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Invisible and exploited in Kazakhstan: the plight of Kyrgyz migrant workers and members of their families

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This FIDH report on violations of labour rights of migrants in and from Central Asia is based on the findings of a series of missions carried out from September to November 2017, both in Kyrgyzstan (country of departure) and Kazakhstan (country of migration arrival) within a project on protection of migrant workers run by FIDH. Kazakhstan is a receiving country counting more than 1 million migrant workers, which represents around 7% of the population.

The missions documented the violations of labour rights of Kyrgyz migrants in Kazakhstan, including practices leading to child labour, forced labour, and violations to the right to maternity protection and childhood. It also examined the conditions of arrest, detention, and deportation from Kazakhstan of Kyrgyz migrants, although this information is very difficult to access.

During the missions in Kazakhstan and Kyrgyzstan, the delegations met men and women affected by labour migration, representatives of non-governmental organisations, international organisations, trade unions, employers, and national authorities. The main focus was the situation of Kyrgyz migrants, but the missions also met with Uzbek and Tajik citizens in Kazakhstan to gain a general overview of the labour right's situation of migrants from Central Asia working in Kazakhstan. The overall objective was to analyse the situation of migrant workers as a vulnerable group in both the country of departure and of arrival, and to formulate recommendations with a view to increase their protection.

Methodology

These missions built on a series of missions conducted by FIDH in the previous years which resulted in two main fact-finding reports : *Migrant Workers in Kazakhstan : No status, no rights*¹, and *Women and children from Kyrgyzstan affected by migration*².

The 2017-2018 project was run jointly with FIDH member organisations in Kazakhstan and Kyrgyzstan, and with the expert participation of Anti-Discrimination Centre Memorial (ADC "Memorial"). In addition to the previously established methodology, this time FIDH extended the migrants' protection problems connected to the work of, and with trade unions, in the countries concerned. Therefore, trade union participants were included in every mission. Local and international trade unions were also a target group of both FIDH research and advocacy in favour of the protection of migrant workers' rights.

The International Labour Organisation (ILO) drew up international labour standards to set out basic principles and rights at work. Among them, it identified eight conventions as "fundamental", covering subjects that are considered as fundamental principles and rights at work, another four conventions as "priority" instruments, and more than a hundred "technical" conventions and recommendations.

Kazakhstan has ratified 24 of these ILO conventions³, while Kyrgyzstan has ratified 53⁴. Both Kazakhstan and Kyrgyzstan ratified the eight fundamental conventions which focus on freedom of association, the elimination of forced labour, child labour, and discrimination. These conventions apply to all workers, including migrants, whether in a regular or an irregular situation, and both countries must thereby ensure their effective implementation to protect the labour rights of migrants. In addition, Kazakhstan ratified 16 other ILO conventions, including those on labour inspection, protection of wages, working environment, occupational safety and health, workers with family responsibilities, and maternity protection. These conventions also apply to all migrants, no matter what their status. Among others, Kyrgyzstan has ratified ILO Convention N°97 on Migration for Employment⁵, and thus has committed to take appropriate measures to provide migrants with accurate information relating to emigration and immigration, and to ensure that migrant workers and members of their families enjoy adequate medical attention and good hygienic conditions at the time of departure, during the journey, and on arrival in the territory of

1. FIDH 2016, available at https://www.fidh.org/IMG/pdf/note_kazakhstan_681a_6_sept_2016_uk_web.pdf

2. FIDH and ADC "Memorial" 2016, available at https://www.fidh.org/IMG/pdf/rapport_kyrgyzstan_uk-2-web2.pdf

3. See the list of ILO Conventions ratified by Kazakhstan: http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103542

4. See the list of ILO Conventions ratified by Kyrgyzstan available at http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103529

5. C097 - Migration for Employment Convention (Revised), 1949 (No. 97).

destination. Neither Kazakhstan nor Kyrgyzstan have ratified ILO Convention N°143 on migrant workers, whose Part 1 explicitly and specifically aims at protecting the vulnerable group of migrant workers in an irregular situation.

Mission delegates included in their research the ILO methodological framework and standards, including its *Survey Guidelines to Estimate Forced Labour of Adults and Children* published in 2012⁶. The definition of forced labour was considered through a set of indicators in regard to four principal dimensions : unfree recruitment, hard work and life, the impossibility of leaving an employer, and the menace of penalty. To define child labour and maternity protection, mission delegates referred to ILO standards. According to these standards, child labour is considered as a “work that deprives children of their childhood, their potential, their dignity, and work that is harmful to physical and mental development”. Among other violations, this kind of work deprives children of the opportunity to attend school⁷. Maternity protection comprehends all necessary measures to prevent harm to expectant and nursing mothers or to their infants’ health, as well as ensuring “that they will not lose their job simply because of pregnancy or maternity leave”.⁸

The missions visited Bishkek and the southern regions of Kyrgyzstan (Osh, Jalalabad, Batken), from where the greatest part of migrants leave either to Russia or to Kazakhstan, but they also visited Kazakh cities of Astana, Almaty and Shymkent, and interviewed over 34 migrant workers who worked, or used to work, in the construction and agricultural sectors.

FIDH collected and systematised numerous testimonies collected by social workers, NGOs, and foundations involved in work on protection and support to women and children involved in migration before or after their return in their country.

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FIDH also thanks the international organisation Global Migration Policy Associates and the representatives of Kyrgyz and Kazakh trade unions with whom the mission delegates met in both countries, as well as all its partners from international workers’ organisations for their cooperation: the International Trade Union Confederation (ITUC), the IUF (the international

6. Hard to See, Harder to Count : Survey Guidelines to Estimate Forced Labor of Adults and Children, ILO, 2012

7. Definition of child labour according to ILO standards, available at <http://www.ilo.org/ipec/facts/lang-en/index.htm>

8. Definition of maternity protection according to ILO standards, available at <http://www.ilo.org/global/topics/equality-and-discrimination/maternity-protection/lang-en/index.htm>

9. IUF is the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations.

union representing workers in rural areas, as well as domestic, hotel, restaurant, and agricultural workers), the Central Asia Labour Rights Monitoring Mission, a platform promoting cooperation between human rights organisations and independent trade unions, and the Building and Wood Workers' International (BWI).

FIDH further thanks all those who accepted to be interviewed during the missions and shared their experience or insight into the complex issues of non-documented migrations. Without them, this report would never be completed. FIDH also expresses its gratitude to the State representatives of Kyrgyzstan and Kazakhstan who accepted to meet its delegations. A full list of institutions met is available in Annex 1.

Introduction

Kazakhstan is one of Kyrgyzstan's main partners. Hundreds of thousands of Kyrgyz citizens travel to this country every year in search of work. According to the annex of a letter of Kazakhstan's Ministry of National Economy dated 8 April 2016,¹⁰ there is no specific data on the number of migrant workers in the country. However, information obtained by FIDH at a meeting with representatives of Kazakhstan's Ministry of Internal Affairs¹¹ shows that from 100,000 to 150,000 Kyrgyz people were registered in the country at the end of 2017. These figures are quite close to those of 2015 when, according to statistics from the Ministry of the Interior, 114,385 migrants from Kyrgyzstan registered with the authorities.

Kazakhstan and Kyrgyzstan are members of the Eurasian Economic Union (EEU)¹² whose treaty¹³ stipulates easing the regime of stay for migrant workers. (A visa-free regime was established long before the EEU).

The EEU treaty states that Kazakhstan does not require any special employment permits for foreign citizens of countries that are members of this treaty, including citizens of Kyrgyzstan. Labour agreements with migrant workers are signed in accordance with the provisions of the Labour Code of the Republic of Kazakhstan¹⁴ pursuant to an identification document. On 15 July 2017 amendments to the Agreement between the governments of the two countries came into effect¹⁵ which stipulated that Kyrgyz citizens arriving in Kazakhstan to work are released from the obligation to register within 30 days of their date of entry. However, if they stay for over 30 days from their date of entry, they must register in accordance with the Kazakhstan's entry laws.¹⁶

This procedure for registration and employment eases the life of Kyrgyz citizens arriving in Kazakhstan for work; however, data from Kazakhstan's Ministry of Internal Affairs shows that most migrant workers from Kyrgyzstan work illegally in Kazakhstan. Moreover, existing bilateral agreements between the two countries deem migrant workers to be only those who are "legally located" in the country of employment, and completely disregards the situation of thousands of people with an unregulated status.

Lack of information throughout the journey and upon arrival, lack of money, practices of corruption within migration police services, and increased discrimination against migrants in the society make it very difficult for Kyrgyz citizens to obtain this "regulated status", which is a necessary condition for living and working legally in Kazakhstan.

A majority of Kyrgyz labour migrants come from the southern part of the country (Osh, Isfana and Batken) and go to southern Kazakhstan (Almaty and Shymkent provinces), as well as to Astana, the capital. Northern Kazakhstan is also experiencing a recent influx of Kyrgyz migrants from Russia¹⁷ who have been expelled due to a strengthening of the Russian immigration legislation¹⁸, where their names have been blacklisted. Today, they find themselves a few kilometres from the border, without the possibility of returning to Russia, and too ashamed or desperate to go back to Kyrgyzstan.

10. Annex to letter of the Ministry of National Economy of the Republic of Kazakhstan, reference no. 14-3/2214//1593 (paragraph 4.33) dated 4 April 2016.

11. Interview with Sabyrzhan Seitzhanov, head of the Migration Service Committee of the Ministry of Internal Affairs of the Republic of Kazakhstan. Astana, 17 November 2017.

12. On the basis of the Treaty on the Eurasian Economic Union of 29 May 2014, the Eurasian Economic Union - which was composed of the Republic of Belarus, the Republic of Kazakhstan, and the Russian Federation - started functioning on 1 January 2015. The Kyrgyz Republic joined the union on 8 May 2015.

13. Section XXVI of the Treaty on the Eurasian Economic Union (signed on 29 May 2014 in Astana).

14. Article 32 of the Labour Code of the Republic of Kazakhstan.

15. Agreement between the Government of the Kyrgyz Republic and the Government of the Republic of Kazakhstan on the Procedure for the Stay of Citizens of the Kyrgyz Republic in the Republic of Kazakhstan and of Citizens of the Republic of Kazakhstan in the Kyrgyz Republic of 11 May 2012.

16. Clause 10 of the Rules for Entry, Stay, and Departure for Migrants to the Republic of Kazakhstan.

17. Interview with a representative of the Kyrgyz diaspora, Astana, 18 November 2017.

18. https://www.rbth.com/politics_and_society/2016/06/27/russia-is-deporting-illegal-immigrants-activists-claim_606551

Kyrgyz migrants usually find positions in the agricultural and construction sectors, on markets, and, for younger girls, as nannies. A large majority come to Kazakhstan for seasonal work, but some stay in Kazakhstan for up to several years, especially when they fall into slavery, or if they do not have enough money to go home and bring something “earned” back with them, feel ashamed, or because they have nowhere anymore where to live in Kyrgyzstan.

In practice, Kyrgyz migrants in an irregular situation are obliged to work for their employer without a written contract, or on the basis of non-compliant contracts, which do not adequately protect their rights. They are also regularly subjected to the goodwill of unofficial and corrupt intermediaries, who extort money from them or deprive them of their passports in the recruitment process. This unofficial recruitment process may actually start in Kyrgyzstan, via newspaper advertisements, orally on marketplaces, or “through acquaintances”.



Radio Centre broadcasting job advertisements at a market in Osh, Kyrgyzstan. November 2017. © ADC Memorial

Babaraim Akimov, a male Kyrgyz migrant, in the village of Andarak, Kyrgyzstan, 3 November 2017: *“I was at the market in Osh when I heard an announcement over the loudspeaker for a job as a herdsman. I have been a herdsman since I was a kid and I like working with animals. I decided to find out more about this job. I went to the radio centre. They pointed to an elderly couple from Kazakhstan who was looking for a labourer for their farm. I refused because I did not want to go to Kazakhstan. Then a woman came up to me and said that her brother has a farm near Bishkek with 2,000 heads of cattle and that he needed a herdsman.”*

The situation of migrant workers, which is exacerbated by a lack of education, by language difficulties, and a lack of action of the state services supposed to protect their rights, provide fertile ground for corruption at all levels.

International labour treaties¹⁹ ratified by Kazakhstan require that the rights of all people are protected from violations by private and state employers, intermediaries, and other persons. As a State that is a recipient of migrant workers, Kazakhstan must regulate and monitor the activities of such people, and closely monitor and supervise employers using the services of such intermediaries in their work. As of the present time, Kazakhstan has not taken effective measures to prevent, investigate, and prosecute persons involved in providing illegal intermediary services, and has not ensured effective legal protection for the victims.

19. For example, the ILO Forced Labour Convention (No. 29) bans the use of forced labour.

In the same vein, even if the existence of cases of human trafficking and slavery involving migrants is well known to the Kazakh authorities and international intergovernmental organisations²⁰, migrants are afraid to file a report with the police because of a lack of confidence in law enforcement agencies.

Forced labour is banned by both the Constitution²¹ and the Kazakhstan Labour Code.²² The country's Criminal Code²³ stipulates punishment for human trafficking in the form of deprivation of freedom for 5 to 15 years depending on the gravity of the offense. Kazakhstan is also a party to the ILO Convention on the Abolition of Forced Labour, the ILO Convention on Forced or Compulsory Labour, and the UN Convention Against Transnational Organised Crime. This last convention obligates parties *"to develop and adopt comprehensive policies, programmes, and measures to prevent and combat trafficking in persons,"* as well as *"to protect and assist the victims of such trafficking, with respect for their human rights."* Kazakhstan also ratified the UN International Covenant on Civil and Political Rights which, in article 8, states that *"1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited. 2. No one shall be held in servitude. 3. (a) No one shall be required to perform forced or compulsory labour"*. In spite of this, Kazakhstan has not developed or adopted a separate law on human trafficking, even though statistics show that the number of cases of forced labour and sexual exploitation are not falling.

Nevertheless, authorities in Kazakhstan have taken concrete measures to combat this practice. Specifically, they have stiffened the punishment for human trafficking. Over 10 months in 2017, internal affairs agencies in Kazakhstan opened 276 cases for crimes connected with human trafficking.²⁴ This statistic was shared with the FIDH mission during a meeting with representatives of Kazakhstan's Ministry of Internal Affairs. In this connection, it is important to note that during a meeting with FIDH, the Chair of the Committee to Monitor Social Protection and Migration of the Republic of Kazakhstan stated that *"there are no instances of slavery in Kazakhstan."*²⁵ Instances of the violation of the rights of Kyrgyz citizens in Kazakhstan are generally never reported to the state agencies of either country. The system of law enforcement agencies, including the migration service, only gives rise to fear among foreign citizens, so they prefer not to appeal to these agencies under any circumstances, including to protect their rights. According to information provided by the "International Legal Initiative" Public Foundation, not one migrant worker who has appealed to the Foundation for help over the past eight years of its existence has managed to avoid bribing a police or migration officer even once during their stay in Kazakhstan.

In fact, no conclusive efforts have been conducted in coordination to protect Kyrgyz migrants and give them an access to an effective remedy. Kazakh authorities argue that it is not their responsibility to protect migrant workers, and that protection of migrant workers is under the responsibility of Akims (heads of regional or local authorities), and to a lesser extent, under the responsibility of the International Organisation for Migration (IOM). This situation violates article 14 of the UN International Covenant on Civil and Political Rights, which states: *"All persons shall be equal before the courts and tribunals [...]; everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."* While the trade unions still in existence admit they haven't mobilised themselves to defend the migrant workers, the independent trade unions are *de facto* unable to do so, being themselves subjected to a massive crackdown by the Kazakh authorities. This massive ongoing crackdown on Kazakh workers and independent trade unions throughout the country has been reprimanded by the ILO in 2017²⁶. As a result, this situation of Kazakh trade unions further inhibits the possibility for migrant workers to have their rights defended. For both nationals and foreigners, this situation violates article 22

20. See report: "Kyrgyzstan: Extended Migration Profile, 2010-2015". National Institute for Strategic Studies of the Kyrgyz Republic, International Organisation for Migration, 2016.

21. Part 1 of Article 24 of the Constitution of the Republic of Kazakhstan

22. Article 7 of the Labour Code of the Republic of Kazakhstan "Prohibition of Forced Labour"

23. Article 128 of the Criminal Code of the Republic of Kazakhstan "Human Trafficking"

24. Interview with Anuar Askerov, Head of the Criminal Police Department of Kazakhstan's Ministry of Internal Affairs. Astana, 17 November 2017.

25. Interview with the Ministry of Labour and Social Protection of the population of Kazakhstan, Astana, 17 November 2017.

26. Namely during the 2017 International Labour Conference in Geneva, in the conclusions of the Committee on the Application of Standards, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_557884.pdf

of the UN International Covenant on Civil and Political Rights, which states : “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”.

Freedom of association

The Republic of Kazakhstan ratified ILO conventions N°87 and N°98, which include the following requirements for ensuring the fundamental principles of freedom of association:

- legally enshrine the right of workers and employers to establish and join organisations of their choice without previous authorisation;
- refrain from interference in the exercise of freedom of association;
- ensure that laws do not violate the exercise of freedom of association (while workers and employers - and their corresponding organisations - must comply with basic law);
- take the necessary and proper measures to provide assistance so that workers and employers can freely exercise the right to establish their organisations;
- provide assistance so that workers have proper protection from actions violating freedom of association;
- provide assistance so that workers’ and employers’ organisations have proper protection from each other’s interference during their establishment, operation, or management.

In addition to the fundamental conventions, which include the ILO conventions concerning Freedom of Association, Forced Labour, Discrimination and Child Labour, Kazakhstan has also ratified ILO conventions concerning labour protection (148, 155, 162, 167, 182) and labour inspection (81,129). Kazakhstan has ratified the UN International Covenant on Civil and Political Rights, whose article 22 enshrines the right to freedom of association as such.

Recent years have seen an aggressive attack on workers’ rights by the government of Kazakhstan. This is happening in parallel with wide-ranging restrictions on freedom of speech, freedom of association, and other fundamental civil liberties.

Democratic unions in Kazakhstan have faced pressure in recent years.²⁷ Trade unions as an important form of public association are regulated by a separate law, which has recently been toughened against independent unions. The new law recognises only sectoral trade unions and their members or branches, forcing independent trade unions to re-register – thereby effectively enshrining the monopolisation of trade unions by law.

The new law on unions was adopted in 2014, even though the ILO recommended reviewing clauses that violate the principles of freedom of association and that were not in compliance with international standards during the stage when amendments to the law “On Union” were being considered.

In 2015, amendments to the Labour Code were adopted that expanded the powers of employers considerably.

In late November 2016, Kazakhstan’s Ministry of Justice took action to liquidate the Confederation of Independent Trade Unions of the Republic of Kazakhstan (KNPRK)²⁸ and its affiliates, including the Sectoral Trade Union of Social and Domestic Workers “Spravedlivost”²⁹.

“Domestic and home care workers are mainly women working without any written agreements or contracts. The union’s task is to support and protect the labour rights of domestic workers and move them out of shadow employment and into official employment. For example, the union is working on developing model contracts that we intend to promote and use to formalise and legalise labour in the unofficial sector,” noted union chairperson Olga Rubakhova.³⁰

27. See Report “We are not the enemy : Violations of workers’ rights in Kazakhstan”, Human Rights Watch, 2016, available at <https://labourcentralasia.org/upload/iblock/e77/e7742d21d94f7f51c9bf44b835e58b00.pdf>

28. KNPRK is a member organisation of the International Trade Union Confederation (ITUC).

29. “Justice”

30. See IUF Article “Профсоюз социальных и домашних работников «Справедливость» борется против ликвидации” (Trade union of social and domestic workers “Justice” is fighting against liquidation), 26 January 2017, available at <http://www.iuf.ru/1/1928.html>

On 4 January 2017, the court adopted a decision to revoke KNPRK's registration and revoked the registration of "Spravedlivost" a day later³¹. Other KNPRK affiliates faced similar barriers. The court decisions adopted in the Ministry of Justice's action were the latest in a process initiated by the Kazakh government to liquidate KNPRK and its affiliates. In addition, the Government of Kazakhstan started launching wide-scale repressions against leaders and activists of independent unions in Mangystau Oblast in January 2017.

On 7 April 2017, Almaty District Court No. 2 in Astana sentenced Nurbek Kushakbayev, labour inspector of the Oil Construction Company and trade union leader, to two-and-a-half years imprisonment in a correctional colony. Kushakbayev was convicted under Article 402 of the Criminal Code, which was used for the first time in this case, in connection with calls to hold a strike.

On 16 May 2017, Amin Eleusinov, chairperson of the Oil Construction Company union in Kazakhstan, was sentenced by the Specialised Interdistrict Court in Astana to two years imprisonment under bogus charges.

On 25 July 2017, a court in Shymkent, a city in southern Kazakhstan, sentenced KNPRK leader Larisa Kharkova to four years of restricted movement, and barred her from holding public positions for a period of five years under a spurious charge of embezzlement³².

In September 2017, a coalition of Kazakh NGOs submitted an interim report as part of the Universal Periodic Review of Kazakhstan's implementation of UN HRC recommendations³³. The NGOs noted that Kazakhstan rejected Recommendation No. 176 to "amend or rescind several provisions of the law on unions, which place excessive restrictions on freedom of association, in order to provide workers with the opportunity to form and unite into independent trade unions".

Since 2015, the ILO worker and employer members have repeatedly appealed to the ILO supervisory bodies to denounce the violations of Convention N° 87 on Freedom of Association and Protection of the Right to Organise. Consequently, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has issued a series of comments acknowledging these violations and urging the Kazakh Government to respond to its observations. At both the 2016 and the 2017 International Labour Conference (which is held every year in Geneva), the Committee on the Application of Standards (CAS) requested that the Kazakh Government amend its Constitution and enact appropriate legislation. So far, these requests have not been followed up by Kazakhstan³⁴, and are thus ignored.

On 17 May 2017, the International Trade Union Confederation (ITUC) submitted a complaint to the ILO Committee on Freedom of Association in this regard. At the time of the publication of this report, the decision of the Committee has not yet been published.

Thus, it is becoming more complicated to oversee the prevention of child and forced labour, and to require employers to provide safe working conditions. Migrant workers are the most vulnerable category of workers, and they are the first ones to become the victims of socially irresponsible employers.

Meanwhile, those Kyrgyz human rights defenders protecting migrants' rights in their own country have been facing more and more difficulties³⁵.

31. Id.

32. See Urgent Appeal of the Observatory for the Protection of Human Rights Defenders, a joint programme of the FIDH and the OMCT, "Kazakhstan: Judicial harassment of Ms. Larisa Kharkova", 4 October 2017, available at <https://www.fidh.org/en/issues/human-rights-defenders/kazakhstan-judicial-harassment-of-ms-larisa-kharkova>

33. Document available in Russian at https://bureau.kz/novosti/sobstvennaya_informaciya/zadanie_nevypolnimo/

34. Comments of the ILO supervisory bodies available at <http://www.ilo.org/dyn/normlex/en/f?p=1000:11100::NO::>

35. See report "Kyrgyzstan at a Crossroads: Shrink or Widen the Scene for Human Rights Defenders", 2016, Observatory for the Protection of Human Rights Defenders (a joint FIDH-OMCT partnership), available at <https://www.fidh.org/en/issues/human-rights-defenders/kyrgyzstan-at-a-crossroads-shrink-or-widen-the-scene-for-human-rights>

The impact of the political crisis between Kazakhstan and Kyrgyzstan on the situation of migrants from Kyrgyzstan in Kazakhstan

"Our people are dependent on who the government is friendly with. For example, our government [Kyrgyzstan] is friendly with Russia, and we're friendly with their people. But we just quarrelled with Kazakhstan - that's it, we don't love them. They even kicked out Kyrgyz food suppliers to the detriment of their own people."³⁶

In October 2017, a new factor was added to the already difficult situation of Kyrgyz migrants in Kazakhstan. After Amambayev, the former President of the Kyrgyz Republic publicly criticised the government of Kazakhstan on 7 October 2017 by accusing it of supporting the family of the ousted President Kurmanbek Bakiyev and of plundering the country's wealth,³⁷ Kazakhstan's Ministry of Foreign Affairs protested, calling these assertions irresponsible and provocative.³⁸

Events in the political arena had immediate consequences in the lives of regular people. Political tensions between these neighbouring countries are usually reflected in changes of the state border regime. Problems arose when crossing the border between Kazakhstan and Kyrgyzstan, and initially affected both regular citizens and wholesale freight carriers. Even though this situation improved within several months, it has yet to be fully resolved. Losses have been suffered, not just by product producers, who have had difficulties selling their products and have been forced to dispose of perishable goods but also by regular people, who have complained of waiting hours to cross the border, and of encountering scrupulous checks and even blackmail.

Human rights defenders from Kyrgyzstan working on the problems of migration reported to the mission that, after the start of the conflict, *"It was difficult for our citizens to cross the border with Kazakhstan. Many people complained. It was hard because the border guards check your baggage. When you enter in your car, they don't tell you that you have to pay a tax on your car, but when you leave, they say 'or give us \$100 and we'll forget about it'. But regular citizens need to be told, informed about this."³⁹ "Someone I know recently entered as a taxi driver. On the way back, he had problems at the border. They held him for five or six hours on the border of Kazakhstan and Kyrgyzstan."⁴⁰*

Representatives of a union of long-haul truckers from Kyrgyzstan describe the changes as follows: *"Many people still mistakenly think that the situation on the Kyrgyz-Kazakh border has been resolved, that there are no problems. That is just not true. No, you won't see a long column of cars stretching from the border, but all the previous problems are still there. Our trucks on the territory of Kazakhstan pay fines from 8,000 to 11,000 som. Our neighbours quibble with us for any reason. They say things like 'that's the wrong route' and so forth. The fines sometimes reach 600,000 tenge."⁴¹*

Human rights defenders from Kyrgyzstan confirm that *"it's tough for 18-wheelers, taxi drivers, too, and just regular people. There are trucks that have been sitting there for days; they're hardly ever let through. A car waits four or five hours, then it's let into Kazakhstan. The minister (Kyrgyzstan) said 'all products became contraband overnight.' They check the quality even if it's just through traffic."⁴²*

Experts on ethnic discrimination from Kyrgyzstan explained that *"trucking companies and agriculture are suffering from deteriorating relations and difficulties at the border with Kazakhstan. Regular people are dissatisfied. They speak out against the president [of Kyrgyzstan]. We Uzbeks*

36. Interview with a feminist initiative group. Bishkek, 12 November 2017.

37. <https://kloop.kg/blog/2017/10/07/atambaev-obvinil-vlasti-kazahstana-v-lyubvi-k-bakievu/> Article by the online media outlet kloop "K chemu privel diplomaticheskii skandal mezhdru Kyrgyzstan i Kazakhstan?" [What has been the result of the diplomatic scandal between Kyrgyzstan and Kazakhstan?], 31 October 2017.

38. <https://kloop.kg/blog/2017/10/07/atambaev-obvinil-vlasti-kazahstana-v-lyubvi-k-bakievu/> Article by the online media outlet kloop "Atambaev obvinul vlasti Kazahstana v 'liubvi' k Bakiyevu" [Atambaev accuses Kazakhstan of "love" for Bakiyev], 7 October 2017.

39. Interview with the Iseda organisation. Osh, 10 November 2017.

40. Director of a local NGO. Osh, 9 November 2017.

41. https://24.kg/ekonomika/72830_profsoyuz_dalnoboyshnikov_kyrgyzstana_kak_nepoteryat_ryinok_gruzoperevozok/ Online media outlet "Informatsionnoe agentstvo 24" Профсоюз дальнобойщиков Кыргызстана: как не потерять рынок грузоперевозок [Kyrgyz Long-Haul Truckers Union: How to Hold Onto the Freight Transportation Market], 9 January 2018.

42. Bir Duino, Osh, 11 November 2017.

*are treated normally at the border: 'No Kyrgyz blood [among relatives]? Go ahead.' And they take 20,000 tenge (that's 4,000 som) from anyone of the Kyrgyz nationality.*⁴³

A member of a feminist initiative group recounted how, in late October 2017, *"I crossed the border myself, and our locals [Kyrgyz citizens] kept shouting 'don't let the Kazakhs in' to us. They don't let us in.*"⁴⁴

Aside from the widely known and reported problems on the border for both citizens and wholesale shipping carriers, the worsening of political relations is reflected by the treatment of migrant workers, including in the form of larger bribes.

Kazakh government authorities have had virtually no reaction to complaints made by Kyrgyz citizens about crossing the border. At the office of Kazakhstan's Human Rights Ombudsman, mission delegates received the following information: *"The two ombudsmen [from Kyrgyzstan and Kazakhstan] went to Korday to see what is actually going on from both sides. [Our] ombudsman made an official statement – he personally checked on the situation and issued a press release. No violations were found. The media have written a lot, mainly on the economic (contraband) and phytosanitary topics. There were no appeals from citizens. All state agencies have drawn attention to this topic. Any problem about the border would definitely have come through to us. It is more a matter of economic issues than human rights.*"⁴⁵

Migrant workers who entered Kazakhstan before the deterioration in the governments' relationship have had a difficult time. In light of the October events, officers of Kazakh law enforcement agencies organised a number of strategic preventive measures to flush out illegal migrants from Kyrgyzstan at large markets. A representative from the Ministry of Internal Affairs explained that they had *"special raids on Kyrgyz citizens. There were two stages: the first in May 2017 and the other in October 2017. They took place over two to four days and were called 'Illegal' raids.*"⁴⁶

A member of the Kyrgyz diaspora in Astana reported that *"police officers always carry out raids in uniform."*⁴⁷ Kyrgyz migrant workers working at the Big Shanghai market in Astana who witnessed the raids took issue with this information and described these raids differently: *"There were raids from 10 to 12 October 2017. Two buses took people away. They lasted three to five hours. The cops came, and more than 10 to 15 of them were in plainclothes, they surrounded us from different rows. Once they got to the precinct, the officers collected documents and issued a summons to appear at 8 am the next day. The officers also checked if the migrants were living at the address listed on their registration. When the police come, we run away."*⁴⁸

With rare exceptions, the Kyrgyz citizens arrested during operational procedures and additional checks never appeal for help both because of their lack of knowledge about the law and because existing protection measures are not effective enough. For example, in contradiction to assertions made by staff at Kyrgyzstan's consulate in Kazakhstan to the effect that they make regular visits to the market to explain the rights and solve the problems of labour migrants,⁴⁹ workers at the market stated that they have never seen or heard of such meetings: *"The consul never came; I never heard him or saw him. No one comes here. I've never appealed to state bodies."*⁵⁰

Kyrgyzstan's consul in Kazakhstan had the following to say about its work during the raids: *"For example, the most recent raid was 'Illegal' from 4 October to 4 November [2017]. Do violations of the norms of law occur during these raids? Yes. There were raids on 10 October [2017], many of our citizens were brought in on one bus, and the officers didn't even check to see if they were*

43. Bir Duino, Osh, 11 November 2017.

44. A women's initiative group network, Osh, 12 November 2017.

45. Interview with Serik Zhamekovich Ospanov, Director, National Centre "Human Rights Ombudsman in the Republic of Kazakhstan." Astana, 16 November 2017.

46. Interview with officials from the Ministry of Internal Affairs of the Republic of Kazakhstan: Sabyrzhan Seitghanov, Lieutenant Colonel, Department of Citizenship and Immigration, Migration Police Committee; Anuar Askerov, Head of the Human Trafficking Investigation Division of the Criminal Police Department; Yevgeny Shcherbakov, Department Head, Migration Police Committee. Astana, 17 November 2017.

47. Shavkat Ismailov – Kyrgyz diaspora, Astana, 18 November 2017.

48. Interview with migrants. Big Shanghai market. Astana, 18 November 2017.

49. Meeting at the Consulate of Kyrgyzstan in Kazakhstan. Astana, 17 November 2017.

50. Interview with migrants, Big Shanghai market. Astana, 18 November 2017.

*legal or not. Everyone was released before I left, but that was about an hour and a half after I was called. The question is: Do they observe procedural norms there? There weren't other complaints regarding the actions of the authorities. This was at the Migration Service, on Seifulina St. There were about 20 people by the time I got there. I came because I was called. Some of them had been checked before my arrival. There were probably about 50 people total.*⁵¹

The representative of the Kyrgyz diaspora in Kazakhstan did not have detailed information (approximate time of detention, violations, and so forth) about the raids on markets in October 2017, and he reported that he did not receive any complaints or appeals in relation to these raids. According to his information, *"no labour violations were found at the central market."* In his opinion, the only violations involved were both the detention of people who had the required documents, and the chaotic nature of these detentions: *"there were violations during the raids in October [2017]: everyone from the market was brought in, regardless of whether or not they had documents. One young woman had to leave an open container there, and it was stolen while she was at the migration police."*⁵² Also, according to him, there were a number of unjustified expulsions, for example, *"this man – he had almost 600,000 tenge credit and he was expelled."*⁵³

Human rights defenders from Kyrgyzstan explained that *"we heard that there have been deportations from Kazakhstan due to recent events. Even people who left here (Kyrgyzstan) on business, to sell bananas, even they are being shut down. Their official businesses are being shuttered and they are being sent back to Kyrgyzstan, checks are being conducted."*⁵⁴

In response to the raids that took place in Astana in October 2017, the representative of the diaspora discovered violations in relation to the absence of interpreters and the fact that law enforcement officers from non-specialized divisions had no knowledge of the rules for conducting operational procedures. *"When the raids involve people from divisions other than the migration police, and these people don't know the rules – in these cases we are going to have supervision with the prosecutor's office. Prosecutors will be informed during raids and we will participate. Sometimes citizens don't know the Kazakh language. We are going to sign a memorandum of understanding with the prosecutor's office."*⁵⁵

It is apparent that Kyrgyz citizens who have found themselves in a difficult situation in Kazakhstan have not been provided with enough measures of assistance. The growing problem on the political level was transferred to the plane of daily life and affected migrant workers to a considerable degree. In fact, the discriminatory relationship towards Kyrgyz citizens has had a negative impact on the situation of migrants, who are already regularly subjected to prejudice. Regular people, who are entirely under the influence of political leaders, have been forced again and again to adjust to precipitously changing conditions of reality in order to earn a living.

Under these circumstances, in conformity with article 3 of ILO Convention N°97 on Migration for Employment, Kyrgyzstan must continue to act in cooperation with Kazakhstan, and provide its citizens, both on its territory and abroad, with appropriate information, assistance, and protection. Kyrgyzstan is also obliged to ensure full access to diplomatic and consular missions for its citizens, especially when they are arrested in order to be deported. Per Article 23 of the UN International Convention on the Rights of All Migrant Workers and Members of Their Families: *"Migrant workers and members of their families shall have the right to have recourse to the protection and assistance of the consular or diplomatic authorities of their State of origin or of a State representing the interests of that State whenever the rights recognised in the present Convention are impaired"*.

In order to determine the legality of the round-ups and deportations, Kazakhstan should fully comply with the UN International Covenant on Civil and Political Rights which, in Article 9 states: *"No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law"*. Also, to ensure all decisions concerning migrant detentions and deportations comply with national and international law, effective remedy should be given to all migrants – whether in a regular or an irregular situation – in compliance with Article 14 of the unmentioned UN International Covenant.

51. Meeting at the Consulate of Kyrgyzstan in Kazakhstan. Astana, 17 November 2017.

52. Shavkat Ismailov – Kyrgyz diaspora. Astana, 18 November 2017.

53. Shavkat Ismailov – Kyrgyz diaspora. Astana, 18 November 2017.

54. Interview with the Women's Initiative Group. Osh, 11 November 2017.

55. Shavkat Ismailov – Kyrgyz diaspora. Astana, 18 November 2017.

I. Human rights violations of Kyrgyz migrant workers in Kazakhstan

1. Problems arising due to a lack of registration at the place of stay

One of the main problems noted by respondents during the field mission was the difficulty of documenting registration at their place of residence, which is due to the inability to register at the place of work and the reluctance of local residents to register migrant workers in the apartments rented to them. This complicates the process of legalization at work, and the exercise of basic social and economic rights.

According to data obtained during the field mission in Astana, many migrant workers in Kazakhstan are in an illegal situation due to their lack of registration and their inability to leave the country after the thirty-day period.⁵⁶

"Many of us work illegally because we don't have a residence permit for our place of residence and employers do not have a permit to hire foreign workers. We usually take advantage of the 30-day permit, then leave the country and return immediately for the next 30 days. It's complicated to register place of residence, since owners do not agree to register migrants when they rent out housing. The Kazakhs just don't trust us. Registration that is not connected with place of residence is prohibited under Kazakh laws. And it's impossible to process paperwork without a registration."⁵⁷

In order to live and work in Kazakhstan for a period exceeding 30 days, most Kyrgyz citizens must leave the country and then immediately re-enter. Several migrants interviewed complained of corruption at entry points on the Kazakh-Kyrgyz border. One migrant worker named Almakhan recounted what happened to her friend as she was crossing the border with Kazakhstan:

"She saw that border guards took money from one man who was standing in front of her, but these guards didn't have the badges with their names and photographs that all customs workers are supposed to wear. She started asking them, 'Where's your badge? Why are you collecting money?' She said that the man they took money from was poor. He had a five-litre bottle of oil, he was dragging it home. It was clear he was a worker. Their boss came in response to her cry. She told him what she had seen and demanded that the money be returned to that person. He said, 'OK, don't joke around,' and he gave the money back."⁵⁸

There are other examples of corruption whose witnesses and victims were migrant workers from Kyrgyzstan:

"I travel to work in Almaty. I can earn good wages there, but I can't register. I have to leave and re-enter the country several times a year. Every time I cross the border, the border guards, who already know me, ask for a bribe of 200-300 som, just because they know that I am traveling for work and that I have money. I pay so that there are no problems. If I'm not able to leave, or if I don't have days off, once every two months I have to pay 1,000 tenge to the police and to the migration officers who come to the café for checks."⁵⁹

"I worked at the construction site of a villa community in Chilisky District of Almaty Oblast in 2016. When we left Kazakhstan through the border town of Korday, we paid bribes in the amount of 1,500 tenge for not having a registration."⁶⁰

The fact that most migrant workers do not have a registration, nor do they have legal grounds to stay and work in Kazakhstan, has resulted in a real "hunt for illegals" led by the migration

56. Since 15 July 2017, Kyrgyz citizens arriving in Kazakhstan to perform work activities have been free from the obligation to register within 30 days of their date of entry. If they stay over 30 days from their date of entry, these citizens must register in accordance with the laws of Kazakhstan.

57. Interview with a migrant worker from Kyrgyzstan. Big Shanghai market, Astana, 18 November 2017.

58. Interview with Almakha K., a migrant worker from Uzbekistan. Shymkent, 15 November 2017.

59. Interview with Kamalytdin S., a migrant worker from Kyrgyzstan. Aravansky District, Osh Oblast, 6 November 2017.

60. Interview with Aziz M., a migrant worker from Kyrgyzstan. Batken. 4 November 2017.

service. According to Kazakh human rights defenders, the officers of this service conduct raids several times a month in places where migrant workers gather – such as markets, food courts, and construction sites - to identify and expel “illegals”. These raids are conducted within the framework of so-called strategic preventive measures that frequently bear the degrading names of “Illegal,” “Migrant,” and so forth.

The violators are not just foreigners who have not completed the paperwork for registration, but also people who are not living at their place of registration and have not notified internal affairs authorities of this. Pursuant to the “Rules for Entry, Stay, and Departure for Migrants to the Republic of Kazakhstan,”⁶¹ this is a violation of migration rules and can entail an administrative fine and expulsion for a period of five years or more. This punishment poses a real threat to the majority of migrants, many of whom experts say usually live not at their place of registration, but rather at construction sites or other places of work.

“The migration police conduct at least one raid per quarter. Or more frequently, if there is some cause for alarm. But they can really drop in anywhere at any time and make checks. At a construction site, for example. Generally, all the local officers know the ‘profitable places’ on their beat. And then the boss has to pay a bribe for each [migrant] on the spot. This bribe can then come out of the migrant’s salary.”⁶²

“Migration officers often come up as if they were customers, but as soon as they notice an accent, they take out their badges and demand documents. When they turn up at a market in uniform, migrants call everyone to warn them. This is how many people are able to hide from them. People who aren’t able to hide try to just bribe the officers right then and there to avoid prosecution, which would mean deportation. The size of the bribes range from 5,000 to 20,000 tenge; if the migrants don’t have cash, the officers may take some goods. Under Kazakh law, re-entry to the country is banned for five years after deportation, so no one stands up against this.”⁶³

The situation of migrant workers employed at construction sites is very similar. In most cases, their safety depends on the involvement of the site’s director or foreman. These people generally have connections with the migration service and can resolve workers’ problems even if their status is not regulated.

“I never saw the boss the entire time I was working there. Only the foreman spoke with me and the other workers and solved all the problems. He paid our salaries and handled problems. For example, he paid bribes to migration service officers during raids. There were three raids over the time I worked there. The migration officers knew that many foreigners worked at the site, but they never detained anyone right there. There were only cases with people who ran off to the market or had other problems. Before the raid, anyone who was illegal was hidden in remote trailers, and the migration police were only shown people who had a registration and a work contract. These were generally local Kazakhs.”⁶⁴

These various testimonies show that the migratory policy of Kazakhstan is discriminatory-based. As a consequence, it also violates article 2 of the ILO Convention N°111 on Discrimination which states that: *“all workers, including migrants, shall enjoy equality of opportunity and treatment in respect of employment and occupation”*.⁶⁵ The practice of collecting bribes at exit points, or building obstacles that complicate the return to Kyrgyzstan, are in violation of the UN International Covenant on Civil and Political Rights which enshrines the right to leave any country. Article 12.2 states: *“Everyone shall be free to leave any country, including his own”*.

61. Clause 10 of the Rules for Entry, Stay, and Departure for Migrants to the Republic of Kazakhstan.

62. Interview with staff members at the “International Legal Initiative” Public Foundation. Astana, 16 November 2017.

63. Interview with a migrant worker from Kyrgyzstan. Big Shanghai market. Astana, 18 November 2017.

64. Interview with Aziz M., a migrant worker from Kyrgyzstan. Batken, 4 November 2017.

65. C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

2. Sub-standard or exploitative working conditions: practices that may lead to forced or compulsory labour

According to article 2 of ILO Convention N°29 "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".⁶⁶

The ILO website expounds upon this article, stating: "Deciding whether work is performed voluntarily often involves looking at external and indirect pressures, such as the withholding of part of a worker's salary as part repayment of a loan, or the absence of wages or remuneration, or the seizure of the worker's identity documents. The principle that all work relationships should be founded on the mutual consent of the contracting parties implies that both may leave the work relationship at any moment, subject to giving reasonable notice in accordance with national law or a collective agreement. If the worker cannot withdraw his/her consent, without fear of suffering a penalty, the work may be considered to be forced labour, starting from the moment he or she has been denied the right to stop working".⁶⁷

According to this definition, the dozens of testimonies collected by the missions suggest that Kyrgyz migrants are regularly subjected to practices that may lead to forced labour while working in Kazakhstan.

a) The illegal business of intermediaries that take advantage of the vulnerable position of migrants

Migrant workers face difficulties at virtually every stage of their journey to work in Kazakhstan: they have to find work, sign a work contract, and then register a residence somewhere. Kyrgyz citizens do not need a work permit according to the EEU Treaty. However, they need to find an employer within their first 30 days of residence and conclude a work contract. After 30 days, they shall register for the period shown in the contract. It is quite difficult for a person to pass through these stages alone, so migrants frequently turn to intermediaries. These intermediaries promise to solve their problems quickly for a certain amount of money by circumventing state authorities. Most of these intermediaries operate unofficially, their activities are not regulated in any way, and they are generally not held liable for their activities.

For example, the cost of a one-month registration ranges from 5,000 to 8,000 tenge and the cost of medical certificate form 086/u, which is frequently required by employers upon hiring, is 2,500 tenge. Documents obtained in this way may frequently be fake and result in administrative and criminal prosecution the first time they are checked by police officers. In situations where a migrant worker has nowhere to turn for legal assistance, this worker becomes the victim not just of fraud, but also of exploitation by both intermediaries and representatives of law enforcement agencies who extort money from them.

One of these intermediaries is a woman name Kyzdarkan, a Kyrgyz citizen who used her connections with Kazakhstan's migration police to complete fake registrations for migrant workers.

"In October 2017, my 22-year-old brother was deported because of this woman. He paid her 35,000 tenge and gave her his passport for her to process his registration. After four months, she still had not returned his passport or processed the registration, which was the cause of his deportation. I found out later that a migration police officer (an acquaintance of this woman who processed documents for money) was arrested with the passports of 65 migrants. Thirty-four of these passports belong to Kyrgyz citizens, and my brother's passport was among them. This woman would initially take one amount – from 30,000 to 50,000 tenge, and then ask for more money, citing some problems that had arisen. So the amount sometimes reached up to 100,000 tenge. If migrants refused to give her more money, she withheld their passports and said that the passports were with a migration police officer and that they would not be returned until additional money was received. This woman and the migration police officer are currently under investigation."⁶⁸

66. C029 - Forced Labour Convention, 1930 (No. 29).

67. Available on ILO website: http://www.ilo.org/empent/areas/business-helpdesk/faqs/WCMS_DOC_ENT_HLP_FL_FAQ_EN/lang-en/index.htm

68. Interview with a migrant worker from Kyrgyzstan. Big Shanghai market. Astana, 18 November 2017.

According to Adilbek Mukashev, Director of the Government Services Department at the Government Services and Anti-Corruption Agency, his agency has adopted measures to stiffen punishments for state workers working through intermediaries. He noted that it is legally impossible to punish the intermediaries directly, but that this problem can be solved by transferring powers to provide state services to another agency.

"In order to prevent these types of intermediary activities, we have initiated the question of transferring all the services provided by the migration police: documentation and issuing identification documents and passports will be done through the state corporation Government for Citizens, that is, through service centres for the population⁶⁹ (SCPs)."⁷⁰

The percentage of migrants turning to intermediaries while they are still in their homeland for help finding work abroad is high. These intermediaries offer assistance in choosing a job, organising passage, completing the required documents, and so forth. They generally have strong connections with employers in Kazakhstan, but they are not responsible for employers' compliance with legal work conditions. Thus, if migrants sent by them do not end up in a situation of forced labour, they may still be subjected to violations on the part of their employers. After collecting the required group of workers, the intermediaries transport them across the border in an organised manner (some illegally) and then work on placing them at work sites, tracking conditions at work, and resolving problems that migrants may face during their work activities.

"I found a job through several intermediaries who were connected with each other. The first one was from Batken. He was connected with a person from Bishkek, and through him I met an employer from Kazakhstan. Initially they promised me work as an unskilled labourer for 25,000 som per month, official employment, official registration, and housing in a dormitory with free meals. Another five people went with me for this job. We were taken across the border in a van. When we were filling out our migration cards, we were told to write that we were taking a trip. When we arrived at the place, we were placed in trailers separated from the outside world by barbed wire and the fence of the construction site. We weren't allowed to go beyond this fence. They were building a villa community. No one took care of our registration. We could only resolve questions through the intermediary. None of us ever saw the employer. After three months, they started withholding our salaries, and then they stopped paying them altogether. I went home without waiting for the debt to be paid, because I knew that I would never be able to prove anything to anyone and that I wouldn't get anything."⁷¹

Many intermediaries fulfil the role of de facto employer and frequently resort to deception and blackmail by using their ties with the migration police against migrant workers. After promising migrants completely legal work conditions, including the processing of their registration, the intermediaries do not fulfil their obligations. But when workers complete the work required by the contract, the intermediaries call migration service officers to their place of work and hand over the people who do not have registrations or the people whose registrations have expired so that they can appropriate the money the workers earned.

"We worked at a private construction site in the Pervomaysky microdistrict of Zhetysuisky District in Almaty. They were seven people in our brigade. We agreed with an intermediary named Adinazar that we would complete the work within four months, so we worked as much as we could every day. We worked mainly without any days off. No one signed any contracts with us, but Adinazar promised to process our registrations. At the end of the fourth month, when it came time to pay us, the residents from the adjoining property told us that we probably wouldn't get anything and that we would be handed over to the police. They said that this was a well-established business for our employers: they just pay one police officer \$2,000-\$3,000 and he organises a raid by the migration service. Two other guys and I ran away that night, because we understood that we had been deceived. The people who stayed really were detained and expelled. As we later learned, Adinazar called migration and police officers and they arrested everyone who was at the site. Naturally, he didn't process any registrations for us, so there was no problem expelling us. I think that Adinazar

69. i.e., all state services will be in one place.

70. "S 'pomogaikami' v Kazakhstane budut borotsia novymi metodami." [New methods will be used to combat 'helpers' in Kazakhstan]. Tengrinews.kz.

71. Interview with Aziz M., a migrant worker from Kyrgyzstan. Batken, 4 November 2017.

*received money for us, but that he didn't give it to us. He gave part of it to the police officers so that they would arrest us, and he kept the rest for himself.*⁷²

Kazakhstan ratified article 1 of ILO Convention N°122 concerning employment policy. This Article states that *"each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment"*. However, despite the existence of this international labour standard relating to recruitment, Kazakh national laws and their enforcement fall short of protecting the rights of migrant workers.

Whether they are Kazakh or Kyrgyz citizens, informal labour intermediaries act outside the legal and regulatory framework, and prey especially on low-skilled migrant workers. Consequent reported abuses in this report involve one or more of the following: deception about the nature and conditions of work; retention of passports; illegal wage deductions; debt bondage linked to repayment of recruitment fees; threats if workers want to leave their employers, coupled with fears of subsequent expulsion from a country. A combination of these abuses can amount to human trafficking and forced labour, and strongly violates ILO standards on fair recruitment.⁷³

b) Absence of a work contract and other violations of work conditions by employers

The absence of a work contract gives rise to a number of other problems, specifically: the withholding or non-payment of wages, non-payment of overtime, difficulties receiving social and legal protection, restricted access to medical services, etc.

Accession to the EEU eased the situation, since it gave Kyrgyz citizens the opportunity to sign work contracts just like Kazakh citizens, but there are still people who have been living and working in Kazakhstan for several years without a contract.

Pursuant to Clause 3 of Article 33 of Kazakhstan's Labour Code, a person may only work after signing a work contract. If there is no contract, or if the contract has not been properly drawn up, the employer is liable for not following the procedure established by the laws of the Republic of Kazakhstan. However, enforcement actions stipulated in Kazakhstan's administrative laws are unbelievably limited. Often the maximum penalties for a violation of the requirements of labour relations laws and labour protection do not correspond to the level of danger of the crime committed. For example, Kazakh law stipulates a fine in an amount ranging from 30 to 150 monthly calculation indices depending on the size of the employer's business if a person is allowed to work without having signed a labour agreement.⁷⁴ In some cases, an even stricter punishment up to suspension of the employer's license is stipulated,⁷⁵ but this is rarely applied for violating labour laws.

*"The migration police apply penalties against foreign citizens and their employers when migration norms are violated. But since we have completely moved to preventive control, the process of work is such: an inspector conducts a check, and if an employer is found to have committed a violation for the first time, he is not prosecuted. If a violation is found a second time, then penalties are applied pursuant to the law. This form of checks has been in effect for two years now."*⁷⁶

Because migrant workers know little about the law and fear expulsion, they rarely appeal for the protection of their rights when their employers perform illegal actions. This means that employers rarely become the target of administrative liability for undocumented labour relations with migrant workers, which allows them to engage in the illegal hiring of workers virtually unpunished. When they consider the likely expenses connected with the proper fulfilment of requirements of the law and the maximum amounts of fines in conjunction with the likelihood of

72. Interview with Omurbay E., a migrant worker from Kyrgyzstan, 3 November 2017.

73. See ILO standards on Fair recruitment, available at <http://www.ilo.org/global/topics/fair-recruitment/lang-en/index.htm>

74. Clause 1 of Article 86 of Code No. 235-V of the Republic of Kazakhstan "On Administrative Offenses" of 5 July 2014.

75. Clause 4 of Article 86 of the Code of Administrative Offenses stipulates that the repeated hiring of a worker without a work contract entails a fine and the suspension of activities.

76. Interview with Tolegen Ospankulov, Deputy Chair of the Committee for Labour, Social Protection, and Migration of the Ministry of Health and Social Development of the Republic of Kazakhstan. Astana, 17 November 2017.

violations being discovered, employers conclude that it is cheaper to pay the fine than to comply with the requirements of the Labour Code.

“Sometimes we have to convince both farmers, who are employers, and migrants to formalise their labour relationship because no one wants to bear the expenses or do the paperwork. Everyone is scared that if they follow the law, tax officials will start conducting checks and hand out fines for incorrectly handling the documentation. But employers and workers are taking a risk without a written contract because employers can be fined and because it is harder for workers to stand up for their rights if their employer does not pay their salaries or commits other violations. One migrant from Kyrgyzstan, Azamat, complained that his employer would not give him leave and withheld his salary. He tried to quit because he was not satisfied with the work conditions. According to Azamat, at the time he appealed for help, the farmer owed him 300,000 tenge. The conflict was resolved after our visit and demands to pay his salary. Azamat received 150,000 tenge right away and 150,000 after the harvest.”⁷⁷

“We had an entire brigade from Batken. We were working in the Pervomaysky microdistrict of Zhetysuisky District in Almaty. We went to work there at the invitation of a person from Leylek [in Kyrgyzstan]. He said that we were supposed to work at a construction company with official employment and registration. The work involved taking down old structures and erecting new villas in their place, so we were told to agree on the timeframe, amount of work, and salary when we got to the site. When we arrived, nothing was as promised. The 15 people who came from Kyrgyzstan were immediately separated into three groups so that no one had relatives or people from the same town in their group. No contracts were signed. We were not registered, even though the employer said that he would handle our registrations. The person from Leylek basically managed everyone. He was supposed to give us our wages later, but he never paid us once over the entire time we worked there. When it came time to leave the site, he just drove me and several other people off the territory without paying us anything. We decided not to complain anywhere, since we didn't have a contract or other proof that we worked for this person. So we just went back to Kyrgyzstan.”⁷⁸

During the mission, cases were also discovered where farmers who hired entire families of migrant workers to work in the field only drew up a work contract for one of them, but liability for violating the terms of the contract was divided evenly among all the family members. One of the farmers described the arrangement for employing workers and paying wages in the following way: *“The contract is drawn up with one person in the family. Generally, with the oldest. A contract is signed with each person, but if one of the family members works badly or violates one of its clauses, the entire family answers for it. What's more, wages are paid at the end of the season, which generally lasts for six months. When they first sign the contract, the farmer and the worker agree that they will split the profits. During the work period, the farmer gives workers some money for their everyday needs and then deducts these amounts when paying the full wages. Workers can also work for another farmer when the planting is done and they have a free week.”⁷⁹*

Even though they are aware of similar situations, the migration police still continue to prosecute foreign citizens in an “illegal situation” while ignoring the people who are actually guilty of mass violations of the rights of migrant workers. This practice is driven by the lack of interest law enforcement agencies have in protecting the rights of foreign citizens, the perception of migrant workers as potential violators, and the high level of corruption that makes it possible for unscrupulous employers to easily avoid any problems by giving bribes. This requires the immediate introduction of amendments to labour laws of Kazakhstan that are aimed at stiffening penalties for employers for violating labour laws in relation to workers, particularly migrant workers.

77. Interview with Bakytgul Elchibaeva, Executive Director of the Fund of Local Communities of Enbekshikazakhsky District. Almaty, 5 September 2017.

78. Interview with Mustafa A., a migrant worker from Kyrgyzstan. Isfana, 3 November 2017.

79. Interview with farmers. Shelek, Enbekshikazakhsky District, Almaty Oblast, 13 November 2017.

c) Risks with implications for the occupational safety and health of migrant workers

The UN International Covenant on Economic, Social, and Cultural Rights recognises the right of every person to the enjoyment of just and favourable conditions of work.⁸⁰ In particular, this right includes safe and healthy working conditions and rest and reasonable restriction of working hours. In spite of this, work conditions for most migrants in Kazakhstan are extremely difficult. The cases we documented are examples of the fairly widespread practice of forced labour in Kazakhstan: migrants are not able to leave the work zone, most of them do not enter into work or civil agreements, they do not receive any socioeconomic guarantees upon hiring, and they work without a set schedule. Pursuant to Article 71 of the Labour Code, the workday must not exceed eight hours, and pursuant to Article 78 of the Labour Code, the total amount of overtime per month must not exceed 12 hours. The work schedule of labour migrants frequently extends beyond these limits; they may work from nine to 15 hours per day with an employment period of six to seven weeks.

"I travel to Kazakhstan every year for seasonal work. I work at construction sites as an unskilled labourer. Last time I went to work at the construction site of a small production facility in the Uighur village of Chundzha, which is located 200 km from Almaty. At these kinds of sites, the work day usually starts at 8 am and lasts 10-12 hours. In the morning, work goes from 8 am to noon, then we have an hour for lunch, and then we go back to work until 6 pm or 8 pm. In the summer, work sometimes goes on until sundown."⁸¹

The problem of work with no fixed hours is especially significant for migrants if it is taken into account that they usually find jobs at construction sites, in the fields, or in the services sphere, all of which involve difficult physical work. Without any formal contract and isolated, migrants work and live in sub-standard conditions, and are therefore more easily exposed to diseases and accidents.



Kitchen used by migrant workers in the basement of a construction site in Shymkent, November 2017. © FIDH

80. Article 7 of the UN International Covenant on Economic, Social, and Cultural Rights.

81. Interview with Hassan T., a migrant worker. Aravansky District, Osh Oblast, 6 November 2017.

Typical instances of these violations were described by residents of Osh and Batken oblasts working in Kazakhstan:

“We lived in trailers on a construction site that was blocked off from the outside world by barbed wire and a fence. We could not leave this area. It was the construction site of a villa community. The trailers were extremely small. Only four bunk beds fit in them with a narrow space between them. We worked from 8 am until 8 pm except in the summer months. Then it was extremely hot. We were allowed to rest, but then we had to work until 10 pm. We had no days off, but we could ask for leave if we needed to. In this case, we weren't paid anything. There were no norms. In general, the nature of the work changed as soon as the previous task was done. The monthly wages were 22,000-23,000 som per month instead of the promised 25,000, because it turned out that the owner spent the difference on food. The workers tried to object, but with no luck. None of them had contracts or properly completed documents.”⁸²



Bedroom of five migrant workers in the basement of a construction site in Shymkent, November 2017. © FIDH

“We were taken out of Kyrgyzstan illegally, circumventing the border. We only found out about this when we arrived at our place of work. The conditions there were hellish. We were housed in a yurt, not in normal houses as we were promised. It was dry and cold inside. We were basically never allowed to venture beyond the boundaries of the construction site. We only ran to the market sometimes. Every time we went out, the police detained us because we didn't have registrations. We constantly had to pay them off. This was all in October and November. The weather was rainy. I worked as a bricklayer. The site was on low ground, so we frequently had to work up to our knees in water for eight to ten hours. I got sick after a couple of weeks and was in bed for a month, apparently because I worked in the rain and my clothes were always damp. My face was swollen; I had a high temperature and the shivers. I don't know what the diagnosis was. I wasn't allowed to go to the polyclinic. They didn't call the doctors. They didn't give me medicine either. They just gave me tea with some herbs.”⁸³

82. Interview with Azim M., a migrant worker from Kyrgyzstan. Batken, 4 November 2017.

83. Interview with Mustafa Sh., a migrant worker for Kyrgyzstan. Golbo, Leylesky District, Batkensky Oblast, 3 November 2017.



Pillows for migrant workers to rest on a construction site in Shymkent, November 2017. © FIDH

There are a number of reasons why migrant workers in an unregulated status have limited access to medical services. The first is financial. Since people migrate to Kazakhstan for economic reasons, their salaries are low, and most of them send money home to their country of origin, spending money on healthcare seems excessive. Migrant workers with an unregulated status also do not want to go to a hospital because they fear being detained by representatives of law enforcement agencies. Finally, in Kazakhstan, access to social and tax services is tied to place of residence and registration. Within this system, each person has an individual identification number (this number is assigned by the tax service for foreign citizens who do not have permanent residence). Many migrant workers with unregulated status cannot obtain this number because they do not have a registration, or because of their fear of initiating administrative proceedings, which are both frequently seen as a means of control and surveillance on the part of the government. Even though an identification number is not theoretically necessary for receiving medical services, in practice hospitals refuse to provide migrants who do not have such a number with free medical services.⁸⁴

Kazakhstan ratified ILO Conventions N° 155, 167, and 187 which concern occupational safety and health.⁸⁵ However, the missions documented several cases where migrant workers from Kyrgyzstan and Uzbekistan worked in an environment that was dangerous for their health. Although some workers are made to work several hours without a break, which may cause their level of concentration to drop, their safety is often not guaranteed. Should there be an accident at the workplace or cases of diseases, workers in an irregular situation (*any* worker who did not conclude a written contract, including migrants) may not receive any assistance or compensation from the employer. The missions did not collect evidence showing that the Government of Kazakhstan is taking action to improve the conditions in the sectors where migrants work, in particular the construction and agriculture sectors. Likewise, the Government has not taken measures to provide guidance to employers and workers on complying with legal obligations in this regard. This absence of effort violates both Articles 4 and 10 of Convention N°155 on Occupational Safety and Health.

Article 9 of the same Convention states, "*the enforcement of laws and regulations concerning occupational safety and health and the working environment shall be secured by an adequate and appropriate system of inspection*". However, and in violation of ILO conventions N°81 and 129 on labour inspection ratified by Kazakhstan, the Kazakh Labour Inspection Agency has been unable to enforce legal provisions relating to conditions of work and the protection of workers (see Section "The Absence of Migrants' Ability to Exercise their Rights : the limited role of the Labour Inspection Agency").

84. Interview with women migrants in Shelek, 13 and 14 March 2016.

85. C155 - Occupational Safety and Health Convention, 1981 (No. 155); C167 - Safety and Health in Construction Convention, 1988 (No. 167); C187 - Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

d) Withholding and non-payment of wages

Representatives of the Committee for Labour, Social Protection, and Migration stated at a meeting with the mission that large-scale violations of labour laws on the part of employers, such as non-payment of wages, do not exist in Kazakhstan: *“Kazakhstan is one of the 50 developed countries in the world. There are no problems like non-payment of wages in the country. Employers have been trained that it is necessary to comply with the law.”*⁸⁶

However, in breach of labour law, employers regularly violate the right of migrant workers to full and timely payment of wages in accordance with their qualifications, the difficulty of their work, and the amount and quality of work completed.⁸⁷ This means that even those migrants who comply with the requirements of migration law in terms of entry into Kazakhstan and record keeping still end up violating the law, since they do not have enough money to leave Kazakhstan when the effective period of their registration expires. This creates yet another situation where migrant workers find themselves outside the legal framework.

When they do not receive their salaries, migrants are frequently forced to search for work with other employers. They may also seek employment at the so-called “kulbazar” (“slave market” in Kazakh) – an unofficial market for day labourers who are hired by private business owners for low wages to perform any type of work. Shymkent has such a kulbazar where migrants frequently seek work on the side. According to a report from a local monitor from the “International Legal Initiative” Public Foundation, it is located near the Stary Gorod bus stop, not far from the bus station. Galym Ageleuov, President of the Liberty NGO also told the mission about this market:

*“Many migrants have problems with documents, which means that they are frequently the victims of fraud and blackmail on the part of employers. They are not paid their wages, so they cannot even pay their rent. Many of them, mostly Uzbeks, go to earn extra money at the market in Shymkent. There migrants will take any job for a tiny salary or a piece of bread: they’ll go build a fence, dig a hole, or build something.”*⁸⁸

Because of the unfixed size of their salaries, migrants rarely have even the remotest idea of when and how much money they will be paid, or if they will be paid at all. When they do not receive their wages, many migrants hope that they will still be paid and decide that it is better to work another few weeks or months so that they can receive at least part of what they have earned. According to one migrant worker who met with the mission in Kyrgyzstan, people in his village have virtually stopped traveling for Kazakhstan for work, even though it is very hard to find a job in his village, because of the risk of fraud on the part of employers. The last time he went to Kazakhstan as a migrant worker, he and his fellow villager were deceived by employers who did not pay them anything for three months of heavy labour at a construction site:

*“We worked at the construction site of a private villa. Everything was illegal. We didn’t have registrations or contracts, even though the owner promised to do all of that. What’s more, they took our passports when we started work. We lived in trailers. There were days when we were left without food because we didn’t receive our wages. After working for three months and doing practically all the work, we started demanding our money, the \$12,000 we were promised when we went there. The owner didn’t even bother talking to us. Some bandits with guns came to the construction site, threatened us, and chased us off. We set off for home and, since we had been living in Kazakhstan illegally all this time, the Kazakh border guards fined each of us 1,500 tenge.”*⁸⁹

Another widespread violation of labour laws by employers is the withholding of wages as is described in the following manner by a migrant worker: *“I worked as a loader at a warehouse. They pay normally here, but in alphabetical order. Anyone whose name starts with a Ya [the last letter of the Cyrillic alphabet – Trans.] gets paid with a lag of one to two months. But the salary is official. It comes out to 85,000 tenge a month. From this amount, 8,000 goes to taxes and about 15,000 when the merchandise has been damaged for a reason or another. In the end, it works out to 65,000 to 70,000 tenge.”*⁹⁰

86. Interview with Tolegen Ospankulov. Astana, 17 November 2017.

87. Article 22 of the Labour Code of the Republic of Kazakhstan.

88. Interview with Galym Ageleuov, President of the Liberty NGO. Almaty, 4 September 2017.

89. Interview with Rakhmankul K., a migrant worker. Togus-Bulak, Leyleksky District, Batkensky Oblast, 2 November 2017.

90. Interview with a migrant worker from Kyrgyzstan. Big Shanghai market. Astana, 18 November 2017.

These cases violate most of the Articles of ILO Convention N°95 on the protection of wages⁹¹. According to this Convention, ratified by Kazakhstan, “wages shall be paid directly to the worker concerned” (article 5); “employers shall be prohibited from limiting in any manner the freedom of the worker to dispose of his wages” (article 6); “workers shall be informed, in the manner deemed most appropriate by the competent authority, of the conditions under which and the extent to which such deductions may be made” (article 8); “any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labour contractor or recruiter), shall be prohibited” (article 9); “wages shall be paid regularly” (article 12); “effective measures shall be taken to ensure that workers are informed, in an appropriate and easily understandable manner before they enter employment and when any changes take place, of the conditions in respect of wages under which they are employed” (article 14); and the Government of Kazakhstan shall “prescribe adequate penalties or other appropriate remedies for any violation thereof” (article 15).

However, the Government of Kazakhstan does not ensure the effective implementation of ILO Convention N° 95 on the protection of wages, which should ensure a protection of migrant workers’ labour rights, whatever sector they work in.

e) Exploitation of migrant workers on farms

A special issue is the violation of the rights of migrant workers employed by farms. After scandals connected with the exploitation of migrants and minor children on tobacco plantations in 2010 and the general trend towards a drop in the demand for tobacco products, Kazakhstan has started to rapidly reduce the number of cultivated tobacco fields. However, the problem of violations of the rights of migrant workers in agriculture remains critical. Land that was previously planted with tobacco is now used for grains, vegetables, and other agricultural crops, and the farmers who own these fields continue to use the labour of foreign workers. Some of these workers are Kyrgyz citizens. The conditions that labour migrants find themselves in are extremely difficult. An unrestricted amount of work hours, harsh work conditions (scalding heat or freezing cold, insects, etc.), and extortion on the part of employers are typical problems faced by migrants in the sphere of employment.

Most migrants arrive for work in the spring or summer seasons and work for several months. Since employment is unofficial in most cases and wages are paid only at the end of the season in disregard of the norms of labour law, conflicts frequently arise between migrants and farmers.

“Wages and all the other conditions are agreed upon orally. Usually everything that is earned is divided equally between the farmers and the workers. Migrants earn from 2,500 to 3,000 tenge for seven to eight hours work in the field. But payment is usually made at the end of the season, after the products are sold. Until then, the worker doesn’t receive anything, but he can borrow from the owner for food and other needs.”⁹² This is why farmers frequently collect documents from workers as security and force them to work off this money. There are times when migrants give their passports to their bosses voluntarily, but the bosses do not return them and force migrants to perform additional work.

Another category of problems is created when workers lease land from farmers. This form of employment for migrants is widespread in several oblasts of Kazakhstan. Since there is no other way to earn money, migrants are frequently prepared to agree to even the most unfavourable terms offered them by owners.

Generally, farmers lease the land from the State for a period of 49 years. Pursuant to Clause 3 of Article 37 of Kazakhstan’s Land Code, farmers do not have the right to sublease land they have leased, nor can they allow another person to use it temporarily free of charge. So even if a farmer and migrant worker enter into an agreement to use this land, this agreement is procured through misrepresentation and is contrary to the law.

At a meeting with the Women’s Business Initiative NGO, one of the workers described how migrant workers working in the fields are forced to earn a living: *“Kyrgyz lease land from Kazakhs, sometimes even from those Kazakhs who previously exploited them for several years. They make*

91. C095 - Protection of Wages Convention, 1949 (No. 95)

92. Interview with farmers in Shelek. Enbekshikazakhsky District, Almaty Oblast, Kazakhstan, 13 November 2017.

oral agreements, without signed contracts, to pay an amount from the produce they cultivate. After the harvest in the fall, migrants try to sell produce right on the side of the highway. They do this because they can't reach agreements with anyone to sell it. But because it is not advantageous for Kazakhs when the Kyrgyz sell products at markets or on the side of the highway, they put pressure on the Kyrgyz and do not allow them to reach points of sale. Migrants must wait until the end of the season when the Kazakhs have sold all their produce. After this, they are either allowed to sell on the highway, or the Kazakhs buy their spoiled produce for next to nothing to feed to their livestock.”⁹³

Registered since 2007, the Fund of Local Communities in the Enbekshikazakh District (Almaty province) have been conducting programmes to improve the social situation in the region, whose economy is predominantly agricultural. The Fund works with farmers, helping them formalise labour relationships and establish contracts. Since 2011, it has included in its programmes a support to migrant workers. Bakytgul Yelchibaeyva, Director of the Fund, explained to the mission that several initiatives have been launched to help and inform both farmers and migrant workers on the legislation and the obligation to contract:

“We have been working on migrant issues since 2011, when Philip Morris approached us about it. The company was actively working on this problem, and there was access to migrants who worked in tobacco fields. A lot has changed since then: now there is no tobacco. People who stopped cultivating tobacco started planting fodder crops, corn, vegetables, and soy. We developed a group of migrants who came to us for help, who had been living in Kazakhstan for years without legal status. They had never submitted documents for a residence permit. They had crossed the border by car or by foot. They used illegal communications channels and lived from five to ten years in Kazakhstan. Some of them are now volunteers who help us and distribute information about us. Farmers also approach us for help when migrants come to work for them. We distribute information about how to properly draw up their documents. The farmers who come to us are ones that we have been working with for a long time. Sixty-nine permits were issued for work in 2014-2015 before accession to the EEU. Sometimes, we have to convince both employers and migrants to formalise their labour relationships. Either no one wants to pay for it or deal with the paperwork, or else the tax inspectors will see it and every agency will go the farmers for a check. Under the treaty, Kyrgyz citizens can enter into any contract, but in practice they think it amounts to extra expenses and they don't want to legalise their status. They only file appeals when their rights are violated”.

ILO Convention N°129 on Labour Inspection in Agriculture⁹⁴ remains largely unimplemented in Kazakhstan, even though it was ratified by the Government in 2001, partly due to the fact that the Labour Inspection Agency has very limited means to fulfil its mandate. As a consequence, violations of this convention occur every day. For example, labour inspectors cannot enter any workplace freely and without previous notice at any hour of the day or night (Article 16), and they are not notified of occupational accidents or occupational diseases occurring in the agricultural sector (Article 19). In ratifying this convention, Kazakhstan made a commitment to ensure that agricultural undertakings be inspected as often and as thoroughly as is necessary (Article 21), and that the Labour Inspection Agency, as the central inspection authority, publish an annual report providing statistics of inspection visits, agricultural undertakings liable to inspection and the number of persons working therein, violations and penalties imposed, and of occupational diseases and accidents, including their causes (Article 27).

3. The problem of putting migrants with unknown status in detention centres and expelling them

Kazakhstan's migration laws stipulate several types of penalties for various violations. The main penalties are administrative fines and arrest, with subsequent deportation from Kazakhstan.⁹⁵ Migrants with unregulated status detained during raids or regular document checks on the street are sent to a court that issues a decision on the type of punishment.

From May to October 2017, migration police officers conducted large-scale raids dubbed “Illegal.” During these raids, 97,149 migrant workers detained were given administrative punishments. Of

93. Information from the Women's Business Initiative NGO, Kyrgyzstan. Osh, 10 November 2017.

94. C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129).

95. Articles 391 and 394 of Kazakhstan's Code of Administrative Offenses.

these, 11,000 were deported from Kazakhstan.⁹⁶ Here is how a migrant worker from Kyrgyzstan described the events of those months:

"Beginning on 10 October and all the way up to the end of the month, there were raids every day at the market. Anyone who was caught was taken first to the precinct and then to the court. This took the entire day, and people weren't given anything to eat or allowed to use the bathroom. They were fined in court. [Pursuant to Article 517 of the Code of Administrative Offenses, fines can be given in an amount ranging from 15 to 25 monthly calculation indices (MCI)].⁹⁷ Twenty to thirty of these MCIs were issued for each person. They were given seven days to pay the fines, and they were all deported even if they weren't fined. They deported 50-60 people from each market."⁹⁸

Kazakhstan's migration policy roadmap for 2017-2021 was approved by Resolution No. 602 of the Government of Kazakhstan of 29 September 2017. The top priorities of this roadmap are listed as the determent and prevention of the flow of illegal migration and the negative consequences that come with it by developing an effective mechanism for deporting illegal migrants and creating a network of specialized centres to temporarily hold foreigners who lack a definite status. Right now, the practice of holding foreigners in these specialised centres is disproportionate to the violations that they committed and violates their rights.

According to Galym Ageleuov, president of the Liberty NGO, the conditions in these special centres are definitely not intended for holding people and do not comply with basic sanitary norms: *"At the special centre at 110 Lobachevsky Street in Almaty, I witnessed how migrants from Uzbekistan and Kyrgyzstan were held the entire time outside, in the open air, in both the rain and under the blazing sun. They are only inside at night and they sleep on the bare floor. Forty to fifty people are held in small cells. Many of the prisoners are being held there for violating the regime of stay. This means both staying in Kazakhstan beyond the prescribed period or lacking any registration whatsoever, as well as many other things."⁹⁹*

According to the laws of Kazakhstan, violators cannot enter the country for a period of five years after deportation. This forces migrant workers to find alternative sources of earnings. Given the pervasive unemployment in Kyrgyzstan, many migrants try to return to Kazakhstan by circumventing the official border or by using a fake passport, and many may find themselves in conditions of forced labour or slavery.

4. Human trafficking and slavery

Kazakhstan is considered to be both a source and a destination of human trafficking victims, who are used for forced labour or sexual exploitation. The specific nature of the form of slavery depends on the region. Cases of sexual exploitation are generally recorded in large cities, while forced labour is more prevalent in the provinces. The victims of the latter are generally migrant workers from the neighbouring countries of Tajikistan, Uzbekistan, and Kyrgyzstan. Their labour is used in agriculture, construction, and the extraction industry. According to assessments by the Walk Free Foundation, a total of 81,600 people were victims of various forms of slavery in Kazakhstan in 2016.¹⁰⁰

According to ILO standards, the forced labour definition encompasses *"traditional practices of forced labour, such as vestiges of slavery or slave-like practices, and various forms of debt bondage, as well as new forms of forced labour that have emerged in recent decades, such as human trafficking. [...] Forced labour is different from sub-standard or exploitative working conditions. Various indicators can be used to ascertain when a situation amounts to forced labour, such as restrictions on workers' freedom of movement, withholding of wages or identity documents, physical or sexual violence, threats and intimidation or fraudulent debt from which workers cannot escape. In addition to being a serious violation*

96. Interview with officials from the Ministry of Internal Affairs of the Republic of Kazakhstan: Sabyrzhan Seitzhanov, Lieutenant Colonel, Department of Citizenship and Immigration, Migration Police Committee; Anuar Askerov, Head of the Human Trafficking Investigation Division of the Criminal Police Department; Yevgeny Shcherbakov, Department Head, Migration Police Committee. Astana, 17 November 2017.

97. The monthly calculation index changes every year. It was set at 2,405 tenge for 2018 and 2,269 tenge for 2017.

98. Interview with Gulnara M., a migrant worker for Kyrgyzstan. Almaty, 12 November 2017.

99. Interview with Galym Ageleuov. Almaty, 4 September 2017.

100. <https://www.globallslaveryindex.org/index/#>

*of fundamental human rights and labour rights, the exaction of forced labour is a criminal offence.*¹⁰¹

According to this ILO definition, a large number of Kyrgyz migrants have been held in slavery. Many of the respondents interviewed by the FIDH mission were sold into forced labour¹⁰² and - as a result of the illegal actions of intermediaries, border guards, and the police - fall under the definition of human trafficking as a new form of forced labour.

Former migrant workers describe the recruitment process in the following way: *"In May 2015, my husband, 10-year-old daughter, and I went to Bishkek to look for work. We looked at the Osh Market in Bishkek. It's usually possible to find job notices near the radio centre, or else intermediaries or employers themselves offer you work there. I had a plan that we would go to work in Russia, that I would be a seamstress, my husband would go work at a construction site, and my daughter could be a babysitter. We met a local woman named Mavliuda near the radio centre. She offered us good work conditions in Kazakhstan: a job as a shepherd paying 15,000 som a month for my husband, and work for my daughter and I picking tobacco in the field paid depending on how much tobacco we picked. They promised 200 tenge for one kilogram of tobacco picked and prepared for drying. My husband and I agreed. Mavliuda organised our departure that evening and drove us across the border herself in her car. Five other women were with us. We crossed the border officially. We were issued migration cards noting that the purpose of our trip was tourism. After crossing the border, we were moved to a different car and taken to our place of work somewhere in Shetsky District of Karagandsky Oblast. It turned out that the driver was the person who bought us from Mavliuda."*¹⁰³

*"I didn't have a job, and somehow I ended up going to Bishkek to find work in October. [...] A woman came up to me [...] First she took me to her home, then picked up two more women along the way, and finally we supposedly went to her brother's. I hadn't even taken my passport with me. This was in the evening. We drove for a long time, and when I saw barbed wire, I understood that we had reached the border. I tried to find out what was going on, but she wouldn't answer me. We were met by Kyrgyz border guards. They led me and the two women through the barbed wire. I said that I wanted to return, but one of them shoved me in the back and took me to a car. A man was sitting in the car. He said that he would hire me for work, that he would give me clothes, find me a room, and pay me regularly. I agreed, especially because there was nowhere for me to run. I didn't even have my passport. The women who were with me were put in another car. I don't know what happened to them after that. When we reached the owner, he said that he bought me from that woman and that I would work for him as much as he wanted. He was called Satzhan. At the time, he was told to be a deputy in the district Soviet and he lived in the aul of Zhaksylyk, Ryskulovsky District, Zhambylsky Oblast. I worked for him for three months before my relatives found me and bought me back from him."*¹⁰⁴

Aina Shormanbeyeva, who protects the rights of migrant workers, said that people can even end up in slavery if they are already within the country: *"We have an intercity bus station here in Almaty called Sayran. The buses head for other cities, including ones in Almaty Oblast. Our experience is that people are most frequently sold in this area. There are always people at the bus station who present themselves as security guards. They separate out people who have clearly just arrived, who are looking for work, and who look like they are lost and don't know what to do. These "guards" promise them work and normal wages and send them directly to farms in villages where their documents are taken and they are forced by various threats to work without pay. The work there is usually heavy, so people don't agree to it voluntarily unless they are in a very difficult situation."*¹⁰⁵

In practice, forced labour means that the "owner" takes documents away from migrants, threatens them with violence or migration service officers, and houses them in inhuman conditions. There is no payment for this type of labour—workers only receive food, which is rarely high-quality or nutritious:

"The place where we were taken was surrounded by the steppe for many kilometres in all directions—there was no sign of civilisation. I was separated from my husband right away. We weren't allowed to see each other during the work day, but sometimes we met in the evenings when we had enough

101. See ILO website, available at <http://www.ilo.org/global/topics/forced-labour/definition/lang-en/index.htm>

102. One third of the 34 interviewed migrants were subjected to human trafficking.

103. Interview with Dzhazgul T., a migrant worker from Kyrgyzstan. Kurbanaly Sabyrov Village, Isfana, 4 November 2017.

104. Interview with Babaraim A., a migrant worker from Kyrgyzstan. Andarak Village, Leyleksky District, Batkensky Oblast, 3 November 2017.

105. Aina Shormanbayeva, President, "International Legal Initiative" Public Foundation, Astana, 16 November 2017.

strength after work. They also took our documents almost right away. They said it was for safe-keeping. My husband was housed in an addition to the barn, while my daughter and I and the other women were put under a kind of pavilion tent that was covered with tarpaulin to provide shelter from the rain and the sun. There were no walls. There were just mattresses lying on the ground. They were covered with dirty linen that was apparently left over from the previous workers. We slept on the floor. There also wasn't anywhere to wash. We set up a closed-in makeshift area where we could just pour water over ourselves. In the winter, when it was cold, they set up a stove for us inside and we were able to heat water on it. The rest of the time it was just cold. We weren't fed very well, but at least we were fed three times a day. Sometimes they brought us food for three days and we had to eat the same thing, generally a dish that was not very tasty. There was water, but not a lot. We never had enough of it, especially in the summer. There wasn't a lot of drinking water or just regular water for washing, etc. [...] We weren't paid our wages from the very first month. We were told how much each of us earned, but we weren't actually given anything. The boss said that our money was accumulating and that he would give us the entire amount at once, whenever we wanted to stop working. We believed him. Then we started to worry that we would be deceived. We started asking him to give us our money, but we were told that the more we asked, the less we would get. Sometimes he was even openly rude. He called us farm slaves and told us that he wouldn't pay us anything at all, he said that he would shoot us and that no one would find us.¹⁰⁶

"The boss explained my job to me and showed me the sheepfold (primitive tent) near the stable where I would be living, and the next morning I started working. In the summer my day started at 6 pm and lasted until 9 pm. In the winter I worked from 9 am to 5 pm. I worked the entire time without one single day off. I had to care for 800 sheep. Another five Kyrgyz men like me tended the other rams. The boss has approximately 100 hectares of land where he cultivated clover and something else. There were also Kyrgyz people working there. Their situation was exactly the same as mine. The living conditions were terrible. I didn't have any time off; I only worked. There was only a cot in the sheepfold and nothing else. There was no shower. We heated the water ourselves on a stove and managed to bathe somehow. The boss took us to the banya [a steam bath] about once every three months. I had the chance to run away, but the owner scared me by saying that I would be captured right away because the police work for him and that then I would end up in even worse conditions. Also, I didn't have any money or a passport. I didn't know where to go for help and how I would be able to cross the border. I worked only for food."¹⁰⁷

In many cases, migrants have been forced to perform heavy labour that lasts from sunrise to sunset without any breaks or days off in violation of all norms and rules: *"The schedule was as follows: we worked without any days off. We got up at 6 am and work started at 7:30. We generally worked until 9 or 10 pm. But that was only when the boss or one of his children watched over us and forced us to work. Sometimes they didn't come, and then we allowed ourselves to stop working earlier, at 4 or 6 pm. During our work, we weren't allowed to talk or even look at each other. If the overseers noticed this, they would start shouting at us. My daughter always worked with me. I picked the tobacco, and she sorted it by size and strung the leaves: large leaves with large leaves, small leaves with small leaves. Then we hung everything out to dry. This all happened under the sun in the summer and in the frigid cold in the winter."¹⁰⁸*

People who are able to run away rarely appeal to the police for help, since they fear expulsion or simply do not believe that the police are able to protect their rights. In many cases, officers of law enforcement agencies are the link between migrant workers and buyers. Staff members at an NGO specializing in helping victims of slavery told the mission about several cases where police officers participated in human trafficking. According to them, this is the main reason why only a small percentage of victims of turn to law enforcement agencies for help. People do not trust the police. They say that those involved in human trafficking have money and connections and that they can easily make accusations disappear, even if a criminal case has been opened against them. Another reason why victims of forced labour do not want to appeal to the police is that they fear prosecution and expulsion for violating the laws, even though, pursuant to Article 741 of Kazakhstan's Code of Administrative Offences, foreign citizens recognised as

106. Interview with Dzhagul T., a migrant worker from Kyrgyzstan. Kurbanaly Sabyrov Village, Isfana. 4 November, 2017.

107. Interview with Babaraim A., a migrant worker from Kyrgyzstan. Andarak Village, Leyleksku District, Batkensky Oblast, 3 November 2017.

108. Interview with Dzhagul T., a migrant worker from Kyrgyzstan. Kurbanaly Sabyrov Village, Isfana, 4 November 2017.

victims of human trafficking are not liable for violating the migration regime.¹⁰⁹

Aina Shormanbaeva told the mission that: *“Many victims have told us that police officers actually sold them into slavery. Because of this, fewer than seven or eight people report instances of human trafficking to law enforcement. Everyone is scared to do this because sometimes it’s the officers themselves who return victims to their owners. Corruption in Kazakhstan is of a systemic nature, so we have stopped advising victims to appeal to the police first, because this may be dangerous. Migrants can only go to the police if they have been prepared for this, and only with the help of an attorney from an NGO, so that the police know that there is a person protecting these victims.”*¹¹⁰

If a victim of human trafficking does decide to appeal to law enforcement on his or her own, there is a high risk that the complaint will not be properly investigated or, in the worst case, will not be registered: *“At the police agency, victims may run into the problem of being forced to refuse to file a complaint in exchange for a small amount of compensation, or they may face threats from human traffickers that these traffickers will file a counter-complaint about how these victims stole rams or a video camera. Therefore, many victims cannot even get a criminal case to be opened, much less have a trial. Their complaints are usually not even registered.”*¹¹¹

The words pronounced at a meeting of the mission by Sabyrzhan Seytzhano, head of the Migration Service Committee of the Ministry of Internal Affairs, are a clear example of what representatives of law enforcement agencies think about victims of slavery: *“The cause of labour slavery is legal ignorance, or alcoholism. Alcoholics are prepared to work for a bottle of vodka. These are mainly people who have little control. These kinds of people come out of slavery only to end up back in it.”*¹¹² Evidently, the people guilty of violations are considered to be the victims, and state agencies do not acknowledge their obligation to be the guarantors of the migrant’s rights.

The authorities’ failure to provide effective means of legal defence in human trafficking cases is one of the main problems that has not been resolved during the time that Kazakhstan has been a party to a number of international legal documents in this sphere.¹¹³

5. The limited role of the Labour Inspection Agency

Kazakhstan’s Labour Code directly stipulates that workers have the ability to protect their rights and legal interests. According to research conducted by FIDH, most migrant workers have virtually no knowledge about their rights, and do not ask for help protecting them. Some of them do not know about the remedies available while others fear penalties for illegal stay and prefer to solve their problems unofficially, by turning to diaspora organisations or intermediaries for help. Still others hope until the last moment that their work conditions will improve. This mistrust, and sometimes fear, of law enforcement agencies helps to increase the vulnerability of migrants and allows employers to use migrants for their own purposes without the danger of facing punishment.

This situation is exacerbated by the passivity of one of the main bodies authorised to oversee compliance with labour laws: the Labour Inspection Agency of the Republic of Kazakhstan. At a meeting with representatives of the Committee for Labour, Social Protection, and Migration, one official stated that previous norms stipulating that employers must follow the instructions of work inspectors within a period of 10 to 15 days are currently not in effect: *“Right now, work inspectors cannot protect workers’ rights. We come to the site, find violations of the rights of a worker, impose an administrative fine, and demand that this violation be eliminated. If the instructions aren’t followed, there’s nothing we can do, and the worker must file a complaint with the court. The worker filing the complaint does not have to pay state fees, but that’s not the problem.”*¹¹⁴

109. Clause 11 of Article 741 of the Code of Administrative Offenses “Circumstances Obviating the Need for Proceedings in Cases Related to Administrative Offenses.”

110. Aina Shormanbayeva, President, “International Legal Initiative” Public Foundation, Astana, 16 November 2017.

111. Ibid.

112. Interview with Sabyrzhan Seitzhanov, head of the Migration Service Committee of the Ministry of Internal Affairs of the Republic of Kazakhstan. Astana, 17 November 2017.

113. The UN International Covenant on Civil and Political Rights (ICCPR), the Convention against Transnational Organized Crime, ILO Conventions Nos. 29 and 105.

114. Interview with Tolegen Ospankulov, deputy chair of the Committee for Labour, Social Protection, and Migration of Kazakhstan’s Ministry of Health and Social Development. Astana, 15 November 2017.

Despite ratifying ILO Convention N°81 on labour inspection in industry and commerce, Kazakhstan fails to comply with almost all its articles. Indeed, the Labour Inspection Agency has very few means to fulfil its mandate. Its inspections are planned well ahead of time, can only be carried out once a year for large companies, and only once every three years for small- and medium-sized enterprises (SME). In such a context, few follow-up visits are made. Additionally, both SMEs and individuals regularly benefit from the suspension of inspections by governmental decree on the pretext that such inspections stunt economic growth and the development of companies. (The last moratorium on inspections of SMEs lasted from 2 April 2013 to 1 January 2015.) The Labour Inspection Agency may also make unplanned visits, but never on its own initiative. The Labour Code allows inspections to be conducted only after a complaint has been filed or a request for one has been made. For such a request to be considered valid, it must not be anonymous. This mechanism could be particularly effective for domestic workers whose working conditions are not monitored by the Labour Inspection Agency, but assumes that workers know about this law, that they do not fear reprisals from the employers and trust the Labour Inspection Agency. Only very few complaints of this type are addressed to the Agency every year.¹¹⁵

The position taken by state agencies contravenes the principles enshrined in Kazakhstan's labour laws, pursuant to which the state's main obligations are preventing restrictions on human and civil rights in the labour sector, preventing the use of forced labour,¹¹⁶ and complying with the norms of international law - specifically the provisions of ILO Conventions No. 29 on forced or compulsory labour and No. 105 on the abolition of forced labour, as well as Article 8 of the UN International Covenant on Civil and Political Rights and Articles 6 & 7 of the UN International Covenant on Economic, Social and Cultural Rights, all ratified by the Republic of Kazakhstan.

In 2016, the ILO Committee of Experts (CEACR) submitted the following direct request to Kazakhstan, relative to forced and bonded labour of migrant workers in the tobacco, cotton, and construction industries.¹¹⁷ "[T]he Committee recalls the importance of taking effective action to ensure that the system of employment of migrant workers does not place them in situation of increased vulnerability, particularly where they are subjected to abusive practices by employers such as confiscation of identity documents or delayed payments of wages, as such practices might cause their employment to be transformed into situations that could amount to forced and bonded labour. The Committee requests the Government to take the necessary measures to ensure that the national legislation is effectively enforced and that migrant workers are fully protected from any abuse or exploitation that amounts to forced and bonded labour."

In this same request, CEACR published comments relative to the issue of human trafficking: "the Human Rights Committee indicates that a significant majority of all criminal cases related to trafficking are investigated under Section 309 of the Criminal Code 2014 on brothels and prostitution rather than under Section 128 on trafficking in persons, that there is alleged complicity and corruption between police officers and those involved in facilitating trafficking and finally, that the state-funded shelters and support services to victims are insufficient. The Committee requests the Government to ensure the effective implementation of the existing relevant legal and policy frameworks aimed at combating trafficking in persons [...]. The Committee also requests the Government to take appropriate measures to strengthen the victims' identification mechanisms as well as providing them adequate care, social and legal assistance and reparation".

So far though, Kazakhstan has not shown any willingness to ensure implementation of ILO conventions on forced labour and the abolition of forced labour, and has not taken steps towards an effective protection of migrant workers victims of such abuses.

115. See FIDH report: *Migrant Workers in Kazakhstan : No status, no rights*, 2016

116. Article 4 of Kazakhstan's Labour Code "The Principles of Labour Law in the Republic of Kazakhstan."

117. Direct Request (CEACR) - adopted 2016, published 106th ILC session (2017), available at http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3288459

II. The situation of women migrant workers in Kazakhstan, a group of a particular vulnerability

According to experts, in recent years more and more women have been leaving Kyrgyzstan as migrant workers. While about one-third of all migrants were women two to three years ago, now a balance between genders can be observed among migrant workers.¹¹⁸ Kyrgyz women travel to work in Kazakhstan, both with their children and alone. One of the consequences of labour migration, including labour migration to Russia, is an increase in the number of women left behind by men both with children and without. Considering the lack of work, especially in Kyrgyz villages, women have nothing left to do but set off to work abroad. Sometimes they have to take their children with them because they have no one to leave them with in their country of origin. This makes their situation all the more difficult.

A woman who left for Kazakhstan with her daughter said that *“When I faced difficulties here, I regretted coming, I thought that maybe it was for nothing, that maybe I should have found another solution. When you’re alone, you manage somehow. You find housing. But with children, you need school and medical services. It was extremely difficult.”*¹¹⁹

Problems related to the infringement of the rights of unskilled workers have a discernible effect on women, whose vulnerable position leads to both an increase in the number of labour violations and more serious violations.

1. Maternity protection

Various international instruments have repeatedly stressed the need to ensure conditions for protecting the rights of women in their documents, which underline the special status of women in the context of motherhood. For example, ILO Convention No. 183¹²⁰ stipulates a number of provisions aimed at protecting motherhood in order to further equality in employment for all women, and protect the health and safety of mother and child. The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was ratified by the Republic of Kazakhstan on 26 August 1998. Articles 11, 12, and 13 of CEDAW also enshrine equality of professional opportunities and working conditions, as well as maternity protections and access to health-care, family benefits and social security. Kazakh laws that take the provisions of international legal acts into account also contain norms that guarantee additional support measures both pre- and post-natal. In practice however, if these norms are realised, it is only in regulated labour relationships, and migrant women in an irregular situation are left unprotected.

Along with other migrant workers, most Kyrgyz women do not have the documents required for work in Kazakhstan. It is not advantageous for employers to sign a work contract, and the fact that migrants do not know their own rights makes it easy to avoid regulation of matters in the legal field.¹²¹ The absence of officially formalised labour relations entails the failure to provide guarantees aimed at protecting women and results in the inevitable violation of their rights, particularly motherhood rights.

According to ILO standards, maternity protection comprehends all necessary measures preventing harm to expectant and nursing mothers or to their infants' health, as well as ensuring *“that they will not lose their job simply because of pregnancy or maternity leave”*¹²². Article 11 1. (f) of the CEDAW underlines *“[T]he right to protection of health and to safety in working conditions,*

118. Baktygul Bozgorpoeva, director of the Kyrgyz Family Planning Alliance. Bishkek, 12 September 2017.

119. Almakhan K. Shymkent, 15 November 2017.

120. C183 - Maternity Protection Convention, 2000 (No. 183)

121. According to a woman migrant from Uzbekistan, her friend who works in Kazakhstan as a seamstress only has *“an oral agreement with the owner of the atelier, a fifty-fifty agreement where the average wages are enough for the necessities.” Interview of Salima, 43 years old, Uralman, Uzbek migrant. The interview was conducted in the presence of a jurist from Sana Sezim, Almaty, 5 September 2017.*

122. Definition of maternity protection according to ILO standards, available at <http://www.ilo.org/global/topics/equality-and-discrimination/maternity-protection/lang--en/index.htm>

including the safeguarding of the function of reproduction”, and article 11. 2 stresses that states should “prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work”. This same article claims that states should take all measures :

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

Article 12 of the convention insists on the same issue by stating :

“1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”

In recognition of the need to create additional measures to protect the health of pregnant and nursing mothers, Article 44 of Kazakhstan’s Labour Code envisages employers’ obligations to transfer pregnant women to jobs that exclude the impact of harmful and dangerous work-related factors but in which they retain their salaries.¹²³ In reality, most migrant workers have menial jobs or jobs that require heavy physical work that regularly exceed all norms.

A woman from Uzbekistan spoke about her situation, which is typical for women migrants: “I work as a janitor (cleaning woman). From 9 am to 9 pm, and when there are banquets, until 3 am or 4 am. They pay extra for the banquets. Physically, this is very difficult work. The banquet hall is a large area and there are lots of dishes. Lunch breaks were 30 minutes maximum. There were no days off, I work every day. They don’t have any contracts. Some people can’t prove anything when they don’t get paid because nothing is documented. One woman worked at a car wash, they told her they didn’t have money and so they didn’t pay her. This happens to many people. It’s the same with sewing. They take your work and then say: ‘We’ll pay you later’ and then they never do. Some people are given an advance to build trust, but then they stop being paid and in the end are told: ‘come back later and we’ll give you your money.’”¹²⁴

The head of the Women’s Initiative Group from Kyrgyzstan spoke about her acquaintance, a migrant worker employed in a sewing shop in Kazakhstan: “The husband works as a tailor, and the women sew. She says that ‘we sit as if we are at school desks, cramped, one behind the other. The work space is violated in terms of area.’ They probably work 10 to 12 hours. They go there to earn money, to make their money, and to earn overtime. Their work is not standardised. For example, one skirt is 80 tenge, and a person wants to earn more, but the wages are by piece. The owners don’t let Kyrgyz citizens out on the street.”¹²⁵

In violation of the Labour Code provisions and Article 3 of ILO Convention No. 183,¹²⁶ women migrants are used for heavy jobs without account for their familial situation. Their workspaces generally never undergo any certification, the job’s level of difficulty and its impact on the health of the mother or the child is not measured, overtime is not counted, and the amount of overtime

123. Labour Code of the Republic of Kazakhstan https://online.zakon.kz/Document/?doc_id=38910832&doc_id2=38910832#pos=77;-239&pos2=842;-179

124. Almakhan K. Shymkent, 15 November 2017.

125. Interview with the Women’s Initiative Group network. Osh, 11 November 2017.

126. ILO Convention No. 183 on maternity protection.

worked never decreases in spite of legally enshrined protection measures. Employers make no efforts to create special conditions for pregnant and nursing mothers that are not advantageous to their businesses, while the absence of a work contract makes it possible for them to ignore these obligations. Moreover, when an employer learns of a woman's pregnancy, that woman risks losing her job.

As a result, migrant workers try to hide impending motherhood until the last months. This means that women perform jobs that are potentially harmful to them and the child. They are also deprived of prenatal leave, which contravenes Article 99 of Kazakhstan's Labour Code,¹²⁷ which reads: "Pregnant women, women who have given birth to a child (children), women (men) who have adopted a new-born child (new born children) shall be granted [...] prenatal and parental leave," and Article 4 of ILO Convention No. 183, which states: "On production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth, a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks."¹²⁸ This kind of approach violates a number of norms of national and international labour laws and has an adverse effect on the health of women and children.

Women who understand that their employers will not grant them maternity leave frequently quit their jobs before the baby is due and leave for home. They do not receive any compensation or payments during their leave, nor can they count on their jobs being held for them.

On 18 November 2017, a migrant at the Big Shanghai market told the mission about his wife, who had been a migrant worker for several years: *"My wife worked as a store clerk and stopped working a week before the birth. Her mother came here and is helping her."*¹²⁹

A representative of the Employers' Alliance of Kazakhstan explained: *"If a woman migrant is hired for work, her employer must pay contributions to the state fund for her or face fines. As soon as she is hired, the employer must start making monthly social contributions. So she should be receiving payments for her pregnancy. The only loss an employer faces due to a migrant's pregnancy is lost profit. He doesn't [personally] pay her any money."*¹³⁰

2. Restriction of access to medical care, including prenatal, childbirth and postnatal care, and its consequences

As migrant workers trying to save money and fearing additional document checks, most women try to avoid seeking medical care, even in the case of pregnancy. Further, some women are not able to be examined by a doctor because of their remote place of residence (in villages of Kazakhstan), restrictions on their freedom of movement (cases of forced labour), or lack of money (late payment of wages). With no diagnostic tests, women and children face negative and sometimes irreversible health consequences, from miscarriage to permanent disability. An activist who helps the victims of forced labour and wished to remain anonymous stressed that migration frequently leads to complications during pregnancy.¹³¹

For example, she recounted the story of how two sisters and their husbands left to work in Kazakhstan in 2015: *"...at a farm, for a cabbage farmer. They tilled and planted four hectares of land. Six families worked there. One woman got pregnant and then fell ill. Her life was in danger when she was six months pregnant and she returned to Kyrgyzstan. She wasn't admitted because she was not registered at the hospital. Because there was a chance of losing the child, local medical services would not take on the responsibility of this patient, and the child was born with serious abnormalities."*¹³²

127. Labour Code of the Republic of Kazakhstan https://online.zakon.kz/Document/?doc_id=38910832&doc_id2=38910832#pos=77;-239&pos2=842;-179

128. In the case of Kazakhstan, the period of maternity leave is 18 weeks (20 weeks in case of obstructed child birth or the birth of 2 or more children).

129. Interview with migrants. Big Shanghai market. Astana, 18 November 2017.

130. Employers' Alliance of the Republic of Kazakhstan. Almaty, 14 November 2017.

131. Member of a local NGO. Osh, 9 November 2017.

132. Member of a local NGO. Osh, 9 November 2017.

A Kyrgyz citizen told the mission about the case of his acquaintances, who travelled to Almaty for work, but, meeting with failure, ended up with physically demanding work in Shymkent: *"The husband and wife worked at a tobacco facility in Kazakhstan. Their child was born disabled. Their living conditions were probably not very good. They were paid, but not very much. Then her mother went to work there as a milkmaid and helped her for another five months after the baby was born. They believe it is shameful to come here [back to Kyrgyzstan] because of lack of money."*¹³³

It is obvious that special safety measures for pregnant women are not taken in the seasonal work system on farms. Pregnancy also does not lead to a less strenuous physical load. Additionally, farmers interviewed by the mission say that contracts are signed with the head of the family.¹³⁴ Thus, a woman who does not have an official work relationship with her employer and ends her employment loses her wages and does not receive any payments due to her. With no leave, women work until within two to four weeks of their due date. Farmers from Kazakhstan stated that most families from Kyrgyzstan come to work for them for a period of about nine months and, that in their many years of practice, they have rarely seen women who give birth in migration. They confirmed that *"[pregnant women] try to leave one month before their due date."*¹³⁵ This is evidence of a lack of proper living conditions for a new-born and of women's attempts to avoid seeking obstetrical care in Kazakhstan.

In addition, few women can afford prenatal tests and examinations, or the births themselves. One migrant spoke about the expenses incurred by his wife, who ended up having to give birth in Kazakhstan: *"35,000 tenge before birth, for ultrasounds and so forth. My wife gave birth with the help of a vacuum, she was in the maternity ward for four days, which amounted to 45,000 or 50,000."*¹³⁶ A representative of the Kyrgyz diaspora with information about better off Kyrgyz migrants described the cost of some medical services: *"Some women work up until the last minute and give birth here. They receive high-quality medical services. The ambulance is always free, and the rest is paid. Women are admitted to the clinic for 80,000 tenge plus another 80,000 for the delivery."*¹³⁷

However, some women give birth in Kazakhstan without going to the hospital because they either do not have enough money or have the ability to move around freely (for instance, when an employer does not allow workers to leave the territory of the work space, such in case of forced labour).

An expert who observed a woman in an IOM shelter in Osh spoke about how this woman spent several years in slavery in Kazakhstan in 2014 to 2015: *"One child was already born [prior to the trip to Kazakhstan], and three were born there. She separated from her husband in Kazakhstan. They worked on a tobacco farm and then remained with one boss to care for the livestock. They were left without wages and without documents for their children. The conditions, they were terrible, inhuman."*¹³⁸

The lack of identification documents results in difficulties crossing the border, enrolling the child in day care, and receiving benefits. Sometimes women cannot even take their own children back to their native country because they do not have birth certificates. One human rights defender described how a woman Kyrgyz citizen in Kazakhstan *"asked another woman who had a child to take her own child across the border under someone else's certificate of birth."*¹³⁹

An expert with the Women's Initiative Group from Kyrgyzstan asserts that women frequently return to Kyrgyzstan to give birth and then leave right after for Kazakhstan to earn money.¹⁴⁰ There is a growing number of children who have never seen their own parents or have no memory of them. A human rights defender working on migration issues said that she knew of a case where *"a woman gave birth in Kazakhstan in 2016 and sent her daughter to Kyrgyzstan through an acquaintance. This girl has not seen her parents, and she is already almost one. She has a three-year-old brother in Kyrgyzstan, he has not seen his mother for two years."*¹⁴¹

133. Interview with M. Osh, 9 November 2017.

134. Interview with farmers, Shelek Village. Enbekshikazakhsky District, Almaty Oblast, Kazakhstan. 13 November 2017.

135. Id.

136. Interview with migrants. Big Shanghai market. Astana, 18 November 2017.

137. Shavkat Ismailov, Kyrgyz diaspora. Astana, 18 November 2017.

138. Information from the Women's Business Initiative NGO of Kyrgyzstan. Osh, 10 November 2017.

139. International Protection Centre. Osh, 8 November 2017.

140. Interview with the Women's Initiative Group network. Osh, 11 November 2017.

141. Interview with the Iseda organisation. Osh, 10 November 2017.

To keep their jobs, many women find a replacement for the time when they cannot work. A café worker told the mission that *“if you need to leave, then you have to find a replacement. I can rest for at least a week if someone agrees to work for me.”*¹⁴²

Some women migrants who remain in their country of migration have sometimes invited an older woman (mother or mother-in-law) to Kazakhstan to care for their new-born.¹⁴³ A woman from Kyrgyzstan told human rights defenders that her *“daughter gave birth [in Kazakhstan] in late May”* and that she (the mother or mother-in-law) *“went to take care of the children because there is no maternity leave. She gave birth and went right back to work.”*¹⁴⁴

It is more difficult when there is no one to leave new-borns and young children with, and there is no possibility to enrol them in day care. The Women’s Initiative Group from Kyrgyzstan gave examples of how women with children working at a sewing shop in Kazakhstan have been forced to manage their situations: *“There are unofficial ‘Kyrgyz’ day cares, when children are brought to someone’s apartment and a Kyrgyz migrant like us looks after all the children.”*¹⁴⁵

Sometimes women working in the service sector take their children to work with them. Children who live with their parents who work on a farm spend the entire work day with them. At the same time, children on farms or plantations frequently lack the nutrition they need, including for the reason that their mothers do not have access to this nutrition.¹⁴⁶ The living conditions that mothers can afford are not suitable for them or their children from the standpoint of health and living standards, as set forth by international legal acts (specifically, Article 6 of ILO Convention No. 183¹⁴⁷ states: *“Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.”*)

One expert spoke about a family with a small child she knew that was caught in forced labour: *“There weren’t any kind of conditions at all—they lived in unfinished houses, the windows were covered with plastic sheeting, the toilet was outside. In terms of food, they were given the same products every day. The bosses refused to give them money. But they did start giving them some of their money, just so that they could buy milk for the child, who was tiny and very thin.”*¹⁴⁸

In violation of obligations enshrined in the law (Article 82 of Kazakhstan’s Labour Code¹⁴⁹ and Article 10 of ILO Convention No. 183), mandatory breaks for women with children under the age of 18 months (no less than 30 minutes every three hours per child) are generally not given. As a result, the work day is not reduced, and children are left without their mother’s attention or milk.

The negative consequences caused by the failure to realise measures to protect the health of mothers and children is one of the most important aspects of the problems that women face in labour migration.

These testimonies, collected during the missions, show that work practices imposed on women migrant workers in Kazakhstan regularly violate several articles of ILO Convention N°183 concerning maternity protection, and in particular on health protection (article 3), maternity leave (article 4), leave in case of illness or complications (article 5), benefits (article 6), employment protection and non-discrimination (articles 8 and 9), and breastfeeding mothers (article 10). These practices also violate the CEDAW, especially the dispositions concerning employment (article 11), health (article 12), and economic and social benefits (article 13). Finally, the practices of Kazakhstan violate the Convention on the Rights of the Child, which was also ratified by

142. Almakhan K. Shymkent, 15 November 2017.

143. Interview with migrants. Shanghai market. Astana, 18 November 2017.

144. Interview with the Women’s Initiative Group network. Osh, 11 November 2017.

145. Interview with the Women’s Initiative Group network. Osh, 11 November 2017.

146. Interview with Gulnara Ibraeva head of NGO “Innovative solutions”, Bishkek, 14 November 2017.

147. ILO Convention No. 183 http://www.ilo.org/wcmsp5/groups/public/@dgreports/@gender/documents/generic_document/wcms_114195.pdf

148. Information from the Women’s Business Initiative NGO, Kyrgyzstan. Osh, 10 November 2017.

149. Labour Code of the Republic of Kazakhstan https://online.zakon.kz/Document/?doc_id=38910832&doc_id2=38910832#pos=77;-239&pos2=842;-179

Kazakhstan, and more specifically points d) and f) of its article 24 concerning maternity and pre- and post-natal care.

In addition, these cases violate articles 3, 4, 5, 6, 8, and 11 of ILO Convention N°156 on Equal Opportunities and Equal Treatment for Workers with Family Responsibilities. This convention was also ratified by Kazakhstan.

3. Gender-based violence

Women also experience difficulties connected with gender stereotypes and detrimental practices that put them in an even more vulnerable position. Violence against women is a pressing problem for both single women and those in couples who migrate, where men can frequently become especially aggressive towards their partners due to hardships that arise in migration and women lack even minimal legal protection (domestic violence).

A worker at the IOM shelter in Osh told the mission about a couple that was caught in slavery in Kazakhstan and lived in terrible conditions: *“The boss would start pouring drinks for the husband, who then forgot about his children, his wife. It was like the boss and the husband were on one side and the wife and children were on the other. And he withheld money on holidays, which only the husband took part in.”*¹⁵⁰ When they returned from slavery back to Kyrgyzstan, the husband would repeatedly beat the wife right in the shelter.

Single women are even more vulnerable: *“An Uzbek woman from Osh divorced her husband and went there [to Kazakhstan]. And there, if you’re without a man, people feel entitled to anything, as if they have open access [to a woman]. She was gang raped twice. Her boss, a Russian, helped her. She needed some kind of husband so that others stopped going to see her. She got married there. Her husband beats her constantly. But he has connections with a criminal, so she is able to sell the produce she grows. She is afraid to write a statement [about the beatings].”*¹⁵¹

In spite of their extreme vulnerability during their time in labour migration, women in financial distress still decide to leave Kyrgyzstan. To compound matters, they rarely have correct information about what is awaiting them, and they are sometimes illiterate or have little education. According to the chair of the Children’s Foundation of Kazakhstan NGO and member of the Committee to Prevent Child Labour, *“When women migrants hear that someone is working and earning money in a foreign country, when they decide to become migrant workers, they never even think that instead of working they may end up in a detention centre or spend time in a place that cannot offer even basic living conditions.”*¹⁵²

4. Exploitation by in-laws when returning home

Even in situations where women have been able to earn money in Kazakhstan, after passing through multiple ordeals, they still may face difficulties when they return home.

*“Discrimination and shame are put on women, especially in rural areas. When she comes back, the woman has nothing because people think that migration equals prostitution. For months, migrant women have sent money, remittances, worked... . Thanks to them, their family members built houses. When they come back they are rejected by their family, especially if they became infertile after health issues abroad. The family in law holds the money of the woman migrant who just returned to Kyrgyzstan and uses it without consulting her, holding back the money from her. She is beaten, even.”*¹⁵³

150. Information from the Women’s Business Initiative NGO, Kyrgyzstan. Osh, 10 November 2017.

151. Information from the Women’s Business Initiative NGO, Kyrgyzstan. Osh, 10 November 2017.

152. Elvira Batlina, director of the Children’s Foundation of Kazakhstan NGO. Member of the Commission to Prevent Child Labour. Almaty, 4 September 2017.

153. Interview with Gulnara Ibraeva head of NGO “Innovative Solutions”, Bishkek, 14 September 2017.

III. The situation of minor migrants in Kazakhstan

The process of labour migration to Kazakhstan affects minor citizens of Central Asian countries. A significant number of these minors are children and adolescents from Kyrgyzstan.¹⁵⁴ Some end up in Kazakhstan with their parents, while others come on their own because parents send them to work in an attempt to earn enough money to survive. Just like adults, a majority of Kyrgyz minor migrants come from the southern part of the country (Osh, Isfana and Batken) and go to southern Kazakhstan (Almaty and Shymkent provinces), as well as to Astana.

Kyrgyz minor migrants usually occupy positions in markets, in the agricultural and construction sectors, or, if women, as nannies. Reportedly, it is not rare for some to fall into slavery, or to become victims of sexual abuses or forced labour.

Kazakhstan ratified ILO Convention N°138 concerning the minimum age for admission to employment, and designated 16 years old as the minimum age to work. The Eurasian Economic Union (EEU) legal framework and Kazakh legislation also allow Kyrgyz migrants to work part-time in Kazakhstan as of age 16. In theory, this means that they can state on their migration card at the border that they have come to Kazakhstan to work.

However, our mission did not collect any case of such a situation where a minor migrant was in a regular situation in accordance with the Kazakh labour and migration law. In practice, just like adults, minor migrants have their migration card registered at the border with a “private” purpose when entering. Likewise, this places them in an irregular situation and officially they can be held accountable for breaching the migration law as soon as they start working part-time. Thus they are vulnerable as there is an increased likelihood that they will be subjected to violations of their labour rights, such as working without contract, non-payment of wages, no guarantee of their occupational safety and health, no access to social protection, etc. It also makes them vulnerable in the context of the violation of migration rules.

If they happen to be controlled, minor migrants face different scenarios depending on their age. If they are proved to be under 16 years old, they are sent to a regional Adaptation Centre for minors for up to three months, until an adult relative has been found and can assume responsibility. In such centres, minor migrants have access to school and medical care. However, the centres do not ensure any monitoring as to what happens after the child leaves, and do not have information on their new situation.¹⁵⁵

If minor migrants are proved to be over 16 years old, or thought to be over 16 due to a lack of ID or wrong ID, just like Kazakh minors they can be held accountable for an administrative offense. This exposes these migrants, just like adult migrants, to a fine or administrative arrest for up to ten days, or administrative expulsion from the Republic of Kazakhstan.¹⁵⁶ Kazakh legislation only provides for the eventuality that “*when imposing an administrative penalty on a minor [...], the conditions of his life and upbringing, the level of mental development, other personality characteristics, as well as the influence of older persons on him, are taken into account.*”¹⁵⁷ To a certain extent, this provision is likely to result in a discretionary-based decision.

In such cases, children are detained with adults in specialised centres to temporarily hold foreigners. These special centres do not comply with basic sanitary norms¹⁵⁸. However, these

154. According to statistics from Kazakhstan’s Centre for the Adaptation of Minors about one-third to one-fifth of all minors coming in to Almaty’s centre alone over the past three years have been Kyrgyz citizens. In the first ten months of 2017, 53 out of 232 were Kyrgyz; in 2016, 89 out of 291 were Kyrgyz, and in 2015, 77 out of 238 were Kyrgyz. Moreover, Kyrgyzstan is one of the top three countries in terms of number of minors coming in to centres for the adaptation of minors. Seypoldayeva Raisa Sekenovna, Aydar Sydykbayev, Zabira Rubayeva, Centre for the Adaptation of Minors. Almaty, 14 November 2017.

155. Id.

156. Code of the Republic of Kazakhstan on Administrative Offenses, Article 517: Violation by a Foreigner or a Stateless Person of the Legislation of the Republic of Kazakhstan in the Field of Migration of Population.

157. Code of the Republic of Kazakhstan on Administrative Offenses, Article 67: Imposition of an Administrative Penalty on a Minor.

158. Interview with Galym Ageleuov. Almaty, 4 September 2017.

migrants are first and foremost children, as recalled in Article 1 of the Convention on the Rights of the Child, ratified by Kazakhstan : *“For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”*¹⁵⁹ In Kazakhstan, majority is attained at 18.

The Convention obliges Kazakhstan to : *“[...] respect and ensure the rights [...] to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s [...] national, ethnic or social origin, [...] birth or other status”.*

On 17 November 2017, UN experts recalled that minor migrants, as a doubly-vulnerable population, need specific protection: *“all children caught up in the global migration crisis should be treated as children first and foremost, regardless of their nationality or migration status, or that of their parents. [...] The key principles of the Convention on the Rights of the Child¹⁶⁰ – such as non-discrimination, the best interests of the child, the right to life, survival and development, and the right to be heard and to participate - should be the guiding principles of any migration policy at local, national, regional, and global levels”.*¹⁶¹

1. Infringement of the right of children to education

According to ILO standards, *“not all work done by children should be classified as child labour that is to be targeted for elimination. Children’s or adolescents’ participation in work that does not affect their health and personal development or interfere with their schooling, is generally regarded as being something positive. This includes activities such as helping their parents around the home, assisting in a family business or earning pocket money outside school hours and during school holidays. These kinds of activities contribute to children’s development and to the welfare of their families; they provide them with skills and experience, and help to prepare them to be productive members of society during their adult life”.*¹⁶²

Taking into account a number of international requirements in the sphere of child labour, Kazakhstan’s labour laws permit limited use of the labour of adolescents up to the age of 18.¹⁶³ Article 31 of the country’s Labour Code permits the signing of an agreement with minors who have reached the age of 16 (15, if the minor has received a secondary education) or 14, if the work is performed outside of school hours, does not cause harm to health, and does not interfere with the learning process. Article 69 of the Labour Code sets a shorter workday for minors: no more than 24 hours per week for 14- to 16-year-olds, and no more than 36 hours a week for 16- to 18-year-olds. Overnight work and overtime are prohibited for minors in accordance with Articles 76 and 77 of the Labour Code.

Along with the possibility of labour for minors, legal norms of Kazakhstan in the sphere of occupational safety stipulate measures for their protection. For example, Clause 6 of Part 2 of Article 182 of the Labour Code establishes the employer’s obligation to not allow minors to carry or move heavy objects that exceed the maximum amounts listed in Order No. 944 of the Ministry of Health and Social Development of 8 December 2015.¹⁶⁴

This same document contains a list of jobs banned for minors. Specifically, these are jobs: on tobacco and cotton plantations (Subparagraph 17 of Paragraph 85 of Order No. 944); that use pesticides or herbicides (Subparagraph 18 of Clause 85 of Order No. 944); that are connected with responsibility for the life, health, and safety of children (Paragraph 87 of Order No. 944); and that involve the carrying or moving of objects weighing over 4.1 kilograms (Section 2 of Order No. 944).

In theory, the right to part-time employment applies to all children over the age of 16 in Kazakhstan. However, migrant children cannot generally obtain legal work permits, since to do this “work”

159. Convention on the Rights of the Child, 1989, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

160. Ratified both by Kazakhstan and Kyrgyzstan in 1994.

161. Article “Children must be top of global migration agenda, UN experts say”, 17 November 2017, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22408&LangID=E>

162. Definition available on ILO website, at <http://www.ilo.org/ipec/facts/lang--en/index.htm>

163. Labour Code of the Republic of Kazakhstan, https://online.zakon.kz/Document/?doc_id=38910832

164. https://tengrinews.kz/zakon/pravitelstvo_respubliki_kazahstan_premier_ministr_rk/trud/id-V1500012597/

must be listed as the purpose of their visit to the country when they enter Kazakhstan. Most children enter with their families for the purpose of studying, and only want to work part-time in their free time or during vacations. Thus, children who are citizens of Kazakhstan can work legally and have their labour rights protected, while migrant children cannot. As such, they do not have the right to practice activities that could contribute to their development and to the welfare of their families, which violates Article 2 of ILO convention N°111 on Discrimination in Respect of Employment and Occupation.

Cases where migrant minors are working (generally in markets with their parents) are regularly documented. These children, outside the Kazakh legal framework, cannot benefit from any specific protection concerning occupational safety and health measures at work, or social protection.

Kazakhstan ratified the Convention on the Rights of the Child which states that the country should not discriminate between national and foreign children concerning their rights (article 2.2). This Convention also states that foreign children should be able to access, just like nationals, social security (article 26), school (article 28), as well as be entitled to leisure time (article 31). It further states that state parties should “recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development” (article 32).

According to Kazakh legislation, children of migrant workers with permanent¹⁶⁵ or temporary¹⁶⁶ residency have the same free access to education as Kazakh citizens. However, it excludes children of seasonal and cross-border migrant workers, and all those whose parents, or who are themselves, in an irregular situation.¹⁶⁷ Further, it is often the case that headmasters of school will not accept migrant children because they do not have an individual identification number (IIN), even though this number is not required by law. The systematic requirement of this individual ID number can dissuade parents or minors without work authorisations and/or residency permits from signing up for school. Migrants of various origins complaining of difficulties enrolling their children in schools have repeatedly appealed to the organisation Sana Sezim, which is based in Shymkent, for assistance.

“Tajik citizen Kosim came to Shymkent, Kazakhstan with his children for seasonal work. He wanted to enrol them at the local school. The principal refused to accept the children, justifying his decision by saying that the children were not registered in Kazakhstan and did not have IINs. The principal also had doubts that the children could be assimilated into the school programme, approved by the Ministry of Education of the Republic of Kazakhstan, which meant that he could not determine which class the children should join.”¹⁶⁸

“Kyrgyz citizen Zhanna came to us in March 2017. She needed an IIN to enrol in school. However, a mistake was found in her documents while the school was processing them, and she was not allowed to enrol. (It was later clarified that the clerk who entered the information entered it incorrectly.) Zhanna repeatedly appealed to the State Revenue Department to correct the mistake, but staff there ignored her appeal and said that IINs are issued only once and that there was nothing they could do. It was only after an attorney for the organisation appealed to the State Revenue Department of the Ministry of Finance that this matter was resolved.”¹⁶⁹

There have also been cases when human rights defenders themselves were not able to help when school officials approached them for assistance with accepting children without documents.

“The administration of one school came to Sana Sezim in January 2018 for help documenting the minor children of foreign citizens attending their school. Because these children did not have IINs, the school could not transfer them to the next class pursuant to the programme. One of our jurists

165. Article 8 of the law “On education” and Article 10 of the Law “On the legal status of foreign nationals”

166. Decree of the Ministry of Education and Sciences No. 468 of the Republic of Kazakhstan dated 28 September 2010, Para. 2.

167. See FIDH report : “Migrant workers in Kazakhstan: no status, no rights”, 2016, available at https://www.fidh.org/IMG/pdf/note_kazakhstan_681a_6_sept_2016_uk_web.pdf

168. Liliya Khalyulina, jurist with Sana Sezim, 14 March 2018.

169. Id.

*had trouble with the documentation, since the documents of some of the parents had expired or had been lost, which is a violation of the migration regulations. For this reason, it was impossible to get any documents for the children. This is because undocumented parents must first get their own documents in order and must also pay fines, which they cannot afford. It is also important to note the apathy on the part of the parents, many of whom fear that they will not be able to prove their parenthood. The principal accepted the children, but the school will not be able to give them diplomas when they graduate if they do not have identity documents.*¹⁷⁰

Within the framework of a study conducted by the Kazakh Foundation for Children between December 2011 and April 2012, out of the 360 migrant parents surveyed (internal and external migrants), nearly 24 % responded that their children were not attending school. Of that percentage, 45 % explained that the main reason was that they were not registered.¹⁷¹

This situation violates several international standards : namely Articles 6, 28 ,and 29 of the Convention on the Rights of the Child, relative to their right to security, health and development, and access to education; and article 2 of ILO Convention N°111 on Discrimination in Respect of Employment and Occupation; and several articles of the UN International Covenant on Economic, Social and Cultural Rights, in particular article 12 on the health of the child, and articles 13 and 14 on a free access to education.

2. Absence of monitoring of the situation of migrant minors

Evidence of violations in Kazakhstan of the rights of minors from Kyrgyzstan are generally never reported to state authorities in either country. Currently, the only reception office of the Human Rights Ombudsman in Kazakhstan is located in Astana, which makes it virtually impossible for migrants from remote oblasts (regions), where the most serious violations generally take place, to appeal to the ombudsman. Staff members at this office have reported that the lack of regional offices seriously complicates their work.¹⁷² In Kyrgyzstan, the institution of the Human Rights Ombudsman does not provide for the specific position of Ombudsman for Child's Rights, but its central office has a department that focuses on the rights of minors. Nevertheless, appeals to regional offices of the Human Rights Ombudsman are rare and are generally connected with parents' departure for migration and the inability of relatives to provide for the children and carry out their appropriate duties.¹⁷³



The family members of this boy were victims of human trafficking. His mother was held in slavery. Kyrgyzstan, November 2017. © ADC Memorial

170. Id.

171. See report : "Migrant workers in Kazakhstan: no status, no rights", 2016, available at https://www.fidh.org/IMG/pdf/note_kazakhstan_681a_6_sept_2016_uk_web.pdf

172. Interview with officials from the Ministry of Internal Affairs of the Republic of Kazakhstan: Sabyrzhan Seitzhanov, Lieutenant Colonel, Department of Citizenship and Immigration, Migration Police Committee; Anuar Askerov, Head of the Human Trafficking Investigation Division of the Criminal Police Department; Yevgeny Shcherbakov, Department Head, Migration Police Committee. Astana, 17 November 2017.

173. Meeting with Kasylov Shambet, the Human Rights Ombudsman for Osh Oblast. Osh, 8 November 2017.

The Institution of Children's Rights Ombudsman was created by the president of Kazakhstan on 10 February 2016. In particular, his order states that Kazakhstan is implementing the UN Convention on the Rights of the Child, supports the international community's efforts to create a supportive and friendly environment for children, and is therefore creating the Institution of Children's Rights Ombudsman as a public service. In light of this initiative, it is recommended that a state programme for the children of migrants be created.

However, Kazakhstan lacks any effective system to monitor work by minors, even in the case of its own citizens. The situation with the children of migrants is even more complicated because they are harder to count and track. Also, experts note that, generally, labour by minors is still considered the norm in Central Asian republics and is basically never criticised by the governments, or even by citizens.¹⁷⁴

Zulfiya Baysakova, Union of Crisis Centres of Kazakhstan: *"There was a case when a boy from a village [a citizen of Kazakhstan] was sent to take care of his grandmother for a bag of rice. He didn't attend school for a year, he was taken to a city in the south of Kazakhstan. In these cases, people say that the children have supposedly gone to live with distant relatives. If it is a private house, it is hard to know what is going on in the courtyard, since no one can see in."*¹⁷⁵

3. Child labour

According to ILO standards, *"the term "child labour" is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that is mentally, physically, socially, or morally dangerous and harmful to children; interferes with their schooling, deprives them of the opportunity to attend school; obliges them to leave school prematurely; or requires them to attempt to combine school attendance with excessively long and heavy work."*¹⁷⁶

a) The use of child labour with parental consent

Child labour currently exists not just in its traditional form, but in new forms as well. Kyrgyz parents experiencing financial difficulties are more frequently sending their older children into labour migration. The presence of "black lists"¹⁷⁷ in relation to entry into Kazakhstan and, in particular, Russia, complicates the situation: when both parents are banned from entry, they are automatically deprived of the right to earn enough money to support their family. To overcome their adverse situation, some parents send their children to work. Human rights defenders believe that most young people who go to work in Kazakhstan are minors from the southern oblasts of Kyrgyzstan.¹⁷⁸ These are generally adolescents aged 14 to 17, some of whom are going alone to work.¹⁷⁹ Many arrive in Kazakhstan¹⁸⁰ to help their relatives, acquaintances, or fellow Kyrgyz sell products in Almaty at Barakholka (goods market), the wholesale bazaar, and the Zeleny Bazaar (dried fruits, produce).¹⁸¹

Kyrgyz citizen A., Aravan, Kyrgyzstan, 6 November 2017: *"Our brigade included kids who were born in 2001-2002, making them 14 or 15 years old. They didn't finish school and left for work. They crossed the border with authorisation letters from their parents. They had exactly the same*

174. Zulfiya Baysakova, Union of Crisis Centres of Kazakhstan. Almaty, 14 November 2017.

175. Zulfiya Baysakova, Union of Crisis Centres of Kazakhstan. Almaty, 14 November 2017.

176. Definition available on ILO website, at <http://www.ilo.org/ipec/facts/lang-en/index.htm>

177. In Russia, citizens who have violated the regime of stay, entry, or departure, public order, or procedures for conducting labour activities are included on "blacklists." Bans on entry are for a period of up to five years with the possibility of an increased term of up to 10 years in the event of repeated violation, which stipulates deportation or administrative expulsion. In Kazakhstan, citizens expelled under a court ruling for violating the regimes of stay or work are also included on "blacklists." Expulsion also includes a ban on entry into the country for a period of five years.

178. Interview with R.A., an expert on social issues. Bishkek, 12 November 2017.

179. Zulfiya Baysakova, Union of Crisis Centres of Kazakhstan. Almaty, 14 November 2017.

180. Seypoldayeva Raisa Sekenovna, Aydar Sydykbayev, Zabira Rubayeva, Centre for the Adaptation of Minors. Almaty, 14 November 2017.

181. Seypoldayeva Raisa Sekenovna, Aydar Sydykbayev, Zabira Rubayeva, Centre for the Adaptation of Minors. Almaty, 14 November 2017.

*responsibilities at work as adult workers and worked under the same conditions. Brigade workers usually live in trailers, but sometimes they build housing for themselves. (This is what happened during the construction of a tannery.) The trailers, which are 8 x 3 metres, generally house seven people (they rest and prepare food there). Brigade members work 10 to 12 hours starting at 8 am, with a break for lunch. A contract for providing services is not signed with anyone.*¹⁸²

According to information from staff members at the Centre for the Adaptation of Minors in Kazakhstan, minors from Kyrgyzstan who end up at the centre usually come to perform seasonal work for one to three months under an authorisation letter from their parents.¹⁸³ Sometimes minors enter Kazakhstan using counterfeit documents giving a made-up age (this makes it possible to avoid drawing up other documents, such as authorisations, and to avoid attracting attention). They may also resort to crossing the border illegally. Sometimes they use an older relative's passport.¹⁸⁴

Child migrants from Central Asian countries (including from Kyrgyzstan) who work in Kazakhstan mainly send all the money they earn home. It is likely that this money is used by relatives and people from the same town, and not by the adolescents themselves. Staff members at the Centre for the Adaptation of Minors say that the children brought to them never have any cash on them.¹⁸⁵

Adolescents who work alongside adults also face risks to their health: wounds received during physical labour and illnesses like tuberculosis that are common among migrants in Kazakhstan.¹⁸⁶ In the absence of qualified medical help, the health of children and adolescents is particularly vulnerable.

Few minors who leave for migration have completed 9th grade, and virtually none of them have received a complete secondary education. Thus, as migrants, they can only apply for low-skilled jobs and, as a result, generally do not have the opportunity to continue their educations or obtain a specialisation. Specialists at the Centre for the Adaptation of Minors in Kazakhstan reported that *"Kyrgyz children say that they are generally just listed as enrolled at schools at home. They come here during the school year. When you ask: 'Are you here during the school year?'; they respond: 'they gave us a leave of absence.'*¹⁸⁷

A. Aravan, who left for work after graduating from school, would like to study further and learn a profession corresponding to his skills (plastering, puttying, masonry, and other construction work), and obtain a diploma. But he does not have the time or money to receive an education, so he has to spend all his time working in Kazakhstan. He says that a diploma would allow him to find work at a company, receive a higher salary, and become a foreman. The lack of a diploma narrows his earning opportunities, leaving mainly just the private hiring sector with its low salaries and unofficial employment.¹⁸⁸

These situations documented by the mission violate several articles of ILO Convention N°138 on Minimum Age for Admission to Employment, in particular because they jeopardise the health, safety, or morals of young persons who did not received adequate specific instruction or vocational training in the relevant branch of their activity (article 3), and because these situations can be harmful to their health or development, and prejudice their attendance at school (article 7).

182. Interview with A. Aravan. Kyrgyzstan, 6 November 2017.

183. Seypoldayeva Raisa Sekenovna, Aydar Sydykbayev, Zabira Rubayeva, Centre for the Adaptation of Minors. Almaty, 14 November 2017.

184. International Protection Centre. Osh, 8 November 2017.

185. Seypoldayeva Raisa Sekenovna, Aydar Sydykbayev, Zabira Rubayeva, Centre for the Adaptation of Minors. Almaty, 14 November 2017.

186. "There are many migrants infected with tuberculosis." Zulfuya Baysakova, Union of Crisis Centres of Kazakhstan. Almaty, 14 November 2017.

187. Seypoldayeva Raisa Sekenovna, Aydar Sydykbayev, Zabira Rubayeva, Centre for the Adaptation of Minors. Almaty, 14 November 2017.

188. Interview with A. Aravan. Kyrgyzstan, 6 November, 2017.

b) Extreme forms of child labour, including slavery

According to the ILO definition, *"in its most extreme forms, child labour involves children being enslaved, separated from their families, exposed to serious hazards and illnesses, and/or left to fend for themselves on the streets of large cities – often at a very early age. Whether or not particular forms of "work" can be called "child labour" depends on the child's age, the type and hours of work performed, the conditions under which it is performed and the objectives pursued by individual countries".*¹⁸⁹

In violation of legal bans and a number of other restrictions on the labour of minors in Kazakhstan, it is known that migrants under the age of 18 often work alongside adults, even in jobs that are banned for children. Some of the work performed by minor migrants (in the fields, at construction sites, etc.) directly contravenes Articles 2 to 4 of ILO Convention No. 138.

However, representatives of a number of state agencies in Kazakhstan (including the Ministry of Internal Affairs and the Ministry of Labour) have denied the existence of this practice in Kazakhstan. For example, a representative from the Ministry of Labour told the mission that: *"now labour by minors has been banned by the Committee to Protect the Rights of the Child. We don't know of any such cases."*¹⁹⁰ Representatives of the Federation of Unions and the Employers' Alliance of Kazakhstan hold a similar position: *"Child labour in Kazakhstan does not exist. There was child labour in the south of Kazakhstan. Two years have passed, and people say that there is no child labour now."*¹⁹¹

Representatives of the Employers' Alliance were similarly confident: *"Kazakhstan's 'worst forms of child labour' programme has been completed and there is no new programme. Previously, yes, there were questions about the south of Kazakhstan, about child labour in cotton and tobacco fields."*¹⁹²

Potential employers and farm representatives also deny the use of child labour. They assert that they *"do not help parents with this, because it is prohibited by law and punishable by fines."*¹⁹³

Nevertheless, instances of child labour regularly come to the attention of experts and human rights defenders. Many migrants in both Kazakhstan and Kyrgyzstan who spoke with the FIDH mission regularly mentioned that they travel for work with their children and that their children work alongside them.

Moreover, minors who come to Kazakhstan alone and who are taken from Kyrgyzstan against their will continue to get trapped in slavery. Sometimes children who migrate with their families become the victims of slavery with their parents. In these cases, the "employer" collects the children's birth certificates along with other documents. Minors live in spaces with inhuman living conditions with their family members or with other people. Food rations are generally meagre and unvaried. Children do not attend school or receive any education, and do not have access to medical services. Minors are forced to perform heavy labour on their own or with their parents. There is no doubt that these living conditions have an effect on their situation, even after their release from slavery, when they may have problems with health, falling behind in school, or illiteracy. Many times, minors do not even have a place to return to in Kyrgyzstan because their housing has already been taken over by other people. Thus, being held in slavery makes an indelible impression on the life of minors and, when they reach the age of 18, they can usually only find unskilled jobs because of their poverty and lack of education.

As one human rights defender explained: *"There was a case in 2016 when a 14-year-old boy from Jalal-Abad Oblast was brought out of Kazakhstan. He was abandoned after his parents' divorce. His mother got married in Jalal-Abad and his father disappeared into Russia. The child was with his grandmother, and then he left of his own volition to be with distant relatives in Kazakhstan. His relatives deserted him, and he spent four or five years on his own. He didn't have any documents. It was slavery. He worked at a mini rubber processing shop. He fell ill and there was a suspicion of*

189. Definition available on ILO website, at <http://www.ilo.org/ipec/facts/lang-en/index.htm>

190. Interview with a representative of the Ministry of Labour. Astana, 17 November 2017.

191. Muhammed Toleugazin, Takhima Kubeleva, Satybaldy Dauletan, Federation of Unions of the Republic of Kazakhstan. 17 November 2017.

192. Interview with representatives of the Employers' Alliance of Kazakhstan. Almaty, 14 November 2017.

193. Interview with farmers in Shelek village. Enbekshikazakhsky District, Almaty Oblast, 13 November 2017.

*sarcoma. The boss got scared and had him hospitalised. He was found there and taken out of the country through the Department of Internal Affairs. The International Organization for Migration helped.*¹⁹⁴

A representative of the Human Rights Ombudsman in Osh Oblast shared the following first-hand account with the mission: *“A woman from Kyrgyzstan (Nookatsky District) and her two children (a son, aged nine and a daughter, aged three months) were sold by their cousin into slavery in Kazakhstan (Kara-Bulak village, Almaty Oblast) for more than 10 years. Their identification documents were taken, except for the daughter’s birth certificate, which they were able to conceal. While the woman did dirty work and tended livestock, her minor son helped her. He also tended the livestock and did other ‘work to support my mother and sister’. One time, a tractor ran over his leg and he spent four months in bed at home without the ability to seek medical help (in part because he did not have identification documents). Even though a stepfather came to Kazakhstan, the stepbrothers did not accept him, and he was frequently told to “go home.” When mother and son were able to free themselves from this forced labour in April 2017, they were obliged to cross the border at the river because they did not have documents. The woman almost drowned. In Kyrgyzstan, relatives reported that the boy’s father (when the boy arrived in Kyrgyzstan, he was already an adult) had died and he was denied help in building a house or even obtaining his father’s death certificate. This boy had never been to school, had never mastered reading, had no housing, and had speech and health problems arising, as with his mother, as a result of the forced labour.*¹⁹⁵

Even though experts regularly learn of cases of forced child labour of Kyrgyz citizens in Kazakhstan,¹⁹⁶ one problem is the difficulty of recording these instances. According to labour unions, agencies responsible for monitoring the situation and combatting child slavery do not function very well, thus most cases of forced labour remain unknown.¹⁹⁷ Another problem is that, even though some cases of forced child labour are publicly exposed in the media and reported to representatives of law enforcement agencies, the guilty parties are generally never prosecuted. This is primarily because specialists do not have experience working with victims or are not interested in this work. Also, investigative agencies, especially in the regions, receive insufficient training, and there is little cooperation within the Ministry of Internal Affairs system in similar cases¹⁹⁸.

c) Young girls working as nannies

At the same time as male Kyrgyz adolescents who work at Kazakhstan’s numerous markets as porters, “container” guards, and salesclerks,¹⁹⁹ in recent years, parents have been sending their daughters aged from 12 to 17 to work as nannies for other Kyrgyz citizens who have moved to Kazakhstan or Russia.

194. Interview with a human rights defender. Osh, 9 November 2017.

195. Meeting with Kasylov Shambet Kazybekovich, Human Rights Ombudsman for Osh Oblast. Osh, 8 November 2017.

196. *“Last year, one boy ended up in slavery in Kazakhstan. The police helped take him across the border. He kept livestock and arrived home in a terrible physical state. No case was ever opened.”* Ulybka NGO. Osh, 6 November 2017.

197. Muhammed Toleugazin, Takhima Kubeleva, Satybaldy Dauletan, Federation of Unions of the Republic of Kazakhstan. 17 November 2017.

198. Regional offices of Kazakhstan’s Ministry of Internal Affairs do not receive enough training on instances of human trafficking. In addition, Kyrgyzstan’s Ministry of Internal Affairs does not investigate such crimes that occur in another country. In the same way, it is difficult for Kazakhstan’s Ministry of Internal Affairs to investigate crimes when the victim has returned home.

199. Interview with R.A., an expert in social issues. Bishkek, 12 November 2017.



Job adverts on a market in Bishkek, Kyrgyzstan. November 2017. © ADC Memorial

Job adverts for young nannies can be found at markets. They hang near the radio centre and are announced over the loudspeaker and in the media. *“Even the radio centre at the bazaar constantly makes announcements that a girl is needed for work. It’s even hard for local people who need nannies to find these kinds of girls, the demand is very high.”*²⁰⁰ Even though the adverts do not mention anything directly about age, experts and human rights defenders report that adult women will not travel for work for such meagre amounts of money because they can find positions that pay more.

*“When a family starts looking for a nanny, they look first at their relatives or fellow villagers who do not have resources. If they need someone right away, they go to the radio centre. They usually look for Kyrgyz citizens. If they abandon the girl later, it is not like she is from some other country.”*²⁰¹ *“An 18-year-old might apply, but will she really work for that kind of money when she can earn more at another job?”*²⁰² *“Some women do not want to bring 17- or 18-year-old girls into their family, so they look for younger workers ‘who don’t interfere with the management of the household or the family’s personal life.’ They are scared that a beautiful, young woman will destroy their relationships with their husbands.”*²⁰³

Young relatives or fellow villagers are frequently hired as nannies. As is the case when adults are hired, relationships with minors are built on trust and no official documents are signed, which results in cases where the promised salary is not paid to the girl’s parents and the girl herself cannot provide proof of work.²⁰⁴

Parents agree that the employer will send the money their daughter earns directly to them and that their daughter will live at the expense of her employer. Meanwhile, she does not receive anything for her own expenses.²⁰⁵ Experts report that for many parents it important that their

200. International Protection Center. Osh, 8 November 2017.

201. International Protection Center. Osh, 8 November 2017.

202. International Protection Center. Osh, 8 November 2017.

203. International Protection Center. Osh, 8 November 2017.

204. Information from the Women’s Business Initiative NGO, Kyrgyzstan. Osh, 10 November 2017.

205. “Employers usually reach an agreement with parents and pay them money for their daughter to work as a nanny.” A., Women’s Initiative Group network, Osh, 12 November 2017.

daughter working as a nanny brings in income, but also that the family employing her feeds and clothes her. Since the salary is so low, many parents resort to hiring out their children for this kind of work because of their dire financial situation.²⁰⁶ Generally, minors work as nannies for a year, during which time they do not attend school, even though they usually continue to be enrolled at a school in Kyrgyzstan. As a result, these girls do not receive a high-quality education, which leads to low-skilled jobs and the further violation of their rights due to their illiteracy and inability to protect their rights.

"Sometimes neighbours from the village say: 'Come on, send us your daughter. She's in 6th or 7th grade, why does she need to waste so much time? We'll buy her a diploma. She'll send her salary to you.' There are lots of these stories from Kazakhstan as well, especially since it is easier to get there. They (employers) just say that this is their relative and come up with some story about why she is traveling with them."²⁰⁷

Social workers assert that even though this kind of work is not associated with violence, children still suffer psychological harm. *"For example, there was a 14-year-old girl. Her mother sent her to work, and her employers sent 5,000 som home every month. She worked for a year and then returned. There [in Kazakhstan] she was provided with clothes and shoes. Her mother was happy, but what did the 14-year-old feel surrounded by four walls, thousands of kilometres away, without even knowing where she was? And this is all unofficial, naturally."²⁰⁸*

Another problem young girls working as nannies face is sexual violence in the family that hired her. *"After 9th or 10th grade they go to our Kyrgyz migrants with their birth certificates. These girls are the youngest. Husbands and other relatives have relations with nannies."²⁰⁹*

According to specialists, there was an initiative in Kyrgyzstan to ban the departure of women under the age of 21 to Kazakhstan or Russia, but nothing ever came of it.²¹⁰ Experts believe that the sale of child labour by parents is one of the new forms of human trafficking.²¹¹

Usually, parents do not take their children's opinion into account when they send them to work in another country. Other times, girls leave to work because they feel responsible for their family and their younger brothers or sisters. But in either case, the adolescents themselves do not consider this to be forced labour, and do not view the work they perform as a violation of their rights, so they never file reports with authorised agencies or social organisations.²¹²

These documented situations are in violation of both ILO Convention N°138 on Minimum Age for Admission to Employment, and several articles of ILO Convention N°182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, where Kazakhstan engaged, relative to article 7, to *"provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration; ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour; identify and reach out to children at special risk; and take account of the special situation of girls"*.

In addition, despite the fact that a large number of migrant workers, including girls from Kyrgyzstan are proved to work as domestic workers, Kazakhstan did not ratify ILO Convention N°189 concerning decent work for domestic workers, thus preventing these children from benefiting from an adequate protection mechanism.

206. Interview with R.A., an expert in social issues. Bishkek, 12 November 2017.

207. Interview with R.A., an expert in social issues. Bishkek, 12 November 2017.

208. Aimira Public Foundation. Osh, 7 November 2017.

209. Information from the Women's Business Initiative NGO, Kyrgyzstan. Osh, 10 November 2017.

210. Interview with R.A., an expert in social issues. Bishkek, 12 November 2017. For more information, see: https://rus.azattyk.org/a/kyrgyzstan_human_rights_woman/24530666.html

211. Interview with R.A., an expert in social issues. Bishkek, 12 November 2017.

212. Zulfiya Baysakova, Union of Crisis Centres of Kazakhstan. Almaty, 14 November 2017.

4. The situation of children who migrate with their parents

Minor children who migrate with their parents also experience various difficulties. Children who are Kyrgyz citizens in Kazakhstan do not receive the mandatory school education. This is generally due to the lack of the documents²¹³ (for example, an individual tax identification number (TIN)²¹⁴) required to enrol children in school, or because of fear of additional document checks, as well as with a lack of knowledge about their rights.²¹⁵ Sometimes migrants in Kazakhstan are not allowed to enrol their children in school, and are only able to resolve this problem after turning to public organisations and the diaspora for help.²¹⁶

Representatives of the Kyrgyz diaspora told the mission about intermediaries who offer to resolve the question of education.

With a typical work schedule of 10 to 12 hours a day, parents frequently are not able to drop off or pick up their children. This means that children spend all their time alone or accompany their parents to work. *“My daughter sits home alone on the weekends. Sometimes we take her to work with us. When there are banquets, she sits and does her homework. Then she takes a nap. When the banquet ends, we return home together.”*²¹⁷

Sometimes difficulties enrolling in school are tied to the lack of classes taught in a child’s language. This is particularly problematic in remote rural districts and oblasts of Kazakhstan. Representatives of the institution of Kazakhstan’s Human Rights Ombudsman reported that akimats (regional or district local executive bodies in Kazakhstan) and population centres monitor school attendance,²¹⁸ but representatives of social organisations have repeatedly noted that the actions of these administrations are ineffective, and that the children of migrants rarely attend school.

Minor migrants generally also do not receive medical assistance, mainly because of the high cost of services, fear of additional document checks, and lack of knowledge about their rights.

5. The children left behind

According to UNICEF indicators, 11% of the children in Kyrgyzstan have at least one parent abroad, and 5% have both parents abroad.²¹⁹

Minors whose parents have migrated to Kazakhstan or other countries and have been left behind in the country of departure face a number of problems. One of the main problems is lack of parental attention, care, and responsibility.

“I don’t need a house or a car, just come home, mama.’ This is what a 10-year-old child told me,” reported an expert on social issues.²²⁰

Many parents leave their children with relatives or neighbours. This, in turn, means that children frequently run away from home²²¹ because of poor treatment, or because sometimes they do

213. *“If a migrant has a regulated status (document of the Ministry of Education), even if there is an official document regarding the right to spend at least one month in Kazakhstan, then this is a ground for a child’s enrolment at school. The ground for enrolment may be legal, but later they may check if the term of legal stay has ended.”* First-hand account provided by Shavkat Ismailov of the Kyrgyz diaspora. Astana, 18 November 2017.

214. *“In Uzbekistan, citizens are given TINs when they turn 16. And in Kazakhstan, they give you a TIN as soon as you arrive from another country and you use it to register everywhere.”* Interview with Almakhan K., an Uzbek migrant. Shymkent, 15 November 2017.

215. A., Women’s Initiative Group network, Osh, 12 November 2017.

216. The deputy director of a school in Astana refused to review the application of a Kyrgyz citizen, but after a representative of the diaspora appealed for help, the application was accepted (2017). Shavkat Ismailov – Kyrgyz diaspora. Astana, 18 November 2017.

217. Interview with Almakhan K., an Uzbek migrant. Shymkent, 15 November 2017.

218. Meeting with Ospanov Serik Zhamekovich. Astana, 16 November 2017.

219. Interview with Severine Jacomy-Vite, Consultant on Children Affected by Migration at UNICEF, Geneva, 27 February 2017.

220. Interview with R.A., an expert in social issues. Bishkek, 12 November 2017.

221. International Protection Centre. Osh, 8 November 2017.

not like being dependent and want to earn their own money.²²² When parents leave for migration, they generally do not complete any official documents for custody of their children, which results in the *de facto* absence of any one who can take responsibility for minors after their departure, including in matters of education or medical care. Educational institutions are rarely told that a child's parents have migrated, and these children frequently do not attend school regularly, which sometimes results in expulsion.²²³

Victims of forced labour who arrive in Kazakhstan as minors continue to face problems upon their return. In order to come back home from Kazakhstan, they have to give bribes or look for a way to cross the border in places where it is not well-guarded. When they do finally return home, they have no documents, education, or place to live.

One human rights defender recounted the story of a family that spent 18 years in Kazakhstan, including in forced labour. *"It was a large family. Three children returned from Kazakhstan with them and the oldest was 25. He lived there for over 18 years. They had left Nookat when he was little. Where is he going to work? He doesn't know how to read or write. He can only restore documents through court. The children [both minors and adults] of migrants who return from Kazakhstan are in a grave situation. I don't even know who is going to work with them."*²²⁴

Forced labour and difficult living conditions mean that even parents can be in dire financial and psychological states when they return to their country of origin. State services in Kyrgyzstan do not conduct effective work with victims of slavery and forced labour, while the efforts of non-governmental organisations are insufficient for working with the consequences of the complicated lives of labour migrants. In a number of cases, the totality of problems faced by migrants during their lives abroad and upon their return home (especially for the victims of forced labour) leads to inappropriate and sometimes violent actions in relation to family members, including children.

Some parents who migrate and leave their small children with relatives start a new family in the other country and stop fulfilling their parental obligations in respect of the children they left behind, which increases those children's vulnerability.

*"In 2015, a man who had been trapped in slavery in Kazakhstan came home and drank too much. His wife fled the home with her nursing baby but left her three-year-old daughter with her husband. The girl was taken to the hospital in the morning. Doctors found 15 stab wounds on her face and neck and noted that there had been an attempt at rape. The husband didn't even recall doing this. The wife faced pressure from her husband's relatives to deny that he had done this. She asked for him not to be charged, and at a press conference a year later, she showed that her daughter was healthy and asked for her husband to be released."*²²⁵

*"One girl was 17. She had lived with her grandparents in Isskyk-Kul for a long time. Her parents migrated. A builder at the construction site raped her for a year. Her grandmother said that she couldn't tell anyone about this."*²²⁶

222. International Protection Centre. Osh, 8 November 2017.

223. A., Women's Initiative Group network. Osh, 12 November 2017.

224. Information from the Women's Business Initiative NGO, Kyrgyzstan. Osh, 10 November 2017.

225. Interview with R.A., an expert in social issues. Bishkek, 12 November 2017.

226. Interview with R.A., an expert in social issues. Bishkek, 12 November 2017.

State agencies are clearly reluctant to uncover violations of the rights of minor children, including in the sphere of labour. In the current situation, social organisations are the only group to which migrants have recourse when they need assistance. But poor knowledge of the law and the lack of information about organisations that protect labour rights mean that few appeals for help are made. In many cases, parents do not even mention their children as victims of forced labour, even if they have been subjected to it, due to fear of liability, distrust of social services, and concern about losing their children. Minor citizens virtually never appeal for protection of their rights on their own. Thus, the problem of child labour remains partially invisible and required measures to stop harmful practices are not taken.

In joint general comments made in 2017,²²⁷ the UN Committee on the Rights of the Child and the UN Committee on the Protection of the Rights of All Migrant Workers and their Families state that children aged 15 to 18 can be mistaken as adults, and are frequently in an extremely vulnerable position that does not take their special rights as children into account. States, particularly receiving states, must ensure the protection of all minors regardless of their migration status, and provide them with the opportunity to complete their educations, access to decent jobs, and integration in society, especially as they near the age of 18. Minor migrants must also have guaranteed access to medical services and education regardless of the documents they may have or not have. Effective international cooperation is needed to ensure their rights and implement the principle of the best interests of the child.

Considering the special vulnerability of minors to various forms of violence and exploitation over the course of the entire migration process, the state must adopt effective measures to prevent violations of the rights of the child, including victims of human trafficking and victims who have engaged in jobs that pose a threat to their health, safety, and morality.

Penalties for the illegal use of child labour must be enshrined in the law and implemented in practice.

227. Joint general comments of the UN Committee on the Rights of the Child and the UN Committee on the Protection of the Rights of All Migrant Workers and their Families "On the General Principles for Protecting the Rights of the Child in the Context of International Migration" and "On State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return".

Conclusion

Lack of information about their rights throughout the journey and upon arrival, practices of corruption within migration police services, and increased discrimination against migrants in the society make it very difficult for Kyrgyz citizens to obtain a “regulated status”, which is a necessary condition for living and working legally in Kazakhstan.

As a result, since the beginning of 2017, Kyrgyz migrants have been victims of repressive operations conducted by Kazakh state services. When they have committed minor violations of migration rules or lost their “regulated status”, they are subject to deportation and a five-year entrance ban, effectively depriving them of financial resources.

In addition, due to an absence of professional binding-contracts, Kyrgyz migrants are regularly victim of abuses in the workplace. Despite repeated remarks of civil society organisations and international bodies,²²⁸ labour inspection in Kazakhstan remains inefficient and does not benefit from enough financial, legal, or human resources to carry out its mission, which is essential to denounce abuses. And yet, it is the responsibility of the Kazakh authorities to make sure that migrants working on their territory and members of their families are fully protected. All Ministries concerned, namely the Ministry of Labour and Social Protection of the Population, the Ministry of Internal Affairs, the Ministry of Health and Social Development and the Ministry of Justice, shall take full responsibility in this matter.

By ratifying the ILO's fundamental Conventions²²⁹, Kazakhstan engaged to guarantee freedom of association for workers, and to fight against discrimination in all its forms in the workplace. In ILO practice, this definition includes discrimination practices against migrant workers whether they are in a regular or irregular situation. So far, Kazakhstan does not fully respect its international commitments in this regard. In addition, Kazakhstan does not fully respect ILO conventions on the elimination of forced labour of adults and children. The existence of cases of human trafficking and slavery involving migrants is well known to the authorities and international intergovernmental organisations.²³⁰ However, no conclusive efforts have been conducted in coordination to protect Kyrgyz migrants and give them an access to an effective remedy.

In the end, while they represent an increasing part of the labour migration flows to Kazakhstan, Kyrgyz women and children do not enjoy adequate protection. As signatories to the UN Convention on the Elimination of All Forms of Discrimination against Women and UN Convention on the Rights of the Child, Kazakhstan and Kyrgyzstan must commit resources to conduct monitoring on these issues including the situation of migrant women and children, and implement all necessary measures to protect them, without discrimination.

228. Direct request of ILO CEACR to Kazakhstan during the 2016 International Labour Conference, available at http://www.ilo.org/dyn/normlex/fr/?p=1000:13100:0::NO::P13100_COMMENT_ID,P13100_LANG_CODE:3240246,en:NO

229. The ILO's Governing Body has identified eight conventions as “fundamental”, covering subjects that are considered as fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. Information available at <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm>

230. See report “Labour Exploitation, Trafficking and Migrant Health: Multi-country Findings on the Health Risks and Consequences of Migrant and Trafficked Workers”, International Organisation for Migration (IOM), 2015

Recommendations

To the Kazakh authorities

- Ratify the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- Ratify the Optional Protocol to the UN International Covenant on Economic, Social and Cultural Rights (Kazakhstan signed the Protocol in 2010 but has not yet ratified it).
- Ratify the following ILO Conventions:
 - ILO Convention N°97 of 1949 concerning Migration for Employment and its recommendation No. 86;
 - ILO Convention N°143 of 1975 concerning Migrant Workers (Supplementary Provisions) and its recommendation No. 151;
 - ILO Convention N°189 on Domestic Workers and its recommendation No. 201, especially as migrant workers are generally employed as such in Kazakhstan, regardless of the actual sector they work in; and
 - ILO Convention N°181 concerning Private Employment Agencies.
- Implement the recommendations adopted by the Human Rights Committee in its concluding observations on the second periodic report of Kazakhstan²³¹, in particular the recommendations concerning migrant workers' rights and the total lack of protections.

On migrant workers from Uzbekistan

Given that Uzbek citizens represent the largest percentage of migrant workers in Kazakhstan, and given that migratory flows between both countries are increasing:

- Open bilateral negotiations with the Government of Uzbekistan (as already exists with other countries such as Kyrgyzstan), with the aim to provide a legal framework for these labour migration flows, in accordance with international standards on non-discrimination, and to evolve towards an area of freedom of movement and settlement.

On discrimination

- Ensure full and effective implementation ILO Convention N°111 on Discrimination, and in particular article 2 which states that all workers, including migrants, shall enjoy equality of opportunity and treatment in respect to employment and occupation.
- Fully comply with article 2.2 of the Convention on the Rights of the Child, which enshrines the principle of non-discrimination among children, regardless of their national or legal status.

On freedom of association

- Fully comply with ILO Convention N°87 on freedom of association and the right to organise and N°98 on the right to organise and collective bargaining.
- Follow up on all requests made by the ILO supervisory bodies²³² on Convention N° 87 on Freedom of Association and Protection of the Right to Organise, in particular the requests to amend the provisions of the Trade Union Law of 2014 which limit the rights of workers to form and join trade unions of their own choosing; and to ensure that the KNPRK and its affiliates are able to fully exercise their trade union rights.
- Fully comply with articles 21 and 22 of the UN International Covenant on Civil and Political Rights concerning freedom of association with others, including the right to form and join trade unions for the protection of his or her interests.
- Fully comply with article 8 of the UN International Covenant on Economic, Social and Cultural Rights concerning the right of everyone to form trade unions and join the trade union of his choice.
- Put an end to all acts of harassment, including at the judicial level, against Ms. Larisa Kharkova and trade unionists in Kazakhstan.
- Immediately and unconditionally release Messrs. Nurbek Kushakbaev and Amin Eleusinov.

231. CCPR/C/KAZ/CO/2 para 33-36, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FKAZ%2FCO%2F2

232. See requests made by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Conference Committee on the Application of Standards (CAS), available at <http://www.ilo.org/dyn/normlex/en/f?p=1000:11110::NO::>

- Re-register the Confederation of Independent Trade Unions of the Republic of Kazakhstan and put an end to any form of restriction to freedom of association and expression, in accordance with international human and labour rights standards.
- Repeal legal provisions limiting freedom of association including those contained in the 2014 Law on Trade Unions.
- Remove the provision of the 1995 Kazakh Constitution that prohibits financial assistance from abroad to Kazakh trade unions.

On forced labour and practices leading to forced labour, namely deception about the nature and conditions of work; retention of passports; illegal wage deductions; debt bondage linked to repayment of recruitment fees; threats if workers want to leave their employers:

- Comply with all articles of ILO Conventions N°29 on forced or compulsory labour and N°105 on abolition of forced labour.
- Follow up on 2016 direct request of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) relevant to forced and bonded labour of migrant workers in the tobacco, cotton, and construction industries, and take the necessary measures to ensure that the national legislation is effectively enforced and that migrant workers are fully protected from any abuse or exploitation that amounts to forced and bonded labour.²³³
- Comply with article 1 of ILO Convention N°122 concerning employment policy to “declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment”.
- Ensure full implementation of ILO Convention N°95 on the protection of wages, in particular articles 5, 6, 8, 9, 12, 14, and 15, to ensure protection of migrant workers’ labour rights, regardless of what sector they work in.
- Ensure full implementation of articles 1, 6, and 7 of the UN International Covenant on Economic, Social and Cultural Rights.
- Comply with article 8 of the UN International Covenant on Civil and Political Rights and ensure that no one is held in servitude, slavery, or forced labour.

On human trafficking

- Take action to ensure full implementation of all articles of ILO Convention N°29 on forced or compulsory labour and N°105 on abolition of forced labour.
- Follow up on the 2016 direct request of the CEACR relevant to the issue of trafficking of persons, and take appropriate measures to strengthen the victims’ identification mechanisms, as well as providing them with adequate care, social and legal assistance, and reparation.
- Fully comply with articles 1, 6, and 10 of the UN International Covenant on Economic, Social and Cultural Rights.
- Adopt a non-discriminatory approach towards migrants who appear to be victims of forced labour, including human trafficking, and systematically and thoroughly register their complaints.
- Take all necessary measures at the national level to identify more cases of human trafficking, sexual or labour exploitation, and adopt a gender-based approach when receiving a complaint of a migrant victim.
- Launch a national information campaign to denounce practices of forced labour or forced sexual exploitation, including human trafficking; build capacity of all parties interested in combatting the trafficking of persons, especially that of enforcement officers, judges and lawyers, as well as social services staff and civil society actors, in order to guarantee effective remedy to victims of trafficking.
- Take measures to pursue perpetrators of such crimes and hold them accountable for violations of Kazakh laws.
- Guarantee immunity to all migrants who are victims of trafficking should they breach migration rules, and implement an appropriate system of protection during investigations and judicial proceedings.
- Enhance monitoring of the conditions in which the migrants are working by allowing the Labour Inspection Agency to make frequent and random visits to farms and construction sites, and by allocating adequate financial and human resources for it to carry out its mandate.

On working conditions of migrant workers and social protection attached

- Ensure effective implementation of ILO Conventions N° 155, 167, and 187 concerning occupational safety and health, in particular with articles 4, 9, and 10 of ILO Convention N°155.

233. Direct Request (CEACR) - adopted 2016, published 106th ILC session (2017), available at http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3288459

- Ratify ILO Convention N°118 on Equality of Treatment of Nationals and Non-Nationals in Social Security.
- Ensure full compliance with Articles 7, 10, and 12 of the UN International Covenant on Economic, Social and Cultural Rights, in order for migrant workers and members of their families to benefit from an adequate social protection.
- Ensure that all migrants have an adequate written agreement when working in Kazakhstan.
- Amend the migration law to include the fundamental rights of all migrant workers in accordance with international human rights standards, such as the rights to fair and favourable working conditions (including equitable pay), safe conditions, reasonable working hours, days off, and rest.
- Enable all migrants to regularise their situation permanently by reforming the immigration and employment laws, as well as ensure migrants can obtain a work authorisation without discrimination. In order to avoid dependence of the migrant worker on the employer, payment for such work authorisations would only be due once the worker receives his first wages.
- Fight against corruption among the Kazakh authorities, especially in law enforcement, customs, the migration police and the Labour Inspection Agency.
- Strengthen controls on employers, and ensure that those who employ migrant workers without contracts, or who do not respect the conditions set forth in contracts, face appropriate penalties.
- Plan labour inspections in households that employ domestic workers, in particular migrant women.

On labour inspection

- Ensure effective implementation of all articles of ILO Convention N°81 on labour inspection in industry and commerce, and of ILO Convention N°139 on labour inspection agriculture, in particular articles 16, 19, 21, and 27.
- Ensure full compliance of Article 7 of the UN International Covenant on Economic, Social and Cultural Rights.
- Enhance monitoring of the conditions of work by allowing the Labour Inspection Agency to make frequent random visits to small, medium, and large businesses, and by allocating it sufficient financial and human resources to carry out its mandate.
- Allocate human and financial resources to the Labour Inspection Agency for information campaigns among workers on their rights, irrespective of their legal status, and on the various existing remedies which they can access, especially the mechanism to file a complaint with the Labour Inspection Agency should there be violations of the workers' rights.
- Strictly frame responsibility of employers when they appear to have violated labour rights of migrant workers.

On access to justice for migrants, including in cases of deportation

- As a priority, depoliticise the issue of migration.
- Comply with articles 13 and 14 of the UN International Covenant on Civil and Political Rights and ensure that all migrants have the right to a fair trial, including when being held in detention and/or deported under administrative decisions.
- Establish an effective system for filing complaints for all migrants by implementing programmes to fight corruption among official representatives, in particular border guards, police officers, and migration police.
- Respect the right to defence for all migrants: ensure that their rights are explained to them, that they have access to a lawyer and an interpreter, and that their right to file a complaint or to appeal the Court's decision is respected.
- In cases where a Kazakh Court decides that a migrant should be deported for administrative violation of the migration law, comply with article 517(5) of the Kazakh Administrative Code, which states that the effective deportation of a migrant in an irregular situation shall enter into force 10 full days after the Court's decision, and not earlier. At every step, migrants should be informed of their rights, in particular of the right to appeal. At no point should migrants be detained for an administrative offence within these 10 days.
- Implement measures to vigorously pursue those effectively responsible for the lack of registration of migrants (such as intermediaries, unscrupulous employers, corrupt migration police officers, etc.), and launch a national information campaign for these practices to be considered unlawful.
- Ensure that lawyers are not criminalised when they defend migrants charged with administrative offences regarding migration laws.

On maternity protection

- Ensure full compliance with ILO Convention N°183 concerning maternity protection of female migrants, in particular on health protection (article 3), maternity leave (article 4), leave in case

- of illness or complications (article 5), benefits (article 6), employment protection and non-discrimination (articles 8 and 9), and breastfeeding mothers (article 10).
- Ensure full implementation of articles 3, 4, 5, 6, 8, and 11 of ILO convention N°156 on Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities.
- Ensure full compliance with articles 7, 10, and 12 of the UN International Covenant on Economic, Social and Cultural Rights.
- Ensure full compliance with articles 11, 12, and 13 of the Convention on the Elimination of all forms of Discrimination Against Women
- Ensure full compliance with article 24 of the Convention on the Rights of the Child, more specifically its points d) and f).
- Guarantee all migrant women, irrespective of their legal status, free access to sexual and reproductive healthcare, including methods of contraception, prenatal, and postnatal care.
- Expand the list of beneficiaries of free medical care to all migrant workers, whether their papers are in order or not, and not only to foreign citizens with permanent residency.
- Raise employers' awareness of their health and safety obligations to pregnant women and new mothers.
- Ensure that fees are not a barrier to accessing justice for migrant women experiencing pregnancy and maternity discrimination.
- Establish free access to sexual and reproductive health, including antenatal care services for all women, regardless of their legal status.

On minor migrants

- Ensure full compliance with ILO Convention N°138 on Minimum Age for Admission to Employment, in particular with article 3 on work situations that may jeopardise the health, safety, or morals of young persons, and article 7 on situations which can be harmful to their health or development, or prejudice their attendance at school.
- Ensure full implementation of ILO Convention N°182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, in particular article 7 to "provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration; ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour; identify and reach out to children at special risk; and take account of the special situation of girls"; but also of article 5 to monitor the implementation of the provisions giving effect to this Convention; and article 6 in order to implement programmes of action to eliminate as a priority the worst forms of child labour.
- Ensure full compliance of the Convention on the Rights of the Child, and more specifically articles 7.1, 24, 26, 28, 31, 32, and 37
- To combat discrimination against minor migrant workers, ensure full compliance with article 2 of ILO Convention N°111 on Discrimination in Respect of Employment and Occupation in order to give minor migrants the right to participate in activities that could contribute to their development and to the welfare of their families.
- Ratify ILO Convention N°189 concerning decent work for domestic workers in order for minor domestic workers (Kyrgyz nannies) to benefit from an adequate protection.
- Ensure full compliance with the UN Convention on the Rights of the Child, in particular articles 6, 28, and 29 on security, health and development, and access to education.
- Ensure full implementation of the UN International Covenant on Economic, Social and Cultural Rights, in particular article 10 on child labour; article 12 on the health of the child; and articles 13 and 14 on a free access to education.
- Immediately address the absence of accurate and comparable data on child domestic workers.
- Guarantee that all children, including children of seasonal and temporary migrant workers, have a free access to education, and amend Decrees No. 398 and 468 to guarantee this access regardless of the legal status of the child's parents.
- Impose penalties against those who employ child labour.
- Address the root causes of child labour by supporting migrant workers and members of their families through social protection schemes.
- Monitor and regularly inspect farms and construction sites where minors are employed.
- Develop a preventive focus effort on child labour, with special attention to the specific needs of children in domestic work.

To the Kyrgyz authorities

- Ratify ILO Convention N°143 of 1975 concerning Migrant Workers (Supplementary Provisions) and its recommendation No. 151 to protect the rights of all migrant workers, regardless of their status.
- Advocate for the ratification of the UN International Convention on the Rights of All Migrant Workers and Members of Their Families by the receiving countries – the Russian Federation and the Republic of Kazakhstan – within the framework of integration processes and harmonisation with Eurasian Economic Union laws on migrant workers.
- In conformity with Article 41 of the UN International Convention on the Rights of All Migrant Workers and Members of Their Families, increase the opportunities of all Kyrgyz emigrants to participate in public affairs of their State of origin, and most importantly to vote from abroad.

On human trafficking

- Introduce a national programme on human trafficking for law enforcement officers, judges, prosecutors, work inspectors, teachers, medical workers, and staff members at embassies and consulates, as well as widely disseminate information about human trafficking and assistance for victims.
- Enhance the realisation of programmes to rehabilitate victims of human trafficking, by offering them advice, refuge, and legal assistance, as well as services to help with their rehabilitation.
- Launch a campaign to increase society's awareness of the problem of human trafficking.

On access to justice for migrants, including in cases of deportation

- In conformity with article 3 of the ILO Convention N°97 on Migration for Employment that it has ratified, Kyrgyzstan must continue to act in cooperation with Kazakhstan and provide its citizens, both on its territory and abroad, with appropriate information, assistance, and protection.²³⁴
- In conformity with articles 37 and 65 d) of the UN International Convention on the Rights of All Migrant Workers and Members of Their Families, maintain appropriate services that provide information and appropriate assistance to migrant workers and members of their families regarding legal, administrative, and material conditions for working abroad, be it in a regular or irregular situation.
- In conformity with article 23 of the UN International Convention on the Rights of All Migrant Workers and Members of Their Families, increase the effectiveness of Kyrgyzstan's embassy and consulates in Kazakhstan by providing them with the technology needed to provide effective assistance and protection for migrant workers.
- In conformity with article 22. 6 of the UN International Convention on the Rights of All Migrant Workers and Members of Their Families, increase collaboration with Kazakhstan so that in case of expulsion, migrant workers have opportunities to settle any claims for wages and other entitlements due to him or her and any pending liabilities.
- Create national platforms for discussing the problems of labour migration, informing migrant workers of the need for them to report instances of corruption, and increasing awareness among migrant workers and their families regarding free legal assistance.
- Adopt effective measures in respect of incidents of corruption involving migrant workers and members of their families and duly investigate all reports of corruption.

On minor migrants

- Persuade the Kazakhstan Government to a collaboration in order to guarantee the access to Kazakh schools for all Kyrgyz migrant children, and to integrate the Kyrgyz language and culture in their school programmes as much as possible in conformity with article 45. 2 of the UN International Convention on the Rights of All Migrant Workers and Members of Their Families.

On freedom of association

- Renounce the promotion and adoption of unconstitutional laws aimed at restricting fundamental civil and political rights, including freedom of association and peaceful assembly;
- Expedite the implementation of the 664 recommendations of UN human rights bodies addressed to Kyrgyzstan by making them central for realisation for all state bodies and institutions;
- Encourage state and local government bodies to create favorable conditions for the work of NGOs pursuant to Principle 2 (the state's duty to respect, protect and facilitate the exercise of

234. See advanced list of recommendations to the Kyrgyz authorities in FIDH report "Women and children from Kyrgyzstan affected by migration", 2016, available at https://www.fidh.org/IMG/pdf/rapport_kyrgyzstan_uk-2-web2.pdf

the right to freedom of association) and other principles stipulated in the Guidelines on Freedom of Association of the OSCE/ODIHR.

To both governments of Kazakhstan and Kyrgyzstan

On freedom of movement

- Abolish the system of registration of citizens/non-citizens at the place of residence in its current form (propiska system), which links the implementation of economic, social and cultural rights to the registration at a place of residence, and replace it with a non-discretionary registration system based on freedom of movement and settlement. Until this goal is reached, abolish the registration system within the country for everyone and, for foreign migrants, replace it with a notification-based system using an address, whether personal or professional, upon declaration at the border.
- Remove any responsibility from migrants concerning violations of administrative rules linked to problems of registration with the propiska system. Until this goal is reached, ensure that all migrants can enjoy a fair trial and respect of their right to defence.
- Follow-up bilateral negotiations between both governments of Kazakhstan and Kyrgyzstan to evolve towards an area of freedom of movement and settlement.
- Ensure full compliance of Articles 1, 9 and 11 of the UN International Covenant on Economic, Social and Cultural Rights.

On the lack of information on migratory flows

- Establish an open data platform accessible to the public, and in particular to the civil society, containing all information maintained by the government concerning border crossings, number of migrants in the country and abroad (gender, age), procedures, international agreements, number and conditions of sanctions' implementation, including detention and deportation (gender, age).

FIDH and ADC Memorial urge the international community to use all the means at its disposal to make authorities in Kyrgyzstan and Kazakhstan follow the aforementioned recommendations and, in particular, to address the following recommendations:

To the European Union

The EU holds yearly political and human rights dialogues with each of the countries of Central Asia. In addition to bilateral relations, the EU relations with the region take place in the framework of the EU-Central Asia Strategy, first adopted in 2007 and last reviewed in 2017. The EU is the number one donor in the region, with one billion Euros for bilateral and regional aid for the period 2014-2020, covering sustainable development, regional security and support for economic, social and institutional reforms.²³⁵

On Kazakhstan

- In line with the 12 December 2017 European Parliament Opinion attached to its Consent Decision on the EU-Kazakhstan Enhanced Partnership and Cooperation Agreement (EPCA)²³⁶:
 - ensure that "both sides abide by the essential elements of the EPCA [respect for democratic principles and human rights], because failure to observe them would lead to either a dispute settlement (Article 278) or even suspension in the event of serious violations (Article 279)";
 - "develop benchmarks and deadlines for implementation of the EPCA";

235. In December 2017, the European Parliament gave its consent to the EU-Kazakhstan Enhanced Partnership and Cooperation Agreement (EPCA). Kazakhstan is the first Central Asian country to benefit from such an enhanced partnership which foresees a deepening of the relations in a number of sectors from reinforced political dialogue, cooperation in justice, home affairs among other sectors, and promotion of mutual trade and investment. The agreement also lays the ground for a reinforcement of the participation of civil society in the economic, social and political cooperation areas. When giving its consent to the EPCA, the European Parliament demanded to be included in the monitoring of the implementation of the agreement notably to ensure that its "essential elements" (respect for rule of law and human rights) be fully implemented and that human rights reform be encouraged on the basis of the 'more for more' principle. Kyrgyzstan relations with the EU are still governed by the 1999 Partnership and Cooperation Agreement (PCA), which covers political dialogue, economic relations and cooperation in a variety of sectors. Negotiations of an enhanced agreement comparable to the one with Kazakhstan have begun.

236. Available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0485+0+DOC+PDF+V0//EN>

- “provide for a comprehensive monitoring mechanism between Parliament and the EEAS once the EPCA fully enters into force, including the elements as specified in its resolution of 22 November 2012”.
 - demand that the Kazakhstan authorities revise the 2014 Trade Union Law and the 2015 Labour Code to bring them in line with ILO standards.
 - demand that the Kazakhstan authorities take effective steps to guarantee the existence and functioning of independent trade unions.
- Build on the possibilities offered by upgrading of the EU-Kazakhstan relations in the context of EPCA to propose and support a national strategy and an action plan to protect migrant workers’ rights.
 - Such a strategy and action plan should be discussed in the political and human rights dialogues and in the sectoral cooperation in the areas of justice, home affairs, migration, trade (including labour rights).
 - As encouraged by the EPCA, the EU should work with the Kazakhstan authorities on an active participation of the civil society (including trade unions and migrants’ rights representatives) in the preparation of this strategy and action plan.
 - The future EU aid in the focal areas of reform of the justice sector and the reinforcement of the capacity of the public sector to introduce social and economic reforms should be designed accordingly to ensure implementation of the action plan.

On regional aspects

- Propose at the next EU-Central Asia Ministerial Meeting the launch of a process towards the adoption of a regional strategy on migrant workers’ rights.
 - This process should include all relevant stakeholders, including Labour, Justice and Interior ministers of the region, as well as civil society organisations and trade unions.
 - It should include discussions on how to set up frameworks for regional and bilateral settlement of the issues mentioned in this report through effective protection of migrant’s rights, access to remedy, and enforcement of labour standards.
- Support for such a regional strategy on migrant workers’ rights should be integrated into the revision of the EU Strategy towards the Central Asian region (foreseen for 2019) and into the 2020-2027 multi-annual development assistance budget for the region.
 - The two sectors of focus of the current Regional Multiannual Indicative Program for Central Asia should allow a comprehensive response to the challenges mentioned in this report by integrating migrant’s rights in the ‘Sustainable Development’ (inc. socio-economic development) focus sector and by proposing a human-rights based approach to the ‘Regional Security’ focal sector (which covers border management, fight against drugs and crime, Rule of Law and judiciary reforms) – including through a strong focus on protection and access to remedies.
 - The European Commission should also follow-up on the European Parliament recommendation to develop programmes focusing on the social reintegration and employment of returning migrant women from abroad [EP Resolution of 13 April 2016 on implementation and review of the EU-Central Asia Strategy].
- Include the issue of work migration, traffic, and children left behind into the political and human rights dialogues with the Kyrgyz authorities as well as in the GSP+ monitoring framework and missions. The EU should play a role of facilitator between the Kyrgyz and Kazakh authorities to ensure that the rights of migrants and the issue of trafficking are addressed in a comprehensive and coordinated way in the relations between the two countries.
- Work on an EU legislative proposal for an effective mechanism for tracing goods produced through forced or child labour.

To the ILO

- In the framework of the **International Labour Conference (ILC)**, integrate the issues of the rights of migrants and members of their families both in countries of destination and origin. In particular, integrate the issue of migrant women in Kazakhstan in the framework of the ILC 2018 tripartite discussion on “Violence and harassment against women and men in the world of work”.
- Encourage **ILO regional offices** to cooperate on a regular basis with civil society organisations

- working in the fields that are important to ILO.
- Encourage the **ILO technical department** to conduct visits in Kazakhstan on the questions of migration, labour inspection and freedom of association.

To international workers' and employers' organisations

- Include the issue of migrant workers' protection in Kazakhstan in the discussions ahead of the ILC 2018 and keep it high on the international agenda.
- Mobilise their affiliates on migration issues and on the protection of migrant workers.

To Kyrgyz and Kazakh trade unions

- Address the issues of migrant workers' rights violations at the national and local levels, including all the affiliated sectoral unions in those activities.
- Increase the awareness raising of the migrant workers in countries of the origin and destination on the issues of legal employment, occupational safety and health, and basic unionism.
- Establish partnerships with the Labour Inspection and employer organisations in order to promote the protection of migrant workers' rights.
- Establish partnerships between the unions in Kazakhstan and Kyrgyzstan in order to improve the organisation of migrants and to promote the ratification by Kazakhstan of ILO Conventions N°97 and 143 on the protection of migrant workers.

To the OECD

In June 2017, Kazakhstan became the 48th country to adhere to the OECD Investment Declaration, which also means committing to adhere to the OECD Guidelines for Multinational Enterprises. As such, OECD has established a National Contact Point that can handle complaints.²³⁷

- Systematically integrate the issues of the rights of migrants and members of their families in countries of destinations, and those left behind in countries of origin, into the bilateral human rights dialogues with Kazakhstan.
- Ensure that the objective of effective realisation of human rights is not isolated in human rights' dialogues, but is incorporated in all negotiations and policies, and is politically supported at all levels of discussion (including on trade, within UN bodies, with the World Bank, and the ILO).

To the World Bank, the European Development Bank, and international employer companies working in Kazakhstan

- Ensure that the issues of adequate contracts, adequate work conditions, and social protection of all migrant workers are conditioned by the projects implemented in Kazakhstan and Kyrgyzstan.

237. More information available at <http://www.oecd.org/investment/kazakhstan-signs-oecd-agreement-to-strengthen-investment-climate.htm>

ILO and UN standards for the protection of migrant workers in Central Asia

	Kazakhstan		Kyrgyzstan		Tajikistan		Russia	
	Ratification	Review by the ILO CEACR*	Ratification	Review by the ILO CEACR	Ratification	Review by the ILO CEACR	Ratification	Review by the ILO CEACR
CONVENTIONS								
Four ILO's migrant-specific instruments								
Convention No. 97 on Migration for Employment, 1949	-	-	2008	2017 (out of cycle**)	2007	2017	-	-
Recommendation N° 86	-	-	-	-	-	-	-	-
Convention No. 143 on Migrant Workers (Supplementary provisions), 1975	-	-	-	-	2007	2017	-	-
Recommendation No. 151	-	-	-	-	-	-	-	-
ILO Fundamental Conventions								
Abolition of forced labour								
29- Convention on Forced Labour, and its Protocol, 2014	2001	2018	1992	2017 (out of cycle)	1993	2019	1956	2019
105-Convention on Abolition of Forced Labour	2001	2018	1999	2017 (out of cycle)	1999	2019	1998	2019
Elimination of child labour								
138-Convention on Minimum Age	2001	2018	1992	2017 (out of cycle)	1993	2019	1979	2019
182-Convention on Worst forms of child labour	2003	2018	2004	2018	2005	2019	2003	2019
Trade union rights								
87-Convention on Freedom of association and protection of the right to organise	2000	2017	1992	2017	1993	2018	1956	2018
98-Convention on Right to organise and collective bargaining	2001	2017	1992	2017	1993	2018	1956	2017
Equality and non-discrimination in employment and occupation								
100-Convention on Equal remuneration	2001	2019	1992	2017 (out of cycle)	1993	2017	1956	2017
111-Convention on Discrimination (employment and occupation)	1999	2017 (out of cycle)	1992	2017 (out of cycle)	1993	2017	1961	2017
Selected ILO conventions and recommendations of general application								
81-Convention on Labour inspection	2001	2017	2000	2017	2009	2019	1998	2019
94-Convention on Labour clauses (public contracts)	-	-	-	-	-	-	-	-
95-Convention on Protection of wages	2015	2017	1992	2017	1993	2017	1961	2017
121-Convention on Employment-injuries benefit	-	-	-	-	-	-	-	-
122-Convention on Employment policy	1999	2019	-	-	1993	2018	-	-
129-Convention on Labour inspection in agriculture	2001	2017	-	-	-	-	-	-
131-Convention on Minimum wage fixing	-	-	2007	2017	-	-	-	-
144-Convention on Tripartite consultation	2000	2018	2007	2017 (out of cycle)	2014	2017	2014	2017
149-Convention on Nursing personnel	-	-	1992	2018	1993	2018	1979	2018
155-Convention on Occupational safety and health	1996	2019	-	-	2009	2019	1998	2019

161-Convention on Occupational safety and health services	-	-	-	-	-	-	-	-	-	-	-	-	-
167-Convention on Safety and health in Construction	2008	2019	-	-	-	-	-	-	-	-	-	-	-
172-Convention on Working conditions	-	-	-	-	-	-	-	-	-	-	-	-	-
176-Convention on Safety and health in Mines	-	-	-	-	-	-	-	-	-	-	2013	-	2019
183-Convention on Maternity Protection	2012	2018	-	-	-	-	-	-	-	-	-	-	-
184-Convention on Safety and health in Agriculture	-	-	-	2004	2019	-	-	-	-	-	-	-	-
187-Convention on Promotional framework for occupational safety and health	2015	2017 (first report)	-	-	-	-	-	-	-	-	2011	-	2019

Selected ILO Conventions and Recommendations containing specific provisions on migrant workers

19-Convention on Equality of treatment (accident compensation)	-	-	-	-	-	-	-	-	-	-	-	-	-
88-Convention on Employment service	2001	2019	-	-	-	-	-	-	-	-	-	-	-
102-Convention on Social security (minimum standards)	-	-	-	-	-	-	-	-	-	-	-	-	-
Recommendation No. 100 on Migrant workers (underdeveloped countries)	-	-	-	-	-	-	-	-	-	-	-	-	-
110-Convention on plantations	-	-	-	-	-	-	-	-	-	-	-	-	-
118-Convention on Equality of treatment (social security)	-	-	-	-	-	-	-	-	-	-	-	-	-
157-Convention on Maintenance of social security rights	-	-	2008	2017 (out of cycle)	-	-	-	-	-	-	-	-	-
181-Convention on Private Employment Agencies	-	-	-	-	-	-	-	-	-	-	-	-	-
Recommendation NO. 200 on HIV and AIDS	-	-	-	-	-	-	-	-	-	-	-	-	-
189-Convention on Domestic workers	-	-	-	-	-	-	-	-	-	-	-	-	-
Recommendation No. 201 on Domestic Workers	-	-	-	-	-	-	-	-	-	-	-	-	-
Recommendation No. 203 on Forced Labour (supplementary measures)	-	-	-	-	-	-	-	-	-	-	-	-	-
Recommendation No. 115 on Workers' housing	-	-	-	-	-	-	-	-	-	-	-	-	-

UN Conventions	Ratification	Review by the attached UN Committee	Ratification	Review by the attached UN Committee	Ratification	Review by the attached UN Committee	Ratification	Review by the attached UN Committee
UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families	-	-	2003	-	2002	-	-	Review by the attached UN Committee
UN International Covenant on Economic, Social, and Cultural Rights	2006	April 2018	1994	TBC	1994	TBC	1973	TBC
UN International Covenant on Civil and Political Rights	2006	TBC***	1994	TBC	1999	TBC	1973	July 2018
UN Convention on the Elimination of all forms of Discrimination against Women	1998	TBC	1997	TBC	1993	September 2018	1981	TBC
UN Convention on the Rights of the Child	1994	TBC	1994	TBC	1993	TBC	1990	April 2018
UN International Convention on the Elimination of All Forms of Racial Discrimination	1998	TBC	1997	April 2018	1995	TBC	1969	TBC

* Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization

** out of cycle : Report not received. Country is late in reporting.

*** To be confirmed.

List of meetings held in Kyrgyzstan and Kazakhstan during FIDH and ADC Memorial missions September-November 2017

In Kyrgyzstan

Government agencies of the Kyrgyz Republic

- Ombudsman of the Kyrgyz Republic, Department of Protection against Domestic Violence and Gender Discrimination
- Ministry of Education and Science of the Kyrgyz Republic
- State Migration Service under the Government of the Kyrgyz Republic
- Human Rights Ombudsman for Osh Oblast
- Center for Adaptation and Rehabilitation of Minors in Osh
- Migration Service, Osh

International organizations

- ILO office in Kyrgyzstan
- IOM office in Kyrgyzstan

Civil society organizations

- Public Association Human Rights Movement: "Bir Duino-Kyrgyzstan"
- Public Association "Arysh"
- Public Foundation "Insan Leilek"
- Public Association "Kyrgyz Family Planning Alliance"
- Public Association "Mekhr-Shavkat"
- Human Rights Advocacy Center
- Public Foundation Legal Clinic "Adilet"
- NGO Ulybka (work with children), Osh
- Public Foundation Aymira
- Public Foundation Centre for Support of International Protection
- Iseda Centre
- Public Foundation "DIA" women's business initiative
- IGZh Network – women's initiative group, Osh
- Women's Rights Initiative Group, Bishkek
- Foundation "Soros -Kyrgyzstan"

Trade unions and workers' organisations

- Solidarity Center
- Independent Trade Union "Opora"
- Federation of Unions of the Kyrgyz Republic
- Union of Workers of the Agricultural Sector and Municipal Workers of the Farming Sector
- Union of Workers of Retail Stores, Food Services, Consumers' Cooperatives, and Other Forms of Business
- Union of Food Industry Workers
- Union of Textile and Light Industry Workers
- Union of Construction and Industrial Materials Workers
- Union of Education and Science
- Union of Timber and Related Industries Workers

Experts

- National Strategic Research Institute of the Republic of Kyrgyzstan

In Kazakhstan

Government agencies of Kazakhstan

- Centre for the Adaptation of Minors for Almaty
- National Center "Human Rights Ombudsman in the Republic of Kazakhstan"
- Ministry of Labor and Social Protection of the Population of the Republic of Kazakhstan, Department of International Cooperation and Integration
- Ministry of Internal Affairs of the Republic of Kazakhstan

Representatives of foreign states and associations

- Embassy of the Kyrgyz Republic in Kazakhstan
- Kyrgyz diaspora in Astana

International organizations

- SOROS Foundation
- IOM office in Kazakhstan
- ILO office in Kazakhstan
- World Bank office in Kazakhstan

Civil society organizations

- Public Foundation "International Legal Initiative"
- Kazakhstan International Bureau for Human Rights and Rule of Law
- Union of Crisis Centres of Kazakhstan
- Public Foundation "Children's Foundation of Kazakhstan"
- Public Foundation "Liberty"
- Foundation of Local Communities of the Enbekshikazakh District
- Legal Centre for Women's Initiatives "Sana Sezim"

Trade unions

- Confederation of independent trade unions of the Republic of Kazakhstan (KNPRK)
- Union "Spravedlivost" for domestic workers
- Federation of trade unions of the Republic of Kazakhstan
- Union of workers in the construction, housing and utility sectors

Employers

- Confederation of employers
- Farmers from Shelek, Enbekshikazakhsky District, Almaty Oblast

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fidh

Establishing the facts - Investigative and trial observation missions

Supporting civil society - Training and exchange

Mobilising the international community - Advocacy before intergovernmental bodies

Informing and reporting - Mobilising public opinion

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<http://adcmemorial.org>

The Anti-Discrimination Center Memorial works in Russia and other former Soviet countries to protect the rights of people suffering from discrimination, including ethnic minorities, Roma, migrants, sexual minorities (LGBTI), and victims of other forms of discrimination.

ADC Memorial is a member organization of FIDH and a partner of the Civic Platform «Central Asia on the Move».

<http://adcmemorial.org>



The International Legal Initiative Foundation was founded in 2010 with the aim of protecting and promoting human rights in Kazakhstan. It raises awareness of human rights and ensures their realisation and protection by advancing legal initiatives on the national and international levels, gathering and disseminating information concerning human rights in Kazakhstan, and providing legal aid.

fidh

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FIDH is an international
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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 184 member organisations in 112 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

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