



fidh

Migrant Workers in Kazakhstan: No status, no rights

People line up at the Ak-Zhol checkpoint at the border between Kyrgyzstan and Kazakhstan, August 12, 2015.
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INTRODUCTION

Alerted by its partners in Central Asia on the situation of migrant workers in Kazakhstan, the International Federation of Human Rights (FIDH) organized regular visits to Kazakhstan including an investigative mission¹ between February and May 2016. To document violations of the rights of migrant workers and members of their families, FIDH consulted with relevant actors including migrants² from Kyrgyzstan, Uzbekistan and Tajikistan, defenders of migrants' rights, representatives of international organizations, experts on migration issues and the Kazakh authorities.

While in 2004 Kazakhstan became a prime destination for migrant workers from other Central Asian countries,³ local civil society and various international organizations condemned massive violations of migrant workers' rights in the country in the late 2000s.⁴ They indeed often end up being victims of exploitation and abuse by their employers and Kazakh law enforcement. Between 2012 and 2014, the Human Rights Commission under the President of the Republic of Kazakhstan published three reports on the situation of migrants and violations of their rights.⁵ The authorities' interest in migrants' rights has been reflected in the adoption between 2013 and 2015 of two major legislative changes, which allowed the regularization of some migrants. That regularization was carried out based on certain employment demands in 2013 for domestic workers from member States of the Commonwealth of Independent States (CIS), or based on nationality for Kyrgyz nationals in 2015 within the framework of the Eurasian Economic Union (EEU). However, these changes do not suffice. In 2016, hundreds of thousands of migrant workers still find themselves unable to regularize their status and that exacerbates their vulnerability.

The regularization of migrant workers constitutes the most effective way to protect their rights and makes it possible to redress their extreme vulnerability.⁶ The Republic of Kazakhstan, as a State party to the core international human rights instruments, has a duty to protect migrants working on its territory. In this respect, the creation of a legal framework enabling for regularization of migrant workers accompanied by a simplification of the rules regarding migrants' employment in effect is indispensable.

1. The investigative mission was carried out in March 2016 over 9 days in the south of Kazakhstan: in Shymkent (near the Uzbek border), Chilik (120 km east of Almaty, near the Kyrgyz border) and Almaty. The international delegation was composed of two representatives of the FIDH, Maroussia Ferry, an anthropologist and expert on migration issues (France), and Rosalie Laurent, project coordinator at the FIDH (France), as well as Liliya Khaliulina, representative of the organisation "Sana Cezim" based in Shymkent, Bakytgul Yelchibayeva, director of the Fund of Local Communities in the Enbekshikazakh District, based in Chilik, Mirlan Kubatbekov of the FIDH member league "Bir Duino - Kyrgyzstan" (Bishkek, Kyrgyzstan) and Ramil Nafikov from the partner organisation "Mekhr Shavkat" based in Aravan (south of Kyrgyzstan).

2. The names of the people interviewed and indicated in this report are pseudonyms and some details of their identification were changed to protect their privacy and safety.

3. Mainly coming from Uzbekistan, Kyrgyzstan and Tajikistan.

4. FIDH, "Kazakhstan/Kyrgyzstan: Exploitation of migrant workers, protection denied to asylum seekers and refugees", 2009 [<https://www.fidh.org/IMG/pdf/Kazakhstan530a-3.pdf>]; Human Rights Watch, "Kazakhstan: Migrant Tobacco Workers Cheated, Exploited", 2010 [<https://www.hrw.org/news/2010/07/14/kazakhstan-migrant-tobacco-workers-cheated-exploited>].

5. K. Sultanov, T. Abishev, Human Rights Commission under the President of the Republic of Kazakhstan, Special Report "On the situation of migrant workers' rights in the Republic of Kazakhstan", IOM/OSCE, Astana, 2014 [available only in Russian and English. For the English version, Human Rights Commission under the President of the Republic of Kazakhstan Special report "On situation with migrants' rights in the Republic of Kazakhstan", IOM/OSCE, Astana, 2014].

6. Committee for the Protection of the Rights of All Migrant Workers and Members of their Families, General Comment N°1 on migrant domestic workers, Para. 52, 2011 [http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CMW%2fC%2fGC%2f1&Lang=en].

I. KAZAKHSTAN, ATTRACTIVE, BUT DANGEROUS DESTINATION FOR CENTRAL ASIAN MIGRANTS

1. A LAND OF IMMIGRATION

Definitions of the term “migrant”

The International Organization for Migration (IOM) notes that at the international level, there is no universally accepted definition of “migrant”. In her 2002 report, the Special Rapporteur on the Human Rights of Migrants, Gabriela Rodríguez Pizarro, proposes the following criteria to define persons who can qualify as “migrants”: “a) Persons who are outside the territory of the State of which they are nationals or citizens, are not subject to its legal protection and are in the territory of another State; b) Persons who do not enjoy the general legal recognition of rights which is inherent in the granting by the host State of the status of refugee, naturalized person or of similar status; c) Persons who do not enjoy either general legal protection of their fundamental rights by virtue of diplomatic agreements, visas or other agreements.”⁷

Kazakh legislation distinguishes between the following types of migration: a) return to country of origin (“historical motherland”) of ethnic Kazakhs since 1991 (“*oralmans*.” See the footnote number 17.); b) family reunification; c) migration for the purposes of studies or training; d) labour migration.⁸

Definition of the term “migrant worker”

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families – not ratified by Kazakhstan – defines migrant workers as “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.”⁹ Their incentives may vary (economic, family-related, political, environmental) as may their legal status (see the distinction between regular and irregular migration in part I.2 “Prevalence of irregular immigration from other Central Asian countries”).

Kazakh legislation considers labour migration as temporary migration, which is governed by work permits that limit the time of the professional activity of the migrant. It recognizes four categories of migrant workers: 1. “foreign workers-immigrants” who arrive in Kazakhstan in order to be employed; 2. “business-immigrants” who immigrate to Kazakhstan to start

7. Gabriela Rodríguez Pizarro, Special Rapporteur of the Human Rights Commission, Human Rights of Migrants, Note of Secretary General, A/57/292, 9 August 2002 [https://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/un/57/A_57_292_en.pdf].

8. Article 3 of the law on migration of the population, 2011, available in Russian at [http://online.zakon.kz/Document/?doc_id=31038298#pos=780;-267].

9. International Convention on the Protection of All Migrant Workers and Members of their Families, Article 2 [<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>].

their own business; 3. “seasonal foreign workers” who immigrate to Kazakhstan to do seasonal work governed by weather conditions or other natural conditions, for a defined period (a season) not exceeding one year; 4. “immigrant-workers” residing in Kazakhstan as domestic workers who work at an individual's household after having been granted authorisation.¹⁰

The United Nations¹¹ estimates that there are over 3.5 million migrants in Kazakhstan, including all reasons for migration. This estimate encompasses the return of the “*oralmans*,” as well as the migration carried out for private or touristic purposes, or within the framework of university studies or yet again the flow of regular and irregular immigration. According to this figure, migrants represent 20 % of the population of Kazakhstan¹² that stands at over 17.5 million in 2015.¹³ Kazakhstan is the third largest country in the post-Soviet space. It ranks third in the number of migrants whom it hosts, coming after Russia with 11.9 million migrants and Ukraine, 5.1 million.¹⁴

Statistical Matters

Official statistics on labour migration only take into account the above-mentioned categories. They are based on the number of official authorizations granted by the authorities per category. To the extent that these figures do not count the flow of irregular immigration, no reliable official statistics exist on the real flow of labour migration to Kazakhstan. Estimates may be made based on the number of entries and exits from Kazakh territory, and on the number of temporary residency permits issued by the authorities. However, this method poses three major problems: 1. a person crossing the border several times (in one day or throughout a year) is counted as a migrant every time he/she crosses the border; 2. all persons crossing the border and/or obtaining a temporary residency permit in Kazakhstan do not carry out professional activity; 3. many migrant workers do not obtain a temporary residency permit, nor a work permit, and/or cross the border clandestinely. They are therefore totally invisible to the authorities.

After having mainly been a land of emigration and transit to Russia, Kazakhstan gradually became a country of immigration at the beginning of the new millennium as the economic situation improved.¹⁵ Subsequent to the fall of the Union of Socialist Soviet Republics (USSR), the net migration rate of the new Republic of Kazakhstan was negative. The flow of emigration was then mainly composed of Russians, Ukrainians, and Germans returning to their country of origin. Moreover, many Kazakhs emigrated to work abroad, principally in Russia, during the transition of

10. Article 34 of the law on migration of the population, 2011 [available in Russian at: http://online.zakon.kz/Document/?doc_id=31038298#pos=780;-267].

11. United Nations, Department of Economic and Social Affairs, International Migration Report, 2015 [http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015_Highlights.pdf].

12. World Bank, Migration and Remittance Flows: Recent Trends and Outlook, 2013-2016, October 2013 [<http://www.worldbank.org/en/news/feature/2013/10/02/migration-and-remittance-flows-in-europe-and-central-asia-recent-trends-and-outlook-2013-2016>].

13. Statistics from the World Bank for 2015 [<http://data.worldbank.org/country/kazakhstan> (consulted on 23 June 2016)].

14. World Bank, Migration and Remittance Flows: Recent Trends and Outlook, 2013-2016, October 2013 [<http://www.worldbank.org/en/news/feature/2013/10/02/migration-and-remittance-flows-in-europe-and-central-asia-recent-trends-and-outlook-2013-2016>].

15. The gross domestic product (GDP) of Kazakhstan in 2014 was equivalent to 217 000 billion dollars, that is more than double the amount of Uzbekistan's GDP (over 62 000 billion dollars), of Kyrgyzstan (over 7 000 billion dollars), and Tajikistan (over 9 000 billion dollars). Statistics from the World Bank, available at [<http://data.worldbank.org/indicator/NY.GDP.MKTP.CD/countries/KG-KZ-UZ-TJ?display=graph> (page consulted on 26 June 2016)].

the Communist Kazakh economy to a market economy. Between 1990 and 1999, the population of Kazakhstan shrank by 11 %.¹⁶ After the establishment of a policy of voluntary repatriation of *oralmans* living abroad (mainly in Uzbekistan) in 1992,¹⁷ then with the beginning of strong economic growth,¹⁸ and the ebbing of emigration, the migratory balance of the country became positive in 2004.¹⁹ The United Nations reports²⁰ that between 1993 and 2003 labour migration increased from 2 000 migrant workers per year in 1993 to over 11 000 in 2003.

Following a significant increase in the migratory flow toward Kazakhstan at the start of the millennium, it slowed after the 2008 economic crisis and then the deterioration of the Kazakh economy caused by the Russian economic crisis and drop in the price of hydrocarbons in 2014. According to the United Nations' statistics,²¹ there was a major increase in the number of foreigners coming to work in Kazakhstan between 2003 and 2008 going from 12 325 to 58 810 migrant workers (with the required documents), before plummeting to 22 041 migrant workers in 2012 subsequent to the 2008 crisis.

The second ebbing in the arrival of migrant workers is, however, partially offset by the redirecting of a part of the migratory flows from Uzbekistan, Tajikistan and Kyrgyzstan who had been heading to Russia.²² Kazakhstan, being closer and more financially accessible, has become a new destination since the Russian crisis. The number of migrants to Kazakhstan from these three countries has even been rising since 2015. According to statistics of the Kazakh Ministry of the Interior,²³ the number of foreign nationals registered with the authorities during the first quarter of 2016 shows an increase of 12 % as compared to the first quarter of 2015. In Almaty, the main destination of migrant workers to Kazakhstan, 40 000 migrants were officially registered during the first months

16. Decree of the Kazakh government N°1593 "On the complex plan to resolve migration problems, strengthening control of migratory flows from neighbouring countries, creation of favourable conditions for qualified professionals of Kazakh nationality with a view to stemming the flow of emigration toward foreign labour markets for the period 2014-2016", 31 December 2013 [available in Russian: Постановление Правительства Республики Казахстан n°1593 «О Комплексном плане по решению проблем миграции, усилению контроля за миграционными потоками из сопредельных государств, созданию благоприятных условий для отечественных квалифицированных кадров с тем, чтобы не допустить их чрезмерного оттока на зарубежные рынки труда на 2014-2016 годы», 31 декабря 2013, <http://adilet.zan.kz/rus/docs/P1300001593>].

17. Between 1992 and 2014, over 860 000 ethnic Kazakhs established themselves in Kazakhstan as *oralmans*. Over 60 % of them were from Uzbekistan, namely the Autonomous Republic of Karakalpakstan. Human Rights Commission under the President of Kazakhstan, A Special report on the situation concerning the rights of oralmans, stateless persons and refugees in the Republic of Kazakhstan, Astana, 2012 [<http://unhcr.kz/eng/resources/publicationsandreports/1870/>].

18. In 2000, economic growth of Kazakhstan stood at 9.8 %; in 2006, at 10.7 % ; and in 2014, at 4.4 % following the consequences Russian economic crisis and the plummeting of the price of hydrocarbons. Statistics from the World Bank, [<http://databank.worldbank.org/data/reports.aspx?source=2&country=KAZ&series=&period=> (consulted on 27 June 2016)].

19. Elena Sadovskaya, "Kazakhstan in the migration subsystem of Central Asia", Demoscope Weekly, Avril 2010, n°415-416 [available only in Russian: Елена Садовская, «Казахстан в Центральноазиатской миграционной подсистеме», Демоскоп Weekly, 22 марта-4 апреля 2010, n°415-416, <http://demoscope.ru/weekly/2010/0415/analit04.php>].

20. United Nations, Economic and Social Commission for Asia and the Pacific, "Migration and Skills in North and Central Asia," 2015 [available in Russian: Организация Объединенных Наций, Экономическая и социальная комиссия для Азии и Тихого океана, Миграция и вопросы квалификации в Северной и Центральной Азии, 2015, http://www.unescap.org/sites/default/files/2%20Migration%20and%20Skills%20Rus%20report%20v1-4-E_0.pdf].

21. *Idem*.

22. Between July 2013 and November 2015, the number of Uzbek, Tajik and Kyrgyz migrants working on Russian territory diminished by 23.4 %, 20 % and 11 % respectively. "The number of migrants from Uzbekistan, Tajikistan and Kyrgyzstan in Russia fell by a million", CA-news, 12 November 2015 [available only in Russian: «Число мигрантов из Узбекистана, Таджикистана и Кыргызстана в России снизилось на 1 млн (графики)», CA-news, 12 ноября 2015, <http://ca-news.org/news:1169456>].

23. Statistics provided by the Ministry the National Economy following a round-table organised by the FIDH on 31 May 2016 in Astana.

of 2016 according to the department of the Ministry of the Interior of the city²⁴: that is 8 000 migrants more than in the first quarter of 2015.

2. PREVALENCE OF IRREGULAR IMMIGRATION FROM OTHER CENTRAL ASIAN COUNTRIES

Definition of irregular immigration

The International Organization for Migration (IOM) specifies²⁵ that there is no “universally accepted definition of irregular migration. From the perspective of destination countries, it is entry, a stay or work in a country without the necessary authorization or documents required under immigration regulations.”

The United Nations are against the criminalization of irregular migration. Moreover, the United Nations Working Group on Arbitrary Detention clearly highlighted that “criminalizing illegal entry into a country exceeds the legitimate interest of States to control and regulate illegal immigration and leads to unnecessary detentions.” (A/HRC/7/4, Para. 53)²⁶ Kazakh national legislation on migration (Act dated 22 July “On migration of the population”)²⁷ only uses the term “illegal migration” and defines it as a violation by foreign citizens or stateless people of national legislation governing entry, departure or stays, as well as transit on Kazakh territory. Persons responsible of such violations may be sentenced to paying a fine or deported. In its General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, the Committee for the Protection of the Rights of All Migrant Workers explains that the “use of the term ‘illegal’ to qualify migrant workers in an irregular situation is inappropriate and should be avoided as it tends to stigmatize them by associating them with criminality.” Furthermore, it adds that “criminalizing irregular migration fosters and promotes public perceptions that migrant workers and members of their family in an irregular situation are ‘illegal’, second-class individuals or unfair competitors for jobs and social benefits (...),”²⁸ thereby fuelling discrimination against them and violation of their rights.

In order to stay in the country legally, foreigners must obtain a residency permit through registration. According to Kazakh legislation, foreign citizens have up to five days after having crossed the border to register at the local department of migration for a period of one month, renewable once. After two months, migrant workers who have not signed a job contract enabling them to extend their registration usually go to the nearest border, cross it and then come back into the country to be able to remain on Kazakh territory legally for another

24. “The flow of migrant workers is increasing significantly in the Almaty Region,” Sputnik, 14 April 2015 [available only in Russian: «Поток трудовых мигрантов значительно увеличился в Алматинской области», Sputnik, 14 апреля 2016, <http://newskaz.ru/regions/20160414/11664930.html#ixzz45sbSvFle>].

25. International Organisation for Migration, key migration terms, [<http://www.iom.int/key-migration-terms> (page consulted on 5 July 2016)].

26. Special Rapporteur on the human rights of migrants, François Crépeau, Annual Report, 2 April 2012, A/HRC/20/24 [<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session20/Pages/ListReports.aspx>].

27. Law on migration of the population (with amendments included on 6 April 2016), 2011 [available in Russian: Закон Республики Казахстан «О миграции населения» (с изменениями и дополнениями по состоянию на 06.04.2016 г.), http://online.zakon.kz/Document/?doc_id=31038298#pos=232;-279].

28. Committee for the Protection of the Rights of All Migrant Workers and Members of their Families, General Comment N° 2 on the rights of migrant workers in an irregular situation and members of their family, Paragraphs 2 and 4, 28 August 2013, CMW/C/GC/2 [http://www2.ohchr.org/english/bodies/cmw/docs/CMW_C_GC_2_ENG.PDF].

two-month period.²⁹ Certain exceptions exist under agreements reached with Kazakhstan. Thus, Armenian, Belorussian, Kyrgyz and Russian nationals who have indicated on their migratory card that they have come to Kazakhstan to work have 30 days to register within the framework of the Eurasian Economic Union for a maximum duration of 90 days.³⁰ To work legally, foreigners must be employed by Kazakh citizens who have obtained prior authorisation by the authorities following a quota system, or they must buy a work permit (*“patent”*) if they plan to work for a private individual as a domestic worker. Within the framework of the EEU, Kyrgyz migrants are exempt from these procedures. (See Part III.2.)

In Kazakhstan, this means that the following persons are considered migrant workers in an irregular situation; 1. those who entered Kazakh territory illegally; 2. those who do not have a temporary residency permit (or registration); 3. those who work without a work permit or for an employer who has not obtained authorization to hire a foreigner, while possibly having complied with the legal procedures for registration and residing legally in the country.

The Kazakh Ministry of the Interior indicates that in 2015, 1 381 681 foreigners registered with the police (see below), of which officially only 125 625 did so with a view to working (which should be indicated on the migratory card issued at customs). The majority of migrants reside and/or work with an irregular status and, therefore, are not officially counted as migrant workers by the authorities. Between 300 000³¹ and 1.5 million³² migrants are currently working in Kazakhstan with an irregular status, giving an average estimation of at least a million. The director of the Kazakh Labour Inspection Agency, Akmadi Sarbassov, stated in February 2016 that the number of migrants in an irregular situation has continued rising³³ (See above on the redirecting of a part of the migratory flow from Central Asian countries to Russia toward Kazakhstan, Part I.1).³⁴

Nationals from countries of the Commonwealth of Independent States³⁵ do not need visas to enter Kazakh territory. Many of them obtain a temporary residency permit from the authorities by specifying that the purpose of their stay is “personal,” “studies” or “tourism,” then work without having obtained a permit.³⁶ Thus, almost the majority of nationals from the CIS working with an

29. Customs at border posts regularly extort migrant workers who go back and forth to legalise their situation. An old member of the migration police explained to the FIDH delegation that some members of the customs police stamped migration cards and passports without their holders even being present: intermediaries collected the passports migrant workers who did not have the time to go to the border, took them to the border posts before returning them to their owners for a fee (20 000 tenge, that is, the equivalent of 53.50 euros).

30. Eurasian Economic Union was created in May 2014 and is composed in 2016 of Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia.

31. In 2013, the Minister of the Economy of the Kazakh Republic, Yerbolat Dossayev, had quoted the figure 300 000 migrant workers in an ‘illegal’ situation present on Kazakh territory [available in English: “Kazakhstan says illegal migration hits 300,000 a year”, Azer News, 6 March 2013, <http://www.azernews.az/region/50561.html>].

32. “Kazakhstan has calculated the cost of ‘catching and forgiving’”, Zakon.kz, 10 October 2013 [available only in Russian: «Казахстан подсчитал, за сколько “поймет и простит”» Zakon.kz, 10 октября 2013, <http://www.zakon.kz/kazakhstan/4580704-kazakhstan-podschital-za-skolko-pojimet.html>].

33. During a high-level roundtable, organised jointly by the IOM and the Library of the First President of the Republic of Kazakhstan in February 2016 on socio-economic consequences of migration. “The number of illegal migrant workers is not decreasing – A. Sarbassov”, Inform.kz, 26 February 2016 [available in Russian: «Число нелегальных трудовых мигрантов в Казахстане не уменьшается - А. Сарбасов», Inform.kz, 26 февраля 2016, <http://www.inform.kz/rus/article/2875166>].

34. FIDH Interview with the director of Tajik Ethno-cultural Centre in Shymkent on the premises of the civil society organisation “Sana Cezim” on 10 March 2016.

35. The Community of Independent States was created in 1991 and currently brings together Belarus, Russia, Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Moldova, Uzbekistan, and Tajikistan.

36. Statistics provided by the Ministry of the National Economy, following the round-table organised by the FIDH on 31 May 2016 in Astana.

irregular status in Kazakhstan are not considered migrant workers (See above “Statistical matters” in Part I.1). Officially, only 9.8 % of labour migration is made up of the migrant workers from the CIS. The reality, however, is that Uzbeks, Kyrgyz nationals and Tajiks constitute almost two-thirds of the migrant workers in Kazakhstan. The granting of temporary residency permits (registration) makes it possible to estimate the real situation. According to statistics from the Ministry of the Interior,³⁷ out of 1 381 681 migrants registered with the authorities in 2015, 797 982 come from Uzbekistan (that nearly 58%), 114 385 from Kyrgyzstan (that is, a little more than 8 %), and 33 036 from Tajikistan (that is, just over 2 %).

The majority of migrant workers in an irregular situation have jobs that require few skills. They work on construction sites (Uzbeks, mainly), and in the farm fields (Uzbeks and Kyrgyz nationals) between March and November in the south of Kazakhstan, at markets (jobs occupied mostly by Tajiks and Kyrgyz nationals, to a lesser extent by Uzbeks), in the service sector (stores, cafés, restaurants) and for private individuals (as domestic workers).

“Sana Cezim,” an organization that defends namely the rights of migrant workers in Shymkent and in the southern region of Kazakhstan, estimated³⁸ in 2013 that nearly 40 % of migratory flows were made up of women with an over-representation of Kyrgyz nationals³⁹ as compared to Uzbeks and Tajiks. Many migrate as a family to work in the fields of southern Kazakhstan. Others find jobs in the service sector (as waitresses, cleaning ladies, etc.) or for private individuals (as nannies, cooks, etc.).

As migrant workers constitute an unskilled or poorly skilled workforce, they come from other Central Asian countries almost exclusively to Kazakhstan for economic reasons in the hopes of finding work and earning better wages than what they could hope for in their own countries. The Special Rapporteur for the Human Rights of Migrants, François Crépeau, notes that “the need for manpower in destination countries is another important factor of migration. Irregular migration often results in a lack of ways to migrate legally. That is especially the case for unskilled workers, for whom there is often an unrecognised need in destination countries and this leads to the creation of a many jobs on the black market that attract migrants. Many migrants see migration as the only way to improve their economic and social situation, and migrating in an irregular fashion or staying in a country seems to them the only possible solution. The migrants, especially those in an irregular situation or whose status as resident is precarious, are often willing to do dirty, difficult and dangerous work, which the citizens of the country are not willing to do, and that for a pittance offered by unscrupulous employers.”⁴⁰

The main destinations of irregular migratory flows to Kazakhstan from Kyrgyzstan, Uzbekistan and Tajikistan are Astana in the North and the south of Kazakhstan (the regions of Shymkent, Taraz, and Almaty).

37. *Ibid.* Out of 1 381 601 foreigners registered in 2015, 1 164 094 were from CIS countries.

38. “Sana Cezim”, “For 2015, Kazakhstan will need 1.8 million migrant workers,” 27 April 2013 [available in Russian: Сана Сезим, «К 2015 году Казахстану потребуется до 1,8 млн трудовых мигрантов», 27 апреля 2013, <http://www.migrant-help.org/node/3>].

39. See the FIDH report on the topic: FIDH, with the participation of ADC “Memorial” and “Bir Duino – Kyrgyzstan”, Women and children from Kyrgyzstan affected by migration, 2016 [<https://www.fidh.org/en/region/europe-central-asia/kyrgyzstan/central-asia-the-ordeal-of-migrant-workers-and-their-families>].

40. Report of the Special Rapporteur on Human Rights of Migrants, François Crépeau, Labour Exploitation of migrants, 3 April 2014, A/HRC/ 26/35 [<http://www.ohchr.org/Documents/Issues/SRMigrants/A.HRC.26.35.pdf>].

II. VIOLATIONS OF RIGHTS OF MIGRANT WORKERS IN AN IRREGULAR SITUATION

Migrant workers from Central Asia often perceive migration as a solution to their problems and to those of their families. In his report on the labour exploitation of migrants, the United Nations Special Rapporteur, François Crépeau, highlights the fact that migrants are particularly vulnerable, especially due to “a) deceptive recruitment practices by employers and intermediaries; b) frequent lack of a social support systems; c) unfamiliarity with the local culture and language, their rights at work and national labour and migration laws in the country of employment; d) limited or denied access to legal and administrative systems; e) dependence on the job and employer due to migration-related debt, legal status, or employers restricting their freedom to leave the workplace; and f) reliance by family members on remittances sent back home by the migrant.”⁴¹

Vulnerability of migrant workers in an irregular situation in Kazakhstan is all the more exacerbated by the precariousness of their status. On the one hand, employers, intermediaries and law enforcement take advantage of their situation by exploiting and/or extorting them. On the other hand, migrant workers only have very limited access to justice and social services because they are afraid to be noticed in a country where they are considered “illegal” and therefore treated as criminals.

International migration law

Kazakhstan is a State party to the core international human rights instruments, namely the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child. Moreover, it has ratified the eight fundamental conventions of the International Labour Organization (ILO).⁴² It is also a State party to the Additional Protocol to the United Nations Convention Against Transnational Organized Crime that aims to prevent, suppress and punish trafficking in persons, especially women and children (known as the “Palermo Protocol”). By ratifying these international instruments, Kazakhstan has committed to taking national measures and passing laws compatible with the obligations, which stem from the treaties. In its General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, the Committee for the Protection of the Rights of All Migrant Workers and Members of their Families stipulates that “the rights guaranteed in those treaties apply to everyone, including migrants and other non-nationals, without discrimination of any kind based on race, colour, sex, language, religion, political opinion or other opinion, national or social origin, property, birth or other status, including immigration status.”⁴³

41. Report of the Special Rapporteur on Human Rights of Migrants, François Crépeau, Labour Exploitation of migrants, 3 April 2014, A/HRC/ 26/35, Para. 18 [<http://www.ohchr.org/Documents/Issues/SRMigrants/A.HRC.26.35.pdf>].

42. These conventions are the following: C029 – Forced Labor Convention (N° 29), 1930; C087 – Freedom of Association and Protection of the Right to Organise Convention (N° 87), 1948; C098 – Right to Organise and Collective Bargaining Convention (N° 98), 1949; C100 – Equal Remuneration Convention (N° 100), 1951; C105 – on the Abolition of Forced Labour Convention (N° 105), 1957; C111 – Discrimination (Employment and Occupation) Convention (N° 111), 1958; C138 – Minimum Age Convention (N° 138), 1973; C182 – Worst Forms of Child Labour Convention (N° 182), 1999.

43. Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, General Comment N° 2 on the rights of migrant workers in an irregular situation and members of their families, Paragraph 8, 28 August 2013, CMW/C/GC/2 [http://www2.ohchr.org/english/bodies/cmw/docs/CMW_C_GC_2_ENG.PDF].

While Kazakhstan has not yet ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, it is nevertheless obligated to protect the fundamental rights of migrants working on its territory, irrespective of their legal status. In its General Comment No. 2 on the rights of migrant workers in an irregular situation and the members of their family, the Committee for the Protection of the Rights of All Migrant Workers and Members of their Family stipulates that “most of the rights in Part III [of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, including those who are in an irregular situation] are common to a host of international treaties on human rights, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,”⁴⁴ instruments which Kazakhstan has ratified.

The main countries of origin – Uzbekistan, Kyrgyzstan and Tajikistan – are also States parties to the six principal instruments on human rights mentioned above, as well as to the Palermo Protocol. Tajikistan and Kyrgyzstan are parties to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Kyrgyzstan and Tajikistan have ratified the eight fundamental ILO conventions, whereas Uzbekistan has only ratified seven of them (it is not a State party to the Freedom of Association and Protection of Right to Organise Convention [No 87]).

1. TOTAL LACK OF CONTRACTS AND ABUSIVE WORKING CONDITIONS

Right to equitable working conditions

Article 7 of the International Covenant on Economic, Social and Cultural Rights guarantees “the right that every person has to enjoy fair and favourable working conditions, which namely provide:

- a) Remuneration that ensures, as a minimum, to all workers:
 - i) An equitable salary and equal pay for equal work without any distinction (...);
 - ii) A decent existence for them and their family in keeping with the provisions of this Covenant;
- b) Safety and health at work; (...)
- d) Meals, recreation, reasonable limits to the duration of work and periodical paid days off, as well as paid statutory holidays.”⁴⁵

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families – not ratified by Kazakhstan – stipulates in Paragraph 3 of Article 25 that the irregularity of a migrant worker’s situation specifically regarding a stay or employment must not free employers from legal or contractual obligations and must not in any way limit the scope of their obligations.⁴⁶

Whereas many migrants from CIS countries meet the requirements for completing registration and

44. *Ibid.*, Paragraph 6.

45. International Covenant on Economic, Social and Cultural Rights, Art. 7 [<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>].

46. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families [<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>].

obtain a temporary residency permit, most work without having signed a valid contract.⁴⁷ According to the survey conducted by the Kazakh organization “Obschestvennaya Positsiya”, in cooperation with the FIDH member organisation “Bir Duino - Kyrgyzstan”, only one of the 293 migrants surveyed (mainly nationals from Kyrgyzstan and Uzbekistan) in Almaty, Taraz, Astana and in the farm fields of the Enbekshikazakh District in the Almaty province had signed a job contract in 2013.⁴⁸ Upon hiring, working conditions are not always stipulated. In most cases, an oral agreement acts in lieu of a contract and provides no guaranties.

In the overwhelming majority of cases, Central Asian migrants work in very difficult conditions, sometimes comparable to conditions of exploitation. Workdays, including for heavy manual jobs, last, on average, for twelve hours.⁴⁹ Article 77 of the Kazakh Labour Code calls for a maximum of 40 hours of work per week, with a maximum of eight-hour workdays. Rest days are not always allowed and are often less than what is provided for in Kazakh legislation (one or two days per week according to Article 96 of the Labour Code). Moreover, migrant workers, even ones whose papers are in order, are often unaware of their rights at the workplace, especially with regard to paid holidays or payment for overtime.

Nazgul, Ak-Jar (Chuy Region, Kyrgyzstan):⁵⁰ *“I worked [without a contract] for several months in a café in Almaty, between 10 and 14 hours a day, depending on the day. (...) it was hard! Usually, the rule is one day off per week. But sometimes, I had to stay at work. One day, I was so tired that I fainted. My colleagues and I made arrangements so that I could rest a while before resuming work. (...) I was earning 50 000 tenges a month at the beginning [the equivalent of 177 euros in March 2016]. It is perhaps less than in Russia, but at least I was receiving it regularly.”*

On top of the exceedingly long hours, the salaries of migrant workers in an irregular situation are far less than the average salary paid to Kazakh nationals or to migrant workers with their papers in order (the average salary in Kazakhstan in 2016 stands at approximately 150 000 tenges, the equivalent of 390 euros in January 2016).⁵¹ Migrants in an irregular situation very frequently receive their salary with excessive delays ranging from a few days to several months, particularly in agriculture where some employers only pay seasonal migrant workers at the end of the season. In some cases, employers do not advance any living costs (such as food), but very often provide housing to the migrant workers and a plot of land that they till for their own consumption or use to later sell the produce, which they have grown on it. Migrants then find themselves dependent on their employer because if they leave before the harvest, they will not receive any salary.⁵² Others only receive a part of the amount agreed orally prior to the start of work or sometimes never receive the amount due to them. Employers use different means to delay payment of wages or to reduce the amount of the remuneration agreed orally prior to the start of the job. As migrant workers leave their countries for economic reasons, they may be arriving in Kazakhstan after having spent all of

47. In Kazakhstan, validity of a contract is contingent upon prior obtention of authorisation to hire qualified or seasonal workers by the employers, or a work permit issued to employers. See Part III.

48. Report submitted to FIDH during an interview with the defender of migrant workers' rights Assiya Kaliyeva in November 2015 in Almaty.

49. Testimonies by women migrants in Shymkent in service industry (restaurants). Information indicated in the information brochure for migrant workers published by “Sana Cezim” with the support of the Norwegian Embassy, distributed, inter alia, at the border between Kazakhstan and Uzbekistan.

50. Interview conducted in March 2016 at the FIDH in Ak-Jar (in the Chui region, on the outskirts of Bishkek), Kyrgyzstan.

51. “The average salary for Kazakh is under 500 dollars”, Kapital.kz, 15 janvier 2016 [available only in Russian: «Средняя зарплата Казахстанцев – менее 500 долларов», Kapital.kz, 15 января 2016, <https://kapital.kz/economic/47047/srednyaya-zarplata-kazahstancev-menee-500-dollarov.html>].

52. Report of the Special Rapporteur on Contemporary Forms of Slavery, included their Causes and Consequences, follow-up mission to Kazakhstan, 28 August 2014. A/HRC/27/53/Add.2 [<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Pages/ListReport.aspx>].

their savings and asked their employers for an advance payment to cover daily expenses and/or administrative fees (for instance, the cost of obtaining a work permit for domestic workers. See Part III). Debt incurred from their employers puts them in a position of dependence and some employers use that pretext to reduce their wages above and beyond the amounts owed. Other claim to be taking all the necessary administrative measures to get the papers in order for the migrants who work for them in order to dock extra amounts from wages due. Alina Orlova, director of a women's and migrants' rights organization in Petropavlovsk, explained to FIDH⁵³ that just as many Kazakh employers do, members of the Kyrgyz diaspora firmly established in Kazakhstan for several years and having permanent residency or Kazakh citizenship, take advantage of the trust of their newly arrived compatriots. Some employers also take advantage of the precarious situation of irregular migrant workers not to pay them their wages. According to Galina Kaliyeva, director of the organisation "Bolashak" in Taraz,⁵⁴ employers sometimes get migrants to work in their fields or on a construction site by promising to pay them a wage once the work will have been completed. However, once the work is done, these employers report their irregular situation to the police. The migrants are then brought before a court and deported for violations of migration legislation, thus enabling the unscrupulous employers to avoid having to pay them.

The Special Rapporteur on the Human Rights of Migrants notes in his report on the exploitation of labour migrants "occupational safety and health violations are a big concern as migrants are employed high-risk, hazardous sector, including agriculture, construction (...), and different types of informal work."⁵⁵ In Kazakhstan, working conditions can be gruelling in the above-mentioned sectors. While some labourers can be made to work several hours in a row and their level of concentration may drop, their safety is often not guaranteed because their employers often consider their post expendable.⁵⁶ Should there be an accident at the workplace, migrant workers in an irregular situation may not receive any assistance (See Part II.3 below on limited access to health care), nor compensation from the employer. The Special Rapporteur underscores the extreme vulnerability of migrant workers in an irregular situation who "might (...) be afraid that the administrative authorities will discover their situation if they seek compensation, or they might have a hard time proving a working relationship."⁵⁷

Migrant workers in an irregular situation may be victims of psychological or physical violence, and abuse from their employer. Special attention must be paid to domestic workers whose vulnerability is exacerbated by the fact that their work takes place in a private household behind closed doors and subsequently out of sight.

2. INDECENT LIVING CONDITIONS

Right to a decent standard of living

Article 11 of the International Covenant on Economic, Social and Cultural Rights stipulates that all persons have the right to "a decent standard of living for themselves and their families, including sufficient food, clothing and housing, as well as a constant improvement in living conditions."

53. FIDH seminar with 15 representatives of Kazakh civil society (two from Kyrgyz civil society, and one from Russian civil society) on 1 February 2015 in Almaty.

54. Interview conducted in November 2015 in Taraz.

55. Report of the Special Rapporteur on Human Rights of Migrants, François Crépeau, Labour Exploitation of Migrants, 3 April 2014, A/HRC/26/35, Para. 40 [<http://www.ohchr.org/Documents/Issues/SRMigrants/A.HRC.26.35.pdf>].

56. Testimony of a Kazakh citizen working for a construction company in Almaty that employs migrant workers in an irregular situation. Interview conducted by the FIDH on 6 June 2016.

57. *Ibid.*, Para. 41.

In big Kazakh cities such as Almaty, Astana and Shymkent, migrant workers do not have the financial means to rent housing in town. In order to obtain a residency permit in these cities, they can register with the authorities by indicating an address where they are not living and situated within the administrative delineation of the relevant city by paying an amount to an owner of housing in that area. Instead of living at the indicated address, they live in set-ups that are often overcrowded and lacking the necessary sanitary facilities. They are also remote from their place of work.⁵⁸

Migrants in an irregular situation working in the fields, on construction sites, in cafés or at individuals' homes live most of the time at their workplace in extremely precarious conditions. Their housing, provided by their employer, thus hinges on their job, and frequently they endure living conditions that are not decent: housing can be overcrowded, at times without beds, and/or without appropriate sanitary facilities. For example, on construction sites, migrant workers most often live in shacks, where 15 to 20 people may be crammed into a few square meters. According to a Kazakh employee of a construction company,⁵⁹ migrants may be confined to their workplace throughout the entire duration of the work. They never go out into public space, but remain on the site where they work, eat and sleep. Near Almaty, Uzbek migrants meet up in Kaskelen where they are recruited informally and disappear for the entire duration of the construction period.

3. FORCED LABOUR AND TRAFFICKING

Definition of forced labour

According to ILO Forced Labor Convention (No 29) ratified by Kazakhstan in 2001, "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."⁶⁰

Definition of trafficking

According to the Palermo Protocol ratified by Kazakhstan in 2008, "the expression 'trafficking in persons' shall mean recruitment, transportation, 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, 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."⁶¹

Migrant workers in an irregular situation are especially vulnerable to various forms of modern slavery such as forced labour. According to Liliya Khaliulina, a jurist at the organization "Sana

58. Testimony of a Tajik migrant working at markets in Almaty made to the FIDH on 4 June 2016.

59. Interview conducted by the FIDH delegation on 5 June 2016 in Almaty.

60. Definition of the International Labor Organisation, available at: [http://www.ilo.org/global/topics/forced-labour/news/WCMS_237569/lang-en/index.htm].

61. Additional Protocol to the United Nations Convention Against Transnational Organised Crime, Article 3 [<http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>].

Cezim" (Shymkent),⁶² migrant workers from Uzbekistan continue, on a massive scale, to be trapped as victims of forced labour in the south of Kazakhstan,⁶³ including in the fields, on construction sites or for private individuals.

Although it is prohibited by national legislation, withholding of migrant workers' passports is widespread in Kazakhstan, including in the construction and service industries or for domestic workers.

Shakhlo, of Uzbek nationality:⁶⁴ *"I have been working here for nine months [Shymkent]. I tend to an elderly woman in my capacity as a live-in nurse. (...) She is the one who has my passport. It is safer that way. I would be afraid of someone stealing it from me or of losing it. That's normal. That's what everyone does around here."*

While Shakhlo does not testify to any pressure or abuse committed against her, withholding of the passport can have serious consequences. Without their ID, migrant workers are forced to remain with their employer and work without receiving wages. The Special Rapporteur on Human Rights of Migrants notes in his 2014 report that this practice "is routinely used as a tool to trap migrants in exploitative jobs, forcing them to perform work that they would not agree to otherwise. This practice reinforces isolation and dependence and restricts the freedom of movement of the migrant out of the place of work and residence, as well as out of the country."⁶⁵

According to the 2015 US State Department Report on Trafficking,⁶⁶ Kazakhstan is "a destination country and, to a lesser extent, a country of transit or origin for men, women and child who are victims of sexual trafficking and forced labour." Between 2004 and 2014, 1 165 persons were identified as victims of trafficking in Kazakhstan by the IOM; of them, 60 % were foreign nationals.⁶⁷

Migrant workers may be victims of trafficking for economic or sexual exploitation. According to the IOM, out of the 153 cases of trafficking documented in 2012, 79 were for economic exploitation, whereas 74 were for sexual exploitation.⁶⁸

Most of the time, victims of trafficking are young girls and women from neighbouring countries (Kyrgyzstan, Tajikistan, and especially Uzbekistan). According to the United Nations Office on Drugs and Crime (UNODC), between 2010 and 2012, 428 victims of trafficking were identified by the IOM and different Kazakh civil society organizations, and 269 of them were women. In 2014, Anna Ryl, director of the temporary centre for trafficking victims in Astana "Korgau-Astana", emphasised that the two cities where there was the greatest number of cases of trafficking were Shymkent and Astana, places where many Uzbek migrant workers live.⁶⁹

62. Testimony made during a seminar bringing together about fifteen Kazakh civil society organisations organised by the FIDH in February 2016.

63. In a 2009 report, "Sana Cezim" had already mentioned to the FIDH a number of cases of forced labour. FIDH, "Kazakhstan/Kyrgyzstan: Exploitation of migrant workers, protection denied to asylum seekers and refugees," 2009, available at: [<https://www.fidh.org/IMG/pdf/Kazakhstan530a-3.pdf>].

64. Interview conducted by the FIDH in March 2016 in Shymkent on the premises of the organisation "Sana Cezim."

65. Report of the Special Rapporteur on Human Rights of Migrants, François Crépeau, Labour Exploitation of Migrants, 3 April 2014, A/HRC/26/35, Para. 36 [<http://www.ohchr.org/Documents/Issues/SRMigrants/A.HRC.26.35.pdf>].

66. State Department of the United States, Trafficking in Human Beings, July 2015 [<http://www.state.gov/documents/organization/245365.pdf>].

67. The Commission on Human Rights under the President of the Republic of Kazakhstan, Special Report on current issues affecting human rights protection in the area of combatting trafficking in persons in the Republic of Kazakhstan, with the technical support of the IOM, Astana, 2015 [<http://www.iom.kz/new/166-press-rel-athtmig>].

68. UNODC, Eastern Europe and Central Asia, 2014 [https://www.unodc.org/documents/data-and-analysis/glotip/GLOTIP14_Country_profiles_Eastern_Europe_Central_Asia.pdf].

69. "Shymkent and Astana are the cities in Kazakhstan with the greatest number of victims of trafficking", Kazpravda, 30 July 2014 [available only in Russian: «По Казахстану наибольшее число жертв торговли людьми в Шымкенте

Victims of trafficking may be kidnapped in their country of origin, or in Kazakhstan by criminal networks that may be trans-regional. Others may be lured by a false promise. “Cezim”⁷⁰, which helps victims of sexual exploitation in Kyrgyzstan, confirms recruiters often trap young girls at markets by promising them jobs as waitresses, nannies or models in dynamic cities of Kazakhstan.

Yuzma, of Uzbek nationality:⁷¹ *“A woman approached me at a market in Tashkent. She promised me a job as a waitress in Shymkent with good wages. (...) at that time, I really needed money. (...) I left the market with the “recruiter” by train to Kazakhstan. Another girl accompanied us. We got off the train at a station, which I did not know [in Kazakhstan]. And there, the other girl and I were sold to two men. We were forced to prostitute ourselves. I barely slept four hours a day; they almost gave me nothing to eat and I was forced to “work” non-stop from 5 PM to five in the morning. I was watched by the two men and by other girls who were also prostituting themselves (...). If I would refuse to go they would insult and hit me. This lasted a month. One day, I managed to escape, and I went to see the police.”*

In 2014, the Public Ministry of Kazakhstan underscored the yearly increase in the number of on-going legal cases on trafficking, as well as the number of verdicts on violations of articles of the Criminal Code governing trafficking. In 2012, 267 cases were initiated, 166 people were found guilty; in 2013, 350 cases were initiated and 166 were found guilty; and for the first nine months of 2014, 262 cases were initiated and 134 people were found guilty.⁷² These figures do not reflect the scale of the phenomenon in Kazakhstan to the extent that the many victims have not been identified and the cases are far from always being brought before the courts due to the victims’ fears of potential reprisals, threats, even intimidations by the traffickers, and due to corruption of law enforcement (See Part III. 1. “Corruption among the authorities”). Yuzma (quoted above) is one of the rare victims of trafficking for purposes of sexual exploitation in Kazakhstan to have filed a complaint and testified against the traffickers who bought and exploited her.

4. UNGUARANTEED SOCIAL RIGHTS

Limited access to health care

Right to health

Article 12 of the International Covenant on Economic, Social and Cultural Rights recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

Rights to sexual and reproductive health are guaranteed by different human rights instruments such as the International Covenant on Economic, Social and Cultural Rights and Convention on the Elimination of All Forms of Discrimination Against Women. These rights are also enshrined

и Астане», Kazpravda, 30 июля 2014, <http://www.kazpravda.kz/news/obshchestvo/po-kazahstanu-naibolshee-chislo-zhertv-torgovli-ludmi-v-shymkente-i-astane/>

70. Interview conducted by the FIDH in Bishkek in March 2016.

71. Interview conducted by the FIDH delegation in Shymkent on 10 March 2016 on the premises of the non-governmental organisation “Sana Cezim.”

72. The Commission on human rights under the President of the Republic of Kazakhstan, Special report on current issues affecting human rights protection in the area of combating trafficking in persons in the Republic of Kazakhstan, with the technical support of the IOM, Astana, 2015 [<http://www.iom.kz/new/166-press-rel-athtmig>].

in the Programme of Action of the International Conference on Population and Development (Cairo, 1994), and in the Declaration and the Beijing Programme of Action (1995). In 1999, the Committee on the Elimination of Discrimination Against Women affirmed that “access to health care, especially in the area of reproduction, is a fundamental right enshrined in the Convention on the Elimination of All Forms of Discrimination Against Women.”⁷³ The Committee on Economic, Social and Cultural Rights recalled in 2016 in its General Recommendation No. 22 that the right to sexual and reproductive health is indivisible from and interdependent with other human rights.⁷⁴

According to Kazakh legislation on access to health (Article 88.5 of the Code on Public Health and the Health System), only migrant workers with their papers in order can have access to free medical care in the case of infectious diseases, which represent a danger to the population.⁷⁵ Migrants who are nationals of member countries of the CIS (such as Kyrgyz nationals, Uzbeks and Tajiks) all have access to free medical assistance in case of an emergency irrespective of their migratory status. Otherwise, migrant workers only have access to paid healthcare.

Within the framework of the EEU, Kyrgyz migrant workers with their papers in order and members of their families now have access to the Kazakh healthcare system on equal footing and under the same conditions as Kazakh citizens. In practice, however, as the majority of them work without having signed a contract before beginning their work, they cannot benefit from this unrestricted access to the healthcare system, and only have the right to free medical assistance in an emergency given that they are nationals of a member country of the CIS.

Migrant workers in an irregular situation only have very limited access to healthcare for various reasons. The first is financial: while the very reason that they have come to Kazakhstan is economic and that, more often than not, they only receive small wages most of which they send home in remittances, healthcare expenses often seem superfluous. Furthermore, migrant workers in an irregular situation do not want to go to hospital for fear of being arrested by law enforcement. Finally, Kazakhstan has established a system of registration at the national level to manage access to social services and payment of taxes within the framework of which every individual is attributed an individual identification number (at the tax services for foreign citizens without the status of permanent resident). Many migrant workers in an irregular situation cannot obtain this number because they have no registration or due to their perception that carrying out administrative procedures would lead to them being controlled and monitored. Yet, while this number is not theoretically indispensable for access to healthcare, in practice some hospitals can refuse to provide free healthcare if migrants do not have it.⁷⁶

Along with the problem of access to healthcare, is the problem of the deteriorating state of health of migrant workers. Due to their living and working conditions, which are often indecent, migrant workers are more susceptible to contracting certain infectious diseases and having them develop or to being victims of work accidents. Moreover, they are frequently not well or little informed of some diseases like the human immunodeficiency virus (HIV) or tuberculosis, and may not have

73. Committee on the Elimination of Discrimination Against Women, General Recommendation No. 24: Article 12 of the Convention, 1999, A/54/38/Rev. 1, chap. 1, § 1, 29 [[http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=A%2F54%2F38%2FREV.%201\(SUPP\)&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=A%2F54%2F38%2FREV.%201(SUPP)&Lang=en)].

74. Committee for Economic, Social and Cultural Rights, General Recommendation No. 22 on the right to sexual and reproductive health, 2 May 2016, E/c/12/GC/22 [http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolNo=E%2FC.12%2FGC%2F22&Lang=fr].

75. Diphtheria, measles, roseola, scarlet fever, chicken pox, paratyphoids A, B and C, polio, acute viral respiratory infections, flu, viral meningitis, cholera, typhoid, tuberculosis, pulmonary anthrax, viral haemorrhagic fever, hepatitis A and B, malaria, acute intestinal diseases.

76. Interviews conducted with women migrants in Chilik on 13 and 14 March 2016.

access to screening or fear it because they want to maintain anonymity and/or not be stigmatized. The Kazakh deputy minister of health and social development, Alexei Tsoi, stated in November 2015 that experts estimate that there are between 300 000-500 000 and one million migrants working in Kazakhstan every year, and that 15 % of them suffer from tuberculosis or live with HIV.⁷⁷ Ulzhan Lukpanova, from the organisation "Zabota" which helps the most vulnerable segments of the population obtain access to healthcare in Almaty, explained to the FIDH during an interview⁷⁸ that, within the framework of a tuberculosis prevention and screening programme,⁷⁹ her organisation experienced great difficulty making contact with Kyrgyz, Tajiks or Uzbeks in an irregular situation at markets in Almaty because the latter were afraid of being arrested by the authorities.

Children's limited access to education and children working

The right of all children to an education

Article 13 of the International Covenant on Economic, Social and Cultural Rights and Article 28 of the Convention on the Rights of the Child recognize free, accessible, compulsory primary education for all and encourage the organisation of different free forms of secondary education. The Convention on the Rights of the Child emphasizes that States parties must "take measures to encourage regular attendance at schools and the reduction of drop-out rates."⁸⁰

According to Kazakh legislation,⁸¹ children of migrant workers with permanent residency have free access to education on equal footing with Kazakh citizens. Furthermore, a decree from the minister of Education enacted in 2010⁸² stipulates that children of migrant workers residing temporarily on Kazakh territory may also benefit from free access to education, but excludes from the education system children of seasonal and cross-border migrant workers. In 2012, the

77. "Nearly 15 % of migrant workers suffer from infectious diseases", LITER, republican political and social magazine, 19 November 2015 [available only in Russian: «До 15% трудовых мигрантов страдают инфекционными заболеваниями», ЛИТЕР Республиканская общественно-политическая газета, 19 ноября 2015, http://liter.kz/mobile/ru/news/show/14341do_15_trudovyh_migrantov_stradayut_infekcionnymi_zabolevaniyami]

78. Interview conducted on 8 March 2016 in Almaty.

79. Programme funded by the Global Fund to Fight AIDS, Tuberculosis and Malaria and launched in December 2015 for a three-year period. The three objectives of the programme are: 1. to eliminate obstacles preventing access to care for internal and external migrants; 2. to carry out prevention campaigns and guarantee treatment of migrants suffering from tuberculosis; and strengthening the roles of systems of communities, NGOs and civil society [available in English at: <http://www.projecthope.org/news-blogs/stories/2015/providing-tb-support-for.html>].

80. Article 28 of the Convention of the Rights of the Child [<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>].

81. Article 8 of the law "On education" and Article 10 of the Law "On the legal status of foreign nationals".

82. Decree of the Ministry of Education and Sciences No. 468 of the Republic of Kazakhstan dated 28 September 2010, Para. 2, "Children of foreign nationals and stateless persons residing permanently in Kazakhstan, as well as those residing temporarily (refugees, asylum seekers, representatives of consular services and diplomatic institutions and migrant workers with the exception of seasonal and border workers), are accepted into the education system to receive preschool, primary and secondary education, and enjoy the same rights as Kazakh citizens." [Available in Russian: Приказ Министра образования и науки №468 РК от 28.09.2010г пункт 2. «Дети иностранцев и лиц без гражданства, постоянно проживающих в Республике Казахстан, а также лиц, временно проживающих в Республике Казахстан (беженцы, лица, ищущие убежище, консульские должностные лица, работники дипломатических учреждений, трудовые мигранты, за исключением сезонных и приграничных трудящихся), принимаются в организации образования для получения дошкольного, начального, основного среднего и общего среднего образования и пользуются такими же правами, как и граждане Казахстана», https://tengrinews.kz/zakon/pravitelstvo-respubliki-kazahstan-premer-ministr_rk/obpazovanie/id-V070005096_/].

Minister of Education enacted Decree No. 398⁸³ thereby modifying the preceding decree and allowing “children of foreign citizens and stateless people, residing permanently or temporarily on Kazakh territory (refugees, asylum seekers, representatives of consular services, migrant workers carrying out professional activity in keeping with legislation governing migration)” to have access to education on equal footing with Kazakh citizens. Elvira Vatlina, director of the Children's Fund of Kazakhstan, vehemently condemns the fact that this decree excludes from the education system children of migrant workers in an irregular situation: should the Public Ministry verify compliance with legislation governing migration and access to education, children of migrant workers in an irregular situation may be excluded from the education system.

The Decree of 2012 as well as the Education Act breach Article 28 of the International Convention on the Rights of the Child that stipulates that the States parties guarantee free access to education for all children. In October 2015, the United Nations Committee on the Rights of the Child expressed⁸⁴ its concern about the fact that schools would not accept children of asylum seekers, refugees and migrant workers, and recommended to the Kazakh authorities that children be accepted in school irrespective of their parents' administrative status or registration.

Within the framework of a study conducted by the Kazakh Foundation for Children between December 2011 and April 2012,⁸⁵ out of the 360 migrant parents surveyed (internal and external migrants), nearly 24 % responded that their children were not attending school. Of that percentage, 45 % explained that the main reason was that they were not registered. During the investigative mission and within the framework of exchanges with FIDH partners from Kazakh and Kyrgyz civil society, mention was made of certain cases of children who had not been accepted by headmasters of schools due to the fact that they did not hold an individual identification number, even if that number is not required by law. The systematic requirement of this individual ID number can dissuade parents without work authorisation and/or residency permits from signing their children up for school and, by the same token, fosters child labour, especially within families of seasonal migrants who work in the fields. Many migrants come as a family from border regions of Kazakhstan with their children to work in the fields from April-May to September-October. Prior to 2012, most children of seasonal migrants stayed with their parents and worked in the fields, sometimes in very difficult conditions, especially on tobacco⁸⁶ and cotton plantations. In 2006, they represented over half of agricultural labourers.⁸⁷ Many continue to help their parents today in the fields.⁸⁸

83. Decree of the Ministry of Education and Sciences dated 28 August 2012, “Children of foreign nationals and stateless persons residing permanently in Kazakhstan, as well as those residing temporarily (refugees, asylum seekers, representatives of consular services and diplomatic institutions and migrant working in accordance with migration legislation), are accepted into the education system to receive preschool, primary and secondary education, and enjoy the same rights as Kazakh citizens”. [Available in Russian: Приказ Министра образования и науки РК от 28.08.2012. «Дети иностранцев и лиц без гражданства, постоянно проживающих в Республике Казахстан, а также лиц, временно проживающих в Республике Казахстан (беженцы, лица, ищущие убежища, консульские должностные лица, работники дипломатических учреждений, трудовые мигранты, работающие в Республике Казахстан в соответствии с миграционным законодательством) принимаются в организации образования для получения предшкольного, начального, основного среднего и общего среднего образования и пользуются такими же правами, как и граждане Казахстана.» <http://adilet.zan.kz/rus/docs/V1200007924#z4>].

84. Committee on the Rights of the Child, Concluding observations on the fourth periodic report of Kazakhstan, 30 October 2015 [http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fKAZ%2fCO%2f4&Lang=en].

85. Elvira Vatlina, “Access of migrants' children to education in the Republic of Kazakhstan: current situation” 27-29 June 2012, Bishkek. [Available only in Russian: Элвира Ватлина, «Доступ детей мигрантов к образованию в Республике Казахстан: текущая ситуация», 27-29 июня 2012, Бишкек, <http://www.myshared.ru/slide/221089/>].

86. Many cases of child labour in the tobacco fields were identified up until 2014. However, since 2015, tobacco crops have been curtailed considerably. A few remain in the district of Enbekshikazakh, but only make up an infinitely small part of existing crops as compared to years past. (Testimony by Bakytgul Yelchibayeva).

87. International Labour Organization, International Programme on the Elimination of Child Labour, and Centre for Study of Public Opinion, “Child labour in tobacco and cotton growing in Kazakhstan”, rapid assessment report, Almaty, 2006.

88. Report of the Special Rapporteur on Contemporary Forms of Slavery, including their Causes and Consequences, follow-up mission to Kazakhstan, 28 August 2014. A/HRC/27/53/Add.2.

III. TOTAL LACK OF PROTECTION

In its General Comment No. 2 on the rights of migrant workers in an irregular situation and member of their families, the Committee on the Protection of the Rights of All Migrant Workers and the Members of their Families emphasizes that “migrant workers and members of their families in an irregular situation generally live in fear of being reported to immigration authorities by the public service providers or other officials, or by private individuals, which limits their access to fundamental human rights as well as their access to justice, and makes them more vulnerable to labour and other forms of exploitation and abuse.”⁸⁹

1. LIMITED ACCESS TO JUSTICE

Protection of the fundamental rights of migrant workers in an irregular situation

The Special Rapporteur on the Human Rights of Migrants underscores that “the fact that migrant is in an irregular situation does not deprive him/her of human rights protection.” The human rights treaties, including the eight fundamental ILO conventions, apply to everyone without discrimination. (...) States have the right to refuse to give irregular migrants access to their labour market. But as long as such migrants are in fact working, they are entitled to equal conditions of work based on the principle of equality and non-discrimination.”⁹⁰

Right to effective remedy by national tribunals

Article 8 of the Universal Declaration of Human Rights provides that everyone has the right to effective remedy by the competent national tribunals for acts violating the fundamental rights granted him. States are thus obligated to establish accessible and effective remedy mechanisms, which can investigate independently, promptly and in an in-depth manner allegations of human rights violations. That entails guaranteeing that an end will be put to the violations and guarantees of non-repetition. Other fundamental human rights instruments enshrine this right such as the Palermo Protocol (Article 2, 6, 7 and 9), the Convention on the Elimination of All Forms of Discrimination Against Women (Article 6), the International Covenant on Civil and Political Rights (Article 2), the International Convention on the Protection of the Rights of All Migrant Workers and the Members of their Families and several conventions of the ILO, including Convention No. 181 and No. 189.

The High Commissioner for Human Rights specifies that “according to international law, the duty of States to provide remedy is invoked in three cases: a) in the case of violations resulting from an act or omission by a State actor; b) in the case of violations committed by non-State actors with the consent or collaboration of the State or are known by the State or recognized by it; c) in the case where the State has not exercised due diligence to prevent individuals from committing the violation, to begin an investigation on such a violation or to prosecute the perpetrators thereof.”⁹¹

89. Committee for Protection of the Rights of All Migrant Workers and Members of their Families, General Comment No. 2 on the rights of migrants workers in an irregular situation and members of their families, Para. 2, 28 August 2013, CMW/C/GC/2 [http://www2.ohchr.org/english/bodies/cmw/docs/CMW_C_GC_2_ENG.PDF].

90. Report of the Special Rapporteur on Human Rights of Migrants, François Crépeau, Labour Exploitation of Migrants, 3 April 2014, A/HRC/26/35, Para. 57 and 58 [<http://www.ohchr.org/Documents/Issues/SRMigrants/A.HRC.26.35.pdf>].

91. Human Rights Council, Report of the High Commissioner for Human Rights, Summary on the consultations held on the draft basic principles on the rights to effective remedy for victims of trafficking in human beings, 2 May 2014, A/HRC/26/18.

Entitlement to Compensation

The right to effective remedy also entails an entitlement to compensation for violations of human rights. In the Principles and Guidelines on Human Rights and Trafficking in Human Beings, the United Nations High Commissioner for Human Rights defines compensation for damages as “one concrete measure through which victims have access to justice and through which justice is done to them.”⁹² The Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law define different forms of compensation such as restitution, indemnity, rehabilitation, satisfaction and guarantees of non-repetition.⁹³

The 1985 United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power affirms that “victims of crime, including victims of trafficking, are to be treated with compassion and with respect for their dignity; that they are entitled to access to justice and fair treatment; that judicial and administrative processes should be responsive to the needs of victims; and that those responsible for the harm should make appropriate restitution to the victim, including restitution from the State where it can be deemed responsible for the harm inflicted. It further affirms that, where compensation is not fully available from the offender, the State should endeavour to provide compensation from other sources when the victim has sustained serious injury (or to the family when the victim has died or been seriously incapacitated). The establishment of national funds for compensation to victims is encouraged.”⁹⁴

Access to effective remedy often remains a challenge for victims of trafficking. In a report on consultations held on the Draft basic principles concerning the right to effective remedy for victims of trafficking in human beings, the High Commissioner for Human Rights presents the main obstacles to the right to effective remedy detected during those consultations. He namely emphasizes “poor implementation and interpretation of existing national legal frameworks, limited resources, capacities and infrastructure dedicated to the issue, and also gaps in identification and the tendency to criminalize victims, coupled with restrictive immigration policies.”⁹⁵

If their rights are violated, migrant workers in an irregular situation have almost no access to effective remedy in Kazakhstan, and that is so for different reasons. The first is their potential lack of knowledge of 1. the Kazakh language and/or Russian, 2. their rights, and 3. the Kazakh legal and administrative system. Should their rights be violated within the framework of their job, it will be very hard to obtain compensation if they do not have a job contract. The Consul general of Kyrgyzstan in Almaty brought up with the FIDH a case of wages being withheld: as there was no written legal document, the Kyrgyz authorities had to negotiate the payment of

92. United Nations Office of the High Commissioner for Human Rights, Recommended principles and guidelines on Human Rights and Human Trafficking: commentary, 2010 [http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf].

93. Human Rights Council, Report of the High Commissioner for Human Rights, Summary on the consultations held on the draft basic principles on the rights to effective remedy for victims of trafficking in human beings, 2 May 2014, A/HRC/26/18.

94. United Nations Office of the High Commissioner for Human Rights, Recommended principles and guidelines on Human Rights and Human Trafficking: commentary, 2010 [http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf].

95. Human Rights Council, Report of the United Nations High Commissioner for Human Rights, Summary on the consultations held on the draft basic principles on the rights to effective remedy for victims of trafficking in persons, 2 May 2014, A/HRC/26/18 [<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Pages/ListReports.aspx>].

wages with the Kazakh employer on behalf of their national. The employer finally agreed to pay half of the originally agreed amount.⁹⁶ Migrants may also fear reprisals from their employers or the offender(s). Lastly, they may feel reluctant about asking the authorities to provide them with protection out of fear of being identified as migrants in an irregular situation, and being arrested, detained and subsequently deported, or even being victims of extortion by corrupt officials. When migrant workers find themselves in an irregular situation, they are administratively non-existent and therefore “invisible” to the authorities. Consequently, it is all the more difficult to identify them as victims of abuse or trafficking.

Limited role of the Labour Inspection Agency

The Labour Inspection Agency, which is responsible for checking that working conditions comply with national legislation and protecting the rights of workers, has very few means with which to fulfil its mandate. Indeed, its inspections are planned well ahead of time, can only be carried out once a year at big companies and only once every three years at small and medium enterprises. In such a context, few follow-up visits are made and small and medium enterprises, together with individuals, which are the main employers of migrant workers in an irregular situation, benefit regularly from a suspension of inspection under a governmental decree (the last moratorium on inspections of small and medium enterprises lasted from 2 April 2013 to 1 January 2015)⁹⁷ on the pretext that such inspections stunt economic growth and development of companies⁹⁸. The Labour Inspection Agency may also make unplanned visits, but never upon its own initiative. The Labour Code provides namely that an inspection may be conducted after a complaint has been filed or a request for one has been made. For such a request to be considered valid, it must not be anonymous.⁹⁹ This mechanism could be particularly effective for domestic workers whose working conditions are not monitored by the Labour Inspection Agency, but assumes that workers know about this law, that they do not fear reprisals from the employers and trust the Labour Inspection Agency. The director of the department of the Labour Inspection Agency of the southern region of Kazakhstan reported to FIDH that his department had received two complaints of this type since the beginning of the year, a very minimal figure given that the region is the most densely populated of Kazakhstan (nearly 2.8 million inhabitants¹⁰⁰) and that it is one of the principal destinations for Uzbek migrants. The Special Rapporteur on Contemporary Forms of Slavery, including its Causes and Consequences, highlights in 2014 that work inspections planned ahead of time or initiated only after a complaint is received, are carried out too rarely to identify victims of trafficking. She also notes that work inspectors in Kazakhstan are reluctant to report cases of trafficking as they consider that it falls under the remit of the Ministry of the Interior (See below)¹⁰¹.

96. Interview conducted by the FIDH in March 2016 in Almaty.

97. “In Kazakhstan, heads of companies will not be inspected in the next six more months”, YK-news.kz, 13 January 2015 [available only in Russian: «В Казахстане предпринимателей не будут проверять еще полгода», YK-news.kz, 13 января 2015, <http://yk-news.kz/news/в-казахстане-предпринимателей-не-будут-проверять-еще-полгода>].

98. “The moratorium on inspections of small and medium businesses in Kazakhstan takes effect starting today”, Zonakz.net, 21 February 2008 [available only in Russian: «С сегодняшнего дня в Казахстане вступает в силу мораторий на проверки субъектов малого и среднего бизнеса», zonakz.net, 21 февраля 2008, <https://zonakz.net/articles/21116>].

99. Articles 191 to 200 of the Labour Code of the Republic of Kazakhstan, available in Russian at: [http://online.zakon.kz/Document/?doc_id=38910832#pos=1;-307].

100. The population of Kazakhstan reached over 17.39 million inhabitants, Kapital.kz, 6 January 2015 [available only in Russian: «Численность населения РК превысила 17,39 млн человек», 6 января 2015, Kapital.kz, <https://kapital.kz/gosudarstvo/36438/chislennost-naseleniya-rk-prevysila-17-39-mln-chelovek.html>].

101. Report of the Special Rapporteur on Contemporary Forms of Slavery, including its Causes and Consequences, follow-up mission to Kazakhstan, 28 August 2014. A/HRC/27/53/Add.2.

Corruption among the authorities

Corruption is defined by Transparency International as “abuse of entrusted power for private gain”¹⁰². Kazakhstan’s public administration and political class rank among the most corrupt in the world.¹⁰³ According to the Corruption Perceptions Index of Transparency International, Kazakhstan was evaluated at 28 in 2015 on a scale of 0 (perceived as being highly corrupt) to 100 (perceived as not very corrupt).¹⁰⁴ In 2013, 66 % of the people surveyed considered that the police were extremely corrupt and 63 % felt that way about the judicial system.¹⁰⁵ Law enforcement officers and the Labour Inspection Agency may elicit mistrust among migrants in an irregular situation because many of them are corrupt. Migrants and victims of abuses cannot even consider filing a complaint with law enforcement knowing that the offenders can render null and void any court action by paying a bribe to the relevant authorities (police, judges, etc.). Labour inspectors can also fail in their duty by not mentioning violations of working conditions in exchange for kickbacks. Victims of trafficking are most often afraid to file a complaint against the traffickers in a country where law enforcement is very corrupt. Furthermore, funds allocated by the State to protect victims are deemed insufficient by the IOM.¹⁰⁶

Migrant workers in an irregular situation mistrust the authorities (migration police, national security service, customs, tax service, etc.) because the latter may extort them. As they face arrest, detention and deportation due to their irregular situation, they find themselves obliged to pay. At a market in Almaty, Shakhrom, a Tajik migrant, explained¹⁰⁷ to FIDH how migrants from Central Asia, most of whom are in an irregular situation, continue to be able to work openly. When law enforcement reaches its quota of migrants arrested for violations of migration rules (a quota set by their administration), some demand bribes from migrant workers in an irregular situation in exchange for their “protection” or at least their silence. Shakhrom and his family sought a more lasting solution to their situation and paid various intermediaries, including the market administration in order to obtain a residency permit, work authorization and a contract. Their papers are in order now that they have obtained work authorization or a “*patent*” allowing them to work for an individual and after having signed a contract using someone else’s name. However, these papers do not match the reality of their situation as they are self-employed working as merchants at a market. The migration police regularly exert pressure on these migrant workers (by detaining them for several hours thereby preventing them from working) so that the latter give them money.

Migrants in an irregular situation: “outlaws before being victims”

Migrant workers in an irregular situation are qualified as “illegals” in Kazakhstan (See Part I) and in this respect, are treated like criminals. If their most fundamental rights are violated and they turn to the police, they risk being arrested, detained and deported for violations of legislation governing immigration and at work without any hope of obtaining any compensation for the abuse of which

102. Transparency International, The anti-corruption plain language, 2009 [http://www.transparency.org/whatwedo/publication/the_anti_corruption_plain_language_guide].

103. In 2015, Kazakhstan ranks 128th out 168 countries according to the Corruption Perception Index (CPI) of Transparency International which ranks countries as a function of their degree of corruption perceived in public administration and the political class. Transparency International, Corruption Perception Index, 2015. Available in English at: [<http://www.transparency.org/cpi2015#downloads>].

104. *Ibid.*

105. Transparency International, Global Corruption Barometer, National results, Kazakhstan, 2014 [<http://www.transparency.org/gcb2013/country/?country=kazakhstan>].

106. International Organization for Migration, Mapping on irregular migration in Central Asia, 2014, p.84 [<http://iom.kg/wp-content/uploads/2015/01/IDFPublicationeng.pdf>].

107. Testimony made to the FIDH at the “green” market (*zeleny market*) of Almaty on 4 June 2016.

they had been victims. The High Commissioner for Human Rights emphasizes that “citizenship and residency status should not be determining factors in provision of assistance and that States must move national security approach to a human rights- and victims-centred perspective to combatting trafficking”¹⁰⁸.

With regard to migrant workers in an irregular situation who become victims of trafficking, the Human Rights Commission under the President of the Republic of Kazakhstan¹⁰⁹ underscores that in 2014 foreign nationals rarely benefit from adequate protection when they fall victim to trafficking to the extent that many can be deported from the country for violation of immigration legislation, in violation of the Palermo Protocol. Indeed, Article 6 of the Protocol stipulates that “each State party ensures that its legal system provides for measures, which offer victims of trafficking in persons the opportunity to obtain compensation for harm caused,” whereas Article 7 indicates that “each State Party should plan to adopt legislative measures or other appropriate measures that enable victims of trafficking in persons to remain on its territory, temporarily or permanently, when relevant.” The Special Rapporteur on Contemporary Forms of Slavery indicated that in 2014 the Supreme Court of Kazakhstan, in a judgement rendered in 2012, had stipulated that victims of trafficking could not be prosecuted for crimes committed during their captivity, but regretted that victims of trafficking are still ignored and discounted or treated like criminals because their papers are not in order. She emphasized that investigations of cases of trafficking were not conducted conscientiously and rarely resulted in indictment of the perpetrators of the violations related to trafficking¹¹⁰.

Protection provided by the country of origin: extreme vulnerability of Uzbeks

Tajikistan and Kyrgyzstan are States parties to the International Convention on the Protection of the Rights of Migrants Workers and Members of their Families. In this respect, the authorities of these two countries have the obligation to protect the rights of their nationals on their territory, but also in destination countries. However, while the Kyrgyz and Tajik authorities may show good faith in helping their nationals who fall victim to violations on Kazakh territory¹¹¹, their diplomatic consular networks are limited to the two biggest cities in Kazakhstan (Almaty and Astana) and are only lightly staffed. To the lack of financial and human resources is added the lack of understanding by Kyrgyz and Tajik migrants of their rights and the services proposed by the diplomatic representation of their country abroad.

The situation of Uzbek workers in Kazakhstan is especially vulnerable to the extent that the overwhelming majority of them are in an irregular situation and therefore often do not have work authorization or residency permit. As temporary migrants, they are dependent on their job and their employer while having limited access to social benefits enjoyed by permanent residents. Working on construction sites where safety measures are not provided, or as domestic workers,

108. Human Rights Council, Report of the High Commissioner for Human Rights, Summary on the consultations held on the draft basic principles on the rights to effective remedy for victims of trafficking in human beings, 2 May 2014, A/HRC/26/18.

109. The Commission on human rights under the President of the Republic of Kazakhstan, Special report on current issues affecting human rights protection in the area of combating trafficking in persons in the Republic of Kazakhstan, with the technical support of the IOM, Astana, 2015 [<http://www.iom.kz/new/166-press-rel-athtmig>].

110. Report of the Special Rapporteur on Contemporary Forms of Slavery, including their Causes and Consequences, follow-up mission to Kazakhstan, 28 August 2014, A/HRC/27/53/Add.2.

111. See the FIDH report on the topic: FIDH, with the participation of ADC “Memorial” and “Bir Duino – Kyrgyzstan”, Women and children from Kyrgyzstan affected by migration, 2016, Part II.2. “Lack of access to justice in countries of destination”, p. 37 [<https://www.fidh.org/en/region/europe-central-asia/kyrgyzstan/central-asia-the-ordeal-of-migrant-workers-and-their-families>].

especially vulnerable to abuse that remains out of sight, they often fall victim to exploitation, forced labour and trafficking (See Part II). Their extreme vulnerability is also due to the fact that their government remains passive when faced with violations of their rights¹¹², and that they are considered as “traitors” for having left their country. Uzbek law enforcement often demands that families of migrant workers convince their relatives to return to Uzbekistan by threatening to declare them “religious extremists,” or that they directly call the migrants working abroad and urge them to return, otherwise they will be indicted on trumped up charges.¹¹³ As Uzbek migrants cannot obtain assistance from their consular services as opposed to Kyrgyz and Tajik migrants, they are afraid to be identified as migrant workers in an irregular situation and deported to Uzbekistan where they risk imprisonment.

2. WHEN REGULARIZATION IS NOT POSSIBLE

International situation regarding regularization of status

In its General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families, the Committee on the Protection of the Rights of All Migrant Workers and the Members of their Families raises the matter of regularization of status. Although Kazakhstan has not ratified the International Convention on the Protection of All Migrant Workers and the Members of their Families, that General Comment provides important information on legal protection in this field. “Article 35 of the Convention [International Convention on the Protection of All Migrant Workers and the Members of their Families] clarifies that Part III protects the rights of all migrant workers and members of their families, irrespective of their migration status, cannot be interpreted as implying regularization of the situation of migrant workers or members of their families in an irregular situation or any right to such regularization. While States parties have no obligation to regularize the situation of migrant workers or members of their families, they shall take appropriate measures, whenever migrant workers or members of their families within their territory are in an irregular situation, to ensure that such a situation does not persist. (Article 69, Para. 1). States parties shall therefore consider the possibility of regularizing their situation of such persons in each individual case, in accordance with applicable national legislation and bilateral or multilateral agreements, taking into account the circumstances of their entry, the duration of their stay (Article 69, Para. 2). When States parties provide for the regularization of migrant workers in their national legislation, they must ensure that all migrant workers and members of their families in an irregular situation have non-discriminatory and effective access to such regularization procedures and ensure that those procedures not be applied in an arbitrary manner. (Articles 7 and 69)”¹¹⁴.

The Committee for the Protection of the Rights of All Migrant Workers and the Members of their Families recalls that regularization is “the most effective measure to address the extreme vulnerability of migrant workers and members of their families in an irregular situation. States

112. No answer has been received from the Embassy of Uzbekistan to a request for an appointment and an invitation sent by the FIDH in February 2016 to a roundtable with Kazakh civil society and authorities.

113. ‘Uzbek national security services try to bring their citizens back home’, information agency Ozodagon, 8 April 2016 [available in Russian: «СНБ Узбекистана активно пытается вернуть своих граждан на Родину», информационное агенство Озодагон, 8 апреля 2016, <http://catoday.org/centrasia/26028-snb-uzbekistana-aktivno-pytaetsya-vernut-svoih-grazhdan-na-rodinu.html>].

114. Committee for Protection of the Rights of All Migrant Workers and Members of their Families, General Comment No. 2 on the rights of migrants workers in an irregular situation and members of their families, Para. 15, 28 August 2013, CMW/C/GC/2 [http://www2.ohchr.org/english/bodies/cmw/docs/CMW_C_GC_2_ENG.PDF].

parties should therefore consider policies, including regularization programmes, for avoiding or resolving the situations whereby migrant workers and members of their families are in or are at risk of falling into an irregular situation (Article 69, Para. 1)"¹¹⁵.

In Kazakhstan, most migrants in an irregular situation are not given any means, by which they can regularize their situation and obtain minimal protection. Legislation governing labour migration is mainly based on Chapter 6 of Law No. 477-IV dated 22 July 2011 on migration and on Law No. 2337 dated 19 June 1995 "On the legal status of foreign nationals". Only a few references in the law refer to temporary migratory flows within the CIS zone (See Part I definition of labour migration); yet they are the most frequently encountered forms of mobility in Kazakhstan.

A quota system disconnected from the migration reality

Since 2001, when the country began to experience dizzying economic growth, a quota system has been governing the hiring of migrants by Kazakh employers. Every September, these employers submit a request to hire to the local administration, which then transfers this information to the Ministry of Healthcare and Social Development. That Ministry bases itself on the number of job requests received from foreign nationals to determine how many of them can be hired in Kazakhstan; this information is then published in December for the coming year. This quota corresponds both to a percentage of the Kazakh workforce and an absolute number within the framework of implementing top priority projects and subdivided by nationality and specified for each of the fourteen regions of Kazakhstan, as well as Astana and Almaty. The main purpose of this system is to protect the domestic job market. The first quota defined in 2001 made up 0.15 % of the workforce and increased annually until 2008 to reach 1.6 % before falling to 0.75 % in 2009 and 2010 with the economic recession. After a slight increase until 2013 (1.3 % of the workforce), a relapse was observed in 2014 (0.7 %).¹¹⁶

Four categories of quotas exist today: directors, highly qualified specialists, highly skilled workers and, since 2006, seasonal agricultural workers. The three first cover skilled labour and are only of benefit to very few¹¹⁷ nationals from other Central Asian countries who occupy low-skill or unskilled jobs (See Part I). The quota system is not appropriate for seasonal migrant workers. Farmers who want to hire seasonal migrant workers to work in their fields (starting in March until November, with a peak during the harvest in July-August-September) would have to indicate the number and name of the migrant workers, whom they want to hire for the following season over six months in advance. Such a process is obviously not well adapted to the needs and is therefore unrealistic and ends up being circumvented. Furthermore, taking care of these formalities at the headquarters of the local administration, which may be located hundreds of kilometres away from their farms, takes time and money.¹¹⁸ This procedure is no longer required of Kyrgyz migrants since Kyrgyzstan joined

115. *Ibid.*, paragraph 16.

116. Elena Sadovskaya, "Legal labour migration to Kazakhstan", Demoscope, No. 583-584, 27 January-9 February 2014 [available only in Russian: Елена Садовская, Законная трудовая миграция в Казахстан, Демоскоп, номера 583-584, 27 января-9 февраля 2014, <http://demoscope.ru/weekly/2014/0583/tema03.php>].

117. According to information from the Kazakh Ministry of Healthcare and Development, on 1 January 2015, 30 728 work permits were issued. 31 % of the beneficiaries were from China, 20 % from Turkey, 8 % from India, 5 % from Italy and only 4 % from Uzbekistan. "In Kazakhstan, quotas could be abolished to enable migrants to find a job independently", Kursiv.kz 13 February 2015 [available only Russian: «В Казахстане могут отменить квоты на самостоятельное трудоустройство иностранцев», Курсив.kz, 13 февраля 2015, http://www.kursiv.kz/news/obshchestvo/minzdrav_i_sotsrazvitiya_predlagaet_otmenit_kvoty_na_samostoyatelnoe_trudoustroystvo_inostrantsev_841/].

118. During an interview conducted by the FIDH in Essik, a farmer explained that he was unable in 2015 to go to Taldykurgan, which is 400 km from Essik, because the trip would have lasted several days and he did not have the time. Ø

the EEU in August 2015, but remains compulsory for hiring of Uzbek and Tajik migrant workers. With the relapse in Kazakh economic growth, the administration of the Enbekshikazakh District prevented farmers from hiring migrant workers by offering them unemployed Kazakh citizens.¹¹⁹ The quota system for seasonal migrant workers increases the dependence of migrants on their employers because the regularization of their status hinges on them.¹²⁰

Law on domestic workers: a legal void and circumvention of the law

Apart from the quota system, new provisions adopted in December 2013 on labour migration¹²¹ (known as “the law on domestic workers”) provide for the possibility of migrant workers working for private individuals. The latter may only employ a maximum of five persons, whereas migrant workers must obtain authorization (a “*patent*”) from the local authorities that allows them to work for a one-year period for a private individual. This “*patent*” is only renewable once for the same duration with a mandatory waiting period of one month. According to the new provisions, the residency permit for migrant workers is extended for the period indicated in that permit. Migrant workers must indicate on their migration card that the purpose of their trip is “work,” be registered and pay 3074 tenges (the equivalent of €8.50 in July 2016 or €15.50 in January 2014) on top of 1618 tenges (the equivalent of €5 in July 2016), a monthly tax, which they must pay in advance.¹²²

When the “law on domestic workers” was adopted, the Minister of the National Economy, Erbolat Dossayev, stated¹²³ that the fight against irregular migration had become one of the government’s priorities, thereby suggesting that this law would make it possible for more migrant workers to regularize their status. However, the adoption of such legislative amendments only affected migrant workers employed by private individuals. Nothing exists for those who are self-employed or working for companies, for example in construction or the service industry (sectors where most migrant workers from Kyrgyzstan, Uzbekistan and Tajikistan work. See Part I). To redress these legal impasses and be able to work legally, some migrants purchase a “*patent*” to work as “domestic workers” while not being employed by a private individual (See Shakhrom’s testimony above in Part III.1, “Corruption among the authorities”). Representatives of civil society¹²⁴ report that migrants sometimes work in groups of 20 or 30 persons on sites managed by private companies as “domestic workers.”

Given the unrealistic quota system for seasonal workers, subleasing of land is emerging as a practice: migrant workers do not receive wages for their work, but have the right to a percentage of the harvest, which they gather and then eat and/or sell. Following the various interviews conducted by the FIDH with Kyrgyz migrants who were working in the fields in the Enbekshikazakh District, most receive 50 % of the harvest which they gather and that is only a paltry compensation for

119. Testimony of Bakytgul Yelchibayeva, director of the Fund of Local Communities in the Enbekshikazakh District.

120. FIDH recommendation, “FIDH calls on the authorities of Kazakhstan to revise the system for granting work permits to migrants so that such permits are issued to the migrants themselves” presented in its report, Kazakhstan/Kyrgyzstan: Exploitation of migrant workers, protection denied to asylum seekers and refugees, 2009 [<https://www.fidh.org/IMG/pdf/Kazakhstan530a-3.pdf>].

121. Amendments of a series of legislative acts of the Republic of Kazakhstan regarding labour migration dated 10 December 2013 No. 153-V.

122. “The positive and negatives of the legalizing the status of migrant workers in Kazakhstan”, Zakon, 27 May 2014 [available only in Russian: «Плюсы и минусы легализации трудовых мигрантов в РК», Закон, 27 мая 2014, <http://www.zakon.kz/4627313-pljusy-i-minusy-legalizacii-trudovykh.html>].

123. “Kazakhstan says illegal migration hits 300,000 a year,” Azer News, 6 March 2013 [<http://www.azernews.az/region/50561.html>].

124. Elvira Vatlina, Aina Shormanbayeva, Liliya Khaliulina. Roundtable organised by the FIDH on 30 May 2016 in Astana with representatives of Kazakh civil society and the authorities.

their work if their is a poor harvest. Currently, there is no legislation to structure the relationship between landowners and seasonal migrants.

Since the adoption of the 2011 new version of the law on migration, foreign citizens may make a request of the competent authorities to obtain a license authorizing them to be self-employed. According to an IOM report,¹²⁵ only one such license was issued in 2012-2013. Indeed, only about thirty professions are covered by the change and not one is currently being exercised by Central Asian migrants. Migrants are not allowed to work in sales and commerce on markets as self-employed merchants according to the law. So, there are three practical solutions for migrant workers working at markets: 1. working illegally and fleeing as soon as the migration police arrive; 2. obtaining a license to work and a contract by paying off the market administration and different intermediaries, as well as the migration police (See Shakhrom's testimony above in Part III.1, "Corruption among the authorities") or 3. obtaining a permanent residency permit or Kazakh nationality enabling them to work without a specific work authorization. According to the information received, a permanent residency permit may be obtained in Almaty illegally in exchange for a payment 5000 dollars, and Kazakh citizenship for 20 000 dollars. To put things in perspective, the average monthly salary in Kazakhstan in 2016 is 150 000 tenge, that is, about 390 euros or 430 dollars.

New rules in effect for Kyrgyz migrants: regularization made possible in theory

The only ones exempt from the work authorization requirement are Kyrgyz nationals who have been enjoying the same access to the labour market as Kazakh citizens ever since Kyrgyzstan joined the EEC. While in theory these new provisions have eliminated all administrative obstacles to regularizing the stay of Kyrgyz migrant workers, certain difficulties remain in practice due namely to the ignorance among law-enforcement officers with respect to the new legislative provisions in effect. The association of local communities in the Enbekshikazakh District, which provides support to farmers and migrants when they are negotiating a job contract and ensures compliance with contractual conditions by both parties, explained that the new rules are not yet known by all the administrations. For instance, the tax services of the Enbekshikazakh District refused to take into account the contract that some Kyrgyz migrants had signed with their employer and asked them to use the format provided for domestic workers. Moreover, Kyrgyz nationals may not be aware of these procedures either and may not demand that a written contract be signed. Several Kyrgyz migrants who have been present on Kazakh territory for over a decade had confided to the FIDH that they continue to go back and forth to Kyrgyzstan every two months and pay bribes to the migration police,¹²⁶ specifying that everyone in their village is aware of their situation. Lastly, this simplification of procedures to regularize status of migrant workers can only be effective if there is a campaign to address the problem of unscrupulous employers who refuse to sign a written contract with their employees in order not to pay taxes, and even to have more latitude to exploit them (See Part II.1 above "Lack of job contracts and abusive working conditions").

125. International Organization for Migration, Mapping on irregular migration in Central Asia, 2014 [<http://iom.kg/wp-content/uploads/2015/01/IDFPublicationeng.pdf>].

126. Interview with a Tajik migrant at the green market of Almaty on 4 June 2016.

Amnesty, a temporary solution

During a round-table organised by the FIDH with Kazakh civil society in May 2016, representatives of the Ministries of the National Economy and of the Interior shared their amnesty project, which would enable migrant workers in an irregular situation to regularize their situation. While this solution is a step in the right direction, it is not a lasting one and does not resolve the systemic problem as shown with the previous amnesty implemented in Kazakhstan. From 1 August to 31 December 2006, an amnesty had enabled Kazakhs who were illegally employing migrants to legalize their situation for a maximum period of three years. Only 165 000¹²⁷ migrants had benefited from this measure¹²⁸ out of over half a million migrants in an irregular situation at the time. And 47% of these 165 000 once again found themselves in an irregular situation a year later.¹²⁹

127. Richard Weitz, "Kazakhstan Adopts New Policy Toward Foreign Migrants", The Jamestown Foundation, Eurasia Daily Monitor Volume: 11 Issue, 17 January 2014 [http://www.jamestown.org/regions/centralasia/single/?tx_ttnews%5Bpointer%5D=7&tx_ttnews%5Btt_news%5D=41835&tx_ttnews%5BbackPid%5D=53&cHash=69a448dd0065a19990b740e6660cc357#.V2_o301b9CU].

128. "According to estimates of independent experts, the number of migrants working in an illegal situation in Kazakhstan stands at half a million", Zakon.kz, 28 November 2008 [available only in Russian: «По оценкам независимых экспертов число нелегальных трудовых мигрантов в Казахстане доходит до полумиллиона человек», Zakon.kz, 28 ноября 2008, <http://www.zakon.kz/127320-po-ocenkam-nezavisimykhekspertov.html>].

129. Bhavna Davé, "Keeping labour mobility informal: the lack of legality of Central Asian migrants in Kazakhstan", Central Asian Survey, 33:3, 346-359, 2014.

CONCLUSION

Irregular migrant workers who make up the vast majority of migrant workers in Kazakhstan are particularly vulnerable. They often work in dangerous and abusive conditions, and can especially be victims of psychological and physical violence, forced labour or even trafficking. All too often, they live in indecent conditions and work without protection in conditions of exploitation. The insecurity of their status limits their children's access to education, and their access, as well as that of the members of their families, to healthcare.

Considered first and foremost as criminals, they only have limited access to justice. Out of fear of being victims of reprisals or extortion, and/or being arrested, detained and deported for violation of migration law, they rarely turn to the authorities to report violations of their rights. As they are invisible to the administration, especially those working in the fields, on construction sites or as domestic workers for private individuals, they do not enjoy protection of their human rights due to their legal status, and this is in violation of the main international human rights instruments to which Kazakhstan is a State party. To improve protection of the rights of all workers, impunity of unscrupulous employers and traffickers in human beings must be brought to an end and corruption among the authorities tackled head-on.

Furthermore, most migrant workers from Uzbekistan and Tajikistan have no way of regularizing their situation. They are caught between unrealistic legislation for seasonal workers and face a legal void for low-skill jobs occupied temporarily by foreigners on construction sites or at markets, or for leasing of lands to migrants. Regularization of Central Asian migrant workers would make it possible to provide better protection of their rights (by the possibility of signing a contract or turning to the authorities without fear of being arrested or extorted).

THANKS

FIDH thanks the representatives of its member organisations: Kazakhstan International Bureau for Human Rights and Rule of Law, the human rights movement "Bir Duino – Kyrgyzstan" and Anti-Discrimination Centre "Memorial" (ADC "Memorial"), as well as its partner organisations in Kazakhstan – the Public Fund "International Legal Initiative", "Sana Cezim", the Fund of Local Communities in the Enbekshikazakh District, the Children's Fund of Kazakhstan, "Meyerim", "Obschestvennaya Positsiya", the Union of Crisis Centres in Kazakhstan, "Women Support Centre", Gulnura Idigeyeva and Natalya Iskhakova – and in Russia – Civic Assistance Committee –, for their participation in the preparatory seminar for the investigative mission and the round-table with the authorities.

FIDH especially thanks Aina Shormanbayeva (the Public Fund "International Legal Initiative"), Bakytgul Yelchibayeva (the Fund of Local Communities in the Enbekshikazakh District) and Liliya Khaliulina ("Sana Cezim") for their valuable contribution throughout the project and their assistance in organising and holding the investigative mission.

The FIDH also thanks all the people with whom it met during the investigative mission and consulted throughout the project.

RECOMMENDATIONS

FIDH calls upon the authorities of the Republic of Kazakhstan to:

- Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
- Ratify ILO Migration for Employment Convention (No. 97, 1949), Migrant Workers Convention (No. 143, 1975), (complementary provisions), Domestic Workers Convention (No. 189, 2011), as well as Domestic Workers Recommendation (No. 201).
- Fully implement the recommendations adopted by the Human Rights Committee in its concluding observations on the second periodic report of Kazakhstan¹³⁰, in particular the recommendations regarding violations migrant workers' rights and the total lack of protection.¹³¹
- Commit to providing, as soon as possible, Special Procedures who wish to visit Kazakhstan with answers regarding the different aspects related to the organisation of their visit (namely the dates and terms of reference) in order to make these visits possible in keeping with the open and standing invitation addressed on 28 July 2009 to all mandate holders.
- Take measures necessary to guarantee transparency of information on migratory processes under-way in Kazakhstan and their accessibility to civil society organisations in order to optimize protection of the rights of all migrant workers and members of their families.
- Enable all migrants from non-member countries of the EEC working in construction, agriculture, services and commerce to regularize their situation lastingly, reform its immigration and employment legislation by creating provisions necessary to issue work authorization or "*patents*" whether they are employed by private individuals or legal entities, and to expand the list of self-employed professions that foreign citizens may exercise. Payment to obtain this "*patent*" would only be made once the first wage would have been paid to avoid all relationships of dependence of the migrant worker on the employer.
- Amend the migration law to include in it the fundamental rights of all migrant workers, including domestic workers and seasonal workers in accordance with the international human rights standards, such as the rights to fair and favourable working conditions (including equitable pay), safe conditions, reasonable working hours and days off and rest, as well as the right to join a trade union. The law on trade unions should also be amended to enable all migrant workers to be able to create a trade union.
- Guarantee uniform application of Kazakh legislation, including in the area of migration and throughout the territory of the Republic; buttress the fight against corruption among the Kazakh authorities, especially law enforcement, customs, the migration police and the Labour Inspection Agency.
- Continue to provide employees of the customs and migration police with training on the rules in effect on the territory of the Republic of Kazakhstan in the fields of residency, employment of migrant workers and their family members, and fighting trafficking.
- Intensify cooperation between the migration police and the Labour Inspection Agency to identify migrants who are victims of violations of their fundamental rights, especially migrants who are victims of abuse, exploitation, forced labour or trafficking for economic or sexual purposes.
- Establish an effective system for filing complaints of all migrant workers who are victims of abuse; react promptly and efficiently to alleged facts of violations of the rights of all migrant

130. Human Rights Committee, Concluding observations on the second periodic report of Kazakhstan, 9 August 2016, CCPR/C/KAZ/CO/2.

131. Human Rights Committee, Concluding observations on the second periodic report of Kazakhstan, 9 August 2016, CCPR/C/KAZ/CO/2, Paras. 33-36.

workers by conducting efficient, independent and impartial investigations; prosecute persons responsible for abuse of migrant workers or violations of their rights, including those who employ migrants without having signed a contract with them prior to the commencement of work, or who do not comply with the terms of the contract signed with them (working hours, payment of wages, days off and days of rest, etc.).

- Effectively guarantee all migrants who are victims of trafficking immunity should they breach migration rules and a reliable system of protection during investigations and judicial proceedings if relevant in order to guarantee their safety if there should be reprisals by the offenders.
- Enhance monitoring of the conditions in which the migrants are working by allowing the Labour Inspection Agency to make frequent random visits to small, medium and large businesses, and by allocating it requisite financial and human resources to carry out its mandate.
- Allocate human and financial resources to the Labour Inspection Agency for information campaigns among migrant workers on their rights, irrespective of their legal status, and on the various existing remedies, which they can access, especially the mechanism to file a complaint with the Labour Inspection Agency should there be violations of migrant workers' rights.
- Build capacity of all parties interested in combatting trafficking in human beings, especially law enforcement officers, judges and lawyers, as well as social services staff and civil society actors in order to guarantee effective remedy to victims of trafficking.
- Step up cooperation among parties interested in fighting trafficking in human beings on a national scale, and on a regional scale with neighbouring countries, particularly Kyrgyzstan and Uzbekistan.
- Expand the list of beneficiaries of free medical care in case of infectious diseases to all migrant workers, whether their papers are in order or not, and not only to foreign citizens with permanent residency.
- Intensify the HIV and tuberculosis prevention and screening programmes for all migrant workers by involving Kazakh healthcare services.
- Guarantee all migrant women, irrespective of their legal status, free access to sexual and reproductive healthcare, including free access to methods of contraception, and prenatal and postnatal care.
- Guarantee all children, including children of seasonal and temporary migrant workers, free access to education, and amend Decrees No. 398 and 468 by guaranteeing all children free access to education regardless of the legal status of their parents.
- Submit an interim report on the state of implementation of recommendations accepted during the second Universal Periodic Review, namely those calling upon Kazakhstan to guarantee equal access to education for all children, including migrant or refugee children, by repealing legal and administrative conditions such as the registration, and guaranteeing, within the framework of monitoring of migration and extradition agreements, protection of the rights of the people concerned, ensuring that their physical integrity is respected and that they have a right to due process¹³².

FIDH asks that the authorities of the countries of origin of the flows of labour immigration to the Republic of Kazakhstan, in particular the authorities of the Kyrgyz Republic and of Tajikistan:

- Conduct or continue to conduct information campaigns on their territory, as well as on the territory of the Republic of Kazakhstan (or any other destination country) through their consular network, the media and Internet among migrant workers and potential/future migrant workers, and the members of their families on:

132. Human Rights Council, Report of the Working Group on the Universal Periodic Review, Kazakhstan, 10 December 2014, A/HRC/28/10.

- The rules of residency and employment for respective nationals depending on the bilateral and/or regional agreements reached in this field with Kazakhstan, as well as conditions of access to different social services (access to healthcare and education, in particular);
 - The rights of all migrant workers, irrespective of their legal status, guaranteed by the Conventions of the United Nations;
 - Risks they may face on Kazakh territory, including violation of their rights committed by their employers, Kazakh authorities and criminal networks, and abuse and violence of a sexual nature;
 - Assistance they can receive from the consular services of their country should their rights be violated on Kazakh territory (or that of any other destination country).
- Guarantee legal, psychological and financial assistance to all their nationals, including migrant workers, victims of abuse and violence, including of a sexual nature, through their consular network on Kazakh territory.
 - Follow up proceedings initiated against migrant workers on Kazakh territory for breach of migration rules.
 - Continue cooperation in fighting the different forms of trafficking in human beings that are ravaging the region of Central Asia, and to which migrant workers are particularly vulnerable.
 - Combat illegal recruitment networks on their respective territories and within the framework of regional cooperation.

FIDH asks that the authorities of Uzbekistan:

- Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- Stop considering the departure from Uzbekistan to go and work abroad as a disloyal act by nationals toward their country, recognize the difficulties, which they face once abroad and guarantee them legal, psychological and financial assistance through their consular services when they fall victims to violations of their rights.

FIDH calls upon the international community to use all the means at its disposal to encourage the authorities of the Republic of Kazakhstan and the countries of origin, namely Uzbekistan, the Republic of Kyrgyzstan and Tajikistan, to implement the above-mentioned recommendations.

FIDH asks the United Nations Special Rapporteur on the Human Rights of Migrants to:

- Ask the governments of Uzbekistan, the Kyrgyz Republic and Tajikistan to send an invitation for a fact-finding mission to their respective countries to assess the situation of rights of migrant workers and members of their families who return home.
- Organize a fact-finding mission in Kazakhstan to assess the situation of rights for migrant workers in an irregular situation.

FIDH asks the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences to:

- Organise a fact-finding mission to Kazakhstan to assess the situation of migrant women's rights, especially of those working at the homes of private individuals as "domestic workers."

FIDH asks the European Union to:

- Integrate systematically problems linked to respect for rights of migrants and members of their families in destination countries, and to respect rights of those remaining in the countries of origin, within the framework of bilateral dialogues between the Republic of Kazakhstan, Uzbekistan, the Kyrgyz Republic and Tajikistan.
- Ensure that the objective of effective respect for human rights is not isolated, and not only raised within the framework of human rights dialogues, but also included in all other forms of dialogue, and at all negotiations; to ensure that this objective be supported politically at all levels of discussion (including trade talks or discussions at the United Nations).
- Implement the recommendation of the Council of the European Union inviting the Commission to devise, together with partners from Central Asia, strategies to react to the dynamics of the labour markets and changes regarding migrant workers in order to minimize unemployment by promoting a spirit of enterprise, employability and empowerment of youth, women and persons belonging to minorities.”¹³³

FIDH asks the Organisation for Cooperation and Security in Europe (OSCE) to:

- Follow closely the situation of migrant workers and members of their families in Kazakhstan within the framework of its mandate on human rights.

133. Council of the European Union, “Conclusions of the Council on the Strategy of the EU for Central Asia”, Council of Foreign Affairs, 22 June 2015 [<http://data.consilium.europa.eu/doc/document/ST-10191-2015-INIT/fr/pdf>].

ANNEX

List of persons met in Kazakhstan in November 2015, March and May 2016:

National authorities

- Ministry of the National Economy, Viktor Busse, deputy director of the Department of social and migration policy and development of the governmental services of the Ministry.
- Ministry of the Interior, Nurgali Ristanov, representative of the Migration Police Department.
- Ministry of the Agriculture, Ayaulym Mustaphina, expert from the Department of Strategic Planning and Analysis.

Regional and local authorities

- Regional Department of Work Inspection of the Southern Region of Kazakhstan, Bastar Eskarayev, director.
- Department of the Administrative Police of the city of Shymkent, Alma Sergaziyeva, chef inspector of the Section for Protection of Women against Violence.

Foreign authorities in Kazakhstan

- Embassy of Kyrgyzstan in Kazakhstan, Almaz Baybossov, second secretary-consul.
- Consulate General of Kyrgyzstan in Almaty, Kazakhstan, Gulnura Narmatova, consul.

International organisations

- International Organisation for Migration (IOM), country office (Kazakhstan), with a coordinating function for Central Asia, Dejan Keserovic, head of the mission, and Svetlana Zhassymbekova, programme administrator in Astana, and Aliya Belonossova, national administrator in Almaty.
- Organisation for Cooperation and Security in Europe (OSCE), office in Kazakhstan (Astana), Mirco Guenther, deputy head of mission, and Maxime Kan, project assistant regarding economic and environmental dimensions.
- UN Women, regional office for Central Asia in Kazakhstan (Almaty), Nargis Azizova, Programme Specialist.

Non-governmental organisations and associations

- Kazakhstan International Bureau for Human Rights and Rule of Law, Denis Jivaga, deputy director.
- The Public Fund “International Legal Initiative” (Almaty), Aina Shormanbayeva, President, Amangeldy Shormanbayev, expert on political rights, and Roza Aitkeyeva, expert on matters related to trafficking.
- “Sana Cezim”, Khadicha Abysheva (president), Shakhnoza Khassanova (vice-president) and Liliya Khaliulina (jurist).
- The Fund of Local Communities in the Enbekshikazakh District, Bakytgul Yelchibayeva, director, and Asset Amukhamedov, jurist.
- Children’s Fund of Kazakhstan (Almaty), Elvira Vatlina, president, and Almira Japparova, expert on matters regarding access to healthcare.
- “Obschestvennaya Positsiya” (Almaty), Assiya Kaliyeva, president.
- “Meyerem” (Aktau), Kazakhstan branch, International Bureau for Human Rights and Rule of Law in the Mangistaу Region, Aleksandr Mukha, director.
- Union of Crisis Centres of Kazakhstan (Almaty), Elena Parashenko and Assel Mukhamedsadykova, coordinator.
- “Women Support Centre” (Petropavl), Alina Orlova, chairman.

- “Bolashak” (Taraz), Galina Kaliyeva, director.
- NGO “Korgau-Astana” (Astana), Anna Ryl, director, and Danya Bugalieva, jurist and social assistant.
- “Zabota” (Almaty), Ulzhan Lukpanova, director.
- Network of Central Asia for women “Amal,” Elena Bilokon, director.
- “Doverie plus” (Almaty), Roza Oleinikova, director.
- Red Crescent National Societies of the Republic of Kazakhstan, Assistance Centre for Migrant Workers (Astana), Nadira Mazieva, coordinator of project on the territory of Astana.
- Defenders of migrant workers’ rights, Gulnura Idigeyeva and Natalya Iskhvakova (Aktobe Region).

Ethno-cultural centres

- Tajik Ethno-cultural Centre of Shymkent, Faiziyev Rakhimkhoja.
- Kyrgyz Ethno-cultural Centre “Murasse” of Almaty and of its region, Ruslan Mamyrov.

Trade union organisation

- Federation of Trade Union of Kazakhstan, Gulnara Jumageldieva (vice-president), Bakytzhan Tulenov (director of Department of socio-economic protection) and Aizhan Ibrayeva (consultant).

Experts

- Elena Sadovskaya, president of the Centre for Conflict Management, and member of the association Almaty Global Migration Policy Associates (GMPA).
- Caress Schenk, adjunct professor of political science at Nazarbayev University (Astana), specialist of migration question in Russia and Central Asia.

Others

- Polyclinic No. 5 of the city of Shymkent, Zhibek Seidalinova, nurse.
- General secondary school No. 1 in Shymkent, Elena Chevchenko, deputy director of educational activities.

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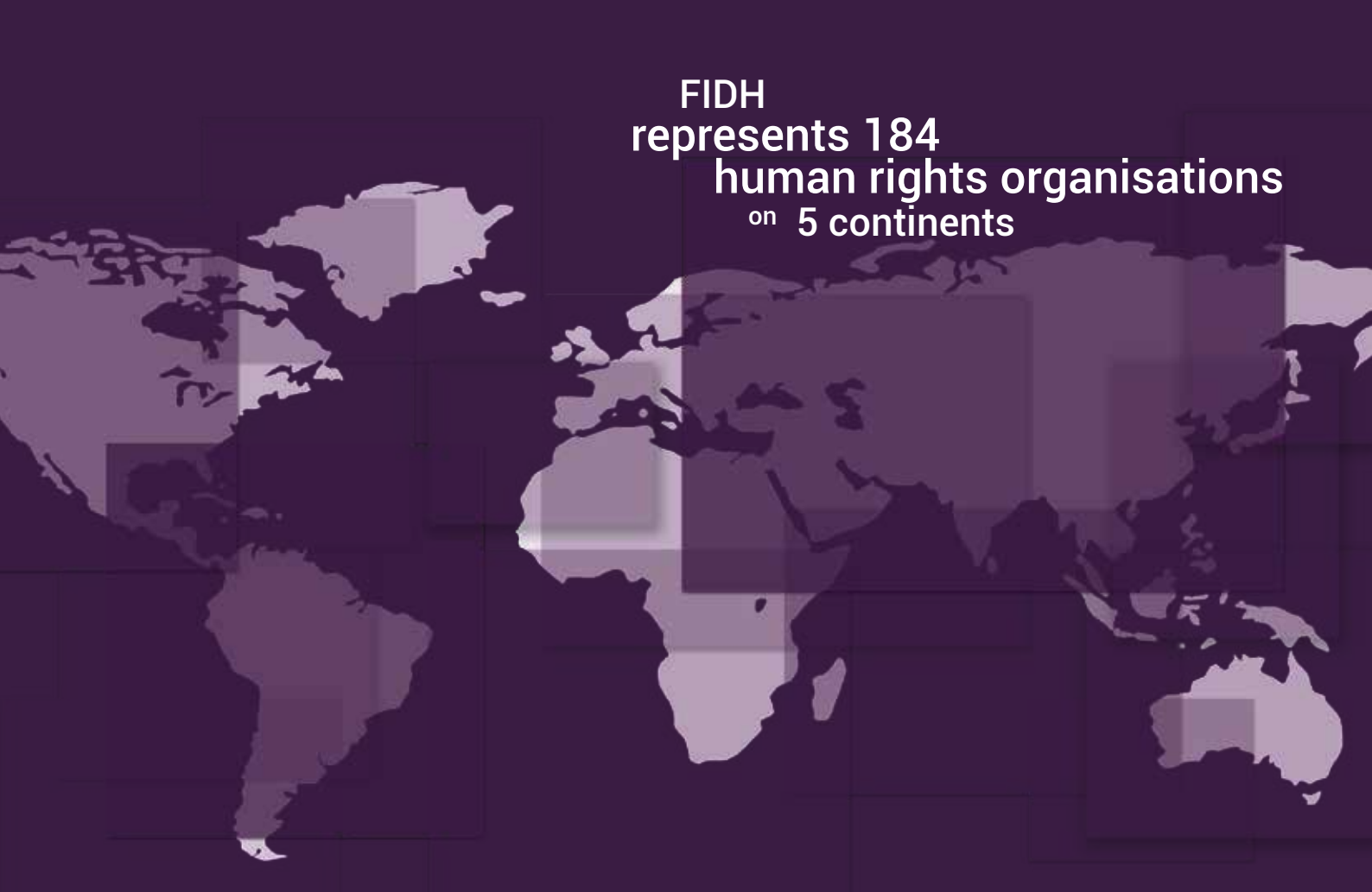
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