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Submission on ethnic minorities, women's and children's rights and LGBTI ahead the Human Rights Dialogue between the EU and Kazakhstan

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In the present submission Anti-Discrimination Centre Memorial provides information on the situation of ethnic minorities in Kazakhstan, the situation of vulnerable groups - women, children and migrants - during COVID-19 pandemic, and wide-spread homophobia and lack of protection by state. Each section is followed by the set of recommendations and positive developments where appropriate.

Situation of ethnic minorities

This year has witnessed several cases of inter-ethnic violence, which the state authorities do not address effectively. In February the pogroms of the Dungan minorities took place in the Korday district, leading to at least 11 deaths, followed by less-scale incidents of inter-ethnic violence in July and August with attacks of the Uzbek and Kurds minorities subsequently. In all the cases, the state authorities denied the inter-ethnic aspects of incidents, stating that they were ordinary crimes.

This discourse is a continuation of the previous policy under the Nazarbayev regime, when the President positioned himself as the main guarantor of peaceful co-existence for the country's various ethnicities. This is also the general situation nowadays: the problem of ethnic discrimination is rejected by the current government, the opposition, and majority of the civil society, and the idea of Kazakhstan as an idyllic "country of united nationalities" living in peace and friendship dominates the discourse. Following the pogroms and violence this year some experts have voiced rare critical opinions that tensions, including ethnic tensions, do exist in the society and requires study, analysis, and response, which has not been observed in Kazakhstan for many years.¹

Pogroms of the Dungans, the Korday district, February 2020

The Dungan population in Kazakhstan numbers almost 60,000 and lives densely in the monoethnic villages of Korday District, Jambyl Oblast, where they make up 26 percent of the district's population. They speak the Dungan language (Sino-Tibetan language group), are Sunni Muslims, and maintain close ties with the Dungan people in neighbouring Kyrgyzstan. Given the absence of a proper integration policy, the linguistic, cultural, and other differences with local Kazakhs became factors in the estrangement, which, used maliciously, easily developed into confrontation and anti-Dungan pogroms.

Ethnic clashes between Kazakhs and the Dungan minority broke out in the villages of Masanchi, Sortobe, Bular-Batyr, and Aukhatty, Korday District, Jambyl Oblast, Kazakhstan during the night of February 7 to 8, 2020. Eleven people died (10 Dungans and one Kazakh, according to official data), over 180 Dungans received injuries and gunshot wounds (no information is available

¹ "An expected tragedy: why has nationality policy foundered in Kazakhstan?" February 11, 2020, <https://camonitor.kz/34172-ozhidaemaya-tragediya-pochemu-nacionalnaya-politika-v-rk-poterpela-krah.html>

about Kazakh victims). The Deputy Prosecutor of Kazakhstan announced that 168 houses and 122 vehicles were damaged.² According to the official preliminary assessment the damages amounted to 1.7 billion tenge, or approximately \$4.5 million.³ Fearing for their lives after and during the pogrom, approximately 8,000 Dungans living in Korday District fled to neighboring Kyrgyzstan.

In February 2020 ADC Memorial performed monitoring field mission, and based on the collected information, the following conclusions were drawn: the conflict was ethnic in nature and involved incitement and hate speech directed against the Dungans; for various reasons, members of different social groups, including Dungan minority who suffered from the pogroms, have remained silent about the racial and ethnic roots of the pogrom; there is evidence that the pogroms were not spontaneous but planned in advance; south Kazakhstan and north Kyrgyzstan have seen significant ethnic tension involving the Dungan minority and a high risk of ethnic conflict remains.⁴

The following evidence demonstrates that the pogrom was prepared in advance: the pogromists from other regions were mobilized using messaging apps, and arrive in organised manner, with some weapons and Molotov cocktails, their vehicles were re-outfitted for attacks and pogroms.

The government did not react properly, and the reaction of the law enforcement was delayed. When the pogrom started almost 70 officers of SOBR (a special rapid response unit) that arrived at the scene did not manage to stop the enormous crowd. At approximately at 9:30 p.m., additional district police unit arrived, but they did not interfere. Moreover, there is evidence that officers were part of the crowd of attackers who participated in the looting. The pogroms ended at 5:25 a.m. on February 8, when National Guard and OMON arrived, thirteen-and-a-half hours after the conflict started. Such an extended delay is difficult to explain. All the nearby localities have interior troops who could have arrived in Masanchi within one to four-and-a-half hours. Moreover, as soon as the conflict started, the authorities restricted internet access and blocked messaging apps in the Dungan villages and shut down mobile connections and electricity in Masanchi.

Even though the conflict in Korday was clearly ethnic in nature and planned in advance, the Kazakh officials have not acknowledged the ethnic and racial motives of the attackers. On February 8, MIA labeled the incident a “mundane [conflict] that grew into large clashes”,⁵ and on March 1, the President Tokayev stated that the cause of the unrest was a fight between two criminal groups.⁶

However, the authorities started criminal investigation, and this is a positive development in the overall situation. On March 27, 2020 the deputy of the General Prosecutor Erlik Kenebayev stated that 25 persons who had taken active part in the mass riots were detained and subsequently arrested. Among them there were Kazakhs, Dungans and Kyrgyzs.⁷ The tragic incident happened on 29 April 2020 when Bekbol Kibaev, one of the accused in mass riots, died allegedly following the attempt to

² Власть, 25 people were arrested on suspicion of rioting in the Korday District, 27.03.2020 <https://vlast.kz/novosti/38238-25-people-were-arrested-on-suspicion-of-rioting-in-the-korday-district>

³ News website www.24.kz, “Work continues in Korday District to rebuild villages,” <https://24.kz/ru/news/social/item/373529-v-kordajskom-rajone-prodolzhayutsya-raboty-po-vosstanovleniyu-posjolkov>

⁴ The report was not public, and could be provided upon the request

⁵ “Cause of the conflicts in Masanchi become known”, February 8, 2020, <https://www.ktk.kz/ru/newsfeed/article/2020/02/08/139378/>

⁶ Sputnik Kazakhstan news agency, “Contraband and gang warfare: Tokayev names the true causes of the conflict in Korday,” March 1, 2020, <https://ru.sputniknews.kz/society/20200301/12967703/kontrabanda-banditskie-razborki-tokaev-prichina-korday.html>

⁷ Tengrinews, Special operation because of riots in Korday was conducted in Almaty, Shymkent and Zhambyl region, https://tengrinews.kz/kazakhstan_news/spetsoperatsiyu-iz-za-besporjadkov-kordae-proveli-almaty-396314/

suicide.⁸ At the same time, 43 of the 47 ethnic Kazakhs arrested immediately following the pogroms have been released.

Following arrests, in April the detentions, searches and interrogations of the Dungans took place in the affected Dungan settlements upon the suspicion in the crimes committed during the pogroms. The interrogations were accompanied with tortures aimed at confessions - the detainees are being beaten, strangled, insulted, threatened and harassed in other ways. The interrogations were conducted for 12-14 hours by 5-8 policemen, without lawyers. During the searches in the houses of the Dungans the law enforcement also seriously violated the law: they did not provide any identification documents or warrants, the searches took place at night by the masked military. The elderly persons were also being detained, an elderly woman - Tsunder Husova - died due to stress caused by the search. This practice was later stopped, especially after the intervention of UN Committee on Elimination of Racial Discrimination.⁹

In September 2020, the military court of Almaty found seven accused guilty in mass riots and sentenced to different terms of imprisonment from 3 to 8 years.¹⁰ All the trials are conducted behind the closed doors, and there is very little information in the media regarding the trials. However, as of November 2020, the Dungan community state that they have not received any compensation of their damages and losses from the government. Only the infrastructure is being renewed.

The human rights defenders, who supported the Dungan, faced threats and defamation campaigns against them. On April the Coalition of NGOs of Kazakhstan against torture filed the address to the General Prosecutor of Kazakhstan reacting to illegal actions of the law enforcement in the Korday district.¹¹ Later the same month, the lawyer of Kazakhstan International Bureau for Human Rights Anna Solodova, who had been a contact person in the address, got phone calls with threats from unknown persons.¹² Aggressive-nationalistic threats, related to the address of the Coalition in protection of the Dungans also became a part of the smear campaign against the head of the Kazakhstan Human Rights Bureau Yevgeniy Zhovtis in media and social media.¹³

Attacks against the Uzbeks, Shornak, July 2020

On July 23, 2020 the mass brawl between Kazakh and Uzbek young men was reported in Shornak, Turkestan region. According to the villagers, the quarrel between several men turned into mass fighting with at least three persons injured, several houses and cars damaged.

Various sources reported that the conflict was incited by the video that was published in the social networks. The media reported that on July 23, the calls to attack ethnic Uzbeks were disseminated in the Internet and via messengers. In response to that calls the unknown persons

⁸ Tag News, Arrested in the case of pogroms in the Korday district died in the detention facility in Almaty, <https://kaztag.kz/ru/news/arestovanny-po-delu-o-pogromakh-v-kordayskom-rayone-umer-v-sledstvennom-izolyatore-v-almaty>

⁹ ADC Memorial, The UN Committee on the Elimination of Racial Discrimination spoke up for the Dungans living in Kazakhstan, September 2020, <https://adcmemorial.org/en/news/the-un-committee-on-the-elimination-of-racial-discrimination-spoke-up-for-the-dungans-living-in-kazakhstan/>

¹⁰ MediaZona, Seven accused in the case of mass disorder got from 3 to 8 years of imprisonment, September 29, 2020 <https://mediazona.ca/news/2020/09/29/korday>

¹¹ Coalition of NGO against torture, Address regarding the police raids in the affected villages of the Korday district https://www.notorture.kz/obrashhenie-v-svyazi-s-policejskimi-rejdami-v-postradavshie-sela-kordajskogo-rajona/?fbclid=IwAR0UGWBfVksdxHZzpvBsdPB8WUWFbud3xNSJ4CJsBMV57L_t5ANd0kW-iUc

¹² Coalition against torture, Appeal regarding the threats to coordinator of the Coalition, <https://www.notorture.kz/zajavlenie-po-povodu-ugroz/>

¹³ Frontline Defenders, Smear Campaign against human rights defender Yevgeniy Zhovtis <https://www.frontlinedefenders.org/en/case/smear-campaign-against-human-rights-defender-yevgeniy-zhovtis>

started to gather in Shornak calling to unlawful acts.¹⁴ It was reported that 80 persons were arrested in the night of July 23 to 24 on the approach of Shornak.¹⁵ The police denied the inter-ethnic conflict and reported the detention of six persons, four of them incited the hatred in the Internet.

Together with that, the locals state that the conflicts and miscommunication between the Uzbeks and Kazakhs increased during the recent years, due to change of the name of the settlement and school. They say that such brawls take place regularly. This one was the third during the last year, and demonstrate high level of aggression within the society.¹⁶ The particular concern is caused by the reports of incitement of hatred in the Internet and the pre-planned attempt to initiate attacks.

Attack against the Kurds, Kaskabulak, August 2020 and other incidents

In the night of August 10 to 11, 2020 the unknown persons drove to Kaskabulak, the village with mainly Kurdish population, attacked the head of the village and threw stones in the windows of several houses and library, and then left. The villagers were extremely frightened, many women and children spent the night in the school.

The authorities, as previously denied, any inter-ethnic character of the incident, and stated that the ordinary fight between drunk persons took place.¹⁷ Later it was reported that 14 persons were detained on accusations in hooliganism.¹⁸ Some detainees said that they had come to Kaskabulak because of the messages in the Internet that the Kurd man had attacked a Kazakh woman.

During the year, there have been also other inter-ethnic incidents. In June 2020 there was a brawl between the Kazakh and Uyghur young men, in which five persons were injured. After the incident at the local council meeting it was suggested to change the name of Uyghur district of Alma-Ata region. In August 2020, a man, who was recognised guilty by the court in the events of conflict between the Kazakhs and Chechens in 2007, was murdered.

Such incidents of inter-ethnic violence has not started this year. In 2006 the pogroms of the Chechens, Lezgins and Azerbaijanis took place in Aktau, in 2006 there was a mass brawl between the Kazakh and Turkish workers in the oil field in Tengiz, leading to death, on different estimates, from 15 to 40 persons. In the same 2006, there was massive brawl with more than 300 persons participating in between the Kazakhs and the Uyghurs, in 2007 there was an above-mentioned conflict between the Kazakhs and Chechens. In 2007 there were also pogroms of the Kurds in the Tulkubasskiy district. The similar incidents followed in 2014 - with Uzbeks, in 2016 - with Tajiks and Turkish people.¹⁹

The inadequate reaction of the authorities of Kazakhstan at anti-Dungan pogroms and other inter-ethnic incidents, unwillingness to recognize the problem of inter-ethnic relations in Kazakhstan, the

¹⁴ Asia Terra, In the Turkestan region the brawl took place between Kazakhs and Uzbeks, the pogrom was prevented, July 26, 2020, <http://www.asiaterra.info/news/v-turkestanskoj-oblasti-kazahstana-proizoshla-draka-kazahov-s-uzbekami-pogrom-udalos-predotvratit>

¹⁵ Zona.Kz, Elders of Shornak: We - the Kazakhs and Uzbeks - are brother peoples, 27 July 2020, <https://zonakz.net/2020/07/24/starejshiny-shornaka-my-kazaxi-i-uzbeki-bratskie-narody/>

¹⁶ Radio Azattyq, «There were similar incidents before», The return to Shornak, July 31, 2020 <https://rus.azattyq.org/a/kazahstan-returning-to-shornak-after-the-conflict-between-kazakhs-and-uzbeks/30757678.html>

¹⁷ Radio Azattyq, «Akim says, how we can not believe? We believe. But everyone wants to live». Night attack on Kaskabulak, August 13, 2020 <https://rus.azattyq.org/a/kazahstan-kurds-kaskabulak-village-events/30782329.html>

¹⁸ Lada.kz, Unrest in the Zhambyl region: Berdibek Saparbaev came to Kaskabulak, 11 August 2020, https://www.lada.kz/another_news/82938-besporjadki-v-zhambylskoy-oblasti-berdibek-saparbaev-priehal-v-kaskabulak.html

¹⁹ Asia Terra, Interethnic conflicts in Kazakhstan: why they appear, 03 September 2016, <https://www.asiaterra.info/obshchestvo/mezhnatsionalnye-konflikty-v-kazahstane-pochemu-oni-voznikayut/>

lack of transparent and independent investigation of the pogroms and inter-ethnic violence, as well as persecution of the human rights defenders who protect the ethnic minorities - all these make the minorities extremely vulnerable and force them to be aware of their safe lives in Kazakhstan.

IT IS RECOMMENDED to the government of Kazakhstan:

- ✓ To conduct an effective and impartial investigation of the inter-ethnic events of 2020 in Dungan villages and other inter-ethnic incidents; to investigate torture and other human rights violations; and conduct a legal assessment of the actions of officials and law enforcement during pogroms;
- ✓ To recognize the problem of ethnic tensions and review national policies to prevent manifestations of racism and xenophobia and guaranteeing the rights of ethnic minorities.

Vulnerable groups during COVID-19 pandemic

In the same way, as in other countries, the COVID-19 pandemic and the restrictive measures taken to protect health and lives, had a negative effect on vulnerable groups, especially women, children and migrants.

Women and Gender discrimination

The restrictive measures related to COVID-19 pandemic, and lockdown led to increased domestic violence and economic drawbacks to women in Kazakhstan. In June - August 2020, the Kazakh officials stated that the number of complaints related to domestic violence have increased by 20-40%.²⁰ The civil society organizations reported the similar numbers with alarming increase of death rate by 44%.²¹

However, there is also an underlying systematic problem. In Kazakhstan domestic violence is not criminalised - only administrative liability is provided with punishment of 5 and 10 days-arrests.²² Such an ineffective system that lacks protection mechanisms for victims has especially become dangerous during the lockdown. At least two cases were publicly reported in April and May when husbands killed their wives following the administrative liability.²³ During the pandemic the majority of complaints to police remain without any further measures taken - the courts do not work, no abusers are brought to responsibility.

In September the amendments to the law «On Counteraction to family and domestic violence» were adopted in the first reading by the Parliament. While being a positive measure, aimed at more effective and comprehensive approach, the amendments have been criticised by some civil society organisations because the notion of violence provided by the bill is very broad, and it gives

²⁰ Fergana, From the start of lockdown more than 30 persons died due to domestic violence in Kazakhstan, August 6, 2020, <https://fergana.news/news/120763/>, Zona.kz, The level of domestic violence by 25% during the quarantine, June 29, 2020, <https://zonakz.net/2020/06/29/na-25-vyros-uroven-semejno-bytovogo-nasiliya-v-kazaxstane-v-period-karantina/>

²¹ Central Asia News, The pandemic aggravated the problems of human rights and domestic violence, 3 August 2020, https://central.asia-news.com/ru/articles/cnmi_ca/features/2020/08/03/feature-01, UN Women, From where I stand: “The fact that domestic violence is not a criminal offence in Kazakhstan is hurting women during COVID-19 crisis”, 9 April 2020, <https://www.unwomen.org/en/news/stories/2020/4/from-where-i-stand-dina-smailova-on-covid-19>

²²Radio Azattyq, «Found some causes, and beaten me», The stories of women-victims of domestic violence, March 5, 2020 <https://rus.azattyq.org/a/kazakhstan-domestic-violence-stories/30470830.html>

²³Radio Azattyq, «He called to ambulance and reported that I was beaten by unknown persons», The story of victim of abuses, 6 April 2020, <https://rus.azattyq.org/a/kazakhstan-women-rights-violence/30535430.html>, Fergana, From the start of lockdown more than 30 persons died due to domestic violence in Kazakhstan, August 6, 2020, <https://fergana.news/news/120763/>

excessive power to state authorities without judicial control, especially ones of taking children away from their families.²⁴

It is important to remind about harmful traditional practices directed against women and girls. The practice of early and forced marriages are still wide-spread in a number of closed and rural communities. According to UNFPA more than 1200 girls under 18 marry annually. They often become victims of violence and abuses. Another traditional practice - *uyat* - the unwritten norms of moral and accepted behaviour in the society - is often used to restrict self-expression of women and girls. Traditional actors use «uyat» to judge the different appearance, hair styles or clothes of women, marriage with foreigners or refusal to marry, or independent way of living and behaviour by women and other aspects of private lives and self-determination.

The other problematic issue is loss of jobs and incomes during the pandemic. UN study concludes that 26% of women lost their jobs during the pandemic in Kazakhstan.²⁵ Many women work in the spheres that were affected by the pandemic measures, and was forced to close due to lockdown. Others, who work in the spheres of education and healthcare, face additional workload and threats to healths and lives without additional remuneration. This is aggravated by the existence of banned jobs for women in Kazakhstan. Nowadays 213 professions are banned for women.

The notion of jobs, banned for women is provided by para 2 of Article 26 of the Labour Code of Kazakhstan, and the most recent List of Jobs Restricted for the Use of Women's Labour, Weight Limits and Weight Carriage by Women was adopted by the Minister of Healthcare and Social Development on 8 December 2015.²⁶ Restrictions on women's access to certain jobs in Kazakhstan date back to the Soviet times and there is a practice all over the region that ADC Memorial advocates to be repealed.²⁷

The existing ban leads to increasing salary gap that is more than 32% in Kazakhstan and lower remuneration to women for their work. Many banned jobs are in prestigious and well-paid spheres as oil and gas industry, transport and logistics, underwater or height works. In some locations, there are simply no other works or occupations, and women are forced to work illegally. ADC Memorial has been working with the case of woman from Kazakhstan who worked at the banned profession, because in the location she lived there was no other available vacancies. In times of pandemic, the access to these jobs could be important solution for some women, as a number of banned spheres are considered as «key» during pandemic and are protected from job loss.

In October 2019 the UN Committee on the Elimination of All Forms of Discrimination Against Women, recommended Kazakhstan to repeal the list of prohibited occupations for women, facilitate access for women to such occupations, and ensure that any restrictions are applied individually and not to all women.²⁸ This recommendation is among the four priority recommendations. The similar recommendation was provided by UN Committee on Social, Economic and Cultural Rights in March 2019.

²⁴ Radio Azattyq, The Kazakhs collect the signatures against the law on domestic violence, 25 October 2020, <https://rus.azattyq.org/a/30911530.html>

²⁵ UN Women, the impact of Covid-19 on women's and men's lives and livelihoods, <https://www2.unwomen.org/-/media/field-office/eca/attachments/publications/2020/07/factsheet-kazakhstan-fin-min.pdf?la=en&vs=1209>

²⁶ Decision of Ministry of Health and Social Development No 944, from 8 December 2015 https://online.zakon.kz/Document/?doc_id=35844164

²⁷ ADC Memorial, Campaign All Jobs for All Women <https://adcmemorial.org/en/all-jobs4all-women/>

²⁸ CEDAW, Concluding Observations on Kazakhstan, November 2019, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fKAZ%2fCO%2f5&Lang=en

In the beginning of August 2020, Elvira Azimova, Ombudswoman of Kazakhstan, sent an official letter to President of Kazakhstan Mr. Tokayev advocating the changes in the Labour Code and equal labor rights.²⁹ At the same time, to protect motherhood, fatherhood and childhood, Ms. Azimova suggested expanding the list of medical contraindications in the labour market.

Children

The main challenge to children during pandemic, except domestic violence as well, has become access to education. The significant part out of 3,3 million pupils in the country do not have equipment for distant studies - either computers, or the Internet access or both. 24 000 teachers do not have computers, and 2 000 do not have access to the Internet.³⁰

Despite the government has put efforts to distribute computers to the most vulnerable families and organise classes in person for those who are unable to study from home, these measures are not sufficient. Not all vulnerable families - especially those with three and more children and in rural areas - were provided with the computers, and not all children even have smartphones to study. Often a family with several children has only one smartphone or one computer for the whole family, and as soon as there are several classes taking place at the same time, someone could not study.³¹ Moreover, in many rural areas there is no access to the Internet or the connection is not stable enough to study. In these conditions, many children simply do not have access to education, and lose their motivation to study, can not learn and progress.

Migrants

Kazakhstan is a transit country for the migrants from Uzbekistan, Tajikistan and Kyrgyzstan, who work in Russia. The closed borders of the countries in the region, including Kazakhstan, led to humanitarian crisis when thousands migrants, who stayed in Russia and other countries, could not return to their countries.³² It resulted in thousands migrants who get stuck at the borders, train and bus stations, airports, and in the spontaneous temporary camps with no living conditions, access to water, food and sanitary facilities. The overcrowded camps have become locations for easy spread of the virus.

In Orenburg region of Russia the first spontaneous camp of mainly Uzbek migrants, who could not transit Kazakhstan and enter Uzbekistan, was organised in April-May 2020. Only a month later, after the three-side negotiations between Kazakhstan, Russia and Uzbekistan, the special transport was organised by Uzbekistan to provide possibility for their citizens to return. The sanitary situation in the camp was extremely dangerous, the water and food were not provided regularly, as well as sanitary facilities and items. In summer, the same spontaneous migrants' camp was organized in the Samara region, near the Kinel city. For more than a month of functioning of the camp, more than 8000 persons stayed there. The sanitary conditions was also quite poor, and the situation was dire for the vulnerable categories as pregnant women, children, elderly persons. The transporting of migrants was organized by trains, and also based on three-countries negotiations. Only in September the last group of migrants was sent home. However, the new camp was organized in the other city nearby.

²⁹ NewTimes.kz, The Ombudsperson called the President to make the labor rights of men and women equal, August 6, 2020 <https://newtimes.kz/obshchestvo/114896-ombudsmen-prizvala-prezidenta-rk-uravniat-trudovye-prava-muzhchin-i-zhenshchin>

³⁰ Radio Azattyq, Hundred thousand schoolchildren are without computers and Internet. How the distant learning will look like, August 27, 2020 <https://rus.azattyq.org/a/kazakhstan-distance-learning-without-computers/30804954.html>

³¹ Radio Azattyq, Five will study with one smartphone: how the new academic year starts in Kazakhstan, 1 September 2020, <https://rus.azattyq.org/a/kazakhstan-the-new-school-year-has-begun-distance-learning/30814731.html>

³² MediaZona, In the tent camp in Samara more than 4,2 thousand of citizens of Uzbekistan got stuck due to closed borders, 16 September 2020, <https://mediazona.ca/news/2020/09/16/samara>

The same situation took place in Kazakhstan itself. The migrants from Tajikistan, who used to work in Kazakhstan, could not leave due to closure of borders and transit countries - Kyrgyzstan and Uzbekistan. It is documented that for more than a month a group of Tajik migrants stayed in the bus station near the Kazakh-Uzbek border, including women, children (there was also a child with disability), elderly, without normal living conditions, sanitary facilities, food and water.³³

We welcome the efforts put in place to organise the return of migrants to their countries of origin during the pandemic. However, the response took very long time in such an emergency situation, was not well-coordinated and put in danger thousands people.

IT IS RECOMMENDED to the government of Kazakhstan:

- ✓ To put in place an effective system for protection of women and children from domestic violence and organise public consultations on new amendments to the Law on domestic violence;
- ✓ To cancel list of banned professions, change the Labor code and ensure the access of women to previously-banned jobs and training on these specialisations;
- ✓ To continue efforts to ensure access of all children and teachers to facilities (computers and internet) necessary to distant education process;
- ✓ To provide free transit to migrants, returning to their countries of origin, and elaborate the systematic solution with the neighbouring countries.

Detention of children-migrants and the Chisinau Agreement

Despite the recent reforms to improve conditions and procedures for children-migrants in Kazakhstan, the centres, where children-migrants are placed, are still closed institutions, and Kazakhstan still uses the outdated Chisinau Agreement to return children migrants.

The Chisinau Agreement (the Agreement of Cooperation of States-Members of the Commonwealth of Independent States on the Return of Minors to their State of Residence, 2002)³⁴ regulates the return of children, mainly unaccompanied or separated, to their countries of origin as part of cooperation between Ministry of Internal Affairs structures of CIS countries. Under the Agreement, children are returned to their countries of origin through “transit institutions” within Ministries of Internal Affairs that are listed in the Annex to the agreement. Children are first placed in the detention centers in the country of residence, and then following the accomplishment of all the procedures are returned to the same detention centre in their country of origin. In practice children stay in detention for quite a long time.³⁵ In the end of 2019 ADC Memorial assisted return of a child from Kazakhstan to Moldova, who had spent at least several months in the closed center.

Kazakhstan has changed its system, and the reception centres for children-migrants have been transformed to adaptation centres, and transferred to the Ministry of Education from Ministry of Internal Affairs. The children-migrants, staying in the centres, are provided with education and are enrolled in to the schools. Together with that, the centres are still closed institutions with rather «police» approach to children-migrants, and stay in the centres amounts *de facto* detention. The centres are mainly closed to public monitoring and human rights defenders, especially because the institutions within Ministry of Education are not subject to general monitoring rules and standards

³³ Radio Azattyq, «Give me some food», Hundreds of Tajik migrants live in the bus station bear the border, 3 June 2020, <https://rus.azattyq.org/a/desperate-to-get-home-over-two-hundreds-of-tajik-migrants-stranded-on-kazakh-uzbek-border/30649903.html>

³⁴ The Agreement of Cooperation of States-Members of the Commonwealth of Independent States on the Return of Minors to their State of Residence, cis.minsk.by/page/1462

³⁵ More information could be found in the report of ADC Memorial, <https://adcmemorial.org/en/publications/migrant-children-in-cis-countries-lack-of-adequate-legal-norms-regulating-cooperation-between-the-countries-involved/>

as police ones. In 2019 ADC Memorial with local partners attempted to visit the adaptation centres to children-migrants in Shymkent and Almaty within the international event dedicated to the issue of return of children-migrants, but got refusal despite the numerous requests.

ADC Memorial considers that the Chisinau Agreement should be replaced by the special bilateral treaties between countries of Eastern Europe and Central Asia concerning the return of children.³⁶ The return of unaccompanied and separated children is not covered and could not be covered by readmission agreements, as well as children and families with children need additional guarantees in the best interests of child. These treaties must be based on the recommendations of the UN Committee on the Rights of the Child and the UN Committee on the Rights of All Migrant Workers and Members of Their Families concerning the special rights of children in migration, the International Convention on the Rights of the Child, and Global Compact on Migration.

IT IS RECOMMENDED to the government of Kazakhstan:

- ✓ To continue reform of the adaptation centres for children-migrants in line with the international standards, and re-organize them to open child-friendly facilities;
- ✓ To elaborate and conclude bilateral agreements with other countries of the region on return of children.

Homophobia and lack of protection: LGBTI+

Even though the situation with LGBTI+ in Kazakhstan is better than in other countries of the region, the national legislation lacks the comprehensive protection of the rights of LGBTI+ that together with wide-spread homophobia result in lack of effective protection for these minorities.³⁷

The level of homophobia is quite high - some religious and political figures publicly condemn LGBTI+ people, the bullying and blackmail on social media take place. The individuals, involved in these unlawful activities, meet LGBTI+ people online, get photos and videos of them, and then threaten with forced coming out. The homophobia is also widespread in families. LGBTI+ people face various forms of violence, including psychological, economic, and physical violence in their families. The idea that the “deviation” of LGBTI+ people can be cured by various means, from religious and mystical to medical, is still widespread.

ADC Memorial works with the case in Kazakhstan, when two men were attacked by relatives of one of them due to suspicions about their sexual orientation. The abusers beat the young men, spouting homophobic slurs, filmed all this and posted a video to the social media. The video had more than 50,000 views. One of the victims was forced to quit his job and to move. When he filed a complaint to the police, and the police found abusers, and they admitted what they did. After that the police stated that these acts do not amount to crime, and refused to open a criminal case.

Another widely-reported case of homophobia this year in Kazakhstan is also connected with violence in family. The parents so desperately tried to “treat” their son from homosexuality, that they even took him to Russia for a brain surgery in the belief that an operation would cure him of «homosexuality». The doctors in Russia refused to make a surgery, and it was made back in Kazakhstan. Moreover, the man was beaten by his family, and was forced to marry. When at some

³⁶ ADC Memorial, Rules for Safe Return, CrossBorderChildhood campaign, <https://adcmemorial.org/en/crossborderchildhood/savereturnrules/>

³⁷ The more detailed information could be found in the report of ADC Memorial LGBTI+ in the region of Central Asia: repressions, discrimination, exclusion, May 2020, https://adcmemorial.org/wp-content/uploads/lgbti_ca_eng1.pdf

point the young man applied to police for protection, they returned him to the family and did not provide any protection.³⁸

As for the transgender persons, the recent reforms have made the transition process more transparent in some ways, but more complicated in others. Now only people over the age of 21 can perform transition. Hormone therapy and surgical corrections are mandatory, as is a year-long course of social and psychological adaptation after the transition is complete. This complicates the situation of transgender people, because many transgender people do not want to have surgery (only 1.5 percent of known transgender men have had a surgical procedure), and some do not want to pose any risk to their health. Moreover, all these make the whole transition process costly. Another negative consequence is that the length of the transition procedure has increased up to several years. The new procedures have been criticized not just by human rights defenders, but also by psychiatrists, who now must decide if a person needs hormone therapy and surgery, even though their main task should be confirmation of the diagnosis.

Even though Kazakh laws have regulated the transition procedure, not all physicians in remote or rural areas are qualified enough to help transgender people. Medical clearance commissions have been organized only in Almaty. Another problem is that, upon completion of transition, IIN (individual identification number) is not changed, which is encoded with the gender marker. Workers at a number of institutions have access to this kind of personal data that could result in discrimination, and even refusal of services including for technical reasons. For example, bank and payroll software may have an error if the gender marker entered does not match the IIN or PIN.

IT IS RECOMMENDED to the government of Kazakhstan:

- ✓ To ensure effective protection of LGBTI+ persons, inter alia by training law enforcement and other state officials on hate crimes and the special needs and guarantees for LGBTI+ persons;
- ✓ To reform the gender transition procedure in accordance with human rights obligations.

³⁸ Radio Azattyq, Banishment of gins and brain surgery: a history from Uralsk, 2020, <https://rus.azattyq.org/a/kazakhstan-uralsk-human-story-gay/30448975.html>