

CCPR Kazakhstan  
International Federation for Human Rights (FIDH)  
List of issues

FIDH would like to draw the attention of the CCPR on the following issues regarding the guarantee of civil and political rights in Kazakhstan, in particular with regards to the rights of migrant workers, asylum seekers and refugees:<sup>1</sup>

Article 7 on the prohibition of torture

- *On refoulement:*

In violation of the obligation under international law not to commit refoulement, many Uzbek and Uyghur asylum seekers and refugees have been abducted, extradited from Kazakhstan or forcibly returned to the countries from which they have fled persecution, where they face a real risk of torture and other serious human rights violations. Although some cases have been well-documented, the total number of such cases is unknown.

According to Article 21(2) on return and expulsion of the new law on refugees adopted in December 2009, “It is forbidden to expel or return an asylum seekers or refugee to countries where his life or freedom would be threatened on account of race, religion, nationality, citizenship, membership of a particular social group or political opinion”. This provision implements Article 33 of the Refugee Convention. **However, the provision fails to mention torture.** In addition, it is feared that national security considerations may be applied to override this protection.

In December 2008, the Committee against Torture expressed its concern at the fact that Kazakhstan’s “current expulsion, refoulement and extradition procedures and practices may expose individuals to the risk of torture”<sup>2</sup>.

- *Will dispositions be taken so as to ensure the full respect of the principle of non-refoulement and the absolute prohibition of torture, in accordance with international customary law, international refugee law and the UN Convention against Torture, by refusing to deport or extradite individuals to countries where they face a risk of torture, cruel, inhuman or degrading treatment or even the death penalty?*

- *On violence against women:*

On 4<sup>th</sup> December 2009, a law on domestic violence has been adopted enabling the police to take preventive measures against domestic violence. In particular, the police must prevent the person involved from having contact with the victim for 10 days. Courts can decide to prohibit the infringer, who is included in a special police list, from having any contact with the victim, limit his rights to have firearms at his disposal, carrying liability for these infringements. The victim can ask to prolong this measure for up to 2 months.

- *Can information be provided on the measures taken to fight violence against women?*
- *Can information be provided on the preventive measures made possible by the law on domestic*

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1 This information is based on the report of a fact-finding mission: Kazakhstan/Kirghizstan: exploitation of migrant workers, protection denied to asylum-seekers and refugees, FIDH, October 2009. Available at: <http://www.fidh.org/IMG/pdf/kgkaz2207a.pdf>.

2 “The Committee is concerned at credible reports that individuals have not been afforded the full protection...in relation to expulsion, return or deportation to neighbouring countries in the name of regional security, including the fight against terrorism. The Committee is particularly concerned at allegations of forcible return of asylum-seekers from Uzbekistan and from China and the unknown conditions, treatment and whereabouts of persons returned following their arrival in the receiving country”

*violence in particular concerning the respect of the rights of the accused and of the rights of children?*

#### Article 8 on the prohibition of forced labour

Migrants in an irregular situation are entirely dependent on their employers and can be forced to work according to the conditions determined by the latter. Exploitation occurs in all sectors, including construction, agriculture (tobacco and cotton fields), or services. When migrants come in organized groups, they are usually brought to the site where they will work and immediately handed over to a single employer. Practices linked to forced labour include:

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

Irregular migrants who are victims of forced labour cannot turn to the police: on the contrary, they fear deportation, since they have no work permits and usually no registration, and in some cases there may be collusion between employers and the police. Employers often threaten to hand over migrant workers to the migration police. Even victims of forced labour risk being deported. Moreover, the migration police conducts frequent raids to find irregular migrants, and migrants are more vulnerable than their employers: according to official figures, in 2008 136,000 foreigners were arrested and 17,000 were deported for infraction to the rules on migration, whereas only 1,800 employers were held liable (but not necessarily fined) for employing irregular migrants.

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

- *Can information be provided on the places and conditions of detention, and about the right to appeal of the people arrested for infraction to the rules on migrations?*
- *Can information be given on the measures taken to ensure effective investigation, prosecution and punishment of employers and intermediaries responsible for violations of the rights of migrant workers and in particular, strengthen measures aimed at fighting against forced labour ?*

#### Article 12 on the right to freedom of movement and residence

Kazakhstan applies a registration system to all those on its territory. The system, inherited from the USSR (“propiska”), is intended to enable the state to monitor and control international and internal migrants. Registration must be made by the person who receives the migrant, e.g., family members, employers and migrants and at the address of residence. In order to access some services in Kazakhstan, migrants have to demonstrate that they are registered. According to the UN Human Rights Committee, the propiska system violates the right to freedom of movement and choice of residence under Article 12 of the International Covenant on Civil and Political Rights.

- *Will measures be taken in order to amend the dispositions of the new law on refugees so that it complies with international law and guarantees an effective protection, in particular to provide refugee status for a period longer than one year?*
- *Will the system of propiska be abolished in order to give full effect to Article 12 of the International*

*Covenant on Civil and Political Rights on the right to freedom of movement and choice of residence?*

Article 22 on freedom of association

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

- *Will measures be taken to enable migrant workers to protect their rights through the establishment and participation in trade unions and other associations, including by amending relevant provisions of the Law No. 3-I on Public Associations of 31 May 1996?*