



HUMAN
RIGHTS
WATCH

Striking Oil, Striking Workers

Violations of Labor Rights in Kazakhstan's Oil Sector



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Acronyms

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| ATS | ArgymakTransService LLP |
| CEACR | Committee of Experts on the Application of Conventions and Recommendations |
| CFA | Committee on Freedom of Association |
| CITIC | China International Trust and Investment Corporation |
| FDI | Foreign Direct Investment |
| FPRK | Federation of Trade Unions of the Republic of Kazakhstan |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ILO | International Labour Organisation |
| ITUC | International Trade Union Confederation |
| ITUCK | Independent Trade Union Center of Kazakhstan |
| JSC | Joint Stock Company |
| KBM | KarazhanbasMunai JSC |
| KMG EP | KazMunaiGas Exploration Production |
| KMG NC | KazMunaiGas National Company |
| KSPK | Confederation of Free Trade Unions of Kazakhstan |
| OMG | OzenMunaiGas |
| TMS | TuplarMunaiService LLP |



Map of Kazakhstan and Mangystau Region. © 2012 Human Rights Watch

Summary

Thousands of workers employed in Kazakhstan's oil and gas sector downed their tools in May 2011 in three separate labor strikes at companies operating in the petroleum sector in western Kazakhstan. While the labor disputes preceding the strikes developed independently of one another, workers and labor unions representing them considered the strikes at all three companies last-ditch efforts to resolve long-standing workers' grievances over issues such as low pay and interference by company management in trade union activity. In response to the strikes and in the course of workers' efforts to resolve labor disputes by other means prior to striking, Kazakh authorities and the three companies variously violated workers' fundamental rights, including freedom of association, collective bargaining and expression, and the right to strike.

This report, based on interviews with oil workers in Kazakhstan's petroleum sector who participated in strikes in western Kazakhstan in 2011, documents human rights violations by companies and Kazakh authorities in the months preceding and during the strikes at the oil service contractor Ersai Caspian Contractor LLC and at the oil exploration and production companies KarazhanbasMunai JSC and OzenMunaiGas. The three strikes lasted from one and a half to seven months starting in May 2011. The protracted strikes were unprecedented in oil-rich Kazakhstan, a country that promotes itself as providing a stable investment climate and being a reliable trade partner.

Kazakhstan is the largest country in Central Asia and boasts the fastest growing economy in the region, fueled by its large reserves of natural resources such as oil, gas, coal and uranium. In the last decade, Kazakhstan has annually drawn billions of dollars in foreign direct investment, including from the United States, Great Britain, and Russia, most of which pours into its oil and gas sector. Oil sales have accounted for nearly 40 percent of total government revenue in recent years. As of January 2011, Kazakhstan has the world's eleventh largest amount of proven oil reserves, the bulk of which can be found in western Kazakhstan, a semi-arid region along the Caspian Sea.

In particular, this report documents how the three companies and the Kazakh government violated the rights of oil workers to freedom of association, the right to organize and bargain collectively. Ersai Caspian Contractor LLC and KarazhanbasMunai JSC restricted union

leaders' access to company territory and denied workers space to hold general meetings. KarazhanbasMunai JSC failed to recognize the election of a new acting union chairman. All three companies dismissed hundreds of workers after they participated in peaceful strikes. The report also documents how local authorities brought administrative sanctions against union members in retaliation for legitimate union activity, and how a union lawyer was sentenced to six years in prison for speaking to workers about wage disparity. Furthermore, the government of Kazakhstan has placed undue legal restrictions on Kazakh oil workers' freedom of assembly and on their right to strike. These actions grossly undermine workers' freedom of association and rights to organize and bargain collectively.

In the months leading up to the strikes, workers at Ersai Caspian Contractor LLC, KarazhanbasMunai JSC, and OzenMunaiGas attempted to voice grievances, including demands for higher wages, either through their unions in an effort to have these demands reviewed by a mediation commission, or in individual, direct communications with company management. The right to collective bargaining is enshrined in International Labour Organisation (ILO) conventions to which Kazakhstan is party and in Kazakhstan's national labor laws. The three companies declined in various ways to review workers' demands in mediation procedures that could have brought about resolution of the workers' grievances. Believing they had no other option to resolve their industrial disputes, workers at the three companies went on strike, a fundamental right to which workers may resort to further and defend their economic interests.

Local courts declared each of the three strikes illegal, citing workers' failure to comply with national legal requirements to conduct legal strikes, as well as a labor code provision that prohibits strikes at "hazardous production facilities," a designation that includes Ersai Caspian Contractor LLC, KarazhanbasMunai JSC, and OzenMunaiGas. However, Human Rights Watch considers national legislation regulating strikes in Kazakhstan very burdensome and the blanket ban on conducting strikes in certain sectors of the economy overly broad and in violation of international labor standards.

On the basis of court rulings rendering the strikes illegal, local authorities brought administrative charges against those they considered to be the leaders of the strikes, and in unfair hearings that did not respect due process standards, sentenced them to short-term administrative arrest. The authorities also brought criminal charges of "inciting social discord," a charge so vague and so broad that it can be used to criminalize legitimate

exercise of the right to free speech and assembly, against a union lawyer at Karazhanbas-Munai, sentencing her to six years in prison, and used restrictive legislation regulating freedom of assembly to convict an oil worker at OzenMunaiGas for organizing an illegal strike. Over the months workers were on strike, the three companies altogether fired over 2,000 workers, in some cases in violation of national legislation.

Despite the court rulings, workers persevered with their peaceful strikes. Authorities broke the strike at Ersai Caspian Contractor in June 2011, after they threatened to round up strikers and bring administrative charges against them if they did not disperse. Security forces brought the strike at OzenMunaiGas to an abrupt end on December 16, 2011 after clashes erupted between people who had gathered on the central square in the city of Zhanaozen, including striking oil workers and police. That day, the local administration had planned Independence Day celebrations on Zhanaozen's central square where striking oil workers had been gathering daily for several months. After initial clashes on the square, over the course of the day several buildings were set on fire and shops were looted.

In response to the outbreak of violence, police opened fire, killing at least 12 people and wounding dozens of others, according to government numbers. Three other individuals died, and dozens of police were wounded in the clashes, according to Kazakhstan's Prosecutor General's office. Immediately following the violence, President Nursultan Nazarbaev declared a state of emergency in Zhanaozen and ordered an investigation into the violence. He also ordered a government commission to address the more pressing socioeconomic problems in Zhanaozen and to find new employment for oil workers who had been dismissed from OzenMunaiGas and KarazhanbasMunai. The strike at KarazhanbasMunai effectively came to an end at this point too.

In the months since the outbreak of violence in Zhanaozen, the authorities have targeted oil workers, their supporters, and others who allegedly participated in the December 2011 unrest with criminal charges. Human Rights Watch is seriously concerned that the authorities seized upon this tragic outbreak of violence as a pretext for retaliating against workers who had actively exercised their legitimate right to strike in the preceding months.

On March 27, 2012, 37 oil workers and others were tried on charges of organizing or participating in the unrest. Despite credible allegations made by many of the defendants in court that police and security forces ill-treated and tortured in pre-trial custody in order to

force them to give testimony against themselves and others, the authorities refused to thoroughly and impartially investigate these allegations. On June 4, the court convicted 34 of the defendants, and sentenced 13 of them to prison terms. The rest were released under amnesty, will serve suspended sentences, or were acquitted. The appeals court upheld all but one of the sentences, reducing one prison term from seven to five years.

In January and February 2012, authorities also arrested several oil workers and opposition activists who supported the oil workers during the strike for allegedly “inciting social discord.” The trial of Vladimir Kozlov, leader of the unregistered opposition party *Alga!;* Serik Sapargali, a member of the People’s Front opposition movement; and Akzhanat Aminov, an oil worker from Zhanaozen, began on August 16, 2012.

This report provides documentation and analysis of the industrial labor disputes and strikes that preceded the violence in Zhanaozen in December 2011 and assesses the laws and tactics deployed by the authorities and the companies involved to break the strikes against international standards on workers’ freedom of association and collective bargaining.

The duration of the strikes, the fact that the original claims of the workers at all three companies were never fully resolved, and the bloody end to the strike at OzenMunaiGas raise serious questions about the mechanisms in place in Kazakhstan to address workers’ grievances and have serious implications for international businesses and governments seeking to make long-term investments in Kazakhstan. The mass dismissals that followed the workers’ strikes, attempts by the authorities to break up the strikes, and the imprisonment of union leaders for participation in peaceful strikes all violate rights guaranteed under international law. They also send a clear signal to unions and employees across Kazakhstan that they cannot count on laws in place in Kazakhstan to protect these rights.

Instead of protecting workers’ rights and promoting reliable mechanisms for collective bargaining and negotiations that both employers and workers can enjoy and trust, the authorities in Kazakhstan have used vaguely defined and restrictive labor legislation to target workers and union activists for making demands and have failed to protect workers’ rights when employers have interfered in legitimate union activity. Human Rights Watch sent letters to the three companies whose workers went on strike to solicit their views, as well as to the Ministry of Labor and Social Protection. Human Rights Watch received responses from two of the three companies, Ersai Caspian Contractor LLC and

OzenMunaiGas. The third company, KarazhanbasMunai JSC, and the Ministry of Labor and Social Protection did not respond.

Ersai Caspian Contractor LLC

Ersai Caspian Contractor LLC (Ersai), where the first of three strikes documented in this report took place, is a joint venture between Kazakhstan’s ERC Holdings, a subsidiary of Lancaster Group Kazakhstan, and Saipem International B.V., a wholly-owned subsidiary of Italy’s Saipem S.p.A, which is a partial subsidiary of Eni S.p.A. Ersai provides construction and other services to oil exploration and production companies from its service yard in Kuryk, a small town in western Kazakhstan. In March 2011, Karakiya, an independent union at Ersai, submitted to company management a list of demands including higher wages and non-interference in the union’s activities, after the company placed restrictions on the union leader’s access to company territory. Ersai management declined to initiate review of Karakiya union demands, citing national labor laws regulating industrial disputes.

In the weeks following submission of their demands to Ersai management, Ersai’s personnel and security departments summoned and questioned workers and, in some cases, threatened workers who had signed the demands with dismissal unless they denied participation in the union meeting at which members had formulated the demands. One Ersai worker, Yermek Y. (not his real name), told Human Rights Watch that following this meeting he was summoned by company management for questioning and was told by a police officer and the head of Ersai security, “You’re on a black list. You should quit.” Harassing and threatening union members with dismissal for participating in legitimate union activities constitutes a grave violation of freedom of association as protected under international law.

Karakiya union persisted in its efforts to have union members’ demands reviewed by the company. After repeated failed attempts, however, workers felt they had no option but to go on strike. In mid-May, Karakiya union and other Ersai workers who supported the union’s demands downed their tools.

A local court found the strike at Ersai Caspian Contractor illegal on grounds that strikes are prohibited at “hazardous production facilities,” a designation that includes this type of

petroleum service company, and because workers failed to adhere to legal provisions regulating the right to strike.

In late May, in an apparent effort to break the strike, Ersai Caspian Contractor closed access to the Kuryk yard, forcing workers who resided at the yard while on shift to sleep outside and preventing their access to toilets and showers. In June, a court temporarily imprisoned the five members of the strike committee and suspended Karakiya union for six months for holding an illegal strike, actions that directly violate workers' rights to hold a peaceful strike.

Ersai Caspian Contractor informed Human Rights Watch that the “[c]ompany has a long history of constructive and collective bargaining relations” and that it “does respect and observe rights of employees to form trade unions.” Ersai informed Human Rights Watch that it sought to meet with the Karakiya union before union members went on strike but did not address the claims that union members were summoned, questioned, and harassed after holding a trade union meeting in March 2011.

KarazhanbasMunai JSC

KarazhanbasMunai JSC, where the second of three strikes documented in this report took place from May to December 2011, is a joint venture between China’s state-owned CITIC Group and KazMunaiGas Exploration Production Company, which is majority-owned by Kazakhstan’s state oil and gas company, KazMunaiGas NC. Mediation procedures between company management and the Karazhanbas union at KarazhanbasMunai disintegrated in January 2011 when management refused to allow a Karazhanbas union lawyer and an independent labor activist to participate in arbitration procedures concerning workers’ demands for higher wages. Approximately one week later, a group of men beat several union members in an attack that appeared to be in retribution for their trade union activities. Acts of harassment and intimidation may discourage union members from engaging in legitimate union activities, thereby violating their right to organize.

Losing faith in the union chairman to represent their interests, Karazhanbas union members held a general vote in which a majority of union members voted to remove the chairman from office. KazMunaiGas management denied the trade union use of the assembly hall to hold general meetings and prevented the union lawyer from meeting with

union members at the oil field, actions that undermine workers' right to freedom of association, which includes the workers' right to participate in legitimate union activities and to be protected from anti-union discrimination. KarazhanbasMunai management also failed to respect the union's right to choose their own leaders without interference by not recognizing the legitimacy of a union vote and denying the newly-elected acting leader access to the union office at KarazhanbasMunai headquarters in Aktau. This prompted workers to stage a partial hunger strike in early May 2011. Approximately a week later, union members went on strike.

A local court found their strike illegal, citing the same restrictive legislation as in the case of the strike at Ersai. Authorities fined workers for participating in the strike, and in August, in violation of international human rights law, prosecuted Karazhanbas union lawyer Natalia Sokolova on criminal charges of "inciting social discord" for speaking to workers about wage disparity, sentencing her to six years in prison, although she was later released.

KarazhanbasMunai JSC did not respond to Human Rights Watch's letter seeking the company's views and perspectives on the labor dispute and industrial relations with Karazhanbas union.

OzenMunaiGas

OzenMunaiGas is a wholly state-owned subsidiary of KazMunaiGas Exploration and Production located in Zhanaozen, a town in western Kazakhstan. In late May 2011, approximately two dozen OzenMunaiGas workers began individual hunger strikes to protest decreasing wages. Workers sent letters in April to company management, local authorities, and governmental bodies raising their concerns over decreased pay. In response, representatives of the Department of Labor and Social Protection informed several OzenMunaiGas workers in a meeting in the regional capital of Aktau in May that their demands were unfounded. Approximately two dozen workers individually sent written notices of their demands to company management and local authorities ten days before they commenced their hunger strike. In response, rather than considering their demands through mediation, OzenMunaiGas again informed them that their demands were "unfounded and illegitimate."

In a letter to Human Rights Watch, OzenMunaiGas stated that company management acted in accordance with the law and that after receipt of the workers' announcement to commence a hunger strike, "representatives of company management ... met with OzenMunaiGas workers on a daily basis to explain the system of remuneration and the groundlessness of the claims, which was [later] confirmed by court decisions." The company also informed Human Rights Watch that they offered to enter into dialogue at the negotiating table within the parameters of national legislation regulating labor disputes.

In late May, when the workers began their hunger strike, several thousand other OzenMunaiGas oil workers spontaneously downed their tools in support of the demands. As in the case of the other two strikes, a local court found the strike illegal on grounds that workers had not adhered to regulations for holding a legal strike and because OzenMunaiGas is classified as a "hazardous production facility." Authorities fined workers who participated in the hunger strike and brought criminal charges against one oil worker, Akzhanat Aminov, for allegedly organizing the strike by phone, sentencing him to a one year suspended sentence with two years of probation in August 2011.

In early July, police used force to disperse oil workers and round up those on hunger strike, prompting workers to relocate to Zhanaozen's central square. The ILO has stated that authorities should resort to the use of force in dealing with strikes only in grave situations where law and order is seriously threatened. Despite the peaceful nature of the OzenMunaiGas workers' strike, Human Rights Watch documented how police used night sticks to beat one worker in the legs and violently twisted the arms of others as they were being detained. In the following months, unknown assailants violently attacked two striking oil workers, apparently in retaliation for their participation in the strike. The authorities opened investigations, but have yet to hold anyone accountable.

The rights to organize, bargain collectively, and strike unfold seamlessly from the basic right to freedom of association. This does not mean that workers necessarily have a right to win their collective bargaining demands, nor do they have a right to win a strike on their terms. However, employers must respect, and the government must protect, workers' rights as set forth in domestic law and international standards. As this report documents,

Ersai Caspian Contractor LLC, KarazhanbasMunai JSC, OzenMunaiGas, and the Kazakh government have failed dismally in this regard.

In order for workers to enjoy their rights in full, the government of Kazakhstan should take immediate steps to guarantee full respect for labor rights. The Kazakh authorities should immediately amend the labor code, the law on professional unions, and the law on public associations to bring them fully in line with international norms on collective bargaining, freedom of association, and the right to strike. The authorities should define and narrow the prohibition on strikes only to those industries that are essential services in the strict sense of the word, in line with ILO conventions. The government should protect trade union activists and union members from national and multi-national companies interfering in their activities. Efforts to quash union activity should be immediately and thoroughly investigated and those responsible should be held to account. The authorities should also desist from misusing criminal law to prosecute legitimate actions by workers and unions that are protected under international human rights law concerning freedom of speech, assembly, and association.

Companies operating in Kazakhstan, including the companies named in this report, Ersai Caspian Contractor LLC, KarazhanbasMunai JSC, and OzenMunaiGas, should ensure that all their employees are fully informed about their rights and how to exercise them, and that trade unions are permitted to freely exercise their association and collective bargaining rights without undue interference. Companies should also develop or revise existing internal labor codes to include the protection of labor and other rights of workers employed by the companies and their subcontractors, subsidiaries, and other agents.

Kazakhstan's international partners should insist that Kazakhstan adhere to international human rights and labor norms to which Kazakhstan is party. These partners, including the European Union and the United States, should call on the Kazakh government to respect its citizens' rights to freedom of association and assembly and the right to strike and ensure that any future labor disputes are regulated in a manner that is consistent with international human rights law. The European Union, with whom Kazakhstan is currently seeking to upgrade relations through an enhanced partnership and cooperation agreement, has an especially important role to play in formulating concrete, measurable human rights improvements that the authorities should implement before conclusion of the agreement. Other actors, including international businesses investing in Kazakhstan, should ensure

that their workers in Kazakhstan are fully informed about their rights and that trade unions do not face harassment or interference in activities aimed at protecting the rights of their union members.

Recommendations

To the Government of Kazakhstan

On the Right to Freedom of Association

- Respect the rights of individuals to associate, organize, form unions, and peacefully assemble with others regardless of whether they express views that run counter to the political views of the government of Kazakhstan.
- Respect and promote freedom of association and the rights of workers to form independent labor unions, conduct strikes, and collectively bargain with employers, in accordance with Kazakhstan’s obligations under the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and as a member of the International Labour Organisation (ILO).
- Ensure that workers are able to register independent unions either at the local, regional, or country-wide level, without undue difficulty or delay.
- Ensure that independent trade unions are permitted to freely exercise their trade union rights by preventing undue company interference in the work of unions and enforcing the non-discrimination clause enshrined in the Law on Professional Unions, which protects individuals who belong to trade unions from suffering any “restriction[s] of labor, social, economic, political, personal rights and freedoms guaranteed by law.”
- Amend the 2007 Labor Code to bring it into conformity with ILO conventions 87 and 98 by lifting broad restrictions and prohibitions on the right to strike except in cases where a strike would “endanger the life, safety or health of the whole or part of the population,” and by clearly defining provisions for collective bargaining so that workers, employers, and intermediaries can understand and easily follow provisions in the law.
- Enforce the protections and guarantees of trade unions and their members as enshrined in the Law on Professional Unions and the ICCPR, ICESCR, and ILO Conventions 87 and 98.
- Register the inter-industrial trade union *Zhanartu*, an independent country-wide trade union.

Enforcement of Rights-respecting Business Conduct

- Ensure that all privately owned, state-owned, and foreign-invested companies and enterprises in Kazakhstan respect international labor standards.
- Conduct a thorough and impartial investigation into the actions of Ersai Caspian Contractor LLC, KarazhanbasMunai JSC, and OzenMunaiGas that violated workers' rights, including the specific instances of interference with legitimate union activities, threats and harassment against workers, and mass firings of workers, as described in this report. These investigations should consider all relevant national and international legal standards and be capable of identifying those officials who approved and carried out policies or activities that violated workers' rights. Those found responsible should be prosecuted to the fullest extent of the law.

Cooperation with International Mechanisms

- Respond promptly and positively to the request for an invitation submitted by the UN special rapporteur on freedom of association and assembly to visit Kazakhstan and cooperate fully with the special rapporteur in the lead-up to, during, and following the visit, including by implementing swiftly the resulting recommendations.
- Issue invitations to senior ILO officials to Kazakhstan to conduct briefings with oil workers employed in western Kazakhstan on freedom of association and collective bargaining, including with company-level trade unions in the oil and gas sector.
- Ensure that the plan of action for training trade union members, promoting social dialogue, and bringing daily activities of trade union organizations in the Mangystau region's oil industry back to normal, as developed during a working visit to western Kazakhstan in March 2012 by the ILO, is being properly implemented.

Effective Inspections and Investigations

- Ensure that the labor inspectorate and economic courts consider international labor rights norms when enforcing existing labor laws, by:
 - Expanding the authority of the labor inspectorate to investigate fully allegations of labor rights violations such as company interference in union activity.
 - Ensuring that the labor inspectorate has sufficient staff with the necessary training to address violations of labor rights.

- Ensuring that copies of the relevant ILO conventions, including conventions 98 and 87, are made available in Russian and Kazakh to all economic court judges and the labor inspectorate.
- Conduct a thorough and impartial investigation into allegations of use of force by police in the course of dispersing peaceful protests by striking oil workers and others.
- Conduct thorough and impartial investigations into the allegations of ill-treatment and torture by defendants in the trial of 37 oil workers and others, and hold the perpetrators to account.
- Conduct a thorough and impartial investigation into the January 2011 attack on Karazhanbas union members Aslanbek Aidarbaev, Tlekbai Dosmugambetov, and Kuanish Sisenbaev.
- Ensure that the investigations opened into the violent attacks against oil workers Zhanar Saktaganova and Estai Karashaev, and journalists Asan Amilov and Orken Bisenov are thorough, impartial, take all necessary investigative steps, and are capable of identifying the perpetrators.

On the Misuse of Overbroad Criminal Laws

- Immediately cease misusing overbroad and vague criminal legislation, such as the charge of “inciting social discord” or “calling for the forcible overthrow of the constitutional order” to detain and arrest labor activists and others who advocate for and disseminate information about labor rights.
- Repeal or amend the offence of “inciting social discord” under article 164 of Kazakhstan’s Criminal Code so that it complies with international human rights law.
- Ensure an impartial and fair trial of unregistered opposition *Alga!* party leader Vladimir Kozlov, opposition activist Serik Sapargali, and oil worker Akzhanat Aminov.

To Kazakhstan’s International Partners, Including European Union Member States and the United States Government

- Consistently raise concerns about violations of labor rights in Kazakhstan at the highest levels.
- Call on the government of Kazakhstan to fully protect in law and in practice internationally recognized workers’ rights, including the right to freedom of association and the right to organize and bargain collectively.

- Insist that the Kazakh government immediately cease the detention, harassment, or arrest of labor activists and others who disseminate information about labor rights, including those who have been arrested on criminal charges of “inciting social discord.”

To the International Labour Organisation

- Dispatch a senior-level mission from Geneva to engage with and raise awareness of the Kazakh government on internationally protected workers’ rights to unionize, bargain collectively and strike.
- Seek a time-bound reform program for amending the Labor Code to bring it into compliance with ILO Convention 87 (regarding the right to freedom of association and protection of the right to organize) and Convention 98 (regarding the right to organize and collectively bargain).
- Urge the government of Kazakhstan to implement the ILO Committee on the Freedom of Association’s 1996 recommendation to take steps to amend article 5 of the constitution to lift the prohibition on national trade unions’ acceptance of financial assistance from international organizations of workers and, in the meantime, not to obstruct national trade unions’ acceptance of financial assistance from international organizations of workers, as elaborated in the committee’s review of a complaint against Kazakhstan brought by the Independent Trade Union Centre of Kazakhstan (ITUCK) Report No. 305, Case(s). 1834.

To National Companies and Foreign Companies Investing in Enterprises in Kazakhstan

- Ensure that independent trade unions are permitted to freely exercise their rights, by:
 - Allowing union leaders to access the work places of union members without interference or undue restrictions; and
 - Permitting unions to use assembly halls to hold general meetings after work, or during work hours with permission without interference or undue restrictions.
- Ensure that all workers are fully informed and trained about their rights and how to exercise them, making information about labor rights easily accessible, for example by publicly posting them at the workplace.

- Develop or revise existing internal labor codes to include the protection of labor and other rights of workers employed by the company and their subcontractors, subsidiaries, and other agents. Draw on relevant expertise as necessary to develop human rights compliant codes.
- Develop mechanisms for monitoring—including independent monitoring—and implementation of the code.

Methodology

Human Rights Watch conducted research on violations of freedom of association and assembly and the right to strike in Kazakhstan between August 2011 and March 2012. Human Rights Watch interviewed 64 oil workers, lawyers, and civil society representatives for this report. This figure includes only those individuals from whom we gathered sufficient and relevant information.

Human Rights Watch undertook two research trips to western Kazakhstan, in August and October 2011. In August, Human Rights Watch travelled to Aktau and Zhanaozen. In October Human Rights Watch conducted interviews in Aktau, Zhanaozen and Kuryk. Human Rights Watch interviewed a total of 50 striking oil workers about the development of their labor disputes, subsequent strikes, and instances of harassment they faced. Additional interviews were conducted with lawyers and NGO representatives in Almaty and by phone. The purpose of these additional interviews was to ask for expert perspectives on legal standards concerning the right to strike, freedom of assembly and association, and about the human rights situation in Kazakhstan more generally.

Telephone and in-person interviews were conducted in Russian by a Human Rights Watch researcher fluent in Russian and a consultant to Human Rights Watch fluent in Russian and Kazakh, who provided Kazakh to Russian translation assistance in some instances. In several interviews, additional translation assistance was provided by oil workers who spoke both Russian and Kazakh.

Most of the interviews were conducted individually and in private, although some of these interviews took place in the presence of others. In addition to individual interviews, Human Rights Watch conducted five group interviews. In Zhanaozen, we spoke with one group of approximately 30-50 oil workers on Yntymak Square and conducted one group interview with two oil workers. In Aktau, we conducted three group interviews, two with two oil workers, the other with four oil workers.

Some individuals were interviewed two or three times with additional questions or to receive the most up-to-date information related to the strike and harassment of oil workers.

Interviewees were offered no incentives for speaking with us. Human Rights Watch made no promises of personal service or benefit to those whom we interviewed for this report and made sure that all interviewees understood that the interviews were completely voluntary and confidential.

Other materials, for example copies of court documents and official letters to companies by union workers, were provided to Human Rights Watch by interviewees. A Human Rights Watch consultant translated relevant Kazakh-language documents into Russian. We also reviewed relevant laws, regulations, and jurisprudence.

Human Rights Watch wrote to all three oil companies affected by the labor disputes and strikes documented in this report with specific questions concerning violations we documented to provide the companies an opportunity to respond to specific allegations.

Human Rights Watch also wrote to the Ministry of Labor and Social Protection and Saipem S.p.A. Human Rights Watch received responses from Ersai Caspian Contractor LLC and OzenMunaiGas. Their responses are reflected in the relevant sections of this report and are included in the annex to this report. Human Rights Watch did not receive a response from KarazhanbasMunai or its affiliate companies, Saipem S.p.A., or the Ministry of Labor and Social Protection.

On Human Rights Watch's second trip to western Kazakhstan in October 2011, authorities questioned, placed under surveillance, and threatened with administrative sanctions Human Rights Watch's researcher and consultant. In particular, at a checkpoint outside Zhanaozen, Human Rights Watch's vehicle was stopped by police, and a man in plain-clothes questioned Human Rights Watch staff about their purpose for travelling to Zhanaozen. The man, who only flashed his identification at the Human Rights Watch researcher but would not let her look at it, stated clearly that if she was found speaking to any oil workers on Zhanaozen's central square, local authorities would understand this action as participating in an "illegal protest" and take measures against her. While in Zhanaozen, Human Rights Watch was placed under close and aggressive surveillance, the result of which Human Rights Watch declined to conduct several interviews with oil workers for fear of placing interviewees at risk.

Many individuals interviewed for this report declined to have their names published, for fear of possible retaliation. Human Rights Watch uses pseudonyms for many of the indi-

viduals interviewed in this report in order to protect their privacy and avoid negative consequences for having spoken with us. Where pseudonyms are used, they appear as a first name and an initial of the same letter. Where an individual is identified, his or her name is provided in full.

The scope of this report is not exhaustive, and it does not seek to document violations of labor rights beyond those that occurred in the three companies mentioned in this report and in the time period specified in the case of each company. However, the findings in this report present valuable insight into how restrictive labor laws and poor government regulation of companies' adherence to existing labor laws limit and undermine workers' freedom of association and assembly and the right to strike in all sectors of Kazakhstan's economy.

I. Background

Oil and Gas: Backbone of Kazakhstan's Economy

Oil-rich Kazakhstan boasts one of the fastest-growing economies in the former Soviet Union. It is the largest country in Central Asia with an estimated population of 17.5 million. Kazakhstan shares a border with China to the east, Russia to the north, and Kyrgyzstan, Turkmenistan, and Uzbekistan to the south. However, despite significant economic development since Kazakhstan gained independence in 1991, fueled predominantly by its oil and gas sector, Kazakhstan's human rights record, including protection of workers' rights, has been poor.

Kazakhstan is among the 20 largest oil producers in the world and the second-largest oil producer in Eurasia, after Russia. Experts estimate that Kazakhstan holds more than three percent of the world's total recoverable oil reserves.¹ Kazakhstan's approximate average of oil production in 2011 was 1.6 million barrels a day (mb/d). Oil is Kazakhstan's most important source of revenue, and in 2010, it accounted for approximately 11.5 percent of the country's GDP. According to the United States Energy Information Administration (EIA), if Kazakhstan fully develops its three major oil fields, the country could become "one of the world's top five oil producers within the next decade."² While the government has recognized the need to diversify its economy away from oil, it has indicated that it will continue to invest in and expand its oil industry, according to some estimates, by more than US\$100 billion over the next several years.³

Since Kazakhstan's independence, the country has pursued an economic policy directed at fully integrating itself into the world economy. Kazakhstan has marketed itself as a stable and reliable investment partner and has been recognized as such by the World Bank,

¹ Based on its increase in oil production from 1992 to 2008, Kazakhstan was the 19th largest oil producer in the world. For more information see: United States Energy Information Administration (USEIA), Country Analysis Briefs, Kazakhstan, Background; <http://www.eia.gov/countries/cab.cfm?fips=KZ> (accessed April 9, 2012).

² The fields are the Tengiz, Karachaganak, and Kashagan. USEIA, Kazakhstan, Background.

³ "China, Kazakhstan initiate oil, gas cooperation," *People's Daily Online English*, December 15, 2011, <http://english.peopledaily.com.cn/90778/7677772.html> (accessed January 28, 2012). See also Bilqis Bahari, "Kazakhstan to tap oil expertise," *Business Times*, March 5, 2012, http://www.btimes.com.my/Current_News/BTIMES/articles/kazgas/Article/ (accessed on April 9, 2012).

advancing 11 spots to rank 47th out of 183 countries in the World Bank's 2012 Doing Business report on ease of doing business and investor protection.⁴

Kazakhstan's growing economy is fueled by substantial foreign direct investment (FDI), including by the European Union, the United States, Russia and China.⁵ The total amount of FDI in Kazakhstan in 2011 alone was US\$18 billion.⁶ Kazakhstan has attracted more than US\$136 billion in FDI since 1993, making it the second largest recipient of direct foreign investment in the Commonwealth of Independent States (CIS).⁷ In recent years, the bulk of Kazakhstan's FDI has flowed to the extractive industries sector (75.25 percent in 2010), with oil taking the largest share.⁸

Despite Kazakhstan's high economic growth, averaging around 8 percent since 2000, and overall decline in poverty rates from 46.7 percent in 2001 to 6.5 percent in 2010, according to government statistics, rural poverty continues to be a serious issue across the country.⁹ Poverty remains especially high in the Mangystau region in western Kazakhstan, even though it is one of Kazakhstan's richest in oil and natural gas, accounting for the second highest output of oil production in Kazakhstan from 2003 to 2011, after the neighboring

⁴ "AmCham Executive Director hails Kazakhstan's cooperation with investors," *Gazeta.kz*, February 20, 2012, <http://engarticles.gazeta.kz/art.asp?aid=357881> (accessed March 6, 2012). Also of note, while Kazakhstan endorsed the Extractive Industries Transparency Initiative (EITI) in 2005, on February 15, 2012, EITI noted that "Kazakhstan had not reached compliance" and renewed Kazakhstan's candidate status for 18 months. See "Minutes," 19th EITI Board Meeting, EITI International Secretariat, Oslo, March 22, 2012, http://eiti.org/files/2012-03-22_Minutes_from_the_19th_Board%20meeting.pdf (accessed on May 9, 2012).

⁵ According to the International Monetary Fund (IMF), Kazakhstan's "[o]il sector value added accounted for 11.5 percent of GDP in 2010, while oil exports represented nearly 57 percent of total exports of goods and services." For more information see: Ana Lucía Coronel, Dmitriy, Rozhkov, and Ali and Raman Al-Eyd, , "Republic of Kazakhstan Selected Issues," IMF Country Report No. 11/151, June 2011, <http://www.imf.org/external/pubs/ft/scr/2011/cr11151.pdf> (accessed July 6, 2012).

⁶ Remarks by President Nursultan Nazarbayev at a meeting with heads of the diplomatic missions accredited in the Republic of Kazakhstan, Astana, March 2, 2012, http://www.akorda.kz/en/speeches/summit_conference_sittings_meetings/vystuplenie_presidenta_respubliki_kazakhstan_na_nazarba (accessed March 29, 2012).

⁷ *World Investment Report, Non-Equity Modes of International Production and Development*, United Nations Conference on Trade and Development, New York and Geneva, 2011, p. 64.

⁸ Coronel et al., III.b.

⁹ In 2010, rural poverty was at 10 percent. World Bank, "Kazakhstan Overview," <http://www.worldbank.org.kz/en/country/kazakhstan/overview> (accessed on April 9, 2012).

Atyrau region.¹⁰ In 2010, the poverty rate in oil-rich Mangystau region reached 21.2 percent, the highest in Kazakhstan.¹¹

Some towns in western Kazakhstan continue to lack basic infrastructure, such as paved roads, electricity, and running water. Single-industry towns, such as Zhanaozen, are not uncommon. The semi-arid environment in western Kazakhstan makes it difficult to grow produce locally, raising the cost of living as residents are required to pay higher rates for food shipped in from other parts of the country.

Employees in the extractive industries typically engage in work that exposes them to various hazards, including exposure to chemical vapors and fumes, some of which may be poisonous, or dangerous machinery, for example. Oil and gas workers in western Kazakhstan also face difficult environmental conditions, with temperatures rising to over 45 degrees Celsius (113 degrees Fahrenheit) in the summer.

Analysts, including those at the International Monetary Fund (IMF), have recommended that Kazakhstan diversify its economy away from the petroleum sector, and have pointed to the government's lack of investment back into local communities.¹² In 2011 the IMF stated, "A key challenge [for Kazakhstan] is ensuring that the benefits from the oil wealth are shared by the population as a whole."¹³ The IMF notes that the direct impact of the oil sector economy

¹⁰ Output of basic industrial products in the Republic of Kazakhstan, 'Industry' Page of the Agency for Statistics of the Republic of Kazakhstan under 'Basic indicators for 2003-2011.' See: <http://www.eng.stat.kz/digital/Industry/Pages/default.aspx>.

¹¹ Department of Employment and Standard of Living Statistics, Agency for Statistics of the Republic of Kazakhstan, "Monitoring income and standard of living of the population of the Republic of Kazakhstan," [Агентство Республики Казахстан по статистике Департамент статистики труда и уровня жизни, "Мониторинг доходов и уровня жизни населения в РК"], 2011, p. 9. These are official figures provided by the government of Kazakhstan. Actual poverty rates are likely to be much higher. The Mangystau region was singled out in the Committee on Economic Social and Cultural Rights' June 2010 concluding observations on Kazakhstan: "The Committee is deeply concerned about the high level of poverty in rural areas and in some regions, despite the macroeconomic achievement of the State party. According to the most recent data available to the Committee (from 2006), poverty rates exceeded 38.2 per cent in the oil-rich oblast of Kyzylordinskaya and 25.1 per cent in Akmolinskaya and the oil-rich oblast of Mangystauskaya, where rural poverty stood at over 63.2 per cent." The CESCR 2010 concluding observations on Kazakhstan do not indicate the source for these figures. UN Committee on Economic, Social and Cultural Rights (CESCR) Concluding Observations, Geneva, June 7, 2010, E/C.12/KAZ/CO/1.

¹² According to the Financial Times, "Experts were puzzled by Nazarbayev's decision to use the National Oil Fund to support the national oil company. Funds might be better spent, they said, on projects to diversify the economy." Isabel Gorst, "Kazakhstan: using the oil fund to diversify into... oil," post to beyondbrics (Financial Times blog), March 1, 2012, <http://blogs.ft.com/beyond-brics/2012/03/01/kazakhstan-using-the-oil-fund-to-diversify-into-oil/#axzz1ntExFVQx> (accessed April 9, 2012).

¹³ Coronel, et al., p. 27.

on non-oil growth is “rather limited” and that “the direct benefits of stronger oil activity are only shared by a few related sectors, such as transportation and communications.”¹⁴

Oil Companies in Kazakhstan

There are dozens of foreign companies working in Kazakhstan’s oil and gas sector, including some of the biggest western conglomerates, a number of which began investing in Kazakhstan’s oil industry in the early 1990s.¹⁵ Kazakhstan’s national oil and gas company, JSC NC KazMunaiGas, was established in 2002. In recent years Kazakhstan has made a concerted push to reacquire stakes in petroleum companies that it had sold off to foreign investors in the 1990s.¹⁶ It is now an important shareholder in many of the companies operating in western Kazakhstan, including two of the three companies affected by labor unrest last year.

JSC NC KazMunaiGas is a majority owner of KazMunaiGas Exploration Production (KMG EP), which produces oil and gas from Kazakhstan’s hydrocarbon reserves. KMG EP owns a 50 percent stake in JSC KarazhanbasMunai (KBM), an oil production company, and one of the three companies affected by the labor unrest identified in this report.¹⁷ A second 50 percent stake in KBM is held by CITIC Oil & Gas Holdings Limited, an indirect wholly-owned subsidiary of CITIC Resources Holding Limited, which is majority-owned by China’s state investment company, CITIC Group Corporation.¹⁸

KBM has approximately 4,000 employees.¹⁹ As of December 2010, KBM’s estimated proven oil reserves were equivalent to 317.2 million barrels.²⁰ TulparMunaiService LLP (TMS) and

¹⁴ Ibid., p. 28.

¹⁵ These include the BG Group, ENI S.p.A, ExxonMobil, ConocoPhilips and LUKoil.

¹⁶ Megha Bahree, “Are Western Oil Firms Acting As Colonialist Powers In Kazakhstan?” *Forbes*, October 11, 2010, <http://www.forbes.com/sites/meghabahree/2010/11/10/are-western-oil-firms-acting-as-colonialist-powers-in-kazakhstan/> (accessed April 9, 2012).

¹⁷ KazMunaiGas Exploration and Production website, Entry on Relationship with NC KMG, http://www.kmgep.kz/eng/the_company/corporate_governance/relationship_with_nc_kmg/ (accessed July 3, 2012).

¹⁸ CITIC Resources Holding Limited website, Entry on Business Strategies, <http://www.citicresources.com/eng/business/strategies.htm> (accessed July 3, 2012).

¹⁹ Mangystau Oil & Gas Official Catalogue, November 2-4, 2010, <http://www.youblisher.com/p/63232-> (accessed April 10, 2012), p. 37.

²⁰ CITIC Resources Holdings Limited website, Entry on Karazhanbas Oilfield, Kazakhstan, <http://www.citicresources.com/eng/business/oil.htm>, (accessed on April 10, 2012).

ArgymakTransService LLP (ATS) are affiliate companies that provide drilling, construction, transportation, and other services at Karazhanbas oil field, operated by KBM, located approximately 200 kilometers away from Aktau. TMS and ATS are similarly partially owned by KMG EP and CITIC Resources.

The second company identified in this report, OzenMunaiGas (OMG), is fully owned by KMG EP and produces the bulk of KMG EP's oil output. For 2011, KMG EP reported that OMG accounted for "74 percent of core reserves and 64 percent of the core production level."²¹ In 2010, OMG and another KMG EP subsidiary, JSC EmbaMunaiGas (EMB), were the sole sources of KMG EP's reported 609 billion KZT (US\$4.1 billion) in revenues, an increase of 485 billion KZT (US\$3.2 billion) over the year before. As of May 1, 2011, OMG had 9,071 employees.²²

Ersai Caspian Contractor LLC, the third company identified in this report, is a 50/50 joint venture formed in 2003 between ERC Holdings LLC (Kazakhstan) and Saipem International B.V. (The Netherlands). ERC Holdings LLC is a subsidiary of Lancaster Group Kazakhstan. Saipem International B.V is a wholly-owned subsidiary of Saipem S.p.A (Italy), which is a partial subsidiary of Eni S.p.A. (Italy).²³ Ersai is an oil-service contractor that provides assistance, maintenance, and materials for extractive industry clients in Kazakhstan. In April 2011, Ersai had a total of 2,564 employees, 1,270 of whom worked at the onshore industrial base in Kuryk, in western Kazakhstan's Mangystau region, where Ersai employees construct equipment, such as pipe racks and tower structures, for offshore operations.²⁴

Corporate Responsibility

Although the government of Kazakhstan has the primary responsibility to respect, protect, and fulfill human rights under international law, private entities, including companies in the oil and gas sector, also have responsibilities regarding human rights.

²¹ KazMunaiGas Exploration and Production website, Entry on Production, http://www.kmgep.kz/eng/the_company/our_business/production, (accessed on April 10, 2012).

²² Letter from Erbol Ismailov, advisor on strategic communications at OzenMunaiGas, to Human Rights Watch, March 11, 2012, unofficial translation.

²³ Website of Ersai Caspian Contractor LLC, Company Profile page, <http://www.ersai.kz/company/index> (accessed July 3, 2012).

²⁴ Letter from Camillo Ceresa, general director, Ersai Caspian Contractor, to Human Rights Watch, March 2, 2012.

The responsibilities of business in relation to human rights, including workers' rights, are increasingly recognized by international law and other norms.²⁵ They include, at a minimum, the responsibility to respect all human rights, but also include additional responsibilities of protection in relation to certain issues.²⁶ Consistent with their responsibilities to respect human rights, all businesses should have adequate policies and procedures in place to prevent and respond to abuses.

The basic principle that businesses of all sizes have a responsibility to respect human rights, including workers' rights, has achieved wide international recognition. The Organization for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, United Nations (UN) Human Rights Council resolutions on business and human rights, UN Global Compact, various multi-stakeholder initiatives in different sectors, and many companies' own codes of behavior draw from principles of international human rights law and core labor standards, in offering guidance to businesses on how to uphold their human rights responsibilities.

For example, the “Protect, Respect and Remedy” framework and the “Guiding Principles on Business and Human Rights,” which were developed by the former United Nations Special Representative on Business and Human Rights Professor John Ruggie and endorsed by the UN Human Rights Council in 2008 and 2011, respectively, reflect the expectation that businesses should respect human rights, avoid complicity in abuses, and adequately remedy them if they occur. They specify that businesses must exercise due diligence to identify, prevent, mitigate, and account for the impact of their activities on human rights.²⁷

²⁵The preambles to key human rights treaties recognize that ensuring respect for human rights is a shared responsibility that extends to “every organ of society,” not only to states. In addition, the preambles of both the International Covenant on Civil and Political Rights and International Covenant on Economic Social and Cultural Rights recognize that “individuals” have human rights responsibilities, a term that can incorporate juridical persons (including businesses) as well as natural persons. The broad consensus that businesses have human rights responsibilities is also reflected in various standards and initiatives, as discussed below.

²⁶ For example, corporate responsibilities in relation to child rights are somewhat broader than general human rights obligations, and include a responsibility to protect child rights. Businesses that carry out a public function are subject to additional obligations. See, for example, Committee on the Rights of the Child, “Annotated Outline for the General Comment on Child Rights and the Business Sector,” <http://www2.ohchr.org/english/bodies/crc/docs/AnnotatedOutlineBroaderConsultations.doc> (accessed July 3, 2012).

²⁷ See UN Human Rights Council, “Mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises,” Resolution 8/7, A/HRC/RES/8/7; and “Human rights and transnational corporations and other business enterprises,” Resolution 17/4, A/HRC/17/L.17/Rev.1.

The OECD sets out norms of responsible social behavior by multinational firms, incorporating the concept of due diligence and the content of ILO core labor standards. The guidelines call on multinational companies in all sectors of the economy to “respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organizations of their own choosing” and, further, to “respect the rights of workers ... [to have such organizations] recognized for the purpose of collective bargaining, and engage in constructive negotiations ... with such representatives with a view to reaching agreements on terms and conditions of employment.” In addition, the guidelines call on enterprises to “respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved,” including by carrying out “human rights due diligence” and working to remedy adverse human rights impacts they have caused or to which they have contributed.²⁸

The UN Global Compact is a voluntary initiative that incorporates human rights commitments. Under the compact, companies pledge their adherence to ten “universally accepted principles in the areas of human rights, labour, environment and anti-corruption.” Principle 1 states: “Businesses should support and respect the protection of internationally proclaimed human rights,” which has been defined to be consistent with the UN’s “Protect, Respect, Remedy” framework addressed above. In particular, under this principle, the Global Compact calls for businesses “not to infringe on the rights of others — put in other words — to refrain from having a negative impact on the enjoyment of human rights,” and to undertake human rights due diligence. Principle 3 of the Global Compact states, “Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining,” which entails companies acting, *inter alia*, to “ensure that all workers are able to form and join a trade union of their choice without fear of intimidation or reprisal” and to “ensure union-neutral policies and procedures that do not discriminate against individuals because of their views on trade unions or for their trade union activities.”²⁹

²⁸ *OECD Guidelines for Multinational Enterprises (2011 Edition): Recommendations for Responsible Business Conduct in a Global Context*, May 25, 2011, http://www.oecd.org/document/28/0_3746,en_2649_34889_2397532_1_1_1_oo.html (accessed July 6, 2012). As described in the document itself, “[t]he Guidelines are recommendations jointly addressed by governments to multinational enterprises [that] provide principles and standards of good practice consistent with applicable laws and internationally recognized standards.”

²⁹ “The United Nations Global Compact,” The Ten Principles, <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>; “Global Compact Principle One,” <http://www.unglobalcompact.org/aboutthegc/thetenprinciples/principle1.html>; and “Global Compact Principle Three,” <http://www.unglobalcompact.org/aboutthegc/thetenprinciples/principle3.html> (accessed June 6, 2012).

The ILO Tripartite Declaration of Principles further recommends standards of conduct for multinational corporations and others “in the fields of employment, training, conditions of work and life and industrial relations,” including specific provisions regarding freedom of association and the right to organize as well as collective bargaining.³⁰ In addition, the ILO’s Committee on Freedom of Association (CFA) has stated, “[R]espect for the principle of freedom of association requires that the public authorities exercise great restraint in relation to intervention in the internal affairs of trade unions. It is even more important that employers exercise restraint in the same regard.”³¹

Kazakhstan’s Labor Movement

In the early 1990s, following the collapse of the Soviet Union, an independent workers’ movement emerged in Kazakhstan. Following a series of strikes in the mining sector in the late 1980s, workers across Kazakhstan began to form independent trade unions.³² Around the same time, workers in small private businesses and cooperatives in Almaty and the Almaty region founded *Birlesu* (*Unity*), an independent trade union.³³ By 1991, *Birlesu* and other independent trade unions in Kazakhstan founded the Independent Trade Union Center of Kazakhstan (ITUCK), which later evolved into the Confederation of Free Trade Unions of Kazakhstan (KSPK), which continues to operate in Kazakhstan today.³⁴ A second country-wide union, the Federation of Trade Unions of the Republic of Kazakhstan (FPRK) that grew out of its Soviet predecessor, the Soviet All-Union Central Council of Trade Unions in Kazakhstan, was established in 1990 and remains to date the largest trade union federation in Kazakhstan.³⁵ In 2004, a third country-wide trade union, the Confederation of Labor, broke from the KSPK and registered as a separate trade union.

³⁰See International Labour Office Governing Body, ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 204th Session, Geneva, November 1977, as amended at its 279th (November 2000) and 295th Session (March 2006) fourth edition, 2006, paras. 7, 42-56.

³¹ International Labour Organisation Freedom of Association Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO Fifth (revised) edition 2006, paras. 859, 761. Hereafter, ILO Digest of Decisions and Principles.

³² Namely in Karaganda, a city in northern Kazakhstan, and in Shymkent and Kentau, cities in southern Kazakhstan,

³³ Human Rights Watch Skype interview with Yevgeniy Zhovtis, August 13, 2012.

³⁴ Ibid. See also: Ainur Kurmanov, “The current state of the trade union movement in Kazakhstan,” *International ViewPoint*, IV Online magazine: IV424, May 2010, <http://www.internationalviewpoint.org/spip.php?article1862> (accessed August 16, 2012).

³⁵ NN, “Kazakhstan,” University of Warwick, 2005, www.warwick.ac.uk/russia/Intas/KazakhstanEng.doc (accessed April 10, 2012).

Despite these developments, Kazakhstan's labor movement remains weak, and the legacy of state-controlled trade unions during the Soviet period has meant that many established unions do not effectively represent workers' interests vis-à-vis their employers. In addition, restrictive and vaguely defined legislation restricts workers' abilities to collectively bargain and exercise their right to strike, thereby undermining workers' efforts to defend their interests in independent trade unions.

FPRK maintains close ties to the government, and the FPRK president, Siyazbek Mukashev, has occupied his position since 1992. Overall union membership has deteriorated significantly since independence, from over seven million in 1990, to approximately two million in 2005.³⁶ As of 2011, FPRK has stated that its membership base is around two million. According to the union's website, the FPRK encompasses 14 regional unions and 26 industrial unions, which represent various industries, including the construction, telecommunications, and railway industries, and the oil and gas sector.³⁷

KSPK President Sergei Belkin, who was elected to the position in 2003, continues to be involved in the workers movement in Kazakhstan but has been criticized by some labor activists for not maintaining enough distance from the state. For example, in February 2009, the KSPK, along with various pro-government political parties, including the president's Nur Otan party, signed a memorandum in which they agreed "to cooperate during the global economic crisis" and lent the union's support to a moratorium on organizing and holding rallies, marches, pickets, and protests.³⁸ KSPK encompasses five regional unions; four industrial unions including in mining, health, and education, as well as 86 other unions.³⁹ Little reliable information exists about its membership base or total number of members.

³⁶ Maarten van Klaveren, Kea Tijdens, Melanie Hughie-Williams, and Martin Nuria Ramos, "An Overview of Women's Work and Employment in Kazakhstan; Decisions for Life MDG3 Project, Country Report No. 10," University of Amsterdam/Amsterdam Institute for Advanced Labour Studies (AIAS) March 2010, para. 2.4.2.

³⁷ Website of the Federation of Trade Unions in Kazakhstan, Member Organizations, <http://www.fprk.kz/?m=article&cid=10&lng=rus> (accessed July 20, 2012).

³⁸ This would encompass labor strikes as well. A copy of this memorandum is on file with Human Rights Watch. According to socialist activist Ainur Kurmanov the FPRK also follows the policy of social partnership by signing memoranda. See Kurmanov, "The current state of the trade union movement in Kazakhstan."

³⁹ "The only way out of the conflict in Mangystau – is dialogue with all sides" ("Единственный выход из конфликта в Мангистау – диалог всех сторон"), *Unions Today*, November 24, 2011, <http://www.unionstoday.ru/news/ktr/2011/11/24/15697> (accessed April 13, 2012).

Both the FPRK and the KSPK have sought to play a bigger role in the international trade union movement and in 2009 applied for membership with the International Trade Union Confederation (ITUC). Neither has been approved for full membership, although the FPRK has been granted associated status. In March 2012, the president of the Labor Confederation of Russia, Boris Kravchenko, spoke out against the FPRK's application bid at the Sixth Pan-European Regional Council Executive meeting in Brussels, in particular for leaving striking oil workers in western Kazakhstan "without any support by the Republic of Kazakhstan's largest trade union."⁴⁰ According to media reports, his position was supported by other trade unions at the conference.⁴¹

In the absence of effective unions to represent worker interests at local, regional, and national levels, in recent years some groups of workers have taken to self-organizing by registering independent unions or seeking to advance their demands and interests through spontaneous strikes, two- to three-hour warning strikes, or unsanctioned labor strikes, or by staging hunger strikes and other collective actions.⁴² While workers have achieved some success in these efforts, their collective actions have largely taken place outside Kazakhstan's legal framework for collective bargaining.⁴³

In May 2009, various independent workers groups and independent trade unions from across Kazakhstan met in Almaty with the aim of strengthening the workers' movement in Kazakhstan. In November 2010, the group submitted documents to the Ministry of Justice to register *Zhanartu*, a country-wide inter-industrial union. However, on various technical grounds, most recently in August 2011, the Ministry of Justice has repeatedly denied

⁴⁰ "KTR is categorically against accepting the Federation of Unions of Kazakhstan into the ITUC" ("КТР категорически против принятия Федерации профсоюзов Казахстана в ряды МКП"), *Unions Today*, March 5, 2012, <http://www.unionstoday.ru/news/direct-speech/2012/03/05/16195> (accessed on April 9, 2012).

⁴¹ *Ibid.*

⁴² On June 29, 2012, approximately 3000 workers at ArcelorMittal Temirtau downed their tools in a "warning strike." See Nariman Gizitdinov, "ArcelorMittal Kazakh Steelworkers Hold Warning Strike Over Pay," *Bloomberg*, June 29, 2012, <http://www.bloomberg.com/news/2012-06-29/arcelormittal-kazakh-steelworkers-hold-warning-strike-over-pay.html> (accessed July 3, 2012). For a list of other examples, see Kurmanov, "The current state of the trade union movement in Kazakhstan."

⁴³ For example, in March 2009, oil workers at Burgylau Oil Company spontaneously went on strike to demand the company be renationalized, management be replaced, and workers whose positions were made redundant be rehired. The strike was found illegal by a local court, but after approximately three weeks on strike, the company agreed to rehire workers and change management personnel. International Federation of Chemical, Energy, Mine and General Workers' Unions, "Kazakh Miners' Strike Ends with Significant Gains," *ICEM InBrief*, October 16, 2006, <http://www.icem.org/en/97-Sustainable-Development-Health-and-Safety/1994-Kazakh-Miners'-Strike-Ends-with-Significant-Gains> (accessed April 9, 2012).

registration to the union. Following the fifth denial, *Zhanartu* chairman Esenbek Ukteshbaev sued the Ministry of Justice on grounds that the ministry had no basis to deny the union registration. However, in November, the Almaty City Medeu district court upheld the Ministry of Justice's decision.⁴⁴ The group resubmitted their registration application to the Ministry of Justice for a sixth time in early April 2012. As of this writing, the Ministry of Justice has still not registered *Zhanartu*.⁴⁵

Activists and journalists supporting workers or reporting on labor developments have also come under pressure from the authorities. For example, on March 22, 2010, Igor Lara, a journalist with the independent daily *Svoboda Slova* (*Free Speech*), who had covered a March 2010 strike in Zhanaozen was assaulted and repeatedly beaten by three unidentified men near his home in Aktobe, a city in western Kazakhstan. Reporters without Borders reported that the assailants did not take any of Lara's belongings and that one said, "Lara, this is a greeting from Zhanaozen."⁴⁶

The legal framework in Kazakhstan does not yet regulate employer-employee relations or labor rights in a manner that ensures full compliance with international norms, despite Kazakhstan's economic development over the last 20 years, nor does Kazakhstan's judiciary provide effective, independent review of violations of labor rights, given its lack of independence from Kazakhstan's executive.⁴⁷ Some of the shortcomings in Kazakhstan's laws and practices concerning labor dispute resolution have been acknowledged by Kazakh officials. For example, Umirzak Shukeyev, the recently appointed head of Samruk-Kazyna, Kazakhstan's sovereign wealth fund, stated, "There is first and foremost a lack of adequate mechanisms and procedures for solving labor disputes and poorly developed institutional arrangements ... and trade unions that do not have a strong enough posi-

⁴⁴ Copy of registration denial on file with Human Rights Watch; see also Madina Aimbetova, "Assembly at the Congress" ("Собрание на съезде"), *Time [Vremya]*, November 12, 2011, <http://www.time.kz/index.php?module=news&newsid=24494> (accessed on April 10, 2012).

⁴⁵ Human Rights Watch Skype interviews with Ainur Kurmanov, April 11, 2012 and June 20, 2012.

⁴⁶ "Independent newspaper reporter badly beaten near his home," Reporters Sans Frontières, March 24, 2010 <http://en.rsf.org/kazakhstan-bailiffs-attack-tv-reporter-inside-24-03-2010,36828.html> (accessed March 9, 2012).

⁴⁷ "Submission on the list of issues to Human Rights Committee consideration of the 1st Periodic Report of Kazakhstan 99th Session, 12 – 30 July 2010," International Commission of Jurists, May 2010, http://www2.ohchr.org/english/bodies/hrc/docs/ngos/ICJ_Kazakhstan99.pdf, p. 1 (accessed May 9, 2012).

tion.”⁴⁸ Hundreds of thousands of workers are employed across Kazakhstan’s oil and gas sector, yet national legislation allows Kazakh authorities and companies operating in Kazakhstan broad leeway to impinge upon workers’ rights that are protected under international treaties, many of which Kazakhstan has ratified.

⁴⁸ “Report of the head of ‘Samruk-Kazyna’ Umirzak Shukeyev at the VII International HR-Conference” [“Доклад главы АО «Самрук-Қазына» Умирзака Шукеева на VII международной HR-конференции”], *Samruk Kazyna*, March 5, 2012, <http://sk.kz/news/view/3245> (accessed August 22, 2012). See also: T. Nurmagambetov, “Measures to prevent labour disputes developed in Kazakhstan,” *Trend*, March 1, 2012, <http://en.trend.az/regions/casia/kazakhstan/1998581.html> (accessed June 1, 2012).

II. Freedom of Association under International and Kazakh Law

Trade unions in the Republic of Kazakhstan are independent public associations with fixed individual membership, voluntarily created by citizens on the basis of their common professional interests to represent and defend labor and other social-economic rights and interests of their members, and to protect and improve labor conditions.

—Article 1, Kazakhstan's Law on Professional Unions⁴⁹

Several months' confrontation in Western Kazakhstan shows the failure of [the] current institutional labour conflict resolution framework in the country.
—Sharan Burrow, Secretary General, International Trade Union Confederation⁵⁰

Over the last half century, a comprehensive body of international law has been developed to protect workers' rights. As a member of the International Labour Organisation (ILO), Kazakhstan is required to respect and promote the fundamental rights enshrined in the ILO Declaration on Fundamental Principles and Rights at Work.⁵¹ Kazakhstan is similarly obliged to uphold the norms enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) with respect to freedom of assembly, association, and expression.⁵² The govern-

⁴⁹ Law on Professional Unions of the Republic of Kazakhstan, No. 2107, April 9, 1993, with additions and amendments of April 29, 2009, art. 1, unofficial translation. The Law on Professional Unions is a law that is more commonly entitled the Trade Union Law (in Russian, 'professional' is meant in the sense of 'occupation' or 'trade').

⁵⁰ International Trade Union Confederation (ITUC), "Confrontation in Kazakhstan," ITUC CSI IGB, December 16, 2011, <http://www.ituc-csi.org/confrontation-in-kazakhstan.html> (accessed March 5, 2012).

⁵¹ International Labour Organization, Declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, June 18, 1998. ILO standards are an important but not the sole source of international labor norms. United Nations declarations and covenants, UN resolutions on business and human rights, the Organization for Economic Cooperation and Development's Guidelines for Multinational Enterprises, corporate social responsibility initiatives, and other instruments and mechanisms provide a wide range of sources for identifying international standards on freedom of association. These various sources establish both binding obligations and non-binding, but authoritative guidance.

⁵² Pursuant to article 2, point 3 of Kazakhstan's labor code, international treaties take precedence over national legislation concerning labor relations, with the exception of the constitution, which takes precedence over any international conven-

ment has an obligation to take reasonable and appropriate measures—including through legislation, regulation, investigation and prosecution, as appropriate—to ensure that companies and employers respect the rights of workers.

Kazakhstan has adopted laws that guarantee the right to form unions, bargain collectively, and go on strike. The law also prohibits anti-union discrimination. However, Kazakhstan's labor laws fall short of international standards in many important respects, thus failing to protect workers' rights in a manner in which these rights can fully be enjoyed in practice. Indeed, some provisions of Kazakhstan's labor code directly violate international human rights standards.

International Labor Standards

Kazakhstan has ratified a range of ILO conventions including Convention No. 87, regarding the right to freedom of association and protection of the right to organize, which states, "Workers' ... organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom," and "[p]ublic authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof."⁵³ Kazakhstan has also ratified Convention No.98 regarding the right to organize and collectively bargain, which states, "Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.... Such protection shall apply more particularly in respect of acts calculated to ... [c]ause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities."⁵⁴

tions ratified by Kazakhstan. "If international treaties ratified by the Republic of Kazakhstan establish rules other than those contained in this Code, then the rules of the international treaty shall be applied. International treaties ratified by the Republic of Kazakhstan are applied directly to labor relations, apart from cases when it follows from the international treaty that its application requires passing of a law," Labor Code of the Republic of Kazakhstan, No. 251, May 15, 2007, with additions and amendments of February 17, 2012.

⁵³ ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise, adopted July 9, 1948, 68 U.N.T.S. 17. entered into force July 4, 1950, art. 3.

⁵⁴ ILO Convention No. 98 concerning the Right to Organise and Collective Bargaining, adopted July 1, 1949, 96 U.N.T.S. 257, entered into force July 18, 1951, art 2(1).

Kazakhstan also has obligations under the International Covenant on Civil and Political Rights (ICCPR),⁵⁵ which guarantees the right to freedom of association and assembly, and under the International Covenant on Economic Social and Cultural Rights (ICESCR),⁵⁶ which protects specific rights related to freedom of association and trade union membership, including:

- The right to form trade unions and join the trade union of one's choice, subject only to the rules of the organization concerned, for the promotion and protection of his or her economic and social interests;
- The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; and
- The right to strike.

Prohibition on Employers' Interference with Freedom of Association

The International Labour Organisation's Committee on Freedom of Association (CFA), which examines complaints from workers' and employers' organizations against ILO members and whose jurisdiction Kazakhstan has recognized, has repeatedly underscored the importance of adequate laws banning interference by employers with workers' organizing and bargaining rights and adequate penalties and mechanisms to ensure compliance.⁵⁷

The CFA has identified such "acts of interference" in its handling of thousands of complaints submitted under Conventions 87 and 98 in the past half century. Examples of acts of interference include creating an atmosphere of intimidation and fear that inhibits the

⁵⁵ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Kazakhstan on January 24, 2006.

⁵⁶ International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, ratified by Kazakhstan on January 24, 2006.

⁵⁷ The Committee on Freedom of Association (CFA) has noted: "The basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed.... Legislation must make express provision for appeals and establish sufficiently dissuasive sanctions against acts of anti-union discrimination to ensure the practical application of articles 1 and 2 of Convention No. 98," ILO Digest of Decisions and Principles, paras. 818 and 822. The CFA's specialized mandate covers violations of Conventions 87 and 98 on freedom of association, the right to organize, and the right to bargain collectively.

normal development of trade union activities, pressuring or threatening retaliatory measures against workers for union membership or for engaging in legitimate union activities, including causing withdrawal from union membership, for example.⁵⁸ As detailed in this report, employers and local authorities have engaged in these types of practices to disrupt workers' organizing and bargaining efforts.

Kazakhstan Labor Law

Kazakhstan adopted a comprehensive labor code in May 2007 that introduced specific legislation regulating labor dispute mediation procedures and the right to strike.⁵⁹ The labor code and the law on professional unions both affirm the right to freedom of association and the right to bargain collectively and recognize the right of workers to organize and form trade unions, or workers associations. The Constitution of the Republic of Kazakhstan recognizes the right to collective bargaining, including the right to strike.⁶⁰

Chapter 32 of Kazakhstan's labor code details the procedures for regulating employer-employee labor disputes, including the right of workers to go on strike. In February 2012, changes and amendments were made to the labor code which seem aimed at making collective bargaining less cumbersome but in fact do not address many of the underlying incompatibilities with international norms concerning freedom of association and the right to strike. This will be examined below.

According to the law on professional unions, trade unions "have the right to represent and defend the rights and interests of their members, ... to conduct individual labor disputes and engage in collective labor disputes in accordance with the law, [to] include ...collective agreements," and "[to] organize or lead in accordance with the law, gatherings, meetings, street marches, demonstrations and strikes."⁶¹

In addition, article 18 of the law on professional unions states, "Any action, aimed at undermining—directly or indirectly—trade unions ... or restricting their rights or interfering

⁵⁸ ILO Digest of Decisions and Principles, paras.35, 67, 514, 638, 772, 781, and 786.

⁵⁹ Kazakhstan Labor Code, chapter 32.

⁶⁰Constitution of the Republic of Kazakhstan, August 30, 1995, with additions and amendments of February 2, 2011, art. 24.

⁶¹ Law On Professional Unions, arts. 4 and 10.

in their activities under the law or [in violation of] their charter (or other founding documents) is prohibited.”⁶²

Protection and Redress

The Kazakh government has an obligation to implement international standards and to enforce Kazakh laws designed to protect workers from abuses. A labor inspectorate exists under the Ministry of Labor and Social Protection and is responsible for monitoring employers’ adherence to labor laws. This includes reviewing applications and complaints made by workers and employers.⁶³

Individuals may also appeal to the prosecutor’s office, which is charged with ensuring respect for the laws of Kazakhstan, to the police, or directly to the courts for certain issues.⁶⁴ Individuals may also appeal to the human rights ombudsman in the event they believe that their rights have been violated by a government official—with certain exceptions—or a commercial organization.⁶⁵

Restrictions on Freedom of Association and Collective Bargaining

Although Kazakhstan’s labor laws on their face provide workers the right to organize and form unions, the authorities and employers can easily impede workers from exercising those rights in practice. Article 4 of the law on professional unions guarantees workers the right to form trade unions and stipulates that “obstruction of the creation of a trade union, or interference in its activities, is punishable by law.” Article 10 outlines the rights of unions, including the right to represent union members in labor disputes and collective agreement negotiations:

Trade unions have the right to represent and defend the rights and interests of their members ... to deal with individual labor disputes and participate in

⁶² Ibid., art. 18.

⁶³ Kazakhstan Labor Code, arts. 328 and 329.

⁶⁴ Human Rights Watch interview with Viktoria Tyuleneva, Kazakhstan International Bureau for Human Rights and Rule of Law, Almaty, March 30, 2012.

⁶⁵ “Rules for Appeals,” website of the Human Rights Ombudsman of the Republic of Kazakhstan, <http://www.ombudsman.kz/sityzens/poryadok.php> (accessed May 5, 2012).

the settlement of collective labor disputes (conflicts) in accordance with the law, enter into agreements and collective agreements.⁶⁶

Freedom of Association

Freedom of association is guaranteed in the constitution and in various laws in Kazakhstan, but in practice, trade unions face some restrictions that are inconsistent with international norms.

In order to register a new trade union at the regional or country-wide level, a group of at least 10 “citizen-initiators” must agree to found a public association, approve the group’s charter, and elect leadership, after which the group of “citizen-initiators” may apply to the Ministry of Justice for registration as a public association.⁶⁷ The public association, or trade union, must provide detailed information about its activities, and the authorities may fine or suspend a trade union if it engages in activities beyond those specified in its charter.

Although establishing a trade union is relatively straightforward, as described above, workers seeking to form *Zhanartu*, a country-wide inter-industrial union, have faced repeated obstacles in registering. Financing of unions can also be challenging. Kazakhstan’s constitution and its legislation on public associations prohibit foreign unions from operating in the country.⁶⁸ They also prohibit non-Kazakh legal entities, such as international organizations or unions, or individuals, from providing financial support to Kazakh unions.⁶⁹ The Committee of Experts on the Application of Conventions and Recommendations (CEACR), the legal body responsible for the examination of compliance with ILO conventions and recommendations, has repeatedly stated in its individual observations on Kazakhstan that “legislation prohibiting the acceptance by a national trade union of financial assistance from an international organization of workers to which it is affiliated infringes the principles concerning the right to affiliate with international organizations of workers.”⁷⁰

⁶⁶ Law on Professional Unions, art. 10.

⁶⁷ Law on Professional Unions, art. 8. All trade unions in Kazakhstan must register as ‘public associations;’ no separate procedure exists for forming a ‘trade union’ in particular. To register a trade union at the local level, groups may apply for registration with the regional department of the Ministry of Justice.

⁶⁸ Constitution of the Republic of Kazakhstan, art. 5, point 4.

⁶⁹ Ibid.

⁷⁰ CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Kazakhstan (ratification: 2000), adopted 2011, published 101st ILC session (2012),

In addition, the CEACR has stated that “all national organizations of workers and employers should have the right to receive financial assistance from international organizations of workers and employers, respectively, whether they are affiliated or not to the latter.”⁷¹

While this report does not deal specifically with challenges faced by workers attempting to register new unions or finance unions, it does explore employer and government interference in the activities of previously registered unions, as described below.

Collective Bargaining

Chapters 30 to 32 of Kazakhstan’s labor code regulate the right to collective bargaining, including the right to strike.⁷² February 2012 amendments to the labor code served to address some of the undue restrictions on collective bargaining in place at the time of the violations documented in this report. Nevertheless, laws regulating collective labor dispute mediation remain burdensome and in some instances vague, allowing companies to avoid good faith efforts to resolve collective labor disputes.

For example, in order for a union to initiate a collective labor dispute, a union is required to hold a meeting of no less than half the total work force of the company. This provision has been met with repeated criticism by the ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR), which has requested on several occasions that Kazakhstan amend its legislation to set a lower threshold for worker participation in order to initiate a collective labor dispute.⁷³

With the February 2012 amendments, in the event that workers are unable to hold a general meeting with at least half the total workforce in a company, now “a representative body of workers has the right to confirm its decision by collecting signatures from at least

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:2972561075882633::NO:13100:P13100_COMMENT_ID:2698737:NO (accessed April 10, 2012).

⁷¹ Ibid.

⁷² While this report does not specifically address procedures regulating the conclusion of other types of Social Partnership Agreements, legislation concerning these procedures can be found in chapter 30 of Kazakhstan’s labor code.

⁷³ In 2009, 2011 and again in 2012, the CEACR stated: “The Committee considers that trade unions should be free to regulate the procedure of submitting claims to the employer and that the legislation should not impede the functioning of a trade union by obliging a trade union to call a general meeting every time there is a claim to be made to an employer.” CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Kazakhstan (ratification: 2000) Published: 2011.

half [of the total number] of workers in support of their demands.”⁷⁴ However, in practice, collecting workers’ signatures does not serve as a viable alternative. The law does not elaborate on what constitutes a legitimate reason for being unable to hold a general meeting with at least half of the workforce. The vague language of the law allows for the possibility that a company’s management may refuse to recognize the collection of signatures as a valid alternative to holding a general meeting.

Once workers have submitted their demands to company management, the company must review the demands within three working days. If the dispute cannot be immediately resolved, a conciliation committee to review the demands is formed within three days with an equal number of employer and employee representatives. The procedure and time allotted to review the demands is decided upon by mutual agreement. If conciliation succeeds, the committee draws up a protocol which is signed by both sides of the dispute and is binding. If conciliation fails, outstanding issues must be submitted for consideration by a labor arbitration council.

An arbitration council of no less than five members is established within five days with the participation of members of national, industrial, or regional committees for regulating social-labor relations. The union and the employer together determine who will participate in the arbitration council, how many members will participate, and the procedure for considering the labor dispute. Members of public organizations, the labor inspectorate, specialists, experts, and others can also participate. The arbitration council’s decision is made based on a majority vote.

If workers and employers are unable to mutually agree on the procedure for mediation and/or arbitration, the time frame for reviewing demands, or arbitration council participants, the law does not envisage procedures for how to resolve a deadlock. Human Rights Watch considers that this vague legislation and lack of regulating procedures undermines workers’ rights to a timely and effective review of their demands.

⁷⁴ Kazakhstan Labor Code, art. 289.

Restrictions on the Right to Strike

While the right to strike is not absolute in international law, and thus may be subject to certain restrictions, the ILO's CFA "has made it clear that [the right to strike] is a right which workers and their organizations (trade unions, federations and confederations) are entitled to enjoy," that any restrictions on this right "should not be excessive," and that the "legitimate exercise of the right to strike should not entail prejudicial penalties of any sort, which would imply acts of anti-union discrimination."⁷⁵

The right to strike is guaranteed in Kazakhstan's constitution and labor code.⁷⁶ However, in order for the strike to be considered legal, workers are required to exhaust the cumbersome and lengthy mediation procedures described above. Where workers fail to fulfill these conditions, including "the time periods, procedures and requirements envisaged by this Code," strikes may be found illegal by a court.⁷⁷

The ILO's Committee on the Freedom of Association (CFA), which oversees ILO members' compliance with applicable international law on the issue, has stated that where national legislation has "conciliation and mediation procedures [that] must be exhausted before a strike may be called, ... [s]uch machinery must, however, have the sole purpose of facilitating bargaining: it should not be so complex or slow that a lawful strike becomes impossible in practice or loses its effectiveness."⁷⁸ Rather than facilitate bargaining, Kazakhstan's labor code imposes cumbersome conditions that make it very difficult for workers to hold a legal strike.

Under Kazakh law workers can call a strike "if mediation procedures have failed to resolve the collective labor dispute, or in cases when the employer declines to participate in the mediation procedures or does not fulfill the agreement achieved in the course of resolution of the collective labor dispute."⁷⁹ In order to hold a legal strike, workers must hold a general meeting with at least half the company's total work force and the decision to strike must be

⁷⁵ Bernard Gernigon, Alberto Odero and Horacio Guido, *ILO Principles Concerning The Right to Strike*, 2000, p. 11.

⁷⁶ Constitution of the Republic of Kazakhstan, art. 24, point 3; and Kazakhstan Labor Code, art. 298.

⁷⁷ Kazakhstan Labor Code, art. 303, point 1, sub-point 3.

⁷⁸ General Survey of the reports on the Freedom of Association and Protection of the Right to Organise Convention and the Right to Organise and Collective Bargaining Convention, Report III (Part 4B), International Labour Conference, 81st Session, 1994, Geneva, para. 171.

⁷⁹ Kazakhstan Labor Code, art. 298, point 1.

supported by majority vote.⁸⁰ Before the February 2012 amendments to the labor code, workers were required to inform their employers in writing at least 15 days in advance of the start date of the strike, and provide information about the time, date and place of the strike, the duration and the number of participants.⁸¹ The February 2012 amendments reduced the requirement of providing advance notice from 15 days to five working days, and workers are no longer required to indicate the duration of the strike in advance.

In addition to cumbersome labor dispute regulations, there is a broad prohibition on the right to strike in Kazakhstan. Under national law, strikes are prohibited in various industries, including in railway transport and civil aviation, at all “hazardous production facilities,” and “in other cases envisaged by the laws of the Republic of Kazakhstan.”⁸²

Under Kazakhstan’s “law on industrial safety of hazardous production facilities,” a “hazardous production facility” is categorized as one that produces, uses, processes, stores, transports, or destroys agents that are flammable, explosive, combustible, oxidizing, or toxic, potentially encompassing all companies that work in Kazakhstan’s petroleum industry and potentially any other companies where toxic or flammable material is stored.⁸³

This broad and vaguely defined categorization of industries where strikes are prohibited constitutes a clear violation of workers’ right to strike.⁸⁴ The ILO’s committee on Freedom of Association has found that in general the petroleum sector does not constitute an essential service in the strict sense of the term, or a service “the interruption of which

⁸⁰ In the event that workers are unable to gather half the total workforce to attend a meeting, a representative body of workers can collect signatures to support the decision to strike. Kazakhstan Labor Code, art. 298, point 2.

⁸¹ Labor Code of the Republic of Kazakhstan, No. 251, May 15, 2007, [in force prior to the February 2012 amendments], art. 299.

⁸² Ibid., art. 303, point 1.

⁸³ Law On Industrial Safety of Hazardous Production Facilities of the Republic of Kazakhstan, No. 314, April 3, 2002, art. 3. In October 2011, Askar Balzhanov, the general director of KazMunaiGas Exploration and Production was quoted in the media as saying: “strictly speaking, strikes at oil fields are, in general, banned.” Malik Andirgaliev, “Establishing our previous work rhythm” (“Наладим прежний ритм работы”), *Ogni Mangystau*, October 1, 2011, http://ogni.kz/index.php?option=com_content&task=view&id=4975&Itemid=3 (accessed June 6, 2012).

⁸⁴ In its 2011 Individual observation, the CFA requested further information on what industries are covered by this provision: “The Committee requests the Government to clarify which organizations fall into the category of organizations carrying out dangerous industrial activities and the categories of workers whose right to strike is so restricted. The Committee further requests the Government to indicate all other categories of workers whose right to strike is restricted by other legislative texts and to provide copies thereof.”

would endanger the life, personal safety or health of all or part of the population.”⁸⁵ It has, however, found that the petroleum sector is one where “a minimum negotiated service could be maintained in the event of a strike.”⁸⁶

In its 2010 concluding observations on Kazakhstan, the UN Committee on Economic, Social and Cultural Rights, which reviews states’ compliance with the ICESCR, noted “with concern the restrictions imposed by the State party on the right to strike.”⁸⁷ The committee urged Kazakhstan to bring its legislation in line with the ICESCR and ILO conventions.

Despite such restrictions, a growing number of unions and groups of workers in various economic sectors in Kazakhstan have held strikes.⁸⁸ However, strikes that take place outside of Kazakhstan’s legal framework are typically found illegal by local courts, as is the case with the strikes detailed in this report.

Consequences for Participating in an Illegal Strike

Under Kazakhstan labor law, workers who participate in legal strikes are protected from disciplinary measures and are protected from dismissal.⁸⁹ However, workers who participate in or lead illegal strikes may be subject to disciplinary consequences for missing more than three hours of work in a row, including dismissal.⁹⁰ They may also face fines, detention, or imprisonment under administrative or criminal legislation regulating public rallies, gatherings, pickets, and protests.⁹¹

⁸⁵ ILO Digest of Decisions and Principles, para. 587. See also Gernigon, et al., *ILO Principles Concerning The Right to Strike*, 2000.

⁸⁶ ILO Digest of Decisions and Principles, para. 624. The CFA has stated that a minimum service “[w]ould be appropriate as a possible alternative in situations in which a substantial restriction or total prohibition of strike action would not appear to be justified and where, without calling into question the right to strike of the large majority of workers, one might consider ensuring that users’ basic needs are met and that facilities operate safely or without interruption,” ILO Digest of Decisions and Principles, para. 607.

⁸⁷ UN Committee on Economic, Social and Cultural Rights (CESCR) Concluding Observations, 2010, para. 22.

⁸⁸ Human Rights Watch telephone interview with Ainur Kurmanov, March 5, 2012.

⁸⁹ Kazakhstan Labor Code, arts. 302 and 305.

⁹⁰ Kazakhstan Labor Code, art. 54, point 1, subpoint 6.

⁹¹ Ibid., art. 304. Art. 72 of Kazakhstan’s labor code defines “disciplinary sanction” as a warning, reprimand, strict reprimand or cancellation of the employment contract. In addition, persons who lead illegal strikes or interfere in the work of a company during an emergency situation face up to one year in prison under article 335 of Kazakhstan’s criminal code.

Pursuant to the February 2012 amendments to the labor code, workers can now also be dismissed if they “continue participating in a strike after the court ruling suspending the strike or finding it illegal was brought to [their] attention.”⁹² The ILO has stated that “[t]he dismissal of workers because of a strike, which is a legitimate trade union activity, constitutes serious discrimination in employment and is contrary to Convention No. 98,”⁹³ which guarantees that “[w]orkers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.”⁹⁴ Any penalties for participating in an illegal strike should be proportionate to the offense or fault committed. Human Rights Watch considers dismissal for exercising the right to strike a disproportionate disciplinary sanction.

Under Kazakhstan’s administrative and criminal codes, the authorities may also punish workers who participate in strikes in public spaces under legislation regulating public meetings, assemblies, and the like. Under the code on administrative offenses, “violating the law on the procedure for organizing and conducting peaceful assemblies, meetings, marches, pickets and demonstrations” carries a maximum penalty of a fine of 50 monthly payment indexes (MRP), a measurement used to calculate wages (50 MRP is approximately US\$550), or 15 days’ administrative detention.⁹⁵ Under national legislation, participating in a strike in a public space may also be considered a criminal offense if the “act resulted in the disruption of transport or caused substantial harm to the rights and lawful interests of citizens and organizations.”⁹⁶ The charge carries a maximum penalty of imprisonment of up to one year.

The ILO also insists that penalties be proportionate to the offense committed and that “the authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike.”⁹⁷ The ILO has also determined criminal sanctions for those who participate in peaceful strikes to be excessive punishment.⁹⁸

⁹²Kazakhstan Labor Code, art. 54, point 1, subpoint 19.

⁹³ ILO Digest of Decisions and Principles, para. 661. See also para. 660.

⁹⁴ ILO Convention No. 98, art. 1.

⁹⁵ Code on Administrative Offences of the Republic of Kazakhstan, No. 155, January 30, 2001, art. 373.

⁹⁶ Criminal Code of the Republic of Kazakhstan, No. 167, July 16, 1997, with changes and amendments as of December 3, 2011, art. 334.

⁹⁷ ILO Digest of Decisions and Principles, para. 668.

⁹⁸ “Criminal sanctions should not be imposed on any worker for participating in a peaceful strike and therefore, measures of imprisonment should not be imposed on any account: no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike.” *Complaint against the Government of United*

In addition, the ILO considers sanctions for participating in strikes acceptable only when national law itself is consistent with international standards on freedom of association. The CEACR has stated that “sanctions for strike action, including dismissals, should be possible only where strike prohibitions are in conformity with the principles of freedom of association.”⁹⁹ As described above, Kazakhstan’s laws regarding freedom of association, including collective bargaining and the right to strike, violate international norms.

States presented by the Transport Workers Union of America AFL-CIO (TWUA) and the Transport Workers Union of Greater New York, AFL-CIO, Local 100 (Local 100), Case No. 2741, para. 772.

⁹⁹ CEACR: Direct Request concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Kazakhstan (ratification: 2000), adopted 2003, published 92nd ILC session (2004), https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:2864798693954451::NO:13100:P13100_COMMENT_ID:2224882 (accessed April 10, 2012).

III. Violations of Freedom of Association and other Rights in Kazakhstan's Oil Sector

As for our union, the company completely ignored us. The company didn't want a union that would open people's eyes, that would provide legal consultation, that workers could [appeal to] to defend their rights. It's easier for them when the workers don't know anything and just [did their] work, silently.

—Karakiya union member [name withheld]

Interference with Union Activity and Strike at KarazhanbasMunai Oil Company

KarazhanbasMunai (KBM) is an oil production company that employs approximately 4,000 workers to explore and develop the Karazhanbas oil field, located approximately 200 kilometers from Aktau, the capital city in the Mangystau region. KBM affiliate companies—TulparMunaiService (TMS) and ArgymakTransService (ATS)—provide maintenance, transportation, and drilling services to KBM. Workers from all three companies are members of the Karazhanbas union.

Beginning on May 8, 2011 hundreds of Karazhanbas union members at KBM, TMS, and ATS began a partial hunger strike after a long-standing dispute with company management regarding higher wages failed to be resolved through mediation, and after management refused to acknowledge new Karazhanbas union leadership. On May 17, workers went on strike on grounds that they were no longer fit to work and over their unresolved labor dispute. Hundreds of workers remained on strike throughout the summer and fall during which time KMB management fired approximately 1,000 workers for participating in the illegal strike.¹⁰⁰

¹⁰⁰ Following violent clashes in Zhanaozen in mid-December, the authorities announced the creation of a government commission to create employment opportunities for dismissed OzenMunaiGas and KarazhanbasMunai oil workers (see additional information below).

Failed Efforts at Mediation

Between November 2010 and January 2011, Karazhanbas union and KarazhanbasMunai, TulparMunaiService and ArgymakTransService management participated in a mediation commission to review workers' demands for higher pay.¹⁰¹ In January, the commission agreed that unresolved questions over wage payment coefficients would be moved to arbitration in accordance with Kazakhstan's labor code.¹⁰²

On January 13, 2011, Karazhanbas union held a general meeting where members agreed upon three experts, including union lawyer Natalia Sokolova, to participate in the arbitration council.¹⁰³ However, the following day, union chairman Erbosyn Kosarkhanov unilaterally signed an agreement with company management excluding Sokolova from the arbitration commission's composition.¹⁰⁴

When union members learned that Sokolova had not been included in the composition of the arbitration commission, they began to doubt Kosarkhanov's commitment to represent the union's interests and pressed him to amend the agreement so that Sokolova could be included.¹⁰⁵ The day before arbitration was scheduled to take place, Kosarkhanov sent a letter to company managers that confirmed the union's decision to include Sokolova in the composition of the arbitration commission and further requested that Mukhtar Umbetov, a long-term Aktau-based labor activist, also be included in order to match the total number of experts put forward by company management.¹⁰⁶

¹⁰¹ Workers were demanding that their wages be increased by a 1.8 percent industrial coefficient, on the basis of a government decree signed by Prime Minister K. Masimov, No. 548, June 9, 2008, and a 1.7 percent territorial coefficient for working in the Mangystau region. Under article 204 of Kazakhstan's Labor Code, employees are entitled to higher pay for "Labor compensation for employees engaged in heavy work or work under harmful (particularly harmful) or hazardous working conditions." Copies of the mediation commission meeting minutes (*protokoly*) are on file with Human Rights Watch.

¹⁰² Wage coefficients are percentages of a base salary that are added to workers base salary as additional compensation for working in certain sectors of the economy, such as in the mining industry, or under certain conditions.

¹⁰³ The experts included Karazhanbas union lawyer Natalia Sokolova, President of the Confederation of Free Trade Unions of Kazakhstan Sergei Belkin, and President of the Coal Mining and Metallurgical Industry Branch Trade Union 'Decent Work' V. Chaika.

¹⁰⁴ Human Rights Watch interview with Karazhbas union members, August 2011; Copy of agreement on file with Human Rights Watch.

¹⁰⁵ Human Rights Watch interview with Alibek A., Aktau, August 8, 2011.

¹⁰⁶ Copy of letter on file with Human Rights Watch. The agreement on the composition of the arbitration council signed by Kosarkhanov on January 14 included four experts put forward by management.

The labor code specifies that the composition and number of members of the arbitration council is determined by “mutual agreement,” but it does not outline how to resolve instances where there is a deadlock.¹⁰⁷ On January 21, Sokolova and Umbetov went to KBM headquarters in Aktau where arbitration was scheduled to take place. However, citing the agreement management had already signed with Kosarkhanov on January 14 and that a total of five arbitration council members were already present, the company representatives refused to allow either Sokolova or Umbetov to participate. Umbetov described what happened to Human Rights Watch:

[Karazhanbas Munai Deputy Director Kairbek] Eleusinov met with us and sharply and aggressively said that “these people” need to be removed from the panel. [He said that] they don’t have the right to participate, and gave various explanations and reasons. We started to unpack the law, explaining who participates is the decision of the labor collective.... Instead of discussing this, Eleusinov called company security and the police to intervene ... and we were forced to leave.¹⁰⁸

In an interview Eleusinov later gave to the media, he stated that Sokolova was an “interested party” and therefore could not participate in the arbitration proceedings and accused the union of deliberately attempting to impede arbitration by insisting on Sokolova’s and Umbetov’s participation.¹⁰⁹

However, as noted above, Kazakhstan’s labor code allows for a wide range of actors to participate in arbitration, including “representatives of public associations, government labor inspectors, specialists, experts and other parties.”¹¹⁰ Furthermore, the ILO’s Committee on the Freedom of Association has found that “it is important that both employers and trade unions bargain in good faith and make every effort to reach an agreement; moreover, genuine and constructive negotiations are a necessary component to establish and maintain

¹⁰⁷ Kazakhstan Labor Code, art. 293.

¹⁰⁸ Human Rights Watch Interview with Mukhtar Umbetov, Aktau, October 24, 2011.

¹⁰⁹ Tatyana Kostina, “Kairbek Eleusinov: We consider the labor dispute concluded” (“Кайрбек Елеусинов: “Мы считаем трудовой спор завершенным”) *Ogni Mangystau*, March 29, 2011, http://ogni.kz/index.php?option=com_content&task=view&id=4080, (accessed April 10, 2012).

¹¹⁰ Kazakhstan Labor Code, art. 293, point 2.

a relationship of confidence between the parties.”¹¹¹ Refusing to allow Sokolova or Umbetov to participate in arbitration proceedings raises questions about KarazhanbasMunai’s and its affiliate companies’ commitment to resolving the labor dispute in good faith.

On February 1, 2012, Human Rights Watch sent a letter to KarazhanbasMunai and its affiliate companies concerning their actions in the labor dispute, but did not receive a response from KarazhanbasMunai or its affiliate companies.

Given the disagreement over who could participate in the arbitration council, members of the arbitration council sent a letter to the Prosecutor General of the Republic of Kazakhstan requesting clarification about the provisions for arbitration.¹¹² According to media reports, however, on February 23, Karazhanbas union decided to terminate the labor dispute. Workers interviewed by Human Rights Watch said that Kosarkhanov made this decision without the knowledge of the union members.¹¹³

Violent Attack on Union Members

On January 30, 2011, approximately one week after the arbitration proceedings disintegrated, a group of men, alleged to have included Karazhanbas union chairman Kosarkhanov, attacked three Karazhanbas union members at the bus stop across from the KarazhanbasMunai oil field.

On the evening of January 30, a group of approximately 20-40 men, one of whom was armed with a gun, beat and threatened deputy union chairman Aslanbek Aidarbaev, as well as Tlekbai Dosmugambetov and Kuanish Sisenbaev, both of whom were active members of Karazhanbas union.¹¹⁴ An eyewitness of the attack told Human Rights Watch

¹¹¹ Complaint against the Government of United States presented by the Transport Workers Union of America AFL-CIO (TWUA) and the Transport Workers Union of Greater New York, AFL-CIO, Local 100 (Local 100), Case No. 2741, para 765. See also ILO Digest of Decisions and Principles, para. 935.

¹¹² Confederation of Labor of Russia, “The only way out of the conflict in Mangystau – dialogue by all sides,” (“Единственный выход из конфликта в Мангистау – диалог всех сторон”), *Unions Today*, November 24, 2011, <http://www.unionstoday.ru/news/ktr/2011/11/24/15697> (accessed April 11, 2012).

¹¹³ Human Rights Watch interview with Baurzhan B. Aktau, August 14, 2011. Karazhanbas union meeting minutes from April 9 and 18 refer to this attack, naming Erbosyn Kosarkhanov as one of the attackers. Meeting minutes on file with Human Rights Watch.

¹¹⁴ Ibid. Karazhanbas union meeting minutes from April 9 and 18 refer to this attack, naming Erbosyn Kosarkhanov as one of the attackers. Meeting minutes on file with Human Rights Watch.

that one of the men pointed a gun at Tlekbai Dosmagambetov and that Kosarkhanov himself punched Sisenbaev and threatened the men, saying they should not meddle in the arbitration process.¹¹⁵

Fearful of potential repercussions, none of the three union members immediately reported the incident to the police. However, on February 14, 2011, Sisenbaev filed a complaint of assault with the police in which he stated: “The people who beat me [on January 30, 2011 were]: Erbosyn Kosarkhanov and his driver, Kashkynbaev, and one other person whom I didn’t know (*neznakomets*).”¹¹⁶ Police responded by conducting a preliminary investigation, but declined to open a full criminal investigation.¹¹⁷

The authorities have an obligation to effectively investigate the attack on the union members; failure to do so undermines the principles enshrined in ILO conventions on freedom of association and collective bargaining. The CFA has stated with respect to a climate of violence in which workers are attacked that “[a]ll States have the undeniable duty to promote and defend a social climate where respect of the law reigns as the only way of guaranteeing respect for and protection of life.”¹¹⁸

Interference in the Election of a New Union Leader

Following the disintegration of labor negotiations with company management, which workers blamed in large part on Kosarkhanov, and the allegations that he was involved in the attack on union members, workers no longer trusted Kosarkhanov would defend their interests.¹¹⁹ Members of Karazhanbas union told Human Rights Watch that at a series of general meetings at Karazhanbas oil field on April 9, 12 and 18, 2011, union members voted to remove Kosarkhanov from his position as union chairman and elected Aslanbek Aidarbaev as acting chairman in his place.¹²⁰

¹¹⁵ Ibid.

¹¹⁶ Copy of complaint on file with Human Rights Watch.

¹¹⁷ Human Rights Watch interview with former KarazhanbasMunai employee [name, location and date withheld].

¹¹⁸ ILO Digest of Decisions and Principles, para. 58.

¹¹⁹ Human Rights Watch interview with Alibek A., Aktau, August 14, 2011.

¹²⁰ Interviews with KarazhanbasMunai, ArgymakTransService and TulparMunaiService workers, August and October 2011. Workers told Human Rights Watch that at the April 12, 2011 meeting, they asked Kosarkhanov to account for the expenditure of 32 million tenge (approx. US\$215,000), and that he was unable to show detailed records and receipts. The decision to vote Kosarkhanov out of office was taken by a majority vote of union members, held in general meetings, in accordance with the union’s charter regulating elections. Copy on file with Human Rights Watch.

The ILO has stated clearly and repeatedly that unions must be able to freely hold elections, and interference in the union elections or their outcome constitutes an infringement on freedom of association as guaranteed by international law.¹²¹ In addition, union members can decide upon the procedure and manner in which the vote is cast. Thus the vote to remove Kosarkhanov from office, which was supported by a clear majority of union members and documented in meeting protocols, should have been recognized as legitimate, both by KarazhanbasMunai and its affiliate companies, as well as local authorities.

However, KarazhanbasMunai and its affiliate companies appeared not only to deny the legitimacy of the workers' vote, but also interfered in the conduct of the elections themselves. Oil workers interviewed by Human Rights Watch said that on both April 9 and 18, company representatives denied the union permission to hold general meetings in the company's assembly hall, where the union had met consistently in the past, and would not permit union lawyer Natalia Sokolova access to company territory, despite the fact that the meetings were held after work hours and therefore did not interfere with union members' work duties.¹²²

Hundreds of Karazhanbas union members were forced to hold these meetings outside the Karazhanbas oil field territory. A Karazhanbas union member, Baurzhan B., told Human Rights Watch, "We had to leave the territory of KBM to have our meeting. That's what they call an illegal meeting. But what are we supposed to do if they don't give us a meeting space?"¹²³

Another worker told Human Rights Watch that in May, following the union's decision to vote Kosarkhanov out of office as union chairman, KarazhanbasMunai vice-president for personnel and administration said on television that the company would only work with Kosarkhanov, despite the recent union vote to remove him from office.¹²⁴

¹²¹ According to the ILO, "It is the prerogative of workers' and employers' organizations to determine the conditions for electing their leaders and the authorities should refrain from any undue interference in the exercise of the right of workers' and employers' organizations freely to elect their representatives, which is guaranteed by Convention No. 87," see ILO Digest of Decisions and Principles, para. 390.

¹²² Human Rights Watch interview with Alibek A., Aktau, August 8, 2011.

¹²³ Human Rights Watch interview with Baurzhan B., Aktau, August 14, 2011.

¹²⁴ Human Rights Watch interview with Samat S. Aktau, October 19, 2011.

Escalation of Tensions and the Initiation of the Strike

At the end of April 2011, Aidarbaev and Sokolova, accompanied by a group of union members, went to the union office at KBM headquarters in Aktau to take possession of the union office key, official stamp, and the union charter and other important union documents in order to officially transfer union authority to elected acting chairman Aidarbaev and thus reinitiate their labor dispute with company management.¹²⁵ However, KarazhanbasMunai security prevented them from entering the building.¹²⁶ Alibek A., who was in the crowd of workers, told Human Rights Watch that following this attempt to access the union office, KarazhanbasMunai Vice-President Kairbek Eleusinov filed a complaint with the prosecutor's office against several of the workers, alleging that they had participated in an unsanctioned meeting.¹²⁷

In response to Kosarkhanov's refusal to relinquish union leadership, workers submitted a number of complaints to the local authorities, including the police, the prosecutor's office, and the *Akimat* (mayor), as well as to company management, asking them to intervene. But apparently no effective measures were taken to compel Kosarkhanov to hand over the union documents and stamp in his possession.

Frustrated with company interference in their efforts to remove Kosarkhanov from office and the lack of response from local authorities, on May 8 workers at KarazhanbasMunai and its affiliate companies began a partial hunger strike to demand that Kosarkhanov step down. On May 12, workers held another general meeting at the oil field, and again company security denied Sokolova entry onto company territory.¹²⁸

After these attempts to reinitiate discussions with KarazhanbasMunai and to draw attention to their demands through a hunger strike failed, union members felt they had no other

¹²⁵ As evidence of the union's decision to remove Kosarkhanov from his position as union chairman, the group brought copies of the minutes of the union meetings documenting the fact Kosarkhanov had been voted out of office. Human Rights Watch interview with Alibek A., Aktau, August 8, 2011.

¹²⁶ Human Rights Watch interview with Alibek A., Aktau, August 14, 2011.

¹²⁷ Ibid. Human Rights Watch also raised this question in a letter to KarazhanbasMunai, but did not receive a response.

¹²⁸ According to workers interviewed by HRW, two days after the workers began their partial hunger strike, the deputy director of administration and personnel department at KarazhanbasMunai, addressed the workers saying that a general meeting would be organized on May 12 with Kosarkhanov to address their concerns. However, on May 12, Kosarkhanov did not appear. Workers resumed their hunger strike until they alleged they were no longer fit to work. Human Rights Watch interviews with Baurzhan B., Aktau, August 14, 2011 and with Alibek A., Aktau, August 8, 2011.

choice but to strike. In the words of one oil worker, “People were tired of [constantly] making demands [and] always coming up against a wall.”¹²⁹ On May 17, workers at KarazhanbasMunai and its affiliate companies downed their tools, beginning what would become a seven-month labor strike.¹³⁰

Strike and Its Aftermath

Workers told Human Rights Watch that after the strike started, some workers continued to monitor the oil wells so that production did not stop, but that most of the workers on shift went out on strike.¹³¹ The striking oil workers submitted to company management a list of demands, including demands for increased wages, review of the workers’ collective agreement, and non-interference in union lawyer Natalia Sokolova’s access to company territory. Indicating their willingness to enter into negotiations with company management over these demands, workers included the names of five individuals ready to represent their interests in such mediation procedures.¹³²

One worker described to Human Rights Watch the heavy-handed reaction by the company and local authorities to the workers’ strike:

The prosecutor was there, all of the [company] management was there, the police, and [KarazhanbasMunai] security was there, with their truncheons.... I didn’t like that, that [the police] came out there with automatic weapons and pistols. We had a peaceful strike, we wanted to remove Kosarkhanov, and they came out with automatic weapons. We’re not [criminals], not bandits.¹³³

On May 17, a representative of KarazhanbasMunai filed a complaint with the Tupkaragan District Court against KarazhanbasMunai oil workers requesting the strike be declared illegal. In the complaint, the company named eight “active participants” responsible for the

¹²⁹ Human Rights Watch interview with Zhandoz Zh., Aktau, October 19, 2011.

¹³⁰ This number gradually decreased and fluctuated during the seven month strike. During a visit to Aktau in August a Human Rights Watch researcher saw approximately 150 to 200 striking oil workers standing outside KarazhanbasMunai offices.

¹³¹ Human Rights Watch interview with Samat S., Aktau, October 19, 2011.

¹³² Copy of letter on file with Human Rights Watch. On May 12, Workers also sent a letter concerning their partial hunger strike, their demands and their request to form a mediation commission to government bodies including the President’s office and the Prosecutor General’s office. Copy on file with Human Rights Watch.

¹³³ Human Rights Watch interview with, October 19, 2011.

strike.¹³⁴ On May 20, the Tupkaragan District Court ruled that the KarazhanbasMunai strike was illegal on grounds that the workers failed to adhere to procedures for conducting a legal strike. The ruling also cited legislation prohibiting strikes at companies identified as “hazardous production facilities,” at which, under Kazakh law, strikes are prohibited.¹³⁵

One worker told Human Rights Watch how on the night of May 20, company employers and representatives of the court informed striking oil workers of the court ruling: “At around 11 p.m., all the employers with representatives of the Tupkaragan District Court, they came and showed us the decision of the court, saying that our strike was illegal, ... [but] we continued our strike,” the worker told Human Rights Watch.¹³⁶

As outlined previously, regulations for holding a legal strike in Kazakhstan are very burdensome, and as such fail to meet international norms with respect to the right to strike. Moreover, the blanket prohibition on strikes in all companies that are considered “hazardous production facilities” undermines and restricts the workers’ right to stage peaceful strikes.

Violations of the Right to a Fair Hearing in Cases against Oil Workers

In its complaint to the court dated May 17, KarazhanbasMunai management named eight workers whom it accused of being “active participants and representatives of the strikers.” During the May 20 hearing concerning the complaint, the court failed to uphold the right to a fair hearing.

Marshalbek Zhadigerov, a Karazhanbas union member who had returned to Aktau from his shift at the Karazhanbas oil field on May 18, was the only one of eight workers named in the company’s complaint present at the hearing. Human Rights Watch is unaware of what, if any, effort the court made to ensure that the other seven individuals named in the complaint were informed of the charges against them, or of the date and time of the hearing.

¹³⁴ Copy of lawsuit against workers for holding an illegal strike on file with Human Rights Watch.

¹³⁵ Kazakhstan Labor Code, art. 303. Copy of court ruling on file with Human Rights Watch.

¹³⁶ Human Rights Watch interview with Erbol Utепов, Aktau, August 10, 2011.

Zhadigerov told Human Rights Watch that after he returned home from his shift, a neighborhood police officer told him he would be summoned to court, but did not tell him what the hearing was about. Two days later, on the morning of May 20, two police officers transported him from Aktau to the Tupkaragan District Court, but did not inform him of the allegations against him or present him a summons. The court handed him a summons to appear in court only after the police delivered him to the courtroom.¹³⁷

Zhadigerov told Human Rights Watch that in response to his request for a lawyer, the presiding judge told him he did not need one for the hearing. Zhadigerov said that it became clear to him that he was being accused of instigating the strike at KarazhanbasMunai only after the hearing began. Zhadigerov described the hearing to Human Rights Watch:

The two lawyers from [KarazhanbasMunai] read out [from the documents] they had in hand. I said I didn't understand. They read and read, and after that, I realized that the hearing was taking place between me and the employers. I stood up quickly and said, "I am not going to answer for 4,000 people." I wanted to leave, but the police wouldn't let me. I wanted to stop the process, as I didn't understand what the hearing was about.¹³⁸

Union lawyer Natalia Sokolova, who was also at the courthouse that day, offered to represent Zhadigerov in the hearing, but the court did not approve her request to do so.¹³⁹ The Tupkaragan District Court found the strike illegal, ordered its immediate cessation, and later that day, fined Marshalbek Zhadigerov approximately US\$100.¹⁴⁰

Article 14 of the ICCPR requires that states guarantee fair trial norms, including due process rights for those charged with a criminal offense. Such guarantees include, among other things, the right to be promptly informed of the charges, adequate time and facilities to prepare a defense, access to legal representation, and the right to examine witnesses.¹⁴¹ A defendant in an administrative case in Kazakhstan also has due process rights to ensure

¹³⁷ Human Rights Watch interview with Marshalbek Zhadigerov, Aktau, August 10, 2011.

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ ICCPR, article 14.

a fair hearing, including the right to legal counsel at hearings, to review the case materials, to reply to the charges, to present evidence, make petitions, and appeal the court ruling.¹⁴² Zhadigerov did not enjoy these rights in the proceedings on May 20, 2011.

Despite the court’s ruling, workers persisted with the illegal strike at Karazhanbas oil field. In the weeks following, two other union members named in the ruling, Erbol Utepov and Erbolat Koibagarov were sentenced to short-term administrative detention for their alleged roles in the strike.¹⁴³ Utepov told Human Rights Watch that he too had requested a lawyer during his hearing on June 10, but was told he did not need one:

I asked for a lawyer. They said it was too late. As soon as I came [to the court], the trial began. I asked for a lawyer, [the court] refused. ... Then the decision was issued to lock me up for five days and that’s it. ...They didn’t give me a chance [to defend myself].¹⁴⁴

In addition, the Tupkaragan District Court fined union lawyer Natalia Sokolova approximately US\$150 on May 23 for allegedly leading an unsanctioned gathering of workers at Karazhanbas oil field on May 17, the day the strike began.¹⁴⁵

Arresting and imprisoning workers for participating in a peaceful strike amounts to a violation of freedom of association. With respect to holding a peaceful strike, the ILO’s CFA has said, “The authorities should not resort to arrests and imprisonment in connection with the organization of or participation in a peaceful strike; such measures entail serious risks of abuse and are a grave threat to freedom of association.”¹⁴⁶

The ICCPR also provides that any restriction on the right to freedom of assembly on grounds of public safety, national security, and public order should be interpreted as narrowly as possible. According to article 21 of the ICCPR, “[N]o restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which

¹⁴² Kazakhstan Code on Administrative Offenses, art. 584.

¹⁴³ Human Rights watch interview with Erbol Utepov, Aktau, August 10, 2011.

¹⁴⁴ Ibid.

¹⁴⁵ Copy of verdict on file with Human Rights Watch.

¹⁴⁶ ILO Digest of Decisions and Principles, para 671.

are necessary in a democratic society in the interest of national security or public safety, public order (*ordre publique*), the protection of public health or morals or the protection of the rights and freedoms of others.”¹⁴⁷

May 24 Attempt to Access Union Office

In response to Kosarkhanov’s persistent refusal to hand over the stamp and founding documents, Karazhanbas union complained to local authorities about the interference in the work of their union and requested the police to intercede. On May 24, Natalia Sokolova and several other workers tried again to access the union office at KarazhanbasMunai headquarters in order to take possession of the stamp and documents.¹⁴⁸ Ilyas I., who was there that day, told Human Rights Watch:

Every morning we gathered around KarazhanbasMunai headquarters around 9 a.m. On May 24, the oil workers summoned Sokolova.... [We] decided that five or six people, [Natalia] Sokolova, and police officers would go to Kosarkhanov’s office [to take the stamp and documents]. But security would not let them into KBM territory.¹⁴⁹

According to Ilyas I., the local police officer (*uchastkovyi*) told striking oil workers that an officer from the Aktau police station would be dispatched after lunch to accompany them into the building.¹⁵⁰ However, the officer did not appear. Ilyas S. said that Aidarbaev and Sokolova never secured the union stamp and documents.

By preventing Karazhanbas union members from accessing their own offices in order to take possession of the union’s founding documents and stamp, items which are necessary for the union to legally communicate any claims to their employer, KarazhanbasMunai undermined the union’s right to hold elections in full freedom, as well as to have their chosen representatives communicate claims on their behalf, rights that are protected under ILO conventions on collective bargaining.¹⁵¹

¹⁴⁷ ICCPR, art. 21.

¹⁴⁸ Human Rights Watch interview with Ilyas I., Aktau, October 21, 2011.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ ILO Digest of Decisions and Principles, para 389.

June 5 Protest March

In an effort to be more visible, approximately three weeks after the KarazhanbasMunai strike began, striking oil workers marched from the Aktau city bus station (where workers would be collected to be driven to the Karazhanbas oil field) to the Mangystau Regional Mayor’s Office (*Akimat*) to stage a hunger strike.

One worker told Human Rights Watch that about 10 to 15 striking oil workers wanted to stage a hunger strike outside the *Akimat* “so that people would pay attention to us.” He said: “The demands were the same. We already gave them our demands, but they didn’t pay attention. There wasn’t much sense to stand at the bus station, so we went to the *Akimat* to announce [a hunger strike].”¹⁵² Between 300 and 500 striking oil workers took part in the march.¹⁵³

Workers who participated in the march told Human Rights Watch that as they approached the building, approximately 50 law enforcement officers and the prosecutor blocked their way and told them that they would not be permitted to pass.¹⁵⁴ Since they were not permitted to pass on the sidewalk, the crowd of workers began to walk into the street and several sat down. Police officers responded by aggressively detaining the workers and took dozens into custody.¹⁵⁵

Taraz T., an oil worker who participated in the march, described to Human Rights Watch how three police officers detained him: “They twisted my hands and shoulders. I said, ‘Let me go, I’ll walk myself, I won’t run anywhere, I’ll walk on my own.’ They didn’t listen to me.”¹⁵⁶ Daniyar D., another worker in the crowd, told Human Rights Watch that the police knocked him off his feet and then grabbed him by his arms and legs and carried him to a bus waiting nearby.¹⁵⁷

¹⁵² Human Rights Watch interview with Daulet D., Aktau, October 24, 2011.

¹⁵³ Human Rights Watch interview with Daniyar D., Aktau, August 10, 2011.

¹⁵⁴ Human Rights Watch interviews with Daniyar D. and Ablai A., Aktau, August 10, 2011.

¹⁵⁵ Ibid.

¹⁵⁶ Human Rights Watch interview with Taras T., Aktau, October 24, 2011.

¹⁵⁷ Human Rights Watch interview with Daniyar D., Aktau, August 10, 2011.

Workers interviewed by Human Rights Watch said that they were held overnight and fined the next day on charges of disturbing public order. Taraz T. estimated that his administrative hearing took no more than two or three minutes. He told Human Rights Watch, “The judge asked this question: ‘Were you there?’ I said, ‘Yes.’ And, that was it, then the [court’s] decision. For two words, in two minutes, they fined me.”¹⁵⁸

Authorities also brought criminal charges for leading an illegal march against Kuanish Sisenbaev, an outspoken oil worker who walked at the front of the march. On July 13, the Aktau City Criminal Court sentenced him to 200 hours of community service.¹⁵⁹ On the day of the march, after police began detaining march participants, Sisenbaev and three others responded to the police detentions by cutting themselves, a form of protest to which prison inmates in Kazakhstan have also resorted.¹⁶⁰ Sisenbaev and one other worker were hospitalized.¹⁶¹

The right to freedom of assembly is enshrined in article 21 of the ICCPR,¹⁶² as well as in article 32 of Kazakhstan’s constitution.¹⁶³ In practice, however, freedom of assembly in Kazakhstan is restricted by the law “On the procedure for organizing and conducting peaceful assemblies, meetings, marches, pickets and demonstrations in the Republic of Kazakhstan.”¹⁶⁴ According to this law, applications for permission to hold public demonstrations must be submitted to the local mayor’s office at least 10 days in advance, and “[t]he application must specify the goal, form, and location of the assembly or its route of movement, the time of its beginning and end, the estimated number of participants, the names of authorized persons [organizers] and persons responsible for public order, place

¹⁵⁸ Human Rights Watch interview with Taras T., Aktau, October 24, 2011.

¹⁵⁹ Kazakhstan Criminal Code, art. 334, point 2. Copy of verdict on file with Human Rights Watch.

¹⁶⁰ “Two dead in Kazakh prison riot,” *BBC News*, August 12, 2010, <http://www.bbc.co.uk/news/world-asia-pacific-10951308>, (accessed May 28, 2012).

¹⁶¹ Human Rights Watch interview with Alibek A., Aktau, August 8, 2011.

¹⁶² Article 21 of the ICCPR provides that “no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”

¹⁶³ Article 32 of the Constitution of the Republic of Kazakhstan states that citizens have the right to gather peacefully for rallies, demonstrations, marches, and pickets. This right may be limited only “in the interests of state security, public order, protection of health, and the protection of the rights and freedoms of other people.”

¹⁶⁴ Law “On the procedure for organizing and conducting peaceful assemblies, meetings, marches, pickets and demonstrations in the Republic of Kazakhstan,” No 2126, March 17, 1995 with December 20, 2004 amendments..

of their residence and work [study], and the application date.”¹⁶⁵ The authorities must provide a response no later than five days before the scheduled event. However, in practice, any public meeting of a political nature that is not organized directly or indirectly by the government, or that does not support government policies, is likely to be denied a permit by the authorities or broken up by police.¹⁶⁶ Furthermore, in cities across Kazakhstan, including Almaty, Astana, and Karaganda, local authorities have designated specific areas, often far from the center, where public meetings may take place. The authorities regularly deny permission for or break up public meetings held in alternative locations, such as in the city center.

Freedom of assembly in Kazakhstan is tightly controlled. If a gathering or meeting is held without permission, authorities may bring administrative or criminal charges against organizers and participants. According to article 373 of the code on administrative offenses, individuals violating the law on freedom of assembly can be fined or detained for up to 15 days. Article 334 of the criminal code provides for up to one year in prison if individuals organize or participate in illegal gatherings or meetings.

¹⁶⁵ Ibid, art. 3. Unofficial translation by Human Rights Watch.

¹⁶⁶ See Sergey Duvanov, Monitoring Freedom of Assembly in Kazakhstan: June-December Interim Report, Kazakhstan International Bureau for Human Rights and Rule of Law, January 2012.

Case of Natalia Sokolova

Lawyer and advocate for workers' rights, Natalia Sokolova, 39, was arrested on May 24, 2011, at the Mangystau district police station in Aktau, where she had reported for questioning in connection with a criminal case against her on charges of "inciting social discord."¹⁶⁷ While she was at the police station, a group of striking oil workers gathered outside to protest Kosarkhanov's ongoing illegal possession of the union stamp and founding documents. Authorities accused Sokolova of organizing this "unauthorized meeting" and that night, a court sentenced her to eight days' administrative arrest.¹⁶⁸

Following her eight days in detention, instead of releasing her, authorities kept Sokolova in custody and formally charged her with "inciting social discord."¹⁶⁹ The basis for the criminal charges was a complaint filed by KarazhanbasMunai management against Sokolova for speaking publicly about wage disparity between oil workers at KarazhanbasMunai and OzenMunaiGas at union meetings and through the mass media.

From October 2010 until her arrest, Sokolova worked as a lawyer for Karazhanbas union, advising workers on their rights and representing the union in mediation procedures during the workers' labor dispute. Sokolova is described by one oil worker as someone union members fully trusted: "People called her because the people trust her.... [S]he doesn't refuse to give her help. You can call her at 3 a.m. if there is a problem, and she'll pick up the phone," he told Human Rights Watch.¹⁷⁰

On August 8, the court handed Sokolova a six-year prison sentence for "inciting social discord" and "actively participating" in illegal gatherings, and barred her from "civic" activity and from holding office in a public association, such as a union, for three years.

The criminal offence of "inciting social discord" under article 164 of Kazakhstan's

¹⁶⁷ Kazakhstan Criminal Code, art. 164, point 3.

¹⁶⁸ Copy of verdict on file with Human Rights Watch.

¹⁶⁹ Kazakhstan Criminal Code, art. 164, point 3.

¹⁷⁰ Human Rights Watch interview with Baurzhan B., Aktau, August 8, 2011.

criminal code is a vague and overly broad charge that can be used to criminalize legitimate exercise of the rights to freedom of expression and association as protected under international human rights law. Laws that target speech that incites violence, discrimination, and hostility must respect the core right of free speech and are considered compatible with human rights law only when such violence, discrimination, or hostility is imminent and the measures restricting speech are absolutely necessary to prevent such conduct. Moreover, the principle of legality under international human rights law requires that crimes be classified and described in precise and unambiguous language so that everyone is aware of what acts and omissions will make them liable and can act in accordance with the law. Article 164 of Kazakhstan’s Criminal Code fails to meet the principle of necessity or legality.

Sokolova’s conviction and imprisonment for exercising legitimate union activities also significantly compromised the union’s ability to adequately represent their members. Moreover, it sent a warning message to Karazhanbas union members and other striking oil workers in western Kazakhstan about the consequences of pursuing their rights.

There are also serious concerns that Sokolova did not receive a fair trial. Sokolova’s husband, Vassiliy Chepurnoi, her public defender at trial, told Human Rights Watch that the presiding judge refused to admit into evidence video recordings that would have bolstered Sokolova’s defense and denied her motions to summon key witnesses.¹⁷¹ On September 26, 2011, an appellate court upheld her sentence, apparently unconvinced by independent linguistic expert analysis, witness testimony, and video material that was presented in her defense during the hearing.

After serving approximately nine months of her sentence, on March 6, 2012, the Supreme Court of Kazakhstan commuted Natalia Sokolova’s six-year prison sentence to a three-year suspended sentence, which led to her release on March 7, 2012. However, the court upheld the ban preventing Sokolova from engaging in “civic” activity and from holding office in a public association for three years.

¹⁷¹ Human Rights Watch interview with Vassiliy Chepurnoi, Aktau, August 9, 2011.

Threats against and Harassment of Karazhanbas Union Members

After the May 17 strike began, Karazhanbas union members experienced various forms of harassment which seemed retaliatory in nature and aimed at preventing workers from further engaging in collective bargaining. The punitive targeting of union activists for legitimate union activity directly violates workers' rights and is contrary to the principles of freedom of association and collective bargaining guaranteed under international law.

On the night of May 19, unknown persons set fire to the home of Aslanbek Aidarbaev, acting chairman of Karazhanbas union, in Shetpe, a town approximately 80 kilometers from Aktau. A worker close to Aidarbaev told Human Rights Watch that Aidarbaev believed his house, the construction of which had not been completed, was set on fire in retribution for his union activities.¹⁷² Authorities opened a criminal investigation, but as of August 2011, no suspects had been identified.

In late June, Malik Mendygaliev and two other KarazhanbasMunai workers travelled to Astana to hand-deliver letters to government officials about the workers' demands. Mendygaliev also gave a media interview while in Astana. Mendygaliev told Human Rights Watch that his apartment in Aktau was vandalized that night, as was the apartment of another one of the other workers with him in Astana. Mendygaliev described what happened to Human Rights Watch:

[Unknown persons] poured petrol over my door and broke my windows. I live on the first floor. In another hour, my friend (*tovarish*) who was with me —there were three of us who went to Astana—[it was] the same situation [at his apartment] in the middle of the night. They also poured petrol on his door and broke his windows.¹⁷³

Mendygaliev told Human Rights Watch that the authorities opened a criminal case, but had not identified any suspects.¹⁷⁴

¹⁷² Human Rights Watch interview with Alibek A., Aktau, August 14, 2011.

¹⁷³ Human Rights Watch interview with Malik Mendygaliev, Aktau, August 8, 2011.

¹⁷⁴ Ibid.

Mendygaliev also told Human Rights Watch that he and several workers who participated in the strikes also received threats against their family by mobile phone. He told Human Rights Watch that sometime after he returned from Aktau he received a threatening text message to his phone saying, “Don’t play with fire, think of your children.”¹⁷⁵

The ILO has stated that “[t]he rights of workers’ and employers’ organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations,” and that “it is for governments to ensure that this principle is respected.”¹⁷⁶ The ILO has further indicated that “the authorities, when informed of such matters [as threats against trade unions], should carry out an immediate investigation to determine who is responsible and punish the guilty parties.”¹⁷⁷

The authorities have an obligation to respond adequately to threats against union members by carrying out full and impartial investigations capable of bringing the perpetrators to justice. Failure to do so would be a violation of the fundamental right to freedom of association and the right to organize as guaranteed under international law.

Wage Dispute and Strike at OzenMunaiGas Oil Company

Beginning on May 26, 2011, thousands of workers at OzenMunaiGas, an oil production company in Zhanaozen, went on a spontaneous strike feeling the company had failed to constructively address long-standing workers’ grievances concerning a reduction in take-home wages. While approximately 7,800 of approximately 9,000 OzenMunaiGas employees are members of OzenMunaiGas union, the labor dispute at OzenMunaiGas developed outside the union structures in place at OzenMunaiGas, by personal initiative of individual workers. Workers interviewed by Human Rights Watch felt that the OzenMunaiGas union leader did not effectively represent their interests vis-à-vis company management.¹⁷⁸

After the strike began spontaneously on May 26, 2011, hundreds of workers peacefully remained on strike for approximately seven months, until clashes erupted between people

¹⁷⁵ Ibid.

¹⁷⁶ ILO Digest of Decisions and Principles, para. 44.

¹⁷⁷ Ibid., para. 184.

¹⁷⁸ Human Rights Watch interview with Natalia Azhigalieva, Zhanaozen, August 12, 2011.

gathered in Zhanaozen's central Yntymak square, including striking oil workers, and police on December 16, 2011, Kazakhstan's Independence Day. As described in more detail below, after initial clashes, police and security forces responded to the outbreak of violence, including looting and arson, by shooting at people with live ammunition, killing 12 individuals. Three other people died in the clashes, according to government numbers; no police died in the clashes. Authorities brought charges of organizing and participating in mass unrest against 37 people, many of whom testified during trial that they had been tortured and ill-treated to coerce testimony against themselves or others during the investigation.¹⁷⁹

While the labor dispute at OzenMunaiGas developed independently of the strike at KarazhanbasMunai, the workers' concerns over wage coefficients and the remuneration system overlapped. OzenMunaiGas workers had also consulted with Karazhanbas union lawyer Natalia Sokolova on the matter of their collective agreement and reduced pay in the spring of 2011. In addition, after workers at both OzenMunaiGas and KarazhanbasMunai had begun their labor strikes, the striking workers jointly identified five representatives from both companies to participate in joint mediation procedures.

Wage Dispute between Workers and OzenMunaiGas Management

OzenMunaiGas workers' grievances over pay date back to February 2010, when the company first introduced changes to the remuneration system.¹⁸⁰ Workers held a spontaneous strike in March 2010 protesting the changes, which a court declared illegal because the workers had not first exhausted mediation procedures as required by law.¹⁸¹ The strike ended after OzenMunaiGas management agreed to form an employee-employer commission to review workers' demands.¹⁸² In June 2010, on the basis of a supplementary collective agreement, the new system of remuneration went into effect. While workers' pay increased initially under the new agreement, worker representatives interviewed by Human

¹⁷⁹ "Kazakhstan: Suspend Trial, Investigate Torture Allegations," Human Rights Watch news release, April 23, 2012, <http://www.hrw.org/news/2012/04/23/kazakhstan-suspend-trial-investigate-torture-allegations>.

¹⁸⁰ Human Rights Watch interviews with Natalia Azhigalieva, Zhanaozen, October 22, 2011 and with Rosa Tuletaeva, Aktau, October 24, 2011. See also Simon Pirioni, "Striking Kazakh oil workers push past union to win concessions," *Power Money and People*, March 28, 2010, <http://spirani.wordpress.com/2010/03/28/striking-kazakh-oil-workers-push-past-union-to-win-concessions/> (accessed April 12, 2012).

¹⁸¹ The court fined approximately 20 workers who were allegedly responsible for organizing the strike. Copy of Zhanaozen City Court ruling on file with Human Rights Watch.

¹⁸² Human Rights Watch interview with Natalia Azhigalieva, Zhanaozen, October 22, 2011.

Rights Watch explained that after several months, they began to receive less money than before.¹⁸³

OzenMunaiGas workers told Human Rights Watch they sought legal advice about the changes that were made to the remuneration system. In particular, they consulted with Karazhanbas union lawyer Natalia Sokolova in March 2011. Following these consultations, OzenMunaiGas workers sent a letter of inquiry raising concerns about the payment system to various governmental bodies, including the Ministry of Labor and Social Protection and the prosecutor general's office requesting the matter be investigated, in particular to assess whether the company was fulfilling its payment obligation under article 204 of the labor code.¹⁸⁴

Workers told Human Rights Watch that while OzenMunaiGas did not invite workers to review their grievances, a small group of workers, including Natalia Azhigalieva, Roza Tuletaeva, and Akzhanat Aminov, along with union lawyer Natalia Sokolova, were invited to an interagency government commission meeting in Aktau with Deputy Minister of Labor Birzhan Nurymbetov on May 13, 2011.¹⁸⁵ According to the workers, the deputy minister told them that the remuneration system reflected in new collective agreement was compatible with legal norms and did not violate their rights. Natalia Azhigalieva told Human Rights Watch that it was made clear at this meeting that no further changes or amendments would be made to the collective agreement regulating their now-reduced pay.¹⁸⁶

On May 16, 2011, approximately 22 OzenMunaiGas oil workers each sent company management and local authorities a notice of their intent to stage individual hunger strikes until their demands concerning remuneration are met.¹⁸⁷ According to workers interviewed by Human Rights Watch, OzenMunaiGas did not initiate individual or collective review of their demands following receipt of these notices.¹⁸⁸ In a March 2012 letter responding to

¹⁸³ Human Rights Watch interviews with Rosa Tuletaeva, Aktau, October 24, 2011 and with Natalia Azhigalieva, Zhanaozen, October 22, 2011. In February 2011, a new collective agreement was adopted which kept the remuneration system in place, despite objections by some worker representatives that their take-home salaries had begun to decrease.

¹⁸⁴ Human Rights Watch interviews with Natalia Azhigalieva, Zhanaozen, October 22, 2011; and with Rosa Tuletaeva, Aktau, October 24, 2011. Letter on file with Human Rights Watch.

¹⁸⁵ Ibid.

¹⁸⁶ Human Rights Watch interview with Natalia Azhigalieva, Zhanaozen, October 22, 2011.

¹⁸⁷ Copy of list of demands on file with Human Rights Watch.

¹⁸⁸ Human Rights Watch interview with Maksat Dosmagambetov, Zhanaozen, August 11, 2011.

Human Rights Watch concerns about the development of the labor dispute at OzenMunaiGas, company management confirmed this information, saying,

After the company received claims from 22 workers in oil production units who stated their intent to go on hunger strike, the company sent official responses signed by OzenMunaiGas' then-acting director K. J. Eshmanov to each of the workers explaining the groundlessness and illegitimacy of the workers' claims and calling on them to return to work.¹⁸⁹

In its letter to Human Rights Watch, OzenMunaiGas management also stated that “[u]pon receipt of claims announcing hunger strikes in May 2011, representatives of company management, including the general director and deputy general director of the company met with OzenMunaiGas employees on a daily basis to explain the system of remuneration and the groundlessness of their claims, which was [later] confirmed by court decisions.”¹⁹⁰

Ten days after they submitted statements of their intent to stage a hunger strike, and feeling there were no options left open to them to have their demands reviewed by OzenMunaiGas management, on May 26, 2011, 22 OzenMunaiGas oil workers began their hunger strike on the territory of OzenMunaiGas oil field, several kilometers from Zhanaozen. The same day, thousands of oil OzenMunaiGas workers spontaneously downed their tools in support of hunger strikers' demands concerning higher wages.¹⁹¹

Strike and Immediate Repercussions

From the time the labor strike began on May 26 through early July, approximately two dozen additional oil workers participated in the hunger strike in rotation. The two groups of striking oil workers—the two dozen or so on hunger strike, as well as the hundreds of workers who spontaneously had begun to strike in support of the demands—sat out at one

¹⁸⁹ Letter from Erbol Ismailov, advisor on strategic communications at OzenMunaiGas, to Human Rights Watch, March 11, 2011, unofficial translation.

¹⁹⁰ Ibid.

¹⁹¹ The May 27 verdict finding the strike illegal put the number of strikers at around 1000 people. Over time the number of striking oil workers decreased. When Human Rights Watch visited the site of the strike in August 2011, there were approximately 200 to 250 workers sitting out on Zhanaozen's central square.

of OzenMunaiGas’s production units, several kilometers outside Zhanaozen until the authorities attempted to break their strike in early July, as described below.

OzenMunaiGas management and representatives of KazMunaiGas Exploration and Production Company who travelled to Zhanaozen to address the striking oil workers insisted the only way they would consider the workers’ demands was in the context of national legislation regulating collective bargaining and only after the workers completely ceased their strike. In its letter to Human Rights Watch, OzenMunaiGas stated that it “repeatedly suggested that participants in the illegal acts of protest return to work and continue discussions at the negotiating table, in accordance with the labor law.”¹⁹² However, as described above, the legislation in place regulating labor disputes does not fully protect workers’ rights as is required under international labor and human rights law.

On May 27, the Zhanaozen City Court found the OzenMunaiGas strike illegal on grounds that OzenMunaiGas workers did not follow procedures for holding a legal strike under Kazakhstan’s labor code, and because strikes at “hazardous production facilities,” a categorization OzenMunaiGas falls under, are prohibited under national legislation.¹⁹³ A blanket ban on strikes at “hazardous production facilities” is inconsistent with international human rights and labor law, as described above.

After the Zhanaozen City Court found the strike illegal, local authorities brought administrative charges against a number of oil workers for violating legislation regulating freedom of assembly. On June 2, Maksim Isenbaev, a union representative at one of OzenMunaiGas’ 15 production units, and oil worker Azkhanat Aminov were each fined approximately US\$200 for violating legislation regulating public assemblies.¹⁹⁴ Several other workers who were participating in the hunger strike, including Talgat Saktaganov, Natalia Azhigalieva, and Roza Tuletaeva, were also fined, but had not attended their administrative hearings. One worker told Human Rights Watch that these workers learned

¹⁹² Letter from Erbol Ismailov, advisor on strategic communications at OzenMunaiGas, to Human Rights Watch, March 11, 2012, unofficial translation.

¹⁹³ Copy on file with Human Rights Watch. The ruling was issued several days after a May 24 court ruling finding the demands of the workers unfounded.

¹⁹⁴ Human Rights Watch interview with Ainur A., Zhanaozen, August 12, 2011.

they had been fined when court bailiffs brought court rulings to the site of the strike.¹⁹⁵ It is not clear what effort, if any, the authorities had taken to inform all the individuals facing administrative sanctions in a timely matter of the date and time of their administrative hearings and the charges against them.

As described above, defendants in administrative cases in Kazakhstan are entitled to due process rights, including the right to legal counsel at hearings and to review the case materials, to present evidence, make petitions, and appeal the court ruling, rights which may have been denied to the OzenMunaiGas oil workers who were not present during the administrative hearings against them for participating in an unsanctioned public assembly.

Riot Police Violently Disperse Peaceful Strikers

OzenMunaiGas workers told Human Rights Watch that on July 8, riot police and other law enforcement officers forcibly dispersed oil workers who had downed their tools at one of OzenMunaiGas's production units. Workers had maintained the strike in a peaceful and orderly manner and the strike did not present a threat to the health and safety of the public. Human Rights Watch considers this police action against the peaceful strike at OzenMunaiGas an infringement of the workers' freedom of association and assembly rights. According to the ILO,

The authorities should resort to calling in the police in a strike situation only if there is a genuine threat to public order. The intervention of the police should be in proportion to the threat to public order and governments should take measures to ensure that the competent authorities receive ad-

¹⁹⁵ Human Rights Watch interview with Arman A., Zhanaozhen, August 12, 2011. According to a copy of the court verdict, on June 4 Tuletaeva was found guilty of violating the law on organizing or leading peaceful gatherings, events, pickets, and demonstrations under article 373, point 1 of the Code on Administrative Offenses and was fined 30,240 tenge (approx. US\$200). According to a court document relating to the criminal charges against Akzhanat Aminov, which recalls administrative sanctions against him and other oil workers on strike, other workers were administratively fined for violating article 373 of the Code on Administrative Offenses. It states: "... the actions of Azhilieva N., Saktaganov T., Ermaganbetov S., Chalaev B., Tuletaeva R., and other active participants in the strike of 26.05.2011 do not amount to a crime under article 334, part 2 of the Criminal Code of the Republic of Kazakhstan, but do amount to features of an administrative violation under article 373, part 1 of the administrative code...for which the active strike participants were held administratively liable." Copy of document on file with Human Rights Watch.

equate instructions so as to avoid the danger of excessive violence in trying to control demonstrations that might undermine public order.¹⁹⁶

Natalia Azhigalieva, one of the OzenMunaiGas oil workers who participated in the hunger strike from its start on May 26, told Human Rights Watch that she witnessed how on July 8, during the traditional Friday meal, or *sadakha*, several buses filled with policemen arrived at the site of the strike and without warning began to forcibly disperse workers and others who had gathered there. Azhigalieva described to Human Rights Watch the police actions:

At about 4 or 5 p.m. the [police] arrived.... The riot police were in full gear, with night sticks and helmets.... [They] walked past the hunger strikers towards the supporters, cutting them off from us. There were big woks of food, and it was all turned over into a big mess (*kasha*). People were driven away [by police] in a rough manner.¹⁹⁷

Azhigalieva told Human Rights Watch that when she saw police officers advancing towards the workers on hunger strike, she poured petrol over herself and threatened to alight herself on fire if the police came closer out of fear that she and others would be detained. OzenMunaiGas workers interviewed by Human Rights Watch estimated that over a dozen people were detained on July 8. Everyone detained was released later the same day.¹⁹⁸

The following night, in the early hours of July 10, riot police officers rounded up the OzenMunaiGas workers who remained on hunger strike. Workers said that the operation took place very quickly, without warning, and in some cases police used force against workers as they were detaining them. As described by one worker, “Some of us were so weak.... They need not have twisted [our arms]. If they had just explained, we would have [gotten up] ourselves, normally.... Some were really weak lying there for so many days.... Those who were there from the beginning, they were so weak. They could hardly walk.”¹⁹⁹

¹⁹⁶ ILO Digest of Decisions and Principles, para. 647.

¹⁹⁷ Human Rights Watch interview with Natalia Azhigalieva, Zhanaozhen, August 12, 2011.

¹⁹⁸ Ibid.

¹⁹⁹ Human Rights Watch interview with Marat M., Zhanaozhen, October 22, 2011.

Kanat K., one of the OzenMunaiGas workers on hunger strike, told Human Rights Watch that riot police officers woke him up by beating him:

Around 4 a.m., I was sleeping in the car, a hatchback. My legs were [hanging out over] the bumper. And then, suddenly, there was lots of noise. I opened my eyes and the OMON [riot police] were beating me with night sticks. Three of them [beat me] on my legs.... Then [they] sat on me, twisted my arms, and loaded me into the bus.... We sat down [on the bus], and didn't raise our heads.²⁰⁰

Other hunger strikers said that riot police officers twisted the arms of two hunger strikers with such force that their shoulders became dislocated, and that police forced all of them to keep their heads down as they were being detained.²⁰¹ Hunger striker Orman O. told Human Rights Watch,

At around 4 a.m., [the riot police] came at us. [They] twisted my arms; I didn't understand what was going on. About three people grabbed me by the legs, twisted my arms and pushed my head down, so that I couldn't see.... When we got out of the bus, they didn't let us raise our heads either. We walked with our hands behind our heads.²⁰²

Four OzenMunaiGas workers detained that night by police told Human Rights Watch that they and other hunger strikers who were rounded up by police were taken to a local hospital where they were examined. After some time, those who did not have serious injuries left to join the other striking oil workers who had relocated to Zhanaozen's central square, Yntymak.

The use of force by police to round up OzenMunaiGas workers on hunger strike in the middle of the night and without warning does not adhere to international principles on the use of force and undermines workers' rights to freedom of association and assembly. Law

²⁰⁰ Human Rights Watch interview with Kanat K., Zhanaozen, August 13, 2011.

²⁰¹ Human Rights Watch interview with Bekzhan B., Zhanaozen, August 13, 2011.

²⁰² Human Rights Watch interview with Orman O., Zhanaozen, August 13, 2011.

enforcement authorities may regulate public assemblies in accordance with international policing standards. The UN Code of Conduct for Law Enforcement Officials states that “law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.”²⁰³ Furthermore, the UN Basic Principles on the Use of Force and Firearms also place limits on the use of force in dispersing “unlawful assemblies.” Principle 13 states, “In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.”²⁰⁴

Case of Akzhanat Aminov

On June 30, 2011, police detained oil worker Akzhanat Aminov, 54, and pressed criminal charges against him in conjunction with the ongoing strike by OzenMunaiGas oil workers.²⁰⁵ Workers interviewed by Human Rights Watch said that Aminov played an active role in defending workers’ rights in the months preceding the May 2011 labor strike and is well-respected by OzenMunaiGas workers who looked to him for advice. One OzenMunaiGas oil worker described Aminov as the person “who opened our eyes” and helped workers understand their rights.²⁰⁶

On August 17, the Zhanaozen City Court gave Aminov a one-year suspended prison sentence with a two-year probationary period for “organizing an illegal gathering” on grounds that he had led the strike by giving orders to workers by phone.²⁰⁷ According to Aminov’s testimony as it is recorded in the verdict, during the trial Aminov explained to the court that “he gave advice to the workers by phone, but he could not

²⁰³ United Nations Code of Conduct for Law Enforcement Officials, adopted December 17, 1979, G.A. res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979), art. 3.

²⁰⁴ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990), principle 13.

²⁰⁵ Kazakhstan Criminal Code, art. 334, point 2.

²⁰⁶ Human Rights Watch interview with Natalia Azhigalieva, Zhanaozen, August 12, 2011.

²⁰⁷ Copy of verdict on file with Human Rights Watch.

imagine that this constituted organizing [the strike], as he thought that he was just helping the workers restore their violated rights.”²⁰⁸ Under his suspended sentence, Aminov was obliged to observe a curfew and to check in regularly with police.

The criminal conviction of Aminov for consulting with workers by phone about the peaceful strike at OzenMunaiGas is a disproportionate sanction for legitimate trade union activity. Under the principles of freedom of association, “criminal sanctions should not be imposed on any worker for participating in a peaceful strike and therefore, measures of imprisonment should not be imposed on any account: no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike.”²⁰⁹

Aminov was subsequently arrested in February 2012 on charges of “inciting social discord” in the context of the authorities’ investigation into the December 16 violence. In July 2012, authorities brought additional charges of “calling for the forcible overthrow of the constitutional order” against Aminov. He faces up to 12 years in prison.

Threats, Harassment, and Violence against Oil Workers and Their Families

Over the months OzenMunaiGas workers were on strike, oil workers and their relatives experienced various acts of violence, threats, and harassment. In some instances, oil workers and their relatives were also detained and some were sentenced to short-term administrative arrest for offenses they did not commit, suggesting that they were targeted by the authorities for their or their relative’s participation in the strikes.

Under the principles that govern the exercise of workers’ rights, workers have the right to be involved in labor actions in “normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind.”²¹⁰

²⁰⁸ Ibid.

²⁰⁹ Complaint against the Government of United States presented by the Transport Workers Union of America AFL-CIO (TWUA) and the Transport Workers Union of Greater New York, AFL-CIO, Local 100 (Local 100), Case No. 2741, para. 772.

²¹⁰ ILO Digest of Decisions and Principles, para. 35.

In order to ensure these “normal conditions,” authorities should ensure prompt and thorough investigations into acts of violence or harassment directed at workers that are capable of bringing perpetrators to account. However, in the cases of harassment and violence during the seven-month strike at OzenMunaiGas documented by Human Rights Watch, there is little evidence that the police have taken anything beyond the minimum of investigative steps to find and hold the perpetrators to account.

Violent Attacks

On October 8, 2011, at around 10 p.m., an unknown assailant fired a rubber bullet that hit striking OzenMunaiGas oil worker Zhanar Saktaganova who was accompanied by opposition activist Aizhangul Amirova as they both were returning home from the central square in Zhanaozen, where they had been sitting with striking oil workers.²¹¹ Saktaganova described how she was attacked to Human Rights Watch:

When we exited a shop, I immediately noticed the guy. He was standing at the corner of the next apartment building: building number 61. I wanted to tell Aizhangul that there was a suspicious guy, a young guy, thin, but thought to myself, okay, [never mind].... We started talking and laughing and then all of a sudden, bam, [I was shot].²¹²

Saktaganova told Human Rights Watch that despite opening a criminal investigation into the attack, the authorities were slow to investigate. According to Saktaganova, when police finally summoned her and Amirova for questioning two days after the attack took place, one police officer allegedly accused them of shooting one another.²¹³ To date, the authorities have not identified the perpetrator.

Within two weeks of this attack, another OzenMunaiGas oil worker was attacked by unknown assailants. On October 26, 2011, Estai Karashaev, a striking worker and member of the opposition Azat Social Democratic Party (OSDP), was attacked by an unknown

²¹¹ Human Rights Watch interview with Zhanar Saktaganova, Zhanaozen, October 22, 2011.

²¹² Ibid.

²¹³ Ibid.

assailant and shot with a rubber bullet as he was walking up the stairs to his apartment.²¹⁴ Karashaev had to be hospitalized following the attack. The authorities opened an investigation, but as of this writing, the police have not identified the perpetrator.

In a separate incident on the same day, in the port city of Aktau, a town approximately 160 kilometers from Zhanaozen, two Almaty-based journalists from the online video portal *Stan.TV* were attacked at midday with rubber bullets and a baseball bat by unknown assailants. Asan Amilov and Orken Bisenov had traveled to Aktau to cover the ongoing strikes in Aktau and Zhanaozen.²¹⁵ They had to be hospitalized following the attack. The authorities opened a criminal investigation, but as of this writing, no one has been held accountable.

The authorities have a responsibility to investigate violent attacks on trade union members and journalists in a manner that is capable of bringing the perpetrators to justice. The attacks described above, coupled with failure to date to identify or hold accountable anyone who may be responsible, creates what the ILO has described as “a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights.”²¹⁶

In addition to the incidents documented above, the media reported the killings of two individuals in Zhanaozen in August 2011. Zhaksylyk Turbaev, 29, an employee at MunaiFieldService, an affiliate company of OzenMunaiGas, was killed by unknown assailants on company territory on August 3, the day he was due to participate in an election for union chairman.²¹⁷ On August 24, the body of Zhansaule Karabalaeva, 18, the daughter of a striking OzenMunaiGas oil worker, was found three days after she went missing.²¹⁸ Authorities opened criminal investigations in each case. In November 2011, the media reported

²¹⁴ Togusbaev, Kazis, “Striker activist is wounded with a rubber bullet in Zhanaozen” (“В Жанаозене ранен резиновой пульей активист забастовщиков”), *Radio Azattyk*, October 27, 2011, http://rus.azattyq.org/content/zhanaozen_estai_karashaev/24372910.html (accessed April 11, 2012).

²¹⁵ “Kazakhstan: Violent attack against human rights defenders and journalists Asan Amilov and Orken Bisenov,” *Frontline Defenders*, November 7, 2011, <http://www.frontlinedefenders.org/cases/kazakhstan-violent-attack-against-human-rights-defenders-and-journalists-asan-amilov-and-orken> (accessed April 11, 2012).

²¹⁶ ILO Digest of Decisions and Principles, para. 52.

²¹⁷ “Zhaksylyk Turbaev, a trade-union activist murdered,” *Open Dialogue Foundation*, August 30, 2011, http://www.odfoundation.eu/en/urgents/300/zhaksylyk_turbaev_trade_union_activist_murdered (accessed April 11, 2012).

²¹⁸ “Daughter of an oil industry worker, murdered,” *Open Dialogue Foundation*, August 30, 2011, http://www.odfoundation.eu/en/urgents/302/daughter_of_an_oil_industry_worker_murdered (accessed April 11, 2012).

that the authorities had detained suspects in both cases, and in May 2012 two men were sentenced for the murder of Karabalaeva.²¹⁹ The authorities maintain that neither death was connected to the labor dispute at OzenMunaiGas, yet the timing of these murders reinforced the climate of fear and insecurity amongst the striking oil workers.

Detentions and Arrests

Detention of oil workers' wives

At about 6 p.m. on June 12, a group of approximately nine oil workers' wives gathered at the bus station where oil workers were normally picked up to be driven to the OzenMunaiGas oil field. As the women gathered not far from the station, they noticed a bus of riot police stationed nearby. Shortly after the group gathered, two other women who appeared to have ties to the police initiated an altercation with the group. Aisuluu Amangeldieva, one of the women in the group, described the incident to Human Rights Watch:

A woman came up to us.... She started to scream at us, swear at us. Then she went up to the police, spoke with them, and laughed with them. It was clear [to me] she was with them. At that point a police officer ran up to us and said, “If you raise an uproar like that, it doesn’t matter that you’re women, we’ll take you all away.” ... Then [that woman] ... kicked one of the women standing with us and screamed at her. At that moment the police ran up, threw themselves on us, and pushed us onto the bus.²²⁰

The police held the group of oil workers' wives in police custody for several hours before releasing them. One woman's request for a lawyer went ignored. While none of the women in the group were charged with any crime, police took the women's fingerprints and photographs and made them write explanatory statements about the altercation.²²¹

²¹⁹ “Mangystau police solved the murder of an oil worker in Zhanaozhen” (“Полиция Мангистау раскрыла громкое убийство нефтяника в Жанаозене”), *Aktau Business*, November 1, 2011, <http://www.aktau-business.com/2011/11/01/policiya-Mangystau-raskryla-gromkoe-ubystvo-neftyaniika-v-zhanaozene.html> (accessed April 13, 2012); and “Conviction in the murder case involving the daughter of an oil worker activist,” [“Приговор по делу обубийстве дочери активиста нефтяников”], *Radio Azattyk*, May 3, 2012,

http://rus.azattyq.org/content/zhansaule_karabalaeva_kudaibergen_karabalaev_zhanaozhen/24568628.html (accessed July 20, 2012).

²²⁰ Human Rights Watch interview with Aisuluu Amangeldieva, Zhanaozhen, August 12, 2011.

²²¹ Ibid.

According to Amangeldieva, police ignored their requests to summon an ambulance for one of the older women who suffered from high blood pressure and whose arm had become swollen.²²²

Detention of Aliya Tuletaeva, daughter of a striking oil worker

On August 13, authorities in Zhanaozen sentenced Aliya Tuletaeva, 25, the daughter of outspoken oil worker Rosa Tuletaeva, to seven days' administrative arrest on charges of "causing bodily injury." On July 2, Aliya had provided a witness statement to police concerning an incident at the apartment of her mother's colleague and fellow striking oil worker. On that day, a woman entered the oil worker's apartment and broke several dishes in what appeared to be a provocation. Tuletaeva told Human Rights Watch that the oil worker's daughter summoned Aliya for help. When Aliya arrived, she called the police and gave a witness statement about what she had seen.

A month later, the case moved to court. Two days before the hearing, Aliya, who had no part in the altercation between the intruder and the neighbor, was served a summons to appear in court as the "accused" on charges of "bodily injury," rather than appear as a witness. The court sentenced Aliya to seven days' administrative arrest. Tuletaeva told Human Rights Watch that her daughter's July 2 witness statement was not presented in court and believes that the authorities targeted her daughter in retribution for her own labor activism.²²³

Detention of oil worker Natalia Azhigalieva

Natalia Azhigalieva, an outspoken oil worker who assumed a leadership role in the strike, was detained on September 8 and sentenced to administrative detention on charges of attempting to harm a police officer. Azhigalieva was accused of attempting to spray petrol on a police officer on July 8 when law enforcement officers attempted to break the oil workers' strike at OzenMunaiGas by forcibly dispersing workers and others who had gathered there.

Azhigalieva told Human Rights Watch that on September 8 she and Aiman Ungarbaeva, a fellow striking oil worker, were driving up to Ungarbaeva's home by car when the police

²²² Ibid.

²²³ Human Rights Watch interview with Rosa Tuletaeva, Zhanaozen, August 13, 2011.

“ran up to the car, didn’t identify themselves, and then forcibly pulled me out.”²²⁴ Aiman Ungarbaeva told Human Rights Watch that when Ungarbaeva’s 12-year-old son got between her and the deputy police chief, the officer hit her son in the face, and her son had to receive medical care.²²⁵

Azhigalieva told Human Rights Watch she was not immediately informed of the charges against her:

They took me to the GUVD [city police station] and told me to write an explanatory note. But in connection with what? They didn’t explain anything to me. I refused to write or sign anything.²²⁶

Her hearing took place several hours after she was detained. Azhigalieva asked to be represented by a lawyer of her choosing, but the court denied her request and appointed a state lawyer. The court also denied her request to call witnesses. On September 8, the court sentenced her to 15 days’ administrative arrest for allegedly trying to spray petrol on a police officer during the July 8 police raid.

Azhigalieva’s arrest and subsequent imprisonment was carried out in violation of due process rights as guaranteed under international human rights law. Given the threat of imprisonment for 15 days, Azhigalieva had at a minimum the right to have “adequate time and facilities for the preparation of [her] defense and to communicate freely with counsel of [her] own choosing,” rights which she was not allowed to exercise in the summary trial held to convict her.²²⁷

Aizhgalieva also told Human Rights Watch that she suffered other forms of harassment and threats during the strike as well. In the middle of the night on August 17, unknown assailants came to her mother’s apartment, broke the windows, and shouted threats.

²²⁴ Human Rights Watch interview with Natalia Azhigalieva, Zhanaozen, October 24, 2011.

²²⁵ Human Rights Watch telephone interview with Aiman Ungarbaeva, September 8, 2011.

²²⁶ Human Rights Watch interview with Natalia Azhigalieva, Zhanaozen, October 24, 2011.

²²⁷ ILO Digest of Decisions and Principles, para. 102. See also ICCPR, art. 14.

According to Azhigalieva, when her niece called the police to report the incident, after she gave the address and name, the police started laughing and hung up.²²⁸

Interference in Union Activity and Strike at Ersai Caspian Contractor

On May 11, 2011, employees of Ersai Caspian Contractor (Ersai), a company that provides services to oil exploration and production companies in western Kazakhstan, went on strike at the company's service yard in Kuryk, a town approximately 70 kilometers from Aktau in western Kazakhstan. Members of Karakiya union, an independent trade union established in 2009 at workers' initiative, were joined by hundreds of other Ersai employees who supported their demands. An estimated total of 700 workers downed their tools.

In the months preceding the strike, Karakiya union had made repeated attempts to enter into a formal labor dispute with Ersai, but management declined on grounds that the union had not adhered to regulations in Kazakhstan's labor code mediating labor disputes.²²⁹ The company also interfered with the union's activities including by unduly restricting the union chairman's access to the service yard and harassing and threatening union members after Karakiya union submitted a list of demands to company management for review.

Ersai Caspian Contractor Restricts Karakiya Union Chairman's Access to Workers

In a March 2012 letter to Human Rights Watch, Ersai Caspian Contractor stated, "In managing our work we consider trade unions as an effective partner for agreeing long-term, fair conditions for our workforce in accordance with rules and legislation."²³⁰ However, this position seems inconsistent with Karakiya union members' statements to Human Rights Watch describing company interference in the union's activities starting almost as soon as it was registered by the authorities in April 2009.²³¹ For example, Abai Dzhantleuov, a member of Karakiya union, told Human Rights Watch:

²²⁸ Human Rights Watch interview with Natalia Azhigalieva, Zhanaozen, October 24, 2011.

²²⁹ Karakiya union had not held a general meeting with at least half the total number of employees at Ersai Caspian Contractor as required under art.289, point 1 of Kazakhstan's labor code. This article was amended in the labor code in February 2012.

²³⁰ Letter from Camillo Ceresa, general director, Ersai Caspian Contractor, to Human Rights Watch, March 2, 2012.

²³¹ Human Rights Interview with Abai Dzhantleuov, Zhanaozen, August 12, 2011.

In April 2009 we were registered. Since that year, the union began to speak out on our behalf.... Nurbek Kushakbaev was chosen by the union, that is, as our leader. From that day, we've had problems. They wouldn't allow Nurbek to work. According to an order [*akti*] by the employer, he could only meet with workers once a month.²³²

Shortly after Karakiya union was registered, Kushakbaev sent a letter to Ersai Caspian Contractor requesting regular access to his union members at the company's service yard (Kuryk yard) and office space, as management had provided for "Aktau," the other union representing Ersai workers.²³³ Kushakbaev received a letter in response dated August 14, 2009, which stated, "The management of ERSAI Caspian Contractor LLC examined your request, [and] decided that only on second [*sic*] Friday of each month you will be authorized to visit the work place of your Trade Union members within our Caspian Yard Ersai."²³⁴ In a September 17, 2009 letter addressed to the mayor (*Akim*) of Karakiya district, who had intervened on Karikya's behalf with a letter of support to Ersai management on September 1, the company stated even more clearly that "the rights to enter the territory of Ersai Caspian Contractor LLC as well as provision of premises are regulated by the Company Management ONLY."²³⁵

According to the collective agreement regulating relations between Karakiya Union and Ersai Caspian Contractor, trade union representatives have the right to visit the union's members at their work place, although it does not specify how frequently such visits are permitted.²³⁶ Karakiya union members told Human Rights Watch that they felt that the company was unduly restricting Kushakbaev's access to union members:

²³² Ibid.

²³³ Nurbek Kushakbaev and other workers told Human Rights Watch that "Aktau" union was provided with an office and telecommunications equipment at Kuryk yard. However, Ersai Caspian Contractor management denied this, stating in its letter to Human Rights Watch: "The Company had not undertaken to provide an office premise and neither allotted it for either of the unions." Letter from Camillo Ceresa, general director, Ersai Caspian Contractor, to Human Rights Watch, March 2, 2012.

²³⁴ Letter from Yousri Khattab, deputy director of personnel management, to Nurbek Kushakbaev, Karakiya union chairman, August 14, 2009, copy on file with Human Rights Watch.

²³⁵ Emphasis in the original. Letter from Yousri Khattab deputy director of personnel management, to the Akimat of the Karakiya District, September 17, 2009, copy on file with Human Rights Watch.

²³⁶ Collective Agreement, July 1, 2009, to which Karakiya union became a signatory on July 1, 2010 pursuant to signing the Additional agreement about addendum for Collective Agreement, point 8.2.8. Copy on file with Human Rights Watch.

[Company management] wouldn't let our union chairperson onto the territory more than once a month. The head of the human resources department issued an order that our union leader can only come to ... the territory of Ersai, to the workers, to defend their rights only once a month. That's just not realistic.”²³⁷

Karakiya Union Sues Ersai Caspian Contractor for Unlawful Interference

Kushakbaev told Human Rights Watch that after repeated unsuccessful attempts to negotiate more frequent access to the base and be allotted an office space at Kuryk yard, Karakiya union took legal action against Ersai Caspian Contractor for interfering in its activities.

In the first instance the court ruled in the union's favor, stating that “in order to fulfill the terms of the law, ... [Kushakbaev] must have access to the work place of his workers, otherwise the function of the union is rendered meaningless,” and ruled that Ersai allow Kushakbaev free access to his union members' work place and provide office space at Kuryk yard.²³⁸ This ruling was upheld on appeal.²³⁹ However, in April 2011, the court of cassation, the next instance appeals court, overruled previous rulings on technical grounds and ruled that these questions must be resolved through negotiations.²⁴⁰ The union appealed, and on July 1, 2011, the Supreme Court of Kazakhstan declined to consider the appeal, leaving the court of cassation's judgment intact.

In its March 2012 letter to Human Rights Watch regarding concerns we had raised about company conduct in resolving the Karakiya union labor dispute, Ersai Caspian Contractor acknowledged regulating Kushakbaev's access to the service yard and claimed this was justified by saying,

²³⁷ Human Rights Watch interview with Baibolsin B., Aktau, August 9, 2011.

²³⁸ Mangystau Region Specialized InterDistrict Economic Court ruling, December 23, 2010, copy on file with Human Rights Watch.

²³⁹ Mangystau Regional Court ruling, February 8, 2011, copy on file with Human Rights Watch.

²⁴⁰ Mangystau Regional Court of Cassation ruling, April 11, 2011, copy on file with Human Rights Watch.

Access to the company premises is regulated due to: (i) the operational yard, which is classified as a hazardous production facility with uninterrupted activities, undertakes to ensure safe performance and (ii) any interruption of employees involved in hazardous operational facilities during work hours may result in industrial accident.²⁴¹

In Kazakh law, there is no specific legislation limiting union representatives' access to companies classified as "hazardous production facilities." In fact, both national and international law require that union representatives have access to union members at their place of work. Article 10 of Kazakhstan's law on professional unions states that trade union representatives have the right to visit union members at their workplace.²⁴² ILO standards require that "[w]orkers' representatives should be granted access to all workplaces in the undertaking where such access is necessary to enable them to carry out their representation function."²⁴³ By limiting Karakiya union chairman Nurbek Kushakbaev's access to his union members and their place of work to once a month, Ersai Caspian Contractor interfered with his ability to effectively represent his workers, as he was entitled to under national and international law. The restrictions on Kushakbaev's access also constitutes interference in the union's activities and violates international norms with respect to workers' rights as enshrined in ILO conventions to which Kazakhstan is party.

Ersai Caspian Contractor Restricts Union Activities, Refuses to Negotiate

Under Kazakhstan's labor legislation in effect at the time of Karakiya union's labor dispute with Ersai Caspian Contractor, in order to initiate mediation procedures, Karakiya union was required to hold a general meeting of workers and provide the company written notification of a majority vote supporting the claims in question. With a view to communicating claims to Ersai management, Karakiya union chairman requested that union members be released from work on March 11, 2011, to attend a general meeting.²⁴⁴

²⁴¹ Letter from Camillo Ceresa, general director, Ersai Caspian Contractor, to Human Rights Watch, March 2, 2012.

²⁴² Law on Professional Unions, art. 10.

²⁴³ ILO Committee Digest of Decisions and Principles, para. 1104. Para. 1105 states "Trade union representatives who are not employed in the undertaking but whose trade union has members employed therein should be granted access to the undertaking."

²⁴⁴ Human Rights Watch interview with Nurbek Kushakbaev [date and location withheld].

Ersai management denied Kushakbaev permission to hold a general meeting, but granted him permission to hold a meeting with 19 union members.²⁴⁵ Wanting to hold a general meeting in order to discuss their grievances, union members decided to hold a makeshift general meeting during their lunch and coffee breaks to discuss their grievances and formulate their demands.²⁴⁶

During their lunch and coffee breaks on March 11, union members agreed upon the four demands they wanted to prioritize with the company, namely: (1) higher wages, (2) revision of the collective agreement, (3) equal wages with foreign staff, and (4) non-interference in union activities.²⁴⁷ Workers told Human Rights Watch that 217 union members who agreed with the four demands signed their names on the general meeting minutes (*protokol*) and that the following week the minutes of the general meeting were sent to Ersai Caspian Contractor in a letter.²⁴⁸

However, Ersai Caspian Contractor did not accept the union meeting as legitimate. Despite having met collectively during non-work hours—during lunch hours and at coffee breaks—Ersai accused Karakiya union of holding the meeting during work hours. Ersai responded to Karakiya union’s demands with a letter stating that Karakiya union had not followed the procedure stipulated by national labor law for submitting claims, and therefore there was no basis to enter into labor negotiations with them.²⁴⁹ In its letter to Human Rights Watch, Ersai Caspian Contractor acknowledged the meeting took place and maintained their position that the meeting was held “during work hours.”²⁵⁰

²⁴⁵ Letter from Yousri Khattab, deputy director of personnel management, to Nurbek Kushakbaev, Karakiya union chairman, April 4, 2011, copy on file with Human Rights Watch.

²⁴⁶ Human Rights Watch Interviews with Ersai Caspian Contractor workers, Aktau, October 19 2011, and with Yermek Y., Aktau, October 19, 2011.

²⁴⁷ Human Rights Watch interviews with Erlan E., Aktau, October 19, 2011 and with Nurbek Kushakbaev [date and location withheld].

²⁴⁸ Human Rights Watch interviews with Baibolsin B., Aktau, August 9, 2011, and with Abai Dzhantleuov, Zhanaozen, August 12, 2011.

²⁴⁹ Letter from Yousri Khattab, deputy director of personnel management, to Nurbek Kushakbaev, Karakiya union chairman, April 4, 2011, copy on file with Human Rights Watch.

²⁵⁰ Letter from Camillo Ceresa, general director, Ersai Caspian Contractor, to Human Rights Watch, March 2, 2012.

According to point 8.4 of the collective agreement between Ersai Caspian Contractor and Karakiya union, the “Employer shall not put obstacles to the legal activity of the Trade Union and to participation of the employees in Trade Union activity.”²⁵¹ Furthermore, the collective agreement also makes explicit that the Employer should not “interfer[e] with a (sic) trade union activities or allow any action aiming at hampering the activities of [the] trade union ...”²⁵² The company was under no obligation to release all Karakiya union members to attend a general meeting during the work day, but their failure to offer Karakiya union an alternative time to hold its general meeting, outside work hours, such as during a lunch break, undermines the principles of freedom of association and collective bargaining.

Threats and Harassment of Karakiya Union Members

Karakiya union members told Human Rights Watch that after they sent their claims to company management, Ersai’s personnel and security departments summoned, questioned, and, in some cases, harassed and threatened the 217 employees whose names appeared on the list of claims. Karakiya union members told Human Rights Watch that they were asked general questions about the March 11 meeting, and some workers reported that they were pressured to write that they did not participate at all.²⁵³

Another worker told Human Rights Watch that he felt the company was pressuring workers to withdraw their demands and say they had not participated in the meeting. “It [seemed] important for the company that people refuted their words, [or] that they [would say they] didn’t participate in the meeting,” he told Human Rights Watch. “It was more important than production at that moment.”²⁵⁴ Another worker also told Human Rights Watch that after a fellow worker was summoned for questioning several times in one day and threatened by Ersai management, the worker withdrew his union membership.²⁵⁵

²⁵¹ Collective Agreement, July 1, 2009, to which Karakiya union became a signatory on July 1, 2010 pursuant to signing the Additional agreement about addendum for Collective Agreement, point 8.4. Copy on file with Human Rights Watch.

²⁵² Ibid., point 8.7.

²⁵³ Human Rights Watch interviews with Zhumabek Zh., Aktau, August 9, 2011; with Abai Dzhantleuov, Zhanaozen, August 12, 2011; and with Dosym D., Kuryk, October 20, 2011.

²⁵⁴ Human Rights Watch interview with Dosym D., Kuryk, October 20, 2011.

²⁵⁵ Human Rights Watch interview with Zhumabek Zh., Aktau, August 9, 2011.

Another worker, Erlan E., told Human Rights Watch that the company pressured him to accuse union leader Nurbek Kushakbaev of forcing union members to sign their names to the demands:

Then they started to ask questions about where, how [the meeting] took place, as if Nurbek [Kushakbaev] forced us to sign [the *protokol*]. They said, confess.... They wanted to hear that answer, but I didn't give this version. They wanted to hear that Nurbek ... made us, and that during working hours [he] collected signatures.²⁵⁶

Karakiya union members began to refuse to respond to company summons, after which a number of them were summoned to the police station in Kuryk, a neighboring town approximately eight kilometers from Kuryk yard.²⁵⁷ For example, Yermek Y. told Human Rights Watch that he was repeatedly summoned for questioning and to provide written statements, or explanatory notes that could be used as evidence in legal proceedings, including to the police station in the nearby town:

First they summoned me to the office that's on the base. We started work in the morning, at 8:30 a.m. They summoned me to the office before 9 a.m. They told me, "Write an explanatory note." I asked, "About what?" [They said], "Why did you start this?" I wrote an explanatory note once, in the office. The police were there. They threatened [me] saying, "You're on a black list, you should quit." Then they summoned [me] to ROVD [the district police station].²⁵⁸

Union leader Kushakbaev told Human Rights Watch that at the end of March, he too was summoned to the police station in Kuryk:

They called me to the police [and] asked me to write an explanatory note. I asked them, "On what grounds?" "You led a meeting." I said, "Yes, I did." [They asked], "How did you do it?" [I said], "What right do you have

²⁵⁶ Human Rights Watch Interview with Erlan E., Aktau, October 19, 2011.

²⁵⁷ Human Rights Watch interview with Nurbek Kushakbaev [date and location withheld].

²⁵⁸ Human Rights Watch interview with Yermek Y., Aktau, October 19, 2011.

interfering in our union activities?” [They said], “We have statements [from workers against you].”²⁵⁹

Police had collected the statements from workers when management and police summoned union members who had participated in the Karakiya union March 11 general meeting for questioning and pressured them to make statements. These were later used against Kushakbaev in the case against Karakiya union which resulted in the union’s six-month suspension, as described below.

On April 27, over 100 union members who claimed that they had been threatened and harassed by Ersai personnel and security departments sent a complaint to the Mangystau regional mayor (*Akim*) in which they briefly described the harassment and requested that the authorities intervene.²⁶⁰ Kushakbaev told Human Rights Watch that the workers did not receive a response to the letter and that their claim was not investigated.²⁶¹

Human Rights Watch raised a number of questions about the treatment of Karakiya union members following their union meeting in a letter to Ersai Caspian Contractor, including a question about why members of Ersai’s personnel and security departments summoned and questioned Karakiya union workers. However, none of these questions were addressed in the response Human Rights Watch received from the company.²⁶² On June 5, 2012, Human Rights Watch sent a similar letter to Ersai Caspian Contractor’s parent company, Saipem S.p.A., reiterating its concerns about Karakiya union members’ allegations that they were summoned for questioning and threatened, but as of this writing, Human Rights Watch has not received a response.

Systematically summoning, questioning, and harassing Karakiya union members who attended a union meeting and signed their names to the list of union demands constitutes undue interference in legitimate union activities and discrimination against union members and a violation of freedom of association as protected under international law. Holding a union meeting during non-work hours poses no threat to public order or the

²⁵⁹ Human Rights Watch interview with Nurbek Kushakbaev [date and location withheld].

²⁶⁰ Copy of complaint on file with Human Rights Watch.

²⁶¹ Human Rights Watch telephone interview with Nurbek Kushakbaev, April 13, 2011.

²⁶² Letter from Camillo Ceresa, general director, Ersai Caspian Contractor, to Human Rights Watch, March 2, 2012.

security of other workers and is a basic right afforded to members of a trade union. The ILO's Committee on the Freedom of Association has stated that organizing union meetings is an "essential aspect" of trade union rights, and "measures taken by the authorities to ensure the observance of the law should not, therefore, prevent unions from organizing meetings during labour disputes."²⁶³

Another Attempt to Enter into Mediation with Ersai Caspian Contractor Management

Since the union's first attempt to have their claims reviewed by Ersai Caspian Contractor did not succeed, Karakiya union made a second attempt to have their claims reviewed by Ersai Caspian Contractor and organized their meeting in such a way as not to expose union members to further harassment.²⁶⁴ One worker described to Human Rights Watch the union's efforts:

On April 10, we held a general meeting, a conference. We couldn't all gather in one place [because Ersai did not allow it], so we elected delegates and the delegates voted on behalf of the workers. They held a conference; the demands were the same.²⁶⁵

On April 13, Karakiya union sent Ersai Caspian Contractor management the conference minutes and repeated their request to have their claims reviewed in mediation procedures. However, Ersai management refused to accept the legitimacy of the workers' demands without first seeing a list of workers who had picked the delegates.²⁶⁶ The union refused to provide this list, however, as the union members feared this would invite further pressure and harassment by Ersai. As one union member explained,

We didn't send [the protocols of the elections of the delegates] to the company. Why? Because we held a meeting before, and what happened? They summoned everyone; they scared everyone. Because we didn't want

²⁶³ ILO Digest of Decisions and Principles, para. 131.

²⁶⁴ Human Rights Watch interview with Dosym D., Kuryk, October 20, 2011.

²⁶⁵ Human Rights Watch interview with Abai Dzhantleuov, Zhanaozhen, August 12, 2011.

²⁶⁶ Human Rights Watch interview with Dosym D., Kuryk, October 20, 2011.

that to repeat itself, we didn't provide them the protocols. [We wanted] to avoid pressure.²⁶⁷

The ILO's Committee on the Freedom of Association has found that “it is important that both employers and trade unions bargain in good faith and *make every effort* [emphasis added] to reach an agreement; moreover, genuine and constructive negotiations are a necessary component to establish and maintain a relationship of confidence between the parties.”²⁶⁸ Despite Karakiya union’s repeated good faith efforts to enter in to negotiations with company management, Ersai Caspian Contractor refused to respond in kind.

Workers Go on Strike

In light of the interference by Ersai management in the union’s legitimate efforts to organize general meetings as a first step in carrying out the legal procedures to enter into a labor dispute with the company, the subsequent harassment by Ersai and the police, and Ersai’s continuing refusal to enter into mediation concerning the union’s demands, Karakiya union members felt they had no option but to go on strike.

On April 20, Karakiya union elected five individuals to form a strike committee. During the meeting union delegates voiced their exasperation about their thwarted efforts to have their demands reviewed by Ersai Caspian Contractor. One worker exclaimed, “It’s been over a month already since we announced our demands, but the employer doesn’t take any steps, just threatens and exerts pressure on ... workers.”²⁶⁹ The committee voted to go on strike, and following this meeting, sent an announcement of their plans to Ersai management.

In addition, approximately two weeks before the strike began, in a letter dated April 27 and addressed to the Mangystau region *Akim*, the Council of Unions, the Department of Labor and Social Protection, and the Mangystau region Prosecutor’s office, Karakiya union announced their intent to strike and requested assistance in mediating the dispute. In

²⁶⁷ Ibid.

²⁶⁸ Complaint against the Government of United States presented by the Transport Workers Union of America AFL-CIO (TWUA) and the Transport Workers Union of Greater New York, AFL-CIO, Local 100 (Local 100), Case No. 2741, para 765. See also ILO Digest of Decisions and Principles, para. 935.

²⁶⁹ Karakiya union April 20 meeting protocol. Copy on file with Human Rights Watch.

their letter they stated, “We earnestly ask you to lend your assistance in holding discussions between the Employer and workers representatives in connection with the difficult situation in order to resolve the labor dispute.”²⁷⁰ Kushakbaev told Human Rights Watch, “We wrote to the management. We sent them this announcement 19 days in advance, and then [wrote] to the *Akim*, the Prosecutor of the [Mangystau] Region, and the Department of Labor, so they would act in order that this strike need not take place.”²⁷¹ Ersai Caspian Contractor told Human Rights Watch that prior to the start date of the strike, “Company Management had conducted another meeting with both the Unions offering once again its availability for an open discussion.”²⁷² Nurbek Kushakbaev, who participated in this meeting, told Human Rights Watch it was held “unofficially,” and did not amount to formal review of workers’ claims.²⁷³

On May 11, members of Karakiya union went on strike. They were joined by other employees of Ersai Caspian Contractor who supported their demands. A total of approximately 700 workers gathered at the parking area outside the gates of Ersai service yard where they remained on strike for approximately a month and a half before local authorities broke their strike.

On May 16, court bailiffs came to the site of the strike and announced that the Mangystau Region Specialized Interdistrict Economic Court had issued a decision in a case brought by Ersai Caspian Contractor, stating that Ersai workers must suspend their strike until the court ruled on its legality.²⁷⁴ The company had requested that the court void the union’s general meetings of March 10 and April 20 and declare the strike scheduled for May 11, 2011 illegal. Two days later, on May 18, the Mangystau Region Specialized Interdistrict Economic Court ruled that the strike was illegal.²⁷⁵

²⁷⁰ Letter from Nurbek Kushakbaev, Karakiya union chairman, to K. E. Kusherbaev, Mangystau Regional Akim, and others, April 27, 2011. Copy on file with Human Rights Watch.

²⁷¹ Human Rights Watch interview with Nurbek Kushakbaev [date and location withheld].

²⁷² Letter from Camillo Ceresa, general director, Ersai Caspian Contractor, to Human Rights Watch, March 2, 2012.

²⁷³ Human Rights Watch interview with Nurbek Kushakbaev [date and location withheld].

²⁷⁴ Specialized InterDistrict Economic Court in the Mangystau Region decision [in Russian, *opredelenie*] on file with Human Rights Watch; and Human Rights Watch interview with strike committee member, Kuryk, October 20, 2011.

²⁷⁵ Copy of court ruling on file with Human Rights Watch.

According to the May 18 court ruling, Karakiya union did not fulfill the procedures for holding a legal strike as stipulated in the labor code. The court also based its ruling on the fact that Ersai Caspian Contractor is classified as a “hazardous production facility,” at which strikes are prohibited under national legislation.²⁷⁶

As described above, the prohibition on strikes at companies in Kazakhstan identified as “hazardous production facilities” violates workers’ right to strike and does not meet international norms on freedom of association and collective bargaining. The ban on strikes in the petroleum industry in Kazakhstan is overbroad and unjustifiably restricts workers’ fundamental right to strike.

Strike Committee Members Arrested, Karakiya Union Suspended

Despite the court ruling rendering their strike illegal, workers continued to strike as they felt it was the only means available to them to resolve their labor dispute. In the subsequent weeks, all five members of the strike committee, Amanzhol Amankeldy, Abai Dzhantleuov, Erkin Kangereev, Ermek Korganbaev, and Nurbek Kushakbaev, were sentenced to short-term administrative arrest for failing to adhere to the court order calling for the immediate cessation of the strike.²⁷⁷

Strike committee members Amankeldy, Dzhantleuov, and Korganbaev were summoned to appear in court on May 20 to explain their actions regarding the illegal strike. Dzhantleuov told Human Rights Watch that they requested the hearing be postponed so that their lawyer, who was in Aktau, could be present, but the judge refused and tried them the same day.²⁷⁸ The court handed each of the three strike committee members a sentence of five days’ administrative arrest.

On May 25, the same court sentenced a fourth strike committee member, Erkin Kangereev, to four days’ administrative arrest for failing to adhere to the court order declaring the strike illegal. Kangereev had just finished serving a five-day administrative arrest on hooliganism charges, after he was accused of insulting and swearing at the head of Ersai’s

²⁷⁶ Kazakhstan Labor Code, art. 303, point 1, sub-point 1.

²⁷⁷ Kazakhstan Code on Administrative Offenses, art. 524.

²⁷⁸ Human Rights Watch interview with Abai Dzhantleuov, Zhanaozen, August 12, 2011.

security service on May 19.²⁷⁹ In certain circumstances, these actions can constitute “hooliganism” under Kazakh law.

Kangereev appears not to have been given a fair hearing after being charged with ‘hooliganism.’ Zhumabek Zh., a Karakiya union member who attended Kangereev’s hearing on May 19, told Human Rights Watch that the judge denied Kangereev’s request that the hearing be postponed so that his lawyer could represent him in court, as well as his request that the hearing be conducted in Russian.²⁸⁰ According to Zhumabek Zh., the court provided Kangereev a state-appointed lawyer and asked the court secretary to be his impromptu interpreter. The court gave Kangereev approximately 20 minutes to acquaint himself with the case materials, which were in Kazakh, a language Kangereev does not have command of.²⁸¹

Union chairman Nurbek Kushakbaev, another strike committee member, was sentenced to 10 days administrative arrest on June 15 on the same charge of failing to adhere to a court order.²⁸²

On June 14, 2011, a day before Kushakbaev’s administrative arrest began, the Mangystau Region Karakiya District Court suspended the activities of Karakiya union for a period of six months and fined Kushakbaev 105,804 tenge (approximately US\$715) on administrative charges of “violating the law on public associations.” The court stated that in accordance with national law, in order to go on strike, Karakiya union was required to have held a meeting of no less than half the total number of workers employed at Ersai Caspian Contractor. By holding a general meeting of only 217 workers, Karakiya union failed to meet this requirement, and thus, Karakiya union broke the law by going on strike.²⁸³ During the hearing Kushakbaev told the court that the decision to go on strike was made voluntarily by union members, and his lawyer argued there was nothing in Kushakbaev’s actions that amounted to a violation of the administrative code.²⁸⁴

²⁷⁹ Human Rights Watch interview with Zhumabek Zh., Aktau, August 9, 2011.

²⁸⁰ Ibid.

²⁸¹ Ibid.

²⁸² Kazakhstan Code on Administrative Offenses, art. 524.

²⁸³ Ibid., art. 374, point 2. Copy of court ruling on file with Human Rights Watch.

²⁸⁴ Mangystau Region Karakiya District Court verdict, June 14, 2011. Copy on file with Human Rights Watch.

Imprisoning strike committee leaders and suspending the activities of Karakiya union for six months is an excessive and unfounded response to workers' attempts to strike, all the more so since legislation on the basis of which the strike was found illegal is itself not in conformity with international labor rights norms. Under the principles of freedom of association,

All penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence or fault committed and the authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike.²⁸⁵

Other Attempts to Disrupt the Peaceful Strike

Ersai workers interviewed by Human Rights Watch said that during the strike, company management and Kuryk local authorities harassed them and attempted to break their strike.

On May 27, 2011, approximately two weeks after Ersai workers began their strike and nine days after the strike was rendered illegal by a local court, Ersai management closed the gate to the Kuryk yard, blocking off workers' access to the base, including to the dormitory rooms where out-of-town workers lived while on their multi-day shifts. In its March 12, 2012 letter to Human Rights Watch, Ersai Caspian Contractor alleged that "that the strike was becoming more and more aggressive from day to day" and stated that on May 27, "in order to protect employees of the Company who worked and resided in Company facilities and to avoid accidents at the hazardous facility and secure property Company, Management decided to block access to Kuryk Yard [emphasis in the original]."²⁸⁶

Yet this tactic appeared to have the reverse impact on those who were peacefully on strike just outside company premises. When Ersai blocked access to the yard, the company prevented striking oil workers from accessing toilets, clean water, and, in the case of non-local hires, their temporary homes.²⁸⁷ One worker described the sealing off of the yard to Human Rights Watch. "That morning we left, they closed the door, and locked it, and inside

²⁸⁵ ILO Digest of Decisions and Principles, para. 668.

²⁸⁶ Letter from Camillo Ceresa, general director, Ersai Caspian Contractor, to Human Rights Watch, March 2, 2012.

²⁸⁷ Human Rights Watch interviews with Dosym D., Kuryk, October 20, 2011 and Yermek Y., Aktau, October 19, 2011.

they placed a bulldozer and strengthened security,” he explained. “Around just one gate there were approximately 25 to 30 people, security guards. And along the perimeter of [the yard].”²⁸⁸

Another worker explained the difficulty of being prevented access to the base. He said, “They closed the base, closed the gates. [Workers] couldn’t go to eat, or take a shower. Those that were living [on the base] on shift, they started sleeping outside. Do you understand [how awful this was]? ”²⁸⁹

Karakiya union members told Human Rights Watch that another way the authorities tried to break their strike was by closing off the road that connects the Ersai Caspian Contractor yard to Kuryk town, eight kilometers away, forcing workers to bring water and food to the site of the strike on foot. Baibolsin B. told Human Rights Watch,

[The traffic police] set up other checkpoints ... [and] closed off the road ... so that our cars couldn’t reach us.... People had to walk by foot, they had to carry water. Walking eight kilometers? People got tired in the heat.²⁹⁰

Approximately a month and a half after the strike began, on June 23 or 24, approximately 20 police officers and the local prosecutor came to the site of the strike and threatened to imprison the approximately 40 to 50 remaining striking workers if they did not disperse. Thus the workers were forced to end their strike, for fear of arrest or substantial fines.²⁹¹

According to Dzhantleuov, after the police forced the strike to end, workers continued to try to meet in different locations in the town of Kuryk, but their efforts were unsuccessful. “We couldn’t gather near Ersai. So we gathered at the cemetery [in Kuryk]. Police followed us everywhere. More than three of us didn’t have the right to gather,” he told Human Rights Watch.²⁹²

²⁸⁸ Human Rights Watch interview with Yermek Y., Aktau, October 19, 2011.

²⁸⁹ Human Rights Watch interview with Dosym D., Kuryk October 20, 2011.

²⁹⁰ Human Rights Watch interview with Baibolsin B., Aktau, August 9, 2011.

²⁹¹ Ibid.

²⁹² Human Rights Watch interview with Abai Dzhantleuov, Zhanaozhen, August 12, 2011.

Mass Dismissals at OzenMunaiGas, Ersai Caspian Contractor, and KarazhanbasMunai and Its Affiliate Companies

Mass dismissals of striking workers by company management was an issue common to all three companies after local courts ruled that the strikes in western Kazakhstan were illegal. Between May and November 2011, Ersai Caspian Contractor, KarazhanbasMunai and its affiliate companies, and OzenMunaiGas dismissed more than 2,000 workers.²⁹³

Under Kazakhstan's labor code prior to February 2012, when amendments were adopted, "If a strike is declared illegal by a court of law, the employer may impose disciplinary sanctions on employees participating in the organization or holding of the strike."²⁹⁴ Possible disciplinary sanctions include a warning, reprimand, serious reprimand, and dismissal.²⁹⁵ In February 2012, Kazakhstan's parliament adopted legislation allowing employers to fire workers who continue to participate in an illegal strike after they have been informed of a court decision declaring the strike illegal.²⁹⁶

The companies detailed in this report dismissed workers for "failure to appear at work without good reason for three or more consecutive hours in one work day (work shift)."²⁹⁷ Ersai Caspian Contractor indicated that "[f]rom May till June 30 labor contracts of 223 employees were terminated for absence in accordance with the current RoK [Republic of Kazakhstan] labor law."²⁹⁸ OzenMunaiGas fired 991 people "[f]rom May 26 to November 30, 2011 ... in accordance with article 54 of Kazakhstan's Labor Code."²⁹⁹

²⁹³ Letter from Erbol Ismailov, advisor on strategic communications at OzenMunaiGas, to Human Rights Watch, March 11, 2012. OzenMunaiGas stated in its letter that 991 employees were fired under article 54 of the labor code. KarazhanbasMunai workers told Human Rights Watch in October 2011 that the list of dismissed workers had reached 993. Ersai Caspian Contractor informed Human Rights Watch that as of June 30, 223 workers had been dismissed, although workers interviewed by Human Rights Watch put the number of those fired or obliged to quit higher, at approximately 400.

²⁹⁴ Kazakhstan Labor Code, art. 304, [in force prior to the February 2012 amendments].

²⁹⁵ Ibid., art. 72, [in force prior to the February 2012 amendments].

²⁹⁶ Ibid., art. 54, point 1, sub-point 19.

²⁹⁷ Ibid., art. 54, point 1, sub-point 6, [in force prior to the February 2012 amendments].

²⁹⁸ Letter from Camillo Ceresa, general director, Ersai Caspian Contractor, to Human Rights Watch, March 2, 2012.

²⁹⁹ Letter from Erbol Ismailov, advisor on strategic communications at OzenMunaiGas, to Human Rights Watch, March 11, 2011.

However, international standards make clear that “all penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence or fault committed.”³⁰⁰ The CFA has labeled dismissal of workers for having participated in a strike and refusal to re-employ them an “extremely serious measure” and one that “implies a serious risk of abuse and constitutes a violation of freedom of association.”³⁰¹ Dismissal is not a proportionate disciplinary sanction for exercising the right to strike, even in a case where a strike was found illegal by local courts, given that the provisions for holding a legal strike in Kazakhstan are not compatible with the principle of freedom of association, as documented above.

Human Rights Watch also documented instances in which striking oil workers were dismissed in a process that violates Kazakhstan’s own national labor laws.³⁰² Several workers at KarazhanbasMunai and its affiliate companies told Human Rights Watch that they did not receive notification that they had been fired, but learned of the fact when they saw their names on a list of dismissed personnel placed outside the management’s head office in Aktau. Under national labor law, employers are required to summon workers to provide an explanation about why they were absent from work before firing them on these grounds. One striking KarazhanbasMunai oil worker told Human Rights Watch that he learned in mid-August that he had been dismissed:

I was fired ... illegally. They didn’t inform me of this in any way. They just put my surname up on the window, the wall, hung it up, and I came and read it. And only then, after three months [since the strike began] did I learn I was fired.³⁰³

Human Rights Watch also documented cases where workers felt obliged to quit under threat that they would be fired if they did not voluntarily leave the company. One

³⁰⁰ ILO Digest of Decisions and Principles, para. 668

³⁰¹ Ibid., para. 666. See also para. 661, 662.

³⁰² According to article 73, point 2 of Kazakhstan’s labor code, “the employer must demand a written explanation from the employee before imposing disciplinary sanctions. In the event the worker refuses to provide a written explanation, the employer draws up the relevant act noting their refusal.” According to Kazakhstan’s Labor Code, only after fulfilling the terms of article 73, ‘the order of applying and appealing disciplinary sanctions’ and article 74, ‘terms of imposing disciplinary sanctions’ – which detail the procedures and timeframe for imposing disciplinary sanctions – may the employer terminate a contract.

³⁰³ Human Rights Watch interview with Ruslan R., Aktau, October 24, 2011.

dismissed Ersai worker described how a human resources representative at Ersai said to him, “You’re not going to work here [anymore], but if you want to get hired in another company, I’ll write that you quit of your own will.”³⁰⁴

At OzenMunaiGas, the company even dismissed workers who did not participate in the strike, but those who visited friends and relatives at the strike during non-work hours. One OzenMunaiGas employee who had worked at the company for over two decades told Human Rights Watch that after the strike began, she and her colleagues began to receive daily notices from management stating that they must not participate in the labor protest.³⁰⁵ She said that management had issued an order stating that OzenMunaiGas workers must not visit the site of the strike even during their non-work hours, including weekends, otherwise they would face unspecified consequences. She told Human Rights Watch that in early July, approximately two weeks after she visited her relatives at the site of the strike, she received a notice by mail that she had been fired.³⁰⁶

Before the outbreak of violence in mid-December, there had been no indication that any of the companies—KarazhanbasMunai and its affiliate companies, OzenMunaiGas, or Ersai Caspian Contractor—whose workers went on strike planned to re-employ the workers who had been fired.³⁰⁷ KazMunaiGas Exploration and Production, the parent company of KarazhanbasMunai and its affiliate companies, and OzenMunaiGas, made a public statement to this effect as well.³⁰⁸

In mid-November 2011, approximately six months after workers went on strike, the Ministry of Labor and Social Protection facilitated a tripartite meeting between government officials, striking oil workers, and OzenMunaiGas management to discuss the workers’ demands.

³⁰⁴ Human Rights Watch interview with Yermek Y., Aktau, October 19, 2011.

³⁰⁵ Human Rights Watch interview with Asel A., Zhanaozen, August 13, 2011.

³⁰⁶ Ibid.

³⁰⁷ Previously, in June, the Mangystau branch of the Nur Otan party attempted to address the matter of dismissed oil workers by creating a council to find alternative employment. However, workers insisted on the legitimacy of their claims, including demands to be reinstated in their previous jobs, and remained on strike. “Nur Otan” takes up employment of those who were laid off because of the oil workers’ strike” (“НурОтан” займется трудоустройством уволенных из-за забастовок нефтяников”), TengriNews, June 30, 2011, http://tengrinews.kz/kazakhstan_news/191767/ (accessed May 30, 2012).

³⁰⁸ Marat Zhanseitov, “No rehires of those fired for absence” (“Уволенные за прогулы на работе восстанавливаться не будут”), Ogni Mangystau, October 8, 2011, http://ogni.kz/index.php?option=com_content&task=view&id=5023&Itemid=9 (accessed May 30, 2012).

According to media reports, Birzhan Nurymbetov, deputy minister of Labor and Social Protection; Askar Aubakirov, a representative of KazMunaiGas Exploration and Production Company; Amankeldy Aitkulov, deputy mayor of the Mangystau Region; Orak Sarbopeev, Zhanaozen City mayor; and representatives of the prosecutor general's office participated in the meeting in addition to 10 striking oil workers.³⁰⁹ The media reported that the participants discussed five key demands, including higher pay on the basis of wage coefficients and that dismissed workers be reinstated to their previous employment. However, over a two-day period on November 23 and 24, they failed to reach an agreement and no concluding document was signed.³¹⁰

Immediately following the violent clashes in Zhanaozen on December 16, 2011, President Nazarbaev told the media that the demands of the striking oil workers were not unfounded and ordered a government commission to be established to "implement immediate measures to tackle the causes of the unrest."³¹¹ On December 30, Deputy Minister of Labor and Social Protection Birzhan Nurymbetov told the media that he had been placed in charge of a committee to create employment opportunities for dismissed OzenMunaiGas and KarazhanbasMunai oil workers and to review the legality of the dismissals.³¹² However, Ersai Caspian Contractor workers were not invited to apply for newly-created jobs.

³⁰⁹ Igor Nesterov, "For the second day in Zhanaozen, a "tripartite meeting" is taking place between the strikers, their former employees, and officials" (В городе Жанаозен второй день идет «трехсторонняя встреча» бастующих, их бывших работодателей и власти), *Lada*, November 24, 2011, http://lada.kz/aktau_news/society/1244-v-zhanaozene-vtoroy-den-idet-trehstoronnyaya-vstrecha-bastuyuschih-ih-byvshih-rabotodateley-i-vlasti.html (accessed August 24, 2012). Both Aitkulov and Sarbopeev faced criminal sanctions following the December 2011 violent clashes in Zhanaozen.

³¹⁰ Igor Nesterov, "Representatives of striking oil workers of Zhanaozen refused to sign the protocol of the tri-partite meeting" ("Представители бастующих нефтяников города Жанаозен отказались подписывать протокол трехсторонней встречи"), *Lada*, November 27, 2011, http://lada.kz/aktau_news/society/1264-bastuyuschie-neftyaniki-zhanaozenyarazocharovany-primiritelnaya-komissiya-okazalas-razyasnitelnaya.html (accessed August 24, 2012).

³¹¹ "Non-paper: Understanding and Responding to Zhanaozen," Embassy of the Republic of Kazakhstan in Brussels, Press & Information Section, <http://www.kazakhstanembassy.be/index.php/en/press-a-information/20-non-paper-understanding-and-responding-to-zhanaozen> (accessed May 9, 2012).

³¹² "Employment Commission Created in Zhanaozen" ("Комиссия по трудуустройству создана в Жанаозене"), *News-Kazakhstan*, December 30, 2011, <http://www.newskaz.ru/regions/2011230/2415458.html> (accessed May 9, 2012). While the majority of dismissed oil workers applied for new jobs through the government commission, approximately 50 dismissed KarazhanbasMunai oil workers continued to strike into 2012, demanding their original claims be considered. See: Asylkhan Mamashuly, "And a year later, protesters stand outside KarazhanbasMunai offices" ("И год спустя у офиса «Каражанбасмунай» стоят протестующие"), Radio Azattyk, May 16, 2012, http://rus.azattyq.org/content/karazhanbasmunai_zabastovka_zhanaozen_neftyaniki/_24581524.html (accessed May 17, 2012).

Ersai Caspian Contractor and OzenMunaiGas Claims regarding Mass Dismissals

In letters to Human Rights Watch, both Ersai Caspian Contractor and OzenMunaiGas stated that they took steps to inform workers that they were participating in an illegal strike, therefore risking dismissal under national law, and that they offered striking workers the opportunity to return to work provided they ceased their illegal labor protest.³¹³

In its March 2, 2012 letter to Human Rights Watch, Ersai Caspian Contractor wrote that before the company fired any workers, they took a series of steps, including “publishing of explanatory materials regarding consequences of participation in illegal strike in public places of Caspian Yard” and sending “messages to striking employees via media outlets (TV ads, web portal).”³¹⁴ Ersai also informed Human Rights Watch that “[e]ach employee was given a chance to give a written explanation over their absence during the strike” before he or she was fired.³¹⁵

However, Ersai workers interviewed by Human Rights Watch dispute the claim that the company allowed them to explain their absence before firing anyone. For example, one Ersai worker told Human Rights Watch that he first learned he had been fired several days after the strike began, when he heard his name called out from a list of dismissals by Ersai management at the site of the strike.³¹⁶ Another worker said that he was fired approximately two weeks after the strike began. He told Human Rights Watch that he did not go to the company in person, but learned of his dismissal when he received a notice sent to his home.³¹⁷

Ersai Caspian Contractor also explicitly stated in its letter to Human Rights Watch that “the decision of the Company to dismiss employees for absence from May 11, 2011, was not based on their membership in any trade union.” However, the CFA has found that “when trade unionists or union leaders are dismissed for having exercised the right to strike, the

³¹³ Human Rights Watch sent KarazhanbasMunai a letter on February 1, 2012, requesting information about efforts the company took to adhere to legislation before they dismissed striking oil workers, however Human Rights Watch never received a response from KarazhanbasMunai.

³¹⁴ Letter from Camillo Ceresa, general director, Ersai Caspian Contractor, to Human Rights Watch, March 2, 2012.

³¹⁵ Ibid.

³¹⁶ Human Rights Watch interview with Yermek Y., Aktau, October 19, 2011.

³¹⁷ Human Rights Watch interview with Dosym D., Kuryk, October 20, 2011.

Committee can only conclude that they have been punished for their trade union activities and have been discriminated against.”³¹⁸

In OzenMunaiGas’ March 11, 2012 letter to Human Rights Watch, the company stated that “the only request that management put forth toward participants in the illegal act of protest was to return to work. In this case, the employer guaranteed the worker’s position and offered to discuss the labor dispute according to the laws of the Republic of Kazakhstan.”³¹⁹ The company also claimed that “prior to termination for non-attendance of employees who took part in the illegal protest, each employee had more than one meeting with representatives of specially established outreach groups [razyasnitelnikh grupp].”³²⁰ As documented above, some workers told Human Rights Watch they were dismissed without notice.

The mass dismissals and limited alternative employment opportunities left many workers in dire social and economic conditions, and this served to further exacerbate the tense situation in western Kazakhstan, which ultimately erupted into violence on December 16, 2011.

Violations of Freedom of Assembly of those Supporting the Oil Workers

Throughout the duration of the labor unrest in western Kazakhstan, authorities used restrictive legislation regulating public assembly to fine and detain oil workers. Authorities also brought administrative charges against civil society activists and members of the opposition who attempted to hold demonstrations or who spoke out in support of the striking oil workers.

³¹⁸ ILO Digest of Decisions and Principles, para. 662

³¹⁹ Letter from Erbol Ismailov, advisor on strategic communications at OzenMunaiGas, to Human Rights Watch, March 11, 2012.

³²⁰ Ibid. The letter further explains: “Such groups included experts, departmental heads, employees of the Department on Social Policy, human resource personnel, as well as analogous employees of those that participated in the illegal protests. They regularly reached out to employees that did not come to work to provide them with comprehensive and reliable information on the situation and once again invite employees to exercise common sense.”

Detention of Opposition Activists in Zhanaozen

In June 2011, police detained several opposition activists in Zhanaozen and threatened them with administrative arrest. Nuriyash Abdraimova, first secretary of the Mangystau region branch of the Communist Party of Kazakhstan, was detained twice on June 12 for allegedly violating legislation regulating public assemblies. She told Human Rights Watch that after she met briefly with relatives of the striking oil workers on the central square that morning, officers from the city prosecutor's office took her into custody where they photographed her and took her fingerprints. "They [told me] that there wasn't permission and that the gathering was illegal," Abdraimova told Human Rights Watch. "They called me aside, and then using force, the police put me into the bus. They took my arms, lifted me up, and put me in the bus."³²¹

Later that afternoon, Abdraimova and two other opposition activists, Serik Sapargali and Aulash Ungarova, were detained as they were leaving the house and taken to the police station.³²² Abdraimova said that Sapargali was questioned separately, and while they were all at the police station, she was subjected to an unprovoked attack by a woman who appeared to be cooperating with the police. Abdraimova told Human Rights Watch that even though the woman kicked her and insulted her, the police took no action and would not take her statement.³²³

Detention and Beating of Bakyt B.

According to one oil worker, on June 19 or 20, dozens of Esrai employees and their relatives gathered outside the Karakiya district Akim's office in Kuryk to call for the Akim's assistance in resolving the strike. Instead of meeting with the crowd, the Akim left the building, shielded by the police.³²⁴ When the people began to raise their voices and shouted at the Akim, the police responded by detaining several people.³²⁵ Several participants were fined for participating in the unsanctioned gathering, and several days

³²¹ Human Rights Watch interview with Nuriyash Abdraimova, Aktau, October 21, 2011.

³²² See also: "Kazakh Activists Supporting Striking Oil Workers Under Pressure," *Radio Free Europe/Radio Liberty*, June 13, 2011, http://www.rferl.org/content/kazakh_activists_supporting_striking_oil_workers_under_pressure/24233981.html (accessed April 12, 2012). Sapargali was arrested on January 23 and was charged with 'inciting social discord' and "calling for the forcible overthrow of the constitutional order" for an alleged role in the December 16 violence in Zhanaozen.

³²³ Human Rights Watch interview with Nuriyash Abdraimova, Aktau, October 21, 2011.

³²⁴ Human Rights Watch interview with Bakyt B., Kuryk, October 20, 2011.

³²⁵ Ibid.

later, Bakyt B., a striking Ersai worker who was among the crowd, was sentenced to five days' administrative arrest.

Bakyt B. told Human Rights Watch that while he was in detention he was insulted and beaten by police. He described the conditions of detention:

On the third day [of my detention], [my relative] brought me food from home ... The officer on duty ... kicked the bag of food with his foot. After that, I raised a fuss. Then all the police officers gathered around.... There were about 10 police officers ... Three of them knocked me around, beat me. Then two of them held me while a third beat me.... After about 20 minutes the beating stopped. I broke away from them and [deliberately] cut myself [with a razor blade].³²⁶

The prohibition on torture and other ill-treatment of persons in detention is enshrined in international treaty law, which also requires that allegations of ill-treatment be investigated and perpetrators prosecuted.³²⁷ Article 7 of the ICCPR states that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Bakyt B. told Human Rights Watch that when he demanded that the prosecutor be summoned so that he could file a complaint, the police officers tried to convince him not to report the incident.³²⁸ Bakyt B.’s lawyer later filed a lawsuit against the police officers allegedly involved in the beating, and although a court ordered three police officers had to pay him compensation for moral damages, they were not held criminally responsible for ill-treating him.³²⁹

³²⁶ Ibid.

³²⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, acceded to by Kazakhstan on August 26, 1998. Article 15 of the Convention reads: “Each party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

³²⁸ Human Rights Watch interview with Bakyt B., Kuryk, October 20, 2011.

³²⁹ Bakyt B. told Human Rights Watch that the three officers each had to pay him 100,000 tenge (US\$675), but that none of the police officers was dismissed.

Detention of Activist Galym Ageleuov

On August 13, Zhanaozen police temporarily detained Galym Ageleuov, a civil society activist who had been monitoring and reporting on the events in western Kazakhstan since July 2011, and threatened him with arrest for allegedly organizing an unsanctioned public event (*shestvie*) outside the OzenMunaiGas offices on August 6.³³⁰ The police held him in custody for approximately one hour and then he was released.³³¹

Detention of Opposition Party Activists in Aktau

Authorities in Aktau fined opposition activist Nuriyash Abdraimova and detained Zhanbolat Mamai, leader of an Almaty-based youth opposition group, after they made public statements at an August 8 gathering of striking oil workers outside KarazhanbasMunai offices in Aktau. Mamai told Human Rights Watch that after he was taken into custody on August 16, the police took away his phone and did not allow him to inform anyone of his whereabouts or of the administrative charges against him.³³² At approximately 11 p.m., a local court sentenced Mamai to 10 days' administrative arrest on charges of participating in an illegal gathering and resisting police.³³³

The next day, on August 17, in Almaty, Socialist Movement of Kazakhstan activists Zhanna Baitelova, Arman Ozhaubaev, and Dmitrii Tikhonov staged a small protest outside the Nur Otan Party office in Almaty in support of the striking oil workers. They were all subsequently sentenced to short term administrative arrest for participating in an illegal gathering.³³⁴

³³⁰ On August 6, about 50 to 100 women gathered outside OzenMunaiGas offices in Zhanaozen to speak to the director with questions about the strike.

³³¹ Human Rights Watch interview with Galym Ageleouov, Zhanaozen, August 13, 2011.

³³² Human Rights Watch Skype interview with Zhanbolat Mamai, February 24, 2012.

³³³ Kazakhstan Code of Administrative Offenses, arts. 373 and 355, points 2, respectively.

³³⁴ Ibid., art. 373.

IV. Strike Aftermath: Violent Clashes and Politically-Motivated Arrests

Despite Kazakhstan President Nazarbaev's warnings not to conflate the oil workers' strike with the violence that erupted in Zhanaozen in mid-December 2011, authorities immediately targeted the most outspoken oil workers and their supporters in their investigation into the violence.³³⁵ Some oil workers were charged with "organizing mass unrest" and others were arrested on charges of "inciting social discord." In addition, in January 2012, the authorities also pressed criminal charges of "inciting social discord" against opposition activists, including unregistered opposition party *Alga!* leader Vladimir Kozlov, who travelled to Aktau and Zhanaozen to support the striking oil workers. In June 2012, all the oil workers but one, Akzhanat Aminov, who had been charged with "inciting social discord" in February, were released and the charges against them dropped on the basis of having signed statements of "active remorse."³³⁶ On August 16, authorities persisted in prosecuting Vladimir Kozlov and Serik Sapargali, opposition activists who had supported the oil workers, as well as Akzhanat Aminov.

December 16 Zhanaozen Violence

On December 16, 2011, clashes between police and people who had gathered on the central square that day, including striking oil workers, broke out in Zhanaozen. December 16 is Kazakhstan's Independence Day, and local officials had set up a stage and brought in yurts, traditional tent-like structures, to Zhanaozen's central square to commemorate Kazakhstan's 20 years of independence. Around mid-day, festivities began and scuffles broke out between police and oil workers on the square. A video clip broadcast on various

³³⁵ Nazarbaev specifically warned against conflating the workers' demands and the outbreak of violence in Zhanaozen on December 17 and again on December 22. In his official statement announcing the state of emergency in Zhanaozen on December 17, President Nazarbaev stated: "I believe the labor dispute of oil workers must not be mixed in with the acts of bandit elements who sought to abuse the situation in their criminal plots." See: "The President of Kazakhstan Nursultan Nazarbayev Chairs Security Council Session at Akorda," Official site of the President of the Republic of Kazakhstan, December 17, 2011, http://www.akorda.kz/en/news/2011/12/segodnya_v_akorde_pod_predsedatelstvom_glavy_gosudarstva (accessed December 18, 2011).

³³⁶ Kazakhstan Criminal Code, art. 65

news programs shows approximately 20 to 30 men in burgundy oil company jackets charging the stage that had been constructed for the event and destroying the equipment.

Human Rights Watch has not been able to confirm independently how the unrest unfolded that day or who participated in the violence. A December 16, 2011 statement from the prosecutor general's office said that those involved in the clashes "overturned the New Year's tree, tore down yurts and the stage, and set a police bus on fire."³³⁷ That day, multiple buildings in Zhanaozen were set on fire, including OzenMunaiGas offices, and shops and ATMs were looted.

In response to the violence, local police and government forces that had been brought into Zhanaozen opened live fire on civilians, including striking oil workers, killing 12 and wounding dozens of others, according to official figures. Three other individuals died in the violence, two as a result of bodily injuries and one in a related fire, according to the general prosecutor's office reports.³³⁸ Other individuals and civil society groups put the death toll much higher.³³⁹

One of the oil workers on the square on December 16 described to Human Rights Watch how police fired on the crowd after initial clashes on the square:

About an hour [after the clashes started], about 50 or 60 police [appeared] with shields that had "police" written on them ... I saw that they're shooting. I thought they were blanks, or ... rubber bullets.... But no, I saw that they're not blanks, not rubber bullets, but live cartridges. I looked around and a guy had been hit in the leg already. He screamed. There was a man near him, an older man who was disabled. They grabbed him and hit him with

³³⁷ "Statement of the Prosecutor General of the Republic of Kazakhstan" ("ЗАЯВЛЕНИЕ Генерального Прокурора Республики Казахстан Даулаева А.К."), Prosecutor General of the Republic of Kazakhstan, December 16, 2011, <http://prokuror.kz/rus/novostiz/?cid=0&rid=4193> (accessed April 12, 2012).

³³⁸ "Text of the speech of Nurgaulet Suindikov, the official representative of the Prosecutor General of the Republic of Kazakhstan" ("Текст выступления официального представителя Генеральной прокуратуры Республики Казахстан Сундикова Нурдаулета"), Prosecutor General of the Republic of Kazakhstan, February 22, 2012, <http://prokuror.kz/rus/novostiz/?cid=0&rid=4302> (accessed April 12, 2012).

³³⁹ Elena Kostyuchenko, "Zhanaozen," *Novaya Gazeta*, December 20, 2011, <http://www.novayagazeta.ru/politics/50191.html> (accessed March 8, 2012).

truncheons [*dubink*]. Before my eyes, they shot a guy. He died.... They shot at passersby.³⁴⁰

On December 17, a day after the clashes, Kazakh authorities imposed a state of emergency in Zhanaozen. They also cut off telecommunications, and several websites, including Twitter, were blocked across Kazakhstan until December 20. In the following days, Human Rights Watch documented allegations of arbitrary arrest, ill-treatment and torture of detainees in custody, and extortion of Zhanaozen residents by police officers. Human Rights Watch compiled these findings in a letter to the prosecutor general of Kazakhstan, raising concerns about the use of lethal force and allegations of torture and ill-treatment, including the death of Bazarbai Kenzhebaev, 50, who was arbitrarily detained on December 16, beaten in custody, and died from internal injuries several days after his release.³⁴¹

This report does not detail in full the violations of human rights with respect to the government's use of lethal force in Zhanaozen and the aftermath of the violence, including instances of ill-treatment and torture. It is nonetheless important to note that violations of labor rights in Kazakhstan's petroleum sector in western Kazakhstan, as documented in this report, served as the backdrop to the December violence, as well as to the government crackdown on outspoken critics in early 2012, many of whom actively supported the oil workers.

Crackdown on Outspoken Oil Workers and Political Opposition Activists

On January 6, 2012, authorities arrested *Alga!* opposition party activist Aizhangul Amirova, who played a prominent role supporting the striking oil workers and providing commentary and information to the media and international groups, on the vague criminal charges of "inciting social discord." Approximately two weeks later, on January 23, authorities in Almaty arrested Vladimir Kozlov, *Alga!* opposition party leader, and Serik Sapargali, a member of the People's Front, an opposition movement, on the same charges. Authorities

³⁴⁰ Human Rights Watch telephone interview with oil worker [name withheld], December 21, 2011.

³⁴¹ For more information see: "Kazakhstan: Protect Detainees From Torture, Ill-Treatment," Human Rights Watch news release, December 22, 2011, <http://www.hrw.org/news/2011/12/22/kazakhstan-protect-detainees-torture-ill-treatment>; and letter from Human Rights Watch to Askhat Daulbaev, Prosecutor General of Kazakhstan, "Kazakhstan: Letter to the Prosecutor General regarding the December events in Zhanaozen and Shetpe," February 1, 2012, <http://www.hrw.org/news/2012/02/01/kazakhstan-letter-prosecutor-general-regarding-december-events-zhanaozen-and-shetpe>.

also brought charges of “inciting social discord” against Bolat Atabaev, a theatre director and member of the People’s Front and Zhanbolat Mamai, a youth opposition group leader. At various times after the strike began in May, each of these individuals had traveled to Zhanaozen and had spoken out publicly in support of the striking oil workers.

A January 25, 2012 statement by the prosecutor general’s office states that the authorities believe that “one of the causes of the mass disorder was the active efforts of some individuals to persuade fired workers to continue their protest action and violently oppose the authorities,” and identifies Kozlov, Amirova, and Sapargali as among those who “incit[ed] social discord.”³⁴² Under international human rights law, persuading fired workers to continue their protest action is a legitimate exercise of freedom of speech.

In February, the authorities additionally arrested six oil workers, several of whom had assumed leadership roles during the strike at OzenMunaiGas, also on “inciting social discord” charges, including Akzhanat Aminov, whom a court had sentenced in August to a one-year suspended sentence for leading the “illegal” strike by giving orders to workers by phone. The others whom the authorities arrested are Natalia Azhigalieva, who assumed a leadership role throughout the strike; Zhanar Saktaganova and Estai Karashaev, each of whom had been attacked by unknown assailants in Zhanaozen in October; Aiman Ungarbaeva, another outspoken oil worker; and Askar Iskenderov.³⁴³

In June 2012, authorities unexpectedly released the oil workers facing charges of inciting social discord, with the exception of Akzhanat Aminov, under article 65 of Kazakhstan’s criminal code or “exemption from criminal liability due to active remorse,” and dropped the charges against them. In July, authorities similarly released Bolat Atabaev and Zhanbolat Mamay and dropped the charges against them.

The prolonged investigation into the December 2011 Zhanaozen violence on “inciting social discord” charges was characterized by secrecy and a lack of transparency. The National

³⁴² “Statement by the Prosecutor General of the Republic of Kazakhstan on the event that took place in the town of Zhanaozen on the 16th of December 2011,” Prosecutor General of the Republic of Kazakhstan, January 25, 2012, <http://prokuror.kz/eng/novostiz/?cid=o&rid=1359> (accessed April 12, 2012).

³⁴³ List of detainees charged under Criminal Code article 164, issued by the Zhanaozen City Prosecutor’s office. Copy on file with Human Rights Watch.

Security Committee, which led the investigation, did not release any evidence of specific speech or actions by any of the three activists to substantiate the charges against them.

The offense of “inciting social discord,” under article 164 of Kazakhstan’s Criminal Code, is so vague and so broad that it can be and has been used to criminalize freedom of opinion, expression, and association, which states are obligated to protect under human rights law. For this reason, Human Rights Watch believes that the charges should be dropped against the political opposition activists standing trial and the charge amended or repealed.

In addition to pressing criminal charges against these activists, the authorities brought charges of organizing or participating in mass unrest against 37 people, 18 of whom were OzenMunaiGas oil workers who participated in the in the seven-month strike in 2011.³⁴⁴ Their trial started on March 27, 2012. Three of the defendants are oil workers who actively participated in the OzenMunaiGas strike and spoke publicly to raise awareness about the workers’ demands. Maksat Dosmagambetov spoke at a press conference in Moscow in June 2011. Talgat Saktaganov travelled to Warsaw, Poland, in late September 2011 and spoke about the strike at the Organization for Security and Co-operation in Europe (OSCE) Human Dimension Implementation Meeting. Rosa Tuletaeva provided commentary and information to the media and international organizations throughout the duration of the seven-month strike.

On June 4, 2012, the Aktau City Court found 34 of 37 defendants guilty of various crimes, including “organizing and participating in mass unrest” and theft. Thirteen were handed prison sentences ranging from three to seven years, including Tuletaeva, who received the harshest sentence of seven years; Dosmagambetov, who was sentenced to six years; and Saktaganov, who was sentenced to four years. Of the twenty-one who were released, five were given amnesties and sixteen were given suspended sentences of one to three years. Three defendants were acquitted of all charges.³⁴⁵ On appeal, the court reduced Tuletaeva’s sentence from seven to five years, but left the rest of the convictions intact.

³⁴⁴ Kazakhstan Criminal Code, art. 241, point 1.

³⁴⁵ For more information about the trial, see “Kazakhstan: Oil Workers Convicted in Flawed Trial, Human Rights Watch,” Human Rights Watch news release, June 5, 2012, <http://www.hrw.org/news/2012/06/04/kazakhstan-oil-workers-convicted-flawed-trial> (accessed June 6, 2012).

Trial monitors and journalists reported that many defendants testified in court that during the investigation they had suffered beatings, suffocation, psychological pressure, and other ill-treatment at the hands of law enforcement officials, apparently to coerce testimony against themselves or others.³⁴⁶ However, the authorities did not carry out an impartial and thorough investigation into these allegations, but dismissed them following a preliminary inquiry stating, “[T]here was no evidence of a crime in the actions of the law enforcement agents that responded to the mass unrest on December 16.”³⁴⁷

Human Rights Watch is seriously concerned that the authorities seized upon the tragic outbreak of violence on December 16 as a pretext for retaliating against workers who had actively exercised their legitimate right to strike in the preceding months. In particular, the authorities appear to have targeted for criminal prosecution the very oil workers who are believed to have led or who took an active role in the strikes.

³⁴⁶ See “Kazakhstan: Suspend Trial, Investigate Torture Allegations,” Human Rights Watch news release, April 23, 2012, <http://www.hrw.org/news/2012/04/23/kazakhstan-suspend-trial-investigate-torture-allegations> (accessed June 6, 2012).

³⁴⁷ Decisions of the Department for Internal Security, Ministry of Internal Affairs, April 26, 2012 and May 2, 2012. Copies on file with Human Rights Watch.

V. The Role of Ersai Caspian Contractor, KarazhanbasMunai and OzenMunaiGas

As part of the research for this report, on February 1, 2012, Human Rights Watch sent letters to the directors of the companies named in this report, including Ersai Caspian Contractor, OzenMunaiGas, and KarazhanbasMunai and its affiliate companies, TulparMunaiService and ArgymakTransService. KarazhanbasMunai's parent companies, CITIC Resources Holding Limited, which is majority-owned by China's state investment company, CITIC Group Corporation, and KazMunaiGas Exploration Production Company, were copied on Human Rights Watch's letter to KarazhanbasMunai. In June 2012, Human Rights Watch also wrote to Saipem S.p.A., the parent company of Ersai Caspian Contractor.³⁴⁸ The letters summarized Human Rights Watch's preliminary findings concerning violations of workers' rights in the context of the labor disputes and industrial actions that took place at their companies in 2011. In the letters Human Rights Watch requested the companies respond to a series of questions in order that this report could reflect both worker and employer information and perspectives.

Human Rights Watch received a response from Ersai Caspian Contractor on March 2, 2012 (see appendix). In this letter, Ersai Caspian Contractor stated that the company considers trade unions "an effective partner for agreeing long-term, fair conditions for our workforce in accordance with rules and legislation" and pointed to the "long history of constructive and collective bargaining relations that dates back to 2003, [the] date of [the] Company's inception."³⁴⁹ However, the company did not respond to questions about the harassment of Karakiya union members following their general meeting on March 11, 2011 or to a question about the company's adherence to international labor rights standards with respect to collective bargaining and the right to strike, although the company stated that its relationship with trade unions is governed by collective agreements, in accordance with national law. The company did not acknowledge it had violated any of its employees'

³⁴⁸ The ownership structures of Ersai Caspian Contractor, OzenMunaiGas, and KarazhanbasMunai and its affiliate companies, TulparMunaiService and ArgymakTransService, are detailed in the background section of this report.

³⁴⁹ Letter from Camillo Ceresa, general director, Ersai Caspian Contractor, to Human Rights Watch, March 2, 2012.

rights and claimed that dismissals took place in accordance with national law and that dismissals were “not based on their membership in any trade union.”³⁵⁰

On March 11, 2012, Human Rights Watch received a response from OzenMunaiGas in which the company stated that it “has a long-established practice of regulating work conditions through use of collective agreements” (see appendix). In answer to Human Rights Watch’s question about the steps OzenMunaiGas took to review in good faith workers’ grievances concerning remuneration, OzenMunaiGas reiterated its position that the claims of the workers were unfounded and pointed to a series of legal documents that supports the company position. In its letter, OzenMunaiGas stated that “the only request that management put forth towards participants of the illegal protest was the suggestion to return to work” and detailed steps that the company took to urge workers to return to their jobs, including a freeze on firing workers for 10 days in July. OzenMunaiGas also asserted that “the actions of the Company in the area of labor rights do not violate international standards regarding negotiating and concluding collective agreements and exercising the right to strike,” and that “the company has no practice of preventing or discouraging employees when they are hired from joining a union, in particular using dismissal or other types of retaliation against an employee because of his participation in union activities.”³⁵¹

Human Rights Watch did not receive a response from KarazhanbasMunai or its affiliate companies, TulparMunaiService and ArgymakTransService.

Public Commitments and Responsibility to Protect Human Rights

As elaborated above, all businesses have a responsibility to respect human rights. Some companies, including Saipem S.p.A. and JSC NC KazMunaiGas, KarzhanbasMunai’s parent company, have articulated these commitments to varying degrees through internal policies. Saipem S.p.A. has a code of ethics which places human rights at the forefront of conducting its activities: “[A]s an international company, or in ventures with partners, Saipem advocates the protection and promotion of human rights, which it sees as an inalienable and fundamental entitlement of all human beings.” With respect to freedom of association,

³⁵⁰ Ibid.

³⁵¹ Letter from Erbol Ismailov, advisor on strategic communications at OzenMunaiGas, to Human Rights Watch, March 11, 2012, unofficial translation.

the code of ethic states, “Particular attention is paid to the acknowledgement and safe-guarding of the *dignity, freedom* and *equality* of human beings, to the protection of *labour* and of the *freedom of trade union association* [emphasis in the original].” Saipem S.p.A.’s Code of Ethics extends to Saipem’s subsidiary companies, or “all those who, within their own remits and responsibilities, operate in Italy and abroad to achieve Saipem’s objectives,” including Ersai Caspian Contractor.³⁵²

In addition, Saipem’s parent company, Eni S.p.A., has a stated commitment to protecting and promoting human rights guided by the United Nations’ “Protect, Respect and Remedy” framework. Eni S.p.A. has articulated its commitment to human rights in its 2007 Guidelines on The Protection and Promotion of Human Rights, which apply to “Eni and subsidiaries that are either directly or indirectly owned by Eni in Italy and abroad.”³⁵³

Regarding freedom of association, the Eni S.p.A. Guidelines state that Eni and its subsidiaries will:

Ensure the freedom of association and effective recognition of the right to collective bargaining by protecting the right to establish and, subject only to the rules of the organization concerned, to join employee organizations of one’s own choosing without distinction, previous authorization, or interference, for the protection of its own employment interests and for other collective bargaining purposes in accordance with national legislation and the relevant ILO conventions.³⁵⁴

KarzhanbasMunai and OzenMunaiGas’s parent company, JSC NC KazMunaiGas, has a code of ethics which states a “commitment to human rights,” but does not elaborate on its commitments in the sphere of labor relations.³⁵⁵

³⁵² “Saipem Code of Ethics,” <http://www.saipem.com/site/Home/CorporateGovernance/ComplianceCommitteeandModel231.html> (accessed June 5, 2012).

³⁵³ “Eni Guidelines on the Protection and Promotion of Human Rights,” Eni S.p.A, Circular No. 257 of 17.4.2007, http://www.eni.com/en_IT/attachments/sostenibilita/linee_guida_diritti_umani_eng.pdf (accessed June 5, 2012).

³⁵⁴ Ibid.

³⁵⁵ JSC NC KazMunaiGas, “Corporate Ethics Code,” Approved by the Resolution of the Management Board of NC KazMunaiGas JSC as of April, 30, 2007 Protocol # 61, <http://www.kmg.kz/en/about/docs/ethics/> (accessed June 5, 2012).

In addition, both and Eni S.p.A. and JSC NC KazMunaiGas have undertaken explicit human rights commitments as participants in the UN Global Compact.³⁵⁶ By joining the Global Compact, these companies have committed themselves to ensuring respect for human rights, including workers' rights, in their operations. JSC NC KazMunaiGas and its subsidiary companies, including KarazhanbasMunai and KarazhanbasMunai's affiliate companies, TulparMunaiService and ArgymakTransService, and OzenMunaiGas, as well as Eni S.p.A.'s subsidiary company, Ersai Caspian Contractor, likewise have a responsibility to respect human rights in their operations.

In Human Rights Watch's view, states should impose clear requirements on business entities to ensure that they uphold their responsibility to respect human rights in all company actions in the state's jurisdiction, and that a remedy is provided in cases where abuses nonetheless occur. Even in the absence of nationally mandated requirements, however, we believe all businesses should take certain steps to meet their human rights obligations. Namely, all businesses should carry out human rights due diligence and address prospective human rights impacts, which may require declining to proceed with a potential business venture if harmful impacts are unavoidable.

As one component of such due diligence efforts, companies should be required to conduct or commission a credible human rights impact assessment that addresses the full scope of potential issues, including risks to workers' rights, and reflects extensive input from affected individuals and civil society, including trade unions. Businesses also should monitor for human rights impacts through ongoing internal processes and periodic independent reviews, and take action to correct any identified problems. Importantly, company due diligence processes should cover business relationships. For example, companies should vet potential business associates to avoid forming business ties with individuals or entities that undermine human rights, including workers' rights, and include enforceable human rights provisions in contracts with parties involved in a relevant business relationship (for example, suppliers, contractors, and business partners).

³⁵⁶ "Social Responsibility of JSC NC KazMunaiGaz," UN Global Compact Participants and Stakeholders, <http://www.unglobalcompact.org/COPs/detail/811>; and "Participant Information: Eni," UN Global Compact Participants and Stakeholders, <http://www.unglobalcompact.org/participant/3359> (accessed June 6, 2012).

Additionally, businesses should disclose what they are doing to address human rights by publicly reporting on a regular basis, including with reference to workers' rights. To the extent that mitigation and remediation efforts fail to adequately address grievances that may arise affecting workers or others, companies must cooperate fully with formally established mechanisms to provide recourse for victims and accountability for violations, including judicial avenues, as appropriate. It is also essential that company due diligence processes cover business activities abroad, outside the home state, when businesses operate transnationally.

In addition, companies should urge the government to stop abuses against union workers exercising their rights and bring national labor legislation in line with international norms and treaties to which Kazakhstan is party and call for investigations into abuses.

VI. The Role of Kazakhstan's International Partners

Kazakhstan is a strategic partner to a number of countries, including the United States, Germany, Russia, and China. Kazakhstan projects itself on the international stage as a country that is politically and economically stable, committed to democratic reforms, and a reliable international partner. The government has spent significant resources cultivating this image, including by hiring former UK Prime Minister Tony Blair in 2011 to advise the government of Kazakhstan on various foreign and domestic policy measures. The government is quick to deflect public criticism of Kazakhstan's human rights record and policies, claiming instead steady human rights improvements, and in some instances has resorted to bullying tactics, threatening to sever ties with certain partners when faced with critical remarks.³⁵⁷

In January 2012, a month after the Zhanaozen clashes, Kazakhstan's Foreign Minister Yerzhan Kazykhanov wrote an article in the journal *Foreign Policy* in which he claimed that the violence was simply an example of the kind of "growing pains" Kazakhstan is experiencing as "a young democracy."³⁵⁸ Kazykhanov asserted that Kazakhstan has "a dynamic, robust market economy that is the primary generator of growth in Central Asia" and reminded readers that Kazakhstan's "commitment to social, political, and economic reform has made it a key ally and trading partner to the United States, Russia, China, and India in a strategically vital part of the world."³⁵⁹ Indeed, Kazakhstan has long cultivated bilateral relationships with a range of international partners, including China and Russia, both of which have significant interest ensuring regional security, as well as in Kazakhstan's vast oil reserves, and with the US and EU, which are keen to diversify energy imports away from Russia.

³⁵⁷ For example, when the OSCE election monitoring mission issued its preliminary assessment of Kazakhstan's January 2011 parliamentary elections as one that "did not meet democratic principles," Kazakhstan threatened to "reject these missions in the future." See: Nariman Gizitdinov, "Kazakh President Threatens to Halt OSCE Vote Monitoring Missions," *Bloomberg Businessweek*, March 2, 2012, <http://www.businessweek.com/news/2012-03-02/kazakh-president-threatens-to-halt-osce-vote-monitoring-missions> (accessed April 12, 2012).

³⁵⁸ Yerzhan Kazykhanov, "Steady Strides," *Foreign Policy*, January 26, 2012, http://www.foreignpolicy.com/articles/2012/01/26/steady_strides?page=full (accessed April 12, 2012).

³⁵⁹ Ibid.

However, Kazakhstan's stated commitments to social and political reform ring hollow in the face of serious and ongoing human rights abuses in the country. To some extent, international actors engaged with Kazakhstan, including the EU, the United States, and the Organization for Security and Co-operation in Europe (OSCE), have criticized Kazakhstan's human rights record in the last year, including on the right to freedom of assembly, religion, and expression. Yet, given the clear deterioration in Kazakhstan's human rights record since Kazakhstan held the OSCE Chairmanship in 2010, public criticism by Kazakhstan's international partners has been inconsistent and mild, at best. Even in instances where international partners have voiced criticism of Kazakhstan's human rights record, they have not followed up with any known policy consequences. Some experts have suggested that this may in part be due to the fact that these partners prioritize the country's geo-strategic importance and hydrocarbon wealth in their relations with the government.³⁶⁰

Standing up for human rights need not and should not come at the expense of Kazakhstan's international partners' strategic interests. Indeed, pursuing alternative energy resources or investing in Kazakhstan's oil sector and upholding human rights principles are not mutually exclusive goals. Kazakhstan's international partners should engage in sustained pressure and set concrete benchmarks with clear timelines for their fulfillment to ensure the Kazakh government remedies human rights violations and respects fundamental rights and liberties.

Kazakhstan's international partners should strongly and publicly encourage the government of Kazakhstan to give real, practical meaning to its stated commitment to human rights, including by ensuring full respect for freedom of association, assembly, and expression, as well as for workers' rights, such as the right to collective bargaining and the right to strike. Kazakhstan should also be encouraged to bring its national legislation in line with international human rights and labor laws.

³⁶⁰ Joanna Lillis, "Will There Be a Central Asian Spring?" *Foreign Policy*, January 26, 2012, http://www.foreignpolicy.com/articles/2012/01/24/will_there_be_a_central_asian_spring (accessed May 9, 2012). See also Luca Anceschi, "Oil riches fuel West's muted reaction to Kazakhstan's dubious poll," *The Age*, April 7, 2011, <http://www.theage.com.au/opinion/politics/oil-riches-fuel-wests-muted-reaction-to-kazakhstans-dubious-poll-20110407-1d5ly.html> (accessed May 9, 2012).

Statements by International Partners on Labor Rights Violations

Prior to the violence that erupted in mid-December 2011, Kazakhstan's international partners made a number of public statements about violations of freedom of association, assembly, and expression in the context of the peaceful extended strikes in western Kazakhstan.

In September 2011, four months after strikes began and several weeks after union lawyer Natalia Sokolova was sentenced to six years in prison for speaking out on workers' rights, the EU issued a statement on the rule of law and human rights standards in Kazakhstan. In it, the EU specifically called on Kazakhstan to "uphold its international obligations and commitments ... in the fields of freedom of expression, association and assembly, including the right to organise and participate in trade union activities."³⁶¹ This call was repeated in another statement issued by the EU in November 2011 in which it further expressed "its concern about the situation of the striking employees, their families and their lawyers in Mangystau region."³⁶²

Also in September 2011, the United States issued a statement in which it "register[ed] its concern regarding ... the August 8 conviction and sentencing to six years imprisonment of Natalya Sokolova." However, the statement stopped short of expressing concern or calling on the government to address violations of freedom of association and assembly.³⁶³

Failure to Turn a New Leaf: Kazakhstan's OSCE Chairmanship

Kazakhstan held the OSCE chairmanship in 2010 but its selection as chair was highly controversial because of the government's poor record of adherence to OSCE's human rights principles.³⁶⁴ At the end of 2007, in response to concerns voiced by participating

³⁶¹ OSCE Permanent Council, "EU statement on the rule of law and human rights issues in Kazakhstan," No. 878, Vienna, September 2, 2011, http://eeas.europa.eu/delegations/vienna/documents/eu_osce/permanent_council/2011/20110901_878_human_right_issues_in_kazakhstan_en.pdf (accessed April 12, 2012).

³⁶² OSCE Permanent Council, "EU statement on Kazakhstan," No. 886, Vienna, November 8, 2011, http://eeas.europa.eu/delegations/vienna/documents/eu_osce/permanent_council/2011/2011103_886_statement_on_kazakhstan_en.pdf (accessed April 12, 2012).

³⁶³ United States Mission to the OSCE, "Statement on the Imprisonment of Natalya Sokolova, the Blocking of Websites and the Transfer of Prison Authority in Kazakhstan," September 1, 2011, Vienna, <http://iipdigital.usembassy.gov/st/english/texttrans/2011/09/20110901122736suo.701299.html#axzz1XAkIzOiu> (accessed April 12, 2012).

³⁶⁴ For that reason, Kazakhstan was unsuccessful in its chairmanship bids in 2005 and 2006.

states about this record, Kazakhstan's then-Foreign Minister Marat Tazhin pledged that the government would institute several reforms prior to assuming the chairmanship, including amending Kazakhstan's media law, reforming its elections law, and liberalizing registration requirements for political parties. In February 2009, the government adopted several modest reforms in line with Tazhin's pledges, but it has not implemented more meaningful reforms to date.

Throughout its chairmanship year, the government maintained restrictive legislation that curbed media freedoms and freedom of assembly, punished activists exercising their right to peaceful protest, blocked a number of websites and weblogs, and refused to register opposition party *Alga!*. The authorities also rejected repeated appeals to open a new, independent investigation into a car accident involving the country's leading human rights defender Yevgeniy Zhovtis, who was sentenced to a four-year prison term for vehicular manslaughter, imposed following an unfair trial.³⁶⁵

Yet key international actors, notably members of the OSCE, uncritically pledged their support for and cooperation with Kazakhstan in advance of and during its OSCE chairmanship in 2010. They generally failed to use the chairmanship and Kazakhstan's bid to hold an OSCE summit in Astana at the end of 2010 as a lever to push for outstanding reforms. In the year following Kazakhstan's controversial OSCE chairmanship, Kazakhstan adopted legislation related to religious and media issues that directly violate human rights norms.

Enhanced Partners: European Union-Kazakhstan Relationship

The European Union is a key partner for Kazakhstan and is well-positioned to leverage its close political and economic ties to secure meaningful human rights reforms. Kazakhstan has been developing an increasingly close relationship with the EU since the 1999 Partnership and Cooperation Agreement (PCA) established a legal framework for EU-Kazakhstan relations. The EU and Kazakhstan are currently negotiating an Enhanced Partnership and Cooperation Agreement which promises preferential political and economic ties to Kazakhstan.

³⁶⁵ On February 17, 2012, Yevgeniy Zhovtis was released under amnesty.

EU High Representative for Foreign Affairs and Security Policy Catherine Ashton has stated, “The successful conclusion of the negotiations will be influenced by the advancement of democratic reforms, notably in enhancing freedom of expression and media, freedom of association and assembly, and improvement of the conduct of electoral processes, to make them compliant with international standards.”³⁶⁶

This position was reiterated in a resolution on Kazakhstan adopted by the European Parliament on March 15, 2012, which urged Kazakhstan “to make every effort to improve the human rights situation in their country” and “underline[d] that progress in the negotiation of the new enhanced Partnership and Cooperation Agreement between the EU and Kazakhstan must depend on the progress of political reform ...”³⁶⁷

The prospect of enhanced relations gives the EU a unique opportunity to promote human rights reform in Kazakhstan by formulating concrete, measurable improvements the authorities should implement before conclusion of PCA negotiations. Among such improvements should be concrete steps to address violations of labor and human rights as outlined in this report.

Germany

Within the EU, Germany has significant and long-term bilateral ties to Kazakhstan. Kazakhstan is Germany’s third largest oil supplier and key energy and trade partner in Central Asia, with bilateral trade reaching US\$5.8 billion in 2010. In recent years, Germany has sought to diversify its energy imports away from Russia and has hosted President Nazarbaev on multiple occasions, most recently in February 2012. While German Chancellor Angela Merkel has used such visits to raise human rights concerns, Germany has made little other discernible effort to challenge the Kazakh government on human rights setbacks and to promote change, particularly in advance of Kazakhstan’s OSCE chairmanship in 2010.

³⁶⁶ “Statement to the European parliament on Kazakhstan on behalf of HR Catherine Ashton delivered by Danish Foreign Minister Villy Søvndal,” March 15, 2012, Brussels, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/123941.pdf (accessed April 12, 2012).

³⁶⁷ European Parliament, “European Parliament resolution of 15 March 2012 on Kazakhstan,” March 15, 2012, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0089+0+DOC+XML+Vo//EN&language=EN> (accessed April 12, 2012).

In February 2012, Germany and Kazakhstan concluded 50 new agreements on cooperation in rare earth metals and other raw materials, industry, and technology worth a total of US\$4 billion.³⁶⁸ While in Berlin on February 8, 2012, President Nazarbaev called the development a “breakthrough” in German-Kazakh relations and stated, “Germany and Kazakhstan enter[ed] a new level of strategic partnership with great prospects.”³⁶⁹ Chancellor Merkel told journalists that she raised human rights concerns in her meeting with President Nazarbaev and was quoted as saying, “Of course when we speak about economic interests, we also address human rights and the need to adhere to democratic principles.”³⁷⁰

Following this “breakthrough” in their relations, Germany is well-positioned to use its strategic partnership with Kazakhstan to press the government on its international commitments, as well as to strongly support the EU in conditioning enhanced relations to fulfillment of concrete benchmarks.

United Kingdom

The United Kingdom is another key partner to Kazakhstan, with the UK being amongst the top three countries with the greatest foreign direct investment in Kazakhstan. While the British Embassy in Kazakhstan supports “projects aimed at promoting tangible progress on human rights,”³⁷¹ these efforts seem overshadowed by the UK’s economic interests and, in particular, the role played by former UK Prime Minister Tony Blair, who is currently one of the most outspoken proponents of Kazakhstan’s investment climate.

³⁶⁸ Melissa Eddy, “Germany and Kazakhstan Sign Rare Earths Agreement,” *New York Times*, February 8, 2012, <http://www.nytimes.com/2012/02/09/business/global/germany-and-kazakhstan-sign-rare-earths-agreement.html> (accessed August 30, 2012).

³⁶⁹ “Kazakhstan, Germany Enter New Stage of Partnership,” *Astana Calling*, Issue #222, February 10, 2012, <http://portal.mfa.kz/portal/page/portal/mfa/resources/Pictures/AstanaCallingPDF2012/Astana%20Calling%20021012.pdf> (accessed April 12, 2012).

³⁷⁰ Melissa Eddy, “Germany and Kazakhstan Sign Rare Earths Agreement,” *New York Times*, February 8, 2012, <http://www.nytimes.com/2012/02/09/business/global/germany-and-kazakhstan-sign-rare-earths-agreement.html> (accessed May 9, 2012).

³⁷¹ British Embassy in Astana website, Human Rights and Democracy projects in Kazakhstan page, <http://ukinkz.fco.gov.uk/en/about-us/working-with-kazakhstan/human-rights-Kazakhstan-Kyrgyzstan/human-rights> (accessed July 5, 2012).

The government of Kazakhstan hired Blair and his associates in 2011 to provide consultation and advice on economic and other policies.³⁷² Most recently, in April 2012, Blair appeared in a promotional video praising Kazakhstan's rapid economic growth since independence. While a Blair spokesperson told the media that Blair raised the need for political reform and human rights in Kazakhstan in his original interview, these clips were noticeably absent from the video.³⁷³

Close and Longstanding US-Kazakhstan Ties

The US is a longstanding and important partner for Kazakhstan. For the last 20 years, the United States and Kazakhstan have collaborated closely on a range of issues, including nuclear non-proliferation, economic development, and regional security. US companies were amongst the first to invest in Kazakhstan's oil industry in the early 1990s.

US officials have publicly raised concern over Kazakhstan's human rights record over the last year, including Assistant Secretary of State for South and Central Asian Affairs Robert Blake, who in January 2012 noted the need for Kazakhstan to provide greater media freedoms, independence of the judiciary, non-interference in the work of civil society, and laws to ensure free and fair elections.³⁷⁴ In March 2012, on the occasion of a Nuclear Security Summit in Seoul, President Obama recalled the close US-Kazakhstan relationship with respect to regional security and commercial interests,³⁷⁵ and noted his plan to discuss "with

³⁷² AFP, "Kazakhstan hires Tony Blair as star consultant to attract investment," *Al Arabiya News*, October 24, 2011, <http://english.alarabiya.net/articles/2011/10/24/173509.html> (accessed April 12, 2012). See also: Jason Lewis, "Oil rich dictator of Kazakhstan recruits Tony Blair to help win Nobel peace prize," *The Telegraph*, October 29, 2011, <http://www.telegraph.co.uk/news/politics/tony-blair/8857689/Oil-rich-dictator-of-Kazakhstan-recruits-Tony-Blair-to-help-win-Nobel-peace-prize.html> (accessed April 12, 2012). In addition, there are allegations that in 2009 the government of Kazakhstan hired professional lobbyists in the United States to lobby on its behalf, including by "illustrat[ing] Kazakhstan's progress on human rights," among US Congresspersons. See: Justin Elliott, "Meet Bahrain's Best Friend in Congress," *The Washington Current*, April 2, 2012, <http://www.thewashingtoncurrent.com/2012/04/meet-bahrains-best-friend-in-congress.html>, (accessed April 13, 2012).

³⁷³ "Tony Blair's star turn in Kazakhstan video," *BBC News*, April 24, 2012, <http://www.bbc.co.uk/news/uk-politics-17827773> (accessed July 5, 2012).

³⁷⁴ Assistant Secretary of Bureau of South and Central Asian Affairs Robert O. Blake, Jr., "Remarks for the Atlantic Council Conference on Twenty Years of Kazakhstan's Independence and U.S.-Diplomatic Relations," January 31, 2012, <http://iipdigital.usembassy.gov/st/english/texttrans/2012/02/20120201113659su0.5150067.html#axzz1rFz6DVl1> (accessed April 12, 2012).

³⁷⁵ According to a US congressional briefing paper, "Since 2009, Kazakhstan has permitted air and land transit for U.S. and NATO troops and equipment—as part of the Northern Distribution Network—to support stabilization operations in Afghanistan. In May 2011, the Kazakh legislature approved sending some officers to take part in non-combat missions in Afghanistan." Jim Nichol, "Kazakhstan: Recent Developments and U.S. Interests," *Congressional Research Service*, June 1, 2011.

the [Kazakhstan] President efforts to further expand democracy and human rights within Kazakhstan, which will help to lead to further growth and prosperity in the future.”³⁷⁶

Yet the US government can and should do more to adopt a more principled approach to their bilateral relations with Kazakhstan. In April 2012, Kazakhstan and the United States held their first Strategic Partnership Dialogue in Washington D.C. aimed at further strengthening the Kazakhstan-US partnership but failed to set concrete benchmarks and clear timelines for their fulfillment in the context of this newly established dialogue.

Kazakhstan’s Other International Partners

Kazakhstan maintains strategic bilateral and multilateral partnerships with both China and Russia. All three countries are members of the Shanghai Cooperation Organization (SCO), which was established in 2001 to promote economic cooperation and regional security in Central Asia and to act as a regional counterweight to NATO. The charter of the SCO includes a clause on rights and fundamental freedoms, which Kazakhstan, China, and Russia have all pledged to uphold. However, China and Russia have been as reluctant to take a stand on human rights in their foreign policy, including in Kazakhstan, as they have been to honor their human rights commitments at home.

Following the disintegration of the Soviet Union, Kazakhstan and Russia have maintained close bilateral ties on a wide range of issues.³⁷⁷ In 2010, Russia, Kazakhstan, and Belarus established the Eurasian Customs Union in an effort to ease trade between the three countries and move towards creating a single economic space, even as this move threatened Russia’s entry into the World Trade Organization, which it had sought for the last 19 years.³⁷⁸ Following the disintegration of the Soviet Union, Kazakhstan has relied heavily on

³⁷⁶ “Remarks by President Obama and President Nursultan Nazarbayev of the Republic of Kazakhstan Before Bilateral Meeting,” *US Embassy in Kazakhstan*, March 26, 2012, <http://kazakhstan.usembassy.gov/st-03-26-12.html> (accessed on May 8, 2012).

³⁷⁷ Yelena Zabortseva, “Kazakhstan’s bilateral economic relations with Russia: a robust partnership?” BASEES 2010 Annual Conference, <http://www.paceprojects.co.uk/Zabortseva%20U%20%20of%20Sydney.pdf> (accessed May 9, 2012). See also: “The Next Stage of Russia’s Resurgence: Central Asia,” *EurasiaNet* (Stratfor), February 15, 2012, <http://www.eurasianet.org/node/65007> (accessed May 9, 2012). Kazakhstan shares a long border with Russia and is home to a sizeable ethnic Russian minority.

³⁷⁸ Konstantin Rozhnov, “Will a new customs union hurt Russia’s WTO bid?” *BBC News*, June 30, 2010, <http://www.bbc.co.uk/news/10448760> (accessed May 9, 2012). On August 22, 2012, the WTO admitted the Russian Federation was as its 156th member.

the existing pipeline infrastructure into Russia for its oil exports, even as it has sought to diversify its options for exporting its oil and gas, including to China.³⁷⁹ Even so, Russia vies to maintain its near-monopoly on transport of Kazakhstan's oil exports from the region to Europe.

China and Kazakhstan have cooperated on issues such as regional security, energy, and pipeline construction, as well as road and railway development in recent years. In June 2011, Chinese President Hu Jintao and President Nazarbaev agreed to a comprehensive strategic partnership, signing several bilateral agreements concerning economy, trade, and environmental protection.³⁸⁰ China has sought to expand its investment in Kazakhstan's oil sector in an effort to diversify its oil imports. In February 2011, Kazakhstan and China signed deals on uranium supplies and financing for oil projects, making China Kazakhstan's second largest import supplier.³⁸¹

³⁷⁹ Evgeny Vinokurov, "The Evolution of Kazakhstan's Position on Relations with Russia in 1991-2010," *Eurasian Development Bank*, March 2010, http://mpra.ub.uni-muenchen.de/22187/1/MPRA_paper_22187.pdf (accessed May 9, 2012).

³⁸⁰ "Chinese, Kazakh presidents hold talks on partnership," *Xinhua*, June 13, 2011, http://news.xinhuanet.com/english2010/china/2011-06/13/c_13926971.htm (accessed May 9, 2012).

³⁸¹ "Kazakh leader's China visit to yield energy deals," *Kyiv Post*, February 22, 2011, <http://www.kyivpost.com/news/russia/detail/97817/#ixzz1uAfbKKxl> (accessed May 9, 2012).

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Appendix

1. Human Rights Watch Letter to Ersai Caspian Contractor LLC, February 1, 2012
2. Ersai Caspian Contractor Letter to Human Rights Watch, March 2, 2012
3. Human Rights Watch Letter to OzenMunaiGas, February 1, 2012
4. OzenMunaiGas Letter to Human Rights Watch, March 12, 2012
5. Human Rights Watch Letter to the Ministry of Labor and Social Protection, June 4, 2012

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300
Fax: 917-591-3452

February 1, 2012

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Rachel Denber, *Deputy Director*
Benjamin Ward, *Deputy Director*
Veronika L. Szente Goldston, *Advocacy Director*
Anna Sevortian, *Director, Moscow Office*
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Giorgi Gogia, *Senior Researcher*
Judith Sunderland, *Senior Researcher*
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Doutje Lettinga, *Researcher*
Mihra Rittmann, *Researcher*
Emma Sinclair-Webb, *Researcher*
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Tom Porteous, *Deputy Program Director*
James Ross, *Legal & Policy Director*
Ina Sautiare, *Deputy Program Director*

Camillo Ceresa General Director ERSAI Caspian Contractor LLC

41, Kazybek bi Street, Park Palace, office 406
480100 Almaty, Kazakhstan
Tel.: +7 7272 980186

Via facsimile: +7 7272 980185

Dear Mr. Camillo Ceresa,

Please accept my regards on behalf of Human Rights Watch.

Human Rights Watch is currently preparing a report on the right of Kazakhstan's citizens to freedom of assembly and association, including the right to organize unions and conduct union activities. The report assesses company and government adherence to international standards on workers' freedom of association in the context of the labor disputes and strikes that began in May 2011 in the oil and gas sector of Mangystau region. The report reviews the response of the authorities and of your company to workers' efforts to organize and bargain collectively, scrutinizing laws and tactics which may run counter to international standards on workers' freedom of association.

As you may know, Human Rights Watch is a nongovernmental organization that monitors and reports on human rights in more than 90 countries worldwide. Human Rights Watch conducts in-situ research to collect relevant facts through interviews with victims of abuse, local human rights advocates, country experts and government officials, and reports on these violations in press releases, advocacy documents, and reports. In recent years, we have published reports on violations of workers' rights in countries such as the United States, China, Tunisia, and Vietnam.

The international norms referenced in the report mentioned above include the declarations and conventions of the International Labour Organization (ILO), the International Covenant on Economic Social and Cultural Rights (ICESCR), and International Covenant on Civil and Political Rights (ICCPR). As you may know, in 2000 and 2001, respectively, Kazakhstan ratified ILO convention 87, Freedom of Association

and Protection of the Right to Organise Convention, and ILO convention 98, Right to Organise and Collective Bargaining Convention. In 2006, Kazakhstan ratified both the ICCPR and ICESCR.

During visits to Kazakhstan's Mangystau region in mid-August and late-October 2011, Human Rights Watch spoke with Ersai Caspian Contractor (Ersai) employees who participated in the strike that began outside the Kuryk Yard on May 11, 2011, including with members of the independent labor union Karakiya. These workers made allegations about company interference in Karakiya union activities, harassment of Karakiya members in the months preceding the strike, and mass dismissals of workers who participated in the strike.

We would like to ensure that any forthcoming reporting reflects both worker and employer information and perspectives. We have included below some of our preliminary findings and look forward to your answers to our questions and any additional relevant information you wish to provide.

General Interference in and Restrictions on Karakiya Union Activities

In interviews with Karakiya union members, workers described to Human Rights Watch how Ersai management interfered in and restricted the activities of the independent labor union, Karakiya.

Karakiya union members told Human Rights Watch that Ersai management placed undue restrictions on union leader Nurbek Kushakbaev, limiting his visits to Kuryk yard to once a month. Ersai employees also pointed out the differential treatment between Aktau, the other union representing Ersai workers that had been provided an office at the Kuryk yard equipped with a phone and computer, and Karakiya, which was given neither an office space or telecommunications equipment.

Several Karakiya members also told Human Rights Watch that Mr. Kushakbaev contested these restrictions in court, and that the first and second instance courts found them unlawful (court decisions on file with Human Rights Watch). However, after Ersai Caspian Contractor appealed to the court of cassation, the previous verdict was overruled.

With regard to the foregoing, we would be grateful for answers to the following questions:

- On what basis did Ersai Caspian Contractor restrict union leader Nurbek Kushakbaev's access to company territory to only once a month?
- How does Ersai Caspian Contractor view this restriction in light of company obligations to respect workers' freedom of association and organizing rights?
- Why did Ersai Caspian Contractor not allot an office space for Karakiya union, when it had done so for Aktau union?

Harassment and Interrogation of Karakiya Union Members

Workers interviewed by Human Rights Watch alleged that Ersai management interfered in Karakiya's attempts to hold general meetings and persistently intimidated union members after a March 11, 2011 general meeting.

Union members told Human Rights Watch that Nurbek Kushakbaev was denied permission to hold a general meeting with all the members of Karakiya when he came to Kuryk yard on March 11. Union members described how they instead met with Mr. Kushakbaev during their lunch and coffee breaks to discuss the union's demands concerning higher wages, revision of the collective agreement, equal wages with foreign staff, and non-interference in the work of their union. A total of 217 workers signed their names in support of these demands, and the following week, a copy of the March 11 meeting protocol was sent to Ersai management.

Karakiya union members told Human Rights Watch that after they sent their list of demands, Ersai's personnel and security departments summoned, questioned, and required workers to provide written statements, and in some cases, harassed and threatened the employees whose names appeared on the list. Ersai employees interviewed by Human Rights Watch described how local Kuryk police officers were also involved in questioning workers at the Kuryk yard.

Karakiya members told Human Rights Watch that they were asked general questions about the March 11 meeting – where and when it took place, how many people participated and why they participated, for example – and that workers were also pressured to write in their statements that they did not participate in the general meeting on March 11. One worker alleged he was threatened with having his pay cut for allegedly skipping work to participate in the meeting, even though the general meeting took place during lunch and coffee breaks, and others told Human Rights Watch that some workers who were questioned by management were threatened with dismissal.

Several union members interviewed by Human Rights Watch also described how in addition to being questioned at Ersai's Kuryk yard by police officers and company management, they were later summoned to the police station in Kuryk, a town approximately eight kilometers away from Ersai's Kuryk yard, for further questioning. One Ersai employee told Human Rights Watch that Mr. Magomed Bashir of Ersai's Personnel Department was actively involved in the questioning of Karakiya union members and that he even came to the Kuryk police station.

With regard to the foregoing information, we would be grateful for answer to the following questions:

- Workers allege they were prevented from holding a general meeting on March 11, 2011. Would you kindly explain why Ersai Caspian Contractor did not allow the union to hold a general meeting?

- Can you kindly explain why members of Ersai's personnel and security departments later summoned and questioned Karakiya union workers about their participation in the union's March 11, 2011 meeting, and urged some workers to write that they had not attended the meeting? On what basis did Ersai management require Karakiya members to provide written explanations?
- Did members of Ersai Caspian Contractor management threaten Karakiya union with dismissal for participating in Karakiya union activities, such as the March 11 meeting?
- Did Ersai Caspian Contractor request the local Kuryk law enforcement's involvement in questioning union members about the March 11 meeting at Kuryk yard? On what basis were local police involved in the questioning of union members on Ersai's premises, and on what basis did local police question and demand explanatory notes from Karakiya union members about the March 11 meeting on the territory of Kuryk yard?
- Could you kindly comment on any steps Ersai Caspian Contractor undertook to make a good faith effort to review the grievances of Karakiya Union, including their demands for higher and equal wages with foreign workers, and revision of the collective agreement?

Strike and Dismissals of Strike Participants

On May 11, 2011 Ersai Caspian Contractor employees went on strike at Ersai's Kuryk yard. Karakiya union members were joined by several hundred other Ersai workers who supported their demands; a total of approximately 700 workers downed their tools.

On May 18, the Mangystau Region Specialized Interdistrict Economic Court ruled that the strike was illegal. According to the court ruling (copy on file with Human Rights Watch), Karakiya did not fulfill the conditions for holding a legal strike as stipulated under article 289, part 1 of Kazakhstan's Labor Code. The court also determined that Ersai Caspian Contractor is a hazardous facility. Under article 303, part 1 of Kazakhstan's Labor Code, strikes at such facilities are prohibited.

Workers explained to Human Rights Watch that although they held a general meeting on March 11 and a conference of union delegates on April 10 in order to agree on and communicate their claims to company management and initiate mediation review, Ersai had declined to start mediation on grounds that the union did not fulfill the conditions outlined in article 289, part 1 of the Labor Code.

However, Human Rights Watch is concerned that Kazakhstan's laws on collective bargaining and the right to strike fall short of international standards. While Kazakhstan's constitution and labor code guarantee the right to strike, cumbersome and lengthy mediation procedures, as well as a ban on strikes in certain sectors of the economy, seriously interfere in this right.

The International Labour Organization’s Committee of Experts on the Application of Conventions and Recommendations (CEACR) has noted in Individual Observations on Kazakhstan that the requirement to hold a general meeting of no less than half the total workforce interferes in workers’ rights to collective bargaining, stating: “trade unions should be free to regulate the procedure of submitting claims to the employer and ... [national] legislation should not impede the functioning of a trade union by obliging a trade union to call a general meeting every time there is a claim to be made to an employer.”

In its 2009 and 2011 Individual Observations on Kazakhstan, the CEACR requested that Kazakhstan “take the necessary measures in order to amend section 289 of the Labour Code so as to ensure the right of trade unions to submit claims to the employers without their prior approval by a general meeting of workers.” The Committee requested that the Government indicate the measures taken or envisaged in this respect, but as of this writing, no amendments to the code have been made.

In addition, legislation prohibiting strikes at ‘hazardous production facilities’ appears to be vaguely defined and thus places potentially broad restrictions on the right to strike. The Committee on the Freedom of Association has consistently found that, in general, the petroleum sector does not constitute an essential service in the strict sense of the term, or a service “the interruption of which would endanger the life, personal safety or health of all or part of the population.”³⁸²

Karakiya union members told Human Rights Watch that after the strike began, Ersai began to dismiss workers who participated in the strike. Workers approximated that no less than 400 employees were fired or obliged to quit.

According to article 304 of Kazakhstan’s labor code, “If a strike is declared illegal by a court of law, the employer may impose disciplinary sanctions on employees participating in the organization or holding of the strike.” However, the ILO has stated that “The dismissal of workers because of a strike, which is a legitimate trade union activity, constitutes serious discrimination in employment and is contrary to Convention No. 98.”³⁸³ Even where there is dispute as to the legitimacy of a strike, the ILO has said that “Penal sanctions should only be imposed as regards strikes where there are violations of strike prohibitions *which are themselves in conformity with the principles of freedom of association.*”³⁸⁴ Any penalties in respect of illegitimate actions linked to strikes should be proportionate to the offense or fault committed. Dismissal for exercising the right to strike is not a proportionate ‘disciplinary sanction.’

³⁸² Digest of principles, 587; ILO Principle Concerning the Right to Strike, 2006.

³⁸³ ILO 2006 Digest, para. 661.

³⁸⁴ ILO 2006 Digest, para. 668.

Furthermore, a number workers interviewed by Human Rights Watch described how they were dismissed in a process that seemed to violate national labor laws. According to article 73, part 2 of the Labor Code, “the employer must demand a written explanation from the employee *before imposing disciplinary sanctions*,” [emphasis added]. In the event the worker refuses to provide a written explanation, the employer draws up the relevant act noting their refusal.

One worker told Human Rights Watch that he first learned he had been fired several days after the strike began, when he heard his name called out from a list of those dismissed by Ersai management at the site of the strike. He said that company management came out to the site of the strike several times to read lists of names of workers who had been fired. Another worker said that he was fired approximately two weeks after the strike began. He told Human Rights Watch that he did not go to the company in person, but learned of the fact when he received a notice sent to his home.

According to Kazakhstan’s labor law, only after fulfilling the terms of article 73, ‘the order of applying and appealing disciplinary sanctions’ and article 74, ‘terms of imposing disciplinary sanctions’ – which detail the procedures and timeframe for imposing disciplinary sanctions – may the employer terminate a contract according to article 62 of Kazakhstan’s labor code.

With regard to the foregoing, we would be grateful for answer to the following questions:

- Please comment on Ersai Caspian Contractor’s adherence to international labor rights standards with respect to collective bargaining and the right to strike.
- Between May 11 and June 31, 2011, how many Ersai employees were dismissed?
- Of those who have been dismissed, how many are members of Karakiya union? On what basis were they dismissed? How many had participated in the strikes?
- What measures did Ersai Caspian Contractor take to ensure that each employee facing dismissal was given adequate warning and opportunity to respond to complaints against him/her by company management before his/her contract was terminated?

Two Ersai workers told Human Rights Watch that approximately 10 days to two weeks after the strike began, Ersai management closed the gate to the Kuryk yard, blocking off workers’ access to the base, including to the dormitory rooms where out-of-town workers lived while on shift. One worker described how approximately two dozen Ersai security guards were posted at just one gate. Another worker interviewed by Human Rights Watch further described a case in which the personal belongings of one of the employees living in the dorm were taken from his room and left outside.

- Could you kindly explain what motivated the company’s decision to close company gates to workers participating in the strike, including those who resided in dormitories on the Kuryk base?

In addition, we would also be grateful if you would provide Human Rights Watch with some general information about Ersai Caspian Contractor, including:

- The total number of employees who work at Ersai Caspian Contractor in Kazakhstan;
- The total number of employees who work at Ersai's Kuryk Yard in Mangystau Region;
- The total number of employees who are registered as members of Karakiya Union.

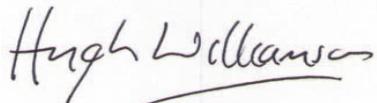
We would also request that you kindly provide any copies of Ersai Caspian Contractor company statutes concerning how the company conducts itself in union relations.

Human Rights Watch believes it is essential to engage in fair, balanced, and accurate reporting. We welcome your perspective on the events described above and your explanation of how Ersai Caspian Contractor's actions at Kuryk yard are consistent with international labor rights law. We look forward to your comments on the above issues, as well as any additional comments or material you wish to provide on these issues.

We respectfully invite you to supply a written response to this letter by February 29, 2012 so that we have adequate opportunity to incorporate your relevant responses into Human Rights Watch's forthcoming report.

Thank you for your attention to this matter.

Sincerely,



Hugh Williamson
Executive Director
Europe and Central Asia Division
Human Rights Watch

CC:

Kassym Abzhanov
President
Lancaster Group Kazakhstan
172 Dostyk Avenue
050051 Almaty
Republic of Kazakhstan
Tel.: +7 727 2619080
Fax: +7 727 2619075

Rossano Tomaselli
Director
SAIPEM S.p.A. Branch Office
41, Kazybek bi Street
Park Palace - Office 406
480100 Almaty - REPUBLIC OF KAZAKHSTAN
Tel.: +7 7272 980186
Fax: +7 7272
98018



Қазақстан Республикасы, Маныстау облысы, 130000, Актау қаласы, 2-шагын вудан, 47 "Б" үй
Маныстау Облысы, Қарасы қудаңы, Құсық кенті, ЕРСАЙ Каспий Верфі
Block 47 B, 2 Microtown, Aktau, Mangystau Oblast, Republic of Kazakhstan, 130000
Mangystau Oblast, Karakiya District, Kuryk village, ERSAI Caspian Yard
Республика Казахстан, Мангистауская область, 130000, город Актау, 2 микрорайон, здание 47 "Б",
Мангистауская Область, Каракиянский район, поселок Курек, Каспийская Верфь ЕРСАЙ

Тел/Тел: +7 7292 527 100 (4000); +7 7292 980 186/187; Факс/Факс: +7 7292 527 110; +7 7292 980 185;

Date : March 2, 2012
Ref No.: LT-ERSAI-GM-0032-2012

To: Human Rights Watch, Europe and Central Asia Division
Messrs: Hugh Williamson
Executive Director

From: ERSAI Caspian Contractor LLC

CC: Kassym Abzhanov
Director
Lancaster Group Kazakhstan

Rossano Tomaselli
Branch Manager
SAIPEM SpA Kazakhstan Branch

Subject: Letter dated February 1, 2012

Dear Mr. Williamson,

Thank you very much for your letter in subject and for giving us an opportunity to state the Company views on the events that took place in Kuryk during May – June of 2011.

ERSAI Caspian Contractor is an oil service contractor providing services to international clients; we are not an oil company and what we do in Kuryk has a direct consequence on the services requested by our Clients.

As a contractor we have responsibility to harmonize relations with our personnel, our clients and our shareholders while running our business in a sustainable manner.

In managing our work we consider trade unions as an effective partner for agreeing long-term, fair conditions for our workforce in accordance with rules and legislation and ensuring that we stay competitive in the market. Furthermore, we believe in constructive discussions with Union Leaders in order to define work related matters as well as legal activity of the Trade Union and the participation of the employees in Trade Union activities.

Company has a long history of constructive and collective bargaining relations that dates back to 2003 date of Company's inception. It is worth to mention that the Collective Agreement was effective since 2004 and was revised several times.



Қазақстан Республикасы, 050010, Алматы қаласы, Қазыбек би көшесі 41, Палас Парк, 406 -офис
Казыбек би str. 41, Park Palace, office 406, Almaty, Republic of Kazakhstan 050010
Республика Казахстан, 050010, Алматы, ул. Казыбек би 41, Парк Палас, офис 406



Казахстан Республикасы, Мангистау облысы, 130000, Ақтөу қаласы, 2-шалын будан, 47 "Б" үй
Мангистау Облысы, Каракия ауданы, Курк кенті, ЕРСАЙ Қасым Веффі
Block 47 B, 2 Microrayon, Aktau, Mangystau Oblast, Republic of Kazakhstan, 130000
Мангистау Область, Каракия Район, поселок Курк, ЕРСАЙ Касым Веффі
Республика Казахстан, Мангистауская область, 130000, город Актау, 2 микрорайон, здание 47 "Б".
Мангистауская Область, Каракиянський район, поселок Курк, Касымская Веффі ЕРСАЙ

Тел/Тел: +7 7292 527 100 (4000); +7 7272 980 186/187; Факс/Fax: +7 7292 527 110; +7 7272 980 185;

Today the company has two Trade Unions. The Company does respect and observe rights of employees to form trade unions. Thus, the first independent union named "Aktau Union" (formed in 1997) was joined by ERSAI employees immediately upon Company inception. This union was led by a famous public figure Mr. Mukhtar Umbetov. The result of the cooperation was the conclusion of the Collective Agreement in 2004. In 2009 the second Union: "Karakiya Union" was founded.

In April 2011, the company had registered a total number of 2564 employees, of which 1270 working in Kuryk Yard – Mangystau Region (Nowadays 1026 employees).

In October 2008 a certain number of Company employees gathered in front of HR Office in Kuryk Yard with a number of demands. Company was able to reach an agreement with the employees' representatives with the mediation of Aktau Union. This agreement laid the foundation for a new revision of the Collective Agreement.

In accordance with the RoK Law, relationship between the company and unions are ruled on the basis of collective agreements. The Chairman of Karakiya Union joined the Collective Agreement in 2010 by signing the amendment and therefore accepting its terms and condition. The Collective Agreement foresees several guarantees for the union activities which are implemented in a lawful manner.

Regarding what mentioned in your letter, please find below that:

Access to the company territory is regulated by the Art. 8.4 of the Collective Agreement; which was signed by Kushkabayev N. on behalf of Karakiya Union in 2010: "Employer shall not put obstacles to the legal activity of the Trade Union and to participation of the employees in Trade Union activity. The Trade Union actions shall be held in a non-working time. In emergency cases they are held in working time with previous consent of the Employer and without any hindrance to production activity."

Access to the Company premises is regulated due to: (i) the operational yard, which is classified as a hazardous operational facility with uninterrupted activities, undertakes to ensure safe performance and (ii) any interruption of employees involved in hazardous operational facilities during working hours may result in industrial accident.

The Company had not undertaken to provide an office premise and neither allotted it for either of the unions. Umbetov Mukhtar, Chairman of the Aktau Union, has his own office in Aktau city (72 km from Kuryk). The Karakiya Union has its address (office) located in Aktau City as well. It is worth to underline that this Company's approach is in line with ILO Convention 98 (Article 2).

In February 2011, in Company premises an anonymous leaflet was found stating a number of demands including, among others, a request for 50% salary increase.

Company management immediately conducted a meeting with local employees and with the participation of both Karakiya and Aktau Trade Unions, including representatives from the Local Authorities.



Казахстан Республикасы, 050010, Алматы қаласы, Қазыбек би кешесі 41, Палас Парк, 406 -офис
Казыбек би str. 41, Park Palace, office 406, Almaty, Republic of Kazakhstan 050010
Республика Казахстан, 050010, Алматы, ул. Казыбек би 41, Парк Палас, офис 406



Казақстан Республикасы, Маныстау облысы, 130000, Ақтау қаласы, 2-шалын аудан, 47 "Б" үй
Маныстау Облысы, Каракия ауданы, Күрк кенті, ЕРСАЙ Қаспий Верфі
Block 47 B, 2 Microrayon, Aktau, Mangystau Oblast, Republic of Kazakhstan, 130000
Mangystau Oblast, Karakiya District, Kuryk village, ERSAI Caspian Yard
Республика Казахстан, Мангистауская область, 130000, город Актау, 2 микрорайон, здание 47 "Б".
Мангистауская Область, Каракиянский район, поселок Курек, Каспийская Верфь ЕРСАЙ

Тел/Тел: +7 7292 527 100 (4000); +7 7272 980 186/187; Факс/Fax: +7 7292 527 110; +7 7272 980 185;

During the meeting, Management confirmed commitment to increase all salaries in accordance with the Collective Agreement; such intervention is implemented in July each year. In addition, Company had announced its plan to revise the pay scale, which would result in further increase in salaries.

In March 2011 (during working hours) the Karakiya Union leader Kushakbayev N. had visited Ersai Caspian Yard and conducted a meeting with about 20 participants. Later, the Company Administration had received the Minutes of Meeting with the signatures of employees in the attached list. According to this, 217 employees had attended the meeting. The Minute was published in all working and workshop areas.

In April 2011, the Company had received an official document from Karakiya Union, where all the demands stated in February's anonymous leaflet were fully repeated, except the request for salary increase that was changed to 100%. Furthermore, in the official document from Karakiya Trade Union it was stated that, in case these demands were not fully met, the Union was going to plan a strike on May 11, 2011.

Prior to the start of the announced strike, Company Management had conducted another meeting with both the Unions offering once again its availability for an open discussion. However on May 11 the strike started.

In June/July 2011, Company issued a statement with increase of salaries to all the local employees by 10% and increase of 35% for labor positions.

From May 11 till June 30 labor agreements of 223 employees were terminated for absence in accordance with the current RoK labor law. Among the employees dismissed for absence 65 employees were members of the Karakiya Union and 9 employees from the Aktau Trade Union. The decision of the Company to dismiss employees for absence from May 11, 2011 was not based on their membership in any trade union.

Before dismissing employees for absence, the Management took measures as follows:

1. Several meetings with employees on strike;
2. Publishing of explanatory materials regarding consequences of participation in illegal strike in public places of Caspian Yard;
3. Involvement of specialists from labor department, prosecutors, Association of Unions of Mangistau Oblast where Karakiya Union is a member as well, local state authorities, public organizations (teachers and elders) for negotiations;
4. Court hearings of the dispute in order to resolve the conflict in an amicable manner and in accordance with the current legislation;
5. Distribution among the striking employees of 400 copies of the Decree of the Mangistau Regional Specialized Economic Court on recognition of the strike as illegal;
6. Sending notice to home address of each absent employee via courier services from May 11, 2011;
7. Messages to striking employees via media outlets (TV adds, web portal);
8. Each employee was given a chance to give a written explanation over their absence during the strike.

It is necessary to mention that the strike was becoming more and more aggressive from day to day.



Казақстан Республикасы, 050010, Алматы қаласы, Қазыбек би көшесі 41, Палас Пәрл, 408 -офис
Көлбек би str. 41, Park Palace, office 406, Almaty, Republic of Kazakhstan 050010
Республика Казахстан, 050010, Алматы, ул. Казыбек би 41, Палас, офис 406



Казакстан Республикасы, Маныстау облысы, 130000, Ақтая қаласы, 2-шагын аудан, 47 "Б" үй
Маныстау облысы, Қарасу өуданы, Құрық қенті, ЕРСАЙ Қаспий Верфі
Block 47 B, 2 Microtown, Aktau, Mangystau Oblast, Republic of Kazakhstan, 130000
Mangystau Oblast, Karakya District, Kuryk village, ERSAI Caspian Yard
Республика Казахстан, Мангистауская область, 130000, город Актау, 2 микрорайон, здание 47 "Б",
Мангистауская область, Карагайский район, поселок Курый, Каспийская Верфь ЕРСАЙ

Тел/Тел: +7 7292 527 100 (4000); +7 7272 980 186/187; Факс/Факс: +7 7292 527 110; +7 7272 980 185;

Therefore, on 27.05.2011 in order to protect employees of the Company who worked and resided in Company facilities and to avoid accidents at the hazardous facility and secure the property Company, Management **decided to block access to Kuryk Yard.**

We hope that Company has provided you with exhaustive answers to your questions.

Best regards,

Camillo Ceresa
General Director
ERSAI Caspian Contractor LLC



Казакстан Республикасы, 050010, Алматы қаласы, Қазыбек би көшесі 41, Палас Парк, 406 -офис
Карыбек би str. 41, Park Palace, office 406, Almaty, Republic of Kazakhstan 050010
Республика Казахстан, 050010, Алматы, ул. Казыбек би 41, Парк Палас, офис 406

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300
Fax: 917-591-3452

February 1, 2012

HUMAN
RIGHTS
WATCH

**EUROPE AND CENTRAL ASIA
DIVISION**

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Rachel Denber, *Deputy Director*
Benjamin Ward, *Deputy Director*
Veronika L. Szente Goldston, *Advocacy Director*
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Emma Daly, *Communications Director*
Barbara Guglielmo, *Finance and Administration Director*

General Director
OzenMunaiGas

3 Satpaeva Street
Zhanaozen, Mangystau oblast
Tel.: +7 72934 63279, 63982

Via facsimile: +7 72934 63279

www.hrw.org

Dear Sir/Madam:

Please accept my regards on behalf of Human Rights Watch.

Human Rights Watch is currently preparing a report on the right of Kazakhstan's citizens to freedom of assembly and association, including the right to organize unions and conduct union activities. The report assesses company and government adherence to international standards on workers' freedom of association in the context of the labor disputes and strikes that began in May 2011 in the oil and gas sector of Mangystau region. The report reviews the response of the authorities and of your company to workers' efforts to organize and bargain collectively, scrutinizing laws and tactics that may run counter to international standards on workers' freedom of association.

As you may know, Human Rights Watch is a nongovernmental organization that monitors and reports on human rights in more than 90 countries worldwide. Human Rights Watch conducts in-situ research to collect relevant facts through interviews with victims of abuse, local human rights advocates, country experts, and government officials, and reports on these violations in press releases, advocacy documents, and reports. In recent years, we have published reports on violations of workers' rights in countries such as the United States, China, Tunisia, and Vietnam.

The international norms referenced in the report mentioned above include the declarations and conventions of the International Labour Organization (ILO), the International Covenant on Economic Social and Cultural Rights (ICESCR), and International Covenant on Civil and Political Rights (ICCPR). As you may know, in 2000 and 2001, respectively, Kazakhstan ratified ILO convention 87, Freedom of Association and Protection of the Right to Organise Convention, and ILO convention 98,

Right to Organise and Collective Bargaining Convention. In 2006, Kazakhstan ratified both the ICCPR and ICESCR.

During visits to Kazakhstan's Mangystau region in mid-August and late October 2011, Human Rights Watch spoke with OzenMunaiGas employees who participated in the strike that began at the production unit OUS-5 at OzenMunaiGas on May 26, 2011. These workers alleged that OzenMunaiGas did not act in good faith to consider workers' grievances about wage payments and following the May labor protest, dismissed employees because of their participation in the strike.

We would like to ensure that any forthcoming reporting reflects both worker and employer information and perspectives. We have included below some of our preliminary findings and look forward to your answers to our questions and any additional relevant information you wish to provide.

Labor Dispute and May 2011 Strike

According to workers interviewed by Human Rights Watch, the labor dispute that led to the May 26, 2011 hunger strike and labor strike at OzenMunaiGas can be traced to spring 2010, when OzenMunaiGas management reportedly circulated written notices about company plans to introduce a new system of remuneration and told employees that they must agree to the new terms of remuneration or face dismissal.

OzenMunaiGas workers interviewed by Human Rights Watch said that in response to the company's plans to introduce the new system of remuneration and threats to fire workers who did not agree to the changes, employees started to strike on March 1, 2010. Worker representatives interviewed by Human Rights Watch said that approximately two weeks later, on March 19, the striking workers and company management reached an agreement to form a commission (*prezidium*) to review the workers' concerns and proposed changes to the system of remuneration, after which, workers returned to work.

In June 2010, workers and OzenMunaiGas signed a supplementary agreement that activated the new system of remuneration. However, according to OzenMunaiGas employees, despite company explanations that the change in system of remuneration would not negatively affect their salaries and promises to introduce payment coefficients, in fact, over time employees' take-home salaries began to decrease. In February 2011, a new collective agreement was signed despite objections by some worker representatives over the new system of remuneration, which was also reflected in the new collective agreement.

In April 2011, OzenMunaiGas workers sent letters of inquiry regarding the new payment system to company management as well as to various governmental bodies, including the Ministry of Labor and Social Protection. In response to their letters, a small group of workers, including Ms. Natalia Azhigalieva, Ms. Roza Tuletaeva, and Mr. Akzhanat Aminov, were invited to a meeting in Aktau with Deputy Minister of Labor Bektas Nurum-

betov. At the meeting they were reportedly told that the remuneration system reflected in the June 2010 supplementary agreement and the new collective bargaining agreement signed in February 2011 was in line with legal norms and did not violate workers' rights.

According to one OzenMunaiGas employee interviewed by Human Rights Watch, it was after this meeting, where it was made clear to the workers that no further changes or amendments would be made to the collective agreement regulating their pay, that workers decided to announce a hunger strike. Starting May 16, 2011, approximately two dozen workers submitted statements to OzenMunaiGas and to local authorities announcing this intent.

On May 26, approximately 10 to 20 workers began their hunger strike at Production Unit OUS-5, and hundreds of other workers spontaneously downed their tools to support their colleagues' protest and demands. The following day, the Zhanaozen City Court ruled that the strike was illegal. According to the court ruling (copy on file with Human Rights Watch), OzenMunaiGas workers did not meet the conditions for holding a legal strike stipulated under articles 289-293 and articles 298-299 of Kazakhstan's Labor Code. The court also cited article 303, part 1 of Kazakhstan's Labor Code, which prohibits strikes at hazardous production facilities.

While the labor protest at OzenMunaiGas did not meet regulations under Kazakhstan's labor legislation for holding a strike, Human Rights Watch is concerned that Kazakhstan's laws on collective bargaining and the right to strike fall short of international standards. While Kazakhstan's constitution and labor code guarantee the right to strike, cumbersome and lengthy mediation procedures, as well as a ban on strikes in certain sectors of the economy, seriously interfere in this right. Furthermore, Human Rights Watch is not aware of any steps OzenMunaiGas took to review in good faith statements by least 22 workers outlining a list of demands concerning remuneration.

The Zhanaozen City Court decision of May 27 cited violations of article 298, part 1 of Kazakhstan's Labor Code, or "Claims of employees...shall be formulated and approved by a general meeting (conference) of employees attended by at least half the employees of the organization by a simple majority of the votes of the participants in the meeting (conference)."

In Individual Observations on Kazakhstan, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) found that the requirement to hold a general meeting of no less than half the total workforce interferes in workers' rights to collective bargaining, stating: "trade unions should be free to regulate the procedure of submitting claims to the employer and ... [national] legislation should not impede the functioning of a trade union by obliging a trade union to call a general meeting every time there is a claim to be made to an employer."

In its 2009 and 2011 Individual Observations on Kazakhstan, the CEACR requested that Kazakhstan “take the necessary measures in order to amend section 289 of the Labour Code so as to ensure the right of trade unions to submit claims to the employers without their prior approval by a general meeting of workers.” The Committee requested that the Government indicate the measures taken or envisaged in this respect, but as of this writing, no amendments to the code have been made.

In addition, legislation prohibiting strikes at ‘hazardous production facilities’ appears to be vaguely defined and thus places potentially broad restrictions on the right to strike. The Committee on the Freedom of Association has consistently found that, in general, the petroleum sector does not constitute an essential service in the strict sense of the term, or a service “the interruption of which would endanger the life, personal safety or health of all or part of the population.”³⁸⁵

With regard to the foregoing, we would be grateful for answers to the following questions:

- Would you kindly comment on the steps OzenMunaiGas took to review in good faith workers’ grievances concerning remuneration after your company received notice from at least 22 OzenMunaiGas workers that they planned to start a hunger strike?

Dismissals of Strike Participants

Workers who participated in the hunger strike told Human Rights Watch that they were the first to be dismissed from their jobs at OzenMunaiGas. Others described how they too were dismissed after participating in the strike.

According to article 304 of Kazakhstan’s labor code, “If a strike is declared illegal by a court of law, the employer may impose disciplinary liability on employees participating in the organization or holding of the strike.” However, the ILO has stated that “The dismissal of workers because of a strike, which is a legitimate trade union activity, constitutes serious discrimination in employment and is contrary to Convention No. 98.”³⁸⁶ Even where there is dispute as to the legitimacy of a strike, the ILO has said that “Penal sanctions should only be imposed as regards strikes where there are violations of strike prohibitions *which are themselves in conformity with the principles of freedom of association.*”³⁸⁷ Any penalties in respect of illegitimate actions linked to strikes should be proportionate to the offense or fault committed. Dismissal for exercising the right to strike is not a proportionate ‘disciplinary sanction.’

³⁸⁵ ILO 2006 Digest of principles, 587; ILO Principle Concerning The Right to Strike, 2006.

³⁸⁶ ILO 2006 Digest, para. 661.

³⁸⁷ ILO 2006 Digest, para. 668.

Yet, since May 2011, OzenMunaiGas has fired hundreds of employees for their participation in the strike. In an August 26 statement posted to its website, OzenMunaiGas' parent company, KazMunaiGas, stated: "Given that the main objective of the Company is to ensure the normal production process...KMG EP had to continue firing those participants in the illegal strike who refused to perform their duties."³⁸⁸ According to media reports, as many as 989 OzenMunaiGas employees have been fired.³⁸⁹

Yet workers interviewed by Human Rights Watch described how they were dismissed in a process that appears to violate national labor laws. According to article 73, part 2 of the Labor Code, "the employer must demand a written explanation from the employee *before imposing disciplinary sanctions*" [emphasis added]. In the event the worker refuses to provide a written explanation, the employer draws up the relevant act noting their refusal. Furthermore, according to Kazakhstan's labor law, only after fulfilling the terms of article 73, 'the order of applying and appealing disciplinary sanctions' and article 74, 'terms of imposing disciplinary sanctions' – which detail the procedure for imposing disciplinary sanctions – may the employer terminate a contract according to article 62 of Kazakhstan's labor code.

One worker interviewed by Human Rights Watch said that she received a phone call from her supervisor two days after she joined the strike and was informed she had been fired. Another worker told Human Rights Watch that his supervisor called him to ask whether he intended to return to work or continue to strike. The worker replied that he planned to continue to strike, following which he received a dismissal order by post.

Another OzenMunaiGas employee who did not initially take part in the strike told Human Rights Watch that she and her colleagues were told almost daily that they must not participate in the labor protest. She also said that in early July, OzenMunaiGas management issued an order stating that the workers must not even visit the site of the strike during their non-work hours, including weekends, otherwise they would face unspecified consequences. She told Human Rights Watch that following this order, she visited her relative at the site of the strike and within two weeks she had been dismissed. She told Human Rights Watch that she received notice of her dismissal by post.

With regard to the foregoing information, we would be grateful for answer to the following questions:

- Between May 26 and November 30, 2011, how many OzenMunaiGas employees were dismissed?

³⁸⁸ "On production stabilisation at Uzennunaigas," JSC KazMunaiGas Press Release, August 26, 2011, <http://www.reuters.com/article/2011/08/26/idUS64690+26-Aug-2011+RNS20110826>, (accessed January 31, 2012).

³⁸⁹ Marat Zhansetov, "Dismissal for being absent from work will not be revoked," *Ogni Mangystau*, October 8, 2011, http://ogni.kz/index.php?option=com_content&task=view&id=5023&Itemid=9, (accessed January 31, 2012).

- What measures did OzenMunaiGas take to ensure that each employee facing dismissal was given adequate warning and opportunity to respond to threats of dismissal before his/her contract was terminated?
- Does OzenMunaiGas apply international labor rights standards, in addition to standards set out in Kazakh national law, with respect to collective bargaining and the right to strike?

We would also be grateful if you would provide Human Rights Watch some general information about OzenMunaiGas, including:

- At the time the strike began in May 2011, what was the total number of employees at OzenMunaiGas?
- How many production units does OzenMunaiGas have?
- How many registered unions currently represent OzenMunaiGas employees?
- How many OMG employees are members of a union?

In addition, we kindly ask you to provide any information on previous instances where workers have gone on strike, and how such strikes were resolved.

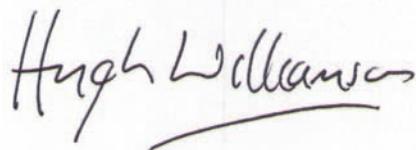
We would also ask you to comment on the chronology of the labor dispute as it is described above.

Human Rights Watch believes it is essential to engage in fair, balanced, and accurate reporting. We welcome your perspective on the events described above and your explanation of how OzenMunaiGas actions are consistent with international labor rights law. We look forward to your comments on the above issues, as well as any additional comments or material you wish to provide on these issues.

We respectfully invite you to supply a written response to this letter by February 29, 2012, so that we have adequate opportunity to incorporate your relevant responses into Human Rights Watch's forthcoming report.

Thank you for your attention to this matter.

Sincerely,



Hugh Williamson
Executive Director
Europe and Central Asia Division
Human Rights Watch

CC:

Alik Aidarbaev

General Director

JSC KazMunaiGas Exploration Production

17 Kabanbai Batyr Ave.

Astana, 0100000, Republic of Kazakhstan

Tel.: +7 (7172) 979 997

Fax: +7 (7172) 977 June 4, 2012

March 12, 2012

Hugh Williamson
Director of the Europe and Central Asia Department
Human Rights Watch

Dear Mr. Williamson,

I would like to express to you my respect and to thank Human Rights Watch for your consistent interest in human rights protection, as well as your willingness to engage in a constructive dialogue with all of interested parties.

Below we provide answers to your questions:

- 1. What steps did OzenMunaiGas take to review in good faith workers' grievances concerning remuneration after your company received notice from at least 22 OzenMunaiGas workers that they planned to start a hunger strike?**

After the company received claims from 22 workers in oil production units who stated their intent to go on hunger strike, the company sent official responses signed by OzenMunaiGas' then-acting director K. J. Eshmanov to each of the workers explaining the groundlessness and illegitimacy of the workers' claims and calling on them to return to work (copies of the letter were sent to Zhanaozen City Prosecutor M.S. Toyzhan, for reference).

A copy of the letter addressed to N.B. Azhigalieva, a worker in the NGDU-1 [production unit, ed.], is attached.

Please note that the principles of the new compensation system, implemented in 2010 after discussions and with the agreement of the workers' trade unions, were outlined on multiple occasions, both in general meetings and on an individual basis. Upon receipt of claims announcing hunger strikes in May 2011, representatives of company management, including the general director and deputy general director of the company met with OzenMunaiGas employees on a daily basis to explain the system of remuneration and the groundlessness of their claims, which was [later, ed.] confirmed by court decisions. The company repeatedly suggested that participants in the illegal acts of protest return to work and continue discussions at the negotiating table, in accordance with the labor law.

Conclusions and court decisions, supporting the groundlessness of the striking workers' claims and the illegitimacy of the strikes:

- Conclusion of the interdepartmental governmental commission, dated May 13, 2011
- Decision of the Zhanaozen City Court, dated May 24, 2011
- Conclusion of the Department of Labor and Social Protection
- Legal explanations by the General Prosecutor of the Republic of Kazakhstan
- Legal explanations by the Mangystau oblast prosecutor

- Decision of the Tupkaragan district court, dated May 20, 2011 (Karazhbasmunai)
- Decision of the Zhanaozhen City Court, dated May 27, 2011 (OzenMunaiGas)

2. **Between May 26 and November 30, 2011, how many OzenMunaiGas employees were dismissed?**

From May 26 to November 30, 2011, 991 people were dismissed from OzenMunaiGas in accordance with article 54 of Kazakhstan's Labor Code (at the employer's initiative, an employment contract can be terminated if an employee is absent from work for a period of three or more hours in a single work day without a valid reason).

3. **What measures did OzenMunaiGas take to ensure that each employee facing dismissal was given adequate warning and opportunity to respond to threats of dismissal before his/her contract was terminated?**

Please note that the only request that management put forth toward participants in the illegal act of protest was to return to work. In this case, the employer guaranteed the worker's position and offered to discuss the labor dispute according to the laws of the Republic of Kazakhstan.

Additionally, prior to the dismissal of employees who participated in the illegal act of protest for absence from work, representatives of specially established outreach groups met repeatedly with each employee. These groups included master craftsmen, departmental heads, employees of the social policy department, human resources personnel, as well as colleagues of participants engaged in the illegal act of protest. They regularly reached out to employees who were not coming to work to provide them with comprehensive and reliable information about the current situation and once again invite workers to exercise common sense.

During the above mentioned meetings, employees were briefed on labor law norms and shown letters from governmental agencies confirming that all payments within the company were consistent with labor law and the absence of any violations on the part of KMG [KazMunaiGas, ed.]. Participants engaged in the illegal act of protest were asked to return to work and constructively resolve all problems, in accordance with Kazakhstani law.

Immediately prior to termination of the employment contract, the employer asked each of the employees to provide an explanatory statement in which they could state their reasons for missing work. If workers took advantage of their employer's offer to end participation in the act of protest, they could preserve their job.

In addition, from July 15 and July 25, 2011, there was a freeze on dismissals, during which each participant in the illegal act of protest had an opportunity to return to work. During this entire period, outreach continued.

4. **At the time the strike began in May 2011, what was the total number of employees at OzenMunaiGas?**

As of May of 2011, the total number of employees of OzenMunaiGas was 9,071.

5. How many production units does OzenMunaiGas have?

OzenMunaiGas has 15 production units. These include:

5 primary production units (oil extraction).

10 secondary production units (oil extraction service).

6. How many registered unions currently represent OzenMunaiGas employees?

Based on information available on February 10, 2012, the public association Kazneftegaz-profsoyuz, includes the public association trade union of OzenMunaiGas employees, which has 18 trade union committees or 91 shop committees.

7. How many OMG employees are members of a union?

There are 7,798 union members at OzenMunaiGas.

8. Does OzenMunaiGas apply international labor rights standards, in addition to standards set out in Kazakh national law, with respect to collective bargaining and the right to strike?

KazMunaiGas Exploration Production JSC (hereafter Corporation, Company, KMG EP), one of the leading companies in exploration and extraction of petroleum in Kazakhstan, is actively involved in the process of creating long-term economic and social benefits for the regions where we conduct our activities. Under a market economy, where the primary goal of the Company is to increase shareholder value, the Company acknowledges the importance and significance of labor relations as a principle factor of long-term business growth, considering that KMG is one of the main providers of employment for the town's population.

In order to fulfill a number of obligations that have arisen following the public offering of global depository receipts on the London Stock Exchange, as well as to undertake business activity that is coupled with social responsibility, the Company is required to operate exclusively within the parameters of the law.

The International Covenant on Economic, Social and Cultural Rights includes a number of socio-economic rights, including labor rights, which protect the right to form unions, to strike, and to bargain collectively. In accordance with the convention, states are obliged, among other things, to secure: the right of each person to form trade unions and to join them for the protection of his economic and social interests; the right of trade unions to operate freely; and the right to strike.

International Labour Organization Convention No. 87 on Freedom of Association and Protection of the Right to Organise establishes the right of workers and employers to create organizations of their choice, or join organizations without prior authorization, and defines a

series of guarantees of freedom of the right to organize without interference by state authorities. International Labour Organization Convention No. 98 on the Right to Organise and Collective Bargaining supplements Convention № 87, guaranteeing the application of the principles of association by prohibiting various types of anti-union discrimination by employers. The 1949 Convention on the Right to Organise and Collective Bargaining (No. 98) provides protection against discriminatory actions aimed at suppressing freedom of association, protects workers and employers against interference in each other's affairs, and identifies measures to promote and encourage collective bargaining.

The results of an analysis [of company policy, ed.], determined that the company has no practice of preventing or discouraging employees when they are hired from joining a union, in particular using dismissal or other types of retaliation against an employee because of his participation in union activities. Furthermore, the relationship between KMG EP and unions excludes any possibility of interference in the union's activities with the aim of placing it under the employer's control.

Furthermore, in accordance with international standards established in ILO Conventions 87 and 98, the Company has a fully developed, long-standing practice of regulating work conditions through collective agreements in each region, taking into consideration of the specific industrial activities of each branch. KMG EP employees have the right to join unions under the terms of their charters, which are established in accordance with the law. In addition, trade unions have the status of legal entities and conduct their activities through their managing bodies. In exercising their rights, the union and Company shall comply with the law.

The Labor Code recognizes the right to strike, in accordance with the International Covenant on Economic, Social and Cultural Rights, as a way for workers to protect their interests in a collective labor dispute. A strike is allowed when mediation is unsuccessful in resolving a collective labor dispute, and the procedures for a strike are regulated in detail. At the same time, the labor code envisages cases in which a strike can be found illegal.

The OzenMunaiGas workers' strike was declared illegal by the court on the following grounds: workers did not comply with the procedures for initiating a collective labor dispute or with procedures for the formulation and submission of complaints; mediation procedures through a mediation commission and labor arbitration were ignored; and, in accordance with article 303 of Kazakhstan's labor code, strikes at hazardous production facilities, a designation which includes the Company, are unlawful.

The court's decision finding the strike illegal entered into effect immediately. Nevertheless, workers continued their strike. The workers' absence from work was recorded, outreach work was conducted, including through mass media, and a moratorium on terminations of labor agreements was enforced with the aim of providing workers the opportunity to return to work without any repercussions on the part of the employer. These steps demonstrate the Company's good-faith efforts to resolve the labor dispute and thereby avoid the imposition of disciplinary measures. However, despite these steps, a number of the strike participants continued their act of protest. Thus, having exhausted all available options, the employer

was forced to exercise its right to terminate employment contracts on the basis of the employee's absence from work without a legitimate excuse for more than three consecutive hours in a single working day (work shift) (article 54 of the labor code).

International standards on human rights protection impose obligations on individuals who are under the jurisdiction of the state. Therefore, in light of this relationship, the nature, function and limitations of international human rights standards have a particular imprint both on existing standards as well as on the implementation of fundamental rights. In addition, it was necessary to adopt certain regional norms so as to pay relevant attention to national legislation and law-enforcement practices in order to maintain consistency. Therefore, the Labor Code of the Republic of Kazakhstan, as well as previously ratified international conventions consistent with the laws of the Republic of Kazakhstan, allow for a balance of interests between workers and employers, and regulate labor relations, including trade union rights and the right to collective bargaining.

Based on the above, we believe it possible to assert that the actions of the Company in the area of labor rights do not violate international standards regarding negotiating and concluding collective agreements and exercising the right to strike, and were carried out within the parameters of the law.

Strategic communications consultant

Erbol Ismailov

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300
Fax: 917-591-3452

June 4, 2012

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RIGHTS
WATCH

HRW.org

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Gulshara Abdykalikova
Minister of Labor and Social Protection
House of Ministers
8 Orynbay Street
01000 Astana, Kazakhstan
Via facsimile: +7 7172 743608
Via email: mintrud@enbek.kz

Dear Minister Abdykalikova,

Please accept my regards on behalf of Human Rights Watch.

Human Rights Watch is currently preparing a report on the rights to freedom of assembly and association, including to organize unions and conduct union activities, in Kazakhstan. The report assesses company and government adherence to international standards on workers' freedom of association in the context of the labor disputes and strikes that began in May 2011 in the oil and gas sector of Mangystau region. The report reviews the response of the three companies involved and of Kazakhstani authorities to workers' efforts to organize, bargain collectively, and strike. It also examines laws and practices that may run counter to international standards on workers' freedom of association.

As you may know, Human Rights Watch is a nongovernmental organization that monitors and reports on human rights in more than 90 countries worldwide. Human Rights Watch conducts in-situ research to collect relevant facts through interviews with victims of abuse, local human rights advocates, country experts, and government officials, and reports on these violations in news releases, advocacy documents, and reports. In recent years, we have published reports on violations of workers' rights in countries such as the United States, China, Tunisia, and Vietnam.

The international norms referenced in the report include the declarations and conventions of the International Labour Organization (ILO). As you may know, in 2000 Kazakhstan ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise Convention, and in 2001 ILO Convention No 98 on the Right to Organise and Collective Bargaining Convention.

Where a state has accepted to be bound by these standards, they apply to all workers in the country, both citizens and foreigners. In most cases, a government's obligation is to ensure that companies and employers respect the rights of workers by law, regulation, investigation, and prosecution, as appropriate. In 2006, Kazakhstan ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR).

During visits to Kazakhstan's Mangystau region in August and October 2011, Human Rights Watch spoke with employees of Ersai Caspian Contractor LLC, KarazhanbasMunai JSC and OzenMunaiGas who participated in strikes that occurred in western Kazakhstan beginning in May 2011. These workers made allegations about company interference in union activities, harassment of union members, and mass dismissals of workers who participated in the strike.

We would like to ensure that any forthcoming reporting reflects both worker and government information and perspectives. We look forward to your answers to our questions and any additional relevant information you wish to provide.

National Legislation

Kazakhstan's Labor Code regulates collective bargaining and recognizes the right to strike. Both the Labor Code and the Law on Professional Unions affirm the right to freedom of association and the right to bargain collectively, and recognize the right of workers to organize and form trade unions or workers' associations. Furthermore, the Constitution of the Republic of Kazakhstan recognizes the right to collective bargaining, including the right to strike. In February 2012, changes and amendments were made to the Labor Code that seem aimed at making collective bargaining less cumbersome, but in fact, do not address underlying incompatibilities with international norms concerning freedom of association and the right to strike.

With regard to the above, could you please provide answers to the following questions:

1. Before the February 2012 amendments to the Labor Code went into effect, what efforts did the Ministry of Labor and Social Protection take to gather feedback from civil society, including human rights nongovernmental organizations and labor unions, to the proposed changes in legislation?
2. What steps did the Ministry of Labor and Social Protection take to ensure that any amendments to the Labor Code were in line with international treaties to which Kazakhstan is party?

Foreign Funding of Unions

Legislation on public associations prohibits foreign unions from operating in Kazakhstan, and non-Kazakhstani legal entities, such as international organizations or unions, are

banned from financing local unions. The ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR), the legal body responsible for the examination of compliance with ILO conventions and recommendations, has repeatedly stated in its individual observations on Kazakhstan that “legislation prohibiting the acceptance by a national trade union of financial assistance from an international organization of workers to which it is affiliated infringes the principles concerning the right to affiliate with international organizations of workers.”

3. What steps has the Ministry of Labor and Social Protection taken to bring this legislation in line with international legal norms?

Labor Dispute Regulation

In the case of a labor dispute between employees and their employers, Kazakhstan labor law envisages mediation procedures to resolve the dispute. If a mediation commission cannot resolve the dispute, the claims are moved to arbitration. An arbitration council of no fewer than five members is established with the participation of members of national, industrial, or regional committees for regulating social-labor relations. The union and the employer together determine who will participate in the arbitration council, how many members will participate, and the procedure for considering the labor dispute. According to the Labor Code, members of public organizations, the labor inspectorate, specialists, experts, and others can also participate. The arbitration council’s decision is made based on a majority vote, or by the chairman if participants’ votes are equally divided.

With regard to the foregoing, could you please provide answers to the following question:

4. If workers and employers are unable to mutually agree on the procedure for mediation and/or arbitration, the time frame for reviewing demands, or arbitration council participants, and mediation or arbitration is stalled or at a deadlock, what recourse do workers have to resolution of their demands?

Right to Strike

While the right to strike is guaranteed in Kazakhstan’s Constitution and Labor Code, workers must exhaust cumbersome and lengthy mediation procedures before they initiate a strike, in order for the strike to be considered legal. Where workers fail to fulfill these conditions, including “the time periods, procedures and requirements envisaged by this Code,” strikes may be found illegal by a court.

Furthermore, there is a broad prohibition on the right to strike in certain unspecified industries in Kazakhstan. Under national law, strikes are prohibited in various industries, including in railway transport and civil aviation, at all “hazardous production facilities,” and “in other cases envisaged by the laws of the Republic of Kazakhstan.” The strikes that began in May 2011 at Ersai Caspian Contractor LLC, KarazhanbasMunai JSC, and OzenMunaiGas

were found illegal by local courts on grounds that strikes took place at “hazardous production facilities.”

The ILO’s Committee on the Freedom of Association (CFA) has found that in general the petroleum sector does not constitute an essential service in the strict sense of the term, or a service “the interruption of which would endanger the life, personal safety or health of all or part of the population.” The blanket ban in Kazakhstan on strikes in companies that are designated “hazardous production facilities” thus potentially violates international labor standards and international human rights treaties to which Kazakhstan is party.

5. Could you please comment on the Ministry of Labor and Social Protection’s efforts to address the undue restrictions on the right to strike in Kazakhstan, and to bring legislation regulating the right to strike in line with the ILO conventions to which Kazakhstan is party?

Consequences for Participating in an Illegal Strike

Under Kazakhstani labor law, workers who participate in legal strikes are protected from disciplinary measures and are protected from dismissal. However, workers who participate in or lead illegal strikes may be subjected to disciplinary consequences for missing more than three hours of work in a row, including dismissal. In addition they may face fines, detention, or imprisonment under administrative or criminal legislation regulating public rallies, gatherings, pickets, and protests. Pursuant to Labor Code amendments adopted in February 2012, workers can now be dismissed if they “continue participating in a strike after the court ruling suspending the strike or finding it illegal was brought to [their] attention.”

With respect to sanctions for participating in strikes, the ILO considers them acceptable only when national law itself is consistent with international standards on freedom of association. The CEACR has stated: “sanctions for strike action, including dismissals, should be possible only where strike prohibitions are in conformity with the principles of freedom of association.”³⁹⁰ The ILO has also stated that “[t]he dismissal of workers because of a strike, which is a legitimate trade union activity, constitutes serious discrimination in employment and is contrary to Convention No. 98.”

Given that legislation regulating the right to strike in Kazakhstan is burdensome and vague – prohibiting strikes at all companies that are “hazardous production facilities” and “in other cases envisaged by the laws of the Republic of Kazakhstan” – and is therefore not in conformity with the principles of freedom of association, the introduction of legislation in

³⁹⁰ CEACR: Direct Request concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Kazakhstan (ratification: 2000), adopted 2003, published 92nd ILC session (2004), https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:2864798693954451::NO:13100:P13100_COMMENT_ID:2224882 (accessed April 10, 2012).

February 2012 that allows companies to fire workers for participating in illegal strikes constitutes a violation of international labor norms.

6. What steps does the Ministry of Labor and Social Protection envisage taking to address this violation and to bring Kazakhstani legislation in line with the ILO conventions to which Kazakhstan is party?

Strikes at Ersai Caspian Contractor, KarazhanbasMunai and OzenMunaiGas

In the months leading up to the May 2011 strikes, employees at Ersai Caspian Contractor LLC, KarazhanbasMunai JSC, and OzenMunaiGas sought to voice grievances, including demands for higher wages, either through their unions in an effort to have these demands reviewed by a mediation commission or in direct communications to company management. According to the workers, when these efforts variously failed to bring about a resolution to their grievances, they went on hunger strike or downed tools to call attention to their demands.

In May 2011, local courts declared each of the three industrial actions illegal, citing workers' failure to comply with national legal requirements to conduct legal strikes, as well as laws that prohibit strikes at "hazardous production facilities," a designation that includes all three companies. Despite these court rulings, believing in the legitimacy of their respective demands, workers at Ersai Caspian Contractor, KarazhanbasMunai and OzenMunaiGas remained on strike. The strike at Ersai Caspian Contractor ended late June 2011, when local authorities broke the strike, whereas OzenMunaiGas and KarazhanbasMunai oil workers remained on strike until mid-December, when violent clashes broke out between civilians, including striking oil workers, and police in Zhanaozen.

Following the clashes in Zhanaozen, you were quoted in the media on January 9, 2012, saying, "As far as the Ministry [of Labor and Social Protection] is concerned, we did everything that we could" with respect to the extended, unresolved labor disputes. Yet, between May and November 2011, officials from the Ministry of Labor and Social Protection repeatedly made public statements that the workers claims were unfounded and illegitimate, and seemed to do very little to intervene to help regulate and facilitate a resolution between company managers at Ersai Caspian Contractor, KarazhanbasMunai, and OzenMunaiGas and striking workers.

For example, according to workers interviewed by Human Rights Watch, on May 13, 2011, an inter-agency working group under the leadership of the Ministry of Labor and Social Protection held a meeting in Aktau with representatives of the striking oil workers including Karazhanbas union lawyer Natalia Sokolova and OzenMunaiGas oil workers Akzhanat Aminov, Rosa Tuletaeva, and Natalia Azhigalieva. Workers interviewed by Human Rights Watch said that they were informed at this meeting that their claims for higher pay were considered unfounded and that the new system of remuneration at OzenMunaiGas did not violate labor norms in Kazakhstan.

Several weeks after this meeting, on June 2, 2011, you were quoted in the media saying that the demands of KarazhanbasMunai workers “are unfounded and are not in line with the law” and that KarazhanbasMunai management did not commit any violations of labor legislation.

With regard to the foregoing, we would be grateful for answers to the following questions:

7. Were representatives of KarazhanbasMunai and OzenMunaiGas management invited to participate in the May 13, 2011 inter-agency meeting in Aktau?
8. What was the aim and outcome of the May 13 inter-agency meeting?
9. Between May and November 2011, did striking oil workers at Ersai Caspian Contractor, KarazhanbasMunai and OzenMunaiGas appeal to the Ministry of Labor and Social Protection to help resolve the labor dispute and subsequent strikes? If so, how did your ministry respond to each of these appeals?
10. What steps, if any, did the Ministry of Labor and Social Protection take to help facilitate dialogue between company management and striking employees in any of the three strikes between May and November 2011 with an aim to resolve the labor disputes at each of the three companies?

Tripartite Meeting

In November 2011, approximately six months after workers went on strike, the Ministry of Labor and Social Protection facilitated a tripartite meeting between government officials, striking oil workers, and OzenMunaiGas management to discuss the workers’ demands. According to media reports, Birzhan Nurymbetov, the Deputy Minister of Labor and Social Protection; Askar Aubakirov, a representative of KazMunaiGas Exploration and Production company; Amankeldy Aitkulov, Deputy Mayor of the Mangistau Region; Orak Sarbopeev, Zhanaozen City Mayor; and representatives of the Prosecutor General’s office, participated in the meeting in addition to 10 striking oil workers. According to the media reports, the participants discussed five key demands including higher pay on the basis of wage coefficients and that dismissed workers be reinstated in their previous employment. However, over a two-day period on November 23 and 24, they failed to reach an agreement, and no concluding document was signed.

With regard to the foregoing, we would be grateful for answers to the following questions:

11. Who initiated the tripartite meeting and what was the aim of the tripartite meeting?
12. Did the Ministry of Labor take any follow-up steps following this meeting to further facilitate dialogue between company management and striking oil workers with an aim to resolve the labor dispute?

We would also be grateful if you would provide Human Rights Watch with additional information, including:

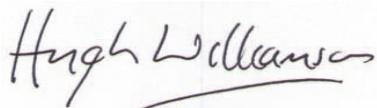
13. What initiatives are currently being taken, or will be taken, by the government at the federal level to promote collective bargaining in Kazakhstan?
14. Could you please provide Human Rights Watch with information about the number of legal strikes that have taken place in Kazakhstan since 2007, when Kazakhstan adopted a comprehensive labor code regulating the right to strike? Could you also provide information about the number of strikes that were found illegal by courts since 2007?

Human Rights Watch believes it is essential to engage in fair, balanced, and accurate reporting. We welcome your perspective and explanation of how the Ministry of Labor and Social Protection's actions and reactions to the labor disputes and strikes that took place in western Kazakhstan in 2011 are consistent with international labor rights law. We look forward to your comments on the above issues, as well as any additional comments or material you wish to provide on these issues.

We respectfully invite you to provide a written response to this letter by June 29, 2012 so that we have adequate opportunity to incorporate your relevant responses into Human Rights Watch's forthcoming report. Please send your response by email to williaa@hrw.org or by fax to +1 212-736-1300.

Thank you for your attention to this matter.

Sincerely,



Hugh Williamson
Executive Director
Europe and Central Asia Division
Human Rights Watch

Striking Oil, Striking Workers

Violations of Labor Rights in Kazakhstan's Oil Sector

With an estimated three percent of the world's proven oil reserves and extensive natural resources, Kazakhstan has experienced rapid economic growth in the last decades, making it an increasingly important trade partner for many countries. National and multinational oil and gas companies invest heavily in Kazakhstan and employ hundreds of thousands of workers, many of them working in difficult and dangerous conditions. Yet fundamental labor rights are not fully protected in Kazakhstan, exposing workers to serious violations of their rights to freedom of association, collective bargaining and expression, as well as their right to strike.

Striking Oil, Striking Workers: Violations of Labor Rights in Kazakhstan's Oil Sector analyzes how companies and Kazakh authorities failed to respect workers' rights in the months preceding and during three separate extended peaceful labor strikes that erupted in western Kazakhstan in May 2011. The report documents the tactics companies and Kazakh authorities employed to restrict workers' rights, including denying elected union leaders access to company grounds, harassing and threatening workers for participating in legitimate union meetings, and imprisoning union leaders for organizing strikes deemed illegal as a result of overly restrictive national legislation. It also analyzes the mass dismissals of over 2,000 oil workers.

Human Rights Watch urges the government of Kazakhstan to immediately uphold and protect internationally protected labor rights by ensuring that authorities and national and multinational companies respect the right of workers to freely join and participate in independent unions, engage in collective bargaining, and hold peaceful strikes without first having to overcome excessively burdensome collective bargaining requirements. The report also calls on Kazakhstan's international partners, in particular the European Union, to push Kazakhstan to respect its citizens' right to freedom of assembly, association, and expression in accordance with international law.



KarazhanbasMunai oil workers on strike outside company offices in Aktau, Kazakhstan in October 2011.

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