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الفدرالية الدولية لحقوق الإنسان

**Submission to the UN Committee on Economic, Social and Cultural Rights
44th session, 3-21 May 2010
Examination of Kazakhstan**

**Kazakhstan: economic, social and cultural rights of migrant workers, asylum
seekers and refugees**

1. Introduction

FIDH submits this information to the UNCESCR on the occasion of its examination of Kazakhstan at its 44th session. The following submission is based on the report of an investigative mission sent by FIDH to Kazakhstan and Kyrgyzstan in June 2009 to document the situation of migrant workers, asylum seekers and refugees in these countries. The mission took place with the assistance of the Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR) and of the Kyrgyz Committee for Human Rights (KCHR). The full report is available at <http://www.fidh.org/IMG/pdf/kgkaz2207a.pdf>.

The mission examined the origin and type of migratory flows, the legal framework and migration policy applicable to migrant workers and refugees, and identified violations of the rights of (regular and irregular) migrant workers, refugees and asylum seekers.

In recent years Kazakhstan has become the region's economic powerhouse, thanks to its oil and natural gas reserves. The country's economic growth has been higher than 9% since 2000; in ten years gross domestic product (GDP) has increased five-fold. This growth has been supported by rising prices of hydrocarbons and growing exploitation of oil reserves in the Caspian. Economic growth has also supported the development of other sectors, in particular construction and banking. Kazakhstan remains rich in minerals and a key agricultural player. Migration flows reflect this development.

However, the fall in hydrocarbon prices in mid-2008, followed by the international financial crisis, had a number of adverse effects on the Kazakh economy: cut of state budget, increase of interest rates, devaluation, real estate crisis turning into a crisis of the whole economy, with the annual growth rate falling from 10% to 1%. As a result, official labour migration quotas were halved in 2009 and the number of registered immigrants has also fallen.

2. Housing rights

Housing is a particularly sensitive issue in Kazakhstan. At the beginning of 2009, several protests were organised, including hunger strikes, by the "Housing for People Movement", demanding a suspension of mortgage repayments. Internal migration from rural to urban areas has affected more than 300,000

people a year since the 1990s. As a result, shanty towns have appeared on the outskirts of big towns like Almaty. In 2006, in Bakay on the outskirts of Almaty, authorities destroyed hundreds of houses, claiming that they were illegally built. Court orders were presented for only a few of these demolitions (29 out of 350-400) and residents were given little notice of the planned eviction. In July 2006, in Shanyrak district, a similar attempt to destroy houses was violently resisted.

On 14 June 2009, the FIDH mission witnessed such destruction on a much smaller scale, in a district on the outskirts of Almaty, not far from the large market commonly called Barakholka. The demolition by plain-cloths policemen affected houses in the process of construction. According to the statements of inhabitants who spoke to the FIDH mission, there was no warning beforehand and no court authorisation. They had received their land at the beginning of the 1990s, but local authorities are now contesting their claims to the property. Since the FIDH mission in June 2009, houses in the process of construction have been destroyed in other parts of Almaty.

3. Extortion practices at the border

Nationals from CIS countries seeking work in, or transit through Kazakhstan fear to cross the border, because of controls and extortion when leaving their home country and even more so on return. In Kazakhstan, each body undertakes its own controls (transportation police, migration police, customs, border guards), multiplying the occasions of extortion of migrants, at the border and on the territory of the state.

Crossing the border by road between Uzbekistan and Kazakhstan can be difficult. In 2006, the NGO "Adilet" conducted monitoring on the Tashkent-Chymkent border, and noted the corruption that exists at checkpoints, on a border which is otherwise very porous. They confirmed that border guards let people through for payment. Where queues last for hours at checkpoints, local people take advantage, proposing to fill custom declarations for 30-60 US cents or to help bypass controls for US \$6-10. The mission has evidenced many instances of collusion between border guards and those who propose to assist migrants in crossing the border illegally. According to Adilet, migrant workers explain that they crossed the border illegally *inter alia* because they wanted to save time, to avoid to be treated badly or to have to give money to the border guards.

4. Obtaining a work permit and access to social rights

In Kazakhstan, migrants have to go through a series of administrative procedures to be able to live and work legally. The first step is to obtain registration. In addition to an official address in the country, migrants have to show their migration card. Registration must be done within 5 days at the office of the migration police or the local police. Only employers can request work permits; migrants are therefore dependant of their employer for legalisation. Obtaining work permits is very costly (in time and money). The slashing of quotas in half in 2009 further prevented migrants obtaining authorisation to work legally. The legal obstacles created by the Kazakh migration policy creates situations of vulnerability for migrants, who as a consequence often work without authorisation. Their irregular status also makes them vulnerable to police controls.

Even for those migrants who work legally, access to social rights are limited to emergency health care and education for children, in a system which allows for lax interpretation by employers of their obligations. Under Kazakh law¹, foreigners are provided with free emergency medical care and medical treatment in case the disease is dangerous for others. Under a bilateral agreement with Kyrgyzstan, migrant workers have equal rights with nationals with respect to emergency medical care. However planned medical treatment is the employer's obligation. As a result, access to health care depends on the company a migrant is working for. Moreover, migrants do not have access to pension benefits and mandatory social insurance which are only available to those who have permanent residence in Kazakhstan.

1 In particular Government Resolution No. 997 of 16 October 2006

The Law on Education² ensures the right to education for foreigners with permanent residence but not temporary migrant workers. Children of migrant workers are to be accepted only for the duration of the migration card of their parents (up to three months). In practice, no problems of access of migrant children to primary schools were reported to the FIDH mission.

5. Risks of forced labour and exploitation

The pattern of labour migration in Kazakhstan is a classical one: Migrant workers from neighbouring states usually find work through an intermediary. As migrants in an irregular situation, they are entirely dependent on their employers, can be forced to work according to the conditions determined by employers and are unable to turn to the police for redress. This has reportedly led in the worst cases to forced labour. While used by Kazakh employers to select and hire foreign work force, intermediaries (often nationals of the migrants' country) have increasingly abused their position by paying themselves on the wages of the workers.

Exploitation occurs in all sectors: construction, agriculture (tobacco and cotton fields), services etc. Practices linked to forced labour include:

- The confiscation of passports by the intermediary or the employer (on the pretext of “registration” or to “keep them safe”)
- Unpaid labour, including debt bondage
- Unlimited working hours (from early morning to late evening) and no days off
- Poor living conditions (migrants living at the place of work, barracks in fields, basements, barns etc.)
- Use of physical violence and/ or imprisonment
- Use of child labour (especially in agriculture, cotton fields)
- Forcing migrants to conduct illegal activities (prostitution, begging etc)

The report documents cases of non payment of migrants who have worked for several employers in different villages.

For instance, at the beginning of 2009 two Uzbek migrant workers in irregular situation were detained in Chymkent after being reported by their employers to the migration police when they asked them for payment. The family of one of them alerted the NGO Sana Syzim who managed to get both migrant workers released and assisted them in obtaining new documents and returning to Uzbekistan.

Another case involved Uzbek migrant workers who were cheated by a Turkish employer based in Kazakhstan. After taking their passports and making them work in different villages, he never returned the documents nor paid the workers. KIBHR had difficulty getting the migration police to work on the case, and the employer merely explained that he had not been paid himself and he entrusted the passports to someone else.

Such cases of forced labour are also regularly mentioned in the media. For example, Bekzod Ikramov and a group of Uzbek migrant workers were abused by their intermediary, B. Bekchanov, who stole their salaries before fleeing. As a result, they were forced to work unpaid for several months before being able to flee. B. Ikramov was unable to escape and was “sold” by his employer to a chief of police in Chymkent. The case was reported to the UN Special Rapporteur on Human Trafficking.³

Irregular migrants who are victims of forced labour cannot turn to the police: on the contrary, they fear deportation, since they have no work permits and usually no registration, and in some cases there may be collusion between employers and the police. Employers often threaten to hand migrant workers over to the migration police. Even victims of forced labour risk being deported. Moreover, the migration police conducts frequent raids to find irregular migrants, and migrants are more vulnerable than their employers:

² No. 319-III ZRK of 27 July 2007

³ See p.50-51 of the report for more details on these cases.

according to official figures, in 2008 136,000 foreigners were arrested and 17,000 were deported for infraction to the rules on migration, whereas only 1,800 employers were held liable (but not necessarily fined) for employing irregular migrants.

According to the experience of the NGO Sana Syzim in Chymkent, although the migration police periodically launches raids at employers' sites, most of the time employers are not prosecuted. Irregular migrants, men and women, are taken to the detention centre (in Russian: "*priemnik raspredelite!*" also known as the "monkey cage", "*obeziarnik*"), where they are held with persons detained for other offences, including criminals. They can be held there up to thirty days before being deported. There have been several cases in which employers have come to the police station, paid a bribe and got the worker back.

This situation is exacerbated by the difficulty for migrants to join trade unions. While Article 23 of the Constitution of Kazakhstan guarantees the right to freedom of association, Law No. 3-I on Public Associations of 31 May 1996 provides that only nationals of the Republic of Kazakhstan may initiate establishment of a trade union (Article 10). Under the same law, migrant workers can join registered trade unions only where the charter of that trade union expressly provides for the membership of foreign nationals (Article 11).

6. Social and economic problems of Uzbek asylum seekers in Kazakhstan: housing, education, health care

The majority of those seeking asylum in Kazakhstan are from neighbouring countries, Afghanistan, Uzbekistan, Russia (Chechens) and China (Uyghurs). Despite ratification of relevant conventions, refugee and asylum legislation and policy in Kazakhstan fail to comply with international law, and political, economic and security concerns tend to override human rights obligations. During meetings with the FIDH mission, the authorities in Kazakhstan invoked regional agreements (such as the Shangai Cooperation Agreement), the preservation of bilateral relations with neighbouring states, security and the fight against terrorism to justify actions which violate the rights of asylum seekers and refugees. Asylum-seekers are denied refugee status by the state. They have to apply to the national office of the UN High Commissioner for Refugees (UNHCR) and, if their application is successful, await resettlement in a third country.

As a result, they find themselves in a state of legal limbo, making them vulnerable to police harassment, abduction and forcible return. In addition, refugees and asylum seekers suffer poor living conditions, economic hardships due to costs of food and shelter, lack of employment opportunities and lack of access to medical services.

Although they are not allowed to work legally, they do not either receive any aid from the State and the only material assistance they mention is that provided by the Kazakh Red Crescent. The majority state that this aid is not always available, is insufficient and that some are not eligible. Consequently, asylum seekers and refugees have no choice but to work illegally, on the markets or on small private building sites. They therefore face the same problems as illegal migrant workers (risk of forced labour, arbitrary arrest or ill-treatment). Their salaries are often insufficient to cover housing and food expenses for their families.

As regards education, the FIDH mission found that those asylum seekers and refugees who wanted

to do so, were able to send their children to school, but not without difficulty. Not all of the youngest children go to school, often owing to the reticence of their parents, who only consider Kazakhstan as being a transit country, to language problems or even due to the cost of travelling to classes.

The position is even more difficult in respect of healthcare. There are an extremely large number of health-related complaints: indeed, health-related problems are compounded by living conditions (overcrowded accommodation, people being forced to sleep on the floor) or stress . Most refugees complain that they are not looked after by the public hospitals or by the Red Crescent, who claim to lack the financial means to help them, and that they therefore have to go to private institutions , when they can afford it.

7. Recommendations

In view of the above, and based on the findings of its mission to Kazakhstan, FIDH recommends the authorities of Kazakhstan to take the following measures with a view to respect, protect and promote the economic and social rights of migrants workers, refugees and asylum seekers:

- Revise the system for granting work permits to migrants so that such permits are issued to the migrants themselves instead of their employers
- Enable migrant workers to protect their rights through the establishment and participation in trade unions and other associations, including by amending relevant provisions of the Law No. 3-I on Public Associations of 31 May 1996
- Guarantee equal payment to regular migrant workers and Kazakh citizens
- Ensure effective access to adequate housing, health care and education for migrant workers and refugees and their families
- Ensure access to social benefits and pensions for migrant workers
- Ensure the effective investigation, prosecution and punishment of employers and intermediaries responsible for violations of the rights of migrant workers and in particular, strengthen measures aimed at fighting against forced labour and human trafficking
- Increase efforts aimed at effectively fighting corruption at all levels of the justice system, within the police, customs and border guards
- Adopt measures to control the operation of agencies recruiting migrant workers and ensure an effective scheme of recruitment for migrant workers monitored by the State
- Sign and ratify the Optional Protocol to the International Covenant on Economic Social and Cultural Rights