



International
Labour
Organization

Rights of Migrant Workers in Kazakhstan:

**National Legislation,
International Standards
and Practices**

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**ALMATY
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INTRODUCTION

This report has been drawn up as part of the International Labour Organization (hereinafter referred to as the ILO) project on “Sustainable Partnerships for the Effective Governance of Labour Migration in the Russian Federation, the Caucasus and Central Asia.” Its main goal is to compare the national legislation of the Republic of Kazakhstan on the rights of migrant workers with the relevant international standards and practices, and to provide recommendations on legislative measures necessary to promote decent work and enhance the protection of migrant workers’ rights.

The paper analyzes the rights of migrant workers provided for under Kazakhstan legislation as well as the main approaches to legal regulation of international labour migration and national procedures for their implementation. The analysis focused on the need for effective management of labour migration, as one of the premises for successfully dealing with irregular and unauthorized labour migration. The comparative analysis was structured largely in accordance with the Handbook on ‘Establishing Effective Labour Migration Policies in Countries of Origin and Destination’¹ and includes the following sections:

1. Executive summary;
2. Background information on Kazakhstan;
3. Access to employment for migrant workers;
4. Protection of migrants’ rights in the sphere of employment;
5. Promotion of social cohesion;
6. Enhancing social welfare;
7. Social protection;
8. Irregular labour migration;
9. Conclusions and recommendations

As far as international law is concerned, the paper did not limit itself solely to the international conventions ratified by Kazakhstan and the regional and bilateral agreements it ratified or approved. The point is that many countries of destination are not parties to the ILO Convention No. 97 concerning Migration for Employment, the ILO Convention No. 143 concerning Migrant Workers (Supplementary Provisions) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. However, the standards underlying these international-law instruments can serve as a basis for designing and implementing national policies on foreign workers’ access to their labour markets and on the protection of their rights.

When drafting the report, tripartite consultations were held in the course of an ad hoc meeting of the project advisory group of the ILO project on “Sustainable Partnerships for the Effective Governance of Labour Migration in the Russian Federation, the Caucasus and Central Asia” (Astana, 28 March 2008). The meeting was attended by representatives of the Republic of Kazakhstan Ministry of Labour and Social Protection, its Migration Committee, the Federation of Trade Unions of the Republic of Kazakhstan, and the Confederation of Employers of the Republic of Kazakhstan.

¹ OSCE-IOM-ILO, *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination*, Vienna and Geneva, 2006 (henceforth referred to as *Labour Migration Handbook*).

I. EXECUTIVE SUMMARY

1. Kazakhstan pursues a policy of supporting temporary labour migration only. This refers, in particular, to skilled specialists and workers. The government allows employers to hire foreign workers for no more than one year. As Kazakhstan prioritises ethnic migration, support and conditions for immigration are provided primarily to certain categories of oralmans² and also proceeding from recognition of the rights of certain categories of persons to repatriation and family reunification (those who were born on the territory of Kazakhstan or had Kazakhstan citizenship before; members of their families; nationals of the former Soviet Union republics whose close relatives are nationals of Kazakhstan). At the same time, the holders of Kazakhstan permanent residence permits are not seen as labour migrants.

2. The procedure for providing authorizations for use of migrant labour established in Kazakhstan is based on giving priority to the gradual replacement of foreign workers by local personnel, even at the expense of appropriate investments by the employer. This approach differs from practices in a number of industrialised countries that are competing to attract skilled migrants, and where residency rights increase directly in proportion with the years of legal residence. Furthermore, ILO Convention No. 143 (Migrant workers {Supplementary Provisions} Convention 1975), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, provide for the migrants' right of free access to the labour market after they have been legally employed in the country during a specified period of time. It should also be noted that Kazakhstan's procedure for issuing foreign workforce employment permits is highly complicated, time-consuming, and costly for the employer. Furthermore, the scope of applicable requirements tends to grow in number and complexity year by year, which, in practice, may be one of the reasons for growth of irregular labour migration in the country.

3. The principle of non-discrimination, including on ethnic grounds has gained wide recognition in Kazakhstan, and national legislation does not contain any discriminatory provisions with respect to migrant workers, as far as labour conditions are concerned. However, viewing external labour migration as a temporary phenomenon and managing migration flows by issuing permits to the employer tends to restrict migrant workers' employment rights by binding a migrant worker to one employer. Moreover, despite ratification by Kazakhstan of the International Covenant on Economic, Social and Cultural Rights and ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, labour migrants are not entitled to establish trade unions and have limited opportunities for participating in the already existing workers' associations.

4. Social integration of migrant workers is currently of less relevance to Kazakhstan for a number of reasons. In the first instance, its labour migration policy is based on recognition of the temporary nature of labour migration. Secondly, most migrant workers arriving in Kazakhstan have in the recent past been nationals of the same state (USSR), and therefore have no serious language or cultural problems with integration in the country of employment. Meanwhile, migrants arriving from Mongolia, China and other countries are provided with adaptation services by a specialized centre. Moreover, given a visa-free regime with the main countries of origin of migrant workers, and the overall open nature of the visa policy, regular migrant workers have no major legislative obstacles in exercising the right to family reunification in Kazakhstan.

² *Foreigners or stateless persons of Kazakh origin who permanently resided outside the Republic of Kazakhstan at the time it achieved state sovereignty and who arrived in Kazakhstan with the purpose of permanent residence.*

5. The following should be stressed as far as the formulation and implementation of the policy on providing equal access to health and children's education, as set forth in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and ILO Convention No. 143, is concerned: in Kazakhstan, labour migrants have certain access to health and educational services, and in both cases, their respective rights have been formalized in national legislation. This refers mainly to medical treatment.

6. Migrant workers in Kazakhstan have no rights of access to pension benefits and mandatory social insurance. This is due to the fact that relevant opportunities are provided only to persons who have gained the right of permanent residence in Kazakhstan. The employer in both cases is not bound to make relevant payments in respect of migrant workers. It should be noted in this connection that the provisions of current Kazakhstan legislation on the rights of foreign workers to social insurance are inconsistent with the international standards laid down by the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and ILO conventions Nos. 118 (Equality of Treatment {Social Security} Convention 1962), 143, and 157 (Maintenance of Social Security Rights Convention 1982). Under Kazakhstan legislation, however, migrant workers enjoy the same right to compensation for damages caused to their life and health in performance of their duties as the local workers.

7. From 1 August to 31 December 2006, a one-off action to legalize irregular labour migrants from CIS countries was held in Kazakhstan. Subject to registration with internal affairs bodies, labour migrants, employed in Kazakhstan without proper authorizations obtained by their employers were granted the right to register and subsequently work in Kazakhstan on legal grounds for a period not exceeding three years. At the same time, legalized labour migrants were not granted the right of free access to the Kazakhstan labour market, but only an opportunity to formalize their labour relations with the employer that used the procedure for their registration.

II. BACKGROUND INFORMATION ON KAZAKHSTAN

2.1. Kazakhstan as a Country of Destination for Labour Migrants

Over the past few years, Kazakhstan, only recently a country of origin of labour migrants, has become a major country of destination for foreign workers. This was due largely to the economic growth which began in Kazakhstan in the 2000's and a resultant increase in the number of jobs, wage hikes and higher incomes of the population. At the same time, there is a labour shortage on the domestic market. One of the reasons is that many low skilled jobs are ignored by local residents due to low wages, for instance, in agriculture, construction and the services sector. Skilled job vacancies are the result of a major drain of professionals and young specialists to the trade and services sectors during the 1990s economic crisis or their departure from the country, In the near future, Kazakhstan will also face the consequences of a sharp birth decline of the 1990s and the resultant drop in the number of young labour market entrants.³ (See the table below.)

Table 2.1.

Shares of child and youth cohorts in the population of Kazakhstan (at beginning of year)

Indicator	Years				
	2003	2004	2005	2006	2007
Population, thous	14,866.8	14,951.2	15,074.8	15,219.3	15,396.9
0-14-year olds per 1000 population	257.1	250.3	245.5	241.8	239.8
15-19-year olds per 1000 population	103.4	105.2	105.1	103.7	101.1
20-24-year olds per 1000 population	86.7	88.1	90.4	93.2	96.2

Source: Agency on Statistics of the Republic of Kazakhstan. Astana, 2008.

It is clear from the above data the 20-24 age cohort displayed an upward trend in the over-all population structure (in the period under review, increasing from 8.67% in 2003 to 9.62% in 2007). Young people, born at the time of the 1980s population explosion, have been entering the labour market in growing numbers since 1995. However, the 10-14 and 15-19 age groups show a downward trend, both in terms of numerical strength and share in the age pattern. This is due to the 1990s "baby bust" in Kazakhstan caused primarily by the plummeting standard of living. Thus, the downward trend will persist in the 15-19 age group and 20-24 age group, the share and size of which are likely to be the lowest at the turn of the 2020s.

Meanwhile, a major workforce inflow to Kazakhstan from the outside world is currently caused by:

- Broader use of entry quota by oralmans from among ethnic Kazakhs returning to their historical home country for permanent residence following Kazakhstan's independence;⁴
- Acquisition of residence permits or citizenship by representatives of various ethnic groups from the former Soviet Union republics who were born in, or had citizenship of, the Republic of Kazakhstan or the Kazakh Soviet Socialist Republic, and members of their families

³ It should be noted that the demographic burden factors (by shares of the population under and above working age) fail to provide a clear picture on workforce replenishment. In 1998-2001, there was a gradual five-year increase of retirement age which reduced the share of people in the above working age group. The under working age cohorts saw a baby bust in the 1990s and a baby boom in the 2000s, and a drastic difference between statutory working age (16 years) and the actual labour market entry by many young people (above 20 years).

⁴ The annual immigration quota for oralmans was established at 15,000 families in 2005-2008.

- Gradual increase in the annual immigrant labour quota
- Increasing flows of irregular and unauthorized labour migrants, above all, from the neighbouring countries.

Overall, Kazakhstan has registered a positive migration balance since 2004, as compared with the 1990s which saw an exodus of various ethnic groups from the country. Whereas in 1999 the number of departures from Kazakhstan for permanent residence elsewhere amounted to 164,947, in 2006, the figure dropped to 33,690, and the number of new arrivals for permanent residence in the country increased from 41,320 to 66,731 over that period. Nearly 50% of the 2006 immigrants were former nationals of Uzbekistan and almost 25% were former nationals of Russia. The number of oralmans arriving from countries other than the former Soviet republics, above all China and Mongolia, is likewise increasing. Ethnic Kazakhs make up the bulk of the arriving immigrants (about 73% in 2006). At the same time, the number of Uzbeks, Kyrgyz, ethnic Koreans and some other Central Asians moving to Kazakhstan for permanent residence is also growing.

Table 2.2.

Migration Balance in 2001-2006

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

Source: *Migration Policy Framework of the Republic of Kazakhstan for 2007-2015*.

At the same time, as will be shown later, the Republic of Kazakhstan Government has gradually increased the annual foreign labour employment quota since 2004. Originally, it applied basically to foreign companies operating in Kazakhstan in order to permit and restrict their employment of foreign managers, experts and workers to high-skilled jobs. At the same time, domestic employers, have, of late, relied heavily on foreign labour particularly in construction and agriculture. For this reason, since 2006, the government quota for foreign labour employment has been extended to skilled workers and farm labourers.

Kazakhstan has recently seen a major growth of irregular and unauthorized labour migration. However, any evaluation of its scope is obstructed by a number of factors, such as the absence of a visa regime with most of the former Soviet Union republics, a high level of informal employment in some sectors of the economy, for example, trade, construction, hospitality, transport. In 2006, during the migrant workers legalization process, it was discovered that 164,500 foreign nationals were illegally employed in the country.⁵ According to recent updates, as of the end of 2007, the number of newly arrived foreign nationals unregistered with the Migration Police Department increased by 47%.⁶ The primary external labour migration flows are coming from the neighbouring Central Asian countries with which Kazakhstan has a visa-free regime, and also from China.

⁵ This data is given in the *Migration Policy Framework of the Republic of Kazakhstan for 2007-2015*.

⁶ According to the data given in "Who Robs the Citizens: Gastarbeiters or Internal Migrants?," *Vecherny Almaty*, January 8 2008, www.vecher.kz.

2.2. Kazakhstan as Party to International Conventions, Regional and Bilateral Agreements on Migrant Workers' Rights

The Republic of Kazakhstan has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ILO Migration for Employment Convention No. 97 (revised), 1949, and ILO Migrant Workers Convention No. 143 (supplementary provisions). At the same time, Kazakhstan has been an ILO member since 1993 and ratified 16 conventions of the International Labour Organization, including 8 fundamental conventions. Along with the above ILO conventions, Kazakhstan has ratified a number of international human rights conventions that are important for the protection of migrant workers' rights. In particular, these include the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the Convention on the Rights of the Child and two Optional Protocols to it.⁷

At the regional level, the Republic of Kazakhstan is party to a number of multilateral labour migration agreements concluded by members of the Commonwealth of Independent States (CIS). Amongst them, it is worth mentioning the 1994 Agreement on Cooperation in the Sphere of Labour Migration and Social Protection of Migrant Workers, the 2004 Agreement on the Mutual Nostrification of Secondary (General), Primary Professional and Secondary Professional (Specialized) Education Certificates. Kazakhstan has also signed bilateral and trilateral agreements on labour migration with Azerbaijan, Belarus, Kyrgyzstan, Mongolia, Tajikistan, and Uzbekistan. It should be noted that many similar agreements have been signed with the neighbouring Kyrgyz Republic.⁸

⁷ *Optional Protocol on the Involvement of Children in Armed Conflict and Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.*

⁸ *The 1997 Agreement between the Government of the Republic of Kazakhstan, the Government of the Kyrgyz Republic and the Government of the Republic of Uzbekistan on Creating Legal, Economic and Institutional Environments for the Free Workforce Movement; the 2002 Agreement between the Government of the Republic of Kazakhstan and the Government of the Kyrgyz Republic on the Employment and Social Protection of Migrant Farm Workers Employed in the Border Regions; the 2006 Agreement between the Government of the Republic of Kazakhstan and the Government of the Kyrgyz Republic on the Employment and Protection of the Rights of the Migrant Workers, Nationals of the Republic of Kazakhstan, Temporarily Employed on the Territory of the Kyrgyz Republic, and the Employment and Protection of the Rights of the Migrant Workers, Nationals of the Kyrgyz Republic, Temporarily Employed on the Territory of the Republic of Kazakhstan.*

III. MIGRANT WORKERS' ACCESS TO EMPLOYMENT IN KAZAKHSTAN

3.1. Regulatory and Legal Framework for International Labour Migration (Admission Policy)

Republic of Kazakhstan Law No. 204-I on Migration, dated 13 December 1997, defines labour migration as a temporary movement of individuals from other countries to the Republic of Kazakhstan and vice versa, as well as within the country, for the purpose of employment. Furthermore, Article 7 of the above law specifies that foreigners arriving in the Republic of Kazakhstan for the purpose of employment unrelated with the change of citizenship, shall have a permanent residence outside the Republic of Kazakhstan unless otherwise provided for under interstate agreements. Thus, foreign nationals and stateless persons granted permanent residence in the Republic of Kazakhstan (foreign nationals – a residence permit, and stateless persons – a stateless person identity card) are not seen as labour migrants under Kazakh legislation. In addition, the provisions of Kazakh legislation on labour migration are not applied to the following categories of foreign nationals and stateless persons:

- Personnel of the military units located on the territory of the Republic of Kazakhstan
- Members of the diplomatic missions and international organizations
- Students and trainees
- Staff of registered religious associations
- Representatives of accredited foreign mass media
- Charitable and humanitarian aid workers, tourists and business visitors
- Crews of marine and river vessels, air, railway and automobile transport.

On the whole, the Kazakhstan legislation reflects the basic exceptions from the subject matter of labour migration regulation as specified in Article 3 of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and, moreover, includes some additional categories (military personnel, representatives of accredited mass media and religious missionaries). At the same time, Kazakh legislation makes no mention of the workers on an offshore installation who have not been admitted to take up residence and engage in an remunerated activity in the state of employment (see Clause f of Article 3 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families).

The 1990 Convention⁹ defines “migrant worker” as a person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a state of which he or she is not a national. According to ILO Convention No. 143¹⁰ the term “migrant worker” means a person who migrates or has migrated from one country to another with a view to being employed, otherwise than on his own account and includes any person regularly admitted as a migrant worker. When comparing the above definitions with the wording of the concept of labour migration under Kazakhstan legislation, it can be noted that international approaches cover both permanent and temporary labour migrants, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families Members covers the so-called business immigrants too. In this sense, the pending provision of the Republic of Kazakhstan Law on Migration is closer to the term

⁹ *Clause 1 of Article 2.*

¹⁰ *Article 11.*

“migrant worker” as provided for under ILO Convention No. 143 of 1975,¹¹ although the term “labour migrant” is used in the Kazakhstan law.¹²

On the other hand, it should be noted that Kazakhstan, due to its comparatively recent state sovereignty,¹³ and the need to respond to the collapse of the Soviet Union, is actively implementing measures to create the conditions for the return migration of different categories of persons. These include oralmans, persons who were born on the territory of Kazakhstan or the Kazakh SSR, or previously possessed Republic of Kazakhstan citizenship. In many respects, return migration is caused by economic reasons, including for the purpose of employment. It became particularly manifest in the 2000s when the economic situation in Kazakhstan improved considerably compared to the neighbouring Central Asian countries (Uzbekistan and Kyrgyzstan in particular). This swelled the flows of migrants from these countries seeking permanent residence in Kazakhstan. In addition, some measures applied by the country to provide state support for oralmans’ return migration have certain features in common with the employment-based immigration encouragement schemes applied in different countries. It should be also noted that Law No. 1017-XII of 20 December 1991 on “Citizenship of the Republic of Kazakhstan” provides for an accelerated procedure for Kazakhstan citizenship acquisition¹⁴ by persons who have certain professions and meet certain qualification requirements. The list of such professions and requirements has been established by Presidential Decree No. 1587 of 6 June 2005 and covers artists, architects, biologists, physicians, geologists, geophysicists, pilots and navigators, chemists, teachers, etc. In a strict legal sense, however, persons granted permanent residence in Kazakhstan may not be referred to as labour migrants in accordance with national legislation.

3.2. Foreign Workforce Quotas

Since 2001, the foreign workforce demand in Kazakhstan has been assessed as a part of the process of setting annual quotas. The quota approval procedure follows the requirements of the Law on Employment¹⁵ and is specifically regulated by Government Resolution No. 836 dated 19 June 2001. The annual quota is established proceeding from the proposals of local executive agencies based on domestic labour market analysis and employers’ applications. Since 2004, the central executive agencies concerned (sectoral ministries and departments) have also been vested with the right to submit proposals to the Ministry of Labour and Social Protection in respect of the foreign workforce employment quotas. Employers take part in quotas allocation by submitting applications to local executive bodies for foreign workforce for the next year.¹⁶

The quota is determined proceeding from the share in the total workforce, namely in percentage to the number of economically active members of the population according to the data for the previous year. In the past few years the relevant decision is taken by the Government in late December of the preceding year,¹⁷ then the approved quota is distributed by the Ministry of Labour and Social Protection between regions, cities of Almaty and Astana within a fairly short period of time.¹⁸

¹¹ *The Convention concerning Migration in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers.*

¹² *See Article 5.*

¹³ *On 16 December 1991.*

¹⁴ *The general procedure provides for acquisition of Republic of Kazakhstan citizenship by foreigners after their lawful/permanent residence in the country for, at least, five years or three years for those married to nationals of the Republic of Kazakhstan.*

¹⁵ *Article 11.*

¹⁶ *In Spain the government establishes quotas after consultations with social partners and regional administrations and agencies.*

¹⁷ *The quota for 2008 was approved by the Government Resolution dated 28 December 2007.*

¹⁸ *For the year 2007 it was distributed on 29 December 2006, and for 2006 on 30 December 2005.*

Table 3.1.

Foreign Workforce Quotas Approved by the Government

Years	2001	2002	2003	2004	2005	2006	2007	2008
% to the economically active population	0.15	0.14	0.14	0.28	0.32	0.70	0.98	1.60
Thous. People	10.5	10.7	10.5	21.2	25.6	56.0	79.5	132.7

Source: Data provided by the Ministry of Labour and Social Protection of the Population of the Republic of Kazakhstan. Astana, 2008.

The labour migration quota system was introduced in Kazakhstan for the purpose of protecting the domestic labour market and was originally intended to restrict the hiring of foreign workers by foreign legal entities in highly or semi-skilled jobs (managerial personnel, experts with higher or secondary specialized education, skilled workers). Over the recent years, the foreign workforce quota requirements in the country have changed significantly. First of all, they are not currently applied to many foreign nationals or stateless persons,¹⁹ including:

- Chief executive officers of foreign legal entities, their branches or representative offices, as well as banking and insurance companies and some other investor organizations
- Athletes and performers
- Individual entrepreneurs²⁰
- Specialists working on the territory of Kazakhstan under international treaties relating to the operation of the Baikonur space airfield, and professors at educational institutions
- Residents of the Republic of Kazakhstan, including oralmans, refugees and persons who have obtained a refugee status or political refuge on the territory of the Republic of Kazakhstan
- Persons not covered by the requirements of labour migration laws.

Secondly, starting from 2006, foreign workforce quotas in Kazakhstan cover seasonal agricultural works in which labour migrants from Kyrgyzstan and Uzbekistan are primarily engaged. Authorizations to this category of migrant workers, are issued subject to agreements with the relevant states of origin on cooperation in the area of labour migration and social protection of migrant workers.²¹ In case of Kyrgyzstan, the provision on granting mutual labour quotas for migrant workers engaged in agricultural work in border regions was envisaged by the bilateral intergovernmental agreement on agricultural migrant workers dated 9 July 2002.²² There is no such agreement with Uzbekistan, and seasonal agricultural migration from it is irregular. Thirdly, the quota requirements under the Kazakh legislation do not cover so-called business immigrants carrying out an entrepreneurial activity on its territory as legal entities.²³

¹⁹ *The effective comprehensive list of such exceptions was compiled subject to amendments to the Government Resolution dated 19 June 2001, introduced on 20 January 2003, 17 March 2004, 14 March 2006.*

²⁰ *It should be noted that under Article 8 of the Law on Migration, foreigners and stateless persons temporarily staying in the Republic of Kazakhstan may be private entrepreneurs, but they may not carry out an unincorporated entrepreneurship activity.*

²¹ *See Clauses 11 and 12 of Government Resolution of the Republic of Kazakhstan No. 836 dated 19 June 2001.*

²² *The agreement between the Government of the Republic of Kazakhstan and the Government of the Kyrgyz Republic concerning labour activity and social protection of migrant workers engaged in agricultural work in border regions was approved by Resolution of the Government of Kazakhstan No. 29 dated 16 January 2003.*

²³ *The quotas for business immigrants that support regular labour migration are set in many countries, for example, in Canada.*

3.3. Foreign Workforce Authorizations

General statutory requirements for hiring foreign workforce are established by the above mentioned Law on Employment. They are regulated more specifically by the rules approved by Government Resolution No. 836 dated 19 June 2001.²⁴ The foreign workforce employment permit in Kazakhstan is issued to employers for the following categories of foreign workers:

- (1) *Category one: executive personnel*
- (2) *Category two: specialists with higher or secondary professional education with the documents verified according to the established procedure*
- (3) *Category three: skilled workers*
- (4) *Category four: workers employed in seasonal agricultural work under cooperation agreements on labour migration and social protection of migrant workers.*

In order to obtain a foreign workforce permit, the employer has to consistently go through the following basic steps:

1. Searching for job seekers on the domestic labour market with mandatory use of prescribed forms and in compliance with their terms
2. Obtaining an authorization for a definite number of foreign workers by the categories and qualifications specified in it
3. Certification by the state authority, that has issued an authorization, of a nominal list of foreign workers being hired.

Currently, Kazakh legislation requires that employers ensure a preferential principle for employment of Kazakh nationals and present a proof, when applying for a foreign workforce employment permit, that they have failed to find appropriate applicants for the available vacancies on the domestic labour market. The compliance with the requirements for a prior search for applicants from among Kazakh nationals is regulated by the legislation and provides for mandatory use of all of the following three methods:

- Registration and placement of job advertisements in the national database on the web-site of the Ministry of Labour and Social Protection²⁵ and the holding of mandatory negotiations with all candidates who have applied for them;
- Search for appropriate applicants in the regional database (of the local executive body that issues permits);
- Publication of job advertisements in national and local periodicals.

For the above methods of the domestic labour market test, there are statutory timelines (publication of advertisements in the press – from 1 to 3 months, search in the regional database of a local executive body – for no longer than a month). The requirements for domestic labour market searches do not apply in the case of CEOs of foreign branches of banking or insurance institutions, and agricultural workers under cooperation agreements on labour migration and social protection of migrant workers. Starting from 1st June 2008, this list was expanded, and the search for applicants on the domestic labour market will not be required in respect of some categories of specialists, for example, university professors and scientific researchers, and ship crew members.

²⁴ *These rules are continuously amended, the latest amendments were introduced by Government Resolution No. 1242 dated 19 December 2007 to come into effect on 1 June 2008.*

²⁵ www.enbek.kz

Foreign workforce employment permits are provided in Kazakhstan to employers by regional executive bodies and those of the cities of Almaty and Astana within allocated quotas. To obtain an authorization, according to the established rules,²⁶ the employer must submit a large package of documents,²⁷ which includes:

1. An application in the state or Russian language specifying the number and category of foreign workforce to be hired by individual occupations and skills
2. Job qualifications set for each position in accordance with the relevant regulatory documents of the Ministry of Labour and Social Protection²⁸
3. Substantiation of the need for the command of a foreign language, and acquaintance with international standards, overseas work experience, if these are included into the job qualifications of a hired employee
4. Certificate stating availability of applicants for vacant positions from the regional database
5. Original copies of national and local periodicals²⁹ with advertisements about available vacancies, specifying job qualifications in the state and Russian languages
6. Search results in the national labour market database
7. Information about compliance with special terms of previously issued authorizations (if any)
8. The employer's motivated refusal to hire the nationals of Kazakhstan to a vacant position if such applicants were available in the process of search for applicants on the domestic labour market
9. Justification for number of hired foreign workforce requested.

Generally, a foreign workforce employment permit is effective only within the territory of a region or Astana and Almaty, i.e. restricts the migrants labour opportunities to the employer who has obtained an authorization and to the territory specified in it. The authorization for two and more areas (a region, the cities of Astana and Almaty) may be issued to the employer only subject to approval by the Ministry of Labour and Social Protection on the basis of an appropriate substantiation provided by the employer.

After a permit for hiring a foreign workforce has been obtained, the employer shall conclude contracts of employment with foreign workers, receive the requisite documents³⁰ from them (confirming their educational status and relevant work experience), and ensure migrant workers' departure to places of their permanent residence upon expiry of the permit term (by providing a copy of the employer's agreement with a bank and a receipt of a respective contribution to the account for the return). Then the employer makes a list of hired migrant workers, indicating the following details: full name; date and year of birth; nationality; country of domicile; country of departure; profession and education; occupation and position in accordance with the regulatory documents effective in the Republic of Kazakhstan.³¹

²⁶ *Clause 14 of Government Resolution No. 836 dated 19 June 2001.*

²⁷ *Since 1 June 2008, to obtain a permit for hiring seasonal agricultural workers one has only to submit an application.*

²⁸ *Handbook of Job Qualifications for Managers, Specialists and Other Office Workers and State Classifier of the Republic of Kazakhstan 01-99 "Job Classifier."*

²⁹ *In practice this requirement means providing a confirmation of job advertisements published at least in two national and two local periodicals.*

³⁰ *For categories one, two and three only (executive personnel, specialists and skilled workers), and not for agricultural workers.*

³¹ *An occupation and position of migrant workers shall be indicated according to the Handbook of Uniform Wage-Rates and Skills for Jobs and Occupations, Job Evaluation Catalog of Positions of Managers, Specialists and Other Office Workers and State Classifier of the Republic of Kazakhstan 01-99 "Job Classifier," i. e. the documents approved by the Ministry of Labour and Social Protection of the Republic of Kazakhstan.*

This list must be approved by the local executive body, and a foreign workforce employment permit comes into effect only subject to its approval. If a contract of employment with a foreign worker is terminated prior to the expiry of the permit term, the employer may hire a foreign worker of the same category and of the same skills on the basis of a revised list of hired foreign workforce approved by an authorized body.

It should be noted that since 1 January 2008 the procedure for issuing a permit to hire foreign workforce also involves assessment of qualifications of migrant workers hired by the employer based on a scoring system³² (education, relevant service record, demand for a specific profession (occupation) on the labour market). It applies to three categories of foreign workers³³ covered by the quota and permits, and not for seasonal agricultural workers.

The Kazakh authorization system, granting migrants access to employment, may also encumber a permit issued to the employer with special terms. They are specified in the permit and involve training, re-training and skills upgrading of Kazakh workers at the expense of the employer in lines of trade where foreign workforce is hired, retention of existing jobs and creation of new ones for Kazakh nationals. Actually, such special terms may be set by a state authority issuing a permit on a discretionary basis. Failure to comply with such terms may be grounds to deny the employer foreign workforce employment permits in future.

3.4. Migrants' Right of Access to the Labour Market (following Admission)

ILO Convention No. 143 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provide for the migrants' right of free access to the labour market following the lawful performance of a labour activity in the country for a definite period of time.

3. For migrant workers whose permission to work is limited in time, a State of employment may also:

(a) Make the right freely to choose their remunerated activities subject to the condition that the migrant worker has resided lawfully on its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed two years;

(b) Limit access by a migrant worker to remunerated activities in pursuance of a policy of granting priority to its nationals or persons who are assimilated to them for these purposes by virtue of legislation or bilateral or multilateral agreements. Any such limitation shall cease to apply to a migrant worker who has resided lawfully in its territory for the purpose of remunerated activity for a period of time prescribed in its national legislation that should not exceed five years – Paragraph 3 of Article 52 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

A Member of the Organization may:

(a) Make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the condition that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first contract work – Article 14 of ILO Convention No. 143.

³² *This scoring system is applied in the countries that support immigration for the purpose of employment or permanent labour migration, for example in Canada, Czech Republic, and the United Kingdom.*

³³ *Managerial personnel, qualified experts, skilled workers.*

Generally, under Kazakh legislation, the immigrants who have obtained a residence permit in Kazakhstan have equal rights to employment with Kazakh nationals from the date of acquiring the proper status.³⁴ However, as stated earlier, under Kazakh legislation, they are not referred to as labour migrants. At the same time, the national labour legislation sets limitations in respect of foreign nationals and stateless persons temporarily staying in the territory of the Republic of Kazakhstan. The latter, under the Labour Code,³⁵ are entitled to conclude a contract of employment, provided that an appropriate foreign workforce employment permit has been issued to the employer by the local executive body.³⁶ As it was shown above in Subclause 2.3, Kazakh legislation defines the employer's right to hire foreign workforce on a temporary basis provided that an appropriate permission is granted and the list of hired migrant workers approved. The completion by migrant workers of labour activity on a legal basis following their primary admission to the labour market is not considered as grounds to freely choose a job in Kazakhstan in future. In general, according to approaches to labour migration legislative regulation in Kazakhstan, based on the issuance of permits to the employer, the previous work experience in the country is important only to the employer hiring foreign workers. In addition, the effective Regulations for Foreign Workforce Employment Permit Issuance set rather rigid requirements to employers concerning gradual substitution of foreign workers by local personnel.³⁷ The right of migrant workers to freely choose a job upon expiry of a certain period of time specified in ILO Convention No. 143 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families differs in this respect with the fundamental approaches of Kazakh legislation. Under Kazakh legislation, when initially or subsequently searching for employment migrant workers can only be hired by the employers who have a foreign workforce employment permit.

3.5. Migrant Workers' Rights in Case of Job Change

Both ILO Convention No. 143 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families contain the provisions relating to retaining the rights earlier granted to migrant workers, who have lawfully arrived in the country, in case of loss of job. First of all, it relates to their rights to further stay in the country for an initially permitted term and for the search for a new job during this period.

2. Migrant workers who in the State of employment are allowed freely to choose their remunerated activity shall neither be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of the termination of their remunerated activity prior to the expiration of their work permits or similar authorizations.

3. In order to allow migrant workers referred to in paragraph 2 of the present article sufficient time to find alternative remunerated activities, the authorization of residence shall not be withdrawn at least for a period corresponding to that during which they may be entitled to unemployment benefits.— Clauses 2 and 3 of Article 49 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

1. On condition that he has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment which shall not in itself imply the withdrawal of his authorisation of residence or, as the case may be, work permit.

2. Accordingly, he shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative unemployment, relief work and retraining. — Article 8 of ILO Convention No. 143.

³⁴ Article 10 of the Law on Migration.

³⁵ Subclause 4 of Article 26.

³⁶ The appropriate functions are performed by employment and social protection departments of local executive bodies.

³⁷ See Clause 13 of Government Resolution No. 836 dated 19 June 2001.

Article 5 of the Kazakh Law on Migration contains a prohibition for deportation of migrant workers, lawfully admitted to the territory of the Republic of Kazakhstan, due to the labour market situation. This legislative provision means that the migrant worker has the right to stay in the country in case of the loss of initial employment for a period of the permitted term of residence in the country (a visa validity or passport registration period in case of the nationals of the states that have a visa-free regime with Kazakhstan). However, the opportunities for legal employment of migrants in this case are restricted to the employers who have vacancies under already issued permissions to employ foreign workers of appropriate category and qualification. In practice, they are also constrained by the requirements set for the relevant employer to receive approval as per the amended lists of recruited foreign workers,³⁸ and according to the amended regulations,³⁹ effective from 1 June 2008, in case of substitution of the workers of categories one, two and three for the remaining term, it is necessary to obtain a new permit under the simplified procedure.

3.6. Recognition of Diplomas

Present-day international standards relating to migrant workers include the provisions concerning recognition of their professional skills acquired outside the country of employment. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families specifies that state parties shall strive to secure recognition of migrant workers' occupational qualifications acquired outside their territories.⁴⁰ According to Article 14 of ILO Convention No. 143, each International Labour Organization member may "after appropriate consultation with the representative organizations of employers and workers make regulations concerning recognition of occupational qualifications acquired outside its territory, including certificates and diplomas." The CIS Agreement of 1994 on Cooperation in the Area of Labour Migration and Social Protection of Migrant Workers includes special provisions relating to mutual recognition by the states parties of diplomas and other certificates of education, and occupational qualifications and length of service. In respect of diplomas, their recognition does not envisage their legalization procedure. The provisions on reciprocal recognition of education documents without the need in their legalization are also included into bilateral and tripartite agreements on labour migration concluded with Azerbaijan, Belarus, Kyrgyzstan and Uzbekistan.

Formerly, the employer permit issuance rules effective in Kazakhstan required notarized translations of education certificates. Even in case of the former Soviet Union countries, this requirement often meant that an applicant should send an education certificate to the recruitment agency or potential employer in Kazakhstan to be translated into the Kazakh language with subsequent notarization of the translation. In practice it created substantial obstacles for the foreigners' initial access to employment in Kazakhstan. It should be noted that the revised rules require that just a copy of an education certificate be provided in the Russian language which removes the necessity for many migrant workers of the prior sending of education certificates to the employer in Kazakhstan to be translated and notarized. However, there remains a problem of establishing the conformity of foreign diplomas, especially the ones issued outside the former Soviet Union. In this case, the procedure of nostrification (establishing the equivalence) of education certificates issued by foreign educational institutions may be used.⁴¹ However, the need remains to establish the conformity of the qualifications according to an education certificate, issued outside the former Soviet Union countries, to the skills required for positions, occupations and qualifications subject to the national regulatory documents.⁴² A more difficult issue in this case is confirmation of occupational qualifications acquired during a labour activity with respect to the category of lower skilled workers.

³⁸ *Clause 26 of the effective Regulations for Determining Quotas, Terms and the Procedure for Issuing Foreign Workforce Employment Permits to Employers in the Republic of Kazakhstan.*

³⁹ *Clause 34 of the Annex to Government Resolution No. 1242 dated 19 December 2007.*

⁴⁰ *Clause 2b of Article 52.*

⁴¹ *The appropriate regulations have been approved by Order of the Minister of Education and Science of the Republic of Kazakhstan No. 542 dated 8 August 2003.*

⁴² *Handbook of Job Qualifications for Managers, Specialists and Other Office Workers and State Classifier of the Republic of Kazakhstan 01-99 "Job Classifier."*

IV. PROTECTION OF MIGRANT WORKERS' RIGHTS IN THE EMPLOYMENT SPHERE

4.1. *Terms and Conditions of Employment*

Kazakhstan has ratified several international conventions that include provisions concerning elimination of discrimination on the grounds of race, colour, ethnic origin, sex or religion, equal opportunities, employment and occupation. This pertains to the International Covenant on Economic, Social and Cultural Rights, ILO Convention No. 111 concerning Discrimination in the Field of Labour and Occupation, ILO Convention No. 100 concerning Equal Remuneration for Men and Women for Work of Equal Value, and the Convention concerning Elimination of All Forms of Discrimination against Women. In ILO Convention No. 143,⁴³ the appropriate provisions have been developed with respect to migrant workers, and ratifying states must formulate and pursue a policy ensuring equality of opportunities and treatment with respect to employment and occupation. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁴⁴ also includes the provisions stating that migrant workers shall enjoy treatment not less favourable than that which applies to the nationals of the State of employment in respect of remuneration and other conditions of work (hours of work and terms of employment).

According to the Labour Code of the Republic of Kazakhstan, the principles of labour legislation include equal rights and opportunities of workers, prohibition of discrimination, ensuring the right of equitable remuneration for work not less than a minimum wage. This law also contains a separate article on the prohibition of discrimination in the field of labour.⁴⁵ It should be noted that the Kazakh legislation regulating labour relation uses the term “worker” that covers both Kazakh nationals and foreigners. Therefore, conditions of labour and remuneration for work in case of local workers and migrant workers are regulated by the same norms and provisions of the legislation. With respect to legislation, the key differences in the legal status of nationals, persons permanently residing in Kazakhstan, and migrant workers, involve employment conditions and terms of employment. The persons who have been granted the right of permanent residence in Kazakhstan enjoy practically the same scope of the rights of Kazakh nationals with respect to labour and employment.⁴⁶ In case of migrant workers versus the nationals, the key exemption provided for by the Labour Code is a possibility of completing an individual contract of employment with them only after the employer has obtained the relevant permission and included them into the list of foreign workforce being hired. In addition, the state guarantees of employment, including employment and job placement services of state agencies, do not cover migrant workers. They are extended only to the nationals of the Republic of Kazakhstan and the persons who have gained the right of permanent residence in Kazakhstan.⁴⁷

The established procedure of migrant workers' access to the Kazakhstan market, which recognizes only temporary labour migration, results in considerable differences in the terms and forms of formalizing labour relations with the employer comparing to Kazakhstan workers. For instance, under Article 29 of the Labour Code, a contract of employment in Kazakhstan may generally be concluded:

43 *Section II. Equality of Opportunities and Treatment.*

44 *Article 25.*

45 *Article 7.*

46 *An exception is the right to holding positions in respect of which the legislation expressly specifies the necessity of Kazakh citizenship.*

47 *See Chapter 12 of the Labour Code, Articles 5 and 15 of the Law on Employment.*

- For an indefinite term when a contract of employment does not specify the term of validity, or specifies that it is executed for an indefinite term
- For a fixed term, and its duration shall be not less than one year
- For a period of performance of a specific piece of work
- For a period of substitution for a temporarily absent worker, for example, in case of sickness or maternity leave
- For a period of seasonal work; such contracts are often entered into in case of agricultural work.

Contracts for an indefinite term are viewed by Kazakh labour legislation as the most preferable ones in terms of ensuring the worker's rights. Therefore, it is prohibited to enter into contracts of employment for a fixed term to evade providing guarantees and compensation envisaged for workers with whom a contract of employment has been concluded for an indefinite term (Clause 1 of Article 29 of the Labour Code).

However, in case of migrant workers covered by the quota and authorization system, there is no possibility of agreeing individual contracts of employment for an indefinite term. Besides, given the time taken by the allocation of quotas, and by the procedure for obtaining a permit and certifying the list of migrant workers, in practice contracts of employment may be agreed with them only for the term of less than one year, namely for the period of performing specific works. Hence, labour relations between the employer and the migrant worker have at all times a short-term nature and must automatically cease upon expiry of the employer's permit, i.e. not later than by the end of a calendar year.

4.2. Vocational Trainings, Language and Integration Courses

Current international standards provide for the principle of equal professional training and re-training opportunities for nationals and regular labour migrants. For instance, Article 43 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families says that they shall enjoy equality of treatment with nationals of the state of employment in relation to access to vocational guidance and job placement services, vocational training and re-training facilities and institutions. According to ILO Recommendation No. 151 of 1975, along with providing equal opportunities and treatment in vocational training and placement services, it is necessary to create conditions to teach them the language of the state of employment.

7. (1) In order to enable migrant workers and their families to take full advantage of their rights and opportunities in employment and occupation, such measures as may be necessary should be taken, in consultation with the representative organisations of employers' and employees' organizations to adopt measures -...

(b) to advance their knowledge of the language or languages of the country of employment, as far as possible during paid time; – Paragraph 7 of ILO Recommendation No. 151.

As part of regional and bilateral agreements of Kazakhstan in the area of labour migration, this principle was incorporated in an intergovernmental agreement only with Azerbaijan. The CIS countries 1994 Agreement on Cooperation in Labour Migration and Social Protection of Migrant Workers, as well as the agreements with Belarus, Kyrgyzstan, Mongolia, Tajikistan and Uzbekistan on migrant workers do not include the provisions relating to their access to professional training opportunities.

The Labour Code of the Republic of Kazakhstan⁴⁸ determines the state guarantees for nationals with respect to the right to vocational training, re-training, skills upgrading in the case of unemployed status, and by creating such conditions at the employer's expense. In case of the employer, vocational training requirements in recent years have been actively promoted by the state through tripartite agreements with trade unions and employers' associations, and the system of issuing permits to hire foreign workforce. Annually provided permits envisage that employers comply with special terms of offering training, re-training and skills upgrading opportunities to Kazakh nationals to eventually replace foreign workers⁴⁹ with them, and the requirements to comply with such terms have in the recent years become more complicated and stringent. Thus, the Kazakhstan legislation does not acknowledge the principle of equal opportunities to receive vocational training for nationals and migrant workers. On the contrary, when these are provided at the employer's expense, the priority is given to professional training for the nationals of the Republic of Kazakhstan. As far as special measures to organize vocational training, re-training and skills upgrading are concerned, as part of the state protection from unemployment, these are provided both for Kazakhstan nationals and the persons who have gained the right of permanent residence in Kazakhstan.⁵⁰ Oralman have been identified as one of the target groups that encounter employment difficulties, and that requiring special social protection measures to be adopted by the state.⁵¹

The issue of migrants' access to language and integration courses in Kazakhstan is applicable only to oralman, and according to Kazakh legislation they should be rendered adaptation services, including the possibility to learn the state and, if desired, the Russian language.⁵²

While the principle of equality for regular migrant workers and nationals clearly extends to access to vocational training, retraining and language training in ILO and UN Conventions, these are two areas where administrative discrimination against migrant workers exists in a number of labour receiving countries.⁵³

4.3. Trade Union Rights

Kazakhstan is a Party to both the International Covenant on Economic, Social and Cultural Rights and ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize. Both conventions grant the right to migrant workers to establish trade unions and/or participate in their activity. Along with that, Kazakhstan has ratified ILO Convention No. 98 concerning Application of the Principles of the Right to Organize and to Bargain Collectively under which workers enjoy relevant rights regardless of citizenship, i.e. this right covers migrant workers as well.

The Constitution of the Republic of Kazakhstan⁵⁴ grants the right of freedom of association which is exercised, among other ways, through establishing and participating in trade union activity which is one of the types of public associations. In accordance with Law No. 3-I on Public Associations⁵⁵ dated 31 May 1996, only nationals of the Republic of Kazakhstan may initiate establishment of a trade union. Foreigners permanently residing in Kazakhstan and migrant workers may only join registered trade unions should the charter of a trade union expressly provide for

48 Article 145.

49 See the Regulations for Determining Quotas, Terms and the Procedure for Issuing Foreign Workforce Employment Permits to Employers in the Republic of Kazakhstan, approved by Government Resolution No. 836 dated 19 June 2001.

50 Article 15 of the Law of Employment.

51 Clause 2 of Article 5 of the Law on Employment.

52 See Subclause 1 of Article 1 of the Law on Employment.

53 Labour Migration Handbook page 141

54 Article 23.

55 Article 10.

the membership of foreign nationals and stateless persons.⁵⁶ Besides, the activity of foreign based trade unions is not permitted in the country, nor is trade union financing by foreign legal entities and foreign nationals, foreign states and international organizations.⁵⁷ In its supervision of the application of ILO Convention No. 87 (Freedom of Association and Protection of the Right to Organise) the ILO Committee of Experts considered that legislation prohibiting the acceptance by a national trade union of financial assistance from international organizations of workers infringes a right protected by the Convention, and repeatedly asked the Government of Kazakhstan to amend the relevant provisions.⁵⁸

At the same time, in case of migrant workers' right to collective bargaining, the main problem is the temporary nature of employment rather than their restricted rights to participate in trade unions. In addition the Labour Code of the Republic of Kazakhstan limits some rights of trade unions in respect of collective bargaining, concluding and monitoring the implementation of collective bargaining agreements, for example, only general meetings of workers are vested with the right to initiate collective labour disputes rather than trade unions.⁵⁹ With regards to temporary workers it should be noted that the ILO Committee on Freedom of Association hold as a principle that temporary workers should be able to bargain collectively⁶⁰

⁵⁶ Article 11 of the Law on Public Associations.

⁵⁷ Clause 4 of Article 5 of the Constitution of the Republic of Kazakhstan. Also resolution of the Constitutional Council of the Republic of Kazakhstan No. 4/2 dated 7 June 2000 "On Official Interpretation of Clause 4 of Article 5 of the Constitution of the Republic of Kazakhstan" states: "The norm of Clause 4 of Article 5 of the Constitution of the Republic of Kazakhstan in the part stating that "it is not permitted ... to finance political parties and trade unions by foreign legal entities and foreign nationals, foreign states and international organizations" should be understood as a legal ban on receiving monetary funds and other material resources by political parties and trade unions."

⁵⁸ Report of the Committee of Experts on the Application of Conventions and Recommendations, Observation, CEACR 2007/78th Session

⁵⁹ Clause 1 of Article 288 of the Labour Code.

⁶⁰ Paragraph 906 of the Digest of Decisions of the CFA, 2006 edition

V. FACILITATING OF SOCIAL COHESION

Post admission policies for labour migration should include the development and implementation of a state policy to promote the social cohesion and integration of migrant workers in the country of employment. As applied to Kazakhstan, where labour migration is seen as temporary, it is important to note that this approach is largely focused on “long-term” and permanent migrants. However, to promote social cohesion, anti-discrimination and family reunification policies should also cover temporary and seasonal migrant workers.

5.1. Addressing Discrimination

The principle of non-discrimination (on the grounds of race, ethnic origin, sex, religion, etc.) is universally applicable and recognized in the International Bill of Rights (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights) and several international agreements on various human rights. It is the core for implementing a policy of social cohesion and integration of labour migrants.

As per Sections 1.2 and 3.1 above, Kazakhstan is party to a number of international conventions containing non-discrimination provisions. Besides, this principle has been recognized as a constitutional norm. Clause 2 of Article 14 of the Constitution of Kazakhstan states that “no one may be subject to any form of discrimination on the grounds of origin, social and property status, official capacity, sex, race, ethnic origin, language, religion, convictions, place of residence or on any other grounds.” Non-discrimination has also been incorporated in the national legislation on migration as a principle of migration regulation. According to Article 3 of the Law on Migration, regulation of migration involves, among other things, the principle of inadmissibility of discrimination on the grounds of origin, social and property status, official capacity, sex, race, ethnic origin, language, religion, convictions, place of residence or on any other ground. Direct or indirect restriction of human (civil) rights and liberties for the above reasons is deemed to be a penal act in Kazakhstan.⁶¹ In general, the principle of non-discrimination is ensured in the country through establishing appropriate statutory bans, using judicial and extrajudicial remedies with respect to their violations, and criminal prosecution of persons who infringe anti-discrimination provisions.

5.2. Integration

The need to design and implement a state policy on labour migrants’ integration is recognized in ILO Convention No. 143.

*Each Member shall, by methods appropriate to national conditions and practice -...
(e) in consultation with representative organizations of employers and workers, formulate and apply a social policy appropriate to national conditions and practice which enables migrant workers and their families to share in advantages enjoyed by its nationals while taking account, of such special needs without adversely affecting the principle of equality of opportunity and treatment as they may have until they are adapted to the society of the country of employment – Article 12 of ILO Convention No. 143.*

Conceptual approaches to the implementation of measures on migrants’ integration used by various countries have significant differences.⁶² Thus, the European Commission defines integration as follows:

⁶¹ Article 141 of the Criminal Code.

⁶² Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination. OSCE, IOM, ILO, 2006, p. 166.

“Integration should be understood as a two-way process based on mutual rights and corresponding obligations of legally resident third country nationals [foreigners] and the host society which provides for full participation of the immigrant. This implies on the one hand that it is the responsibility of the host state to ensure that the formal rights of immigrants are in place in such a way that the individual has the possibility of participating in economic, social, cultural and civil life and on the other, that immigrants respect the fundamental norms and values of the host society and participate actively in the integration process, without having to relinquish their own identity.”⁶³

In Kazakhstan, the issues of migrants’ integration have so far been addressed on a limited scale with respect to oralmans and their family members.⁶⁴ Many of them arrived from former Soviet Union republics, i.e. until recently they had been the nationals of one state – the Soviet Union. In accordance with the Law on Migration, oralmans at their request are provided adaptation services by placement in a specialized adaptation and integration centre.⁶⁵ Oralmans and their family members stay in this centre on a free basis. The centre’s adaptation services include legal consultations, teaching of the state language and, at will, of Russian, vocational training, retraining and skills upgrading.⁶⁶

5.3. Family Reunification

Both the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and ILO Convention No. 143 provide for the need of adopting measures to facilitate migrant workers’ family reunification.

1. A Member may take all necessary measures which fall within its competence and collaborate with other Members to facilitate the reunification of the families of all migrant workers legally residing in its territory.

2. The members of the family of the migrant worker to which this Article applies are the spouse and dependent children, father and mother. – Article 13 of ILO Convention No. 143.

1. States Parties, recognizing that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, shall take appropriate measures to ensure the protection of the unity of the families of migrant workers.

2. States Parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.

3. States of employment, on humanitarian grounds, shall favourably consider granting equal treatment, as set forth in paragraph 2 of the present article, to other family members of migrant workers. – Article 44 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

In this regard, it should be noted that Kazakhstan legislation provides for family immigration as one of the types of migration. The spouse, his/her parents and dependent children, as well as mi-

⁶³ Commission, *Communication on Immigration, Integration and Employment*, COM (2003) 336, 3 June 2003, 17-18.

⁶⁴ *Foreigners or stateless persons of Kazakh origin who permanently resided outside the Republic of Kazakhstan at the time it achieved state sovereignty and who arrived in Kazakhstan with the purpose of permanent residence.*

⁶⁵ *Order of the Acting Minister of Labour and Social Protection of the Republic of Kazakhstan No. 225-p dated 27 September 2007 on “Approval of the Rules of Temporary Stay of Oralman and Members of Their Families at the Oralman Adaptation and Integration Centre and of Providing Adaptation Services to Them.”*

⁶⁶ *Subclause 1 of Article 1 of the Law on Migration.*

nor brothers, sisters having no parents or guardians who are obliged to maintain them at the place of former residence are recognized as members of an immigrant's family.⁶⁷

Thus, under Kazakhstan legislation, membership of the immigrant's family is defined in a broader sense than in the above conventions and, under certain circumstances, and includes minor brothers and sisters. In the case of oralmans, national legislation provisions and annual immigration quotas are largely focused on supporting family immigration. The right to family reunification of labour migrants is not legislatively formulated, nevertheless, legal regulation and the practice of issuing entry permits to foreigners do not impose significant constraints on exercising this right. The Law on Migration⁶⁸ restricts this right by a possible denial of entry to labour migrants' family members if they fail to provide confirmation of the availability of funds required for their stay in and departure from the Republic of Kazakhstan. To comply with this requirement, one should confirm that the following funds are available:

- The amount of no less than the price of an economy class air ticket to the nearest airport of the state where he/she resides on a permanent basis
- For the nationals of the CIS countries, the amount of no less than the price of a railway (compartment type) or motor transport ticket to the nearest station of the state where he/she resides on a permanent basis
- Not less than a two-fold monthly computation index per each day of stay.⁶⁹

Confirmation of the availability of funds for the stay and departure of family members has become a mandatory requirement since the appropriate changes have been made in the Regulations for Arrival and Stay of Foreigners in the Republic of Kazakhstan by Government Resolution No. 688 dated 10 August 2007. It should be noted that the above requirement does not apply to family members of the oralmans, the persons who were born or had been the nationals of the Republic of Kazakhstan or the Kazakh Soviet Socialist Republic, and members of their families. In addition, one has to bear in mind that Kazakhstan maintains a visa-free regime with many countries of origin of labour migrants, including Kyrgyzstan, Uzbekistan and Tajikistan.

⁶⁷ Article 19 of the Law on Migration.

⁶⁸ Article 22.

⁶⁹ Clause 11-2 of the Regulations for Arrival and Stay of Foreigners in the Republic of Kazakhstan and Their Departure from the Republic of Kazakhstan No. 136, approved by the Government on 28 January 2000.

VI. ENHANCING SOCIAL WELFARE

6.1. Healthcare

Clause 1 of Article 12 of the International Covenant on Economic, Social and Cultural Rights ratified by the Republic of Kazakhstan states: “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” The General Comment on the Highest Attainable Standard of Health of the United Nations Committee on Economic, Social and Cultural Rights specifies that States are under obligation to respect the right to health, in inter alia, refraining from denying or limiting equal access for all persons, including irregular migrants, to preventive, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁷⁰ establishes that migrant workers and members of their family shall have the right to receive any medical care that is urgently required for the preservation of life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned, and such emergency medical care shall not be refused them by reason of any irregularity with regard to their status.

The matters of access to medical care have been recognized in regional and bilateral labour migration agreements signed by Kazakhstan, although not as widely. Thus, the CIS Agreement of 1994 on Cooperation in the Area of Labour Migration and Social Protection of Labour Migrants includes the provision stating that medical treatment of migrant workers shall be paid up at the employer’s expense. Bilateral agreements with Kyrgyzstan specify that migrant workers are entitled to equal rights with nationals with respect to emergency medical care, whereas planned medical treatment is defined as the employer’s obligation. Bilateral labour migration agreements with other countries do not specify the issues of medical treatment for migrant workers, or they state that it shall be paid up at the employer’s expense.

In the framework of national legislation, access of foreigners, including migrant workers and members of their families, to medical treatment is regulated by special rules approved by Government Resolution of No. 997 dated 16 October 2006. The rules cover both the foreigners and stateless persons temporarily and permanently residing in Kazakhstan and do not provide for any limitations with respect to irregular migrants. Free medical treatment is provided at the place of stay and its provision does not require the migrant to have a visa or registration. It is stipulated that foreigners are provided with emergency medical care and medical treatment on a free basis in case the disease is dangerous for others.⁷¹ Other medical services are provided to foreign nationals and stateless persons at their own expense, at the expense of their employers, the voluntary health insurance system and from other sources not prohibited under the Republic of Kazakhstan legislation. It should be noted that oralmans take advantage of the entire range of free medical services provided for the nationals of the Republic of Kazakhstan.⁷²

6.2. Housing

Clause 1 of Article 11 of the International Covenant on Economic, Social and Cultural Rights 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 UN Committee on Economic,

⁷⁰ Article 28.

⁷¹ The list of such diseases has been approved by Government Resolution No. 468 dated 30 March 2000.

⁷² Clause 1 of Government Resolution No. 853 dated 28 September 2007.

Social and Cultural Rights emphasizes in its General Comment on the Right to Adequate Housing that the right to housing is applied to all... “individuals and their families entitled to adequate housing, regardless of age, economic status, group or other affiliation or status, and other such factors.” It also states that enjoyment of this right must not be subject to any form of discrimination. In respect of providing migrant workers with housing, ILO Convention No. 97 concerning Migration for Employment (revised)⁷³ and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁷⁴ provide for equal opportunities for migrant workers and Kazakhstan workers. At the same time, the principle of equality of opportunity does not cover the right to purchase housing, and to different subsidies and other forms of social assistance provided in case the housing is purchased. The bilateral labour migration agreements signed by Kazakhstan, either do not cover such matters or make it the employer’s duty to provide the migrant worker with adequate housing that meets hygienic and sanitary requirements.⁷⁵

Kazakhstan legislation grants the right to purchase housing only to the nationals of Kazakhstan.⁷⁶ The right to use housing provided out of the public housing resources or leased out by the local executive bodies is granted only to certain needy and socially protected categories of the nationals of the Republic of Kazakhstan. Oralmans are also included in this group.⁷⁷ The housing allowance paid out of local budgets to certain needy categories is also granted only to nationals of the Republic of Kazakhstan.⁷⁸ In general, the issue of providing housing for migrant workers in Kazakhstan is dealt within the contract entered into by the employer and the employee. The migrant workers’ living conditions are basically controlled by the state only with respect to their compliance with sanitary standards.

The general practice in a number of labour receiving countries is that with respect to seasonal and lower skilled migrant workers, employers are responsible so that workers have access to decent and low cost housing on a free, subsidised or non-subsidised basis.⁷⁹

6.3. Education

The International Covenant on Economic, Social and Cultural Rights⁸⁰ establishes the obligation of States Parties to recognize the right of everyone to education. In its General Comment on the Right to Education the Committee on Economic, Social and Cultural Rights specifies that “the principle of non-discrimination extends to all persons of school age residing in the territory of a State Party, *including non-nationals, and irrespective of their legal status.*” As applied to children of migrant workers, these provisions have been developed in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child’s stay in the State of employment. – Article 30 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

73 Clause 1a of Article 6.

74 Clause 1d of Article 43.

75 Clause 1 of Article 5 of the 1994 Agreement between the Government of the Republic of Kazakhstan and the Government of Mongolia concerning Cooperation in the Sphere of Employment of the Nationals of Mongolia and the Republic of Kazakhstan under a Contract of Employment.

76 Clause 1 of Article 11 of Law No. 94-I dated 16 April 1997 on “Housing Relations.”

77 Clause 1 of Article 67 of the Law on Housing Relations.

78 Clauses 1-2 of Article 97 of the Law on Housing Relations.

79 Labour Migration Handbook page 152

80 Clause 1 of Article 13.

On the level of bilateral labour migration agreements in Kazakhstan, these issues found reflection in the 1999 intergovernmental agreement with Azerbaijan. It stipulates that migrant workers and members of their families are entitled to general education, professional training and re-training on the same basis and the same terms as national workers in accordance with the general rules regulating admission to appropriate educational institutions of the country of employment. Other bilateral agreements on labour migration do not have such a clause.

The Law of the Republic of Kazakhstan No. 319-III ZRK dated 27 July 2007 “On Education”⁸¹ ensures the rights to pre-school, primary, basic secondary and general secondary education for the foreigners who have been granted the right of permanent residence in Kazakhstan, and these rights are equal to those of Kazakhstan nationals. The former are also granted the right to get free technical professional, post-secondary, higher and postgraduate education on a competitive basis within the scope of the public education system if they receive such education for the first time. The above mentioned statutory provisions do not extend to migrant workers and their family members because they are considered to be temporarily staying on the territory of Kazakhstan.

At the same time, national legislation does not directly deny access to pre-school educational institutions and general education schools for children of temporary international migrants, and provides some opportunities to children of migrant workers. Thus, in case of enrolment of children to grade one, it is required that parents provide only a document confirming their place of residence (registration).⁸² Nevertheless, older children of migrant workers’, even from the neighbouring Central Asian states, may face difficulties in accessing school education due to differences in the curricula. For this reason, the issue of admission to education may in many instances be at the discretion of administration of educational establishments. Access of migrant children to technical vocational schools and colleges is subject to tougher regulation.⁸³ It is provided on equal terms to Kazakhstan nationals, foreign nationals and stateless persons granted permanent residence in Kazakhstan, and to ethnic Kazakhs who are not nationals of the Republic of Kazakhstan. Other foreign nationals and stateless persons are admitted to educational institutions in the procedure established by the legislation of the Republic of Kazakhstan and international treaties ratified by the Republic of Kazakhstan.

⁸¹ *Clause 2 of Article 8.*

⁸² *Clause 3 of the Standard Regulations for admission to educational institutions implementing educational programmes of primary, basic secondary, general secondary education approved by Order of the Minister of Education and Science No. 651 dated 25 December 2007.*

⁸³ *See Orders of the Minister of Education and Science No. 586 and No. 587 dated 29 November 2007.*

VII. SOCIAL PROTECTION, INCLUDING OCCUPATIONAL SAFETY AND HEALTH AND SOCIAL SECURITY

In accordance with Article 9 of the International Covenant on Economic, Social and Cultural Rights ratified by the Republic of Kazakhstan, the States Parties to the Covenant recognize the right of everyone to social security, including social insurance. ILO Conventions No. 93 (Wages, Hours of Work and Manning {Sea} Convention {Revised} 1949) and 143 declare that migrant workers have equal rights with nationals in the sphere of social insurance. The following aspects of this right are extremely important for migrant workers:

- Gaining access to the right to benefits on an equal basis with local workers
- Observance of the gained rights when departing from the country, including benefits export
- Obtaining benefits from accumulation of the rights gained in different countries.⁸⁴

ILO Convention No. 143⁸⁵ states that irregular migrant workers shall enjoy the same rights as regular migrants in respect of social insurance benefits related to their past employment. The International Labour Organization adopted a number of other legal instruments on social insurance of workers promoting recognition of equality of treatment for national and migrant workers with regard to:

- Medical care
- Sickness benefits
- Maternity benefits
- Disability benefits
- Old-age benefits
- Survivors' benefits
- Employment injury benefits
- Unemployment benefits; and
- Family benefits.⁸⁶

ILO Convention No. 157 (Maintenance of Social Security Rights Convention, 1982) sets also the provisions on the maintenance of migrant workers' rights in case they depart from the country, and on the export by migrant workers of disability benefits, old-age benefits, survivors' benefits, employment injury benefits as well as death grants.

The CIS Agreement of 1994, and bilateral labour migration agreements, agreed with the former Union republics stipulate that the matters of social insurance for migrant workers, except for pension benefits, shall be addressed in accordance with the national legislation of the state of employment. In respect of pension benefits, a number of these agreements contain a reference to the Agreement of 1992 on guarantees of the rights of the nationals of the CIS State Parties in the area of pension benefits. However, this agreement does not contain special provisions on migrant workers.

In Kazakhstan, the issue of migrant workers' right to social insurance is linked first and foremost to pension schemes, mandatory social insurance, and compensation of damage as a result of an occupational accident.

⁸⁴ *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination*. OSCE, IOM, ILO, 2006, p. 174.

⁸⁵ *Clause 1 of Article 9*.

⁸⁶ *See ILO Conventions No. 19 on Equality of Treatment (Accident Compensation), No. 118 on Equality of Treatment (Social Security), No. 157 on Maintenance of Social Security Rights*.

7.1. Pension Benefits

Since 1997, a defined-contribution pension scheme has been introduced in Kazakhstan, and relevant mandatory payments are made to personal workers' accounts in the pension fund. In accordance with Article 2 of Law No. 136-I dated 20 June 1997 on "Pension Benefits in the Republic of Kazakhstan," nationals, foreigners and stateless persons permanently residing in the territory of the Republic of Kazakhstan have the right to pension benefits. Pensions to foreigners and stateless persons, permanently residing in the Republic of Kazakhstan, are paid on the basis of an identity card of a stateless person, or residence permit of a foreigner in the Republic of Kazakhstan. Contributors to the pension funds have the right to withdraw pension accruals when leaving for a permanent place of residence outside the Republic of Kazakhstan.⁸⁷

At the same time, migrant workers in Kazakhstan do not enjoy the right to pension benefits as they are not recognized as permanent residents in Kazakhstan. Therefore, employers do not make pension fund contributions for migrant workers. Special explanation for this issue was given in a letter of the Ministry of Labour and Social Protection No. 07-02-17/6 dated 10 November 2006. According to this letter, migrant workers may not take advantage of the services of Kazakhstan defined-contribution pension funds even if they or their employers make voluntarily contributions thereto.

7.2. Mandatory Social Insurance

As part of the mandatory social insurance system, the State Social Insurance Fund makes payments in case of:

- Disablement
- Loss of breadwinner
- Loss of work
- Loss of income due to pregnancy and delivery
- Loss of income due to adoption of a newly born child (children)
- Loss of income due to childcare until the child reaches the age of one year.

Kazakhstan nationals or foreigners granted permanent residence in Kazakhstan shall be subject to mandatory social insurance, and their employers shall make relevant payments.⁸⁸

Migrant workers do not enjoy the right to mandatory social insurance because they are not recognized as permanently residing in Kazakhstan. This issue has been clarified by the Ministry of Finance Tax Committee letter No. NK-UM-3-19/11663 dated 12 December 2006 on "Application of the Rules of the Republic of Kazakhstan Law on 'Amnesty due to Legalization of Irregular Migrant Workers'." It specifies that employers need not make social contributions for migrant workers.

The lack of any social security coverage for migrant workers is a significant difference from international standards and best practices. In addition the non-payment of social security contributions by employers is likely to create a permanent low wage demand for migrant workers which could be detrimental to wages and employment for nationals.

⁸⁷ *Subclause 8 of Clause 1 of Article 27 of the Law on Pension Benefits.*

⁸⁸ *Article 8 of Law No. 405-II dated 25 April 2003 on "Mandatory Social Insurance."*

7.3. Occupational Accidents

The Labour Code⁸⁹ establishes the employer's liability to compensate for the harm caused to the employee's life and health while performing his or her duties, including as a result of occupational accidents. This requirement extends to the migrants workers as well. The necessary condition for compensation is the investigation of occupational accidents, and the drawing up of a resultant report on the basis of which the worker may exercise his or her right to compensation. The applicable provisions of labour legislation⁹⁰ do not contain any exemptions from the worker's relevant right connected to his or her citizenship, or temporary stay in the territory of the Republic of Kazakhstan.

In order to ensure fulfilment of the obligation to compensate for the harm caused to the worker's life and health when performing his or her duties, the employer's mandatory civil liability insurance system is established in Kazakhstan. The provisions of Republic of Kazakhstan Law No. 30-III ZRK dated 7 February 2005 on the "Employer's Compulsory Civil Liability Insurance to Cover any Harm Caused to the Worker's Life and Health in Performing His/Her Labour (Working) Duties" extend to all workers, including migrants. If there is insurance coverage, the employer shall reimburse to the worker the difference between an insured amount and actual damage. If there is no agreement on compulsory civil liability insurance, the harm caused to the workers' life and (or) health shall be indemnified in full by the employer. Generally, the compulsory liability insurance contract shall be honoured by the employer for the term of 12 months. As for its applicability to migrant workers, whose labour contracts are usually less than one year, it should be noted that it is possible to arrange the employer's compulsory insurance contract for a shorter period.⁹¹

⁸⁹ Article 164.

⁹⁰ Chapter 37 of the Labour Code, "Investigation and Record of Accidents and Other Damage to the Workers' Health Related to Labour Activity," Resolution of the Government of the Republic of Kazakhstan No. 326 dated 3 March 2001 "On Approval of the Rules for Investigation and Record of Accidents and Other Damage to the Workers' Health Related to Labour Activity."

⁹¹ Article 12 of Law No. 30-III ZRK dated 7 February 2005 on the "Employer's Compulsory Civil Liability Insurance to Cover any Harm Caused to the Worker's Life and Health in Performing His/Her Labour (Working) Duties."

VIII. IRREGULAR LABOUR MIGRANTS AND REGULARISATION

In the Glossary of terms prepared by the International Organization for Migration⁹² irregular labour migration is defined as the movement that takes place outside the regulatory norms of the sending, transit and receiving countries, and from the perspective of destination countries – as illegal entry, stay or work in a country. It conforms to the definition of Article 5 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. ILO Convention No. 143 defines the fundamental rights of irregular labour migrants as follows.

1. Without prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory and are admitted to employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases these laws and regulations have not been respected and in which his position cannot be regularized, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits.

2. In case of dispute about the rights referred to in the previous paragraph, the worker shall have the possibility of presenting his case to a competent body, either himself or through a representative.

3. In case of expulsion of the worker or his family, the cost shall not be borne by them.

4. Nothing in this Convention shall prevent Members from giving the persons who are illegally residing or working within the country the right to stay and to take up legal employment. – Article 9 of ILO Convention No. 143.

The Law on Migration of the Population⁹³ defines illegal migrants as foreigners or stateless persons who have entered and stay in the Republic of Kazakhstan in violation of the legislation regulating the procedure for entry, departure and stay, as well as transit via the territory of the Republic of Kazakhstan. Violation by the foreigner of the rules for staying in the Republic of Kazakhstan (illegal entry, evasion of departure at a stated time, nonconformity of the purpose of entry to the purposes specified in the visa or at registration or in the migration card, infringement of the transit rules) shall be deemed an administrative offence. Kazakhstan legislation⁹⁴ establishes administrative responsibility for such violations.

The above definition of illegal immigrants does not cover foreign nationals who have lawfully entered and stay in the country but carry out a labour activity without their employer's having obtained the appropriate permit. Kazakhstan legislation⁹⁵ also holds them administratively liable and punishable by a fine in the amount of 20 to 25 monthly calculation indices, and an administrative expulsion from the Republic of Kazakhstan. In case of expulsion, the relevant expenses shall be borne by either the expelled foreigners or the organizations or individual persons that invited the foreigner to the Republic of Kazakhstan, and in exceptional cases – by the law enforcement agencies.⁹⁶

⁹² *International Migration Law No. 1: Glossary on Migration. International Organization for Migration. Geneva, 2005.*

⁹³ *Subclause 4 of Article 1.*

⁹⁴ *Article 394 of the Administrative Offence Code.*

⁹⁵ *Clause 2 of Article 396 of the Administrative Offence Code.*

⁹⁶ *Clause 36 of the Rules for Entry and Stay of Foreigners in the Republic of Kazakhstan and Their Departure from the Republic of Kazakhstan approved by Resolution of the Government No. 136 dated 28 January 2000.*

It should be noted that from 1 August 2006 through 31 December 2006, legalization of unauthorized migrant workers from the CIS countries was carried out in Kazakhstan.⁹⁷ It did not cover the following persons:

- Those who entered the country in violation of legislation
- Those who had no documents confirming their right to stay in the Republic of Kazakhstan
- Those who provided false information about themselves, including about their criminal record, or those who did not submit required documents
- Those who carried out a licensed activity without license.

This campaign covered irregular migrant workers who carried out labour activities without the employer's permit to hire foreign workers required in this case.

At the specified period of time, the employers were granted the right to regularize the illegally hired migrants from the CIS countries by registering them with the law enforcement agencies for their subsequent employment on a legal basis.⁹⁸ The employer could enter into a contract of employment with the regularized migrant workers for a term of up to three years from the date of their registration. This procedure extended only to the persons who had arrived 60 calendar days before the enactment of the Law on Amnesty due to Legalization of Illegal Migrant Workers, and who since then had been engaged in a labour activity in Kazakhstan. The regularized migrant workers were entered into a special register and issued special migration cards as a confirmation of their right to employment. At the same time, the Law on Amnesty due to Legalization of Illegal Migrant Workers did not clarify whether the regularized labour migrants would be granted free access to the labour market. However as implementation showed, labour migrants could continue to be employed only by the employers who had used the migrant workers regularization procedure.

Following the registration of migrant workers, the employers were to pay all payroll taxes. At the same time, in the course of this one-off campaign, the regularized labour migrants were not granted the right to pension benefits and mandatory social insurance, and the employers were not bound to make such payments. The regularized migrant workers and their employers were relieved from administrative and criminal responsibility for previous irregularities linked with illegal labour recruitment activities.

⁹⁷ Law No. 149-III ZRK dated 4 July 2006 "On Amnesty due to Legalization of Illegal Migrant Workers."

⁹⁸ About 164,000 migrant workers were regularized during this period.

IX. POLICY AND LEGISLATIVE RECOMMENDATIONS WITH REGARD TO PROMOTING DECENT WORKING STANDARDS AND THE PROTECTION OF MIGRANT WORKERS⁹⁹

Migrant workers in Kazakhstan make an enormous developmental contribution to their host and origin countries - in the form of services and competitiveness in countries of destination, and financial flows in countries of origin. Migration helps to improve the quality of life of many migrants and their families. Many migrants are filling a niche in the national labour markets by doing jobs that nationals do not want or cannot fill. Nevertheless many migrant workers are subject to labour exploitation and abuse. Unauthorized migration is widespread. The protection of jobs and decent working conditions for nationals is an understandable policy concern.

Developing the right policy and legislative response that balances the different interests, and effectively governs migration, is a relatively complex and difficult process particularly whereas admission policies are concerned.

The issues underlying policy responses in a destination country regarding the admission, employment and integration of migrant workers relate to:

- identification, assessment and prediction of labour shortages, at the national level, for both skilled and less-skilled employment.
- analysis of the national labour market in order to understand whether labour migration can provide a solution, in part or in full, for adverse demographic trends, particularly the decline in working populations, and the subsequent impact on the availability of social welfare benefits for future generations.
- involving the key stakeholders --employers and trade unions—in policy formulation and implementation
- protections for employment and conditions of the national workforce in the event that more labour migration is admitted into the country.
- measures to be put into place to ensure equality of treatment and avoid exploitation of migrant workers in the workplace and society in general.
- measures to prevent or reduce irregular labour migration, which are essential for the legitimacy and credibility of a legal admissions policy.

Politicians and policy-makers face a sensitive and challenging task in convincing and educating national populations on the need for foreign labour.

The rights and freedoms stipulated in international human rights law developed under the auspices of the UN system apply equally to migrant men and women as to any other individual, as do the provisions of international labour law developed by the ILO, including those in the eight fundamental ILO Conventions. The first specific international instruments aimed at finding solutions to the problems facing migrant workers include the Migration for Employment Convention, 1949 (Revised) (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) as well as their accompanying Recommendations¹⁰⁰. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted in December 1990, embodies most of the substantive provisions of the ILO instruments, and in some

⁹⁹ Written by Vadim Ni and Nilim Baruah.

¹⁰⁰ *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination*. OSCE, IOM, ILO, 2006, p. 27.

ways goes beyond them. The UN Convention and the specific ILO Conventions may therefore be considered as complementary¹⁰¹.

A core principle of ILO Convention 97 (Migration of Employment Convention {Revised} 1949), concerning the rights of lawfully admitted migrant workers, is equal treatment with nationals in regard to remuneration and employment conditions, collective bargaining, accommodation, social security and dues or contributions. It is also imperative that the country ensure some minimum standards of protection, including the basic human rights, for all migrants workers, *whatever their status*. The UN Convention (1990) and ILO Convention No. 143 contain provisions intended to ensure that all migrant workers enjoy a basic level of protection even when they have immigrated or are employed without authorization and their situation cannot be regularized.

In addition to measures to protect the rights of migrant workers, the most recent ILO instruments on migrant workers and the UN Convention both place great emphasis on efforts to curb irregular migration and unauthorized employment, and the need to formulate appropriate migration policies to that effect. For example: imposing sanctions to give effect to regulations in this area; exchanging information; providing information to migrant workers; and facilitating the provision of consular services.

ILO instruments that are not specific to migration can also be applicable. Given the role of private recruitment agencies in labour migration, Convention 181 on Private Employment Agencies 1997 becomes particularly relevant. Convention 118 (Equality of Treatment {Social Security} 1962) on social security is another good example.

As Chapter three of the report indicates, Kazakhstan is an important destination country for labour migrants. The government of Kazakhstan has enacted legislation as well as instituted a number of measures for the admission of temporary labour migrants. It has implemented a one-off regularisation procedure in 2006, and signed a number of bilateral and multilateral agreements concerning the effective governance of labour migration. The recommendations below highlight some of the key areas for greater effectiveness whereas the effective governance of labour migration is concerned.

1. Recommendations concerning foreign labour admission policy

- (1) To assess, on the basis of the situation analysis of the labour market, and in consultation with the employer and worker associations, and the local governments, Kazakhstan's medium- and long-term requirements for migrant workers of various skills and in various economic sectors (high- and low-skilled workers, seasonal workers, industry, agriculture, etc.). In assessing these requirements, it is also important to take account of the economic sectors in which migrant workers are employed without authorization, such as construction and domestic work. As a result of an assessment of shortages, a list of sectors and professions (occupations) in which foreign labour is in high demand should be compiled. Recruitment of migrant workers in scarce occupations should be simplified without the need for a labour market test. The procedure by which such lists are compiled should include an analysis of available vacancies and the setting up of advisory boards comprised of stakeholders (employers, government agencies, trade unions) and independent experts. The list should be subject to periodic review.
- (2) To examine international good practices and consider possibilities for better use of permanent labour migration to meet the Kazakhstan labour market requirements for high-skilled specialists and workers. This should refer not only to the ethnic migration of oralmans and other

¹⁰¹ *ibid*, p. 28.

repatriates to Kazakhstan but much broader categories of nationals interested in immigration for employment. However such measures may induce further emigration of skilled human resources from poorer neighbouring countries in Central Asia and this dimension needs to be taken into account as well.

- (3) To review the need for special conditions imposed on employers to pay for professional education and vocational training of nationals in case they are employing migrant workers. While training, education and employment of nationals are a priority, this should be promoted by other means. Individual labour market tests can be employed to protect jobs for nationals in occupations not in shortage.

2. Recommendations concerning enhancement of national legislation on rights of migrant workers

- (1) Further development of national legislation on the basis of international standards established by the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ILO Conventions No. 97 on Migration for Employment (Revised), 1949 and No. 143 on Migrant Workers (Supplementary Provisions), 1975.
- (2) To bring national legislation in line with the International Covenant on Economic, Social and Cultural Rights and ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize (1948) with regard to the migrant worker's right to establish and join trade unions in Kazakhstan.
- (3) To analyze the current penalties for law violation and practices of their enforcement in order to ensure adequate action towards labour migration law breakers depending on the offence they committed (employment without work permits, non-compliance with migration law, exploitation and facilitation of irregular migration, including trafficking and smuggling of persons).
- (4) To minimize restrictions on job change by migrant workers, in particular in case of involuntary job loss and in shortage occupations.
- (5) National legislation with regards to social security benefits for migrant workers is at the moment far from compatible with international standards. As a first step awareness building and training may be organized by ILO on conventions 118 and 157 regarding equal treatment of migrant workers, exportability of benefits and maintenance of rights whereas social security is concerned. A working group may also be formed to draft legislative and other changes necessary to provide migrant workers at least the minimum set of benefits (that is currently absent). Attention should also be drawn to best practice in workmen's compensation as per convention 19 (Equality of Treatment {Accident Compensation} Convention 1925).
- (6) Access to affordable and sanitary accommodation – Employers of lower skilled workers should ensure that migrant workers have access to affordable and sanitary housing.
- (7) Treatment of irregular migrants – The UN Convention (1990) and ILO Convention No. 143 contain provisions intended to ensure that all migrant workers enjoy a basic level of protection even when they have immigrated or are employed without authorization and their situation cannot be regularized. This is particularly relevant with regards to human rights, remuneration and conditions of work, access to emergency health care, childrens' education and rights in case of detention or expulsion.

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XI. ANNEXES

*Annex 1. Glossary*¹⁰⁰

Admission – The granting of entry into the State. An alien has been “admitted” if s/he passed through a checkpoint (air, land or sea) and is permitted to enter by border officials. An alien who has entered clandestinely is not considered to have been admitted.

Best practices – Means to further the application of existing norms and principles, both at the international and the national levels. Best practices may be translated into operational directives, codes of conduct or other manifestations of soft law, but should not lead to a weakening or erosion of positive law. They are characterized by: being innovative, developing creative solutions; showing a positive impact on the level of implementation of migrants’ rights; having a sustainable effect, especially by involving migrants themselves; and having the potential for replication.

Country of destination – The country that is a destination for migratory flows (legal or illegal).

Country of origin – The country that is a source of migratory flows (legal or illegal).

Documented migrant worker – A migrant worker or members of his/her family authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990).

Entry – Any entrance of an alien into a foreign country, whether voluntary or involuntary, legally or illegally.

Family reunification/reunion – Process whereby family members already separated through forced or voluntary migration regroup in a country other than the one of their origin.

Frontier worker – A migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week (Art 2(2) (a), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990).

Illegal entry – Act of crossing borders without complying with the necessary requirements for legal entry into the receiving State (Art 3(d), UN Protocol Against the Smuggling of Migrants by Land, Sea, and Air, supplementing the UN Convention against Transnational Organized Crime, 2000).

Integration – The process by which immigrants become accepted into society, both as individuals and as groups. The particular requirements for acceptance by a receiving society vary greatly from country to country; and the responsibility for integration rests not with one particular group, but rather with many actors: immigrants themselves, the host government, institutions and communities.

¹⁰⁰ *Glossary on Migration, International Organization for Migration, Geneva, 2005.*

Irregular migration – Movement that takes place outside the regulatory norms of the sending, transit or receiving countries. There is no clear or universally accepted definition of irregular migration. From the perspective of destination countries it is illegal entry, stay or work in a country, meaning that the migrant does not have the necessary authorization or documents required under immigration regulations to enter, reside or work in a given country. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel documents or does not fulfil the administrative requirements for leaving the country. There is, however, a tendency to restrict the use of the term “illegal migrant” to cases of smuggling of migrants and trafficking in persons.

Labour migration – Movement of persons from their home State to another State for the purpose of employment. Labour migration is addressed by most States in their migration laws. In addition, some States take an active role in regulating outward labour migration and seeking opportunities for their nationals abroad.

Long-term migrant – A person who moves to a country other than that of his or her usual residence for a period of at least a year, so that the country of destination effectively becomes his or her new country of usual residence. From the perspective of the country of departure, the person will be a long-term emigrant and from that of the country of arrival, the person will be a long-term immigrant.

Migrant worker – A person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national (Art 2(1), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990).

Permanent residence – The right, granted by a host State to a non-national, to live and work therein on a permanent (unlimited) basis.

Regular migration – Migration that occurs through recognized, legal channels.

Seasonal worker – A migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year (Art 2 (2) (b), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990).

Short-term migrant – A person who moves to a country other than that of his or her usual residence for a period of at least three months (but less than a year) except in cases where the movement to that country is for purposes of recreation, holiday, visits to friends or relatives, business or medical treatment. For purposes of international migration statistics, the country of usual residence of short-term migrants is considered to be the country of destination during the period they spend in it.

State of employment – A State where the migrant worker is to be engaged, is engaged or has been engaged in a remunerated activity, as the case may be (Art 6(b), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990)

Temporary migrant workers – Skilled, semi-skilled or untrained workers who remain in the receiving country for definite periods as determined in a work contract with an individual worker or a service contract concluded with an enterprise.

Working permit – A legal document giving authorization required for employment of migrant workers in the host country.

Annex 2. Ratified ILO Conventions

	Name of convention	Ratification (accession) document
C 29	Forced Labour Convention, 1930	Law No. 120-II of 14.12.2000
C 81	Labour Inspection Convention, 1947	Law No. 194-II of 7.05.2001
C 87	Freedom of Association and Protection of the Right to Organise Convention, 1948	Law No. 29-II of 30.12.1999
C 88	Employment Service Convention, 1948	Law No. 119-II of 14.12.2000
C 98	Right to Organise and Collective Bargaining Convention, 1949	Law No. 118-II of 14.12.2000
C 100	Equal Remuneration Convention, 1951	Law No. 115-II of 14.12.2000
C 105	Abolition of Forced Labour Convention, 1957	Law No. 117-II of 14.12.2000
C 111	Discrimination (Employment and Occupation) Convention, 1958	Law No. 444-1 of 20.07.1999
C 122	Employment Policy Convention, 1964	Law No. 286-1 of 9.11.1998
C 129	Labour Inspection (Agriculture) Convention, 1969	
C 135	Workers' Representatives Convention, 1971	
C 138	Minimum Age Convention, 1973	Law No. 116-II of 14.12.2000
C 144	Tripartite Consultation (International Labour Standards) Convention, 1976	
C 148	Working Environment (Air Pollution, Noise and Vibration) Convention, 1977	Law No. 10-I of 26.06.1996
C 155	Occupational Safety and Health Convention, 1981	
C 182	Worst Forms of Child Labour Convention, 1999	Law No. 367-II of 26.12.2002
C167	C167 Safety and Health in Construction Convention, 1988	???

Annex 3. Ratified international conventions (protocols) on human rights

Name of convention, protocol	Ratification (accession) document
International Covenant on Economic, Social and Cultural Rights	
International Covenant on Civil and Political Rights	Law No. 91-III of 28.11.2005
Convention on the Rights of the Child	
Optional Protocol to the Convention on the Rights of the Child on the Involvement of children in armed conflict	Law No. 221-II of 4.07.2001
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	
Convention on the Elimination of All Forms of Discrimination against Women	Law No. 248-I of 29.06.1998
Optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women	

Annex 4. Regional and bilateral agreements on labour migration

Name of agreement	Ratification approval document
CIS Agreement of 1994 on cooperation in the areas of labour migration and social protection of migrant workers (Moscow, 15 April 1994)	Ratified by resolution of the RK Supreme Soviet No. 147-XIII of 8.09.1994
Agreement between the Government of the Republic of Kazakhstan and the Government of Mongolia on cooperation on the matters of employment of nationals of Mongolia and the Republic of Kazakhstan (Almaty, 2 December 1994)	Entered into force at the moment of signature
Agreement between the Government of the Republic of Kazakhstan, the Government of the Kyrgyz Republic and the Government of the Republic of Uzbekistan on Creating Legal, Economic and Institutional Environments for Free Workforce Movement (Bishkek, 14 March 1997)	Entered into force at the moment of signature
Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Azerbaijan on the Employment and Social Protection of the Nationals of the Republic of Azerbaijan Temporarily Employed on the Territory of the Republic of Kazakhstan, and Nationals of the Republic of Kazakhstan Temporarily Employed on the Territory of the Republic of Azerbaijan (Astana, 22 October 1999)	Approved by resolution of the Government of the RK No. 1123 of 26.07.2000
Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Belarus on the Employment and Social Protection of the Nationals of the Republic of Belarus Temporarily Employed on the Territory of the Republic of Kazakhstan and the Nationals of the Republic of Kazakhstan Temporarily Employed on the Territory of the Republic of Belarus (Almaty, 23 September 2000)	Approved by resolution of the Government of the RK No. 1503 of 05.10.2000
Agreement between the Government of the Republic of Kazakhstan and the Government of the Kyrgyz Republic on the Employment and Social Protection of Migrant Farm Workers in the Border Regions (Bishkek, 9 July 2002)	Approved by resolution of the Government of the RK No. 29 of 16.01.2003
Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Tajikistan on the Employment and Protection of the Rights of Migrant Workers, Nationals of the Republic of Kazakhstan Temporarily Employed on the Territory of the Republic of Tajikistan and on the Employment and Protection of the Rights of Migrant Workers, Nationals of the Republic of Tajikistan Temporarily Employed on the Territory of the Republic of Kazakhstan (Astana, 4 May 2006)	Approved by resolution of the Government of the RK No. 1248 of 23.12.2006
Agreement between the Government of the Republic of Kazakhstan and the Government of the Kyrgyz Republic on the Employment and Protection of the Rights of Migrant Workers, Nationals of the Republic of Kazakhstan Temporarily Employed on the Territory of the Kyrgyz Republic and on the Employment and Protection of the Rights of Migrant Workers, Nationals of the Kyrgyz Republic Temporarily Employed on the Territory of the Republic of Kazakhstan (Astana, 4 July 2006)	Approved by the resolution of the Government of the RK No. 494 of 13.06.2007

Annex 5. List of relevant laws and regulations of the Republic of Kazakhstan

Nos.	Name of act
1	Constitution of the Republic of Kazakhstan
2	Labour code of the Republic of Kazakhstan No. 251-III of 15 May 2007
3	Criminal code of the Republic of Kazakhstan No. 167-I of 16 July 1997
4	Code of the Republic of Kazakhstan administrative violations No. 155-II of 30 January 2001
5	Law of the Republic of Kazakhstan No. 319-III ZRK of 27 July 2007 “On education”
6	Law of the Republic of Kazakhstan No. 149-III ZRK of 4 July 2006 “On Amnesty due to legalization of illegal migrant workers”
7	Law of the Republic of Kazakhstan No. 30-III ZRK of 7 February 2005 “On employer’s compulsory civil liability insurance to cover any harm caused to the worker’s life and health in performing his/her employment duties”
8	Law of the Republic of Kazakhstan No. 149-II of 23 January 2001 “On employment”
9	Law of the Republic of Kazakhstan No. 204-I of 13 December 1997 “On migration”
10	Law of the Republic of Kazakhstan of 20 June 1997 No. 136-I “On pension benefits in the Republic of Kazakhstan”
11	Law of the Republic of Kazakhstan of 16 April 1997 No. 94-I “On housing relations”
12	Law of the Republic of Kazakhstan of 31 May 1996 No. 3-I “On public associations in the Republic of Kazakhstan”
13	Law of the Republic of Kazakhstan of 20 December 1991 No. 1017-XII “On citizenship of the Republic of Kazakhstan”
14	Resolution of the Constitutional Council of the Republic of Kazakhstan of 7 June 200 No. 4/2 “On official interpretation of article 5, para. 4 of the Constitution of the Republic of Kazakhstan”
15	Conception of migration policy of the Republic of Kazakhstan for the period of 2007-2015 endorsed by Decree of the President of the Republic of Kazakhstan No. 399 of 28 August 2007
16	List of professions and criteria for the persons to whom simplified procedure for granting Kazakh citizenship is applied, approved by Decree of the President of the Republic of Kazakhstan No. 1587 of 6 July 2005
17	Rules on determination of annual quota, requirements and procedure for granting employers permits to employ foreign labour in the Republic of Kazakhstan approved by resolution of the Government of the Republic of Kazakhstan No. 836 of 19 June 2001
18	Rules on investigation and reporting of cases of employment injuries approved by resolution of the Government of the Republic of Kazakhstan No. 326 of 3 March 2001
19	Rules on foreigner entry, stay in and departure from the Republic of Kazakhstan approved by resolution of the Government of the Republic of Kazakhstan No. 136 of 28 January 2000
20	List of socially important and socially dangerous diseases approved by resolution of the Government of the Republic of Kazakhstan No. 468 of 30 March 2000
21	Rules on provision of medical care for foreigners and stateless persons residing on the territory of the Republic of Kazakhstan approved by resolution of the Government of the Republic of Kazakhstan No. 997 of 16 October 2006
22	Resolution of the Government of the Republic of Kazakhstan of 19 December 2007 No. 1242 “On introducing amendments to the resolution of the Government of the Republic of Kazakhstan” No. 836 of 19 June 2001
23	Resolution of the Government of the Republic of Kazakhstan No. 1336 of 28 December 2007 on establishment of the quota of foreign workforce for 2008
24	Handbook of Unified Wage-Rates and Skills for Jobs and Occupations, approved by order No. 266-p of the Ministry of Labour and Social Protection of the Republic of Kazakhstan dated 15 November 2002
25	Handbook of Job Qualifications for Managers, Specialists and Other Officers, approved by order No. 273-p of the Ministry of Labour and Social Protection of the Republic of Kazakhstan dated 22 November 2002

Nos.	Name of act
26	Rules of Procedure for Recognition and Nostrification of Diplomas and Certificates Issued by Foreign Educational Institutions in the Republic of Kazakhstan, Approved by order No. 542 of the Ministry of Education and Science dated 8 August 2003
27	Rules on temporary stay of oralmans and members of their families in the centre of adaptation and integration and on rendering them adaptation services, approved by order No. 225-p of the acting Minister of Labour and Social Protection of the Republic of Kazakhstan dated 27 September 2007
28	Model rules for admission to educational institutions implementing educational programmes of primary, basic secondary and general secondary education approved by order of the Ministry of Education and Science No. 651 of 25 December 2007
29	Job Classifier GK RK 01-99 approved by order of the Standardisation and Certification Committee of the Ministry of Energy, Industry and Trade of the Republic of Kazakhstan No. 22 of 16 October 1999