

fidh

International Federation for Human Rights

KAZAKHSTAN/ KYRGYZSTAN:

Exploitation of migrant workers, protection denied to asylum seekers and refugees

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security



October 2009
N°530a

Acknowledgements

FIDH thanks representatives of the Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR) and the Kyrgyz Committee for Human Rights (KCHR) for their assistance in the preparation and conduct of the mission.

This publication was supported by a grant from the OSI Assistance Foundation.

Table of contents

Introduction	5
I. Kazakhstan and Kyrgyzstan in a globalised world: Background information	7
I.1. Economic and social situation	7
I.1.A. Kazakhstan	
I.1.B. Kyrgyzstan	
I.2. The political situation and principal human rights concerns	10
I.2.A. Kazakhstan	
I.2.B. Kyrgyzstan	
I.3. International obligations versus regional commitments	15
I.3.A. International obligations: progress lacking towards respect for human rights	
1) Kazakhstan	
2) Kyrgyzstan	
3) European Union mechanisms: new opportunities for progress on human rights?	
I.3.B. Regional commitments	
II. International labour migration in Kazakhstan and Kyrgyzstan	26
II.1. Description of migratory flows	26
II.1.A. Kazakhstan: a country of immigration	
II.1.B. Kyrgyzstan: a country of emigration	
II.1.C. Women and migration	
II.2. Migration policy	32
II.2.A. Migration policy in Kazakhstan	
1) Legal framework	
2) Policy implementation	
II.2.B. Migration policy in Kyrgyzstan	
II.3. Migration step by step: from crossing the border to escaping forced labour	46
II.3.A. Crossing the border	
II.3.B. Problems regularising stay, receiving work permits and accessing social rights	
II.3.C. Risks of forced labour and exploitation	
II.3.D. Access to justice and the role of NGOs	

III. Refugees and asylum seekers: Lack of protection and vulnerability	54
III.1. Lack of protection and vulnerability	54
III.1.A. Insufficient national legal framework	
1) Kazakhstan	
2) Kyrgyzstan	
III.1.B. Implementation of asylum policy: violations of the rights of asylum seekers and refugees	
1) Regional agreements versus international obligations	
2) Refusal of asylum to nationals of CIS states and China and the role of the UNHCR	
3) Abduction, deportation, extradition and intimidation	
III.2. Uzbek asylum seekers and refugees under permanent threat.....	63
III.2.A. The context: persecution and torture in Uzbekistan	
III.2.B. Absence of protection in Kazakhstan	
III.2.C. Police harassment, fear of extradition, deportation and kidnapping in Kazakhstan	
III.2.D. Social and economic problems of Uzbek asylum seekers and refugees in Kazakhstan	
III.2.E. Kyrgyzstan: even greater insecurity, equally insufficient protection	
III.3. Uyghur asylum seekers: “virtual refugees”	75
III.3.A. The context: repression of Uyghurs in China	
III.3.B. Treatment of Uyghurs in Kazakhstan	
III.3.C. Treatment of Uyghurs in Kyrgyzstan	
 IV. Summary and recommendations	 81
 Annexes	 87
1. List of persons met by the mission	
2. Table of ratifications	

Introduction

Kazakhstan, ninth largest country in the world, with a population of over 15 million, has in recent years become the major Central Asian economic power, as a result of significant reserves of oil and gas. In contrast, neighbouring Kyrgyzstan, with a population of 5.4 million, has little in the way of natural resources and the economy remains weak. These differences are reflected in patterns of labour migration to, from and between the two countries.

Since 2004, due to significant economic growth, Kazakhstan, formerly a country of origin and transit of labour migrants, has become a major destination country for migrant workers. Most labour migrants come from neighbouring countries in the Commonwealth of Independent States (CIS), including Kyrgyzstan, as well as from China. Kyrgyzstan remains a country principally of origin of migrant workers, although there is some labour immigration, in particular from China.

Yet these neighbouring countries share a Soviet heritage and face many common geo-political problems, including managing relations with their powerful neighbours China and Russia. These factors also influence approaches to the regulation of migration, as well as policies on asylum seekers and refugees.

In June 2009, the International Federation for Human Rights (FIDH) sent a mission of investigation to Kyrgyzstan and Kazakhstan to document the situation of migrant workers, asylum seekers and refugees in both countries. 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 migrant workers (regular and irregular), refugees and asylum seekers. Although such issues form part of the general context (see below, Part I), the mission's investigation did not focus on related issues, already significantly documented elsewhere, including internal migration and emigration from both countries to Russia.¹

The aim of this report is not to compare the policies and practices of the two countries, but to analyse the situation of these vulnerable groups and to formulate recommendations with a view to increasing their protection.

The mission delegation was composed of Amandine Regamey, researcher on Eastern Europe and Central Asia and mission delegate to the FIDH International Board; Katherine Booth, Migrants' Rights Desk Director, FIDH; and Sarah McKune, Law Officer, Human Rights in China. The mission met with representatives of the national authorities, international organisations, NGOs, migrant workers, refugees and asylum seekers in Almaty, Astana, Chymkent and Bishkek.²

The mission took place within the framework of the FIDH Eastern Europe and Central Asia Programme's recent actions aimed at the promotion and protection of migrants' rights in the region. In 2007, FIDH conducted an investigation mission in Russia and published the report *Migration*



1. On migrant workers in Russia, see *Migration in Russia: Marginalised Populations, the first victims of external and internal political crises*, FIDH 2007, available in Russian (Отчет международной исследовательской миссии, Мигранты в России) and French (Migrations en Russie: Populations fragilisées, premières victimes des crises politiques externes et internes), at <http://www.fidh.org/Migrations-en-Russie-Populations>

2. For full list see Annex 1.

*in Russia: Marginalised Populations, the first victims of external and internal political crises.*³ In 2008, in partnership with the Civic Assistance Committee in Moscow, FIDH submitted a report to the CERD Committee *Migrant Workers in the Russian Federation: The Use of Forced Labour.*⁴ FIDH's findings will be shared with member and partner organisations at a regional seminar in Autumn 2009 which will provide an opportunity to exchange experiences and develop strategies for protecting migrants' rights.

FIDH thanks representatives of the Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR) for their assistance in the preparation of the mission, and in particular Andrey Grishin, journalist and member of KIBHR, for accompanying the delegation throughout the mission.

FIDH also thanks representatives of the Kyrgyz Committee for Human Rights (KCHR), FIDH's member organisation in Kyrgyzstan, for their assistance in organising meetings in Bishkek, and in particular Ramazan Dyrlydaev, President, Nazgul Sopieva, Coordinator and Daniar Alikeev, Translator.

FIDH also thanks all those who met with the delegation.⁵

3. FIDH 2007, op cit.

4. FIDH 2008, available at http://www.fidh.org/IMG/pdf/Migration_Russie_ENG_180908.pdf

5. For full list of those met by the mission, see Annex.

I. Kazakhstan and Kyrgyzstan in a globalised world: Background information

The following description of the economic and political situation in Kazakhstan and Kyrgyzstan and their regional and international obligations is not intended to be exhaustive. It aims to present the general context within which migratory and asylum policies in the two countries are defined, as well as to highlight aspects of particular importance or concern.

I.1. The economic and social situation

The fall of the Union of Soviet Socialist Republics (USSR) in 1991 had dramatic effects on Kazakhstan and Kyrgyzstan during the decade that followed: reduced industrial and agricultural production, a break in economic links with the other former USSR republics, inflation, increased unemployment, “brain drain” towards Russia and the West. However, since the turn of the century, the two countries have developed in different ways, mainly as a result of unequal economic assets.

I.1.A. Kazakhstan

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 (Karaganda mines) and a key agricultural player, ranking sixth in grain production (wheat, rice, barley) and the seventh largest exporter in the world.⁶

Migration flows reflect this development: since 2004 there has been more immigration than emigration. Though Kazakhs continue to leave for Russia, Germany and North America, Kazakhstan receives migrants from other Central Asian countries and China. Such migrants generally work on building sites, in the markets and in agriculture. Economic growth has also brought about the arrival of international businesses and foreign specialists. In 2001, in an attempt to train its own specialists, Kazakhstan introduced a quota policy for labour migrants. At the same time, Kazakhstan has been promoting a policy of preferential immigration towards the *oralmany*, ethnic Kazakhs living in neighbouring countries (see further below, Part II).

However, in mid-2008 the fall in hydrocarbon prices had an adverse effect on Kazakhstan. The state budget was cut. Kazakhstan was also affected by the international financial crisis which caused banks to raise their interest rates and revise their lending policies. The devaluation of the tenge in February 2009 worsened the collapse of the banking system and at that point it was estimated that “70% of small and medium businesses in the country were on the brink of bankruptcy.”⁷ The

6. “Kazakhstan 2007”, *Courrier des Pays de l’est* n° 1065, January/February 2008.

7. Rayhan Demytrie, “Turbulence for the Kazakh economy”, BBC News, 12 March 2009.

financial crisis, and the subsequent real estate crisis turned into a crisis of the whole economy, and the International Monetary Fund has forecast that “the Kazakh economy will grow by 1% [in 2009], down from the almost 10% annual growth rate that Kazakhstan enjoyed between 2000 and 2007.”⁸ The halt to the economy is clearly visible in certain sectors, such as construction: in Astana the FIDH mission observed numerous building sites empty of workers. Although, unlike Russia, the Kazakh government did not publicly announce that immigrants should be sent back to their home countries, official labour migration quotas were halved in 2009 and the number of registered immigrants has also fallen (see further below, Part II).

The official rate of unemployment is 7%, but experts believe that the real figure is much higher. The social consequences of the crisis are being felt, even more so as a result of the fact that, since 2007, inflation has been high, particularly for food and other household bills (water, gas and electricity).

Housing is a particularly sensitive issue. At the beginning of 2009, several protests were organised, including hunger strikes, by the “Housing for People Movement”, demanding a suspension of mortgage repayments. More generally, since the 1990s, Kazakhstan has been subject to significant internal migration from rural to urban areas, affecting more than 300,000 people a year (according to information provided to the FIDH mission by the Committee on Migration). 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 hundred 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.⁹

On Sunday, 14 June 2009, the FIDH mission witnessed such destruction on a much smaller scale.¹⁰ The events took place in a district on the outskirts of Almaty, not far from the large market commonly called *Barakholka*, where the majority of inhabitants are internal migrants from rural areas. Demolition had started two days before and plain-clothes policemen had come back to destroy the foundations with hammers. An Uzbek migrant working on the construction of housing was arrested. The demolition only affected houses in the process of construction, in which no one was yet living. However, one house was near completion, and glass had even been inserted into the windows, but its owner, who had gone to the market to fetch the final materials, returned to a pile of rubble.

According to the statements of inhabitants who spoke to the FIDH mission, there was no warning beforehand and no court authorisation: “The local authorities said they wouldn’t destroy our houses, but that was just words” (Nurgul). The police didn’t present any documents or authorisation: “We’ve been told we could be arrested” (Ania). They had received their land at the beginning of the 1990s, but local authorities are now contesting their claims to the property. For them, the reasons are blatantly clear: those in charge within the local authorities have changed, and the new arrivals want their “piece of the pie”. Furthermore, the land that they occupy now comes within the boundaries of Almaty and its value has consequently increased. A legalisation process was launched several years ago¹¹, but in order to benefit, inhabitants had to recognise that they occupied the land illegally, which some refused to do. Most compared these events to those in Shanyrak in 2006. “We are ready to

8. Op.cit.

9. See Igor Kindopp, Gulmira Arbabaeva, “Squatter Conflict Escalates in Kazakhstan”, IWPR- RCA No. 451, 6 June 2006.

10. The FIDH mission recorded statements from four witnesses and took photographs. The real names of the witnesses are not given here: “Ania”, a woman in her forties who had delayed the construction of her house for more than five years while waiting for a judicial decision guaranteeing her rights to the property; “Rahman”, a Kazakh woman of Uyghur ethnicity in her forties who has a house in the same area; “Nurgul”, a young Kazakh woman of Uyghur ethnicity who had saved for years to begin building a house the foundations of which were destroyed; “Aygul” and “Tursun”, an elderly Kazakh woman of Uyghur ethnicity and her husband. Some residents highlighted the discriminatory aspect of the destruction as it did not affect people of Kazakh ethnicity: of the five houses destroyed, two belonged to Russians, one to a Uyghur, one to a Kurd from Azerbaijan. According to the residents, this was not by chance: the authorities sought to divide residents and feared the support that Kazakhs could have received from nationalist organisations.

11. The legalisation process, which took place in 2007, in fact mainly allowed for the legalisation of expensive villas in the mountains around Almaty, whereas only a small proportion of houses in the “problematic” areas were legalised, following legal proceedings.

defend ourselves like the citizens in Shanyrak, these are our houses, these are our homes; we have been here for five years, building on this land, and waiting for our permit” (Ania) “We don’t want to have the earlier incident happen again¹², but if they come to destroy houses where people live, we have to resist, we should go on hunger strike” (Rahman).

Not daring to return to work or leave in fear that the destruction would start again, most victims were convinced that they would not receive any compensation. Though since the FIDH mission in June 2009, other houses in this district have not been touched, houses in the process of construction have been destroyed in other parts of Almaty.¹³

I.1.B. Kyrgyzstan

Kyrgyzstan is considered by the World Bank to be one of the poorest countries in the world, with a gross national income (GNI) per capita of US\$ 780.¹⁴ A mountainous enclave, Kyrgyzstan has few natural resources (gold, rare metals), apart from the hydraulic and hydroelectric resources offered by the rivers that have their sources in the Kyrgyz mountains.¹⁵ Kyrgyzstan also purchases gas and oil from Uzbekistan and Kazakhstan, a dependency often cited by representatives of the national authorities who met with the mission as a factor in the development of the Kyrgyz foreign policy. The debt burden also weighs heavily on the economic development of the country, which has clearly chosen a liberal path (Kyrgyzstan has been a member of the World Trade Organization since December 1998). Bordering China, Kyrgyzstan also benefits from income from the transit of Chinese merchandise sold in Uzbek and Tajik markets. Wholesale markets in Dordoi (in the north) and Kara Su (in the south) are intensive commercial areas where rich businessmen rub shoulders with many migrants.

According to the World Bank, “the average GDP has grown at about 5.5 percent a year since 2003 [but] the country remains poor with about 35 percent of the population below the poverty line [...] Poverty is mostly a rural phenomenon, with three-quarters of the poor living in the rural regions, partly due to sluggish developments in agriculture in recent years. Moreover, access to basic public services such as health, education, running water and public sewerage has deteriorated over the past 17 years.”¹⁶

These social problems were denounced by the Kyrgyz Ombudsman in his 2008 report.¹⁷ He notes that in the private sector, the majority of labour relations take place without contracts, and that unfair dismissals, late payment of wages, and violations of safety procedures are characteristic of the whole Kyrgyz economy. He also highlights, amongst others, the problems of access to healthcare (all procedures, however minor, must be paid for and medicines are very expensive) and the cost of children’s education.

Unemployment remains high in Kyrgyzstan, particularly in the south of the country: the figure of 10% which is often cited is certainly an underestimate,¹⁸ and some studies suggest it could be up to 70% in the south of the country.¹⁹

12. In Shanyrak, many were injured and arrested, and one police officer was killed.

13. Information received from KIBHR.

14. Kyrgyzstan, Country Brief 2009; <http://web.worldbank.org/>

15. Rivers that irrigate Kazakhstan and Uzbekistan in particular. Kyrgyzstan’s attempts to build hydroelectric dams or to raise the price of water have been a stumbling block in relations with neighbouring countries. Kubanychbek Isabekov, Vice-speaker of the Kyrgyz Parliament, expressed to the FIDH mission his confidence that “*There is a great future in the politics of water*” and that Kyrgyzstan’s neighbours “*have to understand that they must pay for water*”. (FIDH Meeting, Bishkek, 20 June 2009).

16. Kyrgyzstan, Country Brief 2009, <http://web.worldbank.org/>

17. Report of the Ombudsman of the Kyrgyz Republic “On the situation of liberties, human and civic rights in the Kyrgyz Republic in 2008”, Bishkek, 2009 (in Russian).

18. <http://www.un.org.kg/en/about-kyrgyzstan/basic-statistic>. Figures are all the more difficult to analyse as the shadow economy is significant (53% of the GDP according to a recent UNDP study).

19. Madeleine Reeves, “*Going to town: exploring the micro-dynamics of labour migration from Southern Kyrgyzstan*”, National Identity in Eurasia II: Migrancy and Diaspora in Eurasia, Wolfson College, Oxford, July 10-12th 2009.

The economic situation causes significant internal migration from the south to the north, which has stirred up tensions. Internal migrants are generally accused, as in Kazakhstan, of illegally occupying land in cities and of illegal construction, and attitudes towards them are predominantly negative.²⁰ Even the Kyrgyz Ombudsman writes that “internal migrants without housing, work or medical care,” represent a “danger for the security of the country”.²¹

Economic conditions have also led to increased labour emigration. Since the end of the 1990s, Kyrgyz citizens have been emigrating towards Russia, Kazakhstan, but also increasingly to the Gulf States, Europe and Turkey (which applies a visa-free regime to Kyrgyz citizens). It is difficult to estimate the number of emigrants. The figure of 500,000 people (out of a total population of 5.5 million people) leaving the country each year is often cited, but Kyrgyzstan does not have precise statistics (see further below, Part II.2).

According to the International Organisation on Migration (IOM), Kyrgyzstan has a negative migration rate (-2.9 migrants per 1000 members of the population) and international migrants represent 5.5% of the population. Migrant worker remittances are thought to amount to USD 322 million²² (see further below, Part II.2).

I.2. The political situation and principal human rights concerns

There is a tendency to contrast the political stability of Kazakhstan, led by the same man since independence in 1991, with the political instability of Kyrgyzstan, where former President Akayev was overthrown in the “Tulip Revolution” of 2005. However, despite these differences, it is clear that in both countries there is the same tendency towards monopolization of power and the reduction of opportunities for protest or criticism. As in other countries in the region, the struggle against certain religious movements, especially those associated with radical Islam, is growing, and is sometimes accompanied by serious human rights abuses.

I.2.A. Kazakhstan

Since 1989, Kazakhstan has been led by Nursultan Nazarbayev, who was former First Secretary of the Communist Party before becoming President of independent Kazakhstan. He has thus recently celebrated 20 years at the head of the country. Nazarbayev pursues a policy of promoting the Kazakh nation, while at the same time conciliating the Russian community (which still formed 30% of the population in 1999) by making Russian the second official language. In May 2007, Nazarbayev put a series of constitutional amendments through Parliament, with a view to installing a “Presidential-Parliamentary regime”; “In fact, this was a case of the Head of State further strengthening his hold on governmental institutions under the guise of democratic reform, supposed to create a good impression in the international community.”²³ These reforms represented a consolidation of power: political parties were obliged to have 7% of the vote in order to be represented in the Majilis (Parliament), and while the presidential mandate was reduced from 7 to 5 years, an exception was made for Nazarbayev, who was authorized to stand for re-election at the end of his seven-year term (which will come to an end in 2012).

20. In the development programme for Bishkek for 2008-2010, it is written that internal migration leads to “a devaluation of the intellectual, educative and cultural potential of the city... The urban environment is worsening in all areas: security, health, education and culture,” “2008-2010 Bishkek Development Programme”, quoted in the 2009 Ombudsman Report.

21. Report of the Ombudsman of the Kyrgyz Republic, op.cit.

22. <http://iom.int/jahia/Jahia/activities/asia-and-oceania/central-asia/kyrgyzstan>.

23. Anna Vadurel, “Comment s’affirmer sur la scène internationale, Kazakhstan 2007”, *Courrier des Pays de l’Est* n° 1065 January-February 2008, p. 127. Nazarbayev’s son-in-law, Rakhmat Aliyev, currently a refugee in Vienna, accused his father-in-law of having introduced amendments to the constitution in order to monopolize power. He was stripped of his ambassadorial functions and an international arrest warrant was issued against him. He recently published a book about Nazarbayev, “Godfather in law”. On 25 May 2009, the Prosecutor-General’s Office declared it legal to read the book, but illegal to bring it into Kazakhstan or to distribute it.

Following the constitutional reforms of May 2007, parliamentary elections were called in August 2007. These produced an absolute majority (88% of the votes) for Nur Otan, the presidential party, which took every seat in parliament. None of the other parties succeeded in crossing the 7% threshold. The International Election Observation Mission sent by the Organisation for Security and Cooperation in Europe (OSCE) to monitor the 18 August elections concluded that “a number of international standards were not met, in particular with regard to elements of the new legal framework and the vote count.”²⁴

Nevertheless, in November 2007 the ministerial council of the OSCE decided that Kazakhstan could assume the Chair of the OSCE in 2010, thus responding positively (with only one year’s delay) to the request made by Kazakhstan in 2003 to be awarded the Chair in 2009.

Since then, obstacles have continued to be placed in the way of any opposition. Political parties must go through a two-stage registration process: first the organizational committee must be registered and then the political party itself. As of October 2009, the opposition party “Alga” has been waiting a year and a half to be registered. Human rights activists and opposition parties complain of difficulties in organizing demonstrations and public gatherings, which are often banned on a variety of pretexts. A recent report by Human Rights Watch has also highlighted attacks on freedom of expression, freedom of assembly and freedom of the media.²⁵

Moreover, on 29 April 2009, the Kazakh parliament adopted a new law on the Internet, which was signed into law by President Nazarbayev in July 2009, although the OSCE had urged him to veto the bill. The legislation recognizes the Internet, including chat rooms, blogs, and public forums, as mass media. It allows local courts to block websites, including foreign ones, and gives the Kazakh Prosecutor-General the right to shut down online resources without going to court.

Religious freedoms are also being undermined. Over the last few years, religious communities labelled as “non-traditional” or “extremist” have been under attack. In December 2008, Parliament passed amendments to the law on religion which imposed a high level of control and significant restrictions on religious activities.²⁶

According to Yevgeniy Zhovtis, President of the Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR), “regardless of the fact that these amendments have been recognized as unconstitutional by the Constitutional Council, their main ideas are being implemented. In the course of [2008 and the beginning of 2009] the national security bodies and law enforcement bodies conducted raids on gatherings of small religious communities, including those held in private houses, and many foreign missionaries are being evicted from the country.”²⁷ This law affects Christian churches (Protestant ones in particular) as well as followers of Krishna²⁸ and various Muslim groups

24. “Kazakh elections: progress and problems”, OSCE Press Release, 19 August 2007, <http://www.osce.org/item/25959.html>

25. According to Human Rights Watch, “in Kazakhstan, journalists operate in an environment of anxiety, faced with constant intimidating lawsuits and, not infrequently, direct threats to their person. (...) Threatening phone calls, visits by the police, and successive lawsuits are common. There are no independent television stations, and websites critical of the government are often blocked by the authorities. (...) Public assembly is very tightly controlled, and any politically motivated public meeting is likely to be denied a permit or broken up by police, or both.” Human Rights Watch, “*An Atmosphere of Quiet Repression, Freedom of Religion, Assembly and Expression in Kazakhstan*”, December 2008, <http://www.hrw.org/en/reports/2008/12/01/atmosphere-quiet-repression-0>

26. Imposition of compulsory registration, restrictions on the distribution of religious material, a ruling that “religious groups” (fewer than 50 people) can only meet in private, etc. For an analysis of this law, see the HRW report “*An Atmosphere of Quiet Repression*”, *op. cit.*

27. “Approaching the OSCE Chairmanship: Kazakhstan 2010” Yevgeniy Zhovtis’s speech during USA Congress’s Commission on security and cooperation in Europe (Helsinki Commission) hearings, U.S. House of Representatives, 12 May 2009.

28. In January 2009, “a court in Kazakhstan sentenced a Russian citizen and missionary of the Unification Church, Elizaveta Drenicheva, to two years in jail for her religious lectures. [...] In Almaty, the municipal authorities ordered Kazakh followers of the Krishna Consciousness Society to vacate premises they owned in the city by February 28. Last year, Hare Krishna followers in Kazakhstan were officially deprived of their place of worship and of private residences constructed on land they had purchased on the outskirts of Almaty in the late 1990s”. (Merhat Sharipzhan “*Religious Intolerance Persists In Central Asia, Despite What Constitutions Say*”, RFE-REL March 11, 2009).

that have been labelled “extremist”, harassment²⁹ of whom began well before the new law was passed.

In July 2009, the United Nations independent expert on minority issues, Gay J. McDougall, visited Kazakhstan and urged the government “to engage in a wide-ranging dialogue with ‘non-traditional’ religious groups about ways to guarantee their full rights and freedoms.”³⁰

Finally, FIDH is particularly concerned about the way in which the trial of Yevgeniy Zhovtis, KIBHR President, was conducted. At the beginning of September 2009, following a car accident in which a pedestrian died, he was sentenced to four years’ imprisonment, based on the assertion that he could have avoided the accident. Defence lawyers, however, point to numerous procedural violations: Zhovtis’s status was changed from witness to defendant without his being informed, an independent assessment was refused, and elements of the case for the defence were not considered. National and international human rights organizations, the European Union³¹ and the OSCE³² have all expressed their concerns and called on Kazakhstan to respect international standards when the case comes to appeal.

I.2.B. Kyrgyzstan

Kyrgyzstan was led from 1990 to 2005 by President Askar Akayev. In March 2005, irregularities during parliamentary elections provoked a wave of unrest, and a nationwide series of demonstrations forced President Akayev to resign. Kurmanbek Bakiyev was elected president in July 2005 with 88% of the vote, in elections that the OSCE described as “a tangible change on the road to democratization.”³³ Since then, the country has been marked by serious instability (it has modified its constitution three times in two and a half years) and by President Bakiyev’s growing bid for control.

Following his election and the adoption of a new constitution in December 2006, schisms within the ruling party and increasing opposition unrest pushed Bakiyev into announcing a referendum to be held on 21 October 2007, in which further reforms to the constitution were approved by 75% of the vote. The referendum also concerned reforms to the electoral code, approved by 76% of voters. On the day of the vote, numerous irregularities were noted, including overstuffed ballot boxes and the expulsion of observers from polling stations.

The day after the referendum results were announced, the president dissolved the Assembly and announced parliamentary elections for 16 December 2007, as well as the creation of a presidential party, Ak Jol. The limited preparation time for these elections prevented opposition parties from organizing and it was no surprise that Ak Jol polled 47% of the vote, gaining 77% of seats.

The opposition party Ata Meken took 8.7% of the national vote, but was nonetheless excluded from parliament because it did not attain the threshold of 0.5% in the town of Osh. The electoral code adopted in the referendum of October 2007 established a complex electoral system which required

29. Since 2006 a groups of more than 200 Kazakh Muslims has been asking, without success, for political asylum in the Czech Republic because of persecutions for their religious activities and believes. Czech authorities rejected their applications for asylum in January 2009, and they now face deportation. See Open letter from the Association for Human Rights in Central Asia to Jacques Barrot, Vice-president of the European Commission, <http://www.migrationonline.cz/e-library/?x=2191142>

30. www.rferl.org/content/UN_Says_Kazakhstan_Has_Room_For_Improvement_On_Minority_Issues/1777382.html

31. “The EU has noted with concern reports on procedural violations during the trial of the internationally renowned Kazakh human rights defender and member of the ODIHR Panel of Experts on Freedom of Peaceful Assembly, Yevgeniy Zhovtis. [...] These procedural violations raise serious doubts about the verdict handed down to Mr Zhovtis by the court on September 3.” The EU “calls on Kazakhstan, the incoming Chairmanship of the OSCE, to ensure that the appeal be handled with full respect for national legislation and international standards, as well as OSCE commitments.” *EU statement in the OSCE on the case against Kazakh human rights defender Yevgeniy Zhovtis, 11/09/09.*

32. OSCE Press Release, “Senior OSCE official visits Kazakh rights defender in detention, stresses importance of fair appeals process” September 19 2009, <http://www.osce.org/item/39624.html>

33. “Kyrgyz election marks tangible progress”, OSCE, 11 July 2005, http://www.osce.org/odihr/elections/item_1_15624.html.

parties to cross two different thresholds in order to be represented in the Assembly: the party must obtain more than 5% of votes nationally, and it must also achieve a quorum of 0.5% of votes in every region and in the two largest cities in the country.

In July 2009, new presidential elections were held, a year before the expected date, which once again gave the opposition less time to organize.³⁴ The electoral campaign was accompanied by a rise in the number of criminal cases being opened against opposition members, and various obstacles placed in the way of their activities.³⁵

The FIDH mission was in Kyrgyzstan in June 2009, a month before the elections, and heard the grievances and concerns of various human rights organizations. These concerns related to the practical organization of the elections (abandonment of the system of marking voters with ink, thus increasing the risk of multiple votes; the fear that only students and state employees (*budzhethniki*) would be able to vote on a weekday) and also to measures preventing independent NGOs from observing the elections. Moreover, the reliability of the electoral lists was called into question (there was no record of those who had moved house or of migrants living abroad for whom it was feared that local authorities would vote in their absence).

Kurmanbek Bakiyev was re-elected with 89.7 % of the vote. Bakiyev's main opponent, Almazbek Atambaev (former Prime Minister and candidate of several opposition parties) withdrew his candidacy in the middle of election day, as he was said to have just 7% of the vote. Several opposition supporters who demonstrated their discontent were detained.

The OSCE election observation mission issued a very critical statement, concluding that, despite some positive elements, the "Kyrgyz presidential election failed to meet key OSCE commitments". According to the OSCE mission, before the election the distinction between the ruling party and the State was blurred, there was bias in the media coverage of the campaign and obstruction of opposition campaign events, as well as pressure and intimidation of opposition supporters. "Election day was marred by many problems and irregularities, including ballot box stuffing, inaccuracies in the voter lists, and multiple voting. The process further deteriorated during the vote count and the tabulation of results."³⁶ Nevertheless, the Central electoral commission ratified the result.

These events top off an insidious erosion of civil liberties that has taken place over the course of several years. According to the Kyrgyz Ombudsman Tursunbek Akun, "2008 was a setback for Kyrgyzstan in terms of human rights", including "closure of the independent newspapers *De Facto* and *Alibi*"; the discontinuation of RFE/RL's Kyrgyz-language TV and radio broadcasts by state-owned TV and radio"³⁷. Over the last two years, nine journalists and human rights activists from Kyrgyzstan have received or have sought political asylum in the West.³⁸ On June 16, 2009, Miklos Haraszti, the OSCE's representative on media freedom, sent a letter to Kyrgyz Foreign Minister Kadyrbek Sarbaev saying, "Kyrgyzstan's journalists have recently endured an upsurge of brutal attacks, including two this month alone, while many cases from earlier this year have still not been resolved by the authorities."³⁹

In June 2008, the Parliament adopted amendments to the Kyrgyz Law on peaceful assembly and protest, which authorises local authorities to restrict considerably the space available for peaceful demonstrations. Arrests and prosecutions of demonstrators have multiplied; several human right defenders encountered during the FIDH mission described having been arrested or harassed by police during demonstrations.

34. There was in fact a discrepancy between the Constitution under which he was elected, which allowed for a mandate of four years, and the current constitution, which states that the president is elected for five years. It was the Constitutional Court which produced a decision, deeming that the president should be re-elected in 2009.

35. "Rise in criminal cases against members of political parties" 2 March 2009, <http://www.fidh.org/Rise-in-criminal-cases-against>

36. OSCE Press-release, "Kyrgyz presidential election failed to meet key OSCE commitments, despite some positive elements", July 24, 2009 <http://www.osce.org/item/39014.html>

37. http://www.rferl.org/content/Kyrgyz_Ombudsman_Agrees_With_Freedom_House_Criticism/1369897.html

38. http://www.rferl.org/content/Kyrgyz_Editor_Seeking_Asylum_In_Europe_The_Ninth_In_Past_Two_Years/1360715.html

39. www.rferl.org/content/More_At_Stake_In_Kyrgyz_Presidential_Vote_Than_Would_Appear/1757395.html

A law on NGOs, under discussion before Parliament in June 2009, was the subject of particular criticism. Under this new law, non-profit organisations would be banned from any engagement in political activity and in elections. Opponents of the bill say it has been conceived as a way of preventing election monitoring by NGOs. ODHIR has recommended that the final version of the bill should not retain certain provisions such as “the prohibition [of] activities that come within a broad definition of what is ‘political’ or connected to elections.”⁴⁰ In September 2009, a bill on “the protection of State secrets” was introduced in Parliament. This specifically defined as State secrets all information on external relationships, the economy and technical or scientific issues, the dissemination of which undermines the State. The bill represents a threat to the activities of NGOs and journalists.

Human rights defenders find themselves in an increasingly precarious situation. Some, from abroad, have seen their entry into Kyrgyzstan blocked (M. Ivar Dale, *Norwegian Helsinki Committee*, expert on Central Asia, in October 2008; V. Ponomaryov, “HRC Memorial” in February and April 2009). After complaining of repeated harassment⁴¹, the president of the Kyrgyz Committee for Human Rights, Ramazan Dyryldaev, who hosted the FIDH mission in June, left the country in August 2009 and sought political asylum in Austria.

The issue of torture in Kyrgyzstan remains of ongoing deep concern. According to the report provided to the mission by the Kyrgyz Ombudsman, which draws on the work of several NGOs, mistreatment and torture continue to take place in police stations, primarily to extort confessions⁴². Impunity is the rule, though politicians fail to acknowledge the problem. Indeed, the Kyrgyz parliament’s vice president, Kubanychbek Issabekov, told the FIDH mission that there was no torture in Kyrgyzstan, or that ‘in any case, there have been no written complaints to [him] on this issue’.

Torture was used in repressing disorder in the town of Nookat in October 2008 – an incident that also illustrates the Kyrgyz government’s increasingly hard-line policy against ‘non-traditional’ Muslims.

On 1 October 2008, public celebration of the religious festival of Eid was banned in Nookat (in the Osh region of Kyrgyzstan). This gave rise to violent clashes and a violent clampdown in the weeks following it. Traditionally during the festival a lottery is organised and *plov*, a traditional rice dish, is distributed.

The public authorities, who initially wanted to ban the festival for fear that Islamist groups would use it to proselytise,⁴³ finally agreed for festivities to take place in the town’s stadium. However, on 1 October the stadium was closed, so people who had gathered there went to the municipality offices. There, dialogue quickly turned into confrontation; stones and other projectiles were thrown at representatives of the municipality while police tried to disperse demonstrators by force.

The next day the hunt for participants and suspected members of the outlawed Islamist party Hizb ut-Tahrir began, under the auspices of the Committee for State Security and the so-called ‘9th bureau’, part of the Ministry of the Interior responsible for fighting terrorism and extremism. Local authorities were ordered to list all constituents who were members of Hizb ut-Tahrir (some paid bribes so as not to appear on the lists). Seventy people were officially arrested, the vast majority were subjected to torture during their detention: electric shock and water torture, beatings, humiliation, religious insults and sexual violence.⁴⁴

The investigation was closed at the end of November 2008; on 27 November, 32 people were sentenced to terms ranging from nine months to twenty years. In addition to the initial charges

40. Kyrgyz NGOs Fear Tougher Legislation, IWPR, RCA No. 569, 10-Mar-09, http://www.iwpr.net/?p=rca&s=f&o=350815&apc_state=henirca2009

41. Appel urgent KGZ 001/0108/OBS 007, 16 janvier 2008; Appel urgent KGZ 001/0108/OBS 007, 16 janvier 2008; Appel urgent KGZ 002/1008/OBS 172, 28 octobre 2008.

42. Report of the Ombudsman of the Kyrgyz Republic “On the situation of liberties, human and civic rights in the Kyrgyz Republic in 2008”, Bishkek, 2009 (in Russian).

43. The fear of Islamist movements is particularly significant in the South of Kyrgyzstan. Because of the way in which the territories interlink, incursions by Islamist groups on Kyrgyz territory (e.g. Batken in 2001) and skirmishes are frequent (Osh and Jalal Abad regions).

44. See information given by the Human Rights Commission under the Kyrgyz Ombudsman and Memorial report, “Kyrgyzstan – human right violations in the ‘Nookat’ affair” (in Russian), 27 January 2009 <http://www.memo.ru/2009/01/27/2701091.htm>

(organisation of mass disorder, using force against an agent of the state), the authorities brought ‘political’ charges (separatist activity; incitation to national, racial or religious hatred; calls to overthrow power by force). People were sentenced without proof of their belonging to a banned party, while some had not even been in Nookat on 1 October. It should be noted that the majority of those sentenced were Kyrgyz citizens of Uzbek origin. In May 2009, Kyrgyzstan’s Supreme Court reduced some of the sentences but rejected the substance of the appeal (allegations of torture, and the illegality of establishing lists of members of Hizb ut-Tahrir).

The case of Nookat which tends to suggest that repressive practices used in Uzbekistan are spreading, also led to the adoption of strict amendments to Kyrgyz legislation. The penal code was amended in October 2008 to increase punishment (up to 10 years’ imprisonment) of those involved in banned organisations, inciting ‘religious hatred’ (including distributing materials), and using ‘extremist’ symbols.

Under the pretext of fighting terrorism and extremism, a new law on freedom of religion was adopted by Parliament on 6 November 2008, and promulgated in January 2009. It closely resembles the law passed in Kazakhstan, setting out a ban on “aggressive action aimed at proselytism”; a ban on the distribution of religious literature, print, audio-video religious materials; and de facto compulsory re-registration of all registered religious organisations.⁴⁵

Since its announcement in January 2009, numerous communities, including Hare Krishna, Jehovah’s Witnesses and Protestants, have complained of raids by police confiscating materials.⁴⁶ In August 2009, Kyrgyzstan transformed its State Inter-Agency Council on Religious Affairs into a State Coordinating Council on the Struggle against Religious Extremism. In the current political climate, this move might also be interpreted as a gesture towards the Shanghai Cooperation Organisation, as well as the Collective Security Treaty Organisation (CSTO).

I.3. International obligations versus regional commitments

The fall of the USSR in 1991 and the consequent opening of borders and political transformations changed the international rules of the game for Kazakhstan and Kyrgyzstan. Both countries sought to become part of the international community by ratifying (or acceding to) the principal human rights protection instruments. The two states also found themselves facing the arrival of asylum seekers, until then an unimaginable situation for these two formerly closed Soviet republics, often used by the Soviet powers as places of exile and deportation.

Arousing the interest of the major powers, as a result of their strategic position at the heart of Central Asia, since independence Kazakhstan and Kyrgyzstan have been trying to formulate foreign policies that balance the interests of the United States of America and Russia. For example, Kyrgyzstan simultaneously hosts a United States airbase, Manas, and Russian troops. At the same time, regional cooperation within security organisations dominated by China and Russia are taking on growing significance.

I.3.A. International obligations: progress lacking towards respect for human rights

1) Kazakhstan

Kazakhstan has ratified the majority of the core United Nations human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR)⁴⁷, the International Covenant

45. Mushfig Bayram, “ KYRGYZSTAN: Restrictive Law due for final parliamentary vote on Thursday”, 5 November 2008, http://www.forum18.org/Archive.php?article_id=1213

46. See articles on religious situation in Kyrgyzstan on Forum 18 web site: <http://www.forum18.org/Archive.php?query=&religion=all&country=30>

47. Ratified on 24 January 2006.

on Economic, Social and Cultural Rights (ICESCR)⁴⁸, the Convention against Torture (CAT)⁴⁹, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)⁵⁰, the Convention on the Elimination of Racial Discrimination (CERD)⁵¹, and the Convention on the Rights of the Child (CRC).⁵² Kazakhstan has also ratified the Convention relating to the Status of Refugees⁵³ and the Protocol relating to the Status of Refugees.⁵⁴ However, Kazakhstan has yet to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.⁵⁵

Kazakhstan has also ratified seventeen Conventions of the International Labour Organisation (ILO), including the eight fundamental ILO Conventions on freedom of association and collective bargaining; elimination of forced and compulsory labour; elimination of discrimination in respect of employment and occupation; and abolition of child labour. However, Kazakhstan has not ratified two instruments which specifically concern migrant workers: ILO Convention No.97 of 1949 concerning Migration for Employment and the ILO Convention No. 143 of 1975 concerning Migrant Workers (Supplementary Provisions).

Recent developments

“The fact that the Republic of Kazakhstan has been selected to chair the Organization for Security and Co-operation in Europe in 2010 [...] is not only a great honour and an acknowledgement of our achievements, but also a great responsibility for meeting all international commitments unconditionally.” (Ms. Tamara Duisenova, Executive Secretary of the Ministry of Labour and Social Protection, Kazakhstan, speaking before the OSCE, 17 May 2009⁵⁶)

The prospect of Kazakhstan taking the Chair of the OSCE in 2010 brought with it hope for progress in respect for international human rights obligations. The decision in 2007 to accord the Chair to Kazakhstan, as the first post-soviet country to preside the organisation, was made following commitments from Kazakhstan to carry out reforms on human rights, in accordance with OSCE principles. Yet progress has been limited. While some modest improvements have been made, key commitments remain unfulfilled and the death penalty has still not been abolished.

Ratifications: Several positive steps were taken in 2008-09, including the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance⁵⁷; the ratification of the First Optional Protocol to the International Covenant on Civil and Political Rights, which allows victims of violations to lodge complaints before the UN Human Rights Committee⁵⁸; and the formulation of declarations under the UN Convention against Torture (CAT), allowing complaints to be lodged with the UN Committee against Torture.⁵⁹

Kazakhstan also ratified the Optional Protocol to the UN Convention against Torture (CAT), allowing the creation of a system of independent monitoring of all detention facilities.⁶⁰

Other developments: In July 2009, the Criminal Code was amended to abolish the death penalty for all crimes, with the exception of “crimes of terrorism” resulting in the death of two or more people and grave crimes committed in wartime. This step follows the adoption of a moratorium on the death

48. Ratified on 24 January 2006.

49. Ratified on 26 Aug 1998.

50. Ratified on 26 Aug 1998.

51. Ratified on 26 Aug 1998.

52. Ratified on 12 Aug 1994.

53. Ratified on 15 Jan 1999.

54. Ratified on 15 Jan 1999.

55. See Annex for Table of ratifications.

56. Statement delivered during the 17th meeting of the OSCE Economic and Environmental Forum, Athens, 18- 20 May 2009, “Migration management and its linkages with economic, social and environmental policies to the benefit of stability and security in the OSCE region”, Session II: Review of the implementation of OSCE commitments in the economic and environmental dimension focusing on migration.

57. Ratified in February 2009.

58. Ratified in June 2009.

59. In accordance with Articles 21 and 22. Declarations made in February 2009.

60. Ratified in October 2008.

penalty in 2003 by Presidential Decree. However the reform falls far short of abolition. The retention of the death penalty for crimes of terrorism leaves scope for it to be applied for a range of offences.

According to Yevgeniy Zhovtis, KIBHR President, other positive changes in the run-up to Kazakhstan chairing the OSCE include “improved openness of state power structures, their preparedness to constructive cooperation with non-governmental organizations, and the setting up a number of advisory bodies, working groups, public councils, within the framework of which a more intensive dialogue is going on between the power bodies and civil society”.⁶¹ While it is important to underline these positive developments, they are seriously short of what is required of Kazakhstan to meet the commitments it made on taking on the OSCE Chair and the internal political situation continues to present major human rights concerns (see above, Part I.1).

In 2009, Kazakhstan accepted the visits of a number of UN independent experts, including in May, the UN Special Rapporteur on torture, Manfred Nowak, who reported on violence and torture within Kazakhstan’s penitentiary system and inadequate investigation, prosecution and punishment of perpetrators.⁶² In his conclusions, he noted that “the use of torture and ill-treatment certainly goes beyond isolated instances” and that “the likeliness for foreigners to be subjected to ill-treatment and inhuman or degrading punishment seems to be higher than average.”⁶³

In July 2009, Kazakhstan extended a standing invitation to all UN Special Procedures. The same month, the UN independent expert on minority issues, Gay McDougall, commended Kazakhstan for its “high degree of inter-ethnic and inter-religious cooperation and tolerance,” but highlighted a “number of issues” of concern, including democratic deficits, inadequate recourse mechanisms for victims of racial discrimination and discriminatory rules on registration of religious groups.⁶⁴

2) *Kyrgyzstan*

Kyrgyzstan has also ratified the majority of the core UN human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR)⁶⁵, the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁶⁶, the Convention against Torture (CAT)⁶⁷, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)⁶⁸, the Convention on the Elimination of Racial Discrimination (CERD)⁶⁹, the Convention on the Rights of the Child (CRC)⁷⁰ and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.⁷¹ Kyrgyzstan has also ratified the Convention relating to the Status of Refugees⁷² and the Protocol relating to the Status of Refugees.⁷³

Kyrgyzstan has ratified fifty-three ILO Conventions, including the eight fundamental Conventions on freedom of association and collective bargaining; elimination of forced and compulsory labour; elimination of discrimination in respect of employment and occupation; and abolition of child labour and Convention No.97 of 1949 concerning Migration for Employment.⁷⁴ Kyrgyzstan has

61. *Approaching the OSCE Chairmanship: Kazakhstan 2010*, Speech delivered by Yevgeniy Zhovtis to hearings of the US Congress Commission on Security and Cooperation in Europe (Helsinki Commission), U.S. House of Representatives, 12 May 2009.

62. UN Press Release, UN Expert on Torture Concludes Visit to Kazakhstan, 13 May 2009 <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/0BE9B42AD9B38DD6C12575B500527CC8?opendocument>

63. “UN Expert on Torture Concludes Visit to Kazakhstan”, 13 May 2009, UN press-release, www.un.kz

64. UN Press Release, *Kazakhstan: “Room for improvement on Minority issues”, says UN Independent Expert*, 15 July 2009, <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/E2439BE5E53977E1C12575F400363653?opendocument>

65. Ratified on 7 October 1994.

66. Ratified on 7 October 1994.

67. Ratified on 5 Sept 1997.

68. Ratified on 10 February 1997.

69. Ratified on 5 Sept 1997.

70. Ratified on 7 Oct 1994.

71. Ratified on 29 September 2003.

72. Ratified on 8 October 1996.

73. Ratified on 8 October 1996.

74. Ratified on 10 September 2008.

not yet ratified ILO Convention No. 143 of 1975 concerning Migrant Workers (Supplementary Provisions).

Recent developments

Ratifications: In December 2008, Kyrgyzstan ratified the Optional Protocol to the Convention against Torture.

Other developments: In 2007, Kyrgyzstan adopted a reform to the Criminal Code which abolished the death penalty for ordinary crimes and commuted death penalty sentences to life imprisonment.⁷⁵ Whilst this is a significant step forward, conditions in detention facilities generally remain of major concern and there are no prisons adapted to receiving prisoners serving life sentences.

3) European Union mechanisms: new opportunities for progress on human rights?

The EU Central Asia Strategy, directed at Kazakhstan, the Kyrgyz Republic, Tajikistan, Turkmenistan and Uzbekistan, was adopted in 2007. It includes goals to strengthen EU engagement in trade, energy, security, education, environmental issues and other policy areas in Central Asian states as well as to promote human rights and the rule of law. The Strategy includes regular human rights dialogues with all five Central Asian Countries.

The establishment of the EU-Kazakhstan and EU-Kyrgyzstan human rights dialogues offers a channel for open and frank exchanges on the human rights situation in these countries. However, the effective impact of these human rights dialogues will be seriously limited as long as the EU does not establish clear benchmarks and time frames on concrete commitments that are agreed by both parties.

The EU and its partners should reach joint public conclusions and commitments that could be monitored and would allow to assess the impact of the dialogues. Meanwhile both parties should make sure that the objective of effective realisation of human rights is not isolated in human rights dialogues sessions but horizontally mainstreamed in all negotiations and policies and backed up politically at all levels of discussion.

I.3.B. Regional commitments⁷⁶

Regional frameworks specific to Central Asia play an increasingly significant role in the policies and practices of Kazakhstan and Kyrgyzstan. These regional frameworks, including the Commonwealth of Independent States (CIS), the Collective Security Treaty Organization (CSTO), and the Shanghai Cooperation Organisation (SCO), have facilitated and expanded cooperation between Kazakhstan, Kyrgyzstan, and their neighbouring countries, largely in the economic sphere and with respect to national security.⁷⁷ In prioritizing regional relationships to maintain economic and security advantages, however, Kazakhstan's and Kyrgyzstan's treatment of citizens of neighbouring countries has become highly politicized, with an eye to ensuring that bilateral relations in the region will not be compromised. This approach is felt most harshly by asylum seekers, as an individual designated a threat by one member state is often treated as a threat by all (see further below, Part III).

Economic cooperation is increasing between states of the region, providing strong incentives for Kazakhstan and Kyrgyzstan to develop close ties and mutually beneficial policies with their neighbours. For example, in June 2009 China promised US \$10 billion in credit support for bilateral and

75. Reform adopted on 29 June 2007.

76. This section on regional commitments draws upon the research and analysis of *Regional Security, Economic Cooperation, and Human Rights: An HRIC White Paper on the Shanghai Cooperation Organization* (forthcoming Winter 2009).

77. The SCO has also acted to consolidate cooperation among the three major regional frameworks of the CIS, CSTO, and SCO. See, for example, *Memorandum of Understanding between SCO Secretariat and CSTO Secretariat*, Dushanbe, 5 October 2007. It remains to be seen whether such cooperation will result in enhanced exchange of intelligence on individuals or heightened anti-terrorism measures.

multilateral project cooperation within the SCO,⁷⁸ and China has partnered closely with Kazakhstan in expanding trade and building oil pipelines that link the countries.⁷⁹ Meanwhile, Kyrgyzstan is highly reliant on Uzbekistan for gas, and officials cite this as one of the primary considerations in relations with Uzbekistan. According to the Vice-Speaker of the Kyrgyz Parliament, Kubanychbek Isabekov, Kyrgyzstan must tread carefully with respect to Uzbek asylum seekers because, after asylum seekers from Uzbekistan came to Kyrgyzstan in 2005 (following events in Andijan – see further below, Part III), Kyrgyzstan “had problems with the Uzbek government . . . we’ve always bought natural gas from Uzbekistan, and the Uzbek side decided to stop supplying us gas and to raise the prices. Kyrgyzstan was left alone, nobody helped us.”⁸⁰ The Vice-Speaker also noted that Kazakhstan was interested in the energy resources of Kyrgyzstan, and that a number of conferences took place on such themes within the SCO and other regional frameworks, the last such conference concerning the Aral Sea.⁸¹

At the same time, cooperation on national security is both an incentive for and a fundamental requirement of participation in these regional frameworks. With shared borders, as well as cultural and historical ties and support networks that exist between the peoples of these member states, the regional frameworks provide a resource for governments to control perceived security threats across state lines. However, a lack of oversight and accountability within the regional mechanisms for law enforcement cooperation and exchange of information on individuals – criminal allegations are apparently accepted on their face, without regard to the international or domestic legal obligations of each state – has exacerbated tensions with protection of human rights in the region. While the regional frameworks themselves include human rights components, in practice many of their member states have prioritized security measures at the expense of human rights. Particularly in light of the fight against terrorism, the national security prerogatives in the region have resulted in use of the regional frameworks as a security apparatus to enforce the anti-terrorism, anti-extremism, and anti-separatism policies of the Central Asian, Russian, and Chinese governments, with a wide-ranging impact on the rights of individuals moving between states.

The Commonwealth of Independent States (CIS)

The CIS was established in 1991, after the dissolution of the USSR, as an alliance of former Soviet Republics, and currently includes as official members Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, and Uzbekistan.⁸² Member states have entered into a number of agreements that bear on labour migration, irregular migration, anti-terrorism, and human rights. These agreements include: the Agreement on Free Movement of Citizens of CIS States (Bishkek, 1992)⁸³; Convention on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters (Minsk, 22 January 1993) (hereafter, the “Minsk Convention”); the Agreement on Cooperation in the Sphere of Labour Migration and Social Protection of Migrant Workers (Moscow, 15 April 1994); the Convention on Human Rights and Fundamental Freedoms (Minsk, 26 May 1995) (it should be noted that Kazakhstan has not signed this Convention); Agreement on Co-operation

78. “Join Hands to Deal with the International Financial Crisis And Build a Harmonious and Beautiful Future Together: Address by H.E. Hu Jintao, President of the People’s Republic of China, at the 9th Meeting of the Heads of State Council of the Shanghai Cooperation Organization, Yekaterinburg, Russia,” 16 June 2009, <http://www.fmprc.gov.cn/eng/zxxx/t572628.htm>.

79. See, e.g., “Backgrounder: Basic facts about China-Kazakhstan relations,” *Xinhua News Agency*, 29 October 2008, http://news.xinhuanet.com/english/2008-10/29/content_10271965.htm; “China-Kazakhstan pipeline starts to pump oil,” *Xinhua News Agency / Associated Press*, 15 December 2005, http://www.chinadaily.com.cn/english/doc/2005-12/15/content_503709.htm.

80. FIDH meeting with Kubanychbek Isabekov, Vice-Speaker of the Parliament, and the chairwoman of the parliamentary Committee on Migration, Bishkek, 20 June 2009. Cf. FIDH meeting with Aigul Ryskulova, State Committee on Migration and Employment, Bishkek, 19 June 2009: “We are criticised but we take a lot of risks. We have economic sanctions from Uzbekistan; Kyrgyzstan has to buy Uzbek gas at European prices so we are forced to buy Kazakh gas.” Dmitri Kabak of the NGO Open Youth Public Foundation also confirmed that there was a well-founded fear in Kyrgyzstan that Uzbekistan could cut the supply of gas. FIDH meeting with Dmitri Kabak, Open Youth Public Foundation, Bishkek, 20 June 2009.

81. FIDH meeting with Kubanychbek Isabekov, Vice-Speaker of the Parliament, and the chairwoman of the parliamentary Committee on Migration, Bishkek, 20 June 2009.

82. See “About Commonwealth of Independent States,” <http://www.cisstat.com/eng/cis.htm>. Turkmenistan is an “associated member” since 2007. Georgia withdrew after the war in South Ossetia (August 2008) and Ukraine is a *de facto* member in a number of CIS agreements.

83. Russia originally signed the Agreement but withdrew in 2001.

between Member States of the Commonwealth of Independent States in Combating Illegal Migration (6 March 1998); the Treaty on Cooperation among the States Members of the Commonwealth of Independent States in Combating Terrorism (Minsk, 4 June 1999); and the Convention on Legal Status of Labour Migrants (Kishinev, November 2008).

Tensions have arisen in practice between the CIS agreements and international human rights frameworks. In FIDH interviews with officials of both Kazakhstan and Kyrgyzstan, particular reference was made to the CIS and the Minsk Convention as governing obligations to neighboring states concerning asylum seekers and refugees (see further below, Part III). The Minsk Convention provides for legal assistance between member states in criminal matters, including extradition.⁸⁴ Officials regularly noted their duty to extradite individuals pursuant to the Minsk Convention⁸⁵ – including individuals who could be subject to persecution in their home countries – despite the absolute prohibition against such extradition under international law (see further below, Part III). CIS member states have also developed a “wanted list” of individuals alleged by any of the member states to have committed criminal acts.⁸⁶ Inclusion on the wanted list precludes an individual from registering in another CIS state, thus preventing that individual from obtaining even temporary visitor status in the state, let alone applying to the state for refugee status as envisioned under the UN Convention and Protocol relating to the Status of Refugees (see further below, Part III).

Additionally, in Kazakhstan, officials within the Kazakh Ministry of Labour indicated to the mission that there was no need for the state to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, as principles on protection of and obligations regarding migrant workers were covered by CIS agreements, “better adapted to the regional context,”⁸⁷ in particular a draft Convention on the Legal Status of Migrant Workers - Citizens of CIS Members and Their Families, which has been under discussion since 2003. It was finally signed by all CIS states in 2008 but has yet to be ratified.

Apart from this convention, agreements regarding migrant workers include:

– The Agreement on Co-operation in the Field of Labour Migration and Social Protection of Migrant Workers, adopted in April 1994. Based on ILO principles, the agreement concerns only regular migrant workers and their families. The Agreement contains provisions on mutual recognition of diplomas and years of experience, on rules of employment in the receiving country and the elimination of double taxation. Only the medical care provision refers to the principle of equal treatment. Migrant workers are also entitled to social security, in accordance with the legislation in the receiving country, and to free transfer of their savings.⁸⁸ The agreement has been ratified by

84. See generally “The Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters: Information Document submitted by the Delegation of the Russian Federation,” Hague Conference on Private International Law, Information Document No. 1, April 2005, http://www.hcch.net/upload/wop/jdgm_info01e.pdf; See Russian version on <http://www.unesco.kz/cgi-bin/library?e=d-000-00---0HRCru-akalru%2CHRCru-01-1-0--0prompt-10---4-----0-11--1-ru-50---20-about---00021-001-1-0windowsZz-1251-00&cl=CL2.7&d=HASH0-efcdabcb475f17daa9ac1&x=1>.

85. E.g., FIDH meeting with Kubanychbek Isabekov, Vice-speaker of the Kyrgyz Parliament, and the chairwoman of the parliamentary Committee on Migration, Bishkek, 20 June 2009 (“We are part of the Minsk Convention, under which we have to give back criminals.”).

86. *Ibid.* (confirming existence of wanted list).

87. FIDH meeting with Ministry of Labour, Assel Nussupova, Vice-Minister, and Amandjur Nurseitov, Director of Employment and Migration Department, Astana, 12 June 2009. *Cf.* FIDH meeting with Vyacheslav Kalyuzhin, Head of National Centre on Human Rights Ombudsman Office, Astana, 11 June 2009 (noting Kazakh government uses the convention on illegal migrations within the CIS to address illegal migrations). FIDH meeting with Anara Ibrayeva, Director of the branch, Kazakh Bureau for Human Rights, Astana, 12 June 2009 (stating the Minsk Convention governs cooperation in criminal cases and provisions on extradition; authorities usually don’t take into account international conventions on human rights, but mainly focus on regional conventions); FIDH meeting with Pawel Szalus, IOM Liaison / Program Officer, International Organization for Migration, Almaty, 15 June 2009 (stating it is unlikely that Kazakhstan will ratify the UN Convention, all the more because CIS countries are drafting their own convention on migration and claim they have regional context).

88. See Lilia Ormonbekova, “Freedom of Movement and Labour Migration in the Commonwealth of Independent States Comparative Brief on CIS and EU Legislation,” http://src.auca.kg/index.php?option=com_content&task=view&id=554&Itemid=54.

all CIS members, but is to be applied through bilateral agreements, and only three CIS states have ratified the 2005 amendments to this Convention.

– Several agreements on fighting irregular migration. The Agreement on Co-operation between Member States of the Commonwealth of Independent States in Combating Illegal Migration was signed on 6 March 1998. This Agreement provides for joint actions to control migration, exchange of information on irregular migration, elaboration of deportation mechanisms and training of persons responsible for combating illegal migration. However, the Agreement does not provide for a special budget or implementation mechanisms. In 2002, there was also an initiative to create a database on Illegal Migrants and Persons Prohibited from Entering the Territories of Parties According to their National Laws, and on the Exchange of Information on Illegal Migrations.

The Collective Security Treaty Organisation (CSTO)

The CSTO is a collective defence organisation established in 2002, and includes as members Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan.⁸⁹ The organisation is an outgrowth of the CIS, and is based on the 1992 CIS Treaty on Collective Security,⁹⁰ which provided that “If one of the participating states is subjected to aggression by any state or groups of states, this will be perceived as aggression against all participating states, to this treaty?... [Participating states] will give it the necessary assistance, including military assistance.”⁹¹ Pursuant to its 2002 Charter, the CSTO member states are obligated to “coordinate and harmonize their efforts in combating international terrorism and extremism,...illegal migration and other threats to the security of the member States.”⁹² The CSTO has established its own blacklist of terrorist and extremist organisations, which includes religious groups.⁹³

The Shanghai Cooperation Organisation (SCO)

The SCO was formed in 2001 on the foundation of the “Shanghai Five” mechanism, a multilateral arrangement established in 1996 to resolve border tensions between China, Kazakhstan, Kyrgyzstan, Russia, and Tajikistan.⁹⁴ The Shanghai Five member states, along with Uzbekistan, expanded their vision of cooperation in 2001 through the creation of the SCO, adopting as key purposes and principles the strengthening of mutual trust and “good-neighborly friendship”, political and economic cooperation, safeguarding of regional security, and non-interference in each other’s internal affairs.⁹⁵ On June 15, 2001, the day of establishment, the member states also signaled that a paramount priority of the regional framework would be national security and anti-terrorism, by adopting the Shanghai Convention on Combating Terrorism, Separatism and Extremism (hereafter, Shanghai Convention) – which adoption even preceded that of the organisational charter.⁹⁶

While its full impact is difficult to measure in Kazakhstan and Kyrgyzstan, this regional security apparatus based on the Shanghai Convention raises significant human rights concerns.⁹⁷ The SCO is not the only regional organization to attempt to define and combat “terrorism,”⁹⁸ but it is unique in that the Shanghai Convention obligates member states to take measures against “three evils”: not

89. See <http://www.dkb.gov.ru/start/index.htm>.

90. *CIS Treaty on Collective Security*, 15 May 1992, English translation available in Zbigniew Brzezinski and Paige Sullivan, eds., *Russia and the Commonwealth of Independent States: Documents, Data, and Analysis* (New York: M.E. Sharpe, 1997), 539-40.

91. *Ibid.*, Art. 4.

92. *Charter of the Collective Security Treaty Organization*, Chisinau, 7 October 2002, Art. 8

93. See “CSTO Adds Islamic Groups To Extremist List,” *Radio Free Europe / Radio Liberty*, 6 May 2009, http://www.rferl.org/content/CSTO_Adds_Islamic_Groups_To_Extremist_List/1622623.html.

94. See *Declaration on Establishment of Shanghai Cooperation Organisation* (hereafter, Declaration on Establishment), 15 June 2001, available at http://www.ecrats.com/en/normative_documents/2006; Alyson J.K. Bailes et al., *The Shanghai Cooperation Organization*, SIPRI Policy Paper No. 17 (SIPRI: Stockholm, May 2007), 4.

95. See Declaration on Establishment at paras. 2, 5.

96. The *Charter of Shanghai Cooperation Organisation* was adopted on 7 June 2002.

97. On the impact of the SCO for Russia, see FIDH/ Civic Assistance report “A society under control. Misuse of the fight against terrorism and extremism in Russia” July 2009, available in French and Russian at <http://www.fidh.org/Une-societe-sous-controle-du>

98. For example, the *Treaty on Cooperation among the States Members of the Commonwealth of Independent States in Combating Terrorism* (Minsk, 4 June 1999) includes a definition of terrorism, and the *Association of Southeast Asian Nations Convention on Counter Terrorism* (Cebu, Philippines, 30 January 2007) lists offences on which cooperation in anti-terrorism is required.

only “terrorism,” but also “separatism” and “extremism.”⁹⁹ By linking the concepts of separatism and extremism to anti-terrorism measures, the SCO framework risks legitimizing as anti-terrorism the targeting of a wide array of conduct that governments perceive as a threat to their political authority, including advocacy for self-determination, religious freedom (particularly the practice of Islam), and exercise of a host of other rights.¹⁰⁰ Such conflation of offenses runs afoul of the principle of legality – part of customary international law based on Article 15 of the International Covenant on Civil and Political Rights – which requires that imposition of criminal liability and punishment be limited to clear and precise provisions in the law.¹⁰¹ The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism elaborated that, pursuant to the principle of legality, “it is essential that offences created under counter-terrorist legislation, along with any associated powers of investigation or prosecution, be limited to countering terrorism. Crimes not having the quality of terrorism, regardless of how serious, should not be the subject of counter-terrorist legislation. Nor should conduct that does not bear the quality of terrorism be the subject of counter-terrorist measures, even if undertaken by a person also suspected of terrorist crimes.”¹⁰²

Kazakhstan and Kyrgyzstan are obliged to adopt a number of security-related measures through the SCO. Such measures include cooperation on border control¹⁰³; implementation of measures to prevent, identify and suppress terrorism, extremism, and separatism in their territories¹⁰⁴; and extradition of individuals suspected of terrorism, extremism, or separatism.¹⁰⁵ Notably, SCO member states have also committed to deny asylum to all individuals *accused* or even *suspected* of terrorism, separatism, or extremism.¹⁰⁶ According to the SCO’s Astana Declaration of 2005, “The SCO member states will prevent any attempts on their territories to prepare and commit acts of terror, including those aimed against the interests of other countries, not provide asylum for individuals accused or suspected of conducting terrorist, separatist and extremist activity, and extradite such individuals at respective requests on the part of another SCO member state in strict accordance with

99. The “three evils” are defined within the SCO framework as follows:

1) “Terrorism” means:

a) any act recognized as an offence in one of the treaties listed in the Annex to this Convention (hereinafter referred to as “the Annex”) and as defined in this Treaty;

b) any other act intended to cause death or serious bodily injury to a civilian, or any other person not taking an active part in the hostilities in a situation of armed conflict or to cause major damage to any material facility, as well as to organize, plan, aid and abet such act, when the purpose of such act, by its nature or context, is to intimidate a population, violate public security or to compel public authorities or an international organization to do or to abstain from doing any act, and prosecuted in accordance with the national laws of the Parties;

2) “Separatism” means any act intended to violate territorial integrity of a State including by annexation of any part of its territory or to disintegrate a State, committed in a violent manner, as well as planning and preparing, and abetting such act, and subject to criminal prosecuting in accordance with the national laws of the Parties;

3) “Extremism” is an act aimed at seizing or keeping power through the use of violence or changing violently the constitutional regime of a State, as well as a violent encroachment upon public security, including organization, for the above purposes, of illegal armed formations and participation in them, criminally prosecuted in conformity with the national laws of the Parties.

Shanghai Convention on Combating Terrorism, Separatism and Extremism, Art. 1.1, June 15, 2001.

100. See further below, Part III.

101. See, e.g., Report of the U.N. Secretary-General, “The protection of human rights and fundamental freedoms while countering terrorism,” U.N. Doc. A/63/337 (2008), para. 24, n. 2; Office of the U.N. High Commissioner for Human Rights, “Human Rights, Terrorism and Counter-terrorism,” Fact Sheet No. 32 (July 2008), 39-40.

102. U.N. Commission on Human Rights, “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,” U.N. Doc. E/CN.4/2006/98 (2005) (Special Rapporteur, Martin Scheinin), para. 47.

103. “The Contracting Parties shall develop cooperation in the field of state border security and customs control” *Treaty on Long-Term Good-Neighborliness, Friendship and Cooperation Between the Member States of the Shanghai Cooperation Organization*, August 16, 2007, Art. 8. Control of the borders between China and Kazakhstan and Kyrgyzstan in particular appears to have tightened since the establishment of the SCO. See Section III.3 *infra*.

104. See *Shanghai Convention on Combating Terrorism, Separatism and Extremism*, Art. 6, June 15, 2001.

105. “The Contracting Parties, in accordance with their national legislations and on the basis of international treaties, to which they are parties, shall build up their interaction in searching, apprehending, extraditing and transferring persons suspected of, charged with or sentenced for committing crimes related to terrorist, separatist, extremist activities or other crimes.” *Treaty on Long-Term Good-Neighborliness, Friendship and Cooperation Between the Member States of the Shanghai Cooperation Organization*, August 16, 2007, Art. 8. See also *Shanghai Convention on Combating Terrorism, Separatism and Extremism*, Art. 2, June 15, 2001.

106. Declaration of Heads of Member States of Shanghai Cooperation Organization, Astana, July 5, 2005.

the current legislation of the member states.”¹⁰⁷ The Astana Declaration does not make any reference to or exception concerning contrary international obligations of the member states, including those enshrined in the UN Refugee Convention and the principle of non-refoulement. Publicly available SCO documents also do not specify what evidence, if any, states must share with each other in designating the particular individuals “suspected” of terrorist, separatist, or extremist activity.

In addition to these national security measures, Kazakhstan and Kyrgyzstan are obliged to undertake measures concerning migration through the SCO. These measures include cooperation to regulate labour migration and counteract illegal migration¹⁰⁸, and facilitation within each member state’s territory of economic activities of citizens of other member states.¹⁰⁹ In October 2009, the SCO member states also stated their intention to strengthen interaction between the states’ healthcare departments, migration control agencies, public security, and employers “with the aim of discovering and preventing infectious diseases among migrants.”¹¹⁰

Finally, the SCO framework includes human rights commitments.¹¹¹ The Shanghai Convention itself provides that, concerning extradition, member states “shall cooperate in conformity with international treaties to which they are parties”¹¹². The practical effect of cooperation through the SCO, however, appears to be the opposite. For example, the Deputy General Prosecutor of Kyrgyzstan, responding to an FIDH inquiry about the documented refoulement of Uzbek asylum seekers and refugees from the country (see further below, Part III), stated that the decision to return the individuals to Uzbekistan was a difficult one, because he had to consider whether to apply the extradition requirements of the Shanghai Cooperation Organisation treaties or the prohibitions of the UN Convention Against Torture.¹¹³ In the end, regional commitments on security trumped international obligations concerning human rights.

Impact of regional commitments

While detailed information is not publicly available, it is clear that regional cooperation in investigating, detaining, and extraditing individuals has increased, in the apparent absence of transparency and accountability mechanisms. Such cooperation may actually encourage sharing “bad practices” among states, as the Central Asian nations emulate their larger neighbors, China and Russia, concerning individual rights. As an expert of an NGO in Bishkek informed FIDH, the SCO forms part of the “new bad strategies of government”, and brings home new politics

107. Ibid.

108. “The Contracting Parties, in accordance with their national legislations and on the basis of observing generally recognized principles and norms of international law, international treaties, to which they are parties, shall actively develop cooperation to counteract terrorism, separatism and extremism; illegal trafficking in drugs, psychotropic substances and their precursors and arms; other forms of transnational criminal activity; as well as illegal migration. . . . The Contracting Parties shall develop cooperation in the field of state border security and customs control, regulation of labor migration, and provision of financial and information security.” *Treaty on Long-Term Good-Neighborliness, Friendship and Cooperation Between the Member States of the Shanghai Cooperation Organization*, August 16, 2007, Art. 8.

109. “The Contracting Parties shall strengthen economic cooperation on the basis of equality and mutual benefit and shall create favorable conditions for developing trade, encouraging investments and exchanging technologies within the framework of the SCO. The Contracting Parties shall facilitate economic activities including the provision of legal conditions for activities, in their territories, of natural and legal persons of other Contracting Parties, who are engaged in a legal economic activity, as well as the protection in their territory of legitimate rights and interests of such natural and legal persons.” *Treaty on Long-Term Good-Neighborliness, Friendship and Cooperation Between the Member States of the Shanghai Cooperation Organization*, August 16, 2007, Art. 13.

110. Joint Statement on fighting against infectious diseases in the region of the Shanghai Cooperation Organisation, 14 October 2009, <http://www.sectsc.org/EN/show.asp?id=147>.

111. See, e.g., *Charter of the Shanghai Cooperation Organization*, 7 June 2002, Art. 1 (a main goal of the SCO is “to promote human rights and fundamental freedoms in accordance with the international obligations of the member States and their national legislation”); *Treaty on Long-Term Good-Neighborliness, Friendship and Cooperation Between the Member States of the Shanghai Cooperation Organization*, 16 August 2007, Art. 11 (member states “shall develop cooperation in such fields as promoting the implementation of human rights and fundamental freedoms in accordance with their international obligations and national legislations”); Declaration of the Heads of the Member States of the Shanghai Cooperation Organisation, Dushanbe, 28 August 2008, para. 10 (detailing methods by which member states will promote human rights).

112. *Shanghai Convention*, Art. 2(3).

113. FIDH meeting with Deputy General Prosecutor S. Nasiza, Bishkek, Kyrgyzstan, 19 June 2009. See Section III infra.

and perspectives to the region – and the world – that do not respect human rights.¹¹⁴

Coordinated opposition to “religious extremism” is one such example. According to Kyrgyzstan’s Deputy General Prosecutor S. Nasiza, the state actively participates in the SCO, and an SCO conference in Moscow bringing together all *Prokuratura*¹¹⁵ of the member states resulted in a decision to strengthen their work against religious extremism.¹¹⁶ Indeed, Kyrgyzstan has taken a number of steps focused on controlling extremism, with concomitant impact on religious freedom and freedom of association, especially after the Nookat demonstrations (see Part I.2.B). Regional consensus appears to exist that membership organisations viewed by one state as a political threat – whether it be for “extremism”, “separatism”, or something else – will be treated as such by all.¹¹⁷

Results of regional cooperation that have been documented publicly suggest that such cooperation has in fact expanded the reach of member state governments to effect their security initiatives and other policies. In its 2008 report to the UN Security Council on Kazakhstan’s anti-terrorism measures, the Kazakh government noted:

“In the course of cooperation among the special services in the context of the Commonwealth of Independent States and the Shanghai Cooperation Organization and also with other foreign States, structural units of the following international terrorist organizations have been prevented from carrying out their activities in Kazakhstan: the Jamaat of mujahidin of Central Asia (Islamic Jihad Union), the Islamic Movement of Uzbekistan and the Islamic Party of Turkistan, all of which are under the control of Al-Qaida, as well as a number of other terrorist organizations.

...

“In 2007, 10 members of a cell of a foreign terrorist organization, the Islamic Party of Turkistan, including two of the main organizers of the involvement of citizens in terrorist activity, who had been hiding abroad for a long time, were convicted by the judicial authorities.

“This year, members of a radicalized criminal group of terrorists (10 persons) and a group of so-called jihadists (15 persons), who had been active in the central and southern regions of Kazakhstan respectively, were sentenced to various terms of imprisonment.

“Thirty leaders and activists of the religious extremist organization Hizb ut-Tahrir, who had been arrested in 2007, were found guilty of committing extremist crimes and sentenced to various terms of imprisonment.

“At the same time, in the context of compliance with its international obligations, and at the request of the competent bodies of other States, Kazakhstan is continuing its efforts to search for and extradite persons associated with terrorism, regardless of the place or time at which their terrorist acts were committed. . . .

“The Republic of Kazakhstan is taking action to enhance the protection of the State border. An adequate passport and visa system is in place. The entry and exit of persons whose names are included in the following lists are monitored:

...

“– Rosters of persons sought by the special services and law enforcement agencies of the member States of the Shanghai Cooperation Organization and the Commonwealth of

114. FIDH meeting with Human Rights Center “Citizens against Corruption”, 18 June 2009.

115. An institution inherited from the Soviet Union, the Prosecutor’s office (*Prokuratura*) is in charge simultaneously of investigation of criminal offences and control of actions of the state administration; it also acts as prosecution during trials. The *Prokuratura* includes judicial investigators and prosecutors under the responsibility of the Chief Prosecutor.

116. FIDH meeting with Deputy General Prosecutor S. Nasiza, Bishkek, Kyrgyzstan, 19 June 2009.

117. Ibid. Deputy General Prosecutor S Nasiza stated that such organisations include the Islamic Movement of Uzbekistan, Hizb ut-Tahrir, and the East Turkestan Islamic Movement, as “they want to destroy the governments of Central Asia and create a government of Turkestan.” He asserted that there was no automatic extradition for mere membership in one of these organisations, but individual members would be extradited if “they have committed a crime.”

Independent States because they have committed or are suspected of committing crimes of a terrorist and extremist nature.

“Intensive efforts are made in the context of the Shanghai Cooperation Organization to prevent the entry of persons involved in terrorism. As part of the implementation of the agreements signed by Kazakhstan in the context of that organization, a Government decision of 5 June 2007 confirmed an Agreement on cooperation in identifying and blocking the routes by which persons involved in terrorist, extremist and separatist activities enter the territory of SCO member States.”¹¹⁸

Similarly, a 2006 submission to the Security Council by Uzbekistan stated:

“With the framework of the Shanghai Cooperation Organization (SCO), Uzbekistan is taking part in measures to detect and block the routes by which persons involved in terrorist, separatist and extremist activities enter the territory of SCO member States.

...

“With a view to strengthening its own borders, Uzbekistan is actively cooperating with its neighbouring States, Kazakhstan, Kyrgyzstan and Tajikistan. Information is continuously exchanged between the border control agencies of the four countries about persons involved in terrorism. The details of all citizens crossing the border at the checkpoints are carefully checked against wanted person databases.”¹¹⁹

Without significant accountability mechanisms, these regional frameworks may compromise individuals’ rights in violation of international law.

Notably, however, among the high-level officials with whom FIDH met, there seemed to be greater familiarity with the CIS framework than with the obligations and ramifications of the SCO. For example, Vice-Speaker of the Kyrgyz Parliament Kubanychbek Isabekov asserted that the SCO had no impact on migration in Kyrgyzstan.¹²⁰ Even institutions charged with defending human rights, such as the National Center on Human Rights of the Kazakhstan Ombudsman, did not demonstrate an awareness of the potential effects on human rights of implementing the SCO agreements. The Ombudsman representative noted that his office did not have contact with the SCO; he was unaware of any SCO commitments related to refugees, and while he acknowledged there were some SCO documents on migrant workers, stated that the Ombudsman office does not work with those documents (and worked within the CIS framework instead).¹²¹ This lack of awareness contrasts with the familiarity with the SCO and other regional mechanisms shown by entities such as the Kyrgyz *Prokuratura*, and suggests that key participants of the member state governments may themselves not be adequately informed of the human rights ramifications of regional cooperation.

118. National Report of the Republic of Kazakhstan on the implementation of Security Council resolution 1624, 23 May 2008, U.N. Doc. S/2008/337 (emphasis added).

119. Fifth report of Uzbekistan on the implementation of Security Council resolution 1373 and responses to Security Council resolution 1624, 23 October 2006, U.N. Doc. S/2006/837.

120. FIDH meeting with Kubanychbek Isabekov, Vice-Speaker of the Parliament, and the chairwoman of the parliamentary Committee on Migration, Bishkek, 20 June 2009.

121. FIDH meeting with Vyacheslav Kalyuzhin, Head of National Centre on Human Rights Ombudsman office, Astana, 11 June 2009.

II. International labour migration in Kazakhstan and Kyrgyzstan

Following an overview of the main characteristics of the migratory flows to, from and between Kazakhstan and Kyrgyzstan (Part II.1), the report will examine the migratory policies in the two countries (Part II.2).

Whilst these policies will be examined separately, it is already possible to identify a number of common features:

- Circulation between countries of the CIS is essentially visa-free. Migrants from the region can thus enter legally and it is mainly only once they start to work, without the necessary authorisation, that they run the risk of becoming irregular migrants.
- In both countries, according to a system inherited from the Soviet period, registration with the police is mandatory, whether on a temporary or permanent basis. So, even where no visas are required, travel nonetheless remains strictly controlled. Moreover, permanent registration is the only way of obtaining the right to a certain number of social benefits.
- Both countries employ a system of quotas for labour migrants. The needs of the economy are thus defined by the state at central level and quotas are adapted according to economic forecasts. The quota policy is linked to a policy of national preference.
- In both countries, a policy of preferential immigration is implemented, in order to encourage the “repatriation” of Kazakhs and Kyrgyz living in neighbouring countries.

All these factors create a highly restrictive legal framework: the number and complexity of administrative requirements (registration, work permits) contribute to employers hiring irregular migrant workers. Such migrants find themselves particularly vulnerable to abuse and exploitation by employers and the law enforcement agencies (corruption). The vulnerability of migrant workers is further analysed in Part II-3, *Migration step by step: from crossing the border to escaping forced labour*.

II.1. Description of migratory flows

II.1.A. Kazakhstan: a country of immigration

Regular and irregular migration: absence of accurate figures

Although a land of emigration during the early 1990s, since 2004, Kazakhstan has become a receiving country and, according to the World Bank, is now in 9th position worldwide for receiving migrants.

*International migration to and from Kazakhstan, 2001 - 2006*¹²²

Year	Arrivals (thousands)	Departures (thousands)	Migration balance
2001	34.4	104.3	-69.9
2002	58.2	120.2	-62.0
2003	65.6	73.9	-8.3
2004	68.3	65.5	+2.8
2005	74.3	52.2	+22.1
2006	67.4	33.9	+33.5

122. Source: Migration policy framework for the Republic of Kazakhstan for 2007-2015.

“According to official reports, the country hosts between 500,000 and one million foreign workers. Taking seasonal flows and shuttle trade into account, however, local experts advance a more plausible figure of two to three million migrants. In 2007, these immigrants are reported to have constituted as much as 12 percent of the country’s working population.”¹²³

The figures given to the FIDH mission varied between 500,000 irregular migrants¹²⁴ to just under two million.¹²⁵ Estimates are all the more complicated due to the visa-free regime and those entering Kazakh territory are not necessarily migrant workers. Moreover, it is not always possible to know whether the figures given are those of persons entering the country (counted at the borders) or those registered with the migration police in Kazakhstan (counted inside the country itself). Migrants can be counted several times if they enter and leave the country several times during the year, or if they register with the police several times.¹²⁶

Whatever the precise figures, it is clear that the true scale of labour migration is not reflected in the figures on regular migration: there were 40,000 regular migrants in the first six months of 2009 according to the representatives of the Ministry of Labour met by the FIDH mission (the quotas being set at 65,000 for the year 2009, compared to 120,000 in 2008, see further below, Part II.2.A).

Origins, geographical distribution and types of work

According to a document provided to the FIDH mission by the Ministry of Labour, as of 1 April 2009, based on the number of entries into the country, the majority of migrants were from Uzbekistan (48.6% of all migrants from CIS member states) and Russia (36.4%). Migrants from non-CIS countries were mainly from China (60.4%) and Mongolia (24.1%). The figures obtained during implementation of a legalisation policy for irregular migrant workers in 2006 also give an idea of the origin of migrants working in Kazakhstan: of the 164,600 irregular migrants who were legalized, 71% were from Uzbekistan, 14.5% from Kyrgyzstan, 6.5% from Russia and 2.8 % from Tajikistan (see below, Part II.2.A).¹²⁷

According to the IOM, the geographical distribution of migrants is relatively stable: migrants from Uzbekistan and Tajikistan tend to go to the South of Kazakhstan, Kyrgyz migrants go to the Almaty region, while the three cities of Astana, Almaty and Chymkent receive migrants from these three countries.¹²⁸ A specialist on this question, Marlène Laruelle notes that, “Regions with massive migrant intake are those with the most developed industry sectors: the regions of Almaty and Dzhambul for tobacco plantations and market-garden produce, the south of Kazakhstan for cotton, both capitals for the construction sector and human services, and western Kazakhstan for construction and hydrocarbon exploitation (...) The salaries in them vary considerably: the construction sites are considered well-paid (at least US \$200), while the work in the fields yields only US \$100 per month.”¹²⁹

Chymkent, in southwestern Kazakhstan, is a particularly important hub: located about sixty kilometres from the Uzbek capital, Tashkent, it receives migrants who are seeking work in Kazakhstan as well as those in transit. According to the Chymkent based NGO *Sana Syzim*¹³⁰, people from Uzbekistan work mainly in construction and in the fields, people from Kyrgyzstan work more in the market,

123. Marlène Laruelle, “Kazakhstan: Central Asia’s New Migration Crossroads”, paper presented at the Conference on “Migrancy and Diaspora in Eurasia”, Wolfson College, University of Oxford, 10-12 July 2009.

124. “Information on the migration situation in Kazakhstan” - document in Russian given by the representatives of the Ministry of Labour, FIDH meeting, Astana, 12 June, 2009.

125. FIDH meeting with Abylsaiat Aбышев, head of the Committee on Migration, Astana, 11 June 2009.

126. The figures obtained during the 2006 legalisation process should also be considered with circumspection, because if 164,600 foreigners working in the country without authorisation declared themselves in three months, then it is impossible to estimate those who did not take advantage of this legalisation opportunity, all the more so as this legalisation process went through the employer.

127. “Information on the migration situation in Kazakhstan” - document in Russian given by the representatives of the Ministry of Labour, FIDH meeting, Astana, 12 June, 2009.

128. IOM, Overview of the legal problems of migrant workers in Kazakhstan, (based on the results of the activity of partner NGOs, 2007-2009, Almaty, 2009, (in Russian).

129. Marlène Laruelle, op. cit.

130. Since 2007, the NGO *Sana Syzim* has programs of legal aid for migrants workers. They have a 24-hour hotline with a lawyer and psychologist in Chymkent, and two small offices with a lawyer and a telephone in small villages in Saryagashski and Saïramski district. One office is near the Uzbek frontier and the other in a district with a large Uzbek population. FIDH interview with Khadicha Aбышева, Director, Chymkent, 16 June 2009

and people from Tajikistan work in the fields and the market, often selling dried fruits. According to the results of monitoring conducted by *Sana Syzim*, from 1 May to 31 October 2008, based on 1153 complaints they received, the absolute majority of migrants came from Uzbekistan. Most of them (62%) worked in the construction industry, the remainder working in agriculture (26%), trade (6%), services (5%) and other industries.¹³¹

Marlène Laruelle also emphasises that a lot of migration is seasonal (for periods of between two and eight months) and that there is an increasing trend towards the migration of entire families. Some migrants hold higher education or technical diplomas and are often attracted by the higher wages in Kazakhstan. “Other migrants, the majority, belong to the Uzbek and Kyrgyz rural milieus and work in Kazakhstan in a situation of illegality. Many of them seek either to escape situations of chronic unemployment in their regions of origin, or to earn higher salaries abroad. They do not belong to the poorest rural strata, since they have a modest starting capital to finance their migration, and hope above all to accumulate greater wealth to climb the social ladder.”¹³²

The consequences of the economic crisis

Although the effects of the economic crisis are hard to assess with any degree of accuracy, it is reported that the number of migrant workers in Kazakhstan has fallen. According to Vyacheslav Kalyuzhin, Head of the National Centre on Human Rights within the Ombudsman’s office, “since the financial crisis there are fewer migrants, and fewer complaints received” by the Ombudsman.¹³³ A migrant met by the mission in Astana confirmed that “many people have gone back to Tashkent because it’s too difficult to find work”, was although he had managed to find work in Astana despite the crisis. According to data from the Ministry of the Interior for the city of Almaty, the number of foreigners registered in this city for the first 6 months of the year fell by 26.7% in relation to the previous year.¹³⁴

On 22 May 2009 in Astana, at a meeting of Heads of State of the CIS, Nursultan Nazarbaev declared, “There is unemployment in all States. It is difficult for everybody. But the States of the CIS have to be tolerant to those migrants who are here. We try as far as we can not to reject them, not to expel them from our country, taking into account the fact that the situation of our neighbours is not so good.”¹³⁵

In practice, in response to the crisis, Kazakhstan halved the quotas for labour migrants, as did Russia. In January 2009 a spokesman for the Ministry of the Interior, interviewed by Radio Azattyk, said the number of expulsions will no doubt rise.¹³⁶ Even though the number of migrants was reported to have dropped in Almaty, the number of people arrested for breach of migration laws rose in the first six months of 2009 (18,040 as against 13,476 in the first six months of 2008), and the number of those deported has risen by 62% over the previous year (936 for the first 6 months of 2008 / 1520 during the first 6 months of 2009).¹³⁷

II.1.B. Kyrgyzstan: a country of emigration

Kyrgyzstan experienced hundreds of thousands of departures in the early 1990s, when Russians and Germans left the country. At that time, labour migration was mainly related to the *shuttle trade*¹³⁸ (“*chelnoki*”) with China, but also with Turkey. In the mid-1990s, competition began to be felt from

131. http://migrant-help.org/pages/120_monitoring/main.htm

132. Marlène Laruelle, op. cit.

133. FIDH meeting with Vyacheslav Kalyuzhin, Head of the National Centre on Human Rights, Ombudsman’s office, 11 June 2009, Astana.

134. “Kazakhstan Segodnia”, 29/06/2009, <http://www.gazeta.kz/art.asp?aid=133886>

135. http://www.zpress.kg/index.php?option=com_content&view=article&id=7846:zpresskg-l-r-&catid=25:2008-10-19-12-17-07&Itemid=58

136. Bagdat Kozhakhmetov, spokesman for the Ministry of the Interior, explained that at the instigation of the migration police, more than 2500 migrants in Astana and 3000 in Almaty returned home “earlier than planned” (without the nature of the “incentives” being clarified). In the same interview, he says: “Now, some construction companies have closed. Citizens from Kyrgyzstan, Uzbekistan and Tajikistan used to work there. Now they are without jobs and without a chance of finding one. Why do we need them here? To survive, they start to commit crimes. This is why we are justified in sending them back” (Radio Azattyk. V Kazakhstane v poslednie mesiaty idet “ohota za migrantov” CA-NEWS (KZ), 28.01.2009.

137. Kazakhstan Segodnia, 02/07/2009, <http://www.gazeta.kz/art.asp?aid=134083>

138. Purchase of goods abroad and resale in Kyrgyzstan.

Chinese merchants. While numerous Kyrgyz citizens continue to trade on the markets of Kazakhstan or Russia, since 2000 the numbers of those working in construction has been rising.

According to the Kyrgyz Statistics Committee, 475,621 people left permanently between 1991-2005.¹³⁹ According to the Kyrgyz government, this negative migratory balance absorbed nearly half the Republic's natural growth, which "led to depletion of the qualified workforce, and a drop in the scientific, the intellectual and ultimately the economic potential of the Republic".¹⁴⁰

The exact departure figures are not, however, easy to obtain, because as explained to the FIDH mission by Aigul Ryskulova, Head of the State Committee on Migration and Employment, it is impossible to monitor the borders: «There are 43 border exits but only 4 have the capacity to register migrants passing through.»¹⁴¹ Therefore the estimates of the number of Kyrgyz citizens leaving the country to look for work vary between 400,000 and 800,000.¹⁴²

According to the "National Program of the Kyrgyz Republic on migration processes regulation for 2007-2010", 400,000 people leave the country every year on a temporary basis to look for work abroad and every year, 20,000 to 25,000 of them remain abroad. The program underlines that 90% of labour migrants work illegally and that an overwhelming majority of the citizens of the Kyrgyz Republic occupy menial, low-paid jobs in the host countries, requiring no particular qualifications. A growing number of migrants are from the small towns or villages and would leave Kyrgyzstan straight after school, without any professional training, and find jobs as yard-keepers, street-cleaners, labourers, market vendors, etc.¹⁴³

Causes of emigration

The Kyrgyz Committee for Human Rights, which received the FIDH mission in Bishkek, published a paper in June 2009 on the question of migration¹⁴⁴ in which it highlighted a certain number of classic causes of emigration ("push-factors"): high unemployment, partly due to low industrial development and low salaries for many specialists, such as teachers, doctors, nurses etc. According to the report, the average salary is 5,000 Som, or about US \$100. The lack of development in the banking sector is also highlighted, which prevents access to credit to help citizens develop their own businesses, and competition from foreign products, in particular Chinese.

Among the factors pushing Kyrgyz citizens to leave, KCHR stresses the problem of corruption, which leads to a strong feeling of insecurity among those with small business (who are afraid of losing their business in favour of someone who has paid bribes). Indeed, the bribes called for to enter university or to pass exams force some parents to emigrate so that they can pay for their children's studies.

Yet socio-economic difficulties are not automatically a determining factor in departure, nor a single cause. The decision to leave for abroad is weighed against the difficulties, the risks (due to widespread impunity), of being arrested, deported, beaten; the consequences for children or other members of the family who stay behind (fear of abandonment/ jealousy of neighbours faced with sudden wealth). Departures can be linked to the desire to provide support for the family but also, in particular for young men, to pay for a certain number of major expenses (house, marriage etc.) and can represent a means of social advancement, replacing the mobility previously possible through membership of the Soviet Union.¹⁴⁵

139. "On National Program of the Kyrgyz Republic on migration processes regulation for 2007-2010", in Russian: http://rus.gov.kg/index.php?option=com_content&task=view&id=1296

140. Conception of migration policy 2005-2010, http://www.government.gov.kg/index.php?option=com_content&task=view&id=67

141. FIDH Interview with Aigul Ryskulova, Head of the State Committee on Migration and employment, 19 June 2009.

142. See <http://src.auca.kg/reports/71/03.htm> and <http://www1.ca-news.org/news/197871>

143. "On National Program of the Kyrgyz Republic on migration processes regulation for 2007-2010", in Russian: http://rus.gov.kg/index.php?option=com_content&task=view&id=1296

144. KCHR, *Monitoring po migratsiam*, 2009 (in Russian).

145. On these issues, see the work of Madeleine Reeves, for example, "Going to town: exploring the micro-dynamics of labour migration from Southern Kyrgyzstan", National Identity in Eurasia II: Migrancy and Diaspora in Eurasia, Wolfson College, Oxford, July 10-12th 2009.

Migration to Russia

Russia remains the primary country of destination for Kyrgyz migrants, who work on construction sites there, in small retail outlets or in services (cleaning). The Kyrgyz authorities rely on figures from the Russian Migration Service (FMS), which in 2008 estimated that more than 500,000 Kyrgyz citizens had entered Russia – although not all of them were labour migrants. Kyrgyzstan appears to have a negative migratory balance with Russia: more than 70,000 people left Kyrgyzstan for Russia permanently in 2008, if we are to believe the Russian entry and exit registers.¹⁴⁶

Furthermore, in six years, more than 160,000 Kyrgyz have received Russian citizenship¹⁴⁷: the Kyrgyz were eligible for a simplified procedure and naturalisation is sometimes the only means for them to work legally, in particular in the markets¹⁴⁸. Problems arise when these people return to Kyrgyzstan and have their Kyrgyz passports taken away. The Kyrgyz authorities, who are also worried about the country's dwindling population, are looking at ways to enable these migrants to retain dual citizenship.¹⁴⁹

The difficulties encountered by Kyrgyz migrants in Russia are similar to those of all CIS labour migrants. The 2007 migratory policy reforms, which simplified registration and application for work permits made it easier for them to work legally. However, a huge number of migrants continue to work with no contract or work permit, especially following the announcement at the end of 2008 that, the work permit quotas for 2009 were to be halved. Forced labour practices have been documented in Russia, along with corruption, police harassment and collusion between employers and employees of the Federal Migration Service.¹⁵⁰ The issue of xenophobia is particularly sensitive¹⁵¹ and was highlighted by many of those met by the FIDH mission. The Kyrgyz Ombudsman, Tursunbek Akun, emphasised the problem of the “skinheads” and murders committed in Russia in recent years. Finally, with the economic crisis, people are becoming increasingly worried about not finding work or being driven out. According to the figures from the Kyrgyz national bank, the remittances sent by migrant workers to Kyrgyzstan in the first half of 2009, are 24% down on the previous year.¹⁵²

Migration to Kazakhstan

According to the Migration Committee, there were nearly 60,000 Kyrgyz in Kazakhstan in 2008.¹⁵³ The agreements signed between the two countries clearly show the types of migration concerned. The first is a 2002 agreement on migrant workers employed in agriculture in the border regions. It in particular concerns seasonal labourers working in the tobacco and cotton plantations in Southern Kazakhstan. The second agreement, which dates from 2006, concerns the rights of Kyrgyz migrants working temporarily in Kazakhstan. Finally, an agreement signed in June 2009 allows for the regulation of individual entrepreneurship: a new decision should enable Kyrgyz entrepreneurs to register individually in the same way as their Kazakh counterparts, without having to create a legal entity in order to be authorised to work.¹⁵⁴

146. <http://www.24.kg/economics/2009/07/10/116035.html> & <http://www.centrasia.ru/newsA.php?st=1247055780>, 147. CA-NEWS (KG), 09-07-2009, available on <http://src.auca.kg/reports/71/03.htm>

148. Note that since April 2007 only Russian citizens are authorised to trade in the markets.

149. FIDH interview with K. Issabekov, Deputy-Speaker of Parliament, Bishkek, 20 June 2009.

Kyrgyz law allows dual-citizenship, but only for countries with which there is an agreement, which for the time being is not the case of Russia. See “Trudovye migranty iz Kyrgyzstana podnimajut problemu, svjazannuju s polucheniem pasporta grazhdanina KR i propiski na rodine”, 11.08.09, http://www.zpress.kg/news/news_only/10/10110.py

150. On this point, see *Migration in Russia: Marginalised Populations, the first victims of external and internal political crises*, FIDH 2007, available at <http://www.fidh.org/IMG/pdf/Migranrussie472fr2007.pdf> and Human Rights Watch XXX “Are you happy to cheat us?” Exploitation of Migrant Construction Workers in Russia, February 2009, <http://www.hrw.org/en/reports/2009/02/09/are-you-happy-cheat-us-0>

151. According to KCHR, a certain number of migrants even change their names to facilitate their integration into Russia. The KCHR report quotes figures from the ZAGS (civil registry) in Dzhahalabad, according to which in 2008, more than 2000 people changed their name: there used to be 65-70 applications every month, but now they have to handle about 280-300 cases per month.

152. <http://www.24.kg/economics/62997-summa-denezhnyx-perevodov-trudovyx-migrantov-v.html>

153. “Za rubezhom nahodiatsa 500-600 tysach grazhdan Kyrgyzstana”, 11/ 08/ 2009 CA-NEWS (KG) , <http://www1.ca-news.org/news/197871>

154. http://www.zpress.kg/news/news_only/10/8393.py et http://www.zpress.kg/news/news_only/10/8360.py

Immigration: Kyrgyzstan as a country of immigration and transit

According to the Deputy Speaker of the Parliament, K. Issabekov, who met with the FIDH mission, Kyrgyzstan is also a land of immigration: there is pendular migration with Uzbekistan and Tajikistan in the south of the country, with people coming during the day to work and going back home at night. There are also migrants from China and Iran and transit migration through Kyrgyzstan. Since the Kyrgyz authorities do not have the capacity to calculate the numbers entering and leaving Kyrgyzstan, the only statistics are the number of registrations in the country: according to official statistics from the Ministry of Internal Affairs, for the first five months of 2009, 22,041 foreign citizens entered and were registered in Kyrgyzstan.¹⁵⁵

With regard to Chinese migration, an article published in 2008 recalled that there were about 60,000 Chinese in the country at the beginning of 2008. Since the end of the 1990s, migrants from China worked first of all in agriculture, then in trans-border trade in clothing and other products “made in China”, but they also set up small businesses (restaurants, brick-works, roads, etc.). “Chinese migrants have been trading for nearly a decade at major Kyrgyzstan markets such as Dordoi, located in the city of Bishkek, and Karasuu, near Osh [...] Since 2002, Madina, a specialized market for textile products, has also become one of the most important commercial centres in Bishkek. Here, Uyghur from Xinjiang engage in commercial activities [...] Thanks to their Turkic language, the Uyghur serve as mediators between Han Chinese and Kyrgyz sellers.”¹⁵⁶

The FIDH mission had an opportunity to visit the market in Madina, without intending to conduct an interview: on arrival, the mission delegates were warned not to take photos and according to a Uyghur human-rights activist met by the mission, the Uyghurs who work there are afraid of surveillance by Chinese agents.¹⁵⁷ According to information gathered by the mission, the migrants working in the market pay the owner protection money so that they are not controlled within the perimeter of the market. Most tend to live close to the market, and never go out alone in the city. The FIDH mission heard several remarks revelatory of underlying tensions between the Uyghurs and the local population.

II.1.C. Women and migration

Labour migration in the former-CIS has generally been seen as primarily a male phenomenon. The NGO *Sana Syzim*, based in Chymkent, which specializes in protecting the rights of women and children, had started a program aimed at providing assistance to women migrants but, in the words of its Director “we understood very quickly that we couldn’t only focus on women migrants because 90% of the complaints are from men”.

However, women represent a growing part of labour migrants, and their specific problems have been analysed in a survey recently published in Russian by UNIFEM.¹⁵⁸ The survey was conducted in 5 countries (Russia, Tajikistan, Uzbekistan, Kyrgyzstan and Kazakhstan), and contains numerous first-hand accounts from women migrants in Kazakhstan, working in agriculture or services. This report highlights a number of characteristics of female labour migration in the region, including the following:

- There are no precise data on the percentage of women migrating; experts estimate that about 15% of migrants from Uzbekistan and Tajikistan are women, and between 20 to 40% of migrants from Kyrgyzstan.
- Women started migrating for work later than men. The numbers of women migrating alone far exceed those migrating to join their families.
- Women who leave are usually young adults (with dependent children and/or parents), and mainly come from the cities, (unlike men). Women migrating to Russia are usually better educated than those migrating to Kazakhstan.

155. FIDH meeting with Aigul Ryskulova, Head of the State Committee on Migration and Employment, Bishkek, 19 June 2009

156. Zhaparov, Amantur, “The issue of Chinese migrants in Kyrgyzstan”, *China and Eurasia Forum Quarterly*, Volume 7, No. 1 (2008) p. 79-91

157. FIDH interview with Tursunbek Akun, 20 June 2009, Bishkek.

158. “Otsenka nuzhd i potrebnostej zhenshin trudjashihsa migrantov. Tsentralnaja Azia i Rossia”, red E. Turukanova, R. Abazov, UNIFEM 2009, <http://www.unifemcis.org/img/database/149.pdf>

- Migrating women usually occupy unqualified jobs in trade or the service industries (domestic work, catering, hotels, cleaning, child-minders, carers). However, a significant proportion of women who migrate work in construction and agriculture. This is the case, for example, in the Chymkent region. According to the Director of the *Sana Syzim* NGO, women usually come for seasonal work, accompanied by their families, including young children. They work in agriculture, in the tobacco fields, but usually no particular account is taken of their needs: for example, there are no separate facilities for women to stay in and no provision is made to accommodate small children, including those who are being breast-fed.
- Access to health care is difficult, with the exception, in Kazakhstan, of care in childbirth, which is provided free of charge. Women therefore usually treat themselves.
- Most accounts from women show that they work illegally (no contract, agreement based on trust, etc.). Aspects of forced labour are revealed in many first-hand accounts: blackmail, confiscation of documents, impossibility of leaving the employer etc.
- The percentage of women working legally in Russia is below that of men. Similarly, in Kazakhstan, during the 2006 legalisation process (see below, Part II.2.A), women were under-represented.
- Relations with law enforcement officials tend to be based on corruption and bribery. Although women are often victims of police harassment, it seems that they are less frequently arrested and placed in detention or deported than men – with the significant exception of sex workers.

II.2. Migration policy

II.2.A. Migration policy in Kazakhstan

1) Legal framework

International obligations

Although Kazakhstan has ratified the majority of the international human rights conventions, which contain provisions covering protection of the rights of migrants, the state has thus far failed to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Kazakhstan has not ratified the ILO Convention No.97 of 1949 concerning Migration for Employment and the ILO Convention No. 143 of 1975 concerning Migrant Workers (Supplementary Provisions).

Regional agreements

Kazakhstan is party to a number of regional agreements, especially within the framework of the CIS (see Part I.3.B), and has signed bilateral and trilateral agreements¹⁵⁹ with Azerbaijan, Belarus, Kyrgyzstan¹⁶⁰, Mongolia, Tajikistan and Uzbekistan.¹⁶¹

National legal framework

In response to economic changes in Kazakhstan, several new laws and decisions have recently been adopted and amendments have been made to existing laws. The legal framework governing

159. See ILO report 2008.

160. Agreement between the Government of the Republic of Kazakhstan and the Government of the Kyrgyz Republic on the Employment and Social Protection of Migrant Farm Workers Employed in the Border Regions, 19 July 2002;

Agreement between the Government of the Republic of Kazakhstan and the Government of the Kyrgyz Republic on the Employment and Protection of the Rights of the Migrant Workers, Nationals of the Republic of Kazakhstan, Temporarily Employed on the Territory of the Kyrgyz Republic, and the Employment and Protection of the Rights of the Migrant Workers, Nationals of the Kyrgyz Republic, Temporarily Employed on the Territory of the Republic of Kazakhstan, 4 May 2006.

161. Agreement between the Government of the Republic of Kazakhstan, the Government of the Kyrgyz Republic and the Government of the Republic of Uzbekistan on Creating Legal, Economic and Institutional Environments for the Free Workforce Movement 1997

migration is complex. According to the Committee on Migration, there are more than 200 laws and regulations that apply to migration.¹⁶²

The main laws and regulations governing labour migration in Kazakhstan include, *inter alia*¹⁶³:

General migration policy:

- Law on Migration of the Population, N°. 204-I, 13 December 1997, last amended in 2002¹⁶⁴: focuses on the control of internal and international labour migration, reducing “illegal migration” and sets out the policy on return of ethnic Kazakhs (oralmans), (see further below).
- Law of the Republic of Kazakhstan on supplements and amendments to the Law of the Republic of Kazakhstan on Migration, N° 276-III-ZRK, 27 March 2002¹⁶⁵
- Labour Code of the Republic of Kazakhstan, N°. 251-III, 15 May 2007
- Conception of the migration policy of Kazakhstan for 2007-2015, adopted by Presidential Decree N° 339, 28 August 2007
- Plan to implement the 2007-2015 “Conception of migration policy” on the first stage (2008-2010), adopted by Governmental Decision N°1110, 20 November 2007
- Plan to implement the 2007-2015 “Conception of migration policy” through the “Nurly Kosh” program for 2009-2011 (mainly for *oralmany* and internal migrants)¹⁶⁶

On quotas for migrant workers:

- Governmental Resolution on Rules for the Deliverance of Work Permits under the Quota System, N° 836, 19 June 2001 (as amended 17 March 2003 and 14 March 2006)
- Government Resolution on Rules for entry and Stay of Foreigners in the Republic of Kazakhstan and their Departure from the Republic of Kazakhstan, No. 136, 28 January 2000 (dealing with deportation).

On oralmans:

- In addition to provisions contained within the Law on Migration of the Population of 1997, there are several specific regulations on the return of ethnic Kazakhs, including Presidential Decree 590, 17/11/2008 on the quota for oralmans for 2009 and Governmental Decision N°32, 22 01 2009 on allocation of these quotas (see further below).

*On trade unions*¹⁶⁷:

- 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).

On citizenship:

- Law on Citizenship of the Republic of Kazakhstan, N°1017-XII, 20 December 1991: The general procedure for acquiring citizenship requires lawful permanent residence in Kazakhstan for at least 5 years, or for 3 years if married to a Kazakh national. The law sets out an accelerated procedure for obtaining Kazakhstan citizenship by persons with certain professions or qualifications.
- Presidential Decree N°. 1587, 6 June 2005, establishes a list of such professions and qualifications which includes: artists, biologists, physicians, geologists, pilots, navigators, chemists, teachers etc.

*On access to economic and social rights*¹⁶⁸:

- *Education:* Under the Law on Education, N°. 319-III ZRK, 27 July 2007, foreigners with permanent residence have a right to education but not temporary migrants. However, there is no

162. *Conception of the New Law of Kazakhstan on Migration of the Population*, Committee on Migration, June 2009.

163. For a detailed description of the main laws and regulations, see ILO, *Rights of Migrant Workers in Kazakhstan*, 2008, Part III, pp. 12- 19.

164. Available at: <http://www.unhcr.org/refworld/docid/3ae6b5740.html>

165. Available at www.imldb.iom.int/viewDocument.do?id={5A6F8800-297B-4408-ACB4-E6AE9792F4BC}

166. Available in Russian at http://www.kazpravda.kz/_pdf/dec08/111208law.pdf

167. See ILO, *Rights of Migrant Workers in Kazakhstan*, 2008, pp. 22-23.

168. See ILO, *Rights of Migrant Workers in Kazakhstan*, 2008, pp. 27-32.

provision expressly denying access to education to children of temporary international migrants.

- *Health*: Access to healthcare of foreigners, including migrant workers and members of their families, is governed by Government Resolution No. 997 of 16 October 2006, which provides for access to health services by all labour migrants, with no restrictions on irregular migrants. Foreigners are provided with emergency free medical care and medical treatment at place of stay, “in case the disease is dangerous for others”. There are no requirements for visas or registration. Under a bilateral agreement with Kyrgyzstan, Kyrgyz migrants have equal rights with nationals with respect to emergency medical care and employers are obliged to provide access to other medical treatment.
- *Pension benefits and social insurance*: According to the Law on Pension Benefits in the Republic of Kazakhstan, N° 136-I, 20 June 1997, only those who have permanent residence in Kazakhstan have the rights to pension benefits. Temporary migrant workers have no such right. The same applies to social insurance, according to the Law on Mandatory Social Insurance, N° 405-II, 25 April 2003. This creates a situation in which the cost to the employer of hiring migrant workers is lower than that of hiring Kazakh nationals.
- *Compensation for occupational accidents*: Under the Labour Code, Article 164, the employer is liable to compensate for harm to the employee’s life and health while performing their duties. The provision covers temporary migrant workers.
- *Housing*: According to the Law on Housing Relations, N° 94-1, 16 April 1997, only Kazakh nationals can purchase housing, or access social housing or housing benefits. For regular migrant workers, accommodation can be dealt with in the contract with the employer.
- *Family reunification*: Under the Law on Migration of the Population, Article 22, and the Regulations for arrival and Stay of Foreigners in the Republic of Kazakhstan, Government Resolution N° 688, 10 August 2007, to gain entry into Kazakhstan, family members of a labour migrant are required to show that they have the necessary funds to cover their stay and departure. This does not apply to oralmans. It also does not affect nationals of those countries with which Kazakhstan has a visa free regime (Kyrgyzstan, Uzbekistan, Tajikistan, Russia, Belarus etc.).¹⁶⁹

A new law on migration is currently under consideration and is expected to be approved by the end of 2009. The OSCE and the International Organization for Migration (IOM) as well as KIBHR have been consulted on the draft and have submitted recommendations, in particular concerning the incompatibility of provisions with international standards and existing national laws. The FIDH mission was unable to obtain a copy of the draft law. It appears to be an extension of the current policy.

According to the Committee on Migration, the new law aims to contribute to the fulfilment of Nazarbaev’s strategy announced in March 2006, “to make Kazakhstan one of the 50 most competitive countries”. The migration policy will seek to attract foreign specialists who would permanently settle in Kazakhstan. Planned reforms include: a unique system of granting visas and work permits; the possibility for foreign students to remain in Kazakhstan and receive a work permit; to provide qualified workers who are ethnic Kazakhs (oralmans) or former Kazakh citizens with work permits which are not linked to a particular employer. The law would also introduce a quota for internal migrants to migrate from ecologically unfavourable regions to towns with the support of the state.¹⁷⁰

The draft law would not reform the existing quota system for work permits for foreign migrant workers who would continue to be tied to a single job and a single employer for a maximum one year term (see further below, *Quotas and other restrictions for external migrants*).

2) Policy implementation

Responsible bodies

There are five main bodies in charge of labour migration issues in Kazakhstan:¹⁷¹

- The Ministry of the Internal Affairs, in charge of fighting irregular migration and controlling labour migration. The Migration Police is responsible for registering migrants, identifying irregular migrants (according to the Committee on Migration they have recently started a database of irregular migrants), and deportations.

169. See ILO, *Rights of Migrant Workers in Kazakhstan, 2008*, pp. 25-26.

170. *Conception of the New Law of Kazakhstan on Migration of the Population*, Committee on Migration, June 2009.

171. FIDH meeting with Assel Nussupova, Vice-Minister and Amandjur Nurseitov, Director of Employment and Migration Department, Ministry of Labour and Social Protection, Astana, 12 June 2009.

- The Ministry of Labour and Social Protection: The Committee on Migration, in charge of implementation of the oralmany policy, and definition of quotas for labour migrants and refugees¹⁷², is part of the Ministry of Labour and Social Protection.
- The Ministry also has an Employment and Migration Department.
- The Ministry of Foreign Affairs
- The Border Service within the National Security Committee
- Local administrations

The Committee on Migration highlights the lack of coordination between the different bodies as an obstacle to the effective implementation of migration policy.¹⁷³ Migration police also complain that ineffective coordination between the different agencies, for example, prevents them from issuing documents or residence permits on time.¹⁷⁴

Regulation of migration through registration

Kazakhstan applies a registration system to all those on its territory. The system, inherited from the USSR (“*propiska*”), is intended to enable the state to monitor and control international and internal migrants. Registration must be made by the person who receives the migrant, e.g., family members, employers and migrants and at the address of residence. In order to access some services in Kazakhstan, migrants have to demonstrate that they are registered.

Different rules apply according to the nationality of migrants:

- Migrants from Tajikistan, Kyrgyzstan, Belarus and Russia are allowed to enter and stay in Kazakhstan for 90 days without a visa. They must then register in order to be permitted to stay in Kazakhstan for a further 90 days.
- Migrants from Uzbekistan do not require a visa but are obliged to register within 5 days of arrival on Kazakh territory. They are then authorised to stay in Kazakhstan for 90 days.
- Migrants from China must have a visa and must register on arrival.
- Internal migrants from other regions of Kazakhstan must register within 5 days.
- Citizens of “developed” countries arriving by plane are automatically registered at the airport.

The UN Human Rights Committee considers that the *propiska* system violates the right to freedom of movement and choice of residence under Article 12 of the International Covenant on Civil and Political Rights.¹⁷⁵

Despite these attempts to monitor the numbers and location of international migrants on Kazakhstan territory, the Committee on Migration points to the lack of reliable statistics on migrants and is planning to create a database of labour migrants.¹⁷⁶

Quotas and other restrictions for external migrants

Since 2001, Kazakhstan has been implementing a quota system for labour migrants. The aim of the system is to fill jobs requiring specialist qualifications on a temporary basis. According to Tamara Duisenova, Executive Secretary of the Ministry of Labour and Social Protection, speaking before the OSCE¹⁷⁷, “Kazakhstan uses foreign labour migration to satisfy the demands of innovative development and to attract a highly qualified workforce”. At the same time Kazakh citizens are be trained so that they can take over in the longer term. The Vice-Minister of Labour and Social Protection told the FIDH mission delegation, “The priority for us is to protect our workers. If an employer wants to invite a migrant worker, he must seek to replace that position with a Kazakh

172. FIDH meeting with Habylsaia Abyshev, Chairperson, Committee on Migration, 11 June 2009.

173. *Conception of the New Law of Kazakhstan on Migration of the Population*, Committee on Migration, June 2009.

174. *IOM information*.

175. *Concluding observations of the Human Rights Committee: Kyrgyzstan. 24/07/2000. CCPR/CO/69/KGZ*, available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.69.KGZ.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.69.KGZ.En?Opendocument)

176. *Conception of the New Law of Kazakhstan on Migration of the Population*, Committee on Migration, June 2009.

177. Statement delivered during the 17th meeting of the OSCE Economic and Environmental Forum, Athens, 18- 20 May 2009, “Migration management and its linkages with economic, social and environmental policies to the benefit of stability and security in the OSCE region”, Session II: Review of the implementation of OSCE commitments in the economic and environmental dimension focusing on migration.

specialist within 2-3 years”.¹⁷⁸ This is reflected in the Law on Migration of the Population of 1997, Article 5, “Protection of the inner labour market shall be considered as a priority in regulating labour migration”.

The state thus sets annual quotas based on an analysis of domestic needs.¹⁷⁹ Quotas do not apply to certain categories of workers, including CEOs, individual entrepreneurs, specialists working under international treaties etc.¹⁸⁰

The quota approval procedure is set out in the Law on Employment¹⁸¹ and regulated by Government Resolution No. 836 of 19 June 2001. Quotas are set as a percentage of the active working population in Kazakhstan. The quota for the following year is usually approved in December and distributed by Ministry of Labour and Social Protection to the regions.

Four categories of workers are defined within the quota: managers of businesses and organisations (*pervye rukovoditeli*), highly qualified specialists, highly qualified workers and, since 2006, seasonal agricultural workers. Authorisations for agricultural workers are subject to a bilateral agreement with the country of origin. Kazakhstan has concluded an Agreement with Kyrgyzstan¹⁸² but has been unable to conclude such agreement with Uzbekistan¹⁸³, despite the large numbers of irregular Uzbek migrants working in the Kazakh cotton and tobacco fields.

The procedure for obtaining foreign workforce authorisations is very strict.¹⁸⁴ In order to obtain foreign workforce employment permits, employer must submit an application to local executive agencies, with a long list of supporting documents. First a policy of national preference is applied; Kazakh employers must prove that they have first sought to fill vacancies with Kazakh nationals (there is no such requirement for agricultural workers and some other posts). Other requirements include: a list of the job qualifications set for each position; certificate stating availability of applicants for vacant positions from the regional database; information, where applicable, on compliance with previously issued permits; justification for the number of migrant workers requested etc.

Authorisations are issued by regional executive bodies and those in Almaty and Astana. Permits are provided only to the employer, not to the migrant workers, for a fixed number of migrant workers in specified categories. They are generally restricted to one employer and one region. They can include specific terms, for example, requiring the employer to train or retrain Kazakh workers to fill such positions in the future, at the employer’s expense.

Once permits have been granted, the employer is required to submit a list of the hired workers which must be approved by local executive body. Under the Law on Migration of the Population 1997 (article 5), regular migrant workers cannot be expelled before the end of their contract term due to changes in the labour market.

For 2008, the quota was set at 1.6%, equivalent to approximately 126,000 persons. Of this, 0.6% for 1st and 2nd category workers (managers and qualified specialists), 0.93% for 3rd category workers (qualified specialists) and 0.07% for 4th category (seasonal agricultural workers). Between 2007 and 2008 the quotas for the 1st, 2nd and 3rd categories were raised, but the quota for the 4th category (seasonal agricultural workers) was cut from 0,13 to 0,07.¹⁸⁵

178. FIDH meeting with Assel Nussupova, Vice-minister and Amandjur Nurseitov, Director Employment and Migration Department, Ministry of Labour and Social Protection, Astana, 12 June 2009.

179. See ILO 2008, p.13.

180. These categories are set out in Government Resolution No. 836 of 19 June 2001 as amended 17 March 2003 and 14 March 2006.

181. Law on Employment, N°149-II, 23 January 2001, Article 11.

182. Agreement between the Government of the Republic of Kazakhstan and the Government of the Kyrgyz Republic on the Employment and Social Protection of Migrant Farm Workers Employed in the Border Regions 2002.

183. FIDH meeting with Assel Nussupova, Vice-minister and Amandjur Nurseitov, Director Employment and Migration Department, Ministry of Labour and Social Protection, Astana, 12 June 2009.

184. See generally, ILO 2008, pp. 14-17.

185. Figures from document obtained by the FIDH mission from the Ministry of Labour and Social Protection, June 2009 and IOM report, Overview of the legal problems of migrant workers in Kazakhstan, Almaty, 2009.

For 2009, due to the financial crisis and to protect Kazakh workers, the entire quota was reduced to 0.75% of the active population or 63,483 persons.¹⁸⁶ The quota for seasonal agricultural workers was reduced to 0.05%.¹⁸⁷

According to Kadicha Abysheva, Director of the NGO Sana Syzim, “Cutting the quotas for migrant workers is not a solution because there will be only more irregular migrants. Since the quota was cut, we have in fact received more complaints about violations of migrant’s rights.”¹⁸⁸

The complexity of the system also contributes to increased numbers of migrants working in an irregular situation. Indeed partly due to the strictness of requirements, the quotas are not fully used¹⁸⁹, “It’s too difficult to legalise workers. To legalise a migrant the employer has to get authorisation from the department of labour, make a contract and pay taxes. So employers try to bypass these procedures.”¹⁹⁰ According to the ILO, “The scope of applicable requirements [for obtaining foreign workforce employment permits] tends to grow in number and complexity year by year, which in practice may be one of the reasons for growth of irregular migration in the country.”¹⁹¹

For those who do obtain permits to work legally under the quota system, the system also creates many problems. Migrant workers have no possibility of concluding individual employment contracts for an indefinite term but only have the possibility of temporary work usually for less than one year. Migrant workers are entirely dependent on their employers, since their legal status is tied to one job and one employer. This has the effect of trapping migrant workers in jobs regardless of the conditions of work. NGOs report receiving many requests for advice from regular migrant workers on how to keep their legal status if they change jobs.¹⁹² Regular migrant workers also have limited access to medical care and education and no access to pensions or social insurance (see above, legal framework).

Yet, according to Assel Nussupova, Vice-Minister of Labour and Social Protection, the authorities are planning to render the quota procedure even stricter, “We are now trying to strictly systematize the procedures, that is why we are developing a new conception of migration policy. We want to improve the way we invite migrant workers. The new system of quotas will be by country and category, depending on bilateral agreements.”¹⁹³

One recent measure should, however, reduce restrictions on individual entrepreneurs (who are not, in any case, subject to the quota system). In June 2009, Kazakhstan concluded an Agreement with Kyrgyzstan, allowing for the regulation of individual entrepreneurship through a patent system. This is intended to enable Kyrgyz entrepreneurs, like their Kazakh counterparts, to register as individuals, and they thus no longer have to create a legal entity in order to obtain authorisation.¹⁹⁴ In 2008, there was also a proposal to extend work permits to individuals. However, according to the Committee on Migration, “this project is frozen for the moment because of the change in the economic situation.”¹⁹⁵

A one-off legalisation policy

In 2006, Kazakhstan implemented a policy to legalise irregular migrant workers from CIS countries.¹⁹⁶ Between 1 August and 31 December, employers could apply to legalise their workers.

186. According to Habylsaia Abyshev, Chairperson, Committee on Migration, “President Nazarbaev fixed the objective of “replacing migrant workers with Kazakh specialists”, Meeting with FIDH, 11 June 2009, Astana.

187. Figures from document obtained by the FIDH mission from the Ministry of Labour and Social Protection, June 2009 and IOM report, Overview of the legal problems of migrant workers in Kazakhstan, Almaty, 2009.

188. Meeting with FIDH, Chymkent, 16 June 2009.

189. IOM report, Overview of the legal problems of migrant workers in Kazakhstan, Almaty, 2009, confirmed by Kadicha Abysheva, Director of the NGO Sana Syzim, Meeting with FIDH, Chymkent, 16 June 2009.

190. Kadicha Abysheva, Director of the NGO Sana Syzim, Meeting with FIDH, Chymkent, 16 June 2009.

191. ILO report, 2008, p.7. See also, IOM, *Legal Assistance for Migrants in Kazakhstan and Central Asia*, Final report to the Government of Sweden, 2006.

192. IOM report, Overview of the legal problems of migrant workers in Kazakhstan, Almaty, 2009.

193. FIDH meeting with Assel Nussupova, Vice-minister and Amandjur Nurseitov, Director Employment and Migration Department, Ministry of Labour and Social Protection, Astana, 12 June 2009.

194. http://www.zpress.kg/news/news_only/10/8393.py et http://www.zpress.kg/news/news_only/10/8360.py

195. FIDH meeting with Habylsaia Abyshev, Chairperson, Committee on Migration, 11 June 2009.

196. Law on Amnesty due to Legalisation of Illegal Migrant Workers, N°. 149-III ZRK, 4 July 2006, available in Russian

Migrants were granted the right to register and to work for period up to 3 years.

Under the policy, employers had to register illegally hired migrants with the law enforcement agencies. The same employer could then legally employ the migrant workers for up to three years. Such migrants received migration cards confirming their right to employment.

As a result, approximately 164,600 irregular migrant workers were legalized (71% from Uzbekistan, 14,5 % from Kyrgyzstan, 6,5% from Russia, 2,8 % from Tajikistan etc). 50% of “legalized migrants” were below the age of 30, 39% were between 30 and 45, 11% above the age of 45. Most of the workers were working in construction 70%; services 14%, agriculture 7,8% and the informal sector (including domestic workers) 7,8%.¹⁹⁷

However, legalisation did not provide free access to the labour market. In practice migrants receiving legal status could only be employed by the employers who had applied for regularisation. Furthermore, many were excluded from policy, including those who entered the country illegally; those who had no documents confirming the right to stay in Kazakhstan; those who provided false information about themselves; and those who carried out licensed activity without a license.¹⁹⁸

The three-year limit on legalisation also places such migrants in a precarious situation as the end of the term approaches. According to one migrant worker from Uzbekistan met by the mission in Astana, “My legal status comes to an end in July 2009, then I will have to apply every three months for registration and I won’t be able to work legally. With a three-month registration, you have to know people in the right places to get a contract. If you don’t know anybody, you can work illegally but you won’t have a contract.”¹⁹⁹

According to the Ministry of Labour and Social Protection, implementation of the policy did not have any negative effects on the employment of Kazakhs and enabled more contributions to be made to the state budget because regularised workers started to pay taxes. Yet the Ministry of Labour and Social Protection concludes that, “this kind of legalisation procedure cannot be turned into a system.”²⁰⁰

Policy to encourage return of ethnic Kazakhs (“oralmans”)

Kazakhstan claims proudly to be a country that has put in place a policy of “ethnic immigration.”²⁰¹ In 1995, Nazarabaev launched a programme to encourage “ethnic Kazakhs”, or “oralmans” to return to Kazakhstan, considered their “natural” homeland. Persons of Kazakh ethnicity have the right to return, despite the fact that their family has lived for decades in neighbouring countries: Uzbekistan, Kyrgyzstan, Russia, China, Tajikistan, Turkmenistan, Mongolia etc.

The policy is designed to assist the demographic and socio-economic development of various regions of the country.²⁰² According to Habylsaia Abyshev, Chairperson of the Committee on Migration, “The Government decides who goes where. They are distributed across the territory.”²⁰³

The Law on Migration of the Population of 1997 sets out the legal framework of this policy. “Oralmans” are defined as “foreign citizens or stateless persons of the Kazakh ethnicity, who permanently resided outside Kazakhstan on the date of gaining sovereignty by the Republic of

at http://www.ast.dvd.mvd.kz/j2/index.php?option=com_content&view=article&id=61&Itemid=71&lang=kz

197. Document obtained by the FIDH mission from the Ministry of Labour and Social Protection, June 2009.

198. ILO 2008, p.34.

199. FIDH interview, Astana, 12 June 2009.

200. Document obtained by the FIDH mission from the Ministry of Labour and Social Protection, June 2009

201. “Kazakhstan is one of only a few countries that promote and implements an ethnic migration policy”,

Document obtained by the FIDH mission from the Ministry of Labour and Social Protection, June 2009.

202. See also, Statement delivered by Ms. Tamara Duisenova, Executive Secretary of the Ministry of Labour and Social Protection, Kazakhstan, during the 17th meeting of the OSCE Economic and Environmental Forum, Athens, 18- 20 May 2009, “Migration management and its linkages with economic, social and environmental policies to the benefit of stability and security in the OSCE region”, Session II: Review of the implementation of OSCE commitments in the economic and environmental dimension focusing on migration.

203. FIDH meeting with Habylsaia Abyshev, Chairperson, Committee on Migration, 11 June 2009.

Kazakhstan and arrived in Kazakhstan for the purpose of permanent residence.”²⁰⁴ The policy aims “to comprehensively assist the immigration of persons of the Kazakh ethnicity into the Republic of Kazakhstan, in organizing their settlement, creation of working places, social welfare and social assistance to oralmans.”²⁰⁵

The policy provides for fixed quotas.²⁰⁶ Oralman who return outside the quota system have less access to resettlement assistance. Incentives are provided to those who return within the fixed quotas, including payment of the costs of return by the state and other financial benefits.²⁰⁷ All oralmans have the right to a pension, social insurance and social allowances (depending on the budget); access to education, including professional and higher education; assistance in finding work; access to land.

The Committee on Migration has departments in each Governate and centres for temporary accommodation of repatriates. They also have four centres for “adaptation and integration” of migrants, with language courses and professional training.²⁰⁸ A new programme (“*Nurly Kosh*”) provides for further resettlement and integration assistance.

From 1991 to 1 June 2009, 188,248 families of oralmans migrated to Kazakhstan, making a total of 737,991 persons. Of these 59,9% were from Uzbekistan, 11,2% from Mongolia, 8,1% from Turkmenistan and 11,2% from China. The majority (100,420 families, the equivalent of 498,859 persons) came under the quota system.

The Kazakh government is currently trying to conclude a bilateral agreement with China, particularly concerning ethnic Kazakhs from China returning to Kazakhstan. This remains a difficult issue between the two countries. It is likely that if such an agreement is concluded it will relate more generally to migrant workers in each country.

This policy raises a number of problems, including difficulties linked to integration, accessing benefits and assistance, finding work and accommodation, obtaining registration, corruption and difficulties with local authorities.

According to the IOM, the legislation regulating procedures for resettlement of oralmans has many gaps, often allowing governmental officials to manipulate it, by hiding or giving incomplete or false information on the procedures to follow to receive benefits that are intended for them. Lawyers involved in a joint project conducted by IOM and KIBHR reported complaints from oralmans who could not obtain confirmation of their status without registration; while they were unable to obtain the registration without having an official status. This legislative loophole is exploited by some corrupt officials to extort money. Many cases were reported in which housing previously granted by authorities to oralmans was subsequently taken away when previous owners appeared claiming their ownership. Furthermore, oralmans are often settled in remote rural areas with insufficient infrastructure and without employment opportunities. The IOM/ KIBHR project also found many cases of discrimination against oralmans’ family members who were not of Kazakh ethnicity, with officials refusing to give such people oralman status. Such family members therefore cannot obtain any official status and they have no social protection or access to employment. As a result of such difficulties, some oralmans end up leaving Kazakhstan to return to the country of previous residence.

Fighting irregular migration into Kazakhstan

According to the Vice-Minister of Labour and Social Protection, within each region employment inspectors control respect for labour legislation, security, conditions of work.²⁰⁹ Under the Labour Code, employers can be fined for employing irregular migrants. This offence carries a fine. Employers can also be prevented from employing irregular migrants for one year, and criminal proceedings can

204. Law on Migration of the Population of 1997, Article 1(11).

205. Law on Migration of the Population of 1997, Article 3.

206. See Presidential Decree 506, 30/12/2007 on the quota for Oralmans for 2008 and Governmental Decision N°1198, 7 12 2007 on allocation of these quotas.

207. Document provided to the FIDH mission by the Ministry of Labour and Social Protection, June 2009.

208. FIDH meeting with Habyysaiat Aбыshev, Chairperson, Committee on Migration, 11 June 2009.

209. FIDH meeting with Assel Nussupova, Vice-minister and Amandjur Nurseitov, Director Employment and Migration Department, Ministry of Labour and Social Protection, Astana, 12 June 2009.

be brought against repeat offenders. Employers can be fined if they employ migrants admitted under the quota in ways other than specified on the permit. “There are many violations where employers declare that they invite a specialist, but the specialist works as a cook. Such an employer will be fined for discrimination against Kazakhs.”²¹⁰ Labour inspectors pass information concerning irregular migrants on to the migration police to arrange deportations.

Migration police also conduct regular raids on irregular migrants.²¹¹ The Administrative Offence Code provides that violation of the rules of entry or stay in Kazakhstan is an administrative offence (Article 394). The majority of irregular migrants are accused of a discrepancy between the stated purpose of their stay in Kazakhstan (they usually write “private” on their migration cards) and their real activities. Those migrants who work without the necessary permit also commit an administrative offence (Article 396). They can be fined and deported from Kazakhstan.

Under Government Resolution on Rules for entry and Stay of Foreigners in the Republic of Kazakhstan and their Departure from the Republic of Kazakhstan, No. 136, 28 January 2000, contrary to Article 9 of ILO Convention 143, in case of expulsion of migrants, expenses are borne either by the expelled migrant, or organisations or individual persons that invited the foreigner to Kazakhstan and in exceptional cases by the law enforcement agencies.

In 2008, 17,844 administrative proceedings were brought against irregular migrants for violations of the Rules of stay for foreigners in Kazakhstan, the vast majority (17,054) from the CIS. There were 2493 deportations. 391 cases were brought against employers for violations of the rule of employment of the foreign workforce.²¹²

According to Amandjur Nurseitov, Director of the Employment and Migration Department within the Ministry of Labour and Social Protection, Kazakhstan wants to sign bilateral agreements with other countries to make deportation more humane: “Right now, we just bring them to the border and push them out, we are not interested in what happens afterwards. We want to make sure the country that receives them welcomes them. We are thinking about investing more money to let the other side know, so that they can be met at the border.”²¹³

II.2.B. Migration policy in Kyrgyzstan

“We don’t stimulate labour migration but we are forced to defend the rights of our citizens who are labour migrants. At the same time we try to create good opportunities for work here.”
(Aigul Ryskulova, Head of the State Committee on Migration and Employment)

Legal framework

Kyrgyzstan ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families in 2003. Kyrgyzstan has also ratified many ILO Conventions, including the Migration for Employment Convention No. 97 of 1949.²¹⁴ Kyrgyzstan has not yet ratified the ILO Migrant Workers (Supplementary Provisions) Convention No. 143 of 1975.

The main national laws regulating migration in Kyrgyzstan include, *inter alia*:

– The Law of the Kyrgyz Republic “On External Migration”, 17 July 2000, This law regulates the entry of foreign citizens into Kyrgyzstan, the conditions of their stay and provides for quotas for migrant workers, and temporary work permits. The law was amended in 2005 with regard to visa requirements.²¹⁵

210. FIDH meeting with Assel Nussupova, Vice-minister and Amandjur Nurseitov, Director Employment and Migration Department, Ministry of Labour and Social Protection, Astana, 12 June 2009.

211. IOM report, Overview of the legal problems of migrant workers in Kazakhstan, Almaty, 2009.

212. IOM report, Overview of the legal problems of migrant workers in Kazakhstan, Almaty, 2009. Statistics based on press releases from the Ministry of the Interior of Kazakhstan

213. FIDH meeting with Assel Nussupova, Vice-minister and Amandjur Nurseitov, Director Employment and Migration Department, Ministry of Labour and Social Protection, Astana, 12 June 2009.

214. Ratified on 10 September 2008.

215. Full text available in English on: <http://www.legislationline.org/documents/action/popup/id/4978> ; in Russian with 2005 amendments and information on related Decrees and Governmental Acts see: http://gairt.kg/index.php?option=com_content&task=view&id=114&Itemid=34

- The Law of the Kyrgyz Republic “On Internal Migration”, 30 July 2002
- The Law of the Kyrgyz Republic “On Foreign Labour Migration”, 13 January 2006, which regulates the conditions for the departure of labour migrants and their protection, as well as the employment of foreign workers in Kyrgyzstan.²¹⁶
- Amendments to Article 124 of the Kyrgyz Criminal Code, August 2003, which provide for a specific offence of human trafficking, carrying a penalty of up to 15 years’ imprisonment. Article 346-1 criminalizes the organization of illegal migration and Article 346-2 punishes repeated violation of the procedures for recruitment and use of foreign labour in Kyrgyzstan.²¹⁷
- The Law on Prevention and Combating Trafficking in Persons, adopted in 2005, criminalizes human trafficking for sexual exploitation and forced labour, and sentences range from 3 to 20 years’ imprisonment.²¹⁸

There are also a number of multi-year programs defining Government action on migration. These include:

- The “Conception of State Migration Policy of the Kyrgyz Republic” for 2005-2010²¹⁹ defines migratory policy as a priority of the state. Mechanisms are required to support Kyrgyz citizens travelling abroad and Kyrgyzstan’s integration into the international labour market must be accompanied by growth in the labour force “exported” by the Republic.
- The “Country Development Strategy, 2007-2010”, includes a section on “Labour markets and optimization of migration processes”. The main priorities are to stabilize internal migration, to provide for “civilized development of external labour migration” and to increase “the competitiveness of the economically active population”.
- “The National Program of the Kyrgyz Republic on Migration Processes, Regulation for 2007-2010”.²²⁰ The program determines the steps to be taken by the various ministries and departments of the Kyrgyz administration in order to improve management of internal and external migration. The objectives set include regulation of external migration and stabilisation of internal migration; improvement of the regulatory and legal basis and of international cooperation; strengthening the institutions in charge of migration and creation of Migration Committee representations abroad; improved information available to Kyrgyz citizens leaving for abroad; improving their level of education and professional training; the creation of guarantees and insurance for those leaving to work abroad; improvements in migration records-keeping; compliance with Kyrgyzstan’s obligations in terms of refugee and asylum-seeker protection.

There are also several Government Decrees and Ministerial Directives, including the “Decree on labour activity of foreign citizens and persons without citizenship on the territory of the Kyrgyz Republic”, N°639, 8 September 2006 and the “Decree on the activities within Kyrgyzstan of individuals and companies seeking work abroad for Kyrgyz citizens”, N°631, 12 October 2001.

Responsible bodies

The main body responsible for migration issues in Kyrgyzstan is the State Committee on Migration and Employment (SCME), created in 2005. According to the Head of the SCME, Aigul Ryskulova, the creation of the Committee was a sign that the Government had started to take migration issues seriously, and the question of labour migration is now on the agenda of all of presidential international visits. The SCME has adopted several concept papers on the regulation of the migration process, fighting human trafficking, and on promoting the return of ethnic Kyrgyz (“Kajrylmany”). Indeed, a Law on ‘State guarantees to ethnic Kyrgyz returning to their historical homeland’, introducing the status of “Kajrylman” was adopted in October 2007, building on a Presidential Decree on ‘Support to ethnic Kyrgyz returning to their homeland’ in 2001. Kyrgyzstan is thus conducting a “repatriation” policy similar to that of the oralmany in Kazakhstan, albeit on a smaller scale.

216. In Russian: http://gairt.kg/index.php?option=com_content&task=view&id=108&Itemid=34

217. Draft Law of the Kyrgyz Republic “On Amendments and Addenda to Certain Legal Acts of the Kyrgyz Republic”, August 2003, <http://www.legislationline.org/topics/topic/14/country/20>

218. In Russian: http://www.base.spininform.ru/show_doc.fwx?Regnom=7615

219. In Russian: http://www.government.gov.kg/index.php?option=com_content&task=view&id=67

220. Adopted by the Kyrgyz Government on 25 September 2007, #433. Available in Russian at: http://rus.gov.kg/index.php?option=com_content&task=view&id=1296

In contrast to the situation in Russia, where the migration service is a part of the Ministry of the Interior, the SCME reports directly to the Prime Minister, and its head is a member of the Government, which according to Aigul Ryskulova helps to enable her to work effectively.

Unlike in Kazakhstan, Kyrgyzstan does not have a migration police, although, according to Aigul Ryskulova, the creation of a structure to control migration (which may or may not be a police force) is under consideration.

The Ministry of the Interior remains responsible for issues of registration, passport issue, control of irregular migration and citizenship.

The Prosecutor's Office ("*Prokuratura*"), which controls the work of the administration and the police, can open investigations, in particular to examine cases of forced labour.

Finally, the Kyrgyz Ombudsman has a specific department working on migration, which in practice deals more with complaints from asylum-seekers or refugees in Kyrgyzstan, than with those of labour migrants.

Regulation of migration through registration

As in Kazakhstan, the Kyrgyz state seeks to control the movement of migrants on its territory through a system of registration, based on a distinction between temporary and permanent registration.²²¹ All migrants arriving in a town, including internal migrants, must obtain temporary registration at the place they live in, with the support of a host organisation or individual. As in Kazakhstan, the system differs according to the nationality of the migrants:

- Agreements with Russia, Kazakhstan, Belarus and Tajikistan allow citizens of these states to enter Kyrgyzstan without visas and to stay for 90 days. They can then re-register for a further 90 days. The same rules apply to Uzbeks and Tajiks living near the border.
- Citizens of Uzbekistan and Japan can stay in Kyrgyzstan for 60 days before having to register.
- Kyrgyzstan has a visa regime with China, which means that citizens from China must be registered immediately; this registration can be extended, depending on the type of visa.
- Internal migrants who come from other regions of Kyrgyzstan must be registered within 45 days.
- A Government Decree has established simplified visa procedures for citizens of "developed" countries who could potentially invest in Kyrgyzstan. Visas can be delivered at the airport, no invitation is needed and there is no need to register for those who stay for less than 60 days.

Registration determines access to services. Only foreigners with permanent registration are entitled to education and health services, on the same basis as citizens of Kyrgyzstan. Migrants with temporary registration only have only access to emergency medical care.

According to NGOs met by the FIDH mission, this system of registration creates numerous problems, including restricting access to social rights and creating conditions for corruption and exploitation. In May 2009 several parliamentarians called for the abolition of the registration system, arguing that it serves as a pretext for the police to demand money from internal and international migrants.²²² During its examination of Kyrgyzstan in July 2000, the UN Human Rights Committee called on Kyrgyzstan to abolish the system of *propiska* in order to give full effect to Article 12 of the International Covenant on Civil and Political Rights on the right to freedom of movement and choice of residence.²²³

Quotas and other restrictions for external migrants

"Our internal market is not closed. There are no obstacles for specialists. But we have to think first about the protection of our internal labour market, and secondly about the security of the state."

(Aigul Ryskulova, Head of the State Committee on Migration and Employment)

221. FIDH interview with representatives of the Ministry of Internal Affairs, Department of passport and visa control, Bishkek, 18 June 2009.

222. www.24.kg, 28/05-2009 08:25, <http://www.24.kg/parliament/2009/05/28/114188.html>

223. Concluding observations of the Human Rights Committee: Kyrgyzstan. 24/07/2000. CCPR/CO/69/KGZ, available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.69.KGZ.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.69.KGZ.En?Opendocument)

As in Kazakhstan, the principle of national preference on the employment market underpins Kyrgyz migratory policy. Article 27 of the 2000 Law “On external migration” stipulates that “In labour migration management the priority shall be to protect the domestic labour market”, and the 2006 Law provides for the “priority rights of Kyrgyz citizens on the domestic labour market” (Article 2).

Kyrgyzstan, like Kazakhstan, thus applies a system of labour migration quotas, which fixes “a maximum number of foreign nationals and stateless persons arriving in the Kyrgyzstan for employment purposes” (Article 28 of the Law “On external migration”, 2000). These quotas are set yearly by the SCME and approved by the Parliament. Following the example of its neighbours, Kyrgyzstan reduced its quotas as a result of the economic crisis: down from the usual 12,000 per year to 8,000 in 2009.²²⁴

The quotas are divided according to country of origin, economic sectors and specialties. In practice, however, according to the Head of the SCME, more than two-thirds of migrant workers accepted under the quota system are Chinese. Others come from Turkey, the CIS, Pakistan, Bangladesh, Afghanistan, Korea, Iran, as well as from the USA and the European Union.

Companies seeking to employ foreign workers must submit an application and pay to obtain a permit (“to offset the expenses involved in issuing such permits”, according to Article 6 of the 2006 Law). As in Kazakhstan, the permits are delivered to the employers. Foreign workers receive a copy of the authorisation but they cannot apply for a permit themselves.

Small entrepreneurs who wish to open their own businesses are required to collaborate with Kyrgyz citizens, since only Kyrgyz citizens are authorised to establish businesses.

Fighting irregular migration into Kyrgyzstan

According to Article 346-1 of the Penal Code, “Organising illegal migration by providing means of transportation, counterfeited documents, accommodations or other premises, and other services to individuals for the purpose of illegal entry into or exit from the territory of the Kyrgyz Republic, or illegal travel within it, shall be penalized by a fine in the amount of 50 to 100 minimum monthly wages or up to 3 years of imprisonment; The same actions committed by an organized group or with abuse of official powers shall be penalized by 2 to 5 years of imprisonment.” Article 346-2 of the Criminal Code stipulates that repeated violation of the procedures for the recruitment and use of foreign labour in Kyrgyzstan, without proper permits issued by authorized agencies, shall be penalized by a fine in the amount of 50 to 100 minimum monthly wages or up to 1 year of imprisonment in the case of repeated violations.²²⁵

According to information on the CIS website, operations against irregular migration are carried out by the Ministry of the Interior and the Committee for National Security, in the same way as in other countries of the CIS, although on a smaller scale. During the “Nelegal 2007” operation, “2000 commerces were controlled, 14 depots, 25 public food service establishments, 152 physical and legal persons, all of whom employ a foreign workforce, along with 1,690 foreigners. 9 of them received a warning for breach of labour rules and 29 were expelled”. During the “Nelegal 2008” operation, 964 foreigners and 112 sites were allegedly controlled throughout the country, and 28 expulsion decisions were handed down by the courts.²²⁶

More generally, as in Kazakhstan, security considerations predominate in migration policies. The Kyrgyz migratory policy for 2005-2010 specifies the need to “take a stand against manifestations of and the expansion of negative migratory trends, manifestations of terrorism and international extremism, of trans-national organised crime, of human trafficking and trafficking in women for the sex trade and other forms of illegal migration.”²²⁷

224. FIDH interview with Aigul Ryskulova; Head of SCME, Bishkek, 19 June 2009.

225. Draft Law of the Kyrgyz Republic “On Amendments and Addenda to Certain Legal Acts of the Kyrgyz Republic”, August 2003, <http://www.legislationline.org/topics/topic/14/country/20>

226. “Illegal migration in the CIS: problems and ways of solving them (in Russian). Information.” <http://www.cis.minsk.by/main.aspx?uid=13734>

227. In Russian: http://www.government.gov.kg/index.php?option=com_content&task=view&id=67

Links continue to be made between migration and terrorism. In August 2009, for example, the Kyrgyz Ministry of the Interior announced an operation to combat irregular immigration “linked to the problems in Tajikistan and China, and the incursion of terrorist groups into the country”, with tougher controls at the border and in the surrounding areas. This operation, once again entitled “Nelegal”, has been entrusted to the 9th department of the Ministry of the Interior, which is responsible both for combating terrorism and for migratory issues.²²⁸ Sixty Chinese migrants were reportedly deported from Kyrgyzstan’s Naryn National Park, where they were part of a team building a road.²²⁹ In early September 2009, a draft amendment of the Law “On external migration” was tabled in order to establish tighter control of pendular migration in southern Kyrgyzstan, with Tajikistan and Uzbekistan.²³⁰

Protection of Kyrgyz citizens abroad

Article 50 of the Law “On external migration” states that “Kyrgyz nationals exiting the Kyrgyz Republic shall have guaranteed protection of the Kyrgyz Republic in conformity with the legislation of the Kyrgyz Republic”. According to officials met by the mission, the Kyrgyz state has put in place a number of initiatives to protect its citizens working abroad:

- *Consular representation and information centres:* In 2005 the SCME opened representation in the consulate of Almaty, Kazakhstan. In Russia, in addition to 9 diplomats based in Moscow, the Kyrgyz government supports a network of diaspora and cultural centres. Kyrgyzstan has also opened a room in the Exhibition Centre in Moscow (VDNKh), where migrants can receive information on work opportunities and procedures, use internet and Skype, transfer money²³¹, buy plane tickets etc.²³² According to Kubanyshkek Issabekov, Deputy Speaker of Parliament, Kyrgyzstan also plans to open representation in Italy, where an increasing number of Kyrgyz citizens work in the domestic services sector.
- *Bilateral meetings at all levels:* While Kyrgyzstan has three specific agreements with Kazakhstan (see above, Part II-2-A), a working group deals with sensitive questions and inter-parliamentary meetings are held regularly (at the time of the meeting with the FIDH mission, Kubanyshkek Issabekov, Deputy Speaker of the Parliament, had just returned from an inter-parliamentary meeting in Almaty).
- The Kyrgyz Ombudsman, Tursunbek Akun, explained that he attempts to protect the rights of Kyrgyz migrant workers abroad, through regular dialogue with his Kazakh and Russian counterparts. He reports, for example, that in one month he managed, to free 3 Kyrgyz workers detained in Kazakhstan. His predecessor travelled to southern Kazakhstan to resolve the problem of border agricultural workers subjected to forced labour in the tobacco plantations in the south of Kazakhstan, a scandal which led to an the conclusion of an ad-hoc agreement with Kazakhstan on this issues.²³³
- *Work with the Russian Federal Migration Service and the Migration Police of Kazakhstan on cases of deportation.* The Head of the SCME, Aigul Ryskulova, reported the case of 150-200 persons detained in Sakhalin, whose cases were resolved with the help of the Russian Migration Service (FMS): the citizens paid a fine and were able to stay in Sakhalin. In another case, in Almaty, the involvement of the SCME prevented some migrant workers from being deported.
- *Cooperation with international organisations,* especially the IOM, with which the SCME has several joint projects.
- *Cooperation with regional organisations:* According to the Head of the SCME, Kyrgyzstan has made several contributions to the drafting of the CIS Convention on the Protection of Migrant Workers.²³⁴ She highlighted, in particular, the recognition of the rights of the families of migrant

228. “MVD KR provodit reid “Nelegal” v sviazi s osolzheniem situatsii v Tadjikistane i KNR”, 6/08/2009, CA-NEWS (TJ) <http://www.ca-news.org/news/195601>

229. “Kyrgyz Authorities Deport Dozens Of Chinese Nationals” 12August, 2009, http://www.rferl.org/content/Kyrgyz_Authorities_Deport_Dozens_Of_Chinese_Nationals/1798209.html

230. <http://www.24.kg/parlament/62133-bumajram-mamasejytova-na-yuge-kyrgyzstana-v.html> or http://www.zpress.kg/news/news_only/10/10622.py

231. Aigul Ryskulova also mentioned that the Kyrgyz Government had signed an agreement with Unistream bank to allow money transfers without commission.

232. “V Moskve otkrylsia infomatsionno-konsultatsionnyj tsentr dlia zashity prav trudovyh migrantov iz KR”, 06-07-2009, <http://src.auca.kg/reports/71/02.htm>

233. None of those met by the mission could provide more detailed information on this.

234. Adopted in 2008, the Convention is yet to be ratified. See above, Part I.3.B

workers and protection against arbitrary police measures (the police should be required to hand over a written receipt when they take a migrants' passport). However, the FIDH mission was unable to obtain a copy of the Convention.

According to information in the press, member states of the Shanghai Cooperation Organisation are to create a "labour migrant card" through a private insurance company. In addition to the monitoring of labour market requirements, this initiative aims to guarantee a certain number of services to migrant workers (legalisation, pensions etc.). Kyrgyzstan and Russia will be the first countries to implement the system.²³⁵

– *Legal advice to migrants*: The SCME has organised an advice hotline operated with the support of the IOM. The Ombudsman also states that his office has put in place a program offering legal advice to migrant workers leaving Kyrgyzstan but the FIDH mission was unable to obtain further details of such programme.

Whilst efforts to increase the protection of migrant workers are to be encouraged, it remains difficult to assess the effectiveness of the various approaches and programs.²³⁶ The authorities appear to recognise that progress is still needed. Whilst claiming that "Kyrgyzstan is one of the most advanced countries on the issue of migration", Kubanyshkek Issabekov, Deputy Speaker of the Parliament, conceded that "it's too early to rest". The Head of the SCME underlined, in particular, persistent problems connected to transit through Kazakhstan and the regulation of the passport system.

Several of those met by the mission stated that Kyrgyzstan is attempting to draw inspiration from the measures implemented by the Philippines.²³⁷ In addition to a support fund for migrant workers (one function of which would be to bring home the bodies of migrants who die abroad), Kyrgyzstan is looking to create a recruitment agency for Kyrgyz citizens seeking work abroad²³⁸, since, the overwhelming majority of labour migrants leave alone, using individual contacts rather than official placement agencies, exposing them to human traffickers, intermediaries and forced labour. Yet, it remains unclear how the state would ensure that prospective workers went through such an agency.

The Kyrgyz Law on migrant workers of 2006 contains an entire chapter on the agencies which handle employment abroad, and their obligations, which to a large extent remain unused given that the migrant workers rarely pass through these agencies. At the same time, the Kyrgyz Penal Code (see above) provides for prosecution of those who act as intermediaries or who organise forced labour.

According to Sumar Nasyza, Deputy Prosecutor General, "Of course when we know there are problems with human trafficking or forced labour we open a criminal case. In 2008 the Prosecutor's Office (*"Prokuratura"*) opened 8 cases against companies on charges of participating in the slave trade. Cases were taken to court. In one case, a person was sentenced to 8 years imprisonment". The role of the Prosecutor's Office is to deal with cases when a crime (including violent attacks or murder) is committed against a Kazakh citizen, and it collaborates with the Prosecutor's Offices in Russia and Kazakhstan.

The FIDH mission was unable to obtain more precise statistics on these issues. According to the official information available on the CIS website, "regular checks are carried out to discover individuals and organisations offering work abroad to Kyrgyz citizens. [In 2008], according to the results of the checks, 4 companies were prosecuted for breach of administrative procedures, 12 supposed forced labour victims were discovered, 3 of whom were repatriated from Russia."²³⁹

235. "Strany ShOS vodiāt "kartu trudvogo migranta", <http://kabar.ru/?p=2632>, 11.08.09 and «Kyrgyzstan as first to work on Card of labour migrant project», 20/08-2009 09:01, Bishkek – News Agency "24.kg", URL: <http://eng.24.kg/community/2009/08/20/8763.html>

236. Aigul Ryskulova, head of the Kyrgyz SCME, therefore stressed that "In Russia, when we opened our representation, there were 13,000 Kyrgyz holding work permits. Now there are 330,000. These statistics show the results of our work". In reality, there has no doubt been a rise in the number of Kyrgyz citizens working legally in Russia and that is above all due to the reforms in Russian migratory policy since 2007, which have made it easier to obtain work permits, issued directly to the migrants.

237. The Head of the SCME recently went to the Philippines to study their experience.

238. "Goskommigratsii KR planiruet sozdat agentsvo po vneshnemu trudoustroistvu zza rubezhom" 12 / 10 / 2009, CA-NEWS (KG) -

239. "Illegal migration in the CIS: problems and ways of solving them (in Russian). Information." <http://www.cis.minsk.by/main.aspx?uid=13734> Some information is also available in the press. On 30 January 2009, the spokesman for the Kyrgyz Ministry of the Interior announced the arrest of two people on suspicion of human trafficking. He explained

II.3. Migration step by step: from crossing the border to escaping forced labour

This section follows the path of a migrant leaving another CIS country to work in Kazakhstan, from the moment he or she crosses the border to attempts to regularise his or her situation. The obstacle course faced by migrant workers at all stages and the quasi-impossibility for migrants to work legally, creates a situation of extreme vulnerability to exploitation.²⁴⁰

Taking the example of Kyrgyzstan as a country of departure and Kazakhstan as a receiving country, it is not intended to suggest that migrant workers from one country are exploited by the other. Indeed, the various actors who have financial interests in the exploitation of migrant workers (intermediaries, employers, law enforcement agencies) are citizens of both Kazakhstan and Kyrgyzstan as well as other states of the region. The countries of departure and arrival are both required to put in place a framework which protects such migrant workers, and both can be held responsible for violations of migrants' rights. The coordination of the policy of both states is necessary to fight the exploitation of migrants.

II.3.A. Crossing the border

While Kyrgyz, Uzbek and other nationals from CIS States can enter Kazakhstan without a visa, crossing the border remains a trial for migrants workers, both for those who seek work in Kazakhstan and those who transit through Kazakhstan to reach Russia. Controls and extortion are feared by everybody, when leaving their home country and in particular on return. In Kazakhstan, each body has its own controls (transportation police, migration police, customs, border guards), multiplying the occasions when migrants have to pay, at the border and on the territory of the state. To avoid paying such "taxes", experienced migrants avoid carrying money on their return journeys, by sending the money earned back through banks or money transfer agencies. Those who can afford it take the plane to return. The feeling of humiliation and the fear ill-treatment and extortion is symbolized by the rumour of a migrant who was forced to go through an X-Ray scanner together with his luggage in North Kazakhstan.²⁴¹

The train remains the main means of transport and journeys lead to numerous complaints. Aigul Ryskulova, Head of the Kyrgyz State Committee on Migration and Employment stressed that during transit through Kazakhstan, "there are a lot of humiliating and groundless controls especially in the trains. For the police, the Committee of National Security and the border guards the Kyrgyz train is like a milk cow." The Kyrgyz Committee for Human Rights (KCHR) received a complaint signed by 85 passengers from the Moscow-Bishkek train: on 22 April 2008, in the Kazakh city of Djambyl (Taraz – near the Kyrgyz border) they were forced to pay policemen between 150 and 1,500 roubles, making a total of 18,930 roubles (430 euros).²⁴² Extortion is not only perpetrated by Kazakh law enforcement agencies: according to KCHR, a group of migrants returning to Kyrgyzstan were told by Kyrgyz border guards: "You earn money for our country, leave some for me", and their money was confiscated.

Several journalists who have crossed the border by train have given a vivid picture of the practices. Russian journalist Roman Gruzov, who went by train from Bishkek to Moscow, writes: " At the Kazakh border, our passports were controlled three times, then small groups of policemen and

that on 2 January, a group of 14 people stated that they had been "sold" in Kazakhstan by an inhabitant of Bishkek, who had promised to find them a good job. Two people were arrested (K Kyraan and his accomplice Mamatov). In all there are claimed to be 43 witnesses in this case and on 28th three other people went to another police station in Bishkek claiming to have been sold after crossing the Kazakh border, even though they had been promised work in Astana <http://www.azattyk.org/content/News/1376712.html>, <http://www.pr.kg/news/kg/2009/01/28/9281/>

240. This part is written mainly on the basis of information given to FIDH mission by NGOs and International organisations working in Kazakhstan. It has not been possible to interview a lot of migrant workers within the short time limits (10 days) of the mission.

241. FIDH Interview with Pawel Szalus, IOM Liaison / Program Officer, Almaty, 15 June 2009.

242. KCHR Report "Monitoring po migratsii", June 2009.

custom officers started to ransack the car. They even smelled bottles of water, looking for alcohol. Learning that I was a journalist, they decided not to smell my water [and told me]: “you’re an educated person, you know that something forbidden can always be found”. And indeed... they found something on everybody: lack of a stamp on a passport, non-declared currency... All problems were solved with a bribe, but the shakedown didn’t stop: the first day, while the train ran slowly through the steppes covered by snow, and the following two days, when we were passing between forests and the long buildings of Russian substations. In this dirty car, smelling of food and sweat, –people were constantly taking things, and the victims weren’t really interested in knowing what country the new authorities were representing”.²⁴³

Mumin Shakirov, who took the train from Dushanbe to Moscow some years later, reported that: “To do Kazakh border guards and customs justice, it should be said that, unlike their Uzbek colleagues, they weren’t overzealous and didn’t try to get money out of passengers. But they treated passengers with severity. [Albina, the driver, was proud to have told them]: “Do you have a plaster on your face?... Smile ! These are passengers here, not prisoners.”²⁴⁴

Crossing the border by road can be as difficult, especially between Uzbekistan and Kazakhstan. In 2006, “Adilet”, an NGO based in Chymkent, conducted monitoring on the Tashkent-Chymkent border²⁴⁵, 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, and their own representatives were able to go through illegally with foreigners by paying 10 000 tenge (US \$66).

An article published in 2009 shows that these practices have not changed. At the “Maiski” border point, the queues last for hours, and local people take advantage, proposing to fill custom declarations for 500-1000 Som (30-60 US cents) or to help bypass controls for 1000-1500 tenge (US \$6 - 10). Many migrants fear that such people are in league with the border-guards, and that they will be stopped by the border-guards anyway, which will cost them more (around US \$100). The majority therefore prefer to wait. Once the Uzbek border controls are behind them, migrants have to travel 14 km to the Kazakh border controls. The journalist recalls that their taxi driver asked them to be ready to pay 2000 Som (a little more than US \$1) “for a migration card on which is written , in big blue letters in three languages (Kazakh, Russian and English), “FREE”. At the Kazakh border-point, there were hundreds of people waiting. Finally, the journalist paid a taxi driver who for 2000 tenge for each passenger (US \$14) proposed to drive them to Chymkent and took them through a side door, to share the money with a border guard.²⁴⁶

These kind of practices, and especially the collusion between border guards and those who propose to assist migrants in crossing the border illegally were mentioned in many of the interviews conducted by the FIDH mission in Kazakhstan.²⁴⁷ The FIDH mission also heard that some taxi drivers “sell” their clients, after having taken their passports to go through border controls. The NGO Sana Syzim, based in Chymkent, therefore only uses taxi drivers they know and trust when they have to drive somebody to the border.²⁴⁸

Adilet’s monitoring actions at the Uzbek-Kazakh border also revealed that while some migrants enter legally with a migration card, many enter illegally, either because it is easier or because they do not want to show their passport to officials on the Uzbek side. Some Uzbeks are afraid that intermediaries will take their passports (see below, Part II.3.C) so they do not take them with them. Sana Syzim draws the same conclusions from monitoring conducted in 2008.²⁴⁹ The majority of migrant workers from Uzbekistan who came to the Sana Syzim legal-help centers crossed the border

243. Roman Gruzov, “Zolotoe peresechenie”, *Bolshoj Gorod*, December 2008 , <http://www.bg.ru/article/7871/>

244. Mumin Shakirov, “Vostochnyj Ekspres. Kazakhstan”, 03.07.2009, <http://www.svobodanews.ru/content/article/1768378.html>

245. FIDH interview with Adil Seitkaziev, “Adilet”, Chymkent, 16 June 2009.

246. Pavel Kravets, “Uzbekskie migranty v Kazakhstane, Trudnosti Perehoda” <http://www.ferghana.ru/article.php?id=6088>, 10 03 2009.

247. For example, FIDH Interview with Pawel Szalus, IOM Liaison / Program Officer, Almaty, 15 June 2009.

248. The NGO dealt with the case of a man who worked two years in Russia, and came back to Uzbekistan through Chymkent. The taxi driver took all his money, the NGO went to the police and taxi station, but never found him. FIDH interview with Kh. Abyшева, Sana Syzim NGO, Chymkent, 16 June 2009.

249. http://migrant-help.org/pages/120_monitoring/main.htm

illegally. As a consequence they did not have migration cards nor a stamp proving that they passed the border, and they therefore could not get temporary registration. According to the NGO, migrant workers explain that they crossed the border illegally because they wanted to save time (they would spend too much time by legally crossing the border) ; to avoid to be treated badly or to have to give money to the border guards; because they don't have any documents or their documents are out of date; or not to be "sold" or taken into slavery just after having crossed the border.

Finally, the issue of identity documents given by the state to its nationals presents problems. Kyrgyz NGOs met by the mission recalled the reforms to the passport system about 3 years ago and reported that until now many people have not received their new passports.²⁵⁰ When questioned on this issue, the Head of the SCME, Aigul Ryskulova, blamed the problem on the previous government: "One of the reasons is the mess with passports created by the previous authorities. At one time there were four different types of passports. They could not be read by computers and some were even written by hand so when they fell into water the ink was erased. So they had created a system that allowed our citizens to be humiliated. But now that problem is solved". Kyrgyz NGOs nevertheless emphasise that corruption remains a major problem. While it is not possible to exert certain rights without a passport (e.g. voting, accessing certain services), having a passport issued costs around US \$150-200. According to one person interviewed by the FIDH mission, "To obtain a job at the passport desk, police have to pay about US \$10,000, because this position is so lucrative. Even the women with the lowest positions are covered in diamonds and gold." Indeed, the IOM "Kyrgyz Passport Modernization Programme" commenced in 2003 as part of a wider regional border control initiative, and has since "evolved into an anti-corruption and capacity-building programme targeting the Kyrgyz National Passport Agency and the Kyrgyz Police's Passport Department".²⁵¹

II.3.B. Problems regularising stay, receiving work permits and accessing social rights

On the other side of the border, 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 so those who entered the country illegally are unable to register. Registration must be done within 5 days (calendar days and not working days), at the office of the migration police or the local police. The IOM has suggested, as yet unsuccessfully, that this registration period should be extended up to 15 days. An employer can register those who work for him or her at his or her private address. Whilst this may help to resolve the migrant's registration problems, it makes the migrant even more dependent on their employer (see further below).

Migrant workers in Kazakhstan cannot do anything alone to regularise their situation on the labour market. Only employers can request work permits. As the labour permit is attached to a work place, and not a person, migrants cannot leave their employer or change employer, because they risk becoming illegal. Obtaining such authorisation is very costly (in time and money) for employers, which dissuades them from using the quota system. (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 therefore creates situations of vulnerability for migrants, who as a consequence often work without authorisation. Their irregular status also makes them vulnerable to police controls.

The story of Alisher, an Uzbek migrant working and living legally in Astana as an "industrial alpinist" (window cleaning on skyscrapers) in a Kazakh firm, is an example of the strategies migrants have to employ to gain regular status.

Alisher came five years ago and has not been back to his home town, Tashkent, since then: "I came to Kazakhstan because I wanted to make money for three or four months, and then go back to Tashkent,

250. Kyrgyz citizens need to get a "foreign passport" to go to Russia, but they can use their "internal passport" to go to Kazakhstan.

251. www.iom.int/jahia/Jahia/pid/507

but I like the people here, their mentality, and I decided to stay. (...) I wanted to go to St Petersburg, but it's dangerous in Russia. Here I can walk in the streets until midnight without problems." At the beginning, he applied for renewal of his registration every three months and paid officially. "To get my residence permit, my friend who is a lawyer registered me at his address. I didn't register at my flat because my landlady didn't want me to". He then took advantage of the 2006 legalisation (see above, at Part II-2) to work legally, and when his three-year permit came to an end, tried to get Kazakh citizenship: "Since I have been here for five years this year I should have the opportunity to become a citizen. Normally to apply for citizenship you have to wait for ten years but I did a false marriage, so that it would be easier and faster to get Kazakh citizenship. There are no controls on such marriages. With a marriage you can apply after five years. I paid 15000 tenge (US \$100) and if everything goes according to plan I'll soon get all the documents I need to be a citizen."²⁵²

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 law (and in particular Government Resolution No. 997 of 16 October 2006), 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 Alisher explained to the FIDH mission: "If I am ill or have an accident at work, I can only count on myself. I cannot go to a state hospital. I could go to a private hospital, but it's expensive. Of course I've heard about accidents at work. How you are cheated depends of the company you work for. If you work for a Turkish company, they usually pay for expenses, they pay to repatriate the body and they give compensations. If you work for a "normal" company they will pay for your treatment, if not the company may give you some pills."

Migrants do not have access to pension benefits and mandatory social insurance which are only available to those who have permanent residence in Kazakhstan: "Although I have been working for five years, I don't have a SIK (social individual code), which will enable me to get allowances. I only have an RNN (registration number for tax payers), I pay taxes, but I can't get a SIK." (Alisher)

The Law on Education²⁵³ 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).²⁵⁴ In practice, no problems of access of migrant children to primary schools were reported to the FIDH mission.

II.3.C. Risks of forced labour and exploitation

"Each time we ask the authorities – what about the rights of irregular migrants, the authorities answer : 'but they are illegal'".

(International migration expert working in Astana)

"When migrants come to us because they have not had their wages paid, there is so much misunderstanding, the police say: 'but he's an illegal migrant, what rights does he have?'"

(Human rights defender, Chymkent)

Information obtained by the FIDH mission from NGOs and international organisations working in Kazakhstan²⁵⁵ demonstrates a classic pattern of labour migration, which leads in the worst cases to forced labour. Migrant workers from neighbouring states usually find work through an intermediary (in Russian *brigadir* or *raspredelitel*). 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.

252. FIDH interview with an Uzbek worker, Almaty, 12 June 2009.

253. No. 319-III ZRK of 27 July 2007

254. Kazahstanskije shkoly prinimajut na obuchenie vse bolshe detej trudovyh migrantov, <http://mirtv.ru/content/view/72167/113/>, 14.08.2009 14:33

255. Interviews with IOM, *Sana Syzim* in Chymkent, offices of the KIBHR in Astana and Chymkent.

The majority of irregular labour migration is organized through such intermediaries (often a national from the same country as the migrant workers). An Uzbek migrant explained to FIDH mission the way it works in Astana: “Usually a company calls an intermediary and asks for about thirty people. The intermediary calls Uzbekistan and asks for workers to come. They work here for three to four months, get paid and return. Usually the intermediary has their contracts and does registration for them, he takes 3,000 tenge per month from the migrant’s salary, so for the entire stay it would be 9,000 tenge. The employer pays the intermediary for his services, because it’s the easiest way to get good workers.”²⁵⁶

In Chymkent, at the border with Uzbekistan, the role of intermediaries has increased “It used to be that the migrants would cross the border and wait on the Kazakh side, 50 meters from the border, for the employer to come and choose them. Now they come by bus. The intermediary distributes them according to the needs of employers.”²⁵⁷ Intermediaries often exploit the migrant workers. As the Uzbek migrant with whom FIDH met in Astana explained: “Uzbek migrants who come are cheated by the intermediary. They are Uzbeks, but they cheat their own people. People know that they will be cheated, but they come anyway to make money.” When the intermediary takes a percentage of the salary “the employee can’t refuse to pay, because the employer pays the salary through the intermediary”.

Most such violations go unreported: “Migrants don’t want to talk, they usually cover up the intermediary, even if the police come: they want to save their job, to keep good relations while working, they fear the reactions of their relatives, who have saved up to send them away to work.”²⁵⁸

Exploitation occurs in all sectors: construction, agriculture (tobacco and cotton fields), services etc. When migrants come in organized groups, they are usually brought to the site where they will work and immediately handed over to a single employer. Practices linked to forced labour include:

- The confiscation of passports by the *brigadir* 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)

Several specific cases were mentioned to the FIDH mission:

- At the beginning of 2009, the NGO Sana Syzim worked on a case of an Uzbek migrant, in an irregular situation, who was sold from one employer to another. After working in several different villages, he no longer knew where he was or who had his passport. When it was time for payment, his last employer reported him to the migration police. Sana Syzim was alerted by his family in Uzbekistan, who thought he had disappeared, and discovered that he was in the Chymkent detention centre. Sana Syzim managed to get him released, as well as a fellow migrant worker who was in the same situation. They assisted the workers to obtain new documents from the Uzbek embassy so that both could finally return to Uzbekistan in April 2009.

- In 2008, the Chymkent branch of KIBHR worked on the case of several migrant workers from Uzbekistan, who were cheated by a Turkish employer based in Kazakhstan. After taking their passports “to register them”, the employer made them work in Almaty and various villages. They were never paid, documents were not returned, and when they ended up in Chymkent, they were fired. An oralman living in Chymkent, a Kazakh who had previously worked in the KGB in Uzbekistan, received complaints from their relatives and managed to track them down. KIBHR had

256. Uzbek labour migrant, met by the mission in Astana, 12 June 2009.

257. FIDH Interview with Adil Seitkaziev, “NGO Adilet” Chymkent, 16 June 2009.

258. FIDH Interview with Pawel Szalus, IOM Liaison / Program Officer, Almaty, 15 June 2009.

difficulty getting the migration police to work on the case, all the more because the Uzbek migrants did not want to talk to the migration police. The employer explained that “he would like to pay but he hadn’t be paid himself, he had given the passports to another man and he couldn’t find him”.

– KCHR received a complaint from five Kyrgyz migrants, who worked in construction in Almaty: their salaries were paid for the first three months, they then worked without regular salary, but with promise of payment. At the end, they were given US \$100 for all the remaining time, and told to go home. When they went to the employer accompanied by legal representatives to demand payment, the employer threatened to kill them.

Cases of forced labour are also regularly mentioned in the media. For example:

– The case of Bekzod Ikramov and others.²⁵⁹ According to information published in the media, in the Spring of 2008, B. Bekchanov, an experienced worker acting as an intermediary, took a group of young people from Khiva to Kazakhstan. They went to the village of Zhalagash, in the Kyzyl-Orda region, to work in construction. Two months later, their parents heard that Bekchkanov had come back to Khiva and he told them that their children would soon send money. They received no money and no news apart from one phone call from Bekzod Ikramov to his mother in December 2008, saying that everything was alright. Later, those who had accompanied Bekzod Ikramov managed to return to Khiva. They reported that Bekchanov had given their passports to their employer, taken US \$5,000 in advance and fled. They had to work for several months without payment. They all managed to escape except Bekzod Ikramov. Bekzod Ikramov’s mother went to Kazakhstan and met his employer, who happened to be the mayor of the village. The employer explained that he had “sold” her son to a chief of police in Chymkent. The Prosecutor’s Office in Khiva opened a criminal case, and a complaint was sent to the UN Special Rapporteur on human trafficking.

– At the end of August 2009, more than 20 Uzbek citizens, detained in the “Samal 2” district of Almaty were freed during a police operation.²⁶⁰ These men and women, aged between 14 and 55, had come to Almaty to work for a cleaning firm: they cleaned the streets and the yards of this district, and lived in a basement, in unsanitary conditions. Their passports were confiscated by their employer and they were not officially registered. Some women were sexually harassed, the men who tried to flee were beaten and burnt by cigarettes. They were finally freed after one of the women managed to escape whilst working in the streets. Another twelve workers were discovered in a barn near the house of the director of the cleaning firm. A criminal case is expected to be opened against him on charges of “human trafficking” (under Article 128 of the Penal Code). For the lawyer defending these migrants, the main concern was the threat of deportation: despite the fact that they had been victims of human trafficking and should be protected, they risked being expelled as irregular migrants.

The practices described here are cases of forced labour as defined in the 1930 ILO Convention on forced labour: “the term “forced or compulsory labour” shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” (art 2). The “Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work”, presented to the 93rd session of the International Labour Conference in 2005, underlines in particular that “The ILO’s definition of forced labour comprises two basic elements: the work or service is exacted under the menace of a penalty and it is undertaken involuntarily.” These threats can be “of a psychological nature”. Situations examined by the ILO have included “threats to denounce victims to the police or immigration authorities when their employment status is illegal [...] Other penalties can be of a financial nature, including economic penalties linked to debts; the non-payment of wages; or the loss of wages accompanied by threats of dismissal if workers refuse to do overtime beyond the scope of their contract or of national law. Employers sometimes also require workers to hand over their identity papers, and may use the

259. Information from the human rights organisation “Nazhot”, from Khorezm, member of the Uzbek “Rapid response group”, - see article “Uzbekskie gastarbeitery popadaiat v rabstvo v Kazakhstane”, 10.08.2009, <http://www.ferghana.ru/article.php?id=6259>

260. See : “Osvobozhdeny iz rabstva 26 nelegalnyh gastarbeiterov”, Diapason, 25/08/2009 <http://www.ferghana.ru/news.php?id=12791&mode=snews>; “Aina Shormanbaeva, iurist Fonda “Khartia za prava cheloveka” : Eto trgovlia liudmi”, 05/09/2009, Time. kz, T Kuchkov, “Nad nimi izdevalis’, tushili ob ih tela sigarety”, 40 karakalpakov vyzvoleny iz trudovogo rabstva v Almaty”, 01 09 2009, <http://www.centrasia.ru/news.php?st=1251783600>

threat of confiscation of these documents in order to exact forced labour”. The report also notes that “Many victims enter forced labour situations initially on their own accord, albeit through fraud and deception; only to discover later that they are not free to withdraw their labour. they are subsequently unable to leave their work owing to legal; physical or psychological coercion. Initial consent may be considered irrelevant when deception or fraud has been used to obtain it.”²⁶¹

A recent investigation conducted by the ILO in Russia stressed that “forced labour can have a number of different aspects: coercion to work additional time; coercion to fulfil additional functions; coercion to work without remuneration (for example, on account of a debt); coercion to work under conditions which are not compatible with the notion of decent work; coercion to live and work under control (restriction of movement, limitation of freedom; bans on medical treatment, etc.) labour.”²⁶²

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: according to official figures, in 2008 136,000 foreigners were arrested and 17,000 were deported for infraction to the rules on migration, where as only 1,800 employers were held liable (but not necessarily fined) for employing irregular migrants.²⁶³

According to the experience of the NGO Sana Syzim, in Chymkent although the migration police periodically launch raids at employers’ sites, most of the time employers are not prosecuted. Irregular migrants, men and women, are taken to the detention centre (“*priemnik raspreditel*” also known as the “monkey cage”, *obezianik*), 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. As the mission was told by a human rights defender in Chymkent: “Operation migrant is really just another way for the police to make money”.

II.3.D. Access to justice and the role of NGOs

“It’s difficult to defend the rights of those who don’t have any rights.” (Human rights defender, Chymkent, on irregular migrants)

Several organisations working with migrants underlined the fact that they had difficulty getting in contact with migrants: “Migrants come for assistance only when they are not paid. They are willing to suffer through everything else: lack of medical treatment, abuse, passport confiscation...”²⁶⁴ The Office of the Kazakh Ombudsman (who receives complaints mostly from regular migrants on problems connected to registration, residence permits and citizenship) also has difficulties following up on these complaints because migrants don’t want to work with the migration police.²⁶⁵ Labour migrants in an irregular situation are not ready to take cases to court so as to create legal precedent; experience shows that they prefer to return home as soon as their personal case is resolved.

The difficulties for migrants to protect their rights are aggravated by the fact that, under the Law on Public Associations²⁶⁶, labour migrants in Kazakhstan are not entitled to establish trade unions and have limited possibilities to participate in workers’ associations.

261. <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/kd00012fr.pdf>

262. E. Tyuryukanova: *Forced Labour in the Russian Federation today*, ILO, 2005.

263. Tulin Tashimov, “Tchuzhie zdes’ ne hodiati”, *Ekspert Kazakhstan*, №9 (205)/9 /03/ 2009 <http://www.expert.ru/printissues/kazakhstan/2009/09/trud/>

264. FIDH Interview with Pawel Szalus, IOM Liaison / Program Officer, Almaty, 15 June 2009.

265. Meeting with Vyacheslav Kalyuzhin, Head of National Centre on Human Rights, Ombudsman’s office, 11 June 2009, Astana.

266. No. 3-1, 31 May 1996.

The strategy for some NGOs, and migrant workers themselves, is thus to try to frighten the employer by threatening to call the law enforcement or the media. An Uzbek migrant met by the mission explained that: “When I was working illegally I had some problems to get my employer pay the wages, but I always threatened them, said I would go to the Financial police, the Ministry of Justice, the Department of Human Rights etc. So I always got my money in the end.”²⁶⁷

Sana Syzim encourages migrants who have been victims of forced labour to submit complaints to the police, but also collects testimonies from other migrants and witnesses and tries to use the media to “make a scandal”. This strategy was used in one particular case, when an employer in Chymkent refused to pay 90,000 tenge to an irregular migrant who had worked for 6 months. Fearing that they would be unsuccessful because of the employer’s social standing, the NGO went to his house with the local police, the migration police and the media. In spite of the support of part of the local police, the employer was forced to give the money and the passport back to the migrant, but in exchange, the migrant withdrew his complaint.

In this case, the migrant had come to Sana Syzim because he he had seen an advertisement in the newspaper. Part of the NGO’s strategy is to provide information on migrants’ rights and contact details in the local newspapers. They also have brochures in Uzbek and Russian to inform migrants of their rights.²⁶⁸

Sana Syzim also uses the strategy of working closely with the migration police. Having provided some training to the police on international law and the rights of migrants, the NGO says it has good relations with the migration police and increasingly succeeds in solving problems of registration through a phone call. They have also succeeded in preventing deportation of migrants by arguing that they are victims of human trafficking.

267. FIDH interview with an Uzbek worker, Almaty, June 12 2009.

268. Sana Syzim even went on of the raids by the migration police against illegal migrants : the main goal was to see how the operation worked, but also to distributed their leaflets. “The police were not at ease when we were there”, and tried to prevent them from coming again.

III. Refugees and asylum seekers: lack of protection and vulnerability

Introduction

The majority of those seeking asylum in Kazakhstan and Kyrgyzstan are from neighbouring countries, Afghanistan, Uzbekistan, Russia (Chechens) and China (Uyghurs).²⁶⁹ There are few asylum seekers from Sub-Saharan Africa (Somalia, Eritrea) and other Asian states (Iran, Pakistan, Sri Lanka, North Korea etc.). For most asylum seekers arriving in Kazakhstan and Kyrgyzstan, the choice of destination is a question of accessibility.²⁷⁰ Many enter the country without documents, avoiding the borders, either because they have no passport or because they fear arrests by border guards.

Kazakhstan and Kyrgyzstan have both ratified the UN Convention relating to the Status of Refugees of 1951 (“Refugee Convention”) and the 1967 Protocol, as well as other international human rights protection instruments including the ICCPR and CAT, which set out the framework for protecting the rights of refugees and asylum seekers. Yet, legislation and policy in both countries fail to comply with international conventions, and political, economic and security concerns tend to override human rights obligations.

During meetings with the FIDH mission, the authorities in both countries invoked regional agreements, the preservation of bilateral relations with neighboring states, security and the fight against terrorism to justify actions which violate the rights of asylum seekers and refugees. In Kyrgyzstan, in particular, decisions are also guided by fear of retribution in economic sphere.

In both countries, asylum-seekers from Uzbekistan, Russia (Chechens), and China (Uyghurs from the Xinjiang Uyghur Autonomous Region (XUAR)), 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 applications are 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 in both countries suffer poor living conditions, economic hardships due to costs of food and shelter, lack of employment opportunities and lack of access to medical services.

III.1. Lack of protection and vulnerability

III.1.A. Insufficient national legal framework

1) Kazakhstan

Despite being party to the UN Convention and Protocol relating to the Status of Refugees since 1999, as of October 2009 there is no national law on refugee status and protection in Kazakhstan.

269. There are also cases of citizens of Kyrgyzstan seeking asylum in Kazakhstan, as well as Kazakhs seeking asylum in Kyrgyzstan, but these cases were not documented by the mission

270. As one Uzbek asylum seeker, Umida, told the FIDH mission in Almaty, Kazakhstan: “*When policemen searched my house and found evidence of my actions as a human rights defender, I decided to flee. I left that night, not by the main route through border controls, that would have been too dangerous. I went around the controls, first to Kyrgyzstan and from there to Moscow by plane*”. Like Umida, many asylum seekers reach Russia, but return for numerous reasons including the risk of extradition, economic difficulties and xenophobia (FIDH interview with Umida. Almaty, 13 June 2009).

Although, according to the Constitution, international conventions ratified by Kazakhstan form part of national law and override conflicting provisions, in practice the Refugee Convention cannot be invoked before the courts.

However, as of October 2009, a draft law on refugees is before parliament. The new law should cover all applications for asylum. But the draft law falls far short of international standards and, whilst its adoption may improve the situation of those currently recognised as refugees by Kazakhstan, it is unlikely to change the situation of asylum seekers from CIS member states and China.

The current regime

In the absence of a law on refugees, asylum seekers and refugees have the same legal status as other foreigners and the same access to services. According to an expert met by the FIDH mission, “Refugees and asylum seekers are all considered to be aliens temporarily residing in the country. They enjoy basically the level of protections as transit passenger in an airport”.

In addition, Kazakhstan currently employs two distinct concepts in its treatment of asylum seekers: that of “refugee”, and that of “political asylum seeker”. In practice, the distinction operates to exclude those fleeing government repression from obtaining refugee status, in flagrant violation of Kazakhstan’s obligations under international refugee law.

Distinction between refugee status and political asylum

Under the Republic of Kazakhstan Law No. 204-I on Migration of Population, 13 December 1997, the term “refugees” is defined in accordance with the Refugee Convention and therefore includes those who have a “well-founded fear of being persecuted for reasons of political opinion, race, religion, citizenship, nationality or membership of a particular social group.”²⁷¹

According to the Regulations on procedure of granting political asylum to foreign citizens and stateless persons in the Republic of Kazakhstan of 1996:²⁷²

“The Republic of Kazakhstan grants political asylum to the persons and members of their families, seeking asylum and protection against persecution or real threat to become a victim of persecution in the country of their nationality and/or of residing on the account of public and political activity, race or nationality, religion, and also in case of infringement of the human rights, stipulated by international law.”²⁷³

The representative of the Committee on Migration, who met with the FIDH mission, explained the distinction in the following way: “refugee status applies to something massive, threats to life”, while “political asylum covers individuals who may be opponents to the regime in their home countries.”²⁷⁴ Yet, an Instruction of the Ministry of Foreign Affairs, dated 3 February 1997 provides that, in addition to the grounds for refusing refugee status set out in the Refugee Convention, political asylum can be refused “if it will seriously influence the development of bilateral relations of Kazakhstan with another State.”²⁷⁵ This provision, in blatant violation of international law, illustrates starkly the prioritisation of political relations over respect for human rights.

While refugee status is determined by the Committee on Migration within the Kazakh Ministry of Labour and Social Protection, “political asylum” can only be granted by the President of Kazakhstan.²⁷⁶ The

271. Article 1. Full text of the law available in English at <http://www.unhcr.org/refworld/type,LEGISLATION,KAZ,3ae6b5740,0.html>

272. Endorsed by the Presidential Decree n°3057 of 15 July 1996. Available in English at www.imldb.iom.int. See also http://e.gov.kz/wps/portal/Content?contentPath=/library/2/2_grazhdane/citizenry/migracija%20naselenija/status%20bezhenca%20i%20polit%20ubezhiwe/article/1310&lang=en

273. Ibid, Article 2.

274. FIDH meeting with Habylsaia Abyshev, Chairperson, Committee on Migration, 11 June 2009, Astana. The concept of “political asylum” was first applied by Russia, after the fall of the Soviet Union. Kazakhstan followed the Russian example, adopting a similar decree on political asylum in 1993. The concept of refugee was introduced later, but the concept of political asylum was also retained.

275. The Ombudsman of Kazakhstan criticizes this provision, see Report of the Ombudsman of Kazakhstan 2009, available only in Russian.

276. Regulations on procedure of granting political asylum to foreign citizens and stateless persons in the Republic of Kazakhstan of 1996, endorsed by the Presidential Decree n°3057 of 15 July 1996, Article 3.

role of the Committee on Migration is in such cases limited to receiving and transmitting applications. Applications must be supported by an “autobiography (curriculum vitae), photos, health certificate including testing on acquired immune deficiency syndrome (AIDS), and other related documents.”²⁷⁷ According to KIBHR, since the introduction of the concept of “political asylum” in 1993, there have only been about two cases in which political asylum has been granted.²⁷⁸

Determination of refugee status

The procedure for determining refugee status is governed by Decree N°273-p of the Ministry of Labour and Social Protection of 20 November 2007.²⁷⁹

The Committee on Migration is responsible for processing applications. Background checks are conducted by the Committee on National Security, including to establish whether the applicant has a criminal record or has links with terrorism.²⁸⁰ The Committee on Migration submits a recommendation to the Attribution Commission, which issues the decision. The two main bodies are based in Almaty and Chymkent, because of the large numbers of asylum seekers arriving there from Afghanistan. The Attribution Commission is composed of representatives of the Committee on Migration, the National Security Committee, a UNHCR observer, as well as a NGO representative.

Refugee status is granted for a duration of one year. Each year, refugees have to apply to the Committee on Migration for renewal, their status is re-examined and extended or refused. Those who are refused are obliged to leave Kazakhstan. If they refuse to leave voluntarily, they can be deported. The Committee can refuse to extend refugee status on the grounds that the person is “against the sovereignty and independence of Kazakhstan and wants to destroy its unity” or is accused of/has been convicted of terrorism or fails to present him or herself within 3 months to the Committee.

Appeals of decisions on refugee status can be made to the National Committee on Migrations, and then before the courts. However, such appeals lack effect since there is no provision for suspending deportation pending appeal. In December 2008, the Committee against Torture called on Kazakhstan to ensure that “persons whose applications for asylum have been rejected can lodge an effective appeal.”²⁸¹

Insufficient protection against non-refoulement

There is no legal framework regulating expulsion, refoulement and extradition and thus no protection against refoulement, meaning the expulsion or return of a refugee to a country where he or she would face a risk to his life, freedom or torture. The United Nations Treaty Bodies have repeatedly expressed concern in this regard and have called for the urgent adoption of such a framework (see further below).

The new draft law on refugees

Many key principles of international refugee law are not included in the draft law²⁸², despite input from the UNHCR. Security concerns and national interest remain overriding considerations.

Whilst the definition of refugees is in accordance with the Refugee Convention, the draft law maintains the distinction between refugee status and political asylum. According to article 2:

2(1) This law regulates the questions of granting asylum (*predostavlenie ubezhishe*) to foreigners or stateless persons and of delivering the status of refugee (*prisvoenie status bezhentsa*)

2(2) This law doesn't concern the question of granting political asylum (*predostavlenie politicheskogo ubezhissha*) on the territory of Kazakhstan.

277. Ibid, Article 5. See also Presidential Decree n°198, 10 October 2006 on the “Status of the Commission on Questions of Citizenship”, available in Russian at http://www.enbek.gov.kz/migration/migr_rusdetail.php?recordID=34&mintrud=1.

278. FIDH meeting with KIBHR, Almaty, 15 June 2009.

279. Available in Russian at http://www.enbek.gov.kz/migration/migr_rusdetail.php?recordID=35&mintrud=1

280. Meeting with Habylsaia Abyshev, Chairperson, Committee on Migration, 11 June 2009, Astana

281. CAT/C/KAZ/CO/2, 12 December 2008, available at, <http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.KAZ.CO.2.doc>

282. The draft provided to the mission in June 2009.

In addition to the reasons for refusal of refugee status enumerated in the Refugee Convention, applications can be refused if:

- The applicant came from a third safe country
- There is serious reason to believe that this person has taken part or takes part in the activity of terrorist, religious-extremist or forbidden religious organisations, operating in his country of citizenship or in the country he came from.

The latter provision, in violation of international refugee law, purports to enable the authorities to reject an application for asylum on the grounds that the person is suspected of being a member of a banned organisation in the country from which he is fleeing persecution. This provision is likely to be applied to exclude, for example, Uzbeks, Chechens and Uyghurs.

According to Article 21(2) on *return and expulsion*, “It is forbidden to expel or return an asylum seekers or refugee to countries where his life or freedom would be threatened on account of race, religion, nationality, citizenship, membership of a particular social group or political opinion”. This provision implements Article 33 of the Refugee Convention. However, the provision fails to mention torture. In addition, it is feared that national security considerations may be applied to override this protection.

As under the current system in Kazakhstan, the status of refugee would be granted for a period of one year after which the refugee must apply to have his or her status renewed.²⁸³ Refugees are thus vulnerable to having their status cancelled and being forced to return to their country of origin within one month.

Of further concern is the very strict time limit for making applications. Under article 10 of the draft law, “Application must be made to the competent body five days after the arrival into the country or after the person has heard of changes in his country which may lead to persecution against him”.

The body responsible for examining applications for refugee status is not determined by the draft law.²⁸⁴

The law is expected to be adopted before the end of 2009.

2) *Kyrgyzstan*

Kyrgyzstan ratified the Refugee Convention and its Protocol in 1996 and adopted a Law on refugees in 2002.²⁸⁵ However, following the Andijan crisis in 2005, restrictions on obtaining refugee status have been increasing in line with anti-terrorism measures. Recent amendments to the law have further compromised the rights of asylum seekers and refugees and increased their vulnerability. Government officials met by the FIDH mission explained this rollback of protection for citizens of other countries, as a way to try to prevent the abuse of the Kyrgyz system, as well as to protect Kyrgyzstan’s relations with its neighbor states.

The Kyrgyz Law on refugees

The Law of the Kyrgyz Republic on Refugees of 2002²⁸⁶, as amended in 2006²⁸⁷, largely complies with the UN Refugee Convention of 1951 and its 1967 Protocol. The law contains a provision on protection against refoulement; under Article 11: “A person, having received a denial of granting refugee status in the territory of the Kyrgyz Republic, or a notice on the revocation of refugee status shall not, under any circumstances, be expelled to the country, where his life or freedom would be threatened on account of his race, ethnic origin, religion, nationality, membership of a particular

283. Articles 11.2 and 15.

284. See article 6, the body is referred to as “upolnomochenyj”, which translates as “plenipotentiary / in charge”.

285. *Law of the Kyrgyz Republic on Refugees*, Kyrgyzstan, N° 44, 25 March 2002, available at: <http://www.unhcr.org/refworld/docid/40fe5dbe4.html> [accessed 30 September 2009]

286. N° 44, 25 March 2002, available at: <http://www.unhcr.org/refworld/docid/40fe5dbe4.html>

287. *Law of the Kyrgyz Republic of 13 May 2006 N° 87 on introduction of amendments into the Law of the Kyrgyz Republic “On Refugees”*, available at, <http://www.unhcr.org/refworld/country,LEGAL,,,KGZ,,447edc5d4,0.html>

social group or political opinion or a country, where he might become a victim of torture or a subject to an inhuman treatment.” Furthermore, the law reiterates the superiority of international conventions ratified by Kyrgyzstan: “If international agreements and conventions, ratified by the Kyrgyz Republic, envisage other rules than those that are contained in the present law, then rules deriving from international obligations of the Kyrgyz Republic shall be applied.”²⁸⁸

The procedure for determining refugee status is set out in Regulations Governing the Work with Refugees in the Kyrgyz Republic of 2003²⁸⁹, as amended in 2006. Refugee status is decided by the State Committee on Migration and Employment. The SCME registers applicants as asylum seekers which enables them to register with the Kyrgyz police. Registration provides access to health and education services, on the same basis as other foreign citizens. Those who are granted refugee status can obtain permanent registration in Kyrgyzstan as well as work permits.

According to the Adilet Legal Clinic, before the Andijan events in 2005, all asylum seekers were registered under the law. Yet in particular since 2008, the Kyrgyz Migration Services have been refusing to register applications. A legal basis used for some such refusals is a reform to the 2002 Law on Refugees, adopted by the Kyrgyz Parliament in May 2006, which purports to modify the definition of “asylum seeker”. In violation of international refugee law, this provision excludes from the definition asylum seekers who entered the country illegally.

According to the amended article 2:

“A person, applying for recognition as a refugee, - is a person who is not a citizen of the Kyrgyz Republic and who states his wish to be recognized as a refugee on the grounds provided for by the Article 1, from among:

- foreign citizens having arrived or wishing to arrive at the territory of the Kyrgyz Republic;
- stateless persons having arrived or wishing to arrive at the territory of the Kyrgyz Republic;
- foreign citizens and (or) stateless persons *staying* in the territory of the Kyrgyz Republic on lawful grounds.”²⁹⁰

This reform has particularly affected Afghan asylum seekers who formerly would have been accorded refugee status by the Kyrgyz government. Now, Afghans only receive registration (and refugee status) if they entered the country legally with valid documentation and visas (see further below, at III.1.B).

Since the reform, NGOs and the UNHCR have been challenging all cases in which registration has been refused on these grounds. As of 1 October 2009, the Adilet Legal Clinic was involved in forty four cases at all levels. Most concern asylum seekers from Afghanistan, but others concern asylum seekers from Iran, India, Syria and North Korea. Of these cases two have gone through all 3 stages of the judicial system and the Kyrgyz Supreme Court has issued two contradictory decisions. The first decision in early 2009, went in favor of the Migration Service and confirmed the refusal to register. However, in June 2009, the Supreme Court decided in favour of the refugee. Adilet has submitted a request for clarification of these decisions. Forty cases are currently before the Supreme Court and hearings are to begin in October 2009.

III.1.B. Implementation of asylum policy: violations of the rights of asylum seekers and refugees

1) Regional agreements versus international obligations

Many of the regional agreements on crime and security to which Kazakhstan and Kyrgyzstan are party contain provisions which conflict with international obligations under the Refugee Convention and other international human rights conventions (see also above, Part I.3.B). For example, the

288. Ibid, Article 3.

289. Approved by Resolution of the Government of the Kyrgyz Republic, N°.188, 4 April 2003, available in English at <http://www.unhcr.org/refworld/country,LEGAL,,,KGZ,,40fe4dad4,0.html>

290. Emphasis added. *Law of the Kyrgyz Republic, On Introduction of Amendments Into the Law of the Kyrgyz Republic “On Refugees”* [Kyrgyzstan], 87/2006, 19 May 2006, available at: <http://www.unhcr.org/refworld/docid/447edc5d4.html>

“Astana Declaration”²⁹¹, signed by SCO member states in 2005, commits states not to give asylum to those suspected of terrorism, separatism and extremism and to extradite such persons back to other SCO member states. There is no provision in the Declaration guaranteeing the principle of non-refoulement.

According to the Minsk Convention of 1993 on Legal assistance for Persons from the CIS, states are obliged to take measures to arrest persons on the CIS “wanted list” and to comply with extradition requests. Again, the Convention contains no provision on non-refoulement. In 2008, the UN Committee Against Torture has expressed its concern that the Minsk Convention does not protect CIS citizens who might have valid claims for refugee status from refoulement.²⁹²

Although according to international law, international conventions take precedence over regional agreements, representatives of the authorities in both countries who met with the FIDH mission invoked regional agreements to justify actions which violate international obligations concerning refugees and asylum seekers. According to a NGO representative met by the mission, “The authorities [in Kazakhstan] usually don’t take into account international conventions on human rights but base their decisions on regional agreements.”²⁹³

2) Refusal of asylum to nationals of CIS states and China and the role of the UNHCR²⁹⁴

(a) Kazakhstan

“The Republic of Kazakhstan, having acceded to the United Nations Convention relating to the Status of Refugees and its Protocol, is consistently meeting its international commitments with respect to refugees. Around 600 persons who have fled from Afghanistan, Somalia and Ethiopia currently have refugee status in Kazakhstan.”

(Ms. Tamara Duisenova, Executive Secretary of the Ministry of Labour and Social Protection, Kazakhstan, 17 May 2009²⁹⁵)

“Kazakhstan has people seeking refugee status from Russia, China and Uzbekistan but Kazakhstan cannot enter into these other countries’ internal affairs.”

(Habylsaia Abyshev, Chairperson, Committee on Migration, 11 June 2009²⁹⁶)

In Kazakhstan, according to the Ministry of Labour, a total of 580 persons have been granted refugee status in Kazakhstan: 577 from Afghanistan, 1 Somalia, 2 Ethiopia.²⁹⁷ From 1 January to 1 June 2009, the Committee on Migration examined 28 cases (22 cases pending from 2008 and 6 applications received in 2009), representing a total of 73 persons. Of these, 2 persons were granted asylum, 33 persons saw their applications rejected and 38 persons’ applications are still pending.

No asylum seekers from CIS states or China have been granted refugee status. In practice, Uzbeks, Uyghurs and Chechens do not apply to the state for refugee status or “political asylum”. According to KIBHR, “They wont go if they know a representative of the National Security Committee is there.”²⁹⁸

When asked about asylum seekers from Chechnya, the authorities tend to deny their existence: “There are no Chechen refugees. Historically, since World War II, there have been a lot of Chechens

291. Declaration of Heads of Member States of Shanghai Cooperation Organization, Astana, July 5, 2005

292. Examination of Kazakhstan, December 2008, CAT/C/KAZ/CO/2, available on <http://www2.ohchr.org/english/bodies/cat/cats41.htm>

293. Interview with Anara Ibrayeva, KIBHR, Astana Branch Director, 12 June 2009.

294. See further below, Part III-2.

295. Statement delivered during the 17th meeting of the OSCE Economic and Environmental Forum, Athens, 18- 20 May 2009, “Migration management and its linkages with economic, social and environmental policies to the benefit of stability and security in the OSCE region”, Session II: Review of the implementation of OSCE commitments in the economic and environmental dimension focusing on migration.

296. Meeting between the FIDH mission and Habylsaia Abyshev, Chairperson, Committee on Migration, 11 June 2009, Astana.

297. Document obtained from the Ministry of Labour, June 2009, available only in Russian.

298. KIBHR sought to establish a precedent by supporting an asylum seeker of Uyghur, Chechen or Uzbek origin to apply for refugee status. When they were refused they could appeal. But they could not find anyone who was prepared to apply.

living in Kazakhstan. Those Chechens who come here, come to see their families. We cannot call them refugees because they live in normal conditions.”²⁹⁹ According to Habylsaia Abyshev, Chairperson of the Committee on Migration, “During the war [in 2000-2001], about 800 Chechens came to Kazakhstan. They were given refugee status by the UNHCR, but Kazakhstan could not give them refugee status. Now they have gone home.”³⁰⁰

Faced with the impossibility of receiving refugee status from the Kazakh authorities, Uzbeks and Uyghurs have to apply to the UNHCR. According to an expert met by the mission, refugee status determination (RSD) procedures are not conducted on Chechens, unless there is a risk of deportation, but in any case Chechens do not usually apply to the UNHCR.

Once asylum seekers have received asylum seeker certificates from the UNHCR or have been granted UN mandate refugee status, the Kazakhstan government generally allows them to remain in Kazakhstan on the understanding that they will be resettled.

Refugees and asylum seekers cannot work legally. “They often sell items on the market at risk of being stopped by the police”. They have difficulties accessing services. “It’s difficult for them to pay rent and other expenses.”³⁰¹ However children are generally able to enrol in school. “There is no major problem if parents want children to go to school but some are afraid and some consider Kazakhstan as a transit country so they don’t want their children to enrol. They don’t want to settle here.”³⁰²

Cases of Uzbek refugees on the CIS wanted list are treated by UNHCR as priority cases for resettlement. Yet resettlement can take up to two years. In some cases, particularly those concerning refugees accused of involvement in banned religious organisations, such as the Islamic Movement of Uzbekistan, Hizb ut-Tahrir, the UNHCR receives up to 5 rejections from third countries before they find one willing to accept the refugee (see further below at III.2).

(b) Kyrgyzstan

Afghans as well as small numbers of asylum seekers of other nationalities have been accorded refugee status by the Kyrgyz State Committee on Migration and (SCME). As of 1 December 2008, according to the SCME, there were 260 refugees and 439 asylum seekers in the country. Refugees included 238 Afghans and a total of 22 from Syria, Iraq, Iran, and North Korea. Among the asylum seekers were 144 Afghans, 163 Uzbeks, 120 Chechens, and 12 from other countries. As of 1 June 2009, 455 refugees and asylum seekers were registered by the authorities of Kyrgyzstan. These included 235 from Afghanistan, 120 from Russia, 80 from Uzbekistan and 20 from other countries of origin.³⁰³

Afghans

According to the UNHCR, there are two main groups of Afghan refugees and asylum seekers in Kyrgyzstan. One group (between 200-300 people) has connections to the former Soviet Union and of these approximately 50 have now obtained Kyrgyz citizenship and are now well integrated in Kyrgyzstan. The majority of the others within this group have been resettled.

299. Meeting with Vyacheslav Kalyuzhin, Head of National Centre on Human Rights, Ombudsman’s office, 11 June 2009, Astana.

300. Meeting between the FIDH mission and Habylsaia Abyshev, Chairperson, Committee on Migration, 11 June 2009, Astana. According to an article in Respublika, dated 13 April 2009, during discussion of the draft law on refugees in parliament, the figures presented on the number of refugees recognised by Kazakhstan gave rise to confusion. The Vice-Minister of Labour gave the figure of 580 refugees, however parliamentarians also received information estimating the number of refugees at 7300. Habylsaia Abyshev, Chairperson of the Committee on Migration, explained that the 7000 figure represented Chechen refugees, who had arrived during the conflict, “We made clear then that we could not accept them here. So the UNHCR gave them UN mandate refugee status. But we, the state of Kazakhstan, we do not recognise them. They are citizens of the Russian Federation. We do not consider the conflict to be political. And to qualify for refugee status, they have to experience religious persecution or political persecution”. (Irina Sergeeva, « Chuzhoj bedy nam ne nado ? » /Respublika/, 13/04/2009, <http://www.respublika-kz.info/news/society/3253/>).

301. Meeting of the FIDH mission with Denis Djivaga, KIBHR, Almaty, 15 June 2009.

302. Ibid.

303. Figures from the UNHCR Office, Kyrgyzstan.

Since the events of 11 September 2001, Afghan asylum seekers and refugees have been viewed with distrust by the Kyrgyz authorities and the second group, more recent arrivals (between 200 and 300 people), face increasing restrictions. Whilst some have been granted refugee status by the Kyrgyz government, the recognition rate is extremely low, at less than 3% (by comparison, in Kazakhstan the recognition rate is 52% and in Tajikistan 62%).³⁰⁴ In addition to refusing to register Afghans who entered the country illegally on the basis of the 2006 amendment to the Law on refugees reform (see above, at III-1-A-ii), the SCME has recently been refusing to provide asylum seeker certificates for persons rejected in refugee status determination procedures but awaiting the outcome of court appeals. Such asylum seekers find themselves in a legal limbo.

When appeals against decisions of the SCME refusing asylum are rejected, the UNHCR reviews each case under its mandate. If having conducted the refugee status determination process the UNHCR considers that an Afghan asylum seeker qualifies for protection, they ask the government to reconsider the case. If the government refuses to reconsider, the person will have to be resettled by the UNHCR, putting additional pressure on UNHCR resources.

Uzbeks, Chechens and Uyghurs

Uzbeks and Chechens can be registered as asylum seekers by the state, even though they are never granted refugee status. They can make applications to the UNHCR, who conducts the Refugee Status Determination (RSD) procedure and attempts to resettle them rapidly in a third country. This process seems to suit the Kyrgyz state, since resettlement prevents an Uzbek opposition base building up in the country. In effect, this system allows the Kyrgyz government not to implement its international obligations. On the other hand, it is accepted by the main actors because there is an awareness that even if the Kyrgyz authorities did give refugee status to these asylum seekers, the state would not be in a position to provide adequate protection to them and they would have to be resettled.

Uyghurs cannot register, since according to an expert met by the FIDH mission, “they do not exist” (see further below, Part III.3).

Since the events in Andijan in 2005, and in particular since 2008, the SCME has also been refusing registration to Uzbeks in the South of the country, although they can still obtain registration in Bishkek. Aigul Ryskulova, Head of the State Committee on Migration and Employment explained to the FIDH mission that “now, we get a lot of fraudulent applications. Uzbeks just want to go to third countries. They say they participated in Andijan. That was a long time ago. They don’t show enough evidence. Now we are refusing all of them”. Asylum seekers without registration do not have access to health care and education from the state. In August 2007, the Committee on the Elimination of Racial Discrimination, examining Kyrgyzstan, expressed concern that:

“Competent authorities of the State party allegedly deny refugee status or asylum to individuals belonging to certain ethnic or national minorities, including ethnic Uyghurs, Uzbeks and Chechens, and fail to adequately protect the rights of such individuals in accordance with the Convention relating to the Status of Refugees and the national legislation of Kyrgyzstan.”

The Committee called on Kyrgyzstan, in particular, to ensure that “measures to combat terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, descent, or, national or ethnic origin.”

The UNHCR has representation in Bishkek (since December 1995) and a Field Office, which deals with most applications, as well as a warehouse with emergency supplies in Osh. The UNHCR provides all refugees and asylum seekers with a medical insurance card. Yet many refugees report obstacles to access to health services even with such a card (see further below, at III.2).³⁰⁵

304. Ibid.

305. UNHCR document.

3) Abduction, deportation, extradition and intimidation

In both Kazakhstan and Kyrgyzstan, Uzbek and Uyghur asylum seekers and refugees have been abducted, extradited or forcibly returned to the countries from which they have fled persecution, where they face a real risk of torture and other serious human rights violations, in violation of the obligation under international law not to commit refoulement (the forced return of people to places where their lives or freedom would be threatened or where they would face a risk of torture).³⁰⁶ Although some cases have been well-documented, the total number of such cases is unknown.

In both countries security services co-operate with their counterparts in neighbouring countries, sharing information on the whereabouts of asylum-seekers and refugees. According to NGO representatives met by the mission in Kyrgyzstan, “Our migration services don’t keep registration information confidential, even though they are required to do so under the law.”³⁰⁷

The United Nations Treaty Bodies, including the Human Rights Committee, the Committee against Torture and the Committee on the Elimination of Racial Discrimination, have repeatedly called on both countries to respect the principle of non-refoulement.

(a) Kazakhstan

According to the UNHCR, there have been no verified reports of deportation or extradition of asylum seekers or refugees from Kazakhstan since 2005, when 9 Uzbek asylum seekers were kidnapped in Chymkent and forcibly returned to Uzbekistan (see further below, at III.2).

However, there have been cases of disappearances or abduction attempts. Uzbek refugees met by the mission reported being followed and observed by the Kazakh migration police and feared the intervention of the Uzbek Security Services. Refugees report seeing Uzbek security forces around the UNHCR building in Almaty. Uzbek police have also taken part in interrogations of asylum seekers and refugees by the Kazakh police (see further below).

There have also been several cases in which the authorities have ordered the arrest of asylum seekers or refugees, but the UNHCR and NGOs have intervened to prevent extradition or deportation.

According to Denis Djivaga from KIBHR, there have been some recent attempts by the authorities to prevent asylum seekers and refugees being returned. In some cases, the police have contacted KIBHR, having received an extradition request, to say “We know where he is, please bring him into the police station so that we can take his fingerprints and say to his home country that he is under UNHCR protection.”³⁰⁸

In December 2008, the Committee against Torture expressed its concern at the fact that Kazakhstan’s “current expulsion, refoulement and extradition procedures and practices may expose individuals to the risk of torture”: “The Committee is concerned at credible reports that individuals have not been afforded the full protection...in relation to expulsion, return or deportation to neighbouring countries in the name of regional security, including the fight against terrorism. The Committee is particularly concerned at allegations of forcible return of asylum-seekers from Uzbekistan and from China and the unknown conditions, treatment and whereabouts of persons returned following their arrival in the receiving country”.

306. Under the *1951 Refugee Convention, Article 33*, States are obliged not to return a refugee to a country of territory where he/she would be at risk of persecution: “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”. The principle is incorporated in several international human rights treaties ratified by Kazakhstan and Kyrgyzstan, including the *1984 Convention against Torture, Article 3*, which prohibits the forcible removal of persons to a country where there is a real risk of torture: “1. No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”. The principle of non-refoulement is also considered to be customary international law, and therefore binding on all states.

307. Adilet Legal Clinic, Cholopon Djakupova, Director, 18 June 2009, Bishkek.

308. Meeting with the FIDH mission, 15 June 2009.

The Committee called on Kazakhstan to adopt a legislative framework regulating expulsion, refoulement and extradition, to ensure that its obligations under article 3 of the Convention are fully implemented whenever a person is subjected to expulsion, refoulement and extradition and to “ensure that priority is given to the provisions of the Convention over any less protective bilateral or multilateral agreements on extradition.”³⁰⁹

(b) Kyrgyzstan

The Adilet Legal Clinic has documented approximately 17 cases of Uzbek refugees and asylum seekers who have disappeared. “We know their cases because those people were registered but there could well be more.”³¹⁰ Uzbek security services have been involved in the abduction of asylum seekers, in collaboration, it is suspected, with their Kyrgyz counterparts. Refugees have even disappeared from the Suzak UNHCR camp just beyond the border with Uzbekistan.

In 2006, Kyrgyzstan extradited four Uzbek asylum seekers, in violation of the principle of non-refoulement and despite a decision from the UN Human Rights Committee calling on Kyrgyzstan not to extradite. According to the Prosecutor office who made the decision, it was a question of balancing international and regional obligations (see further below at III.2).

In August 2007, the Committee on the Elimination of Racial Discrimination, examining Kyrgyzstan, expressed its deep concern with regard to allegations of forcible return of ethnic Uyghurs and Uzbeks to their countries of origin pursuant to multilateral agreements and bilateral agreements concluded with neighbouring countries”. The Committee called on Kyrgyzstan to respect the principle of non-refoulement.

III.2. Uzbek asylum seekers and refugees under permanent threat

The FIDH mission met with approximately twenty Uzbek asylum seekers and refugees in Kazakhstan, both men and women, who had fled Uzbekistan because of alleged persecution as a result of human rights activities, religious activities or practices, or those of friends and family. Fleeing police persecution and sometimes torture, they are unable to obtain asylum in Kazakhstan and their only hope is to be recognised as refugees by the UNHCR and to be resettled in a third country. Above all they fear the Uzbek secret services which are operating more or less overtly in Kazakhstan, and some of them risk extradition or forcible return to Uzbekistan. Their precarious legal situation is compounded by an extremely precarious material situation.

The situation of Uzbek asylum seekers and refugees in Kyrgyzstan is similar.

III.2.A. The context: persecution and torture in Uzbekistan

Countries in Central Asia experienced a particularly large influx of Uzbek asylum-seekers following the Andijan massacres in May 2005. The repression of a demonstration on 13 May 2005, in this city in the Ferghana valley led to hundreds of dead and injured.³¹¹ Although the authorities recognise

309. In 2004, the UN Committee on the Elimination of Racial Discrimination (CERD) called on Kazakhstan to “ensure...that no refugees will be forcibly returned to a country where there are substantial grounds for believing that they may suffer serious human rights violations”.

310. Adilet Legal Clinic, Cholopon Djakupova, Director, 18 June 2009, Bishkek.

311. Thousands of demonstrators had congregated in the town centre, including women and children, to protest against the trial of 23 people accused of membership of a radical Islamist group called *Akramia*, and against the political and economic situation. The demonstrations were preceded by confrontations around the regional administrative offices and the prison, which had led to the release of these prisoners. In fact the repression conducted by the regime of President Karimov had started well before Andijan. Tashkent had already taken as a pretext the attacks in February 1999, ascribed to the Islamic Movement of Uzbekistan (IMU) and to the “Erk” party, and used this to launch repression against all the Islamist movements and all those practising “non-traditional”

187 deaths, a report of the UN High Commissioner for Human Rights released in June 2006 states that “It is not excluded – judging from the accounts of the eyewitnesses interviewed – that the incidents amounted to a mass killing”. Hundreds of people were arrested and tortured after the demonstration. About 500 asylum-seekers found refuge in neighbouring Kyrgyzstan, where they eventually received assistance from the UNHCR. Not only has there been no independent inquiry since Andijan, but repression has also been turned on Uzbek human rights activities and independent journalists attempting to shed light on the events: several of them have been sentenced to lengthy jail terms and some have been forced to leave the country.

The Andijan massacres led the European Union to impose sanctions (including a travel ban on some Uzbek leaders). The Uzbek government has attempted since then to restore its image on the international stage by adopting a number of measures (including abolition of the death penalty and ratification of a number of additional international human rights instruments in 2008). The EU sanctions (apart from the embargo on arms sales) were lifted at the end of 2008 following the release of six human rights activists, despite continued prosecution and sentencing of other human rights defenders.

Recent legislative reforms and ratifications of international instruments have failed to make a positive impact on the human rights situation in the country.³¹² A seminar on the freedom of the media organised by the EU in Tashkent in October 2008 concluded that there had been no positive changes in this area. Though some measures were taken to combat child labour³¹³, children were still forced to take part in the 2008 cotton harvests. Arbitrary arrests and sentencing of human rights defenders on fabricated charges continue and reports on the deteriorating health of defenders detained in extremely harsh conditions are frequent. FIDH has also gathered information on the use of forced internment of human rights defenders and journalists in psychiatric hospitals. As of October 2009, eight members of FIDH’s member organisation “HRSU” (Human Rights Society of Uzbekistan) were languishing in Uzbek jails on fabricated criminal charges. The state of health of these prisoners has deteriorated significantly since their incarceration and they are not receiving adequate medical care.

In February 2009, the Russian human rights organisation, Memorial, published a list of 1,452 people arrested and convicted in Uzbekistan for religious or political reasons between 1 January 2004 and 31 December 2008.³¹⁴ According to Memorial, 94% of them are Muslims arrested as part of the campaign against “Islamic extremism”. At least 359 people have been accused of links to the Hizb-Ut-Tahrir party, 360 of participating in the Andijan events or membership of the “Akramia” movement and 48 of membership of Djamaat Tabligh.³¹⁵ A certain number of Jehovah’s Witnesses and members of Christian churches have also been persecuted. Memorial also mentions the names of 30 human rights activists, 14 members of opposition movements and 18 journalists and writers.

Memorial has gathered information on the use of torture in 161 cases, but notes that these figures are underestimated, in that torture continues to be systematically used in the prisons. Indeed, in May 2005, an FIDH international fact-finding mission collected a number of first-hand testimonies confirming that many people are sentenced based on confessions obtained under torture.³¹⁶ A number of Human Rights NGOs³¹⁷, as well as international bodies, including the European Court of Human Rights³¹⁸ have repeatedly addressed this issue. In November 2007, the UN Committee Against

Islam. Further terrorist acts in March and July 2004 gave fresh impetus to the repression.

312. See FIDH written intervention on the human rights situation in Uzbekistan submitted to the Human Rights Committee in May 2009, <http://www.fidh.org/Written-intervention-on-the-human>

313. According to information received from *Human Rights in Central Asia*.

314. Memorial Human Rights Center “List of people arrested and convicted for political or religious reasons, January 2004- December 2008), Moscow, 2009 (in Russian) www.memo.ru/2009/05/06/0605091.htm. Although this document provoked debates among some NGOs there is a consensus on the list of names and figures given.

315. With regard to these parties and the persecution of Islamist movements throughout the CIS, also see the FIDH– Civic Assistance report: “A society under control. Misuse of the fight against terrorism and extremism in Russia” July 2009, <http://www.fidh.org/IMG/pdf/RapportRussieFr.pdf> (In French and Russian).

316. See FIDH Report “*The Death Penalty in Uzbekistan: Torture and Secrecy*” N426/2, October 2005.

317. See for example, Human Rights Watch, “Nowhere to Turn. Torture and Ill-treatment in Uzbekistan”, November 2007.

318. In April 2008, in the ruling of *Ismoilov vs Russia*, the ECHR considered that the extradition by Russia of 12

Torture expressed its concern about "widespread torture and ill-treatment", including "numerous, ongoing and consistent allegations concerning routine use of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement and investigative officials or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings."³¹⁹

The experience of Yuldash, one of the refugees met by the mission in Almaty, Kazakhstan, whose three brothers are sought by the Uzbek police for religious activities, offers a glimpse of police methods in Uzbekistan and the impossibility of escaping surveillance for all those who have previously been arrested or sentenced.

"In 1996, I was arrested and detained for three days. I was tortured to obtain information on the whereabouts of my brother, but I didn't know where my brother was. If I had known I would have said, no one can put up with that kind of torture. They broke my ribs and I had trouble breathing. To be freed I had to sign to say that I would find my brother.

I left for Russia, but later, in 1999, I returned to Uzbekistan. Then there were attacks in Tashkent and I hid at my parents' house. The Special Forces found out and came with guns. I was tortured again. I said that I didn't have anything to do with my brother, I am not religious in the same way as him. They said I received money from my brother which was true. My brother sent me money, why wouldn't I accept it? Then they showed me drugs, 3 mg of heroin, and said that they found them at my house.. They tried to make me sign to admit that it was mine but I refused. There were two police officers, they were playing good cop bad cop. The "good cop" said that he strongly advised me to admit it otherwise they'd accuse me of possessing weapons." So, under pressure, I admitted that the drugs were mine for personal consumption.

I waited for my trial for 7 months in jail. At the end of November 1999, I was tried and sentenced to 3 years' imprisonment. I was sent to Zone 45, a detention camp. After two and a half months, my uncle, a former high official, managed to get me released by paying a bribe. As soon as I was out, the police started to pursue me again, they knew that I was good at repairs and forced me to work in the police station. I worked for two months and received nothing. When I asked for payment, they replied, "You're working because of your brothers".

I worked constantly without breaks, then I fell ill for two days and stayed at home. The Security Services came to find me. They said they had the address of my brother and that he was in Ufa, Russia, but I knew he wasn't there. They asked me to collaborate, to denounce him and to stop them sending me back to jail, I said I would. The local police told me I had to work for another 10 days and confiscated my passport.

At that point I left Uzbekistan. I went through Tashkent to Kazakhstan without documents, bypassing the border controls. I've been here in Kazakhstan since then."³²⁰

Yuldash's testimony illustrates the use of torture and other ill-treatment, also experienced by two human rights defenders with whom the FIDH met. Gulnara explained that when the police went to search the house of a human rights defender with whom she had worked, she went into hiding with her husband, their daughter, and oldest son elsewhere in Uzbekistan. "My younger son, who's 23 years old, stayed at the flat. The police arrived and took the passports of my two sons. They took my youngest son into custody where they beat him and damaged his kidneys. We had to pay a bribe to get him freed, so we collected money from our relatives. We had to leave Uzbekistan, but the police didn't give the passport of my oldest son back. Now he's in another village and can't go

Uzbeks wanted by Uzbekistan was a breach of article 3 of the ECHR, because they risk torture in their country, or cruel, inhuman or degrading treatment.

319. CAT/C/UZB/CO/3, 26 February 2008, available at, <http://daccessdds.un.org/doc/UNDOC/GEN/G08/406/89/PDF/G0840689.pdf?OpenElement>

320. FIDH interview with Yuldash, Almaty, 14 June 2009. Names have been changed, where necessary to protect those who met with the mission and where anonymity was requested.

home.”³²¹ Gulnara sought refuge in Kazakhstan with her husband, daughter and youngest son, who suffers from kidney and eye problems as a result of his treatment at the hands of the police. Bakhtior was summoned by the police who asked him to help them trace two persons for whom they were searching and to bring them back to Uzbekistan: “I was held in a special department at the police station. The police in Uzbekistan has special techniques. I’ve been a boxer, and a sportsman, but I had never seen those kind of techniques... I don’t want to talk about it. One kind of torture was putting pins under my nails. Even if you don’t want to talk, you do, because it’s so painful.” Bakhtior’s passport and his car were taken by the police “it was like being under house arrest. [So] the next day I left Uzbekistan and travelled to Kazakhstan without a passport, bypassing the border controls.”³²²

The families of the people sought by the police are also under constant surveillance, as borne out by the story of the family of Yuldash: “When I left Uzbekistan, my wife and children stayed. They used to come to Chymkent to pick up money. The first time they came I watched to check they were not followed. But in 2007, after my brother gave interviews on a western radio station, the pressure on my family to give information on my whereabouts got much worse. The police came regularly to the family house with search orders. In August 2007 they came and scattered all our possessions. They hit and kicked members of my family. My wife couldn’t take anymore, she came to Chymkent and said “either I stay here or I want a divorce”. So she stayed...Every time there are events in Uzbekistan, the pressure on my family gets worse. I think the police know where I am, but they continue to harass my family.”

The story of Torjon reveals similar problems. He says that, having fought for some time in the Islamic Movement of Uzbekistan (IDU) in Tajikistan, he had given himself up to the police in Uzbekistan and spent five and a half years in prison. When he got out of prison he continued to be harassed by the police and he fled to Kazakhstan at the end of 2005: “I decided to leave when my brother was arrested in Chymkent (cf below). The police knew I had contact with him.”³²³ After he left with his family, his wife’s brother, was taken into police custody, questioned as to the whereabouts of his sister and beaten.

As a result most Uzbek asylum seekers fear having any contact with their families, so as not put them in danger: “We chat on the internet using special codewords. We can’t contact back to Uzbekistan” (Umida)³²⁴, “I don’t call home. I get information through intermediaries” (Yuldash).

These fears for their families are made worse by the fact that one of the strategies used by the Uzbek services is to send family members to encourage them to return. Torjon explained to the FIDH mission that his mother and brother had come three times to Kazakhstan to look for him. “The local police in Uzbekistan have been putting pressure on them to bring me back. The police gave my brother my address in Kazakhstan, but we had moved and my brother didn’t find us”. KIBHR dealt with two cases in early 2009, in which families from Uzbekistan came to look for asylum seekers in Almaty to urge them to come home. It is difficult for NGOs to do much in such cases.

Collaboration between the security services

Uzbek asylum-seekers and refugees also live in constant fear of the Uzbek special services and collaboration with the Kazakh police and security services.³²⁵ Asylum seekers and refugees fear that the Uzbek security services will find out where they are: “A couple of days ago, I went to the market and saw one of my neighbours from Uzbekistan, she was here to sell fruits. I am really afraid to go on the street now, because I am worried that Uzbek national security are looking for us. I am afraid she will talk, and tell Uzbek national security where we are. (...) And all levels of the Kyrgyz-Uzbek-Kazakh police work together, they are like brothers” (Umida).

321. FIDH interview with Gulnara, Uzbek human rights defenders in hiding, 13 June 2009.

322. FIDH interview with Bakhtior, 13 June 2009.

323. Interview with Torjon Abdusamatov and his family, Almaty, 15 June 2009.

324. FIDH interview with Umida, Uzbek human rights defender, Almaty, 13 June 2009.

325. Some also suspect others Uzbeks living in Kazakhstan of collaborating with the Uzbek Secret Services: “There are a lot of people from Uzbekistan here, but they don’t want to talk to each other, because we are all afraid that the other will report back to Uzbek national security. When we go to the UNHCR we see other Uzbeks, but we don’t even say hello” (Gulnara)

This fear of collaboration between the police forces is expressed by many asylum seekers and refugees: "At first the local police didn't register us in their computer, but the last time we went they typed in our details and I am worried they are going to give that information to Uzbek Security Services" (Bakhtior). Others believe that the Uzbek security services know where they are, but do not have a precise address or at least a current one, so they regularly move from place to place: "We change flats every two months" (Yuldash).

III.2.B. Absence of protection in Kazakhstan

Since the Kazakh government never grants refugee status to Uzbek asylum seekers (see *above*, III-1-B), most of them do not even apply, explaining that "*it makes no sense*" (Habibullah), "it's dangerous, we can be kidnapped" (Nurilo)³²⁶, "Kazakh authorities don't like us. For them, here, we are black" (Bakhtior), "It's not worth it. They deport people under the Shanghai Cooperation Agreement. If Uzbekistan asks for me, they would probably send me back" (Yuldash).

Uzbeks apply for asylum to the UNHCR which examines their cases and tries to find a third country that will accept them for resettlement. Uzbek refugees fear for their safety in Kazakhstan and hope to be sent to another country as quickly as possible, and find the time taken to examine their applications hard to bear: "I have been here for three months, and still haven't had an interview with the UNHCR. I am waiting." (Bakhtior), "I don't care which country they send me to. I just want to be in peace. Here I can't stand it anymore, every time a car stops in front of my house I wonder who it is.... Since 1996 I have lost my health. I have been feeling this fear for 14 years." (Yuldash). The UNHCR explained to the FIDH mission that it was working at maximum capacity and the problem also derives from the difficulty of finding a third country that will accept refugees fleeing religious persecution.

The case of Torjon and his family illustrates this. The family has been in Kazakhstan for three and a half years. They were granted UN mandate refugee status by the UNHCR on 18 January 2006 and they have been waiting for a third country to accept them ever since. They have received refusals twice from Sweden, once from Norway, and were waiting for an answer from France when they met with FIDH mission. Torjon who fought in the Islamic Movement of Uzbekistan (IDU), thinks this is the reason his applications for resettlement have not been accepted: "The UNHCR has given us refugee status but with my past no country will take us. I am on the wanted list in the CIS."

Uzbek asylum seekers and refugees can stay legally in Kazakhstan if they register with the police, in the same way as any Uzbek citizen, and they do so by presenting their UNHCR asylum seeker or refugee certificates: "with the UNHCR letter we can go to migration department of the local police to have our registration extended. We have to go each month" (Umida.) "I am registered in Almaty. My wife and I register every 3 months. The police here checked that I was not on the wanted list." (Yuldash) But those who are on the CIS wanted list cannot get any registration, even with an UNHCR certificate, like Torjon: "I can't register here because I am on the wanted list. My wife registers herself every 3 months but I am forced to live without registration."

The Kazakh police refuses to register people who are on the Uzbek wanted list because it is required, under bilateral and multilateral cooperation agreements, to take measures against them. Therefore, such asylum-seekers run the risk of being considered illegal migrants and expelled.

This situation makes them particularly vulnerable in dealings with the police: "I never go into the street alone, only with my wife and children. If I am alone in the street I will be arrested, but if I have a child with me I will be OK. Several times I have been alone on the street and I have been

326. FIDH discussion with Habibullah, Azam, Jamshid, Anvar, Solijon, Nurilo, Dilmurod and others during a group interview with 15 "religious" refugees in Almaty on 17 June. They live in Kazakhstan with their wives and children, but the discussion was only with the men; 4 of them have UN mandate refugee status, one had his UN mandate status cancelled, one was refused, the other 9 were waiting. Some of them agreed to give their real names. In addition to Torjon Abusamatov (cf. Interview, 15 June 2009), the following people were present: Khudoberdi N/Kurmatov Tursunbay Sulaymonov, Ulugbek Ostonov, Rahim Sabirov, Nigmatulin Nabiev, Ahmat Boltaev and others

detained by a police car and taken to the police station for a check. but I phoned the UNHCR and I was freed.” (Torjon). This fear of the police and the necessity to be “protected” by children was also expressed by other refugees, including those who are officially registered: “When men go into the street, the police arrests them and take their money, the fact that they have registration card doesn’t change anything, the police don’t come to our flat, but on the street it’s a problem.” (Gulnara); “We are afraid of the police here. They take bribes. [...] When we came here to meet you there was a police car passing by, they turned the car to look at us, but they saw there were children and they went away. The police thought that we are suspicious“. (Umida), “I always take my little one with me when I go out to avoid problems” (Yuldash).

KIBHR lawyers (working on a joint project on refugees with the UNHCR) regularly have to go to the police station to get refugees who have been arrested on the street released. The UNHCR confirms that refugees are routinely checked by migration police, questioned about absence of registration, sometimes arrested and threatened, and there have been one or two cases of physical violence in pre-trial detention. The presence of the Kazakh security forces around the UNHCR offices, which has been denounced by numerous refugees, is neither confirmed nor denied officially.

III.2.C. Police harassment, fear of extradition, deportation and kidnapping in Kazakhstan

At a time when Uzbekistan continues to track down its citizens in Kazakhstan, Uzbek asylum-seekers run a three-fold risk: that of being deported from Kazakhstan in the same way as any other illegal immigrant, that of being extradited following a request from Uzbekistan, and finally that of being kidnapped by the security services.³²⁷

The Minsk Convention (providing for mutual legal assistance in criminal and civil cases, see above, Part I-3-B) obliges the Kazakh authorities to take steps to look for and arrest those wanted by Uzbekistan and extradite them. According to the experience of the KIBHR “at the start Uzbekistan was seeking people for illegal religious action. But this is not an offence here. So now Uzbekistan says these people are wanted for crimes that are also crimes here like murder.”³²⁸ When a person is summoned to the police, KIBHR sends a lawyer with the individual to the police for his fingerprints to be taken and explains that the person can not be sent back because they are under UNHCR protection. Nevertheless, for those on the wanted list who are checked by the police, information sent back to the home country includes the address. Furthermore, the Minsk Convention authorises the Uzbek police to be present during interrogations. This was witnessed by KIBHR lawyers.

However, the harassment to which the Uzbek religious refugees are subjected goes far beyond the collaboration to which Kazakhstan is bound under the terms of the Minsk Convention. Even though some of those met by the mission had observed a growing awareness among the Kazakh authorities of the need to protect refugees, there has been no end to the threats, violence and arbitrary arrests.

The group of refugees who met with the FIDH mission said that they were under permanent police surveillance: “the police is always near to our house, they even sometimes flash their lights, maybe to scare us, or to take some photographs” (Dilmurod). Some of them were summoned to the police station with their family ; their addresses and fingerprints were taken, and they were asked to what mosque they go and with whom they are in contact. Even those who are not on the wanted list have to write a statement (obiasnitelnye) The police seems to try to exert a control on their religious activity: “The police asks us not to go to the mosque, not to meet with religious people and not to go to some conferences” (Jamshid), “They make us promise orally but also in writing” (Anvar) “they take our addresses and fingerprints, they write down all the telephone numbers we have on our phones” (Habibullah). Uzbek asylum seekers complain that the police treats them with disdain: “The police insult us, and the UNHCR advises us not to answer back” (Dilmurod), “In the police station, they do not let us pray (*namaz pochitat*)”, they are surprised

327. Ulugbek Ostonov, an asylum seeker met by the mission in June, was arrested in August 2009 on request of Uzbekistan. At this writing the decision of Kazakhstan on extradition is pending.

328. Meeting of the FIDH mission with Denis Djivaga, KIBHR, Almaty, 15 June 2009

that we cannot pray the way we want in Uzbekistan, and then they don't let us pray in the police station.” (Habibullah)

Arrests by the police (often close to the migration police station) are very often accompanied by the confiscation of documents or belongings and threats of deportation.³²⁹ According to Amnesty International, “in May 2008 three Uzbekistani asylum-seekers were detained by Kazakstani police officers after they left the UNHCR office in the centre of Almaty. According to the men, they were interrogated by Kazakstani and Uzbekistani officers and threatened with forcible return to Uzbekistan. They were only released after the joint intervention of representatives of the office of the UNHCR and the Kazakhstan International Bureau of Human Rights. Earlier in May 2008 a refugee was detained by armed masked security officers as he left his apartment in Almaty to attend English language lessons. The officers reportedly hit him in the back with automatic rifle butts, handcuffed him and kept him incommunicado for several hours in a police cell, all the while threatening him with deportation to Uzbekistan.”³³⁰

Torjon told the FIDH mission that he has been arrested twice by the police in Kazakhstan. “The first time was in November 2007 when I went to register with the migration police. There were 4 other refugees with me. We were arrested and taken to the police station where we spoke with representatives of the Kazakh Committee on National Security. The Kazakh police threatened to find drugs or weapons at my house. It is like in Uzbekistan. They took my fingerprints and wanted to deport me. I was only released because of the intervention of the UNHCR. The second time I was arrested was in April or May 2008. The Committee on National Security wanted me to collaborate and give information on other Uzbek refugees and threatened me that I could be sent back to Uzbekistan. They said, ‘we are the ones who decide to give you back to Uzbekistan or to leave you here. The UNHCR secured my release.’”

UNHCR or KIBHR intervention is often essential to free those detained and prevent deportation. Thus in June 2009 the deportation of Ahmat Boltaev was stopped in extremis.³³¹ On 2 June 2, at 3pm, he was arrested on the market in Almaty (*Barakholka*) by the National Security Committee (KNB):

“They asked for my documents, I showed them my attestation from the UNHCR but I was handcuffed and taken into a car. They did not let me phone. They wanted to know more on my relatives who stayed in Uzbekistan, but of course I didn't say anything. Then they started to beat me – they were three of them. There was a fourth man there, but he was only there playing on the computer. They showed me that I was on the wanted list in Uzbekistan for a number of articles of the Criminal code, as always, 242, 159, 216 and others³³², and asked me to write a statement (*obiasnitelnoe*) about how I came to Kazakhstan. They tried to get me to say that I came illegally, so that I would give them evidence against me. They also asked me to write that I worked on the market.”

Then at 10pm I was taken to another ROVD (police station), but they refused to take me, then to a second one, but they refused also. Then they came to the Turksibski police station and handed me over as a “bomzh” (an undocumented migrant). Then I was taken to the detention centre (*priemnik-raspredelitel*), Begalin street 101, and I asked one woman for her phone – so I was able to phone my wife and asked her to phone the UNHCR.” According to Boltaev,

329. Memorial has documented numerous cases of arrest of Uzbek religious refugees since 2005. See, for example, “Kazakhstan: new incidents with Uzbek refugees” (in Russian), 5 June 2008, <http://www.memo.ru/2008/06/05/0506081.html>; “Refugees from Uzbekistan in the CIS countries : threat of extradition (May 2005-August 2007)”, September 2007, http://www.memo.ru/2007/09/26/2609071.htm#_Toc177835854/

330. Amnesty International report, “Kazakhstan: Summary of Concerns on Torture and Ill-treatment: Briefing for the United Nations Committee against Torture, November 2008, Index Number: EUR 57/001/2008 <http://www.amnesty.org/en/library/asset/EUR57/001/2008/en/1b06381e-8bd5-11dd-8e5e-43ea85d15a69/eur570012008en.html>). See also Andrei Grishin, “In two weeks, law enforcement agencies have detained five refugees from Uzbekistan” 11/06/2008, Voice of Freedom.

331. See on this case Memorial press release “Kazakhstan, incident with an Uzbek refugee” (in Russian), 10.06.2009, (<http://www.memo.ru/2009/06/10/1006092.htm>). According to Memorial, Boltaev was arrested and convicted in Uzbekistan in 2000 for religious offences and received an amnesty in 2003

332. Article 242 – organisation of a criminal group; Article 159 – compromising constitutional order; Article 216 – organisation of illegal association or religious organisation

the UNHCR phoned the detention centre three times , but each time they denied that he was there. “The chief of the “priemnik” told me that my UNHCR certificate was not enough, that it was not recognized in Kazakhstan. At least I was freed, thanks to UNHCR. But the police took my two phones, and 23 000 tengue (100 euros), and I don’t know what to do.”

In September 2009, this kind of harassment took a particularly violent turn when masked and armed members of the KNB forcibly burst into the house of several Uzbek refugees and asylum seekers, breaking doors and windows and physically abusing the inhabitants. According to the UNHCR, who has sent a formal protest note to the Government of Kazakhstan with respect to this incident. ”In one of the raids, one refugee was allegedly beaten and suffered a broken nose. Those arrested were then taken to the Almaty Department of the Committee of National Security (DKNB) where they claimed they were verbally abused and threatened with immediate deportation to Uzbekistan. The men were released a few hours later in the morning by the DKNB who unofficially stated that the refugees were arrested during a special operation on suspicion of involvement in crime in Uzbekistan following a search warrant from Uzbekistan. Refugees reported that at the time of detention some of them were handcuffed, and that plastic bags or woven hats were placed over their faces. (...) Although they were registered with UNHCR, they were not allowed to contact the refugee agency or their relatives and were not provided with legal representation.”³³³

The threat of refugees being expelled or deported is not an idle one. Certainly, according to information received by the mission, it would appear that, in recent years, there have been no cases of extraditions of Uzbeks.³³⁴ Nevertheless, there have been a number of abductions and forced returns.

The most well-known case happened in November 2005 in Chymkent, where nine Uzbeks, who were fleeing religious persecution, were abducted and deported to Uzbekistan.³³⁵ Four of them had applied to the UNHCR for asylum. One of them, Tokhir Abdusamatov, was Torjon’s brother: ”My elder brother had fled to Chymkent where he obtained a certificate showing he was an asylum seeker. But in November 2005 he was arrested. The Kazakh national security together with the Uzbek police took his UNHCR papers. He was arrested with eight others who were religious followers of Nazarov and sent back to Uzbekistan.³³⁶ He was sentenced to five years under eight articles of the penal code, including article 159 - actions against the constitution. He served three years. Now every month he is summoned by the Uzbek police to get checked.”

The Kazakh security forces have always denied involvement. However, in August 2007, in an interview posted on the website of the Kazakh security services, Major Absametov, head of the Committee for National Security of South-Western Kazakhstan, stated that more than 50 members of Islamic parties or banned groups had been arrested and sent back to Uzbekistan.³³⁷ This declaration represents a public admission of the breach of the obligation not to send people back to a country where they risk torture.

333. ”UNHCR concerned about arrest and mistreatment of Uzbek refugees and asylum seekers”, Briefing Notes, 15 September 2009, <http://www.unhcr.org/4aaf67109.html>

334. In July 2005, Kazakhstan didn’t extradite the human rights activist and Andijan witness, Lutfullo Shamsuddinov (see HRW, ”Central Asia: Follow Kazakh Example”, <http://www.hrw.org/en/news/2005/07/13/central-asia-follow-kazakh-example>). Similarly, Gabdurafih Temirbaev, who was fleeing religious persecution in Uzbekistan, was arrested in June 2006 – but released in August 2006 (See Amnesty ”Kazakhstan/Uzbekistan: Further information on Incommunicado detention/fear of forcible return/fear of torture: Gabdurafikh Temirbaev”, EUR 57/004/2006 ; <http://www.amnesty.org/en/library/info/EUR57/004/2006/en>). In July 2008, the Kazakh authorities released the Uzbek refugee, Rafik Rakhmonov, who had been arrested in April 2009 following a request from Uzbekistan accusing him of having taken part in the Andijan riots, in acts of terrorism and in an illegal religious organisation (see HRW ”Letter to Kazakh Government against Extradition of Asylum Seeker May 6, 2008”, <http://www.hrw.org/en/news/2008/05/06/letter-kazakh-government-against-extradition-asylum-seeker>)

335. See for ex. :Memorial HRC ”Uzbek secret services try to hide their participation in the kidnapping of Uzbek muslims” (in Russian), 05.12. 2005, <http://www.memo.ru/hr/politpr/asia/2005/pres-uz/uz20051205.htm> ; Kazakhstan: Letter Details Kazakh Involvement in Forced Return of Uzbeks, March 27, 2006, <http://www.hrw.org/en/news/2006/03/27/kazakhstan-letter-details-kazakh-involvement-forced-return-uzbeks>

336. The Imam of Tashkent, Obidkhon Nazarov, who has been wanted by Uzbekistan since 1998, found refuge in a European country in 2006 after having hidden in Kazakhstan for several years.

337. <http://www.amnesty.org/en/library/asset/EUR04/001/2008/en/5b2d8a91-071d-11dd-badf-1352a91852c5/eur040012008eng.html#2.2.Refugees%20and%20Asylum-seekers|outline>. It should be noted that the video is no longer available on the website: http://www.knb.kz/page.php?page_id=175=1&id=2737

Moreover, abductions are continuing: In October 2007, the attempted abduction of Ulugbek Khaidarov (independent journalist and human rights defender from Uzbekistan) was reported.³³⁸ In addition, to the whereabouts of Khurshid Shamsuddinov, who is wanted by Uzbekistan in connection with his religious activities and who disappeared in November 2007 in Almaty, remain unknown.³³⁹

III.2.D. Social and economic problems of Uzbek asylum seekers and refugees in Kazakhstan

”If they don’t let us work, then they should give us money.” (Solijon)

“We don’t receive any health care here, though there is this Shanghai Conspiracy, under which they are bounded to give us health care.” (Jamshid)

Uzbek asylum seekers and refugees in Kazakhstan face many material problems. Unlike those who are recognised as refugees by the state who are authorised to work, Uzbek asylum seekers and UN mandate refugees are unable to work legally. At the same time, they receive no 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: ”The Red Crescent doesn’t really help, they say they don’t have money because of the crisis, they give material help irregularly and only for those who have the UNHCR refugee status. They give only help to families with several children” (Solijon).

Obligated to fend for themselves, but being unable to obtain work permits, such asylum seekers and refugees have no choice but to work illegally, on the markets or on small private building sites. They constantly run the risk of being controlled by the police and therefore face the same problems as illegal migrant workers (see above, Part II). Azam says when he worked on construction in Almaty, the employer owned him US \$100, but he was never paid. Yuldash, who lived in Chymkent for six years, explains that: “[In Almaty] I find work. For the last two weeks I have been doing work on a flat. Of course, I can only work unofficially. If the police came they would arrest the workers and deport them. Some employers get several Uzbeks to work, when they have nearly finished the employers call the police and get everyone deported. I’ve never had this problem. I work well and cheaply.”

They all stress the fact that the cost of living is higher than in Uzbekistan, and that their difficulties in finding accommodation and accessing healthcare and certain social services are compounded by a wariness, and sometimes xenophobic towards them³⁴⁰: ”We have financial problems. We have to pay the rent, so we don’t have enough money for food, the children don’t have enough food, it’s just too expensive, they didn’t have fruit this year. This is the fifth time we had to change apartments because it’s so expensive. Now we are three families living in one room. Each family has to pay US \$200 and we have to pay two months’ rent for the flat in advance. The Red Crescent came and was shocked at the situation.” (Umida)

All mention the housing problem. The mission visited a four room house where three families and their children lived. The price and the lack of space and privacy is often underlined: “:I have 3 daughters. We all live in one room. It’s terribly cramped and there is no privacy. And my daughter is

338. Rinat Saidullin, ”Journalist and refugee Ulugbek Haidarov is sure that the special services of Uzbekistan tried to abduct him” (in Russian), 11.10.2007, <http://www.ferghana.ru/article.php?id=5393>

339. According to Amnesty International Khurshid Shamsuddinov, ”went missing after leaving his residence in Almaty. In December [2007] the Uzbekistani news agency *Press-uz.info* stated that the asylum-seeker had not been abducted but had gone to Moldova where he was detained and deported to Turkey. However, by the end of the period under review no independent reports of his whereabouts in Turkey had emerged, nor was it clear how he could have gone to Moldova.”, AI, Document - Central Asia: Summary of Human Rights Concerns: March 2007 – March 2008 <http://www.amnesty.org/en/library/asset/EUR04/001/2008/en/5b2d8a91-071d-11dd-badf-1352a91852c5/eur040012008eng.html#2.2.Refugees%20and%20Asylum-seekers|outline>. Concerning this case and that of Ulugbek Khaidarov ,also see Memorial HRC, ”Kazakhstan, disappearance of an Uzbek refugee”, 30.11.2007, <http://www.memo.ru/2007/12/03/0312071.html> (in Russian)

340. “Kazakh people don’t like us. What do we do to them? We are people, so why don’ t we treat each other like human beings” (Umida). ”There is some nationalism, when we speak Uzbek in the bus they look at us with suspicion, if we speak Russian it’s OK. There is undercurrent xenophobia here.” (Solijon)

growing up. When I get dressed I ask her to turn around... I would like to rent two rooms but it is not possible. One month I might earn US \$400, but the next nothing.”(Yuldash)

Jamshid explained that when he came to Almaty, he rented a good flat because his wife and child were ill, and paid 30,000 tenge (equivalent of US \$200) for two months in advance, but for some reason the landlord changed his mind and they were forced to leave the flat at 9pm one evening. According to Gulnara, the fact that the Red Crescent comes to their apartment raises suspicion from the landlords.

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.³⁴¹

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), stress and, in some cases, by previous experiences of torture or detention conditions in Uzbekistan.

Even without documents, according to Kazakh law, Uzbek refugees should be entitled to emergency medical care. A woman who the mission met confirmed that two of her children were born in Kazakhstan and that she had had free healthcare.³⁴² Jamshid explained that when he was forced to call an ambulance because of kidney problems, he was taken to the hospital and the doctor examined him and gave him a prescription.

However, most refugees complain that they are not looked after by the public hospitals or by the Red Crescent and that they therefore have to go to private institutions: “My daughter has problems with her kidneys. We went to the Red Cross here but they said they couldn’t help, and that we should go to the local clinic. And the clinic said “you damned refugees, we don’t have money for you, we can’t help you” (Umida) ; “My son is ill after the beating, and my husband is also ill, with stomach problems, but we are forced to go to a private hospital. The Red Crescent says that because of the financial crisis they can’t help us.” (Gulnara), “We have to look after ourselves. Its 25-30 times more expensive here than in Uzbekistan. The local polyclinic wont accept us.” (Yuldash)

III.2.E. Kyrgyzstan: even greater insecurity, equally insufficient protection

“The capacity of Kyrgyzstan to protect refugees is very small. They don’t want to protect them because they feel it’s an obstacle to improving their relations with Uzbekistan. Even if they wanted to protect them, they couldn’t.” (An expert met by the FIDH mission)

In Kyrgyzstan, the majority of Uzbek asylum seekers arrived just after the Andijan massacre. The UNHCR, which assumed responsibility for them, moved a certain number of them to Romania since their security was no longer assured so close to the border and then helped to resettle them in a third country. Since then, the flow of Uzbek asylum seekers has significantly decreased and although the UNHCR is still handling cases, according to the HCR, in 70% of cases these now concern family reunification.

As a consequence of the Kyrgyz government refusing to grant refugee status to Uzbeks, and since 2008 even to register them, Jamshid, now a refugee in Kazakhstan, was unable to register as an

341. “When I came I was very afraid, and I didn’t try to enrol the kids in school. The Red Crescent has classes, but it’s too expensive to pay for the bus, 200 tenge every day. I don’t want my children to go to school anyway because people will see their surnames and know who they are; we need to go to a third country so that we will be secure”, Umida ; “I hope my children will be able to go to school in September. This year they didn’t go, we thought we would be leaving. The UNHCR gives lessons. But the journey costs 200 tenge. It’s too expensive, I am the only one in the family who works.” Yuldash.

342. FIDH Interview with Umida, Almaty, 15 June 2009.

asylum seeker in Kyrgyzstan: “since September the Kyrgyz government refuses to register refugees from Uzbekistan. The UNHCR offered me the possibility of going to court against the Kyrgyz government, but I didn’t want to stay in Kyrgyzstan, it was too dangerous, especially after what happened with Khaetjon Zhurabaev, who is now in an Uzbek jail (see below)”.

Indeed, the risk of abduction and forcible return or extradition is also very high in Kyrgyzstan. What is more, the Uzbek services are very active there, as demonstrated by murders such as that of Alicher Saipov, an independent journalist, who was assassinated in the street in Osh in October 2007. According to Human Rights Watch, “At least half a dozen Uzbek refugees and asylum seekers, including Juraboev, have “disappeared” from Kyrgyzstan since 2005. During that time, the Kyrgyz government has forcibly returned another dozen Uzbek refugees and asylum seekers.”³⁴³

The most well-known extradition was that of four Uzbeks who had found refuge in Kyrgyzstan after Andijan: Jahongir Maksudov, Rasul Pirmatov, Odiljon Rahimov and Yakub Tashbaev. The UNHCR had recognised the four men as refugees and had also found a country willing to accept them for resettlement. However, the Uzbek government, accusing them of violence during the events in Andijan, submitted an application for extradition on 9 June 2005 under the 1993 Minsk Convention and under the 1996 bilateral mutual legal assistance agreement: one of them was accused of being a drug trafficker on the run, the three others were accused of involvement in taking the Andijan prosecutor hostage (the prosecutor was subsequently murdered). Held by the Kyrgyz authorities, the four men, with the support of the Adilet Legal Clinic, submitted a complaint to the UN Human Rights Committee³⁴⁴, which, between March and June 2006 – before the case was examined – issued several urgent interim requests to the Kyrgyz government not to expel them. However, the decision of the Kyrgyz authorities to extradite them was confirmed by the Kyrgyz Supreme Court. In August 2006, they were extradited to Uzbekistan by order of the Kyrgyz State Prosecutor.

In its decision on this case, issued in July 2008, the UN Human Rights Committee reiterated “that States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement. This principle should not be subject to any balancing with considerations of national security or the type of criminal conduct an individual is accused or suspected of.”³⁴⁵ The Committee strongly criticised the fact that Kyrgyzstan did not reply to its explicit request not to extradite the plaintiffs whilst their application was being examined and emphasised that Kyrgyzstan had thus breached its obligations under the Optional Protocol to the ICCPR. Moreover, “The Committee considers at the outset that it was known, or should have been known, to the State party’s authorities at the time of the [complainants’] extradition that there were widely noted and credible public reports that Uzbekistan resorted to consistent and widespread use of torture against detainees and that the risk of such treatment was usually high in the case of detainees held for political and security reasons.”

The FIDH mission raised this case on several occasions with state officials. Most made similar comments and put forward the same political and legal arguments³⁴⁶ as those presented by Kyrgyzstan to the UN Human Rights Committee. Deputy-General Prosecutor Nasiza, who went to Geneva to defend Kyrgyzstan’s position, explained that “After Andijan there were 534 refugees. Uzbek asked for 129. We only gave back 5³⁴⁷, where all evidence was present. We even went to Andijan and have seen videos. We also used information from the Prosecutors’ Office of Uzbekistan and from

343. Human Rights Watch, “Uzbekistan: Abducted Refugee on Trial, Kyrgyzstan Should Protect Refugees and Asylum Seekers”, February 5, 2009, <http://www.hrw.org/en/news/2009/02/05/uzbekistan-abducted-refugee-trial>

344. Under the Optional Protocol to the ICCPR.

345. (CCPR/C/93/D/1461,1462,1476& 1477/2006, 31 July 2008).

346. “8.6 The State party explains that the commitments entered into by Kyrgyzstan in the framework of the Commonwealth of Independent States, the Shanghai Cooperation Organization and bilateral agreements also underpinned its decision to return the authors to Uzbekistan. In particular, the official request from Uzbek authorities was processed in accordance with Kyrgyzstan’s obligations under the 1993 Minsk Convention, the 1996 Agreement, the 1994 agreement on legal assistance and cooperation between the Kyrgyz General Prosecutor’s Office and the Uzbek General Prosecutor’s Office, and the Shanghai Convention ((CCPR/C/93/D/1461,1462,1476& 1477/2006, 31 July 2008).

347. The fifth, Fayejzon Tajihalilov, was deported at the same time as the first four.

the UNHCR, but we didn't have the possibility of going to Uzbekistan to check information. Our conclusions were that one did not have anything to do with Andijan and two were criminals, who had been sentenced to the death penalty."

The matter continues to be a sensitive issue for representatives of the Kyrgyz authorities who continue to fail to give adequate weight to the decision of the Human Rights Committee. Those met by the FIDH mission emphasised that those extradited were criminals. Deputy-General Prosecutor Nasiza invoked Kyrgyzstan's contradictory obligations under regional and international agreements and the diplomatic assurances offered by Uzbekistan: "For these five Uzbeks I didn't sleep for three nights: on the one hand there is the Shanghai Cooperation Organisation Agreement, on the other hand there is the Convention Against Torture. But we were given assurances. (...) The Prosecutor's Office of Uzbekistan gave guarantees that they will not use "unauthorised methods of investigation" When we gave these men back there was a big scandal. It made a lot of noise and Kyrgyzstan was accused of violating international obligations. But we received guarantees that they would not be tortured. Now all are in prison and in good health. We have followed up on the cases of all those extradited back to Uzbekistan. All the Uzbeks are "alive and kicking". We haven't lost any of them".

Kubanychbek Isabekov, Vice-speaker of Parliament invoked the lack of specific information on torture in Uzbekistan: "In the Uzbek law, there is nothing that shows that torture exists, so we cannot know. But of course those who fled Uzbekistan were begging that we didn't give them back, because they would be tortured."³⁴⁸

The FIDH mission was also told that it is easy for the West to criticise a small country such as Kyrgyzstan, whilst it is itself normalising relations with Uzbekistan. Aigul Ryskulova, Head of the State Committee on Migration and Employment accused the West of double-standards: "The EU lifted all sanctions against Uzbekistan and the US cooperates with Uzbekistan. When Russia sent back seventeen Uzbeks to Uzbekistan nobody said anything. We are criticised but we take a lot of risks, we risk economic sanctions from Uzbekistan/ (...) In the case of a drug baron who was in prison in Uzbekistan for 16 years, why is it a problem if we give him back to Uzbekistan?"

In its decision, the Human Rights Committee concluded that "The State party is also under an obligation to prevent similar violations in the future."³⁴⁹ However, it seems that forced returns are still being carried-out: according to Human Rights Watch, "in May 2008, Kyrgyz authorities handed over Erkin Holikov to Uzbek authorities despite his pending asylum claim".³⁵⁰

Moreover, according to Cholpon Djakupova, Director of Adilet Legal Clinic, there have been at least 17 cases in which Uzbek asylum seekers have disappeared over the last two years (these are the cases about which it has been possible to gather information, because the victims were officially registered). Even if the Kyrgyz authorities are not directly involved in these disappearances, they have the obligation to take measures to protect asylum seekers on their territory. This is far from being the case. In August 2006, one month after the Human Rights Committee's Decision, Human Rights Watch reported the disappearances of five asylum seekers in less than two months.³⁵¹

One of the last-known abductions is that of Kahetzhon Zhuraboev.³⁵² On 19 September 2008, he was arrested near a mosque in Bishkek by a person who introduced himself as a member of the Kyrgyz

348. FIDH Interview, 20 June 2009.

349. CCPR/C/93/D/1461,1462,1476& 1477/2006, 31 July 2008.

350. <http://www.hrw.org/en/news/2009/08/04/kyrgyzstan-asylum-seekers-feared-returned-abuse-uzbekistan>

351. According to HRW, "On August 23, two Uzbek asylum seekers, Ilhom Abdunabiev and Bakhtiar Ahmedov, disappeared in the city of Osh after an interview with the State Committee for Migration and Employment in which they applied for refugee status. (...) Both men are from Andijan (...) One week earlier, on August 16 and 17 respectively, two other Uzbek asylum seekers, Valim Babajanov and Saidullo Shakirov, were taken from their temporary homes and presumably returned to Uzbekistan. At least one other Uzbek asylum seeker – Isroil Kholdorov, an opposition political activist from Andijan – disappeared on July 10." "Kyrgyzstan: Uzbeks Disappear While Seeking Asylum", August 24, 2006 <http://www.hrw.org/en/news/2006/08/24/kyrgyzstan-uzbeks-disappear-while-seeking-asylum>

352. The son-in-law of Obidkhan Alikhanov, an imam sentenced for religious extremism in Uzbekistan in the early 1990s, Zhuraboev taught Islam in Russia and was extradited to Uzbekistan in 2007. Freed without charges, Zhuraboev fled to Kyrgyzstan where he had been recognised as a refugee by the HCR.

National Security Service. The Kyrgyz authorities deny that he was sent back to Uzbekistan but, in January 2009, his mother traced him to a prison in Tashkent and, in February 2009, he was sentenced to 13 years for "religious extremism" and "illegal border crossing."³⁵³

In August 2009, two asylum seekers, Sanjar Khudaiberganov and his young son, Savarbek, were reported missing for a week – they had been seen for the last time returning home from the State Committee for Migration and Employment. Fortunately, they reappeared in Osh a week later, but no information has been given as to what happened during the interim period.³⁵⁴

III.3. Uyghur asylum seekers: “virtual refugees”

“When all these Central Asian countries became independent in 1991, the Uyghur people hoped it would lead to justice, help their situation. But it appears these countries are not [our] friends.” (Tursun Islam, Chairman of the Uyghur human rights organisation “Democracy”³⁵⁵)

As their ties with China deepen (see above, Part I-3-B), Kazakhstan and Kyrgyzstan have adopted a strict approach to Uyghur asylum seekers. In both countries Uyghurs are simply ineligible for political asylum or refugee status, discrimination against them is widespread, and they are at risk of refoulement to China. As Kazakhstan and Kyrgyzstan share lengthy borders with the Xinjiang Uyghur Autonomous Region (XUAR) of China, which is homeland to the majority of Uyghurs in China, the two states are key destinations for Uyghurs seeking to exit China for economic or political reasons. By securing Kazakhstan’s and Kyrgyzstan’s cooperation, the Chinese government has extended to Central Asia its control of the movement and activities of the Uyghur minority.

III.3.A. The context: repression of Uyghurs in China

The Chinese government has long viewed Uyghurs, an ethnic minority concentrated in XUAR, as a threat to stability and the rule of the Communist Party of China (CPC) that must be controlled.³⁵⁶ Many Uyghurs have suffered under CPC rule, as the government has encouraged policies that fail to respect their distinct culture, language, and practice of Islam, and has prioritized the settlement and welfare of Han Chinese in the XUAR over that of Uyghurs.³⁵⁷ Some Uyghurs who have spoken out against discriminatory policies and official maltreatment fear torture or execution for their work, leading many to flee China.³⁵⁸

Pressure on Uyghurs in China escalated significantly in July 2009: on 5 July, ethnic tensions between Uyghurs and Han Chinese erupted as riots related to discriminatory treatment of Uyghurs broke out in Urumqi, the capital of XUAR. According to official government estimates, the riots and subsequent backlash resulted in 197 lives lost, 1,700 injuries, and extensive property damage.³⁵⁹ Instead of acknowledging problems in treatment of the Uyghur minority as an underlying cause of the riots, however, the government later asserted that the mass riots “were masterminded by terrorist, separatist and extremist forces both inside and outside China”³⁶⁰ – raising the spectre of the “three

353. Cf. Human Rights Watch, “Uzbekistan: Abducted Refugee on Trial, Kyrgyzstan Should Protect Refugees and Asylum Seekers”, February 5, 2009, <http://www.hrw.org/en/news/2009/02/05/uzbekistan-abducted-refugee-trial>.

354. <http://www.hrw.org/en/news/2009/08/04/kyrgyzstan-asylum-seekers-feared-returned-abuse-uzbekistan>

355. FIDH interview with Tursun Islam, Chairman of the Uyghur human rights organisation “Democracy”, Bishkek, Kyrgyzstan, 20 June 2009.

356. See generally Minority Rights Group International and Human Rights in China, *China: Minority Exclusion, Marginalization and Rising Tensions*, 2007, <http://www.hrichina.org/public/PDFs/MRGHRIC.China.Report.pdf>; Human Rights Watch and Human Rights in China, *Devastating Blows: Religious Repression of Uighurs in Xinjiang*, April 11, 2005, <http://www.hrw.org/en/reports/2005/04/11/devastating-blows>.

357. Ibid.

358. See infra.

359. Information Office of the State Council of the People’s Republic of China, *Development and Progress in Xinjiang*, 21 September 2009, Section VII, available at <http://english.people.com.cn/90001/90776/90785/6763708.html>.

360. Ibid.

evils” to deflect criticism or scrutiny and justify additional repressive measures.³⁶¹ This refusal to address the Uyghurs’ grievances was in spite of the fact that in August 2009, following review of China by the UN Committee on the Elimination of Racial Discrimination, the Committee urged the government to “carefully consider the root causes of [the July] events, including inter-ethnic violence, and the reasons why the situation escalated.”³⁶²

China has an ally in both Kazakhstan and Kyrgyzstan concerning reaction to the July unrest. On July 10, 2009, in Beijing, the SCO Secretary-General issued a statement “in connection with events in Chinese city of Urumqi” that “the SCO member states consider the XUAR to be an inalienable part of the People’s Republic of China and believe whatever happens there is a solely internal affair of the PRC. . . . The SCO member states stand ready to further deepen practical cooperation in the field of fighting against terrorism, separatism, extremism and transnational organised crime for the sake of the regional security and stability.”³⁶³ According to a statement attributed to Kyrgyz Foreign Minister Kadyrbek Sarbaev, “The fight against the ‘East Turkestan’ forces has been ‘the top priority of the SCO since it was established, and we are confident that we will emerge the winner.’”³⁶⁴

III.3.B. Treatment of Uyghurs in Kazakhstan

Uyghurs face serious challenges should they seek refuge in Kazakhstan. Pursuant to its assertion that Kazakhstan “can’t enter into other countries’ internal affairs,”³⁶⁵ the Kazakh government does not grant individuals from China political asylum or refugee status.³⁶⁶ The UNHCR office in Almaty confirmed that Uyghurs remain the most sensitive group as far as the Kazakh government is concerned, and refugee status for Uyghurs is rejected by the government.³⁶⁷ The Kazakh Ombudsman as well noted in his report, “The most difficult situation is for Uyghurs from China, compared to refugees from the CIS, because most of them don’t even have temporary residence registration.”³⁶⁸

Uyghurs in Kazakhstan³⁶⁹ – asylum seekers as well as labour migrants and Kazakh citizens – experience discrimination against them, including on the grounds they are suspected of being ‘separatists’ or ‘terrorists.’³⁷⁰ As one independent expert with whom the mission met in Kazakhstan explained, “Now Uyghurs frighten everyone, like the Chechens in Russia. Everyone is concerned

361. For example, the XUAR Standing Committee passed the “Information Promotion Bill” in September 2009, banning people in the region from using the Internet to undermine national unity or incite ethnic separatism, and requiring establishment of information communications technology monitoring systems. See “Xinjiang authorities ban online separatist talk: state media,” Agence France Press, 27 September 2009, http://www.google.com/hostednews/afp/article/ALeqM5gTLP1delqZHXJr5F6EqfGwFfu_Q.

362. CERD, “Concluding observations of the Committee on the Elimination of Racial Discrimination: The People’s Republic of China,” U.N. Doc. CERD/C/CHN/CO/10-13, 28 August 2009, para. 17.

363. “SCO Secretary-General issues statement in connection with events in Chinese city of Urumqi,” 10 July 2009, <http://www.sectesco.org/EN/Yolder.asp>.

364. “The terrorist nature of ‘East Turkestan’ separatists,” *Xinhua News Agency*, 23 July 2009, http://www.chinadaily.com.cn/china/2009-07/23/content_8466072.htm.

365. FIDH interview with Habylsaiat Abyshev, Chairperson, Committee on Migration, 11 June 2009, Astana.

366. According to Denis Djivaga of the Kazakh Bureau for Human Rights, while this policy is unwritten, it is absolutely implemented in practice.

367. FIDH interview with UNHCR, Almaty, 15 June 2009.

368. Report of the Kazakh Ombudsman on rights of refugees and oralman, 2009 (“Uygury iz Kitaia nahodiatsa v samom khudshem polozenii, po sravneniu so mnogimi bezhnstami iz stran SNG, poskol’lu mnogie iz nih prebyvajut v Kazahstane dazhe bez vremennoi registratsii” *Doklad upolnomochennogo po pravam cheloveka v Respublike Kazakhstana o Sobljudenii prav bezehnstev I oralmanov v respublike Kazkhstan*, 2009, p. 24).

369. A 2007 Minority Rights Group International Report estimates the total population of Uyghurs in Kazakhstan as over 210,000. Minority Rights Group International, *World Directory of Minorities and Indigenous Peoples - Kazakhstan: Overview*, 2007, available at: <http://www.unhcr.org/refworld/docid/4954ce1323.html>. The World Uyghur Congress stated in 2007 that the actual number of Uyghurs in the country may be well over 250,000. Statement by Dolkun Isa, World Uyghur Congress, “Uyghur situation in Central Asia countries (In Kazakhstan, Kyrgyzstan and Uzbekistan),” OSCE Human Dimension Implementation Meeting, September 24 – October 5, 2007, www.osce.org/item/26522.html.

370. See, e.g., Statement by Dolkun Isa, World Uyghur Congress, “Uyghur situation in Central Asia countries (In Kazakhstan, Kyrgyzstan and Uzbekistan),” OSCE Human Dimension Implementation Meeting, September 24 – October 5, 2007, www.osce.org/item/26522.html; Evan Osnos, “Kazakhstan’s ethnic Uighurs feel pressure of petro-politics,” *Chicago Tribune*, December 19, 2006, <http://www.chicagotribune.com/news/specials/chi-china-oil-sidebar-story,0,5554957.story>.

about the ‘separatist threat.’ [Uyghurs] have been here for a long time with no problems, but now, they are finding some problems. . . . Kazakhstan has a policy of fearing people of Uyghur descent, saying they are dangerous to the people of Kazakhstan.”³⁷¹

The independent expert’s belief is that Uyghurs are in fact being targeted because of their political sensitivity in China: “It happens constantly that China asks the Kazakhstan government to look for Uyghurs and send them back. They say that Uyghur terrorism really exists; any day [a Uyghur in hiding] could be proclaimed a terrorist.”³⁷² He added that the situation is exacerbated by the SCO, noting that after its creation, there were more problems for refugees. According to him, “The Kazakh and Chinese governments are working together, and the SCO allows this cooperation among governments. The SCO was the idea of China and Russia, because they fear separatism, and the small countries of Central Asia follow the big countries. Each time there is an SCO meeting, the government creates problems with Uyghurs in Kazakhstan.”³⁷³ Additionally, he noted there is greater control of the border with China, and Uyghurs passing through the border are regularly subjected to humiliations.³⁷⁴

Not surprisingly, many Uyghurs from China in Kazakhstan are in hiding, relying on assistance from the local Uyghur community.³⁷⁵ While the government rejects refugee status for Uyghurs in the country, they can apply to the UNHCR for a refugee status determination with an ultimate goal of resettlement in a third country. The Kazakh government *may* allow them to stay in Kazakhstan temporarily if they are designated as a UNHCR asylum seeker or refugee, under UNHCR protection.³⁷⁶ The UNHCR in Almaty has had to intervene, however, in some cases where a UNHCR mandate refugee has risked extradition by the Kazakh government.³⁷⁷ Moreover, the independent expert noted there were 12 Uyghurs from China of whom he was personally aware in hiding from the police around Almaty, some of whom were unable to receive help from the UNHCR.³⁷⁸

Estimates of the total number of Uyghur asylum seekers in Kazakhstan vary, and the government has not issued a figure, as Uyghurs are not allowed into the channels of the official asylum process. The independent expert with whom the mission met in Kazakhstan placed the range at 100 to 1,000 individuals, while the Kazakh Bureau for Human Rights estimates the “official” number as 30 to 40. A 2003 UN document noted that the number of Uyghurs seeking asylum from the UNHCR “is not exhaustive as only about 30 U[y]ghurs have the courage to show up, whereas over 500 Chinese U[y]ghurs are believed to be in Almaty only, being helped by the Kazakhstani U[y]ghur community.”³⁷⁹

Uyghurs have fled to Kazakhstan from China in fear of retribution for activity such as participation in rights-related demonstrations, distributing materials regarding human rights violations in XUAR, voicing dissent, and joining political organizations.³⁸⁰ “Ibrahim,” a Uyghur asylum seeker in hiding who met with FIDH, fled to Kazakhstan from persecution in China after participating in 1997 in demonstrations in Gulja, XUAR.³⁸¹ These demonstrations, reportedly joined by thousands of Uyghurs, began in response to official repression of Uyghur culture and religion, including banning of *meshreps*, traditional Uyghur social gatherings.³⁸² Dozens of people were killed or injured, and hundreds of others detained, when Chinese security forcefully broke up the demonstrations.³⁸³

371. FIDH interview with independent expert, Almaty, 14 June 2009.

372. Ibid.; see also Evan Osnos, “Kazakhstan’s ethnic Uighurs feel pressure of petro-politics,” *Chicago Tribune*, December 19, 2006, <http://www.chicagotribune.com/news/specials/chi-china-oil-sidebar-story,0,5554957.story>.

373. FIDH interview with independent expert, Almaty, 14 June 2009.

374. Ibid.

375. FIDH interview with “Ibrahim,” a Uyghur in hiding in Kazakhstan, Almaty, 14 June 2009; FIDH interview with independent expert, Almaty, 14 June 2009.

376. FIDH interview with UNHCR, Almaty, 15 June 2009; FIDH interview with Ibrahim, Almaty, 14 June 2009.

377. FIDH interview with UNHCR, Almaty, 15 June 2009.

378. FIDH interview with independent expert, Almaty, 14 June 2009.

379. United Nations in Kazakhstan, “Refugees in Kazakhstan,” August 18, 2003, www.un.kz/img/docs/en/556.doc.

380. Case information obtained during FIDH interview with independent expert, Almaty, 14 June 2009.

381. FIDH interview with Ibrahim, Almaty, 14 June 2009.

382. See Amnesty International, “China: Remembering the victims of police brutality in Gulja, Xinjiang on 5-6 February 1997,” 4 February 2005, <http://www.amnesty.org/en/library/asset/ASA17/005/2005/en/dom-ASA170052005en.html>.

383. Ibid.

Ibrahim's first-hand account demonstrates the severity of official crackdowns and the long-term repercussions of any form of dissent in the XUAR.

"I came to Kazakhstan in 1997. I came because I was against the national policy of China. . . . In China, together with some others I was accused of throwing stones at policemen, so I had to escape. My friends were arrested but I had time to escape. My parents had friends on the border with Kyrgyzstan. I went to that village and illegally crossed the mountains into Kazakhstan. In the beginning I had no intention to escape to Kazakhstan. I had just wanted to wait until everything quieted down. . . .

"I took part in the protests in Gulja, but we didn't use any violence. I lived near Gulja, but the demonstration happened in the center of the city near the market. I was going there to buy fruits and clothes. I saw the group of people and decided to join in. People were chanting, 'Return our daughters and sons! Stop kidnapping! Stop drugs!' I joined in. . . .

"Gulja is a very small town, everyone knows everyone. So it would be easy for police to find out who I was. I knew they arrested someone that I saw protesting. Most of my friends who were arrested got one year of prison, but I'm not sure. I was able to contact people in China two years ago, but not now.

"If I went back, maybe they would put me in jail. If I didn't think so I would be back there. But anyway, I illegally crossed the border."³⁸⁴

Ibrahim's life in Kazakhstan has been difficult, and he worries that he could be accused of terrorism on fabricated grounds and returned to China.³⁸⁵ Protection from the UNHCR is limited, and Ibrahim expressed concern that it was not safe around the UN offices, as Chinese agents are rumored to monitor the complex in order to follow and kidnap asylum seekers.³⁸⁶ As he told FIDH:

"I was caught by the Kazakhstan police many times. In the past I was working at the market, now I do labour moving coil and shovelling. Regular policemen and migration policemen catch me, and I have to pay bribes to get out.

"I have asylum seeker status. I don't have refugee status. I can only use the UNHCR letter [asylum seeker certificate] one year, then I have to go back to the UNHCR to renew it. They can cancel it at any time. Before 2009, I was two years without status. But this year I received asylum seeker status again. . . . I lived without asylum seeker status for six years, but since I speak Russian I'm not suspicious. No one knows I'm from China. If they knew I was from China I would be fired from my job.

"When I'm picked up by the police I always tell them I forgot my documents at home, that I'm from the village. Sometimes I can get freed without bribes, but sometimes they ask for 5,000 to 6,000 tenge."³⁸⁷

True to its commitments per SCO and bilateral agreements, Kazakhstan has extradited Uyghurs in its territory back to China. The exact number of such extraditions is unknown. Kazakh National Security Agency Deputy Chairman Vladimir Bozhko stated in 2004 that Kazakhstan had extradited 14 Uyghurs to China and Kyrgyzstan between 1998 and 2004 for alleged involvement in the Eastern Turkestan Liberation Organization, which officials label a Uyghur separatist organization.³⁸⁸ Amnesty International reported in 2004 that the total number of Uyghurs returned to China in recent years may be as many as 20.³⁸⁹ Amnesty later reported that in 2006, three Uyghur men were returned to China.³⁹⁰ The independent expert with whom the mission spoke noted that between 1998 and the present, he knew of nine Uyghurs that were returned to China, of whom at least three were executed,

384. FIDH interview with Ibrahim, Almaty, 14 June 2009.

385. Ibid.

386. Ibid.

387. Ibid.

388. Unrepresented Nations and Peoples Organization, "Kazakhstan extradites Uyghurs to China," November 16, 2004, <http://www.unpo.org/content/view/1467/236/>.

389. Amnesty International, *People's Republic of China: Uyghurs fleeing persecution as China wages its "war on terror,"* (2004) <http://www.amnesty.org/en/library/asset/ASA17/021/2004/en/4ada86b9-d5cd-11dd-bb24-1fb85fe8fa05/asa170212004en.html>.

390. Kazakstan - Amnesty International Report 2007, <http://www.amnesty.org/en/region/kazakstan/report-2007>.

and the others' whereabouts unknown.³⁹¹ Extradition of these individuals to China, where they risk politicized application of criminal charges, torture, and the death penalty, is in clear violation of Kazakhstan's obligations under the ICCPR and CAT.

III.3.C. Treatment of Uyghurs in Kyrgyzstan

Uyghur asylum seekers in Kyrgyzstan experience the hostility that is also prevalent in Kazakhstan. FIDH interviews with Cholpon Djakupova, Director of Adilet Legal Clinic who specializes in refugee issues, and with Tursun Islam, the chairman of the Uyghur human rights organisation "Democracy," confirmed that Uyghurs from China are "virtual refugees" – everyone knows they are in Kyrgyzstan but they are never officially registered – in order to avoid compromising bilateral relations with China.³⁹²

Kyrgyzstan's prioritization of "anti-terrorism" efforts is also likely to have an ongoing impact on Uyghurs in the state, whose population numbers over 50,000.³⁹³ As Aigul Ryskulova of the State Committee on Migration and Employment explained to the mission: "We have to put a barrier up against terrorism and extremism. . . . People abroad think Kyrgyzstan is a country through which terrorism flows. This must end. We want to create a filter."³⁹⁴ According to Tursun Islam, border controls have indeed tightened: "It is very hard to go through the border between China and Kyrgyzstan. When Uyghur people leave China, they get bad treatment from the Chinese border militia. Uyghurs crossing the border are kept for several hours, tortured, and humiliated. Some are even asked about me. They are asked to collaborate with the police."³⁹⁵

Civil society in Kyrgyzstan is also increasingly under pressure by the government, and "Uyghurs are afraid to try and defend their rights."³⁹⁶ Particularly after the July 2009 unrest in Xinjiang, China has strongly asserted that Uyghur rights movements are led by separatists and terrorists, and must be reined in – not only within China but by the international community.³⁹⁷ Indeed, after protests in Kyrgyzstan concerning the Xinjiang unrest, two organizers of the Uyghur protest were detained by the police.³⁹⁸ Such actions, along with Kyrgyzstan's membership in the SCO,³⁹⁹ do not bode well for treatment of Uyghurs, whether they be citizens, labour migrants, or asylum seekers in Kyrgyzstan.

391. FIDH interview with an independent expert, Almaty, 14 June 2009.

392. FIDH interview with Cholpon Djakupova, Director of Adilet Legal Clinic, Bishkek, 18 June 2009; FIDH interview with Tursun Islam, the chairman of the Uyghur HR organisation "Democracy," Bishkek, 20 June 2009.

393. See Erica Marat, "Uyghur Diaspora Faces Government Pressure in Kyrgyzstan," *Eurasia Daily Monitor* Volume: 6 Issue: 156, August 13, 2009, available at [http://www.jamestown.org/single/?no_cache=1&tx_ttnews\[tt_news\]=35406&tx_ttnews\[backPid\]=7&cHash=6eaef36968](http://www.jamestown.org/single/?no_cache=1&tx_ttnews[tt_news]=35406&tx_ttnews[backPid]=7&cHash=6eaef36968); Statement by Dolkun Isa, World Uyghur Congress, "Uyghur situation in Central Asia countries (In Kazakhstan, Kyrgyzstan and Uzbekistan)," OSCE Human Dimension Implementation Meeting, September 24 – October 5, 2007, www.osce.org/item/26522.html.

394. FIDH interview, Bishkek, 19 June 2009.

395. FIDH interview with Tursun Islam, Bishkek, 20 June 2009; see also Amnesty International, *People's Republic of China: Uyghurs fleeing persecution as China wages its "war on terror,"* p. 28 (2004), <http://www.amnesty.org/en/library/asset/ASA17/021/2004/en/4ada86b9-d5cd-11dd-bb24-1fb85fe8fa05/asa170212004en.html>.

396. FIDH interview with Tursun Islam, Bishkek, 20 June 2009. "Even I am under pressure. I got two phone calls saying if I don't stop my activities I will be destroyed. It's not only me; other NGOs all find it hard to work. We're living in a 'democracy under threat.' . . . Recently when I went to demonstrate in front of the Chinese embassy about the treatment of the children of Rebiya Kadeer, I received a call from the general prosecutor to come in. I asked them to send an official invitation, which they did. They wanted to raise a criminal case against me. But because I am a lawyer and understood the procedures, I presented the permit I had to demonstrate, and they let me go. But they still want to punish me. . . . In July 2007 we held a peaceful meeting in front of the American embassy about the US air base [Manas], urging them to stay in Kyrgyzstan. The base has a big military, political meaning in Kyrgyzstan [as counterweight to Russian and other presence]. We met with the Americans but a half hour later, militia men came and started to beat us up. They beat my son badly. This was when I truly felt there is no longer any democracy."

397. See, e.g., "China protests over Uighur tour," *BBC*, 29 July 2009, <http://news.bbc.co.uk/2/hi/8173730.stm> (noting protests by China to the governments of Japan and Australia for their involvement with Uyghur rights activist Rebiya Kadeer).

398. "Kyrgyzstan Uyghur leaders detained after protest," *Radio Free Europe/Radio Liberty*, August 10, 2009, available at: <http://www.unhcr.org/refworld/docid/4a82b73b2f.html>.

399. FIDH interview with Tursun Islam, Bishkek, 20 June 2009 ("There is big pressure in Central Asia after the SCO was created. What China says, all the other countries execute.").

Given the hostility of the government towards Uyghur asylum seekers, their presence is kept low profile. According to Tursun Islam, “Those [Uyghurs] who are here for political reasons come to Kyrgyzstan secretly, stay in hiding, and when arrested have to pay big bribes.” One of their few viable options is to seek mandate refugee status and resettlement through the UNHCR, which does not report any cases of Uyghur asylum seekers.⁴⁰⁰ In light of these considerations, figures regarding the movement of Uyghur asylum seekers in the country are uncertain. Tursun Islam was aware of approximately 20-30 Uyghurs having come to Kyrgyzstan fleeing Chinese persecution, and that 12 such asylum seekers were resettled to third countries in 2004-2005.⁴⁰¹ Concerning individuals returned to China, he noted that in 2002 and 2004, Kyrgyzstan extradited a total of four Uyghurs to China, and their current status is unknown.⁴⁰² A 2004 Amnesty International report stated that in recent years, the total number of Uyghurs returned to China from Kyrgyzstan was approximately 50.⁴⁰³ Extradition of these individuals to China, where they risk politicized application of criminal charges, torture, and the death penalty, is in clear violation of Kyrgyzstan’s obligations under the ICCPR and CAT.

400. FIDH interview with Tursun Islam, Bishkek, 20 June 2009.

401. Ibid.

402. Ibid.

403. Amnesty International, *People’s Republic of China: Uighurs fleeing persecution as China wages its “war on terror,”* (2004) <http://www.amnesty.org/en/library/asset/ASA17/021/2004/en/4ada86b9-d5cd-11dd-bb24-1fb85fe8fa05/asa170212004en.html>.

IV. Summary and recommendations

Summary

Exploitation of migrant workers

As a strong regional economic power, due to its extensive reserves of oil and gas, Kazakhstan is a major destination country for migrant workers from throughout the region, the majority from neighbouring Uzbekistan, Kyrgyzstan, China and Tajikistan. Kyrgyzstan is principally a country of departure of economic migrants.

Current migration policy in Kazakhstan severely limits opportunities for legal employment and thus increases the vulnerability of migrants. The authorities have invoked the international economic crisis to justify slashing the quota for foreign migrant workers nearly in half, and there is an explicit policy of national preference in employment. Under the quota system, individual work permits are granted to employers, rather than migrants themselves, making migrants dependent on employers and unable to legalize their situation by themselves or to seek work elsewhere when they suffer abuse. Though both countries have a visa-free regime, migrants have to register with the migration police to live legally in the country, and permanent registration is a condition of access to social rights.

The legal framework is so complicated that it is nearly impossible to work legally; and while irregular migrants in Kazakhstan are generally estimated between 500 000 and one million, official quotas for 2009 are set at 65 000.

The FIDH mission documented numerous cases of violations of the rights of migrant workers in Kazakhstan, especially those working in the agriculture and construction industries. Migrants without regular status and without contracts are particularly vulnerable to exploitation: long working hours, lack of rest days, confiscation of passports, non-payment of salaries and sale of migrant workers from one employer to another. In both Kazakhstan and Kyrgyzstan, corruption within the police, customs, and border officials places migrants at constant risk of extortion and deportation. Such violations are generally committed with complete impunity.

While Kyrgyzstan has begun to take steps to strengthen the protection of its citizens abroad, insufficient efforts have been made to control informal recruitment agents (intermediaries) and to fight forced labour.

Major violations of the rights of refugees

In both countries, the FIDH mission found the situation of asylum seekers and refugees deeply concerning. The Kazakh and Kyrgyz authorities refuse to grant refugee status to Uzbek, Uyghur and Chechen asylum seekers. They justify this refusal on the basis of non-intervention in internal affairs of neighbouring countries and risks of economic retaliation by those countries should refugees be accepted.

Uzbeks, Uyghurs and Chechens can apply for refugee status through the Office of the UN High Commissioner on Refugees (UNHCR); such status, however, does not give them access to protection, economic benefits, or the right to work in Kazakhstan or Kyrgyzstan. Moreover, there have been several documented cases of forced return of refugees and asylum seekers back to Uzbekistan, China and Russia in violation of the principle of non-refoulement, which places an absolute prohibition on sending individuals back to countries where they are at risk of torture. FIDH is deeply concerned that refugees continue to be at risk of such decisions.

Authorities in both countries continue to cite their obligations under regional agreements on collaboration in the fight against terrorism or on judicial cooperation to justify extraditions (Minsk Convention on Legal Assistance and agreements concluded within the framework of the Shanghai Cooperation Organisation). According to numerous reports, security services from refugees' countries of origin operate within Kazakhstan and Kyrgyzstan, often with the permission of the authorities, to identify and track down refugees.

These refugees, fleeing persecution in their own countries, are in a situation of extreme vulnerability, dependent on the 'goodwill' of the authorities not to deport or extradite them. Many are permanently looking over their shoulders, in constant fear of being sent back home to the risk of torture or even execution.

Recommendations

On the basis of the preceding analysis of the situation of migrant workers, asylum seekers and refugees in Kazakhstan and Kyrgyzstan, FIDH makes the following recommendations:

On migrant workers

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
- Increase the flexibility of the quota system, including by enabling migrant workers to obtain work permits for longer periods (three to five years) with the subsequent possibility of permanent regularisation in the country; granting short-term permits for up to one month on a declaratory basis, without the need to obtain prior authorisations; and relaxing requirements for supporting documents for applications for the issue of work permits
- Reinforce the legal provisions requiring employers to conclude contracts with migrant workers and monitor their implementation
- 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
- Ensure that the instructions applied by the police and local administration integrate the provisions of national laws and international conventions ratified by Kazakhstan
- Establish training programmes on migrant rights for law enforcement agencies and administration
- Ensure that migrant workers have access to effective appeals against deportation and that detention and deportation of migrant workers are made in full compliance with Kazakhstan's human rights obligations
- Guarantee equal payment to regular migrant workers and Kazakh citizens
- Ensure effective access to health care and education for migrant workers and their families
- Ensure access to social benefits and pensions for migrant workers
- Disseminate information to migrant workers on their rights (through media campaigns, etc.) and establish centres for legal assistance to migrants
- 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
- Pay special attention to the situation and specific needs of women migrant workers and child migrants as particularly vulnerable groups

- Increase the transparency of the drafting process of new legislation on migration and ensure that civil society is effectively consulted
- Ratify the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- Ratify ILO Convention No. 97 of 1949 concerning Migration for Employment and the ILO Convention No. 143 of 1975 concerning Migrant Workers (Supplementary Provisions)

FIDH calls on the authorities of **Kyrgyzstan** to:

- Ensure the effective investigation, prosecution and punishment of employers and intermediaries responsible for violations of the rights of migrant workers and in particular, strengthen measures aimed at fighting against forced labour and human trafficking
- Provide increased access to consular assistance by extending consular representation
- Provide real incentives for migrant workers to find work through recruitment agencies that would be effectively controlled by the state
- Disseminate information to departing migrants on their rights and on the existing legal framework in countries of destination (training sessions, language courses and leaflets)
- Establish a system of government credit to help migrants finance their trips and avoid dependence on intermediaries
- Ratify the ILO Migrant Workers (Supplementary Provisions) Convention No. 143 of 1975
- Submit state report to the UN Committee on the Protection of Migrant Workers, in accordance with the obligation under Article 73 of the Convention (report overdue since 1 January 2005)
- Issue a standing invitation to all UN Special Procedures

FIDH calls on the authorities of **Kazakhstan and Kyrgyzstan** to:

- Increase efforts aimed at effectively fighting corruption at all levels of the justice system, within the police, customs and border guards
- Increase cooperation in the fight against forced labour and human trafficking
- 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
- Pursue cooperation at different levels (migration services, ombudsmen, parliaments) aimed at increasing the legal protection of migrant workers and solving administrative problems
- Abolish the system of *propiska* in order to give full effect to Article 12 of the International Covenant on Civil and Political Rights on the right to freedom of movement and choice of residence
- Respect in all cases the supremacy of international human rights law over regional agreements
- Include information on women migrant workers in the report to be submitted to the UN Committee on the Elimination of Discrimination against Women (CEDAW)
- Include information on migrant workers in reports to the UN Committee on Economic Social and Cultural Rights and Committee on the Elimination of Racial Discrimination
- Include information on the situation of migrant workers and steps taken to protect their rights in reports submitted to the Universal Periodic Review of the UN Human Rights Council
- Respect and promote within the regional frameworks human rights obligations and commitments
- Sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

FIDH calls on the Committee of Experts on the Application of Conventions and Recommendations of the **International Labour Organisation** to:

- Encourage the authorities of Kazakhstan to ratify ILO Convention No.97 and and the authorities of both Kazakhstan and Kyrgyzstan to ratify ILO Convention No.143
- Issue observations on Kazakhstan concerning restrictions to freedom of association for migrant workers under Conventions No.87 and No.98 and forced labour of irregular migrants under Conventions No.29 and No.105

On refugees

FIDH calls on the authorities of **Kazakhstan and Kyrgyzstan** to:

- Ensure the full respect of the principle of non-refoulement and the absolute prohibition on torture, in accordance with international customary law, international refugee law and the UN Convention against Torture of 1984, by refusing to deport or extradite individuals to countries where they face a risk of torture, cruel, inhuman or degrading treatment or the death penalty
- Ensure the possibility to claim asylum, the respect of rights to due and equal process, and effective protection for all asylum seekers, including those from Uzbekistan, China and Russia
- Ensure access for asylum seekers and refugees to translators and free legal advice
- Ensure the complete independence of the body in charge of granting asylum
- Ensure the confidentiality of information concerning asylum seekers and refugees
- Ensure that refugees, including UN mandate refugees, have access to an adequate standard of living including access to health services and adequate housing and the right to work in accordance with the UN Convention on Refugees of 1951
- Refrain from any action of threat, violence, harassment or intimidation against asylum seekers
- Respect in all cases the superiority of international human rights law over regional agreements
- Ensure that those in charge of implementing laws and regulations on refugees and asylum seekers have adequate training and sufficient information from independent sources to make their decisions
- Include information on the situation of asylum seekers and refugees and steps taken to protect their rights in reports submitted to the Universal Periodic Review of the UN Human Rights Council

FIDH calls on the authorities of **Kazakhstan** to:

- Ensure that the provisions of the forthcoming law on refugees fully conform to international law, and in particular to:
 - ensure that applications for asylum are dealt with by an independent body;
 - amend the provisions requiring refugee status to be renewed on a yearly basis;
 - delete the provision that refuses asylum status to members of religious organisations that are prohibited in their country of origin; and
 - strengthen the prohibition on refoulement
- Ensure that asylum seekers can remain in Kazakhstan pending outcome of appeals of decisions concerning refugee status
- Abolish the distinction between political asylum and refugees which is contrary to international law
- Recognize the UNHCR “refugee card” as an official document and ensure the respect of the corresponding rights

FIDH calls on the authorities of **Kyrgyzstan** to:

- Abolish the requirement that applicants for refugee status must have entered the territory legally
- Adopt a legislative framework regulating expulsion, refoulement and extradition in accordance with the principle of non-refoulement and Article 3 of the Convention against Torture

FIDH calls on the **UNHCR** to:

- Actively engage in the drafting process of the new law on refugees in Kazakhstan to ensure that it fully conforms to international standards and Conventions ratified by Kazakhstan

General

FIDH calls on the UN **Special rapporteur on migrants' rights** to:

- Make a country visit to Kazakhstan and request a country visit to Kyrgyzstan

FIDH calls on the **European Union** to:

- Establish clear benchmarks and time-frames for implementing concrete commitments in the framework of the bilateral human rights dialogues
- Reach joint public conclusions and commitments that could be monitored and would allow regular assessment of the impact of the dialogues
- Systematically integrate the questions of the human rights of migrants, asylum seekers and refugees into such dialogues
- Ensure that the objective of effective realisation of human rights is not isolated in human rights dialogues but horizontally mainstreamed in all negotiations and policies and politically backed up at all levels of discussion (including on trade, within UN bodies, etc.)
- Make demarches, where relevant, based on the EU Guidelines on Torture, the Death Penalty and Violence and Discrimination against Women
- Call for greater transparency and accountability in the exchange of information and cooperation by law enforcement bodies within regional frameworks, in particular with relation to “anti-terrorism” efforts
- Generally ensure the respect of international human rights law and international refugee law in EU migration and asylum policy, which is often cited as a model by the authorities of Kazakhstan and Kyrgyzstan

FIDH calls on **EU Member States** to:

- Expedite resettlement of UN mandate refugees in order to reduce the risk of human rights abuses
- Ratify the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

FIDH calls on the Office for Democratic Institutions and Human Rights (ODHIR) of the **Organisation for Security and Cooperation in Europe** (OSCE) to:

- Closely monitor the situation of migrant workers and refugees in Kazakhstan and Kyrgyzstan, in the framework of its human rights mandate

FIDH calls on the Parliamentary Assembly of the OSCE to:

- Follow up on the concerns raised in this report and call on the Governments of Kazakhstan and Kyrgyzstan to take the relevant legislative and other initiatives in implementation of FIDH's recommendations.

Annex 1

List of persons met by the mission

Kazakhstan

- National authorities

Ombudsman's Office, Vyacheslav Kalyuzhnyy, Head of National Centre on Human Rights

Committee on Migration, Habylsaia Abyshev, Chairman

Ministry of Labour, Assel Nussupova, Vice Minister and Amandjur Nurseitov, Director of Employment and Migration Department

- International organisations

IOM Liaison Office, Pawel Szalus, Liaison/ Programme Officer

UNHCR, Cesar Dubon, Head, Damelia Aikhozhina, Assistant Protection Officer and Narashima Rao, Senior Regional Legal Advisor

- NGOs

Kazakhstan International Bureau for Human Rights and the Rule of Law, Headquarters, Almaty, Yevgeniy Zhovtis, Director and Denis Jivaga, Coordinator of the UNHCR project, lawyer

Kazakhstan International Bureau for Human Rights and the Rule of Law, Astana Branch, Anara Ibrayeva, Branch Director

Kazakhstan International Bureau for Human Rights and the Rule of Law, Chymkent Branch, Tatiana Kissilieva, Branch Director, Nikolai Taraka, Lawyer

“Adilet” NGO, Chymkent, Adil Seitkaziev

Legal Center of Women's Initiatives “Sana Syzim”, Chymkent, Khadicha Abysheva, Director

An independent expert on the rights of minorities, Almaty

- Migrant workers, refugees and asylum seekers

Kyrgyzstan

- National authorities

Ombudsman, Tursunbek Akun, Representative of the Migration Service of the Ombudsman, Representative of the International Committee within the Ombudsman's office

Ministry of Internal Affairs, Head of the Department of Passport and Visa Control

State Committee on Migration and Employment, Aigul Ryskulova, Chairwoman

Deputy General Prosecutor, Sumar Nasiza

Vice-Speaker of Parliament, Kubanychbek Isabekov

State Committee on Migration and Employment, Aigul Rysulkova, Chairwoman

- International organisations

UNHCR, Hans Friedrich Schodder, Representative

- NGOs

Human Rights Center “Citizens Against Corruption”, Tolekan Ismailova, Director

“Adilet” Legal Clinic, Cholpon Djakupova, Director

Kyrgyz Committee for Human Rights, Ramazan Dyrlydaev, Chairman

Human Rights Organisation “Democracy”, Tursun Islam, Chairman

NGO Open Viewpoint Public Foundation, Dmitri Kabak, President

Annex 2

Table of Ratifications

	Kazakhstan	Kyrgyzstan
Convention relating to the Status of Refugees, 1951	15 Jan 1999	8 Oct 1996
International Covenant on Civil and Political Rights, 1966	24 Jan 2006	7 Oct 1994
International Covenant on Economic, Social and Cultural Rights, 1966	24 Jan 2006	7 Oct 1994
International Convention on the Elimination of All Forms of Racial Discrimination, 1966	26 Aug 1998	5 Sept 1997
Protocol relating to the Status of Refugees, 1967	15 Jan 1999	8 Oct 1996
Convention on the Elimination of All Forms of Discrimination against Women, 1979	26 Aug 1998	10 Feb 1997
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984	26 Aug 1998	5 Sept 1997
Convention on the Rights of the Child, 1989	12 Aug 1994	7 Oct 1994
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990	Not ratified	29 Sept 2003
International Convention for the Protection of All Persons from Enforced Disappearance, 2006	27 Feb 2009	Not ratified
Rome Statute of the International Criminal Court, 1998	Not ratified	Not ratified
ILO Convention No.97 of 1949 concerning Migration for Employment	Not ratified	10 Sept 2008
ILO Convention No. 143 of 1975 concerning Migrant Workers (Supplementary Provisions)	Not ratified	Not ratified
Optional Protocol to the International Covenant on Civil and Political Rights, 1966	30 Jun 2009	7 Oct 1994
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002	22 Oct 2008	29 Dec 2008
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999	24 Aug 2001	22 Jul 2002
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict 2000	10 Apr 2003	Not ratified
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2000	Not ratified	12 Feb 2003
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989	Not ratified	Not ratified

FIDH represents **155** human rights organisations on **5** continents

Keep your eyes open

Establishing the facts

investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

Supporting civil society

training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

Mobilising the international community

permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

Informing and reporting

mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

FIDH - International Federation for Human Rights

17, passage de la Main-d'Or - 75011 Paris - France
CCP Paris: 76 76 Z
Tel: (33-1) 43 55 25 18 / Fax: (33-1) 43 55 18 80
www.fidh.org

Directrice de la publication: Souhayr Belhassen
Rédacteur en chef: Antoine Bernard
Auteurs: Amandine Regamey, Sarah McKune and Katherine Booth
Coordination: Alexandra Koulaeva
Design: Céline Ballereau-Tetu

FIDH represents **155** human rights organisations on **5** continents



of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary

ABOUT FIDH

- FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

- A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

- A universal movement

FIDH was established in 1922, and today unites 155 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

- An independent organisation

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

fidh

International Federation for Human Rights

Find information concerning FIDH 155 member organisations on www.fidh.org