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Informal Practices and Corruption In Regulation of Labour Migration in Kazakhstan

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ABSTRACT This paper analyses the factors that cause labour migrants in Kazakhstan to work illegally and resort to a web of ‘corrupt’ practices in order to protect their status, employment and earnings. It begins with an analysis of the official migration policies, the existing legal and administrative framework and identifies the inherent ambiguities and complexities of these policies. Second, it details the various practices of legalization and documentation on the ground by utilizing data from my ongoing fieldwork among various groups of labour migrants in Almaty, Astana, Shymkent and Aktau in Kazakhstan. The paper documents the various vested interests within the migration and police services which are able to exploit the legal inadequacies and the brokerage provided by ethnic entrepreneurs, intermediaries in offering services to the migrants. It illustrates the emergence and entrenchment of a shadow economy of migration in key cities in Kazakhstan which feeds on the ‘official’ policies and institutions.

KEYWORDS Labour migration, migrant networks, informal migration, migration and corruption

Kazakhstan’s rising prosperity and a thriving market economy have turned it into the second most dynamic economy in the Eurasian region after Russia. It is also the second most prominent destination after Russia for migrant workers from the neighbouring Central Asian states. Almost two thirds of the migrant workers it receives are from Uzbekistan. Overall, between 20-40% of the populations of Uzbekistan, Kyrgyzstan and Tajikistan are working abroad. Of these about 90% of Tajiks, 80%

Kyrgyz, and almost two thirds to three fourth Uzbeks are estimated to be working in Russia and most of the remaining ones in Kazakhstan.

Its geographical and cultural proximity, together with the reputation for ethnic stability and tolerance make Kazakhstan a far more hospitable migrant destination than Russia for Central Asian migrants, particularly for the youth who are leaving their rural homes to work abroad for the first time. While the pay scales are significantly higher in Russia, the absence of overt racism, social acceptance of foreigners and the relative ease of forming connections with the locals on the basis of common Islamic practices and linguistic affinity are reassuring to new as well as more experienced migrants.

The existence of a visa-free travel regime among the Commonwealth of Independent States (CIS) facilitates the informal, short-term, and frequent movement of migrant labour. Migrants are required to register with the Migration Police affiliated with the Ministry of Internal Affairs within 5 days of arrival by providing a proof of their local address and a number of other supporting documents. They can stay for a specified period as ‘visitors’ and are not allowed to work without a legal permit which is to be obtained by the prospective employer from the Ministry of Labour and Social Welfare. The complex procedure of obtaining a work permit and plentiful opportunities to work informally without it mean that at least 80% of the CIS migrants are working without an official work permit, which relegates them to an ‘illegal’ or ‘undocumented’ status in the eyes of the state authorities.

Although migrant labour is occupying a crucial niche in many sectors, Kazakhstan is far from being a migrant-seeking or migrant-welcoming state. Its stringent and rigid legal framework for regulating migration makes it very cumbersome for a business firm or an individual enterprise to employ migrant workers. These restrictions also generate conditions that condemn the migrants to remain undocumented, invisible, and thus ‘illegal’.

Kazakhstan is experiencing a growing demand for workforce in a variety of sectors: construction, agriculture – notably cotton, tobacco, fruit and vegetable farms and in jobs requiring hard physical labour. These shortages are partly a result of the demographic structure but are also due to the fact that an increasing number of Kazakhstani citizens are opting to work in other sectors of the economy which are less labour intensive. The ready availability of unskilled or semi-skilled migrants who can be hired through informal or non-legal channels, be paid less than half of what a Kazakhstani citizen would be entitled to, and dismissed without any obligation to

contribute towards taxes, pension or medical care are significantly contributing to a boom in all forms of construction, particularly in urban areas.

Both the migrants and the employers or business are able to evade the strict legal provisions through informal labour agreements and enter into mutually beneficial exchanges. The law and order officials – police, border guards, and the officials of the Migration Police – also exploit the complexity of the law to their advantage in extorting payoffs in order to provide informal protection, which is popularly known as *krysha* ('cover').

This paper will detail the personal interactions and exchanges involving the different categories of migrant workers, their kin and ethnic networks, intermediaries (*posredniki*) or brokers, local employers (business, enterprises, contractors and sub-contractors) and state officials, which are producing a vortex of informal and illegal practices and strategies allowing all involved actors to advance their respective interests. These exchanges enable migrants to work while remaining unseen, unheard and undocumented, allow employers to hire cheap labour force and avoid any legal accountability, and offer opportunities to the police and bureaucrats to use their position to extort bribes and fines and receive payoffs for providing protection to migrants.

Methodology

This paper is based on my fieldwork and interviews with Central Asian labour migrants in Kazakhstan over the past three years. My research is centred on migrant workers in Kazakhstan's three major cities – Astana, Almaty and Shymkent. As the new capital which was inaugurated in 1998, Astana is the site of a massive construction boom and is rapidly emerging as a 'new' city attracting migrants from rural regions as well as from the neighbouring Central Asian states. As the former capital, Almaty remains economically and culturally the most vibrant city with an emerging middle class and a service sector that absorbs migrants. Shymkent, popularly referred to as 'Kazakhstan's Texas', attracts a large number of Uzbek migrants due to its proximity to Uzbekistan and has a thriving informal economy due to its various bazaars which serve as magnets for migrants.

My research consisted of visiting a number of construction sites within and outskirts of the city, service establishments ranging from bakeries, café and small shops, as well as various bazaars where migrants work in retail trade and in jobs requiring hard physical labour which are often shunned by the locals. In addition, I also

talked to a number of small and medium businesspeople who have employed migrant workers, some police and security officials introduced to me by friends and acquaintances, leaders or representatives of Kyrgyz, Uzbek and Tajik communities, government officials, academics, media persons, NGO activists (organizations Korgau in Astana, Kazakhstan Bureau of Human Rights and Rule of Law in Almaty, Sana Sezim in Shymkent), and representatives of international organizations such as the International Organization for Migration (IOM), International Labour Organization (ILO), Organization for Security and Cooperation in Europe (OSCE), International Red Cross and Red Crescent Societies (ICRC) and UNHCR.

The material used here is from my various interview data and from legal and policy documents, media reports, reports published by NGOs and international organizations and scholarly and policy analysis works published on related themes. The research illuminates how migrants negotiate the extensive web of laws, procedures, policies, and bureaucratic controls as they garner the relevant documents and resources to be able to work without impediments and devise reliable ways of sending income to relatives back home.

Kazakhstan's migration law and legal framework

Kazakhstan is a destination for two broad categories of migrants: (1) ethnic Kazakhs from the near and far abroad, who are entitled to return and receive assistance for repatriation to their ancestral homeland; and (2) the various labour migrants from the neighbouring states, loosely referred to as 'guest workers' (*gastarbeitery*, the Russianized plural of the German term *Gastarbeiter*), who supply the much needed semi-skilled and unskilled labour but do not have a corresponding legal status or protection. Indeed, the term 'migration', as used in laws, official policy discourses and academic research predominantly captures the state-sponsored repatriation of ethnic Kazakhs, referred to as *oralman*, and the movement from regions to the urban centres.

According to the UN and International Organization for Migration (IOM) ratings, in 2011 Kazakhstan held 15th place in terms of indicators of migration (World Bank 2011).¹ These ratings are based on official statistics provided by states on immigrants. The immigrants counted in Kazakhstan's statistics are largely ethnic Kazakhs from the near and far abroad who have been returning to Kazakhstan since 1992 in response to the government programme for voluntary repatriation of ethnic Kazakhs, referred to as

¹ World Bank, *Migration and Remittances Factbook*, Second Edition. Washington, D.C., 2011. <http://issuu.com/world.bank.publications/docs/9780821382189>.

oralman. About 800,000 have already arrived in the past two decades though the numbers are declining now. The UN and IOM figures, which rely on Kazakhstani government statistics, do not take into account the share of the migrant workers from the neighbouring states.

It is virtually impossible to determine how many labour migrants are there in Kazakhstan at a time. There is a lack of agreement on adopting a standardized methodology across the region to document migration. The Ministry of Internal Affairs of Kazakhstan determines the number of migrants by checking the entries and exits on the mandatory migration card: the number of migrants is arrived at by a simple subtraction of those who left Kazakhstan from those who entered. These data do not distinguish between those transiting through the country and those who stay for a certain period. They only record entries and exits and provide no indication of the number of persons entering the country and staying. However, those who have ‘stayed’ may include people with valid visa and authorization to work, even though a vast majority who stay on are labour migrants.

An estimated 95% of all migrant workers are from Uzbekistan, Kyrgyzstan and Tajikistan respectively and most of the remaining ones are from China, Turkey and Afghanistan. The total number of Uzbeks working without a legal permit is estimated to be between 200,000 and 800,000. South Kazakhstan oblast, especially the cities Shymkent and Taraz have an unspecified number of migrant workers from Uzbekistan.²

Many are short-term labour migrants undertaking a limited number of visits to work. Others are travelling back and forth on a regular basis in order to renew their visitor status while effectively working in Kazakhstan on a regular and ongoing basis. The number of foreign labour migrants varies from season to season, with the peak observed during the March to November period. It is impossible to ascertain how many labour migrants are there in Kazakhstan.³

International Organization of Migration (IOM) in Kazakhstan estimated the number of ‘illegal’ labour migrants in Kazakhstan in 2010 to be between 600,000 to 1.2 million on the basis of figures released by the Ministry of Internal Affairs and the

² Gaziza Baiturova, “V Zhambylskoi oblasti rastet chislo nelega’nykh migrantov iz sosednikh stran,” [“The number of illegal migrants from the neighbouring states rising in Zhambyl oblast,”] *Radio Azattyq*, 22 September 2008.

<http://rus.azattyq.org/articleprintview/1201953.html>

³ “Kazakh Government Intending to Review its Attitude to Labour Migrants,” *Voice of Freedom Central Asia*, 16 December 2009. <http://vof.kg/?p=3554&lang=en>

Ministry of Labour and Social Welfare. Other international agencies (ILO, OSCE), experts and academics quote the IOM estimates which results in a proliferation of statistics that tell us very little about the processes under way.

The profound difficulty of compiling statistics and documentation on the migrants is due to the simple reality that migrants are extremely mobile, and are “neither here nor there” at a time as the short authorised period of stay (now up to 30 days for Uzbek migrants) make it very difficult to know the numbers. Migrants shuffle between ‘legal’ or registered status and ‘illegal’ time to time, and sometimes without their full knowledge. Cautioning against the state centric bias of the term and highlighting a normative and human rights perspective, International organizations such as IOM, ILO, UN recommend using the term ‘irregular’, ‘unregulated’ or ‘undocumented’ migrants whereas several states continue to use the term ‘illegal’.

The *oralman* are welcome, albeit as an ethnocultural as well as demographic assets. They also face numerous difficulties in formalizing their status and attaining settlement and citizenship papers. While any person of Kazakh ancestry can acquire Kazakhstani citizenship (though they have to renounce their existing citizenship), it takes anything from 3 months to two years to muster all the documentation and acquire a Kazakhstani passport. The government has launched various programmes to facilitate an effective social and cultural integration of the oralman and their absorption in the labour market. However, a significant number of oralman have encountered obstacles in obtaining relevant information and assistance in procuring documentation, housing, and access to social services and formalizing their status as an equal Kazakhstani citizen.⁴ Allegations of appropriation by local authorities of funds allocated for settlement, housing, and financial assistance to oralman are common. A study by Kazakhstan’s Transparency International points to a lack of clear mechanism of settlement of repatriates and “non-transparent methods of obtaining a legal status for the oralman” and lists various instances of corruption.⁵ It is little surprise then that the various CIS labour migrants, who work for short duration on an informal, temporary basis, have

⁴ Aleksandr Kostin. “Novye vyzovy dlya Kazakhstanskogo obshchestva: politicheskii aspect problem oralmanov, chast’ 1,” *Kafedra stran postsovetskogo zarubezh’ia RGGU* [“New challenges for the Kazakhstani society. political aspect of oralman’s problem. Part 1], <http://www.postsoviet.ru/print.php?pid=2256> accessed 20 November 2012.

⁵ “Korrupsiia i nezakonnaya migratsiia,” Transparency International. Almaty, 2005.

<http://www.camonitor.com/index.php?module=news&nid=806>.

Also see the English version. “Corruption and illegal migration.” Transparency Kazakhstan, Almaty 2005. [http://www.transparencykazakhstan.org/UserFiles/file/Corruption and illegal migration.pdf](http://www.transparencykazakhstan.org/UserFiles/file/Corruption%20and%20illegal%20migration.pdf).

encountered even greater obstacles as they lack a legal status and are employed illegally.

Kazakhstan's migration law and legal-regulatory framework

The Migration Law adopted in July 2011 after considerable delay and debate, replaced the 1997 law which had long become outdated. The new law mainly deals with the various issues concerning voluntary repatriation of the *oralman* and settlement of rural migrants and does not offer a clear definition of migration or of migrant workers.⁶ Article 3 defines various types of migrations and parts 3-8 elaborate these while using the terms 'migration' and 'immigration' interchangeably. They also contain detailed provisions for quotas for highly-skilled foreign labour migrants. However, the law is virtually silent about quotas or recruitment of low-skilled migrant workers and does not address the increasing scale of informal labour migration from the near abroad.

The migration law was adopted just days before the parliament adjourned for summer vacation, which partly explains some ambiguities and repetitions. It does not take on board several amendments proposed by the OSCE, IOM to the draft law. While a few other proposals are incorporated in the law, they are contradicted by other features or other existing laws.⁷ For instance, the law does not describe clearly how migrants (foreign immigrants) may obtain legalization, residency, permanent settlement and citizenship. Most importantly, it does not spell out what constitutes 'illegal' migration and merely describes it as "violation of the laws of the Republic of Kazakhstan regulating migration." The law contains references to other laws which make it very difficult to understand it on its own right.

In the absence of a proper legal category for the various labour migrants (*trudovye migranty*), the term '*gastarbeitery*', the Russianised plural of the German term '*die Gastarbeiter*' (guest workers) is frequently used in media and in informal discussions.

⁶ *Zakon Respubliki Kazakhstana o migratsii naseleniya*, [The Law of the Republic of Kazakhstan on Migration of Populations.] 8 August 2011.

http://www.zakon.kz/top_law_news/228002-zakon-respubliki-kazakhstan-ot-22.html

⁷ "Opinion on the Draft Law of the Republic of Kazakhstan on Migration of the Population," OSCE Centre in Astana, Warsaw, 24 September 2009.

<http://www.osce.org/astana/77797>;

http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CDUQFjAC&url=http%3A%2F%2Flegislationline.org%2Fdownload%2Faction%2Fdownload%2Fid%2F3466%2Ffile%2FOpinion%2520on%2520draft%2520law%2520of%2520Kazakhstan%2520on%2520regulation%2520of%2520migration%2520processes%252011%2520April%25202011.pdf&ei=73B8T9DkIMKj0QXd_Li3DQ&usq=AFQjCNG8wPMMxA4DcPxrTHa3OCdkAIxsRQ

It has entered the public discourse through Russian media to refer to the CIS migrants and the various contract workers brought in by foreign companies under bilateral agreements. The category *Gastarbeiter* originated in Germany in the 1950s to refer to foreign migrant workers (largely from Turkey) who were brought in legally to work as contract workers. It has a very specific association and is not applicable in the prevalent juridical and socio-cultural context in Kazakhstan. The *Gastarbeiter* in Germany were legal workers, who enjoyed legal and economic protection and were to work as temporary fixed term migrants. The *gastarbeitery* in Kazakhstan (as in Russia) have no legal status, no social protection though as fellow Central Asian Muslims they are able to blend in better in the Kazakhstani society.

Migrant quotas: Perspectives of the employers

Kazakhstan's labour and demographic policies reflect a lack of balance between the detailed provisions for hiring a small number of highly-skilled migrant labour ('quotas') in the law and the virtual lack of provision for the growing need for low-skilled and unskilled jobs in a number of sectors of the economy.

The migration law provides for a small number of quotas for highly qualified foreign specialists as long as these do not adversely affect domestic labour market and national interest. It identifies four categories of workers eligible for the quota: managers of businesses and enterprises, highly qualified specialists, highly skilled workers, and since 2006, seasonal agricultural workers. Authorization for the final category is subject to a bilateral agreement: Kazakhstan has concluded an agreement with Kyrgyzstan but has been unable to conclude such agreement with Uzbekistan, from which a vast majority of migrant workers come.

The procedure for obtaining foreign workforce authorisations is cumbersome and impractical. In order to obtain work permit for foreign workforce, an employer must submit an application to local executive agencies along with a long list of supporting documents. They must prove that they have first sought to fill vacancies with Kazakh nationals (there is no such requirement for agricultural workers and some other posts). Other requirements include: a list of the job qualifications set for each position; certificate stating availability of applicants for vacant positions from the regional database; information, where applicable, on compliance with previously issued permits; justification for the number of migrant workers requested etc. Authorisations are issued by regional executive bodies and those in Almaty and Astana. Furthermore,

permits are issued only to the employer, not to the migrant workers, for a fixed number of migrant workers in specified categories.

The provision of quotas for highly-skilled foreign migrants has generated much discussion, which mimics the debates animating in Russia about quotas and permits (*patent*) for migrant workers. This debate may be a red herring considering the fact that the quota set initially was very small and has been reduced even further. The quota for 2008 was 120,000, which was equivalent to 1.6% of the workforce. This was reduced by half in 2009 to 65,000 in response to the financial crisis afflicting the economy then and further to 33,000 in 2011 when the economy had recovered considerably. The number of registered migrants has also fallen since the introduction of the quotas.⁸

How do employers and ordinary citizens cope with these restrictions? Why would they go for more expensive domestic labour force, when the quality of labour is not necessarily reliable, when ‘cheap’ but informal labour is available?

Yerbol, a businessman, who once held a key position in the City Administration in Almaty and is a senior figure in the Nur Otan party, observed: “It is just not realistic to meet all these requirements. Even if I one did everything legally, applied for a work permit for all the Uzbek construction workers employed and supplied all the documents in support required under some 12-13 points of the law, then it would take so much time and nerves that I would forget the original purpose of why these papers were filled out in the first place.....and even if the permission were to be granted, it would be a one off [*razovoe*]: the employer would be required to submit proof that he is training Kazakh workers to fill such positions in the future, at his own expense.”

The construction sector, including the established firms, subcontractors and private builders, depends on the cheap semi-skilled labour, readily supplied by the migrants as the locals aspire to do white-collar professional jobs or prefer to remain unemployed while engaging in a variety of rent-seeking activities. It is widely known that many major enterprises, let alone small and medium ones, are hiring illegal workers and escape tax payments. “They keep two registers – one with a list of official employees to show to the tax persons (*nalogovye*) and the other which contains people without *propiska* and documentation,” said Viktor, an ethnic Korean migrant construction worker from Uzbekistan. The penalties on employers hiring ‘illegal’ migrants are very low and are often settled through bribes.

⁸ *Kazakhstan - Kyrgyzstan. Exploitation of Migrant Workers, Protection Denied to Asylum Seekers and Refugees*, FIDH. International Federation for Human Rights, October 2009. <http://fidh.org/IMG/pdf/Kazakhstan530a-3.pdf>

Alisher, an ethnic Uzbek with permanent residency in Kazakhstan, has a small construction firm. He goes to his native Andizhan regularly to recruit workers and has kept his Uzbek passport though his wife and children are Kazakhstani citizens. I asked him if he has any Kazakh workers. He laughed and said, “Kazakhs don’t know how to work!” adding that they’ll never take orders from Uzbeks. He noted that till 2007 things were much easier. Uzbeks could work for 3 months and paid only a small tax. Now Uzbeks can get the registration for only 1 month. “They’re my family”, he said, adding that he looks after them and helps them out in all practicalities. None of the men working for him have a legal work permit. Alisher was comfortable in providing these details to me as I was led to him by Elmira, the wife of a local policeman who was of Uzbek-Tatar descent. She helps migrants with documentation and also runs a marriage bureau.

A group of 27 construction workers from Bukhara – all Tajiks from the same *mahalla* constituting a construction brigade – were building the house for a member of the Astana elite in August 2011. Hired by a local sub-contractor, they had completed the construction of a mosque in Karaganda a few months earlier. Since mosque construction is authorized by the government which issues contracts to private construction companies, in theory the agency that was sub-contracted is required to comply with the legal norms. It was obvious that the agency had violated these terms by hiring these migrant workers without having a legal permit. A majority of the men in this brigade were already seasoned migrants, having accumulated the experience of working in a number of remote regions in Russia over last 5-6 years. Two older members of the brigade said that they had work, housing, connections and *krysha* available in St. Petersburg where they could return “anytime”: however, the opportunity to work in Astana brought them closer to home, though the money was less. The construction of a mosque was “noble work” and they also wanted to explore further options in Kazakhstan. They agreed to meet me on the condition that I won’t talk about ‘politics’ and ‘documents’ and that we converse about Bollywood, old Hindi movies and about India in general.

Even ordinary middle class urban residents, who otherwise could not afford to build a home or a dacha by paying the going market price, are secure in the knowledge that ‘cheap’ Karakalpak or Uzbek construction workers are readily available for building a new home or refurbishing an existing one. Alisha, an ethnic Kazakh who migrated to Kazakhstan in 2002 from Tashkent who earned her living by selling tea and cakes in a bazaar got to know a group of men from Karakalpakstan who were able

to offer much 'cheaper' labour than others. These four men stayed with her family for two months to renovate her house. "I fed them, looked after them, one of them got sick so I got medications.....I went with them to the bank to transfer money and protected them from the police. We lived together like a family." Her contacts with the security personnel and the police in the bazaar helped her to attain protection for herself and her workers.

Migrant strategies: Circumventing the legal framework

Entry to Kazakhstan is the easiest part of the migrants' journey as they can avail of the CIS visa free travel regime. They habitually write the purpose of visit on the migration card as 'personal' or 'visiting relatives'. Until April 2010, visitors from the CIS could stay up to 90-days and it was relatively simple to extend this for two additional such terms. Migrants typically took it for granted that they could stay for 9 months to work, albeit on an informal and non-legal basis without having to exit and re-enter in order to obtain a new entry stamp. Following political unrest in Kyrgyzstan in April 2010, Kazakhstan reduced the term of stay for CIS citizens to 30 days, which could be extended by another term if they could muster the relevant documentation. As long as the informal economy in which the migrants are entrenched continues to thrive, the restrictions imposed by the law – such as the decision to reduce the term of registration from 90 days to 30 days since April 2010 – do not significantly deter migrants from entering Kazakhstan to work and only increase the transaction costs involved in maintaining proper documentation. 'Documentation', in migrants' parlance, usually means having a valid passport, a valid migration card, registration at a local residence (which is not a work permit) and appropriate *propiska* or status in the home country.

I began my conversations with the various group of migrants with many basic questions: Where are you from? Do you have a registration? How did you get it? Who got it for you? How much did you pay? How long have you been here? When did you come here first? When did you visit home last? Have you had any altercation with the police or migration authorities? How was it settled? Do you have any friends among them? Do you have a *krysha*?

The responses reveal that the entire process of arriving in the country, finding jobs and housing, obtaining documentation, legalization, protection and settlement (*vid na zhitel'stvo*) tends to be informal and quasi-legal. The connections and networks encompassing friends, relatives, one's kin or ethnic networks, employers, intermediaries or *posredniki* ('migration entrepreneurs') and a range of service

providers or facilitators are pivotal in this. These connections allow the migrants and their networks to protect themselves from the state officials, ranging from the security staff (*okhranniki*) of the particular premises, police (habitually referred to by the migrants by using the derogatory *menty*), migration officials (*migratsionniki*, implying a clique or gang of migration officials), and bureaucrats (*chinovniki*) as well as to establish mutually beneficial transactions. Migrants are driven to resort to these personal exchanges and practices in order to maintain their legal status as a ‘visitor’, obtain temporary employment, and to avail of protection. Bribe, *blat* and other informal and non-legal practices help to mitigate the inadequacy and deficiency of the legal framework.⁹

Below are snippets from some of my conversations which illustrate some of the common practices of procuring documents and legality:

- (1) One sub-group among migrant workers are the various ‘shuttle traders’ – a majority of whom are from Kyrgyzstan – who travel back and forth between the two countries every few weeks to get new supply of goods and to obtain a new stamp of entry on the passports. Aigerim, a Kyrgyz woman from Bishkek with a settlement status in Kazakhstan, has a counter at the *barakholka* in Almaty where she sells garments. She regularly travels to China, Turkey to buy materials for a sewing workshop in Bishkek and brings readymade garments to sell in Almaty. A battery of relatives and friends shuttle back and forth between Almaty and Bishkek to assist her in her business. Her brother, a Bishkek resident, drives a taxi between Almaty and Bishkek, brings some merchandise by car. Individuals cannot bring goods by cars – they can only be brought in trucks with an official permit – but he has contacts at the border and they let him through for a small payment. He has also developed a small business of collecting passports of other migrants to get stamped at the border. Aigerim’s 19 year old sister, who is a student at Manas University in Bishkek, visits frequently during weekends, holidays, vacations or when help is needed.

Aigerim’s example reveals that typically behind one ‘legal’ or documented foreign migrant working at a retail outlet in the bazaar, there is a network of family or friends with temporary registration or uncertain legal status who depend on this one legal

⁹ Alena Ledeneva, *Russia’s Economy of Favours: Blat, Networking and Informal Exchange*. Cambridge: Cambridge University Press, 1998.

person. The 'legal' person is the public face who engages in transactions and arranges the entry, employment, registration and protection (*krysha*) for others.

(2) Nadira, a 47 year old baker from Andizhan has been living in Shymkent since 2003. Every three months she crosses the border to Tashkent in order to get a re-entry stamp. I reminded her that migrants could not stay beyond 30 days under the present regulation (this conversation took place in May 2011). She had quite likely assumed that I did not know these facts. She quickly warmed up to me and revealed that she hadn't been to Uzbekistan for 15 months. She paid an acquaintance to carry her passport across the border to get a new migration card. She is a de facto resident in Shymkent and has built an extensive network of people who know her and value the quality of the bread she bakes. She rents a house from a local Uzbek, which contains the *tandyr* (oven) and necessities for baking *nan*, and is registered at his address. Clearly, the local Uzbek was responsible for keeping her documentation up to date.

(3) Babamurad from Navoi region came to Astana first in 2007 after having worked in Russia in Ekaterinburg for 4 months and in Khanty-Mansiisk region for 9 months. Having initially told me that he goes to Tashkent every month to get his registration renewed, he revealed during the third conversation that he had been sending his passport with an agent to get the new stamp in the past 6 months. He doesn't like the idea of having to do this but noted that "one must live – (*zhit' to nado*)" and that he was only doing what "everyone else is doing." He added, "I work hard and am honest. I haven't done any wrong to anyone. Why should I not be allowed to work?"

(4) Elmira, of Uzbek-Tatar descent whose Kazakh husband is a local policeman, owns 3 counters at the *barakholka* bazaar which she covertly rents to Kyrgyz fruits and vegetable sellers. They pay her the going rate for rent, taxes, for storage containers and in turn she helps them with all the documentation and protecting from police checks and raids. She readily granted me the interview and allowed me to have conversations with the 3 Kyrgyz women who she rents the counters to. She also demanded that I pay

them for their time as they were taking a couple of hours out of their working time. So I paid them an amount equivalent to the sales profit, which revealed to me that the sale was thriving.

The above category of migrants represents the more resourceful people who have built strong networks and amassed the requisite cultural and social capital. They are also the more skilled and successful migrants with several years of experience of working in Kazakhstan. Many of the more recent migrants do not have well-developed networks and are far more likely to pay brokers or facilitators money for registration (usually 3000-5000 tenge) and for finding housing. It is far more rational for them to pay this amount than spend the minimum of a day at the Migration Police to register in person (though registration is free) and face a scenario where they could be asked to produce further documentation, which is usually seen as a pretext for soliciting bribes. Many migrants also opt to pay the brokers or 'friends' to have their passports carried across the border to obtain a new migration card with a new 30 day permit as this is a cheaper and more convenient option than crossing the border oneself.

Several others are forced to overstay in order to complete the assigned construction job in order to receive the payment and have their documents returned. Many migrants are not paid until the construction is over. Some dishonest employers report them to the police and have them deported after the work is over. There is usually a deal between such employers and the police: the latter are able to get their 'quota' of illegal workers to report to their chiefs and the former saves money by not having to pay the migrant workers.¹⁰

Amendment to the law on registration of foreigners in summer 2012 allows Kyrgyz citizens to stay 'up to 90 days'. However, few migrants who I talked to in September 2012 in Shymkent were aware of this or saw it as an improvement. I had informal conversations with about 15 migrants from Kyrgyzstan who were working in the bazaar in Shymkent during which I was assisted by of a couple of workers of the NGO Sana Sezim. These migrants quickly pointed to an 'elder' as a resource person. He was an ethnic Kyrgyz with Kazakhstani citizenship who had a garment stall in the bazaar and had been helping fellow Kyrgyz with documentation. He clarified that the amendment had little practical effect: "up to 90 days does not mean that migrants will actually be granted 90 days to stay" and that only the more resourceful ones, "with

¹⁰ My conversations with members of the NGO Sana Sezim, Legal Centre for Women's Initiatives, Shymkent, May 2011.

connections”, are able to get a 90 day registration. The rest of the migrants have to settle for the 30 day permit and mobilize resources and connections to get the stay extended and then re-enter the country to obtain a new migration card. I had been told in the previous week by a senior figure at the IOM office in Astana that the migration law was being liberalized as the citizens of Kyrgyzstan were authorised to ‘stay for 90 days.’ The activists of Sana Sezim were not aware of this “liberalizing measure”, which they said was only on paper as most cases for legal help handled by them pertained to those whose registration had expired beyond the 30 day period. This is yet another example of reforming a law on paper without providing for a corresponding mechanism for its implementation. Most migrants were simply unaware of the new provision and devised their plans on the assumption that they could only stay for up to 30 days.

All migrants routinely face problems pertaining to registration and fixed terms of visits. In addition, they encounter problems related to the specific categories to which they belong to, i.e., as ‘guests’ (as most labour migrants legally are), as ‘persons with a settlement status’, as ‘students’ and as ‘persons with a legal work permit’. However, “the root cause of the problem is the migration law itself - it is uniformly bad [*odinakovo plokhoe*] for all categories of migrants whether refugees, contract workers and those working under quotas, those visiting families, students...,” said Viktoria Tyuleneva, a human rights lawyer with Kazakhstan’s Bureau on Human Rights and Rule of Law. She added, “The second biggest problem is the Migration Police itself, who see in each migrant a source of revenue.” Tyuleneva noted that she and her colleagues could feel gratified for having won some cases against the Migration Police until 2007. However, they hadn’t had a single successful case against them in the last 4-5 years.¹¹

Battle against ‘illegal’ migration

The Ministry of Internal Affairs compiles statistics on arrests, detention and deportation of illegal migrants or foreigners. It frequently conducts operations such as ‘Migrant’, ‘Law and Order’ (*pravoporiadok*) a few times a year, raiding various construction sites, service establishments and bazaars to track down illegal migrants, fine their employers and carry out mass deportations. According to one available statistics, the operations ‘Nelegal’ in 2010 resulted in administrative fines levied on

¹¹ Conversations with Viktoria Tyuleneva, Almaty, September 2012.

some 76,000 migrants.¹² In contrast, in 2009 about 69,000 were fined though the deportees were the same.¹³ This was the year when Kazakhstan was in the throes of the financial crisis which led to a fall in the number of migrants and a government crackdown on them. In 2008, 17,844 administrative proceedings were brought for violations of the terms of stay for foreigners in Kazakhstan, and the vast majority (17,054) were from the CIS. Over half of these are citizens of Uzbekistan. There were 2493 deportations, 391 cases were brought against employers for violations of the rule of employment of the foreign workforce.¹⁴

These data do not provide an accurate picture of the extent of 'illegality' of the migrants and of various 'violations' of the migration law. One key aim of generating such statistics on arrests and prosecution of 'illegal migrants' by the Police and the Ministry of Internal Affairs is to demonstrate that they are diligently fulfilling the guidelines to hunt and deport illegal workers and also implementing the programme of combating illegal migration and crime in the cities.

Lower-ranking police are expected to 'deliver' a certain number of 'illegal migrants', report cases of 'administrative violations' and the various 'criminal activities' in order to prove to their higher ups that they are carrying out their duties diligently. Sharof, a Tajik and now a Kazakhstani citizen who owns a shop in the *barakholka* in Almaty said that the various checks and raids were a signal to their superiors that the police are effectively doing their job. "It is a common knowledge that they are authorised to collect bribes and deliver a certain amount of their collection to the top officers," he added. Most migrants see police checks and raids as opportunities for the police to supplement their earnings (by collecting bribes).

It is the most vulnerable migrants, often first time migrants without any networks, who tend to get caught, fined and deported. Sharof noted that there were very few cases of deportations of Tajik migrants, because "we don't allow it. A Tajik doesn't just come here not knowing where he is going: he goes where he has close network, he knows his own people, and they put in place the various arrangements for him. He goes where he has relatives, contacts, networks."

¹² Expulsion (vydvorenie) is a milder penalty as it does not necessarily result in a deportation stamp on the passport. A deported person is not allowed re-entry for another 5 year period.

¹³ Veronica Lim, "Tochka pritiazheniia, ili tipichno migrantskaia strana," ["A point of attraction or a typical migration country?"] *Central Asia Monitor*, 25 February 2011, <http://www.camonitor.com/index.php?module=news&nid=806>

¹⁴ Nurgul Zhiger, "V Kazakhstane gotovitsia novaya redaktsiia zakona o migratsii," ["A new edition of the law on migration being drafted in Kazakhstan"] *Liter*, 5 April 2011, <http://www.nomad.su/?a=3-201104060026>.

The local Tajik community, as well as the Tajik Consulate in Almaty assist the new migrants in obtaining documentation and help them to find jobs.¹⁵ Sharof has helped a number of his kin from his native Kurgan Tepe (Qorghonteppa) to work and settle in Almaty and claimed that not a single of them had any problems because he had befriended a number of local policemen. He also had very effective advice for his fellow Tajiks: [i] don't give the passport to them (say, it is at home, or at the OVIR for registration or at the Embassy); [ii] don't give the original of any document; [iii] always carry a copy of the migration card, registration or propiska with you; [iv] The migration card should be the first document to show if you are asked to show documents, so don't offer to show anything else.

Deportation is among the biggest threats that migrants face. A deportation stamp bars them from travelling within the CIS for five years. A Tajik migrant described a deportation stamp on the passport as a "huge headache", not just for the deportee, but also for the extended family and friends. "When the deportee gets home, he would lose at least one month's wages and spend enormous time and money to procure new set of documents with a new identity. The whole process could cost him between \$2000-\$3000. So he may as well offer some of that amount to the authorities in Kazakhstan and reach a settlement with them." Daulat from Uzbekistan who has been travelling to Kazakhstan for some 3 years said that until 2010, a useful strategy for those who had overstayed was to "lose the registration form at the border and negotiate a fine" though this has become far more risky now.

Since August 2011, a new law allows migrants the option of paying an 'administrative fine' of about 16,180 tenge (\$100) which gives them a 12 day grace period within which to leave the country without any further trouble. The fine is to be paid online to the designated account, which is a measure intended to eliminate corruption. If they fail to pay the fine, then a deportation order is issued. Not many migrants are aware of this law or are able to pay the fine online. The average monthly pay of an Uzbek is less than the amount of the fine. Many Uzbek migrants opt to risk overstaying and then "settle the fine at the border."

Restructuring of migration administration – *plus ça change...*¹⁶

¹⁵ Interview with Izotullo Serimsakov, Embassy of Tajikistan, Astana, 18 August, 2011

¹⁶ "*Plus ça change plus c'est la même chose*" – the more things change, the more they stay the same.

The more elaborate, complex and restrictive the law and regulations pertaining to the status of migrants and the conditions under which they can work, the greater is the scope for extortion and corruption among the relevant offices. The law on migration has two key targets or constituencies: [i] the various ministries, government departments, agencies and officials, including the Border and Migration Police who are entrusted with the task of implementing; and [ii] the international organizations (IOM, OSCE, ILO, EU) as well as the various advocates for granting labour rights and developing a rights-based approach to migration. The various migration and labour laws also indirectly protect private employers who hire 'illegal' migrants by not levying significant fines and not elaborating a mechanism of making them comply with the law. The one constituency that it does not address and does not protect are the migrants themselves.

Over the past decade, the government has continued to reorganise the various state organs dealing with migration. In 2004 the Agency on Migration and Demography, which had been set up in the 1990s to deal with the issue of *oralman*, was abolished. Its functions were transferred to the Ministry of Labour and Social Protection, which handles all matters related to the *oralman*, especially setting quotas for repatriation and allocation of funds. An implicit rationale was to reduce corruption in the agency and to make the registration procedure more efficient. However, few believe that the restructuring has helped to reduce corruption or made it easier for the migrants to register.

A recent restructuring designates the Committee of Migration Police, set up within the Department of Administrative Police of the Ministry of Internal Affairs, to handle the issue of registration, legal status of migrants. Commonly referred to as Migration Police, it deals with technical issues and policy implementing as the Ministry of Labour and Social Welfare is charged with policy making. The police and law and order officials entrusted with functions of regulation and management of migration are affiliated with the Ministry of Internal, and there is no oversight by any civil body or an independent structure of migration related issues.¹⁷ In contrast to the Federal Migration Service (FMS) in Russia, which puts a formal emphasis on 'service' in place of the earlier 'policing' functions, Kazakhstan's Migration Police is yet to undergo a shift in nomenclature. Ongoing reforms and restructuring have now elevated the FMS in Russia to the level of a ministry. There may be a corresponding change in the

¹⁷ Lim, "Tochka pritiazheniia"

migration agencies in Kazakhstan but such restructuring from above is unlikely to effectively address the deficiencies of the migration regulatory framework. There are no mechanisms within the administrative organs that check the scale of corruption within them and the proposals to establish a civil body in place of the police to handle migration have not yet taken effect.

A survey by Transparency Kazakhstan in 2005 explored the linkages between migration and corruption by interviewing 80 experts from various spheres - state officials, representative of public associations, science and research institutes and mass media. The majority (72.6%) mentioned that the main factor responsible for corruption in the migration sphere is misuse of power by migration officials in state organs and 45% said that bureaucratization of the procedures and the absence of mechanisms for combating corruption within state structures, particular migration office. Corruption was highest in the process of registration in the Ministry of Internal; in obtaining work permit and in the hiring of migrant workers by employers, in obtaining licence to hire migrant workers.¹⁸

Role of NGOs and international organizations in assisting migrants

For migrants, as well as Kazakhstani citizens who are driven by the economic rationale to hire migrants without work permit, the state and its laws are a hindrance and an inconvenience. They see the incumbents of state offices as *blatnye* - who have acquired the office with the help of relatives or through *blat* and use it for private enrichment and for installing their own network of family and friends. The entire life-experience of ordinary people has taught them to distrust state institutions, their functionaries, especially the police – including the border and migration police. It is economically rational, though risky, for both migrants and employers to circumvent the law and order apparatus when possible or show a nominal compliance with procedures while subverting the law in reality.

NGOs and international organizations, whose mandate is to advocate a rule of law-based approach emphasizing the importance of attaining legal documents and abiding by proper procedures, find themselves in a bind as they encounter corruption and misuse of office among the government officials as well as a wilful ignorance of the law and its deliberate violations by the migrants.

¹⁸ “Korrupsiia i nezakonnaya migratsiia”

Migrants approach an NGO, or are put in contact with an NGO or international organization only when they encounter serious problems such as loss or withholding (by the employers) of passport and other documents, exploitation and ill-treatment, non-payment of wages and looming threat of deportation. No more than 2-3 percent of the migrants approach the NGOs and civil rights organizations, including the IOM, ILO, International Committee of the Red Cross and Red Crescent (ICRC) – all of which have programmes to aid legalization of migrants.¹⁹ Those who seek redress tend to people who lack any network, documents or have been victims of sex trafficking, bonded labour or exploitation.²⁰ The ICRC reported an incremental increase in the numbers of migrants approaching them for help well as a visible increase in their knowledge of laws and procedures.²¹ The Tajiks and Kyrgyz tend to be far better informed about legal procedures and their rights. The activities of various civil rights groups as well as governmental programmes have made an impact.²²

Migrants from Uzbekistan (including a significant numbers from Karakalpakstan and from the rural areas) tend to be the least informed and least likely to approach NGOs or international organizations for help. According to Anna Ryl', director of the NGO Korgau based in Astana, "Uzbeks simply don't take the laws seriously. Their ignorance of laws and procedures is astonishing, resulting in a gross disregard for doing things according to rules. They feel that everything is possible if one pays – in fact this is the only way of getting anything done."²³ In fact, migrants, including Uzbeks, are often acutely aware of the need to obtain registration, work and protection to be able to work as an 'illegal' worker – it is the sheer survival logic that pushes them to disregard for formal shell of legality and procedures and invest in developing a network of relatives and kin, resourcefulness and take calculated risks.

Ryl' lamented that "if migrants come to us and complain, then we can represent their case to the Migration Police and demand clarification. But most of them just don't

¹⁹ Conversations with members of NGO Korgau in Astana, August 2011; NGO Sana Sezim in Shymkent, May August 2011 & September 2012; ICRC in Astana, September 2012.

²⁰ " 'Hellish Work': Exploitation of Migrant Tobacco Workers in Kazakhstan." *Human Rights Watch*. July 2010.

http://www.hrw.org/sites/default/files/reports/kazakhstan0710webwcover_1.pdf

²¹ Interview with ICRC staff, August 2011 and September 2012, Astana.

²² For example, the Regional Migration Programme of the DFID

<http://www.gfmd.org/en/pfp/188-central-asia-regional-migration-programme-carmmp.html>

focuses on informing migrants about their rights, access to social services and employment opportunities for migrants from Kyrgyzstan and Tajikistan working in Kazakhstan and Russia. There is no corresponding programme for Uzbek migrants.

²³ Interview with Anna Ryl', Director of NGO Korgau, August 2011, Astana.

bother – it is easier for them to pay bribes than bother to fight....”²⁴ Indeed, a migrant who has arrived in search of employment, and can stay only up to 30 days during one visit, is interested in quickly finding a job, housing and getting some money. It is easier for him to pay 3000-6000 tenge to an intermediary for registration and for finding him a job. The language of legality and formal procedures used by the NGOs is far too remote from the actual life experience of navigating the world in which laws and authority are used and manipulated for private gains.

NGOs and international organizations working to establish a regulatory framework for migration are dependent on cooperation with the government. This explains their reluctance to criticise the government though they recognise that that informal, non-legal practices arise in response to the inadequacies of the legal framework as well as the reluctance on the part of the states in Central Asia to establish a bilateral or multilateral regulatory framework that allows for legal employment and social protection of migrant workers. Migrants from Uzbekistan in particular are prone to work illegally due to the apparent reticence on the part of the Uzbek government to accept the crucial role that labour migration and remittances are playing in the country’s social structure and economy and the refusal to enact policies that protect its citizens working abroad. Therefore the absence of any bilateral or regional agreement on migrant labour, combined with the migrants’ own lack of knowledge of the legal procedures, a greater willingness to take risks and to resolve issues through payoffs have also increased the likelihood of them being targeted by the police for checks and extortions.

Concluding remarks

Peter Schuck, a noted expert on immigration and refugee issues in the US, notes that the increase in the number of ‘undocumented migrants’ worldwide is largely due to the “inability of the states to adequately and efficiently capture and document the full range of diverse migratory movements.”²⁵ The purported ‘illegality’ (and correspondingly ‘criminality’) ascribed to migrants is often a consequence of an inadequate legal-institutional framework governing migration processes. It is also a product of disjunction between a country’s immigration policy and the domestic and regional labour market, the lack of adequate legal provisions that enable a foreign

²⁴ Ibid.

²⁵ Peter H. Schuck, “Law and the Study of Migration,” in Caroline Brettell & James F. Hollifield eds., *Migration Theory: Talking across disciplines*. Routledge: London, 2008.

migrant to work legally while the informal economy begins to depend on them, and ultimately, the failure to incorporate a normative and pragmatic dimension into its policy framework.

The ethnographic data presented in the paper illustrate that the legal and institutional apparatus, policy guidelines and the official discourse constitute only the visible layer or superstructure of the emerging migration regime in Kazakhstan. It is the web of informal and non-legal practices and exchanges between migrants, their networks, intermediaries and the various state officials which form the solid base of the informal labour migration system. These informal practices, which have emerged in response to the inadequacy and loopholes within the legal framework, are steadily becoming routinised as the natural way of acquiring documentation, work, and protection from the regulating bodies. They further erode the ability of the state to control and regulate the borders and contain the informal movement of labour across the borders.

The absence of reliable government statistics on the number of migrants – including on ‘illegal’ and ‘undocumented’ migrants – makes it difficult to assess their impact on the various sectors of the economy. The increasing dependence of the various sectors of the economy on cheap and irregular or undocumented foreign labour migrants is contributing to a thriving informal economy in the cities in which migrants maintain a vital niche.