

fidh

International Federation for Human Rights

FIDH REGIONAL SEMINAR

**International Migration:
Migrant workers, asylum seekers
and refugees in Eastern Europe,
Central Asia and the South Caucasus**

Almaty, Kazakhstan, 28-30 November 2009

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



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I. Introduction

The promotion and protection of migrants' rights was selected as a priority theme for FIDH at its Congress held in Lisbon in April 2007. As a result several missions have been conducted and reports published examining the situation of migrants in Eastern Europe and Central Asia¹. In late November 2009, FIDH organised a regional seminar bringing together its member and partner organisations, as well as some key international actors, to discuss problems and strategies related to the protection of refugees and migrant workers. The main conclusions of this seminar are presented below. A summary of the programme of the seminar and a number of additional documents are included in the Appendices.

1. See in particular: FIDH / Civic Assistance, « Migrations en Russie. Populations fragilisées, premières victimes des crises politiques externes et internes », May 2007, available in French and Russian (<http://www.fidh.org/Migrations-en-Russie-Populations-fragilisees>), Civic Assistance / FIDH « Migrant Workers in the Russian Federation : The Use of Forced Labour », Joint alternative report to the Committee on the Elimination of Racial Discrimination (CERD), June 2008, as well as the FIDH report « Kazakhstan / Kirghizistan, exploitation of migrant workers, protection denied to asylum seekers », October 2009 (<http://www.fidh.org/IMG/pdf/Kazakhstan530a.pdf>) launched at a press conference which took place in Almaty following the seminar.

II. Supporting refugees and asylum seekers in the CIS

Highly restrictive national asylum procedures

While some countries of the former USSR have no legislation on refugees and asylum seekers (in particular Uzbekistan²), in others legislation exists (Tajikistan, Russia, Belarus and Kyrgyzstan), while others apply *ad hoc* procedures (Kazakhstan, for example, where a law was in the course of adoption at the time of the seminar). Problems arise from the fact that legislation does not always respect the 1951 Convention relating to the Status of Refugees, and that “the law is one thing, practice is another”.

In most cases, the authorities are willing to consider applications for asylum only if there is no political issue at stake. This explains the refusal of the Kyrgyz and Kazakh authorities to consider applications submitted by Uzbeks - the situation being particularly sensitive since the 2005 Andijan massacre³. The problem is the same for Chechens and Uighurs from China. Thus, in Central Asia, the majority of registered asylum seekers are Afghans.

There are also a number of restrictive legislative provisions justifying the rejection of applications for refugee status, in violation of the 1951 Convention:

- Some countries require asylum seekers to have entered or to reside legally in the country in order to have access to asylum procedures. In Russia, it is possible to deny asylum to a person who crossed the border illegally. In Belarus, a person who arrived with fake documents, who destroyed his/her documents, or who has been arrested in an irregular situation on Belarus territory, cannot submit an application for asylum. In Kyrgyzstan, an amendment to the 2006 Refugee Law states that foreigners entered Kyrgyzstan legally can be considered refugees (прибывающих на территорию Кыргызской Республики на законном основании). Since 2008, this provision has been used to restrict access to asylum procedures.
- In Russia, it is possible to deny asylum if: the person has been convicted of a crime in Russian territory (and not only of a “serious crime”, as required by the 1951 Convention); the person comes from a country where he/she could have been granted refugee status; the person is married to a Russian citizen; or if the person has a residence permit (*vid na zhitelstvo*) in Russia. In Tajikistan, asylum seekers suspected of belonging to the special services or to mafia structures in their countries of origin have no access to asylum procedures (under the 1951 Convention they cannot claim refugee status, however, examination of their case should not be blocked on the grounds of mere suspicion). In Belarus, preliminary examination of an asylum application may be stopped if the applicant does not attend a medical examination or provide fingerprints within three days of making an application.
- In addition, in several states of the region (eg. Belarus, Russia), there is a list of safe third countries whose nationals are not eligible for asylum. In Tajikistan, the list of safe third countries includes Afghanistan.

2. In Uzbekistan, asylum seekers are considered as other ‘foreigners’ and face deportation if they are in an irregular situation. The Office of the United Nations High Commissioner for Refugees (UNHCR) comes up against total silence on the part of the authorities on this issue and has no presence in this country since 2006 when its mission (to assist Afghan refugees) was officially closed.

3. Repression of a demonstration by police in this town in the Ferghana valley in May 2005 caused hundreds of deaths and provoked a departure of asylum seekers who fled to Kyrgyzstan where many were taken in by the UNHCR.

- The Kazakh draft law on refugees provides that persons suspected of terrorism, extremism or belonging to a banned religious organisation in their country of origin can be denied asylum. A similar provision is under examination in Russia. This is a direct consequence of the Shanghai Cooperation Organisation (SCO)[□] agreements.

Refugees may also lose their refugee status: in Kazakhstan, for example, refugee status is considered as temporary and must be renewed every year.

In Russia, a number of Afghan asylum seekers are denied refugee status on the basis of minor inconsistencies in their accounts, or on the pretext that the Office of the United Nations High Commissioner for Refugees (UNHCR) “advises Afghans to return back home”.

A process under strict political control

In addition, bodies responsible for granting asylum tend to lack independence (and sometimes the material capacity necessary to deal with such questions). In Belarus, decisions on asylum are directly in the hands of the President. In Tajikistan, the issue of refugees has recently been transferred from the competence of the Labour Ministry to the Interior Ministry, without any resources being provided (lack of buildings, computers, and staff).

Of most concern is the tendency for members of special services to participate in the commissions responsible for granting asylum. This is the case in Tajikistan but also in Kazakhstan, as NGOs have been able to observe since they have recently been granted the possibility of being members of these ad hoc asylum commissions.

Rejection of asylum applications and obstacles to appeal

Throughout the region, the rate of acceptance of asylum applications remains generally very low. Indeed, in 2009 in Kyrgyzstan, only 4 people (3 Afghans and one Korean) had their applications granted, approximately 1% of all asylum applications submitted (source: *Adilet Legal Clinic*). While theoretically, these decisions can be challenged, asylum seekers face problems in accessing justice that go beyond problems inherent in the justice system of each country (lack of independence and/ or corruption).

In Kazakhstan, asylum seekers are considered as temporary residents (*vremeno prebyvajushie*) and thus have no possibility to go to court. Problems also arise when they have no passport or when it has expired. The reluctance of asylum seekers to go to court was highlighted by most participants in the seminar. Some expressed regret that the UNHCR is sometimes hesitant to challenge governments and to help those whose applications have been rejected.

Problems concerning deportation and extradition

Fighting deportation and extradition is an important part of NGOs’ strategies and activities. In Russia, NGOs can use the European Court of Human Rights (ECHR) to challenge decisions of national courts or decisions of the public prosecutor (*prokuratura*). In Central Asian countries, the only international recourse mechanisms are those of the United Nations.

NGOs consider that they can prevent only a small proportion of extraditions, especially since they do not always have knowledge of pending extraditions. Indeed, in Russia, names of people at risk of being expelled are no longer revealed by the press, which prevents NGOs from applying to the ECHR. ECHR decisions are not considered binding by the courts or by the Russian migration service, similarly, decisions of the United Nations Special Rapporteurs are largely ignored, both in Russia and in Central Asian countries.

Illegal extradition is of particular concern; even when the *prokuratura* refuses extradition, it is always possible for the authorities to implement administrative expulsion (*administrativno vydvorenie*) or simply to have the person removed or not to prevent it (similar problems in Russia, Kazakhstan and Kyrgyzstan).

Further problems concern the poor conditions in detention facilities (*tšentry vydvorenia primeniki-raspredeliteli*) for those awaiting deportation. In some Russian centres, detention conditions can be described as inhuman (lack of exercise, arbitrary refusal to allow meetings with family members, inedible food etc.).

States' obligations versus the role of the UNHCR

The discussion focused on a difficult strategic question: should we focus on national asylum procedures and require states to perform their obligations, or, should we accept that the UNHCR replaces states in some cases?

Indeed, when states (for example, Kazakhstan and Kyrgyzstan) refuse to examine asylum applications from nationals of certain countries (Uzbekistan, China and Russia), asylum seekers turn to the UNHCR. The UNHCR examines their applications and starts the procedure for recognition of refugee status before, in some cases, looking for a third country which will agree to resettle them. Thus, it could be considered that the UNHCR allows states to violate their international obligations under the 1951 Convention. At the same time, and this is the paradox, such refugees thereby often receive more effective protection, since such procedures bypass the shortcomings of national laws and procedures, such as the presence (formal or informal) of members of special services within commissions responsible for granting asylum (see above).

In Russia, the requirement that asylum applications go exclusively through the national system instead of the UNHCR has caused increased violations of refugees' rights. With the adoption of the new law on refugees, the problem may also arise in Kazakhstan, where it is feared that national commissions will not make the effort to corroborate cases – as the UNHCR does - with independent sources of information.

Under national procedures, it likely to become increasingly difficult to prevent extraditions and deportations due to lack of information. This is already happening in Russia and could extend to Kazakhstan, although for the last few years cooperation with the *prokuratura* has enabled a genuine exchange of information.

Participants emphasized the sensitivity of the situation. On the one hand, the current procedure, by which the UNHCR to a certain extent replaces states, provides protection to asylum seekers and refugees. On the other hand, when the UNHCR concludes “gentlemen agreements” with states and when the international community accepts that states do not fulfill their legal obligations, the status of these international obligations is weakened, and we thereby risk weakening the protection provided by law as a whole.

Other problems faced by refugees

Other problems faced by refugees were discussed, including:

- Social and economic problems. In Tajikistan, refugees (mainly Afghans) cannot settle in the capital and only have the right to settle in certain small towns which do not have the necessary infrastructure or employment opportunities.
- The problem of xenophobic attacks in Russia, and the reluctance of foreigners to go to the police in case of attack, for fear of being accused of residing illegally in Russia.

Confidentiality – a key element in work with refugees

Problems of confidentiality and information leakage were underlined by all participants. Face to face meetings should be favoured. Email and telephone (including private) should be avoided and attention should be given to the risks of telephone tapping of NGO offices. These security measures must be explained to the refugees themselves.

A national and international policy framework that complicates NGO action

All participants noted that support provided by and activities of human rights NGOs are essential for asylum seekers to make claims for refugee status, to challenge decisions in court and to provide some protection against deportation. In this regard, many human rights defenders present were concerned about the deterioration of their conditions of work.

The negative consequences of the pragmatic policy of the European Union (EU) and the United States (US) in the region were also felt. According to some participants, the US is concerned mostly by its military presence and the EU by transportation, oil and gas. They merely pay lip-service to the issue of human rights. They thus give countries in the region an example of double standards – a bad example that countries in the region are quick to mention when they are criticised for failure to respect their international obligations.

III. Protecting migrant workers' rights in the CIS

International instruments: the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention) was adopted on 18 December 1990. It is considered one of the nine core United Nations human rights conventions, yet to date it has been ratified by only 42 states.

Whilst it remains the case that the majority of states parties are countries of departure of migrant workers, in recent years an increasing number of states that are also countries of destination and transit have ratified (including Argentina, Egypt, Morocco, and Senegal).

No European Union Member State has yet ratified this Convention. In the CIS, it has been ratified by only three countries: Tajikistan, Kyrgyzstan and Azerbaijan.

The Migrant Workers Convention is particularly important as it clarifies the application of certain rights contained in the Universal Declaration of Human Rights, as well as in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, to a particularly vulnerable group. The Convention sets out the obligations of destination countries as well as countries of origin or transit towards migrant workers.

The Convention is divided into two main sections. The first section (part III) sets out the human rights of all migrant workers. These are fundamental rights such as the protection against torture, freedom of religion, access to justice, access to emergency health-care, the right to education for their children, the right to join trade unions etc. The second section (part IV) sets out the rights of migrant workers who are documented or in a regular situation, to equality of treatment with nationals concerning, in particular: access to education and vocational training; access to housing; access to social and health services. This section also contains provisions concerning family unity and tax liability, as well as the right to form trade unions.

Thus, the Convention sets out the foundations for the development of any migration policy.

Faced with the reluctance of states to ratify the Convention, the Steering Committee of the Global Campaign for Ratification of the Convention on Migrant Workers has published a guide to NGOs on advocating for ratification, which FIDH translated into Russian for this seminar. In addition to providing an overview of the Convention itself, this guide sets out the various arguments made by States to justify not ratifying the convention and develops key counter-arguments.

One of the arguments invoked by states in the CIS for not ratifying the Convention is the existence of a regional instrument, the new CIS Convention on migrant workers. However, this instrument ensures a level of protection far lower than that of the international convention and only applies to migrant workers in a regular situation. Its existence in no way diminishes the need for states in the region to ratify the international instrument.

International instruments: International Labour Organisation conventions

The two key International Labour Organisation (ILO) conventions concerning migrant workers' rights are Convention no. 97 on Migrant Workers of 1949 (ratified in the region by Armenia, Kyrgyzstan, Moldova and Tajikistan) and the ILO Convention no. 143 on Migrant Workers (Supplementary Provisions) Act 1975 (ratified by Armenia and Tajikistan).

ILO Convention no. 97 sets out the principle of equal treatment between regular migrant workers

and nationals, in particular concerning: recruitment procedures, living and working condition, access to justice, tax and social security. It also specifies the rights of migrants in relation to contract conditions, access to training, and family reunification etc.

ILO Convention no. 143 is complementary to Convention no. 97. It develops specific guidelines for the management of irregular migration and integration of migrants into the host society. Article 1 establishes the obligation of States to “respect the basic human rights of all migrant workers”, regardless of their legal status in their country of arrival.

In addition, the 9 fundamental ILO conventions are particularly relevant to the protection of migrant workers:

On Freedom of Association – Convention no. 87 on Freedom of Association and Protection of the Right to Organise of 1948 and Convention no. 98 on the right to Organise and Collective Bargaining, 1949.

On Forced Labour – Convention no. 29 on Forced Labour 1930; and Convention no. 105 on Abolition of Forced Labour of 1957.

On Equality – Convention no. 100 on Equal Remuneration of 1951; and Convention no. 111 on Discrimination (employment and occupation) of 1958.

On the Elimination of Child Labour – Convention no.138 on Minimum Age, 1973; and Convention no. 182 on the Elimination of the Worst Forms of Child labour, 1999.

ILO organs supervise the implementation of all the instruments of the organisation. Although they have issued recommendations to several states in the region, sanctions have only been issued towards Belarus.

How many migrants in the CIS?

The difficulty of estimating the number of migrants in the CIS was illustrated by the example of Tajikistan. Migrant workers leaving Tajikistan are estimated at 540,000 by the State Migration Service and at 1,000,000 by the ILO, making up between 24% and 46% of the working population. It is estimated that 92% go to Russia and 6% to Kazakhstan.

The way in which these statistics are calculated is problematic. For example, Tajikistan has recently introduced a system of “migration cards” (*migratsionnye karty*) for migrants to complete when they leave the country. However, this does not guarantee reliable statistics since, for example, when a person leaves the country 5 times, 5 departures are recorded. Estimates are made even more difficult as it is not mandatory to fill this card. Finally, these statistics take account of all arrivals and departures, not only migrant workers.

Legislation in destination countries that makes migrants vulnerable – discussions on proposed reforms

In the two main destination countries in the region, Russia and Kazakhstan, the restrictive legislative framework and administrative requirements make migrant workers vulnerable and force them to work illegally. In addition, the number of migrants in employment is limited by quotas. Consequently, in both countries, the number of irregular migrants is much higher than the number of regular migrants.

In Russia, registration was made easier under a law adopted in 2006, but migrants still have to find someone to “invite” them in order to reside legally in Russia. Moreover, the migration services often impose additional conditions, which are not required by law. The *Migration and Law Fund of Tajikistan* thus recommends increasing the time allowed for migrants to register (*vstats’ na migratsionny utchet*).

In addition, since the beginning of 2009, migrants cannot obtain a one year work permit unless they have an employer - this restriction, in addition to lower quotas, is officially justified by the crisis.

The quota issue also poses problems in Kazakhstan where “licenses” are issued to companies allowing them to employ migrant workers and work permits for migrant workers are only issued to their employers, trapping them in a situation of vulnerability to abuse and exploitation.

Participants in the seminar discussed the question of quotas and whether to advocate their abolition. For some, quotas limiting the number of migrant workers have a negative effect, make migrants vulnerable and create discrimination. Even if one takes the perspective of the state and the desire to protect national workers, quotas are counter-productive: they contribute to irregular immigration. Moreover, undocumented migrants who are paid miserable salaries constitute a kind of “unfair competition” on the job market⁴.

For other participants, quotas are inherent in any migration policy, which necessarily involves limitations and a selection of migrants, as operates in the United States for example. The abolition of quotas would be too drastic a measure, rather efforts should focus on improving the situation of migrants within the existing framework.

Violations of migrants’ rights by employers and means of action for NGOs

Violations of migrants’ rights are also a consequence of employers’ practices. In Russia, even when migrants obtain work permits from the FMS (migration service), the majority of employers do not sign work contracts. In Kazakhstan, migrants are even more dependent on employers, as the latter alone hold work permits.

The most frequent violations of migrants’ rights by employers include practices such as illegal confiscation of passports, violence, forced labor and non-payment of wages.

The experiences of NGOs working with refugees is not necessarily transferable to work with migrant workers, to the extent that violations of the rights of migrant workers are connected to economic and political interests. Entire sectors of the Russian economy, for example, are based on illegal work, partially paid or even unpaid, and the political authorities condone this situation.

A recurring problem for NGOs is to help migrants to recover wages that have not been paid. Problems of unpaid wages are exacerbated by the fact that most migrants do not have a work contract. In addition, NGOs may have difficulties obtaining information from migrants themselves on their place of work (name of director, company name, and specific location etc.). The *Migration and Law Fund of Tajikistan* notes that more than 50% of wages are not recovered.

Difficulties also arise from the fact that the majority of migrant workers themselves are prepared to work illegally (numbers in other parts of the world reach 80%).

Police, arrest and deportation

If arrested by police in Kazakhstan or Russia, migrants can be sent back to their country and banned from returning for 5 years. This threat is often used by employers to ensure the docility of migrants they employ. Employers may even report undocumented migrant workers to the police in order to avoid paying wages.

In Shymkent (Kazakhstan), the NGO Sana Sezim has worked with the police for several years. It has attended raids against undocumented migrant workers, accompanying the public prosecution and the immigration police. This allows them to monitor the conduct of the police

4. In the 2005 Astana Declaration, member states of the Shanghai Cooperation Organisation (SCO) agreed to deny asylum to individuals suspected of terrorism, separatism or extremism.

and to disseminate information to migrants about their rights. The NGO warns the police when it hears about cases of forced labor or illegal conduct by employers. The NGO also participates in police raids against employers employing undocumented migrant workers, which enables it to provide direct assistance to exploited migrants. It makes a fairly positive assessment of what has been achieved after a long process to ensure that the police take into account the relevant laws and migrants' rights.

According to many participants, problems of corruption within the police and violence remain widespread.

Consequences of the economic crisis

The economic and financial crisis affecting countries of the CIS had an impact on migrants. Firstly, because it justified a significant reduction of quotas in several countries of the region (for example, quotas were halved in Russia and Kazakhstan), on the basis of a policy of national preference for employment. In Russia, the authorities, the police and the media fueled perceptions that migrants who lost their jobs would commit theft and assault in order to survive, spreading fear of migrants and the image of migrants as criminals.

The crisis has also resulted in fewer jobs, lower salaries, reductions in remittances; many potential migrants postponed or canceled their departure. Others were blocked in their host country and have been unable to return home due to lack of money and assistance from their state of origin. However, it may be asked whether this phenomenon is overestimated: it should be noted that in many Western countries, migrants have not sought to return home, since the crisis has had a greater impact in their country of origin.

Necessary control of "intermediaries"

Although recruitment agencies have been set up in many departure countries, the large majority of migrants go through private intermediaries. In many cases, these intermediaries are migrants originating from the same country/ region who have networks in the country of destination. Facilitating the migration process, they are useful to both companies (offering a flexible workforce) and their compatriots whom they support in seeking employment. However, this role gives them the opportunity to exploit migrant workers (taking a percentage of their salaries that is sometimes significant, confiscating passports, selling them to employers etc...). It is absolutely necessary to regulate their activities by law and to ensure that they are monitored not only by the state but also by civil society and/ or trade unions.

In this regard, the *Moscow Trade Union of Migrant Workers* reports that it has created a subsidiary, functioning on a commercial basis, that plays the role of a recruitment agency. Its services are paid for by employers, whose applications are registered if considered to be trustworthy, and are free for migrants.

Xenophobia

The portrayal of the risk of growing numbers of "migrant criminals" since the economic crisis is only one aspect of the xenophobic discourse that can be found in Russian newspapers and politicians' statements. Migrants are also reported as being responsible for the spread of infectious diseases, depicted as exploiters filling the job market etc. A "vicious circle of xenophobia" can be observed: repressive laws against migrants presenting them as a problem, feeding popular xenophobia, which is then used to adopt even more repressive laws. Migrants have also been victims of extreme violence perpetrated by skinhead or neo-Nazi groups.

In this regard, participants in the seminar underlined the important role of NGOs in the fight against xenophobia, to challenge misleading figures on the implication of migrants in crime, and to contribute to changing the image of migrants as second class citizens.

Obstacles to access to social rights for migrant workers

The very difficult living conditions of a large proportion of migrants prevent them from bringing

their families to join them, and thus undermine their right to family life.

Migrants also face significant difficulties in accessing health services other than emergency care. Those health facilities to which they do have access are often too expensive. In Moscow, a programme has been set up by *Medecins du Monde*, in collaboration with the *Migration and Law Fund of Tajikistan* and the *Moscow Trade Union of Migrant Workers*.

The question of assistance to migrants in cases of job loss, accident or death was also raised. A mutual assistance fund has been established in Moscow under the supervision of the *Migration and Law Fund of Tajikistan*. It is intended to cover, in particular, costs associated with deaths (the cost of repatriation of bodies is covered by the state).

Difficulties establishing contact and building trust with migrants in countries of destination

All participants emphasised how difficult it is to build relationships of trust and even to make contact with migrants, who are often very isolated and suspicious. Various means are used by NGOs such as distribution of business cards and leaflets informing them of the existence of a help centre, establishment of a hotline, publication of a newspaper, etc. Certain places such as centres, community services and shops offer easier access to migrant workers than, for example, construction sites. In many cases migrants turn to representatives of the diaspora, and to migrants who have “succeeded”, for help rather than contacting Russian human rights organisations.

In addition to a lack of trust of migrant workers towards NGOs, NGOs sometimes lack confidence in other organisations that claim to be helping migrants, which they suspect of exploiting them. Thus, lasting links between NGOs and exchange of information on partners are very important.

Working in countries of departure

According to the IOM, the vulnerability of migrants is a consequence of their lack of knowledge of the relevant legislation and their rights in the host country. Very often, migrants leave their country of origin without any information. They rely on networks and contacts of their families or neighbours and are unaware of legal requirements relating to registration or work permits. Those with few qualifications or little knowledge of Russian are particularly vulnerable.

To contribute to addressing these problems, information campaigns and vocational training programmes have been established in departure countries by the IOM and the OSCE, in collaboration with local implementing partners: language classes, short-term professional training, conversation guides, leaflets, involvement of local media in information campaign, television clips etc.

Some participants expressed skepticism concerning these leaflets (often not updated and/ or not consulted). The experience of a resource centre in Tajikistan demonstrates that migrants themselves are not interested in information on existing laws; they tend to seek advice from other migrants who have ‘succeeded’.

Finally, activities in departure countries raise two important questions:

- The problem of those that remain in the country, migrants’ families, in particular wives. The IOM is concerned by cases of women left behind in villages in Tajikistan who find themselves in situations of extreme poverty. Indeed, migrants tend to send money back to their parents who are in charge of distributing it.
- Another problem (on which the OSCE is working in Tajikistan) is the the reintegration of migrant workers into a national economy which is unable to absorb those that return.

Coordinating activities in countries of departure and destination

All participants emphasised the importance of coordinating the activities of NGOs and trade unions in countries of destination, but also to develop contacts between countries of departure and destination. The circulation of information is all the more important since the issue of

migration involves many actors who have their own programmes: for example, the World Bank, trade unions, the IOM, the ILO, the OSCE etc.

It is also important to act so that the state of departure of migrants plays its role in protecting its citizens abroad. Thus, pressure should be put on such states to establish consular systems providing effective assistance to its citizens (including lawyers, financial assistance and support in case of death) as well as assistance in finding jobs abroad.

The role of trade unions and NGOs in protecting migrant workers' rights

The role of trade unions in protecting migrant workers' rights at the international level is essential. Besides the capacity to organise strikes and to sign collective agreements, unions can file complaints against a country before the IOM and the ILO. Furthermore, collaboration between trade unions in destination countries and in countries of origin may bring positive results (for example in Ukraine).

During the seminar participants discussed whether the approaches of NGOs and trade unions were compatible or opposing. Some participants considered that lawyers and human rights defenders should not act as substitutes for the migrants themselves by offering to protect their rights. All tools should be in the hands of migrants who must learn to use them and to defend their own interests. While some participants expressed concern that migrant workers do not necessarily have such a possibility to defend their own interests, others noted the recent creation of migrant unions on a local basis (eg, a timber yard in Arkhangelsk) as positive examples of migrant empowerment. All participants agreed on the importance of increasing opportunities for migrants to become empowered and to defend their own rights.

Participants also questioned whether it is necessary to establish separate unions of migrant workers, in addition to unions by sectors that integrate migrants. It was stressed that, in the case of Russia, many migrants work in small to medium enterprises, a very competitive and aggressive sector when there are no unions, in contrast to large companies.

IV. Conclusions and recommendations

On refugees:

At the conclusion of discussions between participants in the seminar, some future opportunities for collaboration and common strategies were agreed informally:

- The seminar was an opportunity for different NGOs/IGOs working on the question of refugees to meet or strengthen existing relationships and to agree on the development of joint work.
- The importance of exchanging information between actors in different countries was underlined, in particular concerning best practices and strategies (eg. lawsuits). It is also important for NGOs from countries of origin of asylum seekers to provide information to their partners in destination countries on the political situation and violations of human rights in their countries. In this regard, information supplied to the UN, the OSCE or another international body may carry more weight. The UNHCR has a project to develop a website in Russian with information on countries of origin of asylum seekers. Existing useful websites include: www.accord.org, www.refworld.org (run by the UNHCR), www.ecre.org (European Council on Refugees and Exiles) and www.refugee.memo.ru (Civic Assistance).
- Possible strategies to be developed:
 - Contribute to the respect by states of domestic laws and international obligations by filing systematic complaints before national courts.
 - File complaints before the ECHR (Russia) and make full use of the range of UN mechanisms, including individual complaints to the Human Rights Committee, Special Rapporteurs etc.
 - Advocate for the protection of the rights of refugees to be raised by UN Human Rights Council member states during the Universal Periodic Review process and submit reports to this mechanism. In this regard, FIDH can offer support in accessing the various UN mechanisms.

On migrant workers:

Following two days of discussion, participants agreed on a number of strategies:

General:

- Continue and strengthen collaboration between NGOs, in particular between those in destination countries and those in countries of departure, networking between NGOs and regular exchanges of information (the creation of a mailing-list between participants was proposed).
- Encourage collaboration between NGOs and trade unions.
- Exchange information with programmes run by international organisations on migration, whilst taking into account that the aims of international organisations and NGOs may be different.
- Use international conventions and ILO instruments and mechanisms as advocacy tools.

In countries of departure:

- Participate in information campaigns and training (linguistic, legal and professional) for migrants leaving the country. Participate in media campaigns. Consider the most appropriate means of reaching migrants and the content of messages to be diffused⁵.
- Work with the authorities in departure countries and advocate for the establishment of effective consular networks for emigrants, legal advice and assistance (in particular in cases of conflict with employers).
- Work for the establishment of grants and employment agencies for placing workers abroad, regulated by law, and monitored by government, civil society and trade unions.
- Support migrants' families.

In countries of destination:

- Lead campaigns and work with the media in order to change the public perception of migrants and raise awareness on their problems.
- Help migrants to organise themselves, and in particular to establish unions and/ or to join existing unions. Ensure that national laws allow them to do so.
- Advocate for reforms to legislation to extend possibilities for working legally and to facilitate issuance of work permits. Encourage long-term programmes of regularisation.
- Use existing national mechanisms (courts, *prokuratura*, labour inspection etc.), build positive case-law/ precedent.
- Develop legal protection programmes for migrants at borders.

Launch of a campaign for the ratification of the Convention on Migrant Workers:

- Joint call for ratification of the Convention on Migrant Workers (Appendix III)
- Model Letter to be sent to Heads of State in the region (Appendix IV)

5. Experiences of NGOs with certain programmes funded by the European Union in countries of the Southern Mediterranean show that in some cases the message given is « do not migrate ». One should also be mindful of a discourse which tends to victimise emigrants (migrants seen only as victims of trafficking).

Appendices

Appendix 1 – Programme of the seminar

28 November, morning

Welcome by Alexandra Koulaeva, FIDH and Denis Djivaga, Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR).

Vitali Maslovski of the UNHCR Regional Office in Almaty gave an overview of the situation of refugees in the various countries of Central Asia. Cholpon Djakupova, Director of the Legal Clinic « Adilet » in Kyrgyzstan, presented a comparative analysis of legislation on refugees in Russia, Belarus and Kazakhstan.

A round-table was organised during which NGO representatives presented their strategies on protecting asylum seekers, evoked the difficulties they face and exchanged best practices. Amongst the contributors: Denis Djivaga, lawyer, Kazakhstan International Bureau for Human Rights and Rule of Law and responsible for a joint programme with the UNHCR in Almaty; Elena Riabinina, Consultant for Civic Assistance, Moscow; Olga Tseitlina, lawyer who has defended number of cases before the ECHR and representative of Citizen Watch, Saint Petersburg.

28 November, afternoon and 29 November

Issues related to the protection of migrant workers' rights in the CIS were addressed from three perspectives:

✓ Several presentations gave an overview of the situation of migrants in CIS countries and the work of international organisations in the region. Pawel Szalus (IOM) presented the main violations of migrant workers' rights in the region and IOM's strategies for their protection; Amandine Regamey (FIDH Mission Delegate), highlighted the legal consequences and the xenophobic dimension of Russian migration policy. The situation in a country of high emigration was addressed by Nafisa Khusenova, who spoke about the role and programmes of the OSCE in the area of labor migration in Tajikistan.

✓ The various human rights instruments for the protection of migrant workers' rights were then discussed, as well as concrete experiences in protecting migrant workers outside the CIS. Sergejus Golovaskak (ITUC), presented the role of trade unions at the national and international level and existing ILO instruments; Katherine Booth (FIDH) stressed the importance of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Anne Le Huérou (FIDH Mission Delegate) gave the example of support given to migrants by civil society in France (see Appendix II).

✓ Finally, various associations, NGOs and trade unions working in the CIS presented their experiences, their successes and the challenges they face in protecting migrants' rights in countries of departure and arrival. Presentations were made by Elena Burtin, Civic Assistance, Moscow; Enikeeva Elina, Sana Sezim, Shymkent, Kazakhstan; Natalia Shkurenok, ADC Memorial, St. Petersburg; Sulaymon Chokhzoda, Migration and Law Fund, Tajikistan; Renat Karimov, Trade Union of Migrant Workers, Moscow. The discussion that followed was largely focused on strategies to increase protection of migrant workers' rights, and offered an opportunity to present a range of views on the subject (see list of participants Appendix VI).

Final discussions focused on the elaboration of common strategies, as well as the adoption of a call for ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by governments in the region (see *Call for ratification of the Convention on Migrant Workers* and model letter, Appendices III and IV).

30 November

A press conference was held at the conclusion of the seminar during which the FIDH report “*Kazakhstan/ Kyrgyzstan: Exploitation of migrant workers, protection denied to asylum seekers and refugees*”, was launched. The press conference had significant coverage in the Kazakh media, as reflected in articles and news items below:

Press articles :

« For a better fate », *Vecherni Almaty*, 01-12-2009 (« За лучшей долей », Вечерний Алматы (Алматы): 01.12.2009. Автор: АНАСТАСИЯ МАЛЫШЕВА)

«FIDH shocked by the law on refugees », *Respublika*, 04-12-2009 (« FIDH шокирован законом о беженцах », Республика: 04.12.2009, Автор: КСЕНИЯ БОНДАЛ)

« The situation of migrant workers in Kazakhstan severely criticised by international experts », *Panorama*, 04-12-2009, (« Положение трудовых мигрантов в РК подвергается резкой критике международных экспертов », Панорама: 04.12.2009, Автор: ЯРОСЛАВ РАЗУМОВ)

« No freedom envisaged for forced labourer », *Ekspress*, 02-12-2009, (Юрьев день не планируется, Экспресс К: 02.12.2009, Автор: АЛЕКСАНДР КАМИНСКИЙ, АЛМАТЫ)

Press agencies or online publications :

« An international organisation condemned Kazakhstan’s laws on migrant workers and refugees », *Today.kz*, 30-11-2009 (Международная организация осудила законы РК в отношении рабочих-мигрантов и беженцев Today.kz: 30.11.2009, Автор: РЕФАТ ШАКИРЖАНОВ)

« An international human rights organisation accuses Kazakhstan of violating refugee and migrants’ rights », *IA-Novosti Kazakhstan*, 30.11.2009 (Международные правозащитники обвиняют Казахстан в нарушении прав беженцев и мигрантов), ИА “Новости-Казахстан”: 30.11.2009)

« Human rights defenders accusing Kazakhstan of violating refugee and migrant’s rights » *Rss.kz*: 30.11.2009 (Правозащитники обвиняют Казахстан в нарушении прав беженцев и мигрантов, Rss.kz: 30.11.2009)

« It is absolutely necessary to ensure effective protection of migrant workers’ rights and refugees’ rights – FIDH’s report », *Kazinform*, 30-11-2009 (Необходимо обеспечить эффективную защиту прав рабочих мигрантов и беженцев - отчет FIDH,Казинформ: 30.11.2009, Автор: ЕЛЕНА ИЛЬИНСКАЯ)

« Kazakhstan celebrates international human rights day », *Today.kz*, 8-12-2009 («Казахстан отметит международный день защиты прав человека, Today.kz: 08.12.2009, Автор: РЕФАТ ШАКИРЖАНОВ)

« Kazakhstan : Watchdog Group Calls on Astana to Enhance the Rights of Migrant Workers », <http://www.eurasianet.org>, Joanna Lillis: 12/02/09 (in russian : « Правозащитная организация призывает Астану улучшить ситуацию с обеспечением прав трудовых мигрантов)

« Difficulties for migrant workers in Kazakhstan », <http://www.zonakz.net>, 1-12-2009, (Трудности трудовых мигрантов в Казахстане. автор Владислав ЮРИЦЫН)

Television and radio :

« Representatives of this organisation led their own investigation and were shocked by the way migrants live in our country », КТК TV, 30-11-2009 (Представители этой организации провели собственное расследование и ужаснулись тому, как живут в нашей стране мигранты, КТК (ТВ): 30.11.2009)

« Kazakhstan discusses the problems of migrant workers », MIR TV 18-12-2009
(В Казахстане обсудили проблемы трудовых мигрантов, <http://mirtv.ru/content/view/86387/47/>)

Appendix II – International experiences in the protection of migrants' rights: the example of France

Summary of the presentation delivered by Anne Le Huérou, FIDH Mission Delegate

Labour migration: border closures

In France until 1974 the situation could be compared to that of Russia, with an immigrant labor force coming mainly from North Africa (following the first wave of immigrants from Italy and Poland during the late 19th century and first half of the 20th century), which compensated for gaps in the workforce in France during a phase of economic growth. The situation changed dramatically with the crisis in 1973 and France officially closed its borders to immigration. Today, apart from migrants from other countries within the EU, the official policy is to accept only those who have a right to family reunification, students or asylum seekers.

On several occasions, mass regularisation policies have been implemented, alongside regularisation on a “case by case” basis. These measures have often been adopted following protests (for instance those concerning the “the biggest squat in France” in Cachan where, after forced evictions in 2006, protests led to the regularisation of around 1,000 people). However, the latest mass regularisation measures date back to the “Chevenement law” of 1998. Since then, laws have become increasingly repressive, in particular the new code on foreigners adopted in 2006 (CESEDA) which was accompanied by strong recommendations to local authorities (*prefectures*) to deport maximum numbers of irregular migrants.

Partial regularisation was ordered after the entry into force of the “Sarkozy circular” adopted in 2007, however its criteria are highly restrictive and decisions are usually left to the discretion of local authorities (*prefectures*), which contributes to unequal treatment of cases.

Today, we are witnessing three developments:

- The coming to power of Nicolas Sarkozy and the recognition of a shortage of labour in some sectors generated debate on whether to partially reopen borders, according to the principle of “selected immigration”. However, the economic crisis in large part blocked these measures.

- Increasingly repressive policies towards irregular migrants, with deportation quotas for prefectures: migrant raids including of families with children, arrests in schools and hospitals, calls to denounce irregular migrants...

- Meanwhile, the recent period has been marked by the creation of the Ministry of Immigration and National Identity (“Ministère de l’immigration et de l’identité nationale”), a measure that raised widespread criticisms that were revived in 2009 by the debate on “national identity”. The way in which these questions have been framed contributes to the stigmatisation of and discrimination suffered by both migrant workers on French territory and by French nationals of foreign origin often referred to as “Arabs” despite the fact that they have been French citizens for two or three generations or more.

It should also be noted that French migration policy is developed within the context of ‘Fortress Europe’ the EU migration policy that that has set up new walls comparable to that of Berlin. Special camps for migrants exist at the gates of Europe (see, for example, www.migreurop.org).

Rising suspicion of asylum seekers and increased risks

Many asylum seekers find themselves being treated as undocumented migrants due to the restrictive application of asylum policies (many applications are rejected) and as a result of the Dublin agreements (requiring a person to file his/her application for asylum in the first country of entry). Consequently, asylum seekers are subjected to similar deportation procedures to undocumented migrants.

Support for asylum seekers and undocumented migrants is now provided by the same individuals and organisations. A striking example of this was the situation at the transit centre in Sangatte, where there were many Afghans (Afghanistan is considered to be a safe country by France), Iraqis and Africans. Following the closure of the centre, residents provided assistance (physical, legal and psychological) to these individuals. Legal proceedings have been filed against several of them on the grounds of “solidarity” with undocumented migrants[□].

Development of solidarity

Solidarity with migrant workers in France developed alongside the evolution of migration policies in the sense that it shifted from social and political solidarity (through associations and unions) to solidarity with “undocumented” migrants, in particular in order to help them to regularise their situations.

A new generation of activists is emerging and is using new techniques: the use of internet for lobbying or advocacy, flash mobs, “circles of silence”. A number of organisations have joined together to form a network called “united against a disposable immigration” (“*Unis contre une immigration jetable*”).

In 2004, a network called Education without borders (*Education sans frontières* - ESF) was established to support the families of undocumented migrants in schools (demonstrations, ‘hiding’ children to prevent evictions of families). The network involves parents that are not particularly ‘political’, who seek to help the families of their children’s classmates, and who thereby end up raising awareness of the treatment given to immigrants in France.

In recent years, mobilisation has also been initiated by undocumented migrants themselves and trade unions. In Autumn 2009 - Winter 2010, several thousand undocumented immigrants, many of whom have worked in France for years (including under policies of outsourcing of public services), organised protests in the Paris region, and went on strike, with the support of the CGT trade union in particular.

It could be concluded that while, over the past few years, some negative public perceptions of undocumented migrants have evolved, unfortunately policies have not.

Useful websites:

- Unis contre une immigration jetable: www.contreimmigrationjetable.org
- RESF: www.educationsansfrontieres.org
- Cimade: www.cimade.org
- Gisti: www.gisti.org
- Migreuop’: www.migreuop.org

Appendix III – Call for ratification of the Convention on Migrant Workers

Статья 1.
Все люди рождаются свободными
и равными в своем достоинстве
и правах.



FIDH and its members from Eastern Europe and Central Asia launch a call for ratification of the United Nations Convention on Migrant Workers

Considering that in post Soviet countries, millions of persons are migrants; that all countries in the region are affected by migration either as origin, destination or transit countries; and that all states are thus confronted with the challenges of developing effective migration policies with human rights at their core;

Considering that although, for many, migration is a positive experience, many others migrate under duress and face severe hardships in their countries of destination; and that migrant workers remain particular targets of abuse, discrimination and exploitation by traffickers, smugglers and employers;

Concluding that there is an urgent need for governments to take immediate steps to increase the protection of migrant workers;

Underlining that the International Convention on the Protection of All Migrant Workers and Members of their Families (MWC) is an essential part of efforts to combat exploitation of migrant workers and members of their families; that the MWC recognises the specific vulnerabilities of migrant workers and promotes humane and lawful working and living conditions and the need for increased protection; that migration policies can only be effective if they are based on legal standards, human rights and the rule of law; and that the MWC provides guidance on the elaboration of such policies;

Considering that since its adoption by the United Nations General Assembly in 1990, the MWC has been ratified by 42 states, including Azerbaijan, Kyrgyzstan and Tajikistan;

Considering that in order to become an effective instrument for fighting violations of migrants' human rights, the MWC must be ratified by all states, including those of departure, transit and destination of migrant workers;

Emphasising that the recently adopted CIS Convention on the Legal Status of Migrant Workers and Members of their Families, cannot be used to justify non-ratification of the United Nations

instrument: international treaties are superior to regional agreements, the CIS Convention only covers regular migrants and it does not focus on their protection;

Noting that, in one year from now, we will mark the 20th Anniversary of the Migrant Workers Convention;

WE, FIDH and its members and partners from Eastern Europe and Central Asia, meeting in Almaty from 28-29 November 2009 to develop strategies to strengthen the protection of migrant workers and refugees, hereby call upon the governments of the regions that have not yet done so to seize the occasion of the upcoming 20th anniversary of the Convention to ratify the Migrant Workers Convention.

Almaty, 29 November 2009

Appendix IV – Model-letter on ratification on the convention on migrant workers

Статья 1.
Все люди рождаются свободными
и равными в своем достоинстве
и правах.



International Migrants' Day 2009: FIDH and [Name of Organisation] call on [State] to ratify the United Nations Convention on Migrant Workers

Open Letter to [Head of State, Country]

[Place, date]

Your Excellency,

On the eve of International Migrants' Day, we are writing to you to urge your government to take immediate steps to increase the protection of migrant workers in your country. One year from now we will mark the 20th anniversary of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC). The MWC is the cornerstone of international protection of migrants' rights. As yet, [country] has not ratified this core United Nations instrument. Today, we call upon you to do so, thereby demonstrating your commitment ending the violations and exploitation suffered daily by migrant workers.

In post Soviet countries, millions of persons are migrants. All countries in the region are affected by migration either as origin, destination or transit countries and all states are thus confronted with the challenges of developing effective migration policies with human rights at their core.

Although, for many, migration is a positive experience, many others migrate under duress and face severe hardships in their countries of destination. Migrant workers remain particular targets of abuse, discrimination and exploitation by traffickers, smugglers and employers. Yet an instrument is at your government's disposal to minimise this and to strengthen their legal protection.

The MWC recognises the specific vulnerabilities of migrant workers and promotes humane and lawful working and living conditions and the need for increased protection. It provides guidance on the elaboration of migration policies, which can only be effective if they are based on legal standards and the rule of law. The MWC is a vital part of efforts to combat exploitation of migrant workers and members of their families.

Since its adoption by the United Nations General Assembly in 1990, the MWC has been ratified by 42 states, including Azerbaijan, Kyrgyzstan and Tajikistan. In order to become an effective instrument for fighting violations of migrants' human rights, all states, those of departure, transit and destination of migrants, must ratify.

[Remove for Georgia] The recently adopted CIS Convention on the Legal Status of Migrant Workers and Members of their Families, cannot be used to justify non-ratification of the United Nations instrument: international treaties are superior to regional agreements, the CIS Convention only covers regular migrants and does not focus on their protection.

We therefore urge the Government of [country] to seize this occasion to take the necessary steps for the ratification of the MWC thereby sending a strong message to the international community of your commitment to the protection of the human rights of all human beings, including migrant persons. We strongly hope that on the occasion of the 20th anniversary of the Convention we can also celebrate its ratification by [country].

We would be very interested to receive your Government's views on the matters raised in this letter and look forward to hearing from you.

Yours sincerely,

[Name of president]

[Name of national organisation]

Souhayr Belhassen

FIDH President

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www.migrantsrights.org : Steering Committee of the Global Campaign for Ratification of the Convention on Migrant Workers

Appendix VI - List of participants

Karine Appy	France	FIDH
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Maxim Butkevich	Ukraine	Social Action Centre
Elena Burtina	Russia	Civic Assistance Committee
Sulaymon Chokhzoda	Russia	Migration and Law Fund Tajikistan
Abdulla Duduev	Russia	Moscow Human Rights Research Centre
Renat Karimov	Russia	Moscow Trade Union of Migrant Workers
Elena Ryabinina	Russia	Civic Assistance Committee
Natalia Shkurenok	Russia	ADC Memorial
Olga Tseitlina	Russia	Citizen Watch
Bakhtior Hamroev	Uzbekistan	
Saifilo Ergashev	Tajikistan	“Human Rights Centre” in Khudjand
Nafisa Khusenova	Tajikistan	OSCE Dushanbe Tajikistan
Aziza Abdirasulova		Kylym Shamy
Aida Baijumanova	Kyrgyzstan	Citizens Against Corruption
Irina Bairamukova	Kyrgyzstan	TCA
Cholpon Djakupova	Kyrgyzstan	Adilet
Ruslan Khakimov	Kyrgyzstan	Soros Foundation
Gulisa Omurzakova	Kyrgyzstan	KCHR
Aida Aidarkulova	Kyrgyzstan	Soros Foundation
Svetlana Bekmanbetova	Kazakhstan	IOM
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Denis Djivaga	Kazakhstan	Kazakhstan International Bureau for Human Rights and Rule of Law
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FIDH represents **164** 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.

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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 164 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.

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International Federation for Human Rights

Find information concerning FIDH 164 member organisations on www.fidh.org