

Mandates of the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Special Rapporteur on trafficking in persons, especially women and children and the Working Group on the issue of discrimination against women in law and in practice

REFERENCE:
AL KAZ 6/2018

21 December 2018

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Special Rapporteur on trafficking in persons, especially women and children and Working Group on the issue of discrimination against women in law and in practice, pursuant to Human Rights Council resolutions 34/21, 33/1, 35/5 and 32/4.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning Mr. **Babaraim Akimov**, a Kyrgyz migrant worker who recently managed to return to his country of origin after having reported being subjected to trafficking for the purpose of forced labour and being held in extremely exploitative conditions in Kazakhstan.

According to the information received:

In October 2016, Mr. Akimov, after having been unemployed for a long time, while at the Osh market in Bishkek (Kyrgyzstan), heard of an announcement over the loudspeaker that a shepherd was needed in Kazakhstan. Since he had been working as a shepherd since childhood, he expressed his interest in knowing more about the offer. When he approached the person behind the loudspeaker, he was referred to an elderly couple from Kazakhstan that was seeking someone to work on their property. He reported hesitating at first but being later approached by a woman, informing him that her brother had a farm near Bishkek with 2,000 heads of cattle and that he needed a herdsman. He accepted the offer and the woman immediately took him to her house, picking up two other women along the way with the promise to go to the brother's farm. This happened in the evening and without allowing him to have time to take his passport with him. After having driven for a long time, he noticed a barbed wire and realized that they were at the border. He asked for clarification to the woman but without receiving any response. At the border, they met with Kyrgyz border guards who escorted him and the other two women across the barbed wire. When he opposed resistance and asked to go back, he was pushed into the car, where there was another man promising to hire him and to provide him with clothes and shelter. Given that he had nowhere else to go at that point, he accepted. He also reported that the two women were placed in a different car and that, at present, he still doesn't know what happened to them. The man who promised to hire Mr. Akimov declared later that he had bought him from the woman that accompanied him to the border and

told him that he would work for him 'as long as he desires'. The 'owner' was called Satzhanat and, at that time, he was known to be a deputy in the district Soviet and he lived in the aul of Zhaksylyk, Ryskulovsky District, Zhambylsky Oblast.

Mr. Akimov reported having started to work for him as a shepherd and having received 100 dollars as a salary for the first month. However, the second, third and fourth months passed and he stopped receiving any salary. He reported that the job was very hard as he had to take care of over 3,000 animals on his own. It was only after some months that he started looking into ways to go back to Kyrgyzstan, without any success. Due to his poor living and working conditions, he contracted tuberculosis and was reportedly hospitalised. Later on, he was finally able to contact members of the aul Zhaksylyk, who reportedly dismissed and ridiculed his complaints by telling him to seek help at the Kyrgyz police. He also reported having reached out to Kyrgyzstan authorities, who also refused to address his complaints. After a few months, Mr. Akimov managed to get in touch with his relatives who found him and bought him out from Mr. Satzhanat. After returning to Kyrgyzstan, he faced stigma and discrimination within his family and community, due to the fact that he returned even poorer and in bad health. He was also in need of psychosocial help and medical treatment.

Based on information received through several interviews with other migrant workers, this case may not be an isolated case but rather reflects an ongoing pattern of human rights violations that may amount to trafficking for the purpose of forced labour and labour exploitation against a larger number of migrant workers from Kyrgyzstan, Tajikistan and Uzbekistan. Women and children are reportedly also affected by this phenomenon. However, such cases are rarely reported, investigated and prosecuted, due also to the fact that migrants are generally afraid to file official complaints for lack of trust, fear of retaliation and deportation and alleged corruption of law enforcement officials.

Some of the following indicators, which could lead to trafficking for the purpose of forced labour or labour exploitation have been reported:

a) The illegal business of intermediaries that take advantage of migrants' vulnerabilities

Similarly to the case of Mr. Akimov, a high percentage of migrant workers reach out to intermediaries offering them jobs while still in the country of origin. After having identified the workers, the intermediaries transport them across the border, including sometimes in an irregular manner, and place them at work sites, monitor their conditions at work, and solve problems that migrants may face during their work activities. 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. They also often 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 salary of the workers.

Since informal labour intermediaries act outside the legal and regulatory framework, low-skilled migrant workers recruited by such intermediaries in particular are often victims of exploitation. This includes 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 the country. A combination of these abuses can amount to trafficking in persons for the purpose of forced labour or labour exploitation.

b) Absence of a work contract and withholding of wages as indicators of exploitation that can amount to trafficking and slavery-like practices

We welcome the fact that clause 3 of Article 33 of Kazakhstan's Labour Code requires the signature of a work contract and that, if there is no contract, the employer is liable for not following the procedure established by law. However, because migrant workers know little about the law and fear expulsion, it is reported that in practice, migrant workers rarely file complaints against their employers, who are unlikely to be held accountable for violations of the Labour Code.

In addition, because of uncertainty regarding the amount of their salaries or whether they would receive a salary at all, migrant workers often decide to keep working, even when they are not paid, in the hope of receiving at least part of what they have earned.

When they do not receive their salaries, migrants are frequently forced to look for other sources of revenues and are more likely to fall prey to traffickers and exploiters. It has been reported that 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. As per information received, Shymkent has such a kulbazar where migrants, especially from Uzbekistan, frequently seek employment.

c) Excessive overtime, abusive working conditions, isolation and restriction of movement as indicators of exploitation that can amount to trafficking and slavery-like practices

It has been reported that some migrants in Kazakhstan are not able to leave the work site, do not receive any socio-economic guarantee upon hiring and have work schedules that exceed the limits set by the law. For instance, while as per article 71 of the Labour Code, the workday must not exceed 8 hours and as per article 78 of the Labour Code the total amount of overtime per month must not exceed 12 hours, migrant workers may work from 9 to 15 hours per day and in many cases are forced to perform heavy labour and are more easily exposed to diseases, like in the case of Mr. Akimov, as well as accidents and various forms of abuses.

It has been reported that, while performing their tasks, especially in the tobacco, cotton and constructions industries, migrant workers ‘are not allowed to talk or even look at each other’, they perform their duties under extremely harsh weather conditions, both in the winter and in the summer, they do not have any time off and live in very precarious and inhumane conditions. Some migrant workers reported living in the same place where they worked, having limited access to healthcare and sanitary facilities, including showers, and that the employer was taking them to the ‘banya’ (a steam bath) about once every three months. In addition, migrant workers reported that, when attempting to escape, they were threatened by employers that the police ‘was working for them and would capture them immediately’ as they did not have a passport. Migrant workers reported not having anyone to turn to for help and that they were only working to be able to feed themselves.

There are also allegations that some law enforcement officers work in collusion with traffickers or even participate in trafficking in persons.

Allegations of specific human rights violations and abuses against women migrant workers

Reportedly, the situation of women migrant workers is particularly worrisome. For instance, women migrant workers are used for exploitative jobs, especially as domestic servants, without account for their pregnancy status or the fact that they are nursing mothers. As a consequence, they face health risks or they may lose their job. Migrant women are particularly exposed to gender-based violence, including domestic violence, due to a lack of minimal legal protection mechanisms and they often face intimidation by their male employers, including sexual harassment and physical violence. They also frequently fail to receive their salary, which is either withheld by the employer or sent directly to male relatives, and therefore cannot afford their living costs and daily expenses. As they try to save money and fear additional document checks, most women are reported to avoid seeking medical care, even in case of pregnancy; they often fail to be properly examined by a doctor due to the remoteness of their places of residence, the restriction on their freedom of movement in cases of forced labour or their lack of money in case of withheld or late payment of wages. As a consequence, they often face irreversible health consequences, from miscarriage to permanent disability.

Allegations of child labour and related human rights violations against migrant children

Among the migrant worker population, there are also adolescents aged 14 to 17, sent to Kazakhstan by their families to earn money to support them.

In some cases, children enter Kazakhstan using counterfeit documents giving a made-up age or they may resort to crossing the border undocumented. In violation of legal bans and a number of other restrictions regarding child labour in Kazakhstan, it is reported that migrants under the age of 18 often work alongside

adults, even in jobs that are banned for children, such as in the agricultural sector and at construction sites. In some cases, they are reportedly trapped in exploitative conditions, both when entering the country as unaccompanied minors or with their parents. In these cases, the “employer” collects the children’s birth certificates along with other documents. They often live in inhumane conditions with their family members or with other people: food rations are generally meagre and unvaried, they do not receive any education and do not have access to medical services. They are forced to perform heavy labour on their own or with their parents. Such conditions risk causing irreparable harm on their lives, especially in terms of their health and their education, even after their release from such exploitative situations.

Kyrgyz girls, aged from 12 to 17, reportedly work also as nannies, and are often subject to domestic work amounting to labour exploitation and to sexual and gender-based violence.

We express our serious concern about human rights violations against Mr. Babaraim Akimov and other migrant workers in Kazakhstan, including allegations of trafficking for the purpose of forced labour, child labour and labour exploitation. Similar concerns were already raised by the Special Rapporteur on contemporary forms of slavery in a follow up visit to the country in 2014 (A/HRC/27/53/Add.2)

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide information and any comments you have on the above-mentioned allegations.
2. Please provide information on measures undertaken by the aul of Zhaksylyk, Ryskulovsky District, Zhambylsky Oblast to address Mr. Akimov’s complaint as well as measures that your Excellency’s Government plans to undertake to ensure investigation and prosecution of traffickers and exploiters is carried out in an effective and timely manner;
3. Please provide information on measures that your Excellency’s Government plans to undertake to ensure that Mr Akimov has access to justice, including in the form of fair and adequate compensation as part of his right to an effective remedy,;
4. Please provide information on measures that your Excellency’s Government has undertaken or plans to undertake to ensure that migrants victims of trafficking, including for the purpose of forced labour and labour exploitation, are referred to appropriate protection services, such as psycho-

social rehabilitation and access to other basic services, such as healthcare, accomodation and fair and just employment opportunities;

5. Please provide information on measures that your Excellency's Government has undertaken to regulate and monitor activities of intermediaries in the job market as well as measures taken to prevent, investigate and prosecute those involved in providing illegal intermediary services.
6. Please provide information on measures undertaken by your Excellency's Government to ensure effective legal protection, including protection from retaliation, access to justice and right to effective remedy, to migrant workers that denounce their intermediaries or employers in cases of forced labour or labour exploitation.
7. Please provide information on how your Excellency's Government intends to strengthen identification mechanisms for victims of trafficking in persons, especially women and children, and ensure availability of adequate and accessible services for victims of forced labour, debt bondage, labour exploitation and any other form of trafficking in persons, including psycho-social and financial support, appropriate housing, access to healthcare, social and legal assistance and reparation.
8. Please describe the labour inspection system in place to regulate the agricultural and construction industry but also domestic work; indicate whether it has been used to identify victims of trafficking, debt bondage and other human rights and labour rights violations and what the indicators used are to identify victims of forced labour and labour exploitation.
9. Please provide information on measures that your Government has put in place to adopt a non-discriminatory and gender-sensitive approach towards migrants who may be potential victims of trafficking in persons for the purpose of forced labour or labour exploitation. In this regard, please provide information on the number of complaints registered by migrant workers as well as by the number of investigations and prosecutions undertaken with regards to reports of forced labour or labour exploitation of migrant workers, including women and children.
10. Please provide information on how your Excellency's Government ensures that all forms of trafficking in persons, including domestic servitude, forced and bonded labour, are specifically defined and criminalised under national legislation and clarify how this is implemented in practice.
11. Please provide information on any measures your Excellency's Government has put in place to combat gender-based violence and harassment in the workplace.

12. Please provide information on action to ensure effective implementation of ILO Convention N°29 on Forced Labour, N°105 on Abolition of Forced Labour and No. 182 on Worst Forms of Child Labour.

We would appreciate receiving a response within 60 days. Past this date, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council. We also wish to inform you that a similar communication concerning the situation of Mr. Akimov will be sent to the Government of Kyrgyzstan.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged human rights violations against migrant workers and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations against Mr. Akimov and other migrant workers in a similar situation.

Please accept, Excellency, the assurances of our highest consideration.

Felipe González Morales
Special Rapporteur on the human rights of migrants

Urmila Bhoola
Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Maria Grazia Giammarinaro
Special Rapporteur on trafficking in persons, especially women and children

Ivana Radačić
Chair-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice

Annex
Reference to international human rights law

Without implying in advance, a conclusion on the alleged facts, we would like to draw the attention of your Government to the international standards and regulations applicable to the matters set forth above.

We would like to draw your attention to the Slavery Convention of 1926 (acceded to by your Excellency's Government on 1 May 2008), which calls for the complete abolition of slavery and all its forms, and article 4 of the Universal Declaration of Human Rights, which states that "no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms". We would also like to recall article 5 of the Slavery Convention, which calls on States to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery. The ILO Forced Labour Convention, 1930 (No. 29), ratified by your Excellency's Government on 26 February 1969, in addition calls for suppression of the use of forced or compulsory labour in all its forms within the shortest possible period. In particular, according to article 2, forced or compulsory labour is defined as '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'. Furthermore, your Excellency's Government ratified the ILO Worst Forms of Child Labour Convention 199 (No. 182) in February 2003. Said instrument creates a legal obligation for governments to "take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency".

Protocol 029 to the Forced Labour Convention adopted in 2014 but not yet ratified by your Excellency's Government also provides specific guidelines to governments and businesses on steps to end forced labour.

We would also like to bring to the your attention article 8 of the International Covenant on Civil and Political Rights (ICCPR), ratified by your Excellency's Government on 24 January 2006, which prohibits slavery, the slave trade, servitude and forced labour and article 7 of the International Covenant of Economic, Social and Cultural Rights (ICESCR) (also ratified on 24 January 2006), which protects the right to just and favourable conditions of work. Furthermore, we wish to make reference to article 1 of the 1956 Supplementary Slavery Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery that prohibits debt bondage and provides that States Parties shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of debt bondage.

We would like to remind your Excellency's Government that the enjoyment of the rights guaranteed in the ICCPR are not limited to citizens of States parties but "must also be available to all individuals, regardless of their nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party" (ICCPR/C/21/Rev.1/Add. 13 (2004), Para. 10).

We also would like to draw the attention of your Excellency's Government to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), ratified by your Excellency's Government on 31 July 2008, through which your Excellency's Government is obliged to refrain from acts which would defeat or undermine the Protocol's objectives and purposes, which include to prevent and combat trafficking in persons, including for the purpose of forced labour or labour exploitation. In addition, we would like to refer to the Recommended Principles and Guidelines on Human Rights and Human Trafficking ("Recommended Principles and Guidelines"), issued by the Office of the High Commissioner for Human Rights in July 2002. Principle 13 of the Recommended Principles and Guidelines provides that "States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors".

Criteria and indicators of trafficking in persons for the purpose of labour exploitation should be strengthened in accordance with the benchmarks and indicators for ensuring trafficking-free supply chains proposed by the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/23/48/Add.4, appendix I and A/HRC/35/37).

In addition, other international human rights standards clarify the rights of migrant workers and non-citizens alike. We would like to highlight article 7 of the ICESCR, which recognizes the "right of everyone to the enjoyment of just and favourable conditions of work". Such conditions must ensure, inter alia, remuneration which provides all workers, as a minimum, a decent living for themselves and their families, safe and healthy working conditions, access to food and affordable healthcare, rest, leisure, and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays. The rights in the Covenant apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation (Committee on Economic, Social and Cultural Rights, general comment no 20, para. 30).

We would like to draw your Excellency's Government's attention on article 13 of the ICESCR, which states that: "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent".

We would also like to remind your Excellency of the latest concluding observations of the UN Human Rights Committee regarding Kazakhstan, expressing concerns that: (a) a significant majority of all criminal cases related to trafficking are currently investigated under article 309 of the Criminal Code ("Organization or maintenance of brothels for prostitution and pimping") rather than directly under article 128, on trafficking in persons, with the result that some perpetrators may go

unprosecuted; (b) that trafficking victims who have been brought illegally into Kazakhstan are charged with having violated immigration rules and subsequently expelled from the country; (c) about alleged complicity between and corruption among police officers and those involved in facilitating trafficking; and (d) that State-funded shelters and other support services for victims are insufficient (art. 8). (CCPR/C/KAZ/CO/2). Similarly, in its concluding observations to Kazakhstan, the UN Committee on the Rights of the Child expressed concerns about the reports that large numbers of children are trafficked from, to and within the country and about the complicity of the police in trafficking and exploitation cases (CRC/C/KAZ/CO/4). The UN Committee on the Elimination of Violence against Women, in its concluding observations, remained concerned that Kazakhstan is still a country of origin, transit and destination for trafficked women and girls, mainly for sexual exploitation and forced labour (CEDAW/C/KAZ/CO/3-4) and recommended to intensify efforts to address the root causes of trafficking in women and girls.

We would also like to recall the paragraph 14 of the General Assembly resolution 62/156 which “requests all States, in conformity with national legislation and applicable international legal instruments to which they are party, to enforce labour law effectively, including by addressing violations of such law, with regard to migrant workers’ labour relations and working conditions, inter alia, those related to their remuneration and conditions of health, safety at work and the right to freedom of association”.

Furthermore, we would like to recall to Your Excellency’s Government the thematic report of the Special Rapporteur on the human rights of migrants on labour exploitation of migrants (ref. A/HRC/26/35), in which the Special Rapporteur recommends States to:

79. Take all necessary measures to combat discrimination and violence against migrant workers, including sexual violence, beatings, threats, psychological abuse and denial of access to medical care, by adopting and implementing legislation prohibiting such acts, effectively investigating cases of discrimination and violence, prosecuting and punishing those responsible, as well as providing reparations to victims.

80. Ensure that all workers receive a contract in a language they understand, and that they are protected against contract substitution. Ensure that the contract signed by the worker in their home country is respected in the destination country, and that the work they perform is in accordance with their contract. Bilateral agreements between countries of origin and destination should strengthen human rights protection, and include a model contract which sets out the rights of the worker, including working conditions, and salary. Use certified recruitment agencies, and ensure that they do not work with non-registered sub-agencies.

81. Combat wage theft and ensure, by law, that all migrant workers receive their salaries in a bank account, and that they are paid their full salary, including paid holidays, sick leave and overtime compensation when applicable, on time, and assist with recovery of wages when this is not complied with.

82. Make sure that passports and other identity documents are not confiscated, and make the withholding of such documents an offence, with appropriate penalties, and effectively prosecute violations.

83. Guarantee that all migrants have the right to accept and to leave employment voluntarily, without the threat of a penalty. Migrants who choose to leave an abusive employer should not lose their residence permit. Instead, they should receive adequate support, for example by providing them with a long enough grace period in order to find a new job. Allowing migrants to change employers when they wish would render them far less vulnerable to exploitation.

86. Guarantee that all migrant workers have an adequate standard of living, including adequate food, water, clothing and housing.

91. Ensure that migrants are free to terminate their employment contract, without fear of retribution, and find another employer or leave the country when they so wish. Protect migrants against unfair dismissals, and refrain from tying visas to the employer, so that migrants can find a new job in case their employment is terminated.

We would also like to refer you to paragraph 33 of General Recommendation 30 relating to “Discrimination against Non-citizens,” in which the Committee on the Elimination of Racial Discrimination recommended that States “take measures to eliminate discrimination against non-citizens in relation to working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects.” Furthermore, paragraph 35 unambiguously states that “all individuals are entitled to the enjoyment of labour and employment rights... once an employment relationship has been initiated until it is terminated.”

We would further like to bring to your Excellency’s attention to Article 6 of the International Convention on the Elimination of all forms of Discrimination against Women, which provides that States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women. According to the CEDAW General Recommendation No. 35, “States parties are responsible from preventing acts or omissions by their own organs and agents (...) and to investigate, prosecute and apply appropriate legal or disciplinary sanctions as well as provide reparation in cases of gender-based violence against women, including those constituting international crimes, as well as in cases of failure, negligence or omission on the part of public authorities (CEDAW/C/GC/35, para. 23).

We would also like to remind your Excellency about 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), as well as the Convention on the Elimination of All Forms of Discrimination against Women, acceded to by your Excellency’s Government on 24 August 2001, especially the measures concerning employment (article 11), health (article 12), and economic and social benefits (article 13). We wish to recall also that the United Nations Declaration on the Elimination of Violence against Women calls on States

to take all appropriate measures to prevent, punish, and provide redress for violence against women, including in the workplace.

Finally, we wish to remind your Excellency about the Convention on the Rights of the Child (ratified on 12 August 1994), especially article 2.2. stating that ‘States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members’ and also article 24 (d) and (f) concerning maternity.