



HUMAN
RIGHTS
WATCH

“We Are Not The Enemy”

Violations of Workers’ Rights in Kazakhstan



“We Are Not the Enemy”
Violations of Workers’ Rights in Kazakhstan

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Printed in the United States of America

ISBN: 978-1-6231-34259

Cover design by Rafael Jimenez

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Cities and towns where Human Rights Watch conducted research on labor rights for this report.

Summary

The government of Kazakhstan fails to guarantee workers' rights to freedom of association and to fully protect their interests in the workplace. Workers must overcome significant obstacles established in law and in practice to organize in Kazakhstan. Legislative changes in recent years have made it more difficult for workers to freely form unions and bargain collectively, and have introduced criminal sanctions for leading or participating in illegal strikes. Outspoken trade leaders and worker activists face harassment, surveillance, and in some cases dismissal because of their labor activism.

This report—based on interviews with over 50 trade union leaders, labor activists, and workers in key industries across Kazakhstan—documents retaliatory company action against workers and state and company harassment of labor rights activists. It identifies key labor rights concerns voiced by workers and activists, and details the restrictive labor and trade union legislation that makes it difficult to independently organize and defend workers' rights in Kazakhstan. Human Rights Watch also sought the views and perspectives of the Ministry of Healthcare and Social Protection, as well as those of companies named in the report.

There is limited space for dissent in Kazakhstan, the largest country by land mass in Central Asia with a workforce of approximately 8.9 million people. Kazakh authorities tolerate little public criticism of the government or its record. The government's hostility towards activists inhibits the defense of workers' rights in Kazakhstan. While the government of Kazakhstan has long restricted the right to freedom of association and the right to carry out peaceful dissent, in recent years the government has further tightened controls over trade unions and civil society groups.

From May to December 2011, thousands of workers employed in Kazakhstan's oil and gas sector undertook separate labor strikes at companies operating in the petroleum sector in western Kazakhstan. On December 16, 2011, violent clashes broke out in the central square of Zhanaozen, where one of the strikes had been ongoing for months, with law enforcement officers opening fire on workers and others, killing at least 12 people.

In July 2012, following those extended and unresolved labor strikes in western Kazakhstan, Kazakhstan's president, Nursultan Nazarbaev, called for better regulations of employer-employee relations. Following his directive, the government adopted a new trade union law in June 2014 and a new Labor Code in November 2015. However, legislators ignored key recommendations by trade unions and the International Labour Organization, which provided technical expert analysis of the bills. Neither law fully complies with international standards on workers' rights.

As Kazakhstan's economic growth has slowed in recent years due to the significant drop in the global price of crude oil, and the country's national currency, the tenge, has lost value, the government has grown even more wary of possible unrest. In May 2016, for example, authorities took quick and decisive action against gatherings opposing land code reforms, detaining hundreds of protesters and bringing politically motivated criminal charges against peaceful activists.

The current economic downturn has the potential to affect thousands of workers employed in Kazakhstan's oil and gas and mining industries. It could also exacerbate social tensions in the country and lead to a further deterioration of the rights situation in the workplace. As such, now is an important time to take stock of where practice and legislation fall short of international standards on the protection of workers' rights, and for the government to take heed of workers' grievances and implement much-needed legislative amendments and reforms.

Workers in Kazakhstan interviewed for this report described the significant difficulties they have faced trying to organize and defend their interests in the workplace, as well as efforts by independent trade unions to comply with new labor and trade union legislation, which restricts their rights to freedom of association, collective bargaining, and to strike.

Some trade union leaders described to Human Rights Watch how their efforts to organize workers into active unions led to pressure by company management on trade union members to leave the union, sometimes under threat of dismissal, as well as about cases of retaliatory firings and spurious criminal investigations against workers, in apparent retribution for their labor activism. The report documents undue government surveillance of several trade union activists and how security officials contacted labor activists who spoke to Human Rights Watch in the context of research for this report. Safeguards to

protect workers' rights are inadequate to protect workers from abuses perpetrated either by employers or by the state.

The report assesses the Law on Professional Unions of the Republic of Kazakhstan (“Trade Union Law”), adopted in 2014, and the Labor Code, adopted in 2015, as well as amendments to the Criminal Code, all of which have further tightened controls over civil society activists, including trade union leaders, and have introduced criminal sanctions for leading or participating in illegal strikes. These laws fail to meet international standards regulating freedom of association, collective bargaining, and the right to strike. Although Kazakhstan was publicly and firmly admonished in both 2015 and 2016 over restrictions in the Trade Union Law at the International Labour Conference, the highest-level decision-making body of the International Labour Organization (ILO), as of this writing, no amendments to either law have been introduced.

The report also examines the right to strike in Kazakhstan and how the legislative framework effectively prohibits some workers from exercising that right, except in limited circumstances, and analyzes the consequences for carrying out industrial action that has been found illegal by Kazakh courts. Workers interviewed for the report noted that in some instances, particularly in those cases where industrial disputes spilled over into spontaneous industrial action, authorities at a local and regional level played a positive role in helping to mediate a resolution. However, Human Rights Watch documented cases in which workers were charged by the authorities or dismissed from their jobs for participating in illegal strikes.

Workers' rights to organize and to associate are well-established under international human rights law. The International Covenant on Civil and Political Rights (ICCPR), ratified by and legally binding on Kazakhstan, states that “everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.” The International Covenant on Economic, Social and Cultural Rights (ICESCR), which Kazakhstan has also ratified, similarly recognizes “[t]he right of everyone to form trade unions and join the trade union of his choice.”

The International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work (ILO Declaration) lists freedom of association as one of the “fundamental rights,” which all ILO members have an obligation to protect. ILO Convention 87

concerning Freedom of Association and Protection of the Right to Organise and ILO Convention 98 concerning the Right to Organise and Collective Bargaining, both of which Kazakhstan has ratified, elaborate on this right.

While the government of Kazakhstan has the primary responsibility to promote and ensure respect for human rights, and in particular to guarantee workers' rights to form unions and protect their interests in the workplace, companies too have internationally recognized responsibilities to protect the rights of workers. The United Nations (UN) Guiding Principles on Business and Human Rights, which the UN Human Rights Council endorsed in 2011, recognize that all companies should respect human rights, avoid complicity in abuses, and ensure that any abuses that occur in spite of these efforts are adequately remedied.

The government of Kazakhstan should amend its trade union and labor laws, while companies operating in Kazakhstan should ensure that employees do not face retaliation or harassment for their trade union activism. The failure to do so is incompatible with applicable international standards, violates constitutional norms in Kazakhstan, and denies workers the capacity to organize in the protection of their interests at this especially critical time of economic downturn.

Kazakhstan should take immediate steps to fulfill the recommendations of the ILO to amend the Trade Union Law, and foster a better environment for trade union activism.

Kazakhstan's key economic partners, especially the European Union and the United States, should press the government to take immediate steps to implement labor reforms as part of their respective dialogues with the Kazakh government on the country's economic development and on Kazakhstan's respect for human rights and rule of law. At a minimum, this should happen in the context of the EU's enhanced Partnership and Cooperation Agreement and the United States' Annual Bilateral Consultations with Kazakhstan.

Kazakhstan's international partners should stress that ensuring international standards on labor rights, in particular the right of workers to association and to organize, should be an integral part of Kazakhstan's approach as it aspires to play a more important global role.

Recommendations

To the Government of Kazakhstan

- Respect the rights of workers to associate, organize, and form unions, and to peaceful assembly with others in accordance with international human and labor rights law.
- Foster an environment that protects, not punishes, labor rights activists for defending workers' rights in Kazakhstan.
- Respect and promote freedom of association and the rights of workers to form independent labor unions, bargain collectively, and conduct strikes, 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 ILO Conventions 87 and 98.
- Review, in consultation with independent unions in Kazakhstan, international trade union bodies, and the ILO, all union registration procedures with a view to bringing the 2014 Trade Union Law into full conformity with ILO Conventions 87 and 98, eliminating unnecessarily burdensome two-step registration requirements and the mandatory affiliation requirement. In the interim, accept and promptly grant pending applications for union registration, and ensure that workers are able to register unions without undue difficulty or delay.
- Amend the 2015 Labor Code to bring it fully into conformity with ILO Conventions 87 and 98 by a) lifting broad restrictions and prohibitions on the right to strike, in particular the ban on strikes in "hazardous production facilities," except in limited cases where a strike would "endanger the life, safety or health of the whole or part of the population;" and b) clearly define provisions for collective bargaining so that workers, employers, and intermediaries can easily understand and follow provisions in the law, including by lessening the threshold for workers to initiate procedures for going on strike.
- Cease unfounded government surveillance of trade union activists, which constitutes a breach of their privacy and right to freedom of association.

- Ensure that trade union leaders and worker activists do not face retaliation for their labor activism. In cases where workers allege retaliatory dismissal or other forms of punitive actions on the part of their employer, including allegations of criminal wrongdoing, promptly investigate the workers' claims.
- Amend Criminal Code articles 174 "inciting social, national, clan, racial, class, or religious discord" and 402 "calling on workers to participate in a strike that has been found illegal by a court," as they are incompatible with freedom of association, the right to organize, and the right to strike. Ensure that the definition of "inciting social, national, clan, racial, class, or religious discord" complies with the international legal principles of legal certainty and predictability and cannot be invoked against persons for the legitimate exercise of their basic rights to freedom of opinion, expression or assembly.
- Allow workers to exercise their internationally protected right to peaceful assembly. Immediately amend the law on public assemblies so that any restrictions on this freedom are based on rule of law, absolutely necessary for public order and safety, and not applied in a discriminatory manner.
- Effectively investigate allegations of excessive use of force in connection with the Zhanaozen violence and of torture and ill-treatment in the wake of the events, with a view to holding the perpetrators to account, and given the widespread allegations by defendants at trial that they were subjected to ill-treatment and torture, review all June 2012 Zhanaozen-related convictions and ensure effective redress for those who were wrongfully imprisoned.
- Implement the recommendations of the UN Human Rights Committee, following its review of Kazakhstan's compliance with the ICCPR in July 2016, in particular the recommendation that "the State party should bring its regulations and practice governing the registration and functioning of political parties and NGOs, as well as the legal frameworks regulating strikes and trade unions, into full compliance with the provisions of articles 19, 22 and 25 of the Covenant."
- Implement in full the recommendations issued by the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association in June 2015, following his visit to Kazakhstan, in particular the recommendation

calling on Kazakh authorities “to ensure individuals can form and join trade unions of their choice, including by eliminating compulsory state registration.”

To the Ministry of Healthcare and Social Protection

- Take steps to ensure that all privately owned, state-owned, and foreign-invested companies and enterprises in Kazakhstan respect international labor standards.
- Improve labor inspection methods, including by strengthening oversight mechanisms for checking on company compliance with trade union and labor law, and pay special attention to complaints of discrimination against union leaders filed by registered unions and newly formed unions, or company interference in collective bargaining negotiations.
- Publicly and regularly disclose the companies inspected, key labor rights violations found, and enforcement actions taken, and ensure adequate resources in this regard.
- Urge all businesses and companies operating in Kazakhstan to educate employees about their rights, including their right to join a trade union and the right to file a complaint if there is retaliation.

To National and Foreign Companies Operating in Kazakhstan

- Respect the rights of employees to join trade unions of their choosing, or to form new trade unions, without interference by company management.
- Ensure that all employees 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 work place.
- Develop or revise existing internal codes, for example, on corporate social responsibility, to include the protection of labor and other rights of workers employed by the company and their subcontractors, subsidiaries, and other agents.

- Promptly respond to worker or trade union requests to engage in collective bargaining, to adopt or amend collective agreements, or to resolve collective disputes, and negotiate in good faith, in accordance with international law.

To the EU, EU member states, US, and Kazakhstan’s Other Key International Partners

- Consistently raise concerns, publicly and at the highest level, as well as in the context of multilateral institutions, about violations of labor rights in Kazakhstan, including the need to amend the Trade Union Law, the Labor Code, and the Criminal Code.
- 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, the right to organize, and the right to strike.
- The EU should meaningfully and unequivocally signal to Kazakhstan that it has to respect the terms of the enhanced Partnership and Cooperation Agreement, in which, under Article 231, point I, the parties agree to work together towards “improving the quality of the labour law and ensuring a better protection for workers;” and Article 235, in which the parties “attach particular importance to...respect for human rights and fundamental freedoms.” The EU should raise the concerns included in this report in its Cooperation Council meetings and Human Rights Dialogues with Kazakhstan and monitor progress on the rights of workers to associate, organize, and form unions.
- The US should maintain pressure by consistently raising concerns about worker rights violations in the context of discussions with the Kazakh government on the Generalized System of Preferences and ongoing regional dialogues, such as the Annual Bilateral Consultations.

To the International Labour Organization

- Follow up with the government of Kazakhstan on fulfilling the Committee of Experts’ conclusions issued in June 2015 and again in June 2016, including seeking a time-bound reform program for amending the Trade Union Law and

Labor Code to bring them into compliance with ILO Conventions 87 and 98, and monitor the implementation of the recommendations of the ILO Committee on the Application of Standards.

- Follow up on the Committee of Freedom of Association conclusions issued in response to a complaint filed in 1995 by the Independent Trade Union Center of Kazakhstan calling on the Kazakh government to “take steps to amend...article 5 of the new Constitution so as to lift the prohibition on the acceptance by national trade unions... of financial assistance from international organizations of workers.”

To the Organization for Economic Co-operation and Development

- Engage with the government of Kazakhstan, which has worked to advance its relationship with the OECD in recent years, including to sign the OECD’s Guidelines for Multinational Enterprises, which requires countries to “respect the right of workers employed by the multinational enterprise to establish or join trade unions and representative organizations of their own choosing.”

Methodology

This report is based on research conducted in Kazakhstan between September 2014 and June 2016. Interviews took place in nine cities in five of Kazakhstan's fourteen regions: Almaty, Aktau, Karaganda, Kokshetau, Satpaev, Shakhtinsk, Shymkent, Zhezkazgan, , and in the country's capital, Astana. One interview was conducted by phone with a former trade union activist located outside Kazakhstan at the time of the interview.

Human Rights Watch interviewed 55 trade union leaders, labor activists, and workers who are employed in various sectors of Kazakhstan's economy. Most interviews were on an individual basis, although some took place in small groups. Human Rights Watch also interviewed five representatives of local human rights groups, with specialized trade union or freedom of association knowledge, and one lawyer with expertise in Kazakh labor legislation.

Follow up interviews were conducted in person, by telephone, or over email between April 2015 and November 2016. Human Rights Watch interviewed some trade union representatives multiple times.

Human Rights Watch also attended two roundtables hosted by the Friedrich Ebert Foundation (FES) on the topic of Kazakhstan's new Trade Union Law and its effect on trade unions in Kazakhstan. The roundtables took place in Almaty in October 2014 and in Astana in May 2015.

Interviews were conducted in Russian by a Russian-speaking researcher. A handful of interviews were conducted in Kazakh with the assistance of a consultant to Human Rights Watch fluent in Russian and Kazakh.

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

Human Rights Watch informed all those interviewed of the purpose of the interview, its voluntary and confidential nature, and the ways in which the information would be used. Each person orally consented to be interviewed. Interviewees were informed that they could discontinue the interview at any time or decline to answer questions. No incentives were offered or provided to the interviewees.

Human Rights Watch has provided anonymity for a number of the interviewees referred to in this report to protect their identity and to prevent possible retaliation against them, as indicated in the relevant citations. Where pseudonyms are used, they appear as a first name and an initial of the same letter. Real names have been used with permission from the interviewee, or where the incidents described have already appeared in the media.

In September 2016, Human Rights Watch sent letters to eight companies named in this report with specific questions about the violations we documented in order to provide each company the opportunity to respond to the allegations. By publication only one company had provided a written response. The company's views are reflected in the report and a copy of its response is included in the annex of this report. Some company names have been withheld to minimize the risk to the trade union activists Human Rights Watch interviewed and are identified as "Company" followed by a capital letter from the alphabet, e.g. "Company A."

In June 2016, Human Rights Watch met with the Deputy Minister of Healthcare and Social Development at the International Labour Conference (ILC) in Geneva on Kazakhstan's reporting before the International Labour Organization. In August 2016, Human Rights Watch sent a letter to Kazakhstan's Ministry of Healthcare and Social Development outlining the findings of this report and seeking a written response. In mid-October, Kazakhstan's Ministry of Foreign Affairs sent a short response suggesting Human Rights Watch should resend its letter to the Ministry of Foreign Affairs, requesting its assistance in forwarding the letter to the Ministry of Healthcare and Social Development. This response is included in the annex of the report. On October 21, Human Rights Watch resent the letter. However, by publication, Human Rights Watch had not received a response.

Surveillance by the Authorities

During research in the cities of Aktau and Karaganda and in nearby towns in April 2015, authorities surveilled a Human Rights Watch researcher and consultant. Surveillance included being followed by car and on foot by men Human Rights Watch staff believed to be plainclothes officers.

Human Rights Watch's researcher was also surveilled in Aktau and Shymkent in September 2015. In one instance, a representative of the Committee on National Security identified himself to reception staff at the hotel where the researcher was staying, showed the receptionist a current photograph of the researcher, and requested information about her.

On subsequent research trips to Aktau in September 2015 and June 2016, trade union activists who had previously spoken to Human Rights Watch's researcher stated that security officials had spoken to them by telephone or summoned them for a talk. Officials warned the activists against meeting and sharing information with Human Rights Watch.

I. Background

Economy Before Political Reform

During his 25-year tenure as Kazakhstan's leader, President Nursultan Nazarbaev has pushed a policy of economic development over political reform. In recent years his stated aim has been to make Kazakhstan one of the top 30 most developed countries globally by 2050.¹ From 1995 to 2015, Kazakhstan experienced an average annual economic growth rate of about 5 percent, fueled almost entirely by the country's petroleum industry.² Yet, in the same period, experts say that the government has not managed to diversify its economy or bring about meaningful institutional reforms that would help the country weather economic downturns, such as the one Kazakhstan is currently experiencing as a result of the drop in oil prices beginning in 2014.³ Most recently protests in April and May 2016 over proposed land reforms have highlighted the strains in the government's "economy first" approach.

The global price of oil fell from its peak at US\$112/barrel in June 2014 to under US\$46/barrel in July 2016.⁴ In 2015, the government floated the national currency, the tenge, causing it to lose half its value against the dollar. President Nazarbaev called snap presidential elections in 2015 and snap parliamentary elections in 2016, steps that experts

¹ In his November 2014 State of the Union Address, President Nazarbaev introduced the "Nurly Zhol" economic policy as a component of Strategy 2050, or Kazakhstan's "global step on the path to become one of 30 most developed countries of the world." See: "The Address of President of the Republic of Kazakhstan N.Nazarbayev to the people of Kazakhstan. November 11, 2014" Official Site of the President of the Republic of Kazakhstan, November 14, 2014, <http://www.akorda.kz/en/addresses/the-address-of-president-of-the-republic-of-kazakhstan-nnazarbayev-to-the-people-of-kazakhstan-november-11-2014> (accessed November 11, 2016). See also: "The 100 concrete steps set out by President Nursultan Nazarbayev to implement the five institutional reforms," Kazakhstan 2050, May 20, 2015, http://strategy2050.kz/en/page/message_text2014 (accessed September 6, 2016). See also: Idrissov, Erlan, "Kazakhstan: 100 Steps Toward a New Nation," *The Diplomat*, July 25, 2015, <http://thediplomat.com/2015/07/kazakhstan-100-steps-toward-a-new-nation> (accessed September 6, 2016).

² The World Bank describes Kazakhstan as an "upper-middle-income country."

³ "Stans Undelivered," *The Economist*, June 30, 2016, <http://www.economist.com/news/asia/21701522-five-former-soviet-republics-struggle-survive-new-great-game-stans-undelivered> (accessed September 6, 2016). See also: Farchy, Jack, "Kazakhstan unrest highlights reform conundrum," *Financial Times*, June 6, 2016, <http://www.ft.com/cms/s/0/34e688d4-2bbf-11e6-bf8d-26294ad519fc.html#axzz4lnoGOEc2> (accessed September 6, 2016).

⁴ Puko, Timothy and Kantchev, Georgi, "Oil Prices Tumble Below \$30 a Barrel," *The Wall Street Journal*, January 15, 2016, <http://www.wsj.com/articles/oil-prices-fall-below-30-a-barrel-1452853918> (accessed September 6, 2016). See also: Organization of the Petroleum Exporting Countries, "OPEC, Monthly Oil Market Report," July 10, 2014, http://www.opec.org/opec_web/static_files_project/media/downloads/publications/MOMRJuly2014.pdf (accessed September 6, 2016).

see as the leadership's attempt to rally popular political support before a full economic crisis threatened to hit Kazakhstan's economy.

Internationally, Kazakhstan is deeply invested in cultivating an image of a regional power and has sought opportunities to bring itself into the global spotlight as a key means of garnering global recognition. It became the first Central Asian state to serve as chair of the Organization for Security and Co-operation in Europe (OSCE) in 2010. It was elected to the UN Human Rights Council in 2012. "Expo 2017," a three-month international exposition focusing on energy, is scheduled to take place in Astana starting in June 2017 and is being branded as an opportunity for investors to participate in the "energy of the future." Kazakhstan vied for a non-permanent seat on the UN Security Council for 2017-2018 and won.⁵ In 2015, Almaty was a final contender against Beijing to host the 2022 Winter Olympic Games, but lost.⁶

In early 2015, Kazakhstan signed a Memorandum of Understanding with the Organization for Economic Co-operation and Development (OECD) on implementing Kazakhstan's Country Programme of Cooperation for 2015 and 2016.⁷ In November 2015, Kazakhstan became the 162nd member of the World Trade Organization (WTO).

Despite Kazakhstan's global aspirations and the country's sustained economic growth over the last decade, Kazakhstan has not taken meaningful steps to introduce much-needed human rights reforms domestically, leaving a country experiencing serious and long-term human rights violations during a serious economic downturn.

Violence in Zhanaozen, Subsequent Crackdown, Legislative Initiatives

In 2011, workers' rights—and grievances—were brought to the forefront of Kazakhstan's domestic affairs when workers in the oil and gas sector in western Kazakhstan went on

⁵ Williamson, Hugh and Rittmann, Mihra, "Kazakhstan's Security Council Bid and Its Troubling Rights Record," *The Diplomat*, June 27, 2016, <http://thediplomat.com/2016/06/kazakhstans-security-council-bid-and-its-troubling-rights-record> (accessed August 10, 2016).

⁶ "China/Kazakhstan: 2022 Games Major Test of Olympic Reforms" Human Rights Watch news release, July 21, 2015, <https://www.hrw.org/news/2015/07/21/china/kazakhstan-2022-games-major-test-olympic-reforms> (accessed August 10, 2016).

⁷ "OECD bolsters relationship with Kazakhstan-Signs Kazakhstan Country Program Agreement," OECD Newsroom, January 21, 2015, <http://www.oecd.org/newsroom/oecd-bolsters-relationship-with-kazakhstan-signs-kazakhstan-country-programme-agreement.htm> (accessed August 10, 2016).

strike in May demanding better pay. Workers stayed on strike for seven months in the port city of Aktau and in Zhanaozen, an oil town in Kazakhstan's western Mangistau region, but their grievances went unresolved.

On December 16, 2011 clashes broke out on the central square of Zhanaozen, the site of the workers' strike and of Independence Day celebrations. Police and government forces opened fire on oil workers and others who had gathered there. Over the course of the day, law enforcement officers killed at least 12 and wounded dozens of others, according to official figures.⁸

A concerted government crackdown on dissent followed in the months after the Zhanaozen violence. Authorities arrested and prosecuted outspoken oil workers and government critics, almost all of whom were convicted despite serious allegations of torture, and shut down independent and opposition media, a practice that continues to date. In October 2012, a court sentenced Vladimir Kozlov, the leader of the unregistered opposition party *Alga!*, to seven-and-a-half years in prison on vague charges in an unfair trial for his alleged role in stoking unrest in western Kazakhstan in 2011.⁹

Against the backdrop of this unrest and subsequent crackdown on its critics, the government began to tighten controls over workers and trade unions as well, as part of its broader efforts to quash dissent.

In July 2012, President Nazarbaev issued a social policy program entitled "The Social Modernization of Kazakhstan: Twenty Steps to a Society of Universal Labor," which stressed the need to overhaul legislation regulating labor relations—viewed in part as a response to the strikes and protests in western Kazakhstan of the previous year and the ensuing violent clashes.¹⁰

⁸ Three other individuals died, and dozens of police were wounded in the clashes, according to the Prosecutor General's office. Additionally, Bazarbai Kenzhebaev, 50, who was arbitrarily detained on December 16, died from internal injuries several days after his release.

⁹ "Kazakhstan: Opposition Leader Jailed," Human Rights Watch news release, October 9, 2012, <https://www.hrw.org/news/2012/10/09/kazakhstan-opposition-leader-jailed> (accessed September 6, 2016). On August 19, 2016, Vladimir Kozlov was released on parole after serving four-and-a-half of his seven-and-a-half year sentence.

¹⁰ President Nazarbaev's social policy program can be accessed here: <http://strategy2050.kz/ru/news/189>. See for example, commentary by political analyst Daniyar Ashimbaev: <http://www.kazbio.info/?S=180>.

President Nazarbaev stated that Kazakhstan’s 1993 Law on Trade Unions had become outdated and suggested that “in Kazakhstan today, the mechanisms for regulating, preventing, and settling labor disputes and conflicts are underdeveloped” and that “it is not surprising that trade unions are not always able to play the role of an effective tool for the prevention and settlement of labor disputes.”¹¹ In public comments on July 3, Kazakhstan’s Day of Industrialization, he had called on legislators to draft a new trade union law by the end of 2012, and to introduce greater sanctions for individuals he termed “provocateurs and parasites,” who provoke social and labor conflicts.¹²

The government adopted the new Trade Union Law in June 2014. In 2013, the minister of labor and social protection claimed that the law would “consolidate the right of trade unions to represent the interests of workers and negotiate on their behalf.”¹³ Instead, the law has served to enable greater influence by the authorities over the trade union movement, limit the rights of workers, and make it more difficult for workers to freely organize into trade union structures of their choosing. This is discussed in more detail below.

In January 2015, a new criminal code came into effect that tightens controls over civil society. In particular it identifies “leaders of public associations” as a separate category of individuals who can be subject to increased criminal sanctions. The United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association found that such a formulation in law “appears simply to be a way to instil fear in civil society leaders who consider criticizing the government or its policies.”¹⁴ The criminal code also increased criminal sanctions for “illegal interference by members of public associations in government activities,” a vague formulation that gives authorities wide leeway to take action against civil society activists.¹⁵ Since the adoption of the new Criminal Code, courts have increasingly applied article 50 of the Criminal Code in their rulings, under which a

¹¹ President Nazarbaev’s social policy program: <http://strategy2050.kz/ru/news/189>.

¹² “It is necessary to establish legal responsibility for provoking labor conflicts – Nazarbaev” [“Нужно установить правовую ответственность за провоцирование трудовых конфликтов – Назарбаев”]. *Zakon.kz*, June 3, 2012, <http://www.zakon.kz/4500376-nuzhno-ustanovit-pravovuju.html> (accessed November 11, 2016).

¹³ “Draft “Trade Union law” will solve disparity in workers’ wages” [“Проект закона «О профсоюзах» решит вопрос диспропорции в оплате труда рабочих”], *Zakon.kz*, November 18, 2013, (accessed November 4, 2016).

¹⁴ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/29/25/Add.2, June 16, 2015, page 10, point 43, http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Documents/A_HRC_29_25_Add.2_E.docx (accessed on August 10, 2016).

¹⁵ Criminal Code of the Republic of Kazakhstan, No. 226-V, July 3, 2014, art. 403.

defendant may be restricted from practicing civic or professional activities, including trade union activities, for up to ten years.

Trade Union Movement Since Independence

Kazakhstan's independent trade union movement developed in the late 1980s and early 1990s around the time of the dissolution of the Soviet Union. Yevgeniy Zhovtis, director of the Kazakhstan International Bureau for Human Rights and Rule of Law, who in the early 1990s served as the vice president of the Confederation of Free Trade Unions of Kazakhstan, described how trade unions in the Soviet period differed from robust independent trade unions: "trade unions were a part of the [Soviet] system, from an ideological and organizational point of view...and were always heavily controlled and maximally centralized."¹⁶

Three national trade union federations and confederations have emerged in independent Kazakhstan: the Federation of Trade Unions of Kazakhstan (FPRK), an organization that grew out of the Kazakh Soviet Council of Trade Unions (KazSovProf); the Confederation of Independent Trade Unions of the Kazakh Republic (KNPKR; formerly the Confederation of Free Trade Unions of Kazakhstan, or KSPK), which evolved from the Independent Trade Union Center of Kazakhstan (ITUCK) after the fall of the Soviet Union and large-scale strikes in the mining sector in the late 1980s; and the Kazakhstan Confederation of Labor (KKT; formerly the Confederation of Labor of Kazakhstan), which broke off from KSPK in 2004. A fourth trade union group, known as Zhanartu, has since 2010 repeatedly tried to register as a national-tier trade union, but the Ministry of Justice has denied it registration.¹⁷

Kazakhstan's labor movement remains weak. The legacy of state-controlled trade unions of the Soviet period coupled with today's highly controlled environment for worker organizing has meant that many established unions do not effectively represent workers' interests. The Kazakh government claims that about 54 percent of Kazakhstan's labor force is unionized.¹⁸

¹⁶ Human Rights Watch interview with Yevgeniy Zhovtis, Almaty, April 30, 2015. See also, The Federation of Trade Unions of Kazakhstan's history page: <http://www.fprk.kz/ru/node/3>.

¹⁷ Human Rights Watch interview with Andrei Prigor, Kokshetau, November 5, 2014.

¹⁸ Human Rights Watch interview with Deputy Minister Birzhan Nurymbetov, Geneva, June 7, 2016. According to the State Statistics Agency, these unionized workers are predominantly employed in heavy industry sectors, such as oil and gas, and steel and coal mining.

II. Restrictions on Freedom of Association and Right to Organize

The authorities heavily control the space for worker organizing and freedom of association. Company officials and the authorities engage in a range of tactics to limit the rights of or retaliate against trade union leaders and worker activists who are outspoken in defense of their rights.

The section below details apparent reprisals against trade union leaders, labor activists, and workers, including threats of or actual dismissal from places of employment and government surveillance of activists. Human Rights Watch also documented a few instances in which authorities took legal action against trade union leaders, in apparent retaliation for their labor rights activism, including by bringing criminal charges.

In order to reflect the perspectives of the companies implicated in workers' rights abuses, Human Rights Watch sent letters to the five companies named in this section of the report. They are: TOO Altyntau Kokshetau, Petro Kazakhstan Oil Products, KM Tranco, ArcelorMittal Temirtau and TOO Oil Construction Company. Out of the five companies Human Rights Watch contacted, however, none had responded by publication.

Threats and Reprisals Against Worker Rights Activists

Leading independent trade union and worker activists in all the locations where Human Rights Watch carried out research for this report described how restrictive laws, as well as incidents of interference, harassment, and intimidation by company officials and government authorities contribute to a restrictive environment for trade union activism in Kazakhstan.

Trade union leaders interviewed for this report described how their efforts to organize workers into active unions led to pressure by company management on trade union members to leave the union, sometimes under threat of dismissal, and how, in some cases, companies took punitive action against more outspoken activists. In a handful of cases, trade union leaders and worker activists told Human Rights Watch that the authorities have threatened them with criminal charges, apparently in retaliation for their

activism. In addition, trade union leaders in Aktau and Shymkent told Human Rights Watch that government officials surveilled them, and how in Aktau, officials contacted them before or after meeting with a Human Rights Watch researcher.

Under international labor and human rights law, workers should be free to defend their economic and social interests, form unions, and bargain for better protections of their rights without fear of retaliation. Those standards provide that employers are prohibited from mounting anti-union campaigns that interfere with worker organizing, or retaliating against workers for supporting a union. Any retaliation by the authorities or by companies for engaging in legitimate labor activities is a violation of workers' rights.

International law requires countries to outlaw such conduct, sanction perpetrators with meaningful and deterrent penalties, and enforce the prohibitions. These standards are enshrined in International Labour Convention 87, or the Freedom of Association and Protection of the Right to Organise Convention, and International Labour Convention 98, or the Right to Organise and Collective Bargaining Convention, as well as the United Nations International Covenant on Economic, Social, and Cultural Rights. Kazakhstan's labor laws and practice do not meet these international norms.

Dismissals or Threats of Dismissal Apparently Linked to Union Activity

Independent trade union leaders in five of the cities where Human Rights Watch conducted research for this report said that managers, or management-level employees, pressured workers to leave trade unions, sometimes under threat of dismissal. Human Rights Watch also documented some instances in which companies dismissed employees following their union-related activities or worker activism.

Kazakhstan's law on trade unions prohibits discrimination and retaliation against trade union members for labor activism.¹⁹ International labor and human rights laws, including International Labour Organization conventions that Kazakhstan has ratified, similarly prohibit such actions. ILO Convention 98 explains: "Workers shall enjoy adequate

¹⁹ Article 7 of Kazakhstan's Trade Union Law bans discrimination of workers on grounds of membership in a trade union, in particular in the "hiring, promotion, or termination of a contract...because [the worker] belongs to a union." Article 26 of the Law on Trade Unions guarantees that trade union representatives cannot be disciplined or dismissed without reasonable basis, in accordance with the Labor Code of Kazakhstan. Law on Professional Unions of the Republic of Kazakhstan (Trade Union Law), No. 211-V, June 27, 2014, art. 7 and art. 26.

protection against acts of anti-union discrimination in respect of their employment.... Such protection shall apply more particularly in respect of acts calculated to...(b) [c]ause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities.”²⁰

In one case, Nikolay N., a trade union member at TOO AltynTau Kokshetau, a gold mining company in northern Kazakhstan, told Human Rights Watch that in June 2014 after workers notified their employer that they had organized an independent trade union “Zarya,” management pressured workers not to join the union. “Lots [of people] joined initially, but as soon as [Zarya] formally informed the company, that’s when [pressure] started – they carried out individual conversations and then people dropped out.”²¹

Another trade union member, Boris B., told Human Rights Watch that the day after the trade union informed company management about their trade union, their response was “harsh.”²² Management called a general meeting of workers the very next day and announced openly that if anyone joins the union, they would be fired, Boris B. said.²³

Nikolay N. corroborated this account. “There were threats that people would get fired if they joined the union – it was psychological pressure,” he said.²⁴ Nikolay N. told Human Rights Watch that initially the threats worked to prevent people from organizing, since “people just want to keep their jobs.”²⁵

In the months following the creation of trade union “Zarya,” Altyntau Kokshetau also took disciplinary action against one of the union’s founding members, Sergei Buntakov, for allegedly violating safety procedures at work, and penalized him by thrice refusing to pay his bonuses. Nikolay N., who worked with Buntakov, explained, “There wasn’t actually a violation [of safety rules]; there was no justified reason to limit his bonus. The employer first paid [Buntakov], but then took it back, so Buntakov filed a complaint against them.”²⁶

²⁰ ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

²¹ Human Rights Watch interview with Nikolay N., Kokshetau, November 5, 2014.

²² Human Rights Watch phone interview with Boris B., August 17, 2016.

²³ Ibid.

²⁴ Human Rights Watch interview with Nikolay N., Kokshetau, April 27, 2015.

²⁵ Ibid.

²⁶ Ibid.

Buntakov said in a media interview in November 2014 that he had sued his employers “in connection with violations of my legal rights and the illegal disciplinary action which we connect with our trade union activities.”²⁷ On December 15, 2014, a court ruled in Buntakov’s favor, and the company paid his bonus. But when Buntakov’s contract had come up for renewal on December 9, 2014, management declined to renew it.²⁸

In another case from western Kazakhstan Company C, a company in the oil sector in Mangistau region, suspended one of its employees, Bakyt B., after he tried to organize his colleagues into a union in May 2014. In response to the workers’ efforts to organize, company management “choked the life out of” the union by summoning the members and pressuring them to quit it, Sultan S., a trade union leader in the oil industry who assisted Bakyt B. in his attempt to organize a trade union, told Human Rights Watch.²⁹ Bakyt B. confirmed that after he tried to organize a trade union, the company wanted to fire him, and that “he had to resign” in a telephone interview with Human Rights Watch.³⁰

Human Rights Watch interviewed other trade union leaders in Aktau, Shymkent, Zhezkazgan, and Karaganda region about responses in recent years to workers’ efforts to organize. They said management-level employees at various companies had used similar tactics against union activism, including threats of dismissal.

Erlan Baltabai, an oil worker trade union leader in Shymkent who represents workers employed at Petro Kazakhstan Oil Products (PKOP), an oil company, told Human Rights Watch that the pressure started in January 2012, soon after he was elected chairman and workers had started to join his union. “Foremen began to scare workers pressuring them saying ‘don’t join that trade union or you’ll have problems, we can fire you, or find something against you,’” he said.³¹ Baltabai explained that he encouraged workers to file a

²⁷ “Workers Against TOO Altyntau Kokshetau” in Court” [“Работники против ТОО «Алтынтау Кокшетау» в суде”], Kokshetau.asia YouTube channel, November 12, 2014, https://youtu.be/RcHUCGA_oiA?list=UU9kuzvAd8Po-DD3p4u15imw (accessed November 11, 2016). See also: “Pressure on “Zarya” trade union activists grows,” [“Давление на активистов профсоюза «Заря» усиливается!”], *Socialismkz.info* blog, December 3, 2014, <http://socialismkz.info/?p=13266> (accessed September 6, 2016).

²⁸ “Zarya trade union activist’s suit was granted in court” [“Иск уволенного активиста профсоюза «Заря» был удовлетворён в суде”], *Socialismkz.info* blog, December 18, 2014, <http://socialismkz.info/?p=13453> (accessed September 6, 2016).

²⁹ Human Rights Watch interview with Sultan S., Aktau, September 18, 2015.

³⁰ Human Rights Watch telephone interview with Bakyt B., June 15, 2016.

³¹ Human Rights Watch interview with Erlan Baltabai, Shymkent, September 25, 2015.

complaint about the threats, but that “the workers didn’t want to write [a complaint]— they’re worried about being fired. In Kazakhstan there aren’t any jobs. Everyone just ends up working at the bazaar. Our company is one of the few places to work here.”³²

A worker activist in Zhezkazgan, Erlan Tabylov, told Human Rights Watch that KM Tranco, the copper mining service company where he worked, dismissed him because “I was always very active [and] spoke up before the [workers’] collective, supported them,” including in social media.³³

Tabylov told Human Rights Watch that company management summoned him on Saturday, August 16, 2014 to tell him that if he did not resign, they would fire him.”³⁴ Tabylov contested his dismissal in court. In December 2014, a Zhezkazgan court found his dismissal unlawful, ruling the company had to reinstate him and pay his withheld wages.³⁵ The service company contested the court’s decision. In March 2015, the appeals court overturned the decision and required Tabylov to return the compensation money he had been paid. At the time of the appeal, Tabylov and other worker activists were in the process of trying to register a trade union in Zhezkazgan.³⁶

Tabylov contested the appeal’s ruling. In April 2015 the Karaganda court of cassation upheld the first instance decision reinstating Tabylov at work. However, two months later, in June, when Tabylov’s contract concluded, the company let him go. Tabylov told Human Rights Watch that “fifteen people were laid off, but the company hired 40 new employees.”³⁷

Marat Mirgayazov, chairman of the industrial coal miners’ union *Korgau* in Karaganda, told Human Rights Watch that in late 2013 members of his trade union were pressured, some under threat of dismissal, to leave trade union *Korgau* and join a second trade union, *Birlik*, seen by Mirgayazov as loyal to the company.³⁸

³² Ibid.

³³ Human Rights Watch interview with Erlan Tabylov, Zhezkazgan, September 23, 2015.

³⁴ Human Rights Watch interview with Erlan Tabylov, Zhezkazgan, November 2, 2014.

³⁵ Human Rights Watch interview with Erlan Tabylov, Zhezkazgan, September 23, 2015. Copy of court ruling on file with Human Rights Watch. See also: “Fired worker-activist of Kazakhmys was reinstated at work by the court,” [“Уволенный рабочий-активист «Каззахмыса» восстановлен судом на работе”], *Socialismkz.info* blog, December 23, 2014, <http://socialismkz.info/?p=13478> (accessed August 2, 2016).

³⁶ Human Rights Watch interview with Andrei Prigor, Kokshetau, April 28, 2015.

³⁷ Human Rights Watch interview with Erlan Tabylov, Zhezkazgan, September 23, 2015.

³⁸ Human Rights Watch interview with Marat Mirgayazov, Karaganda, November 1, 2014.

Mirgayazov told Human Rights Watch that *Korgau* repeatedly appealed to the regional prosecutor's office in letters requesting that the authorities take "prosecutorial action" against ArcelorMittal Temirtau in connection with its efforts to "transfer" mine workers from the trade union *Korgau* to the "administration-created trade union *Birlik*. While the prosecutor's office looked into the allegations, he said, it did not take steps to hold anyone at ArcelorMittal Temirtau accountable.³⁹

Trade Union Harassment and Retaliatory Dismissal of Trade Union Leader

In April 2012, ten employees of Company A, a small construction and infrastructure company in Kazakhstan, formed a trade union. In response to the workers' attempts to organize, company management carried out a campaign of harassment, threats, and intimidation against union members and in particular against the trade union chairperson, Asel A., whom the company ultimately fired in retribution for her activism.

Asel A. described to Human Rights Watch how from the very start of the workers' attempt to organize, management undermined their efforts.

People expressed their interest [in organizing a union]... I walked up to the manager and approached him with the proposal - that people want to form a union - and [asked if he] could provide a space to hold a meeting. He refused. So we had to hold our first meeting in the private home of one of the workers, in [her] private residence. About 30 people participated in that first meeting. We filled the room.⁴⁰

The trade union of Company A workers was registered by the authorities in September 2012. Asel A. told Human Rights Watch that it took a bit of time to register the union because the general manager of Company A refused to let the union use the company's physical address in their application and because it was some distance from the company to the Ministry of Justice offices, where they needed to file their paperwork.⁴¹

Immediately after the union was registered, Asel A. informed company management of their new union. She explained:

³⁹ Ibid. Copies of letters on file with Human Rights Watch.

⁴⁰ Human Rights Watch interview with Asel A., location and date withheld.

⁴¹ Ibid.

I took a copy of the charter and registration and went to our manager, to let him know about the trade union, and that employees at Company A were part of the union. The office manager refused to accept my letter, so I took it to [the director] myself... He looked at the papers, and then threw my papers back in my face...I collected the papers, and left. I had to send the notice by registered mail.⁴²

In response, Company A declined to recognize the union and told Asel A. that she had to provide the company the names of everyone who had joined. “When we created [the union] people joined *en masse*. In just two days, 120 people joined. They started to submit their notices [to join], and the company got scared,” Asel A. said. “They [management] tried to find out who was a member of the trade union.”

Within a week, however, Company A informed Asel A. that she had been made redundant. “[The company] started to threaten me, saying if I don’t quit on my own, then two of my colleagues would be fired, and that it would be on my conscience.”⁴³ Company A also issued an order that no employee should approach Asel A. and to report any “unlawful actions, disrespectful treatment, threats or intimidation” by Asel A. to management.⁴⁴

Asel A. described how difficult it was for her. “I survived all of that, and [now]... to remember it all, I started to feel badly. I hid it away [what happened to me], to tell you the truth, so as to not remember. It was a kind of war, and in the end, they fired me.”

Asel A. fought her dismissal in court, but local courts upheld her dismissal, she said.

Government Surveillance and Intimidation

Several independent trade union leaders and workers in western and southern Kazakhstan, regions with strategically important industries, such as the oil and gas sector, reported that government authorities surveilled them and in some instances personnel from the Committee on National Security (KNS) questioned them about their legitimate trade union activities.

Several activists said that they were concerned about speaking openly to Human Rights Watch about their trade union activities and requested anonymity in the report for fear of possible retribution. In the words of Maks M., one trade union activist in Mangistau oblast,

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid. Copy of the order on file with Human Rights Watch.

“if you include this [information], they’ll immediately figure out who I am, and I don’t know what will happen to me.”⁴⁵

Under international law and labor standards union leaders and members should be free to carry out legitimate trade union activities without fear of intimidation by government officials. Unlawful surveillance of trade union activists, including threats by security personnel, or unscheduled and intimidating visits by the KNB to trade union members’ places of work or their homes constitutes a violation of privacy, and violates Kazakhstan’s Trade Union Law and international labor conventions to which Kazakhstan is party.

Three independent trade union leaders in Aktau separately told Human Rights Watch that people they identified as security officials contacted them in regards to meeting with a Human Rights Watch researcher. Two trade union activists were summoned after meeting with Human Rights Watch in April 2014 and in one case, told not to get “too friendly.”⁴⁶ A security officer contacted the third by phone in September 2015 and warned him against meeting with a Human Rights Watch researcher who was visiting Aktau at the time.⁴⁷ In addition to interfering with their ability to speak freely about issues of concern to the activists, these actions strongly indicate that the authorities are monitoring these trade union leaders’ communications.⁴⁸

In another case, Larisa Kharkova, president of the Confederation of Independent Trade Unions of the Republic of Kazakhstan (KNPRK), told Human Rights Watch that during a trip to Aktau in March 2016, she was unable to meet with trade union leaders affiliated with KNPRK without what she believed to be government surveillance, since the men were taking pictures of the activists and followed Kharkova from her hotel. She said: “I was surrounded in Aktau—day and night [by security services]... I went to meet the [union] guys—two trade unions joined [KNPRK]—one of the trade unions just can’t get registered... we were sitting there, talking, and we could see how [the security agents] drove up and photographed us.”⁴⁹

⁴⁵ Human Rights Watch interview with Maks M., Aktau, June 16, 2016.

⁴⁶ Human Rights Watch interview with Saken S. and Askhat A., Aktau, September 18, 2015.

⁴⁷ Human Rights Watch interview with Sultan S., Aktau, September 18, 2015.

⁴⁸ Human Rights Watch’s observation that the activities of its researcher came under government surveillance is consistent with the reports of surveillance of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association during his country visit to Kazakhstan in January 2015.

⁴⁹ Human Rights Watch phone interview with Larisa Kharkova, April 4, 2016.

The chairman of an independent trade union representing workers in the oil industry in Aktau, western Kazakhstan told Human Rights Watch that members of his trade union told him that KNB officers had approached them for questioning or visited them at their homes in 2015 and the first half of 2016 in regards to their trade union activism.⁵⁰ He told Human Rights Watch that about ten trade union members had complained about such harassment.

For example, Orman O., an oil worker, told Human Rights Watch that in the summer of 2015, a KNB officer came to his place of work and questioned him for about half an hour about whether he was preparing to go on strike, and warned him about creating instability in the workplace. Orman O. explained to Human Rights Watch that he thought the reason he was singled out was because “I argued [with my manager] about the volume of work we were told to fulfill.”⁵¹

Another oil worker, Timur T., said that a KNB officer came to his home in the early evening in mid-June 2016. Timur T. told Human Rights Watch that the officer, who introduced himself as from the KNB, wanted information about the activities of the trade union, including how many workers were members of the trade union. The officer also accused the trade union leaders of stirring up unrest amongst workers and asked Timur T. whether the union chairman was involved in any kind of religious extremism. Timur T. told Human Rights Watch that the KNB officer warned him not to tell anyone about his visit.⁵²

Legal Action Against Trade Union Leaders

Human Rights Watch documented a handful of cases in which authorities in western and southern Kazakhstan initiated criminal investigations, or used the threat of criminal sanctions, to apparently target outspoken or active independent trade union leaders.⁵³ Authorities have the right to pursue legitimate criminal investigations and hold anyone who has committed a crime accountable under the law. Under international labor law,

⁵⁰ Human Rights Watch interview with Amin Eleusinov, Aktau, June 17, 2016.

⁵¹ Human Rights Watch interview with Orman O., Aktau, June 17, 2016.

⁵² Human Rights Watch interview with Timur T., Aktau, June 17, 2016.

⁵³ In addition to the cases described below, Radio Free Europe/Radio Liberty reported that in 2013, authorities opened a case against Aktau-based trade union leader Akhmet Suiirkhanov on charges of “squandering funds.” Later the case was dropped and Suiirkhanov stepped down as trade union leader. Human Rights Watch could not independently verify the information. (See: Toiken, Saniya, “Trade union leaders speak of pressure,” [“Лидеры профсоюзов говорят о «давлении»”], *Radio Azattyk*, October 6, 2015, <http://rus.azattyq.org/content/lidery-profsoyuzov-zhaloby-na-davlenie/27290133.html> (accessed April 6, 2016).

however, governments should not “use legitimate trade union activities as a pretext for arbitrary arrest or detention or criminal charges.”⁵⁴

Amin Eleusinov was elected chairman of the Union of TOO Oil Construction Company (OCC) in Aktau in April 2011. In early 2013, the Aktau financial police opened a criminal investigation against Eleusinov on suspicion of “misappropriation of funds” after they had received a complaint from several trade union members about accounting for the trade union’s funds. Nurbek Kushakbaev, the OCC trade union’s safety inspector, told Human Rights Watch that the authorities “took all our documents to check them, [and] held on to them for four months. But they didn’t find anything and closed the case. We wrote to the prosecutor’s office and received a response that there was no evidence of a crime.”⁵⁵

Two years later, in January 2015, local authorities reinitiated the previously closed investigation against Eleusinov. On February 3, 2015, the authorities, including armed riot police (OMON) officers, carried out a search of the trade union’s office, confiscating documents and the union’s computer.⁵⁶ As of August 2016, the authorities had still not returned the documents to the OCC trade union.

The move to reopen the case came around the same time the OCC trade union had filed their own complaint against their accountant, whom they discovered, through an independent audit of their finances, had fraudulently used trade union funds.⁵⁷

Eleusinov denies he has done anything wrong and told Human Rights Watch he believes the authorities have targeted him because of his trade union activism.⁵⁸ Kushakbaev pointed out that Eleusinov still has the trust of his trade union:

⁵⁴ ILO CEACR observation on Fiji, 2012; see:

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3080589 (accessed June 28, 2016). Under international labor law, “the arrest and detention, even for short periods, of trade union leaders and members, engaged in their legitimate trade union activities constitute a grave violation of the principles of freedom of association, see: General Survey of 1994 on freedom of association and collective bargaining, para. 31.

⁵⁵ Human Rights Watch interview with Nurbek Kushakbaev, Aktau, September 19, 2015. See also: Toiken, Saniya, “Trade union leader in Mangistau region complains of persecution” [“Лидер профсоюза в Мангистауской области жалуется на гонения”], *Radio Azattyk*, October 1, 2015, <http://rus.azattyq.org/content/eleusinov-profsoyuz-zhaloby-na-gonenia/27280566.html> (accessed August 10, 2016).

⁵⁶ Human Rights Watch interview with Nurbek Kushakbaev, Aktau, September 19, 2015.

⁵⁷ Copy of the order to re-open the investigation on file with Human Rights Watch.

⁵⁸ Human Rights Watch interview with Amin Eleusinov, Aktau, June 17, 2016.

Trade union funds belong to the workers, so if there are any grievances, they'll come from the workers, not the prosecutor's office. But this time it's the prosecutor's office that [reinitiated] the case [against Eleusinov]. What's it to the prosecutor's office? The workers [trade union members] wrote a letter to the local police station and to the prosecutor general's office saying they don't have any grievances against Eleusinov, that they're aware of the trade union's funds. They requested that the authorities drop the case.⁵⁹

On April 9, 2016, the trade union re-elected Eleusinov as chairman for a five-year term.⁶⁰

A trade union leader in western Kazakhstan told Human Rights Watch that the authorities opened a criminal case in December 2014 implicating him and another union member of "large-scale theft." At the time both he and his colleague were involved in mediation negotiations in a labor dispute at their company. They deny any wrongdoing.

The union leader told Human Rights Watch that police summoned him several times for questioning, including at exact times he was scheduled to take part in mediation discussions and in the middle of the night.⁶¹ He believed that investigators deliberately sought to interfere with the mediation process. "I have a meeting at the *akimat* [mayor's office], and at exactly that time, they summon me to the investigator," he told Human Rights Watch.⁶²

In August 2015, the authorities told the trade union leader the case was closed, but despite his requests to see the case closure order in writing, the authorities have not provided him a copy.⁶³

Following trade union leader Asel A.'s attempt to organize a trade union at her company, Company A, she was dismissed from her job (see case box above), and was then twice

⁵⁹ Human Rights Watch interview with Nurbek Kushakbaev, Aktau, June 17, 2016.

⁶⁰ Human Rights Watch interview with Amin Eleusinov, Aktau, June 17, 2016.

⁶¹ Human Rights Watch interview with [name and location withheld], September 18, 2015.

⁶² Ibid.

⁶³ Ibid.

prosecuted on questionable criminal charges of “defamation,” which she believes to be in retribution for her trade union activism.⁶⁴

In early 2013, one of the company employees filed a complaint against her, alleging that Asel A. abused her position in the company to force her and her husband to join the trade union. They claimed that Asel A. threatened them into signing papers but did not know their content. The case was heard in court, and in May 2013, the court acquitted her. Asel A. told Human Rights Watch that the employee apologized to her and told her that the company forced her to file the complaint.⁶⁵

However, the same day the court rendered a not guilty verdict the judge informed Asel A. that another employee at Company A had filed a separate complaint against her, again accusing her of criminal “defamation,” and that the court had accepted the complaint for consideration.⁶⁶

Asel A. described how during the hearing, Company A “brought out people in busses, approximately 20 or 30 people,” to the courthouse to testify against her, and that she noticed that one of the key witnesses was driven to court in a company car.

The court case lasted several months, and in September 2013, Asel A. was acquitted. An appeal’s court upheld the verdict. Asel A. noted that at the appeals’ hearing, neither the alleged victim nor her lawyer bothered to appear in court.

In another instance, Larisa Kharkova, president of the national-tier Confederation of Independent Trade Unions of the Republic of Kazakhstan (KNPKR), told Human Rights Watch that Petro Kazakhstan Oil Products (PKOP), an oil company in Shymkent, southern Kazakhstan, filed a complaint in December 2013 against Erlan Baltabai, chairman of *Dostoinii Trud*, the KNPRK-affiliate union in Shymkent for allegedly unlawful activities, including “inciting social discord.”⁶⁷

⁶⁴ Human Rights Watch interview with Asel A., location and date withheld.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Human Rights Watch interview with Larisa Kharkova, Almaty, October 28, 2014. See also: “Class conflict: bourgeoisie vs. the proletariat,” [“Классовый конфликт: буржуазия против пролетариата”], *RadioTochka*, December 27, 2013, <https://radiotochka.kz/1436-.html> (accessed September 29, 2016).

Kharkova explained that for several months the prosecutor’s office investigated the complaint, but ultimately dropped the case when they could not find evidence of a crime. “We were summoned to the prosecutor’s office, but they didn’t find anything,” she said, “not the prosecutor’s office or the commission that was set up by the prosecutor’s office, and the case was closed.”⁶⁸

In Zhezkazgan, a city in another industrial region in central Kazakhstan, Dosym D., a worker activist employed in Company B, in the mining industry, told Human Rights Watch that local authorities retaliated against him for his activism in 2014. “I supported some construction workers through an internet video appeal... the company, which hadn’t paid their workers in four months, tried to get the prosecutor’s office to open a criminal case against me,” Dosym D. told Human Rights Watch.

Dosym D. said that after posting online his video appeal calling on the company to pay the workers’ salaries, “law enforcement came to my door with a summons for the next morning. It was about 11 p.m. and I had already prepared for bed.”⁶⁹ Dosym D. told Human Rights Watch that the police showed him an open case file at the police station.

What surprised me is that the police [working my case], are from the [department] combating extremism. Show me where in my actions I display extremist behavior! They told me I had to write an explanatory note. I asked ‘on what grounds - for helping those guys [the unpaid workers]?’ I refused.⁷⁰

In the end, the police did not press formal charges. “I consider it intimidation,” Dosym D. told Human Rights Watch.

A Restrictive New Trade Union Law

According to article 14 of the new [Trade Union] law, if we don’t affiliate with an industrial union, the prosecutorial authorities can destroy us. How is

⁶⁸ Human Rights Watch Skype interview with Larisa Kharkova, August 19, 2016.

⁶⁹ Human Rights Watch interview with Dosym D., Zhezkazgan, November 2, 2014.

⁷⁰ Human Rights Watch interview with Dosym D., Zhezkazgan, September 23, 2015.

that voluntary? Where is our independence? The trade union law doesn't afford us either.⁷¹

Kazakhstan's Trade Union Law, adopted in June 2014, imposes serious restrictions on workers' rights to freedom of association and the right to organize.⁷² The law imposes a burdensome two-step registration process that has resulted in some trade unions in Kazakhstan unable to meet re-registration requirements, or re-register only with serious delays, or be denied registration on spurious grounds. The law also obliges trade unions to affiliate with higher-tier unions, which undermines their right to freely determine their structures. Although the Trade Union Law retains some important elements, such as non-interference in the creation of trade unions and the non-discrimination principle, the trade union law is incompatible with international labor rights and human rights standards, as detailed below.

Kazakhstan's Ministry of Healthcare and Social Development has stated publicly that the Trade Union Law was adopted with the aim of better regulating employee-employer relations and to modernize trade unions in Kazakhstan.⁷³ The Federation of Trade Unions of Kazakhstan (FPRK), the largest trade union federation in Kazakhstan, has spoken out in favor of the law as well. Its chair, Abelgazy Kusainov said "...the new legislative base marshals anew the work of trade unions and makes them stronger."⁷⁴

But even before its adoption, the law came under concerted criticism by local and global trade unions, as well as international bodies.⁷⁵ Independent trade union leaders in

⁷¹ Human Rights Watch interview with Vladimir Kurochkin, Almaty, April 15, 2015.

⁷² Entered into force on July 11, 2014.

⁷³ See also the government's June 27, 2014 press release accompanying the adoption of the bill, which states: "the principle of affiliation allows all the unions to systemically participate in forming an action plan at all levels of social partnership, to build a vertical communication link between workers and trade union leaders and their organizations to make decisions on key questions that touch on citizens' labor and social-economic rights and interests on a consolidated basis." "Press-release to the Law of the Republic of Kazakhstan on Trade Unions," ["Пресс-релиз к Закону Республики Казахстан «О профессиональных союзах» от 27 июня 2014 г., July 4, 2014"], Ministry of Healthcare and Social Protection website, <http://pda.mzsr.gov.kz/ru/node/310420> (accessed August 25, 2016).

⁷⁴ Kusainov, Abelgazy, "Modernizing Trade Unions" ["Модернизация профессиональных союзов"], *Kazhstanskaya Pravda*, July 16, 2014, <http://www.kazpravda.kz/interviews/view/modernizatsiya-professionalnih-souзов> (accessed August 25, 2016).

⁷⁵ The Labor Confederation of Russia, "ITUC criticizes Kazakhstan's draft Trade Union Law" ["МКП критикует проект Закона Казахстана «О профсоюзах»"], Labor Confederation of Russia website, February 17, 2014, <http://www.ktr.su/content/news/detail.php?ID=1713> (accessed September 6, 2016). See also: IUF, "Two years after

Kazakhstan spoke out against the adoption of the bill and called on President Nazarbaev to veto it.⁷⁶ In the words of one Almaty-based trade union chairman:

I spoke out against the law because they're trying to create unions from the top down. My position is that building unions should start from the bottom and work up – the reason being that the foundation of a union is its members.⁷⁷

The ILO's Committee on the Application of Standards concluded two years in a row, in 2015 and 2016, that Kazakhstan must take steps to “amend the provisions of the Trade Union Law of 2014 consistent with the Convention.”⁷⁸ The Ministry of Foreign Affairs of Kazakhstan in an October 2016 letter to Human Rights Watch noted that ILO's Committee on the Application of Standards “provided a number of observations to the Government of the Republic of Kazakhstan on the implementation of the Convention 87 provisions, concerning the aspects of state regulation of the trade unions and employees' associations work in Kazakhstan,” and said that “The Kazakhstan government is committed to follow up the observations made by the ILO Committee.”⁷⁹ No further details were provided in the letter, and as of this writing, Kazakhstan has not introduced any changes to the Trade Union Law to bring it in line with ILO and international standards.

Kazakhstan's Trade Union Law envisages a three-tier trade union structure with national trade union associations at the highest level, industrial trade unions a tier lower, and local trade unions at the company level (see text box below). Local unions represent workers employed at a single company or multiple companies in the same industry. Industrial

Zhanaozen, government of Kazakhstan plans law to bring unions under full state control,” IUF website, December 18, 2013, <http://www.iuf.org/w/?q=node/3031> (accessed September 6, 2016).

⁷⁶ “Independent trade unions call on President Nazarbaev to veto the draft trade union law,” [“Наложить veto на проект закона “О профсоюзах” просят президента Казахстана независимые профсоюзы”], *RadioTochka*, June 19, 2014, <http://radiotochka.kz/2868-.html> (accessed September 29, 2016).

⁷⁷ Human Rights Watch interview with Vladimir Kurochkin, Almaty, April 15, 2015.

⁷⁸ See, for example: Conference Committee on the Application of Standards, Extracts from the Record of Proceedings, One Hundred and Fourth Session, Geneva, 2015, point 140, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_412826.pdf (accessed September 29, 2016). See: Pantland, Walton, Kazakhstan: legal shackles on workers' movement challenged, Union Solidarity International, June 23, 2015, <https://usilive.org/kazakhstan-legal-shackles-on-workers-movement-challenged> (accessed September 6, 2016). See also: Hugh Williamson, Dispatches: Kazakhstan Slammed Over Treatment of Workers, June 9, 2016, <https://www.hrw.org/news/2016/06/09/dispatches-kazakhstan-slammed-over-treatment-workers> (accessed August 2, 2016).

⁷⁹ Letter from J. Omarov, acting executive secretary, Ministry of Foreign Affairs, to Human Rights Watch, October 19, 2016.

unions represent workers employed in the same industry, while national tier trade unions represent workers at the national level, and are comprised of industrial trade unions. Territorial associations group together industrial or local trade unions in the same region. An “initiative group” of three workers or more can organize, but are not a legal entity.

Trade Union Structures in Kazakhstan

National trade union associations. These represent workers at the national level, including in social partnership agreements with the national government. They are comprised of industrial trade unions, with “member organizations,” which can be lower-tier trade unions, or “initiative groups” of workers, in over half of Kazakhstan’s 14 regions, as well as in Astana and Almaty.

Industrial trade unions (also translated as ‘sector-based trade unions’). These represent workers at the industrial level, including in social partnership agreements pertaining to Kazakhstan’s industries. They are comprised of either over half the total number of workers working in that industry or related industries, or of “member organizations,” which can be local trade unions, or “initiative groups” of workers, in that industry in more than half of Kazakhstan’s 14 regions, as well as in Astana and Almaty. By law, industrial trade unions must become affiliate members of a higher-tier national trade union association, and may not remain autonomous.

Local trade unions. These represent workers employed at a single company or multiple companies in the same industry. They may conclude collective agreements at the company level. Local trade unions can range in size from 10 to several thousand workers. By law, local trade unions must become an affiliate member of a higher-tier industrial trade union, and may not remain autonomous.

“Initiative groups” of workers. These are groups of three or more workers in a single company. They do not have legal status, but serve as sub-divisional units of a local or industrial trade union for the purposes of confirming their status.

Territorial associations of trade unions. These represent workers and trade unions at the regional level, including in social partnership agreements with regional authorities. A territorial association must affiliate with a national trade union.

Burdensome Registration and Mandatory Affiliation Requirements

Under the new Trade Union Law, trade unions are required to fulfill a burdensome two-step registration process. To form a trade union, a group of at least ten workers must hold a

congress and adopt a charter and form a trade union body.⁸⁰ The trade union becomes a legal entity upon registration with the Ministry of Justice. Once a trade union registers with the Ministry of Justice, it must within six months confirm its status by proving its membership base and affiliation to a higher-tier union.⁸¹ If a union does not confirm its status within six months, it remains in legal limbo, and the Ministry of Justice can move to strip the union of its registration.⁸²

The mandatory affiliation requirement does not give local and industrial trade unions the option of remaining independent of a higher-tier trade union, a requirement in law which seriously undermines their right to freely choose their structures. The law also creates burdensome obstacles to the creation of industrial and national level trade unions by introducing requirements regarding the geographic location of affiliated unions or workers' groups.

As such, Kazakhstan's Trade Union Law violates the principle of freedom of association enshrined in ILO Conventions 87 and 98, and the UN's ICESCR and ICCPR.⁸³ The ILO has repeatedly expressed concern about the registration and mandatory affiliation requirements in Kazakhstan's Trade Union Law, including before the law's adoption in its 2013 technical comments.⁸⁴

In its 2013 comments on the draft law, the ILO noted that requirements to confirm one's status as an industrial union "imposes a trade union monopoly at the sectoral [industrial] level" whereby a majority of employees in the sector are required to affiliate into one trade union body, and could "further result in a de facto trade union monopoly at the enterprise [company] level."⁸⁵ The ILO recommended that the section be amended "to guarantee the right of workers to form and join organizations of their own choosing."⁸⁶

⁸⁰ Law on Trade Unions, art. 8.

⁸¹ Law on Trade Unions, art. 10, point 2.

⁸² *Ibid.*, point 3.

⁸³ ILO Convention 87 stipulates laws should not "unduly affect organizational structure and composition of the unions." ILO Freedom of Association and Collective Bargaining Training Sheet (copy on file with Human Rights Watch).

⁸⁴ ILO comments to the draft law, June 2013 (copy on file with Human Rights Watch).

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR), in its 2015 Observation, repeated these concerns about burdensome registration requirements and mandatory affiliation requirements, in particular "the requirement of excessively high thresholds [of workers] and to establish a higher-level organization (e.g. a sector-based trade union) conflicts with Article 5 of the Convention [No. 87]," and "the mandatory affiliation of sector-based, territorial and local trade unions to a national trade union association within six months following their registration."⁸⁷ The ILO's CEACR urged "the Government to take the necessary measures in order to amend the abovementioned legislative provisions accordingly."⁸⁸

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association raised similar concerns and recommended the government to "revise the new law on trade unions to bring it in line with international standards as highlighted by the International Labour Office in its memorandum of technical comments on the draft law on trade unions of Kazakhstan."⁸⁹

Some independent trade union leaders reported they felt they did not have any real choice about trade union affiliation, since the Federation of Trade Unions of Kazakhstan (FPRK) was their only viable option at the time they were required to undergo re-registration, in the year following the adoption of the Trade Union Law.⁹⁰

Nurbek Kushakbaev, a safety inspector at a local trade union in western Kazakhstan, expressed concern about the union losing its ability to make independent decisions because of the mandatory affiliation requirement. He told Human Rights Watch: "The rest of the trade unions [in Mangistau region] all are members of the Federation [of Trade

⁸⁷ Observation (CEACR) - adopted 2015, published 105th ILC session (2016) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) - Kazakhstan (*Ratification: 2000*)
http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3253690,103542,Kazakhstan,2015 (accessed on August 3, 2016).

⁸⁸ Ibid.

⁸⁹ Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, OHCHR, January 27, 2015, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=15517&LangID=E> (accessed on September 3, 2016).

⁹⁰ The Confederation of Independent Trade Unions of the Kazakh Republic was only registered in February 2016 and the Labor Confederation of Kazakhstan, the third national trade union association in Kazakhstan, does not have industrial unions in all sectors of Kazakhstan's economy.

Unions of Kazakhstan]... Local unions are required to follow the decisions of the [industrial] unions. It's written in their charter. And the law also states it.”⁹¹

Another trade union activist in the eastern Kazakhstan region, Ivan Bulgakov, the head of the Labor Protection union, described in an online interview the conundrum he and fellow workers were facing:

The only association that my compatriots and I could join is the regional council of trade unions of the FPRK. But we [previously] left that union because it wasn't doing anything [to protect our rights] and we don't want to go back to them. It's a vicious circle. [The authorities] close us down, and we're unable to [carry out our activities], and even if we join the FPRK-union, we won't work because we'll be under control. There is no alternative!⁹²

Human Rights Watch also documented one case in which a local trade union attempted to affiliate with a higher-tier union in that industry, but was refused.

Vladimir Kurochkin was chairman of the Almaty-based “Rukhaniyat” trade union of culture and sport workers in 2015, when the trade union was required to undergo re-registration as a local union of workers in the sports and arts industry, in accordance with the Trade Union Law. Kurochkin told Human Rights Watch that their option for higher-tier affiliation, the industrial trade union of cultural and sport workers, declined “Rukhaniyat's” request when he approached them in 2014, as their charter did not account for local trade union affiliates.⁹³

“Rukhaniyat” then opted to join the industrial trade union of science and education workers, however, the industrial union did not successfully confirm its status within the stipulated six months, leaving “Rukhaniyat” again without higher-tier affiliation. In

⁹¹ Human Rights Watch interview with Nurbek Kushakbaev, Aktau, September 19, 2015.

⁹² “Kazakhstan intent on closing down all independent trade unions through the courts” [“В Казахстане через суды намерены закрыть все независимые профсоюзы”], *KlassProf*, June 30, 2015, <http://www.klassprof.org/news/248-v-kazahstane-cherez-sudy-namereny-zakryt-vse-nezavisimye-profsoyuzy.html> (accessed September 6, 2016).

⁹³ Human Rights Watch interview with Vladimir Kurochkin, Almaty, April 15, 2015.

February 2016 “Rukhaniyat” finally managed to affiliate fully with another industrial-tier trade union, the Industrial Trade Union of Budgetary Organizations.⁹⁴

Delays and Denials of Registration

Following the introduction of the Trade Union Law in 2014, some registered trade unions in Kazakhstan faced delays and denials in response to their efforts to re-register in accordance with the burdensome demands of the new law. Independent trade union leaders interviewed by Human Rights Watch described the challenges of meeting burdensome registration requirements, and how government officials variously delayed processing or denied re-registration applications despite the unions’ good faith efforts to re-register in compliance with the requirements of the new law.

Existing trade unions were given one year from the adoption of the Trade Union Law, until July 11, 2015, to re-register with the Ministry of Justice.⁹⁵ Given that higher-tier trade unions, or industrial and national trade unions, had to bring their charters into compliance with the law, in some cases, restructuring their organizations to meet the law’s representational and geographic requirements, trade unions requested that the Ministry of Justice extend the deadline to re-register. However, their request was not granted.

Despite its efforts to comply with the trade union’s re-registration requirements, the then-Confederation of Free Trade Unions of Kazakhstan (KSPK), an independent national-tier trade union, was unable to meet the geographical and representational requirements of the Trade Union Law and as such was denied re-registration. Larisa Kharkova, KSPK president, told Human Rights Watch that almost without exception, not a single industrial-tier trade union that sought or would have sought affiliation with KSPK, was able to re-register in the stipulated one-year time frame.⁹⁶

⁹⁴ Human Rights Watch telephone interview with Vladimir Kurochkin, November 8, 2016.

⁹⁵ Law on Trade Unions, Art. 33.

⁹⁶ Human Rights Watch phone interview with Larisa Kharkova, April 6, 2016. See also: “The Deputy Minister of Justice of Kazakhstan de facto closed down independent trade unions in Kazakhstan” [“Заместитель министра юстиции Казахстана де-факто закрыл независимые профсоюзы Казахстана”], *RadioTochka*, October 29, 2015, <http://radiotochka.kz/17706-zamestitel-ministra-yusticii-kazahstana-de-fakto-zakryl-nezavisimye-profsoyuzy-kazahstana.html> (accessed September 29, 2016).

KSPK's first re-registration denial was issued on May 25, 2015, on grounds that the trade union's application packet did not comply with requirements under the Civil Code, the Law on Public Associations, and the Trade Union Law. In particular, the Ministry of Justice found that KSPK shared whole or a substantive part of its name with another legal entity, a violation of the Civil Code; that it failed to indicate in full the competence of higher organs, a violation of the Law on Non-Commercial Organizations; and that KSPK failed to describe in detail in its charter the procedure for providing its members information about the procedure for collecting dues, as is required by the Trade Union Law.⁹⁷ The denial also stated that KSPK needed to concretize the procedures for creating various worker bodies under the trade union.

KSPK addressed the Ministry of Justice's concerns and re-filed their application for re-registration on June 8, 2015. The Ministry of Justice denied KSPK's re-registration a second time on grounds that KSPK did not show that it has affiliate industrial unions in over half the regions of Kazakhstan, including in cities of importance and the capital, despite the fact that the union had an additional six months to confirm its status.⁹⁸ KSPK tried a third time, but the Ministry of Justice denied the union re-registration on July 21.⁹⁹ As the one-year deadline for re-registration had passed on July 11, by which time several of their affiliate industrial unions were similarly unable to re-register, KSPK could no longer meet the requirements of the Trade Union Law, and was left without registration.

The International Trade Union Confederation (ITUC), of which KSPK is an associate organization, noted in a statement: "The refusal to register the CFTUK [KSPK], based on a number of arguments concerning the charter of the organisation, demonstrated how the legislation can be used to make it difficult for unions to gain recognition, and came at a time when the government's attitude to the unions was becoming increasingly restrictive."¹⁰⁰

⁹⁷ Trade Union Law, art. 9, Subpoints 8 and 9; Civil Code, art. 38, point 2; Law on Public On Associations, art. 39. Order no. 93, copy on file with Human Rights Watch. See also: Confederation of Independent Trade Unions of Kazakhstan, "Independent Trade Unions in Kazakhstan under threat" ["Независимые профсоюзы Казахстана под угрозой"], Kazakhstan International Bureau for Human Rights and Rule of Law website, July 14, 2015, http://bureau.kz/novosti/iz_drugikh_istochnikov/nezavisimye_profsoyuzy_kazakhstana_pod_ugrozoi (accessed September 6, 2016).

⁹⁸ Copy of denial on file with Human Rights Watch.

⁹⁹ KSPK denied a third time on grounds that they did not provide documentation of KSPK-affiliated sectoral unions in more than half the country's regions, important cities and the capital (copy of the decision on file with Human Rights Watch).

¹⁰⁰ ITUC, Independent Union Denied Registration, Kazakhstan page of ITUC Global Rights Index, May 25, 2015, <http://survey.ituc-csi.org/Kazakhstan.html#tabs-3> (accessed August 15, 2016).

Unable to re-register, KSPK began the process of registering anew. In February 2016, the Ministry of Justice finally registered the Confederation of Free Trade Unions of Kazakhstan as a new legal entity with a new name, the Confederation of Independent Trade Unions of the Republic of Kazakhstan (KNPRK).

Larisa Kharkova, president of KNPRK, told Human Rights Watch in June 2016 that she feared KNPRK would be unable to confirm their status as a national association due to the challenges of meeting geographic and threshold membership requirements.¹⁰¹ “It’s so difficult,” she said. “Registering the confederation is itself a lengthy process..., but getting registered is not enough. You also have to confirm your status. And to confirm your status, you have to build this enormous structure. For what? For whom?” Kharkova continued:

If a trade union is created, it should fulfill its role and functions, it should work according to its program... but no, the registration process continues, and as a result, we’re not moving anywhere. We can’t do the work that our trade union affiliates need from us because we devote huge amounts of time and money to register this structure.¹⁰²

As of publication, KNPRK still had not confirmed their status.

One of KNPRK’s local trade union affiliates, the “*Dostoinii Trud*” trade union of oil workers” in Shymkent, in southern Kazakhstan, faced similar difficulties re-registering. Erlan Baltabai, the trade union’s chairman, told Human Rights Watch that he made several attempts to re-register his trade union as a local trade union, but was unsuccessful, in part because of processing delays by the Ministry of Justice.

On one occasion, his union’s application packet was rejected because the citizens’ assistance center, tasked with receiving the application packet and sending it to the Ministry of Justice, had improperly registered the file, Baltabai said: “It’s their fault, but still, they returned it to us. They drag out the time and 15 days later tell us that it turned out we didn’t register it properly, and [that] you need to file again!”¹⁰³ Another time the Ministry

¹⁰¹ Human Rights Watch phone interview with Larisa Kharkova, June 20, 2016.

¹⁰² Human Right Watch Skype interview with Larisa Kharkova, August 19, 2016.

¹⁰³ Human Rights Watch interview with Erlan Baltabai, Shymkent, September 25, 2015.

of Justice returned their application citing an inconsistency in the trade union’s legal address. The trade union corrected the inconsistency, but when the union tried again, it was denied registration on grounds that the one-year timeframe to re-register had run out.¹⁰⁴ Finally in December 2015, after the trade union filed its paperwork under a new name, the Ministry of Justice registered it as the “Local Dostoinii Trud trade union of oil and gas industry workers”.¹⁰⁵

Nurbek Kushakbaev of the OCC trade union in western Kazakhstan, which intends to affiliate with KNPRK, told Human Rights Watch that the OCC trade union had begun the re-registration process in June 2015 but was denied re-registration on grounds the deadline had passed:

On June 24, we submitted our re-registration documents, and on July 9, they gave us the answer that our [application] doesn’t meet the requirements of the law... they were clearly delaying, and then it was a refusal. We submitted our documents [again] on July 11. They told us that...we had missed the [one year] deadline.¹⁰⁶

The trade union contested the denial in court in October 2015, but the court ruled in the Ministry’s favor, and upheld the decision on appeal.¹⁰⁷

Unable to re-register their existing trade union, the Oil Construction Company trade union of workers began the process of registering a new trade union in 2015. Amin Eleusinov, the trade union’s chairman, and Nurbek Kushakbaev told Human Rights Watch that the union has tried to register eight times in the last year, but that each time, the Ministry of Justice finds a new reason to deny the trade union registration.¹⁰⁸

Some of the reasons given by the Ministry of Justice for denying the OCC trade union registration appear arbitrary and in some cases, outright excuses to deny registration. The

¹⁰⁴ Copy of registration denial on file with Human Rights Watch.

¹⁰⁵ Human Rights Watch phone interview with Erlan Baltabai, November 7, 2016.

¹⁰⁶ Human Rights Watch interview with Nurbek Kushakbaev, Aktau, September 19, 2015. Copy of denial on file with Human Rights Watch.

¹⁰⁷ Copies of OCC trade union’s lawsuit and court decisions on file with Human Rights Watch.

¹⁰⁸ Human Rights Watch interview with Amin Eleusinov and Nurbek Kushakbaev, Aktau, June 1, 2016.

reasons for denial include minor inconsistencies in Kazakh and Russian translation; the use of the word “conference” instead of “council” or “congress;” and the indication in the registration packet that the local trade union would affiliate with an international trade union, which the Trade Union Law does not explicitly allow—but neither prohibits. In the denial dated April 29, 2016, one of the reasons cited by the Ministry of Justice was the union’s use of the word “profsoyus,” a short form for the Russian “professionalnii soyus,” (trade union) in its application packet, rather than the full terminology.¹⁰⁹

Amin Eleusinov told Human Rights Watch that the Ministry of Justice had registered other trade unions using the same template for their charter as the OCC trade union had used, but in their case, the Ministry of Justice refuses to register them:

All of the trade unions that had passed registration, they passed with the same type of documents that we submitted...but now, with the same kind of submitted documents, [the Ministry of Justice] doesn’t allow us to pass [registration]. Instead, they find “mistakes.”¹¹⁰

Authorities have also denied registration to workers attempting to organize for the first time. In late 2014, an initiative group of miners in Zhezkazgan began the process of registering a new union. The group of 10 workers held a meeting as required in national law, drafted their charter in consultation with lawyers, and submitted their application for registration as a local trade union under the name “Local trade union of mining, coal, iron and steel industry workers Zhezkazgan.” The Ministry of Justice denied the trade union registration three times between February and March 2015 on technical grounds, including because the trade union had indicated it would open branch offices, which is neither foreseen in nor prohibited by the Trade Union Law, and because one of the initiative members has outstanding debt.¹¹¹

Andrei Prigor, a labor activist who was involved in attempting to register the trade union, told Human Rights Watch that after the workers’ repeat attempts to register, they came to

¹⁰⁹ Copy of April 29, 2016 denial on file with Human Rights Watch.

¹¹⁰ Human Rights Watch interview with Amin Eleusinov, Aktau, June 17, 2016.

¹¹¹ Human Rights Watch interview with Dosym D., Zhezkazgan, September 23, 2015. Copies of denials on file with Human Rights Watch.

the conclusion that no matter what changes they made to the union’s charter, any further attempts would also be unsuccessful.¹¹²

Lyudmila Ekzarkhova, a journalist, reported that over a four year period beginning in 2011, she and other journalists attempted 12 times to register a trade union of journalists and media workers.¹¹³ In order to comply with the Ministry of Justice’s various demands, the trade union made repeated changes to their charter, changed the name of the union three times, and revised the list of founders.¹¹⁴ Ekzarkhova explained to Human Rights Watch:

In Kazakhstan, no organization can work without official registration – and in the last three years, doing so carries criminal sanctions. All the time [we were in the process of registering] we couldn’t begin our work, train journalists, carry out seminars, or defend their labor rights.¹¹⁵

After this multiple-year effort that spanned the adoption of the new Trade Union Law, the Ministry of Justice finally registered the Trade Union of Mass Media and Telecommunication Workers as an industrial trade union on December 11, 2015.¹¹⁶ The trade union had six months, until June 2016, to confirm its status with the Ministry of Justice, or risk closure. By publication of this report, however, the industrial-level Trade Union of Mass Media and Telecommunication Workers was unable to confirm its status with the Ministry of Justice. Furthermore, in mid-October 2016, an Almaty Department of Government Revenue office sent a letter addressed to Ekzharkova “inviting the leaders of trade unions which did not register in a timely manner to determine further actions toward their re-registration or liquidation.”¹¹⁷

As a party to the ICESCR, Kazakhstan undertook the binding obligation to “take the necessary steps...to adopt such legislative or other measures as may be necessary to give effect to” the right to form and join trade unions. Instead, Kazakhstan’s Trade Union Law

¹¹² Human Rights Watch interview with Andrei Prigor, Kokshetau, April 28, 2015.

¹¹³ “Trade union of mass media workers registered in Kazakhstan” [“Профсоюз работников масс-медиа зарегистрирован в Казахстане”], *RadioTochka*, December 23, 2015, <http://radiotochka.kz/19706-profsoyuz-rabotnikov-mass-media-zaregistrovan-v-kazahstane.html> (accessed September 29, 2016).

¹¹⁴ *Ibid.*

¹¹⁵ Human Rights Watch Skype interview with Lyudmila Ekzarkhova, August 17, 2016.

¹¹⁶ *Ibid.*

¹¹⁷ Copy of the letter on file with Human Rights Watch.

has been used as a gatekeeper for the government to deny registration to some trade unions. It should be amended as a first step towards meeting international obligations on the right freedom of association.

Restrictions On Who Can Form and Join Trade Unions

In contravention of international norms, Kazakh law bans outright certain categories of workers from forming unions, including judges, firefighters, prison staff, police, and prosecutors.¹¹⁸

Although there are some permitted exceptions on workers' right to organize, any exception must be interpreted narrowly and not infringe on the essence of the right to organize in order to be compatible with international labor and human rights law.¹¹⁹ The ILO has repeatedly called on Kazakhstan to amend its legislation to allow judges, firefighters, and prison staff the right to join trade unions, including at the International Labour Conference in 2015 and 2016, and in CEACR comments on Kazakhstan.¹²⁰

Restrictions on Cooperation with Global Trade Unions

Under international human rights law, trade unions have the right to join global trade unions of their choosing. While this right is protected in Kazakhstan's Trade Union Law, and national-tier trade unions in Kazakhstan are full or associate members of the International Trade Union Confederation (ITUC), Kazakh law does not allow trade unions in Kazakhstan to receive any financial support from their international trade union

¹¹⁸ A public association called the "Union of Judges in Kazakhstan" was formed on December 19, 1996, but it is not a registered trade union, and as such, does not have the same legal status and cannot carry out collective bargaining or call a strike, for example.

¹¹⁹ Under Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), states party undertake to ensure "the right of everyone to form and join the trade union of his choice, subject only to the rules of the organizations concerned, for the promotion and protection of his economic and social interests." Under article 2 of ILO Convention 87, it is the right of workers "without distinction whatsoever, to establish and join organizations."

¹²⁰ ILO Observation (CEACR) - adopted 2014, published 104th ILC session (2015) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Kazakhstan, http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3192111 (accessed September 27, 2016). In its comments on the draft bill in June 2013, the International Labour Organization commented that police and military can be the only possible exception to the application of Convention 87.

affiliates.¹²¹ In addition, Kazakhstan's constitution and legislation on public associations prohibit foreign unions from operating in the country.¹²²

The ILO's CEACR 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, and 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.¹²³

Kazakhstan was also criticized for banning trade unions from receiving foreign funding at the International Labour Conference in June 2015 and June 2016.

¹²¹ Constitution of the Republic of Kazakhstan, art. 5, point 4.

¹²² Ibid.

¹²³ CEARC: Individual Observation concerning Freedom of Association and Protection of the Right to Organize Convention, 1948 (No 87) Kazakhstan (ratified: 2000) adopted 2014, published 104th ILC session (2015) http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3192111 (accessed August 13, 2015).

III. Restrictions on Collective Bargaining and Right to Strike

New Labor Code

Kazakhstan’s new Labor Code undermines workers’ right to collective bargaining and restricts the right to strike as it is guaranteed in international human rights law. The law was adopted in November 2015 and has served to undermine the position of trade unions’ bargaining power with employers.¹²⁴

While the government has claimed that the law was adopted with a view to “maintaining an optimal balance between social protection and justice on the one hand, and economic efficiency on the other,” a lawyer specializing in labor relations estimates that it is mostly employers who benefit from the amendments. In her words, “the aim of the code is supposedly to liberalize labor relations, that is, to widen rights and freedoms, but mostly just for employers.”¹²⁵

The government also claimed the law was drafted to “clearly define the limits of state intervention in labor relations,”¹²⁶ but workers and a labor lawyer interviewed by Human Rights Watch expressed concern that in reducing the level of social and economic state guarantees, the position of workers vis-à-vis their employers has been weakened.¹²⁷

Trade unions in Kazakhstan, including the Federation of Trade Unions of Kazakhstan (FPRK), the largest trade union in the country, provided critical feedback on drafts of the bill, as did the International Labour Organization, which was requested by the government

¹²⁴ Lawmakers began drafting a new Labor Code following President Nazarbaev’s announcement in May 2015 of ‘The 100 concrete steps to implement the five institutional reforms.’ Point 83 calls for “the liberalization of labour relations and development of a new labour code.” “The 100 concrete steps to implement the five institutional reforms,” para. 83.

¹²⁵ Human Rights Watch interview with Svetlana Katorcha, email correspondence. See also: Sevostyanova, Irina, “New draft trade union law allows for the protection of workers’ rights, claims the relevant ministry” [“Новый проект трудового кодекса обеспечит защиту интересов работников, уверяют в профильном министерстве”], *Vlast.kz*, August 27, 2015, <https://vlast.kz/obsshestvo/12736-novyj-proekt-trudovogo-kodeksa-obespecit-zasitu-interesov-rabotnikov-uveraut-v-profilnom-ministerstve.html> (accessed September 6, 2016).

¹²⁶ *Ibid.*

¹²⁷ Human Rights Watch interview with Nikolay N., Kokshetau, September 20, 2015. Human Rights Watch interview with Svetlana Katorcha, Almaty, April 29, 2016.

of Kazakhstan to provide expert comments on the draft Labor Code.¹²⁸ The FPRK stated in a news release on its website that “the principles and rules of the redrafted Labor Code strengthen the position of the employer to the detriment to worker's rights.”¹²⁹

Collective bargaining requirements remain overly burdensome on workers and require them to go through lengthy mediation procedures with their employer before they can exercise their constitutionally and internationally protected right to strike.¹³⁰ In its September 2015 technical assessment of the draft code, the ILO noted that the proposed changes in the Labor Code to the regulation of a collective labor dispute “restricts even more the rights of employees to present demands to employers in relation the application of the labour legislation or to the execution or changes in the provisions of collective agreement.”¹³¹ The new Labor Code also fails to specify in clear language the sectors of the economy in which workers are prohibited from going on strike.

The UN Special Rapporteur on the rights to freedom of peaceful assembly and association raised similar concerns and viewed “the legal framework regulating strikes as more focused on limiting strikes than on facilitating the exercise of the right to freedom of association.”¹³²

The new Labor Code removed language obliging employers to “provide the conditions necessary for elaborating and concluding the collective bargaining agreement”.¹³³ It also gives wide discretion to companies to dismiss employees without warning or just cause, prompting fears that union members could be threatened to keep silent or risk losing their job.¹³⁴ As Nikolay N., one trade union leader, put it: “With the new Labor Code, unemployment is our biggest fear. We’ll turn into slaves. [Employers] will say, ‘if you want to work, sit down and keep quiet.’”¹³⁵ Another trade union leader in western Kazakhstan

¹²⁸ See for example: FPRK, “Trade Unions – for the protection of workers rights!” [“Профсоюзы – за сохранение прав работника!”], FPRK website, July 23, 2015 <http://www.fprk.kz/ru/node/992> (accessed August 2, 2016); and FPRK, “The Labor Code should protect rights” [“Трудовой Кодекс должен защищать права”], FPRK website, September 7, 2015, <http://www.fprk.kz/ru/node/1143> (accessed August 2, 2016).

¹²⁹ FPRK, Trade Unions – for the protection of workers’ rights, FPRK website, July 23, 2015, <http://www.fprk.kz/en/node/999> (accessed August 2, 2016).

¹³⁰ Labor Code, Chapter 16.

¹³¹ ILO, “Memorandum of Technical Comments on the Draft Labour Code of the Republic of Kazakhstan,” September 2015. Copy on file with Human Rights Watch.

¹³² Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, para 36.

¹³³ Labor Code, art. 156.

¹³⁴ Labor Code, arts. 51 and 52.

¹³⁵ Human Rights Watch interview with Nikolay N., Kokshetau, April 27, 2015.

echoed this sentiment, saying, “If they adopt the new Labor Code, then trade unions aren’t going to be able to help anyone. Everyone will be under threat of getting fired—no one is going to make a peep.”¹³⁶

The ILO made specific recommendations in its September 2015 technical assessment regarding certain definitions of terms in the Labor Code, some of which were not adopted.¹³⁷ For example, the ILO recommended Kazakhstan include a definition of “collective bargaining” and “discrimination,” and to amend the term “collective bargaining agreement,” to bring them into compliance with international labor law.¹³⁸ The ILO’s technical assessment also raised concern about decreasing the number of entitlements afforded to employees’ representatives.¹³⁹

Collective Bargaining

Collective bargaining, or any negotiations between representatives of an employer and employees, for example relating to the terms of employment or the regulation of an industrial dispute, can take place at the company, industrial, and national level in Kazakhstan.¹⁴⁰ Kazakhstan’s Labor Code and Trade Union Law give trade unions the right to carry out negotiations and to conclude collective bargaining agreements.¹⁴¹ The Labor Code regulates collective bargaining negotiations, including in the context of a collective dispute, and lays out the content and structure of collective agreements.¹⁴²

Human Rights Watch documented how some independent trade unions that sought to conclude or enter into collective agreements faced undue interference, delays, and

¹³⁶ Human Rights Watch interview with Askhat A., Aktau, September 18, 2015.

¹³⁷ ILO, “Memorandum of Technical Comments on the Draft Labour Code of the Republic of Kazakhstan,” September 2015. Copy on file with Human Rights Watch.

¹³⁸ The ILO comments also suggest including a specific definition of sexual harassment, which the law does not provide, as it is a “serious form of sex discrimination,” para. 10.4 of the ILO technical comments.

¹³⁹ ILO, “Memorandum of Technical Comments on the Draft Labour Code of the Republic of Kazakhstan,” September 2015. Copy on file with Human Rights Watch.

¹⁴⁰ The ILO has defined collective bargaining as “all negotiations which take place between an employer, a group of employers or one or more employers’ organisations, on the one hand, and one or more workers’ organisations, on the other, for: (a) determining working conditions and terms of employment; and/or; (b) regulating relations between employers and workers; and/or; (c) regulating relations between employers or their organisations and a workers’ organisation or workers’ organisations.” ILO Convention No. 154, art. 2.

¹⁴¹ Legislation also provides trade unions the right to conclude regional, industrial and national agreements as well. Trade Union Law, art. 16, point 8 and art. 18, point 4.

¹⁴² Labor Code, art. 157.

restrictions on participating in collective bargaining negotiations. Restrictions on collective bargaining in the context of an industrial dispute are discussed in the following section on the right to strike.

Although the government made claims that the new Labor Code, which limits government regulation of employer-employee relations, would enable trade unions to better defend their interests, labor legislation in Kazakhstan does not provide independent trade unions the necessary conditions to engage in free and voluntary collective bargaining as stipulated in international law.¹⁴³

The basic principle that businesses of all sizes have a responsibility to respect human rights, including workers' rights, has achieved wide international recognition. When it comes to collective bargaining, the ILO's Committee on 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 a relationship of confidence between the parties."¹⁴⁴

Human Rights Watch documented several cases of company interference in collective bargaining negotiations or excessive delays in concluding collective agreements, including in the cases below.

In Shymkent, in southern Kazakhstan, for example, the *Dostoinii Trud* union of oil workers fought delays and inaction by company management in response to their efforts to join the company's existing collective agreement.

In January 2012, *Dostoinii Trud* union members at TOO PetroKazakhstan Oil Products (PKOP) elected a new chairman, Erlan Baltabai, to lead the union in negotiations to join the company's collective agreement, which had been negotiated by other unions at the

¹⁴³ Vaal, Tamara, "Trade Unions Should Become Stronger - MZSR" ["Профсоюзы должны стать сильнее — МЗСР"], *Vlast.kz*, September 3, 2015, <https://vlast.kz/novosti/12832-profsouzy-dolzny-stat-silnee-mzsr.html> (accessed September 6, 2016).

¹⁴⁴ Complaint against the Government of the 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.

company.¹⁴⁵ On February 3, Baltabai initiated collective bargaining negotiations in a letter to the director of PKOP.¹⁴⁶ Although the Labor Code states that employers have three days to review the demands of workers in the context of a labor dispute—a provision in both the old and new labor codes—after a month, PKOP still had not responded in writing to *Dostoinii Trud* trade union.

The lack of a response from company management prompted the union to appeal to PKOP’s parent company, KazMunaiGas Exploration Production JSC, and to the regional mayor’s office for assistance.¹⁴⁷ In April, *Dostoinii Trud* trade union sent another letter to the district prosecutor’s office, about “violations of the legal rights and interests of PKOP workers” in the context of collective bargaining negotiations, in particular that their “efforts to join the collective agreement...went ignored by PKOP company management.”¹⁴⁸

In July, a representative of KazMunaiGas Exploration Production JSC visited PKOP and agreed to *Dostoinii Trud* trade union joining the collective agreement, and tasked PKOP management to take steps in this regard.¹⁴⁹ However, PKOP management continued to stall, according to Baltabai. It was only in early September 2012, seven months after *Dostoinii Trud* initiated negotiations with company management, that PKOP confirmed in writing that *Dostoinii Trud* trade union’s request to join the collective agreement had been approved.¹⁵⁰

Soon after, in early 2013, negotiations for a new collective agreement began at PKOP. Trade union representatives from *Dostoinii Trud* trade union, as well as the oil and gas industry Federation of Trade Unions of Kazakhstan affiliate trade union participated in negotiations. By August, however, *Dostoinii Trud* and PKOP management still could not come to an agreement on 11 outstanding issues, which included the calculation of wages, personnel security, and social benefits, said Baltabai. PKOP, *Dostoinii Trud* trade union, and the FPRK affiliate trade union agreed to conclude a collective agreement, along with a disagreement protocol on the outstanding 11 points on which *Dostoinii Trud* trade union

¹⁴⁵ Human Rights Watch interview with Erlan Baltabai, Shymkent, September 25, 2015. In the months after Baltabai was elected, membership in the union surged from approximately two dozen workers to about 300 workers, he said.

¹⁴⁶ Copy of letter on file with Human Rights Watch.

¹⁴⁷ Copy of letter on file with Human Rights Watch.

¹⁴⁸ Copy on letter on file with Human Rights Watch.

¹⁴⁹ Copy of letter on file with Human Rights Watch.

¹⁵⁰ Copy of September 4 complaint to Prosecutor General’s office on file with Human Rights Watch.

and PKOP management could not agree. The two parties agreed to continue negotiations on these 11 points separately.¹⁵¹

According to Baltabai, however, the company did not attempt to resolve the outstanding issues in good faith:

The employer promised to sit down and [resolve the issues], but they didn't keep their promise. We sat down once [to negotiate], and that was it. The people who make decisions didn't participate. As a result none of those questions got resolved or were [ever] included in the collective agreement [we had signed onto]. It was a trick, just so that we would agree to conclude the collective agreement.¹⁵²

Human Rights Watch sent a letter to Petro Kazakhstan Oil Products seeking the company's views on collective bargaining negotiations with the *Dostoinii Trud* trade union, but did not receive a response by publication.

Kanatbek Murzatov, chairman of the branch affiliate trade union of miners *Dostoinii Trud* in Satpaev (separate from the *Dostoinii Trud* trade union of oil workers mentioned above), not far from Zhezkazgan, central Kazakhstan told Human Rights Watch that the *Dostoinii Trud* miners' trade union initiated collective bargaining negotiations in April 2012 with TOO EvroTekhService, a mining service company.¹⁵³ Valery Chaika, the Karaganda-based chairman of the *Dostoinii Trud* miners' union, told Human Rights Watch "EvroTechService workers approached us. They were getting miserly pay. About 100 people joined the trade union and we initiated a collective dispute to raise their pay."

TOO EvroTekhService management repeatedly declined to engage in formal collective bargaining with representatives of *Dostoinii Trud* miners' trade union. In a letter dated August 20, 2012, *Dostoinii Trud* miners' trade union branch affiliate chairman, Kanatbek Murzatov, wrote the director of the company detailing his concern about the delays in forming a commission to negotiate a collective agreement, and to "again propose that

¹⁵¹ Human Rights Watch interview with Erlan Baltabai, Shymkent, September 25, 2015.

¹⁵² Ibid. See also: "Class conflict: bourgeoisie vs. the proletariat" ["Классовый конфликт: буржуазия против пролетариата"], *RadioTochka*, December 27, 2013, <https://radiotochka.kz/1436-.html> (accessed September 29, 2016).

¹⁵³ Copy of letter of initiation of collective bargaining on file with Human Rights Watch.

[EvroTekhService] follow the norms of Kazakh legislation and form a commission to carry out collective bargaining negotiations.”¹⁵⁴

In mid-October, approximately 100 EvroTechService workers, the majority of whom were members of the *Dostoinii Trud* miners’ trade union, went on a spontaneous strike demanding higher wages. After more than 24 hours, during which time workers remained underground, Murzatov and the director of EvroTechService signed an agreement bringing an end to the industrial action. The agreement, signed on October 16, 2012, contained nine points regarding wages and collective bargaining.¹⁵⁵ Murzatov told Human Rights Watch that although the company signed the agreement, in the end, it failed to fulfill any of the points.¹⁵⁶

Instead, EvroTechService proceeded by concluding a collective agreement with a second trade union at the company, *Trud i Pravo*, which was formed around that time, and which was initially comprised of management-level employees.¹⁵⁷ Murzatov told Human Rights Watch that after the industrial action “two days later, the pressure started...[management] started to bully the guys, [in doing so] destroyed our trade union.”¹⁵⁸

By the end of 2012, all of the *Dostoinii Trud* trade union members had withdrawn and joined *Trud i Pravo*.¹⁵⁹ Human Rights Watch was not able to speak to any of the workers who had left *Dostoinii Trud* about their reasons for joining the other management-led trade union, but Murzatov pointed out to Human Rights Watch that collective bargaining negotiations, which management had been avoiding, came to a halt when all the members of his trade union withdrew their membership.

¹⁵⁴ Copy of letter on file with Human Rights Watch.

¹⁵⁵ Copy of agreement on file with Human Rights Watch.

¹⁵⁶ Human Rights Watch interview with Kanatbek Murzatov, Satpaev, November 3, 2014.

¹⁵⁷ Human Rights Watch interviews with Kanatbek Murzatov, Satpaev, November 3, 2014, and Valery Chaika, September 21, 2015, Karaganda.

¹⁵⁸ Human Rights Watch interview with Kanatbek Murzatov, Satpaev, November 3, 2014.

¹⁵⁹ In a separate case, IndustriALL, a global union that represents 50 million workers in the mining manufacturing and energy sectors worldwide, reported in January 2013, that Kazakhmys, a copper company, similarly interfered in the Mining and Metallurgy Workers Union of Kazakhstan, by “forcing TUMMWK members to quit their [independent] union and join the company-controlled one.” See: IndustriALL, “Copper company busts union in Kazakhstan,” IndustriALL website, January 17, 2013, <http://www.industriall-union.org/copper-company-busts-union-in-kazakhstan> (accessed September 29, 2016).

Every last union member went to the other union. I don't know what was promised them, but they all left... We couldn't conclude a collective agreement because not a single person was left in our trade union. Whose interest are we supposed to represent if there isn't any one?¹⁶⁰

Right to Strike

The right to strike is guaranteed in Kazakhstan's constitution and Labor Code.¹⁶¹ However, "railway transport and civil aviation workers, medical workers, and service providers (including workers in public transport, water supply, electricity, heat, and communications)" are prohibited from going on strike, as are workers at "hazardous production facilities," and "in other cases envisaged by the laws of the Republic of Kazakhstan."¹⁶² If a strike falls under any of these categories, a prosecutor can order the strike be suspended until a court ruling on the strike's legality has been issued.¹⁶³

In addition, Kazakhstan's new Criminal Code, adopted in 2014, introduces a new offense of "actions provoking continued participation in a strike that has been declared illegal by a court," which carries a maximum prison sentence of three years.¹⁶⁴

The right to strike is not absolute in international law.¹⁶⁵ It thus may be subject to some restrictions, but penalties must be proportionate to the offense committed, and "the authorities should not have recourse to measures of imprisonment for the mere fact of

¹⁶⁰ Human Rights Watch interview with Kanatbek Murzatov, Satpaev, September 22, 2015.

¹⁶¹ Constitution of the Republic of Kazakhstan, art. 24, pt. 3; Kazakhstan Labor Code, art. 171.

¹⁶² Labor Code, art. 176. In 2014, the ILO's CEARC requested Kazakhstan to clarify which organizations fall into the category of 'dangerous industrial activities. See: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3192111; On December 30, 2014, by order 353 of the Minister of Investment and Development of the Republic of Kazakhstan, rules identifying "hazardous production facilities" was adopted. It was registered at the Ministry of Justice on February 20, 2015 as № 10310. See: <http://adilet.zan.kz/rus/docs/V1400010310#z10>.

¹⁶³ Ibid.

¹⁶⁴ Criminal Code, art. 402.

¹⁶⁵ The ILO'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 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." Bernard Gernigon, Alberto Otero, and Horacio Guido, ILO Principles Concerning the Right to Strike, 2000, point 11.d.

organizing or participating in a peaceful strike.”¹⁶⁶ The ILO has determined that criminal sanctions for those who participate in peaceful strikes is an excessive punishment.¹⁶⁷

The ILO’s Committee on Freedom of Association (CFA), which oversees ILO member’s compliance with applicable international law, 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.”¹⁶⁸

Yet cumbersome and lengthy mediation procedures, which must be exhausted in the context of a collective dispute before workers can consider declaring a strike, make it difficult, and in some instances, impossible, for trade union workers in Kazakhstan to hold a legal strike. The ILO’s CEACR recommended in 2014 that Kazakhstan “amend section 289 of the [old] Labour Code,” which details the procedures for initiating a collective labor dispute.¹⁶⁹ However, the new Labor Code, adopted in November 2015, did not address the ILO’s recommendations.

Marat Mirgayazov, chairman of the coal miner’s union *Korgau*, told Human Rights Watch about a labor dispute with ArcelorMittal Temirtau that had begun in October 2011 when steel and coal workers employed at ArcelorMittal Temirtau requested a 30 percent raise.¹⁷⁰

¹⁶⁶ ILO Digest of Decisions and Principles, para 668.

¹⁶⁷ “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 States presented by the Transport Workers Union of America AFL-CIO (TWA) and the Transport Workers Union of Greater New York, AFL-CIO, Local 100 (Local 100)*, Case No. 2741, para 772.

¹⁶⁸ 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.

¹⁶⁹ In 2014, CEACR found that “the requirements of section 289 of the Labour Code may constitute an obstacle to the exercise of collective bargaining rights by trade unions. It further considers that a representative union should have the right to present its demands to the employer without prior approval by an enterprise workforce.” See: Direct Request (CEACR) - adopted 2014, published 104th ILC session (2015) Right to Organise and Collective Bargaining Convention, 1949 (No. 98) - Kazakhstan (Ratification: 2001), http://www.ilo.org/dyn/normlex/en/?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3189275,103542,Kazakhstan,2014 (accessed November 11, 2016).

¹⁷⁰ Tereshenko, Andrei, “ArcelorMittal Temirtau drags out negotiations for higher wages” [“«АрселорМиттал Темиртау» затягивает переговоры о повышении зарплаты”], *Novosti Karagandi*, February 8, 2012, <http://www.nv.kz/2012/02/08/25622> (accessed September 6, 2016).

Mirgayazov explained that the trade union had begun to collect signatures from workers to hold a legal strike under Kazakh law, but could not meet the threshold of workers required in the labor code.

We weren't able to collect the amount of signatures [to hold a strike] that we needed according to the law, and that's why we couldn't hold a strike. ...We didn't collect enough signatures. We are about 18 thousand [employees], so we needed to collect at least nine thousand [signatures]. We only collected seven thousand.¹⁷¹

Since the extended labor strikes in Kazakhstan's Mangistau region five years ago, workers in western, central, and southern Kazakhstan, locations where Human Rights Watch conducted research for this report, staged multiple spontaneous strikes ranging from a few hours to several days. None of the strikes that Human Rights Watch documented were held in compliance with burdensome legal requirements in Kazakh law. Such spontaneous industrial action suggests the failure of burdensome mediation procedures to regulate labor disputes in Kazakhstan, as workers end up striking outside union structures and legal norms, putting them at risk of prosecution by the authorities.

In some cases, local and regional authorities responded quickly to spontaneous industrial action and participated in tripartite negotiations to find a solution to industrial action by workers, and no legal action was taken against workers who participated in the industrial action. Examples include spontaneous industrial action at Burgylau LLP, a well drilling company in Zhanaozen, western Kazakhstan, in October 2016, *Kazakhmys* (now KazMinerals) in Zhezkazgan, a prominent copper mining company in central Kazakhstan, in May 2012, and at Oil Construction Company in Aktau, in western Kazakhstan, in October 2013.

Nurbek Kushakbaev, a trade union safety inspector with the Oil Construction Company (OCC) workers' union in western Kazakhstan, told Human Rights Watch that in 2013, after the OCC trade union pushed back against the introduction of a new payment system, OCC

¹⁷¹ Human Rights Watch interview with Marat Mirgayazov, Karaganda, April 23, 2015. See also: Veber, Elena, "Miners achieved a 10 percent wage increase" ["Шахтёры добились повышения зарплаты на 10 процентов"], *Radio Azattyk*, June 22, 2012, <http://rus.azattyq.org/a/korgau-zhaktau-karaganda-temirtau/24622828.html> (accessed September 6, 2016).

management proceeded to introduce a new payment system anyhow but through a second trade union at the company, apparently comprised of management level employees.¹⁷²

When trade union members learned of the payment system agreed with the second union, they staged a spontaneous two-day strike in October 2013 to voice their discontent.¹⁷³ Oil Construction Company did not dismiss or take any legal action against the workers who participated in the spontaneous industrial action, and mediation negotiations over the new payment system and other workers demands ensued.

Kushakbaev told Human Rights Watch the mediation negotiations continued for well over a year: “The mediation commission lasted until February [2015]—we dealt with all sorts of issues...but we didn’t complete the process. The company unilaterally drafted a protocol, but we didn’t sign it.”

The trade union of OCC workers appealed to the Mangistau regional department of labor in April 2015 and the prosecutor’s office in July 2015 to take action against the company for what they saw as the management’s unlawful decision to unilaterally end mediation procedures.¹⁷⁴ Kushakbaev told Human Rights Watch that in accordance with national laws, if management had wanted to end mediation negotiations, they should have initiated arbitration, but they did not.¹⁷⁵ Neither the department of labor, nor the prosecutor’s office found any violation, Kushakbaev said.

Human Rights Watch sent a letter to TOO Oil Construction Company seeking the company’s views, but did not receive a response by publication.

In other instances of spontaneous industrial action, however, courts found strikes illegal and local authorities took legal action against workers who participated in the illegal strikes. An illustrative example of how authorities in Kazakhstan use restrictive laws on the right to strike against workers who stage spontaneous, but peaceful strikes, took place in western Kazakhstan, following a protracted labor dispute at TOO TechnoTrading in Aktau.

¹⁷² Human Rights Watch interview with Nurbek Kushakbaev, Aktau, September 19, 2015.

¹⁷³ Ibid.

¹⁷⁴ Copy of responses from the Mangistau Department of Labor and the Prosecutor’s office on file with Human Rights Watch.

¹⁷⁸ Human Rights Watch interview with Nurbek Kushakbaev, Aktau, June 17, 2016.

Workers staged several spontaneous strikes between 2014 and 2016 seeking better pay and better social benefits.

Askhat A., a TOO TechnoTrading Trade Union member, told Human Rights Watch that although the union had engaged in collective bargaining negotiations starting in 2014, repeat delays and failure by company management to appear during negotiations led workers to lose patience and spontaneously go on strike in April 2014 and again in May 2015.¹⁷⁶ Another union member explained why workers attempted to negotiate better pay and were prepared to go on strike: “Workers in other organizations like ours get two or three times more pay than we do. We started to write letters [to the company], but didn’t get any response.”¹⁷⁷

While company management agreed to raise wages by 20 percent after the April 2014 strike, after the May 2015 strike, in which approximately 300 workers participated, management filed a complaint with local authorities seeking to find the strike illegal, although the company had in fact fulfilled some of the workers’ demands. According to a May 29 court decision finding the three day strike illegal, “workers... from 08.00 hours on 18.05.2015 to 17.00 hours 20.05.2015 held an unsanctioned strike in violation of labor legislation and without fulfilling the procedures in accordance with articles 298-299 of the Labor Code.”¹⁷⁸

The company fired six workers in June 2015 for participating in the illegal strike, accusing them of being away from their work place without legitimate reason for more than three hours.¹⁷⁹

The six workers contested their dismissals in court, but the court ruled in the company’s favor.¹⁸⁰

¹⁷⁶ Copies of letters from trade union to company complaining of delays on file with Human Rights Watch.

¹⁷⁷ Human Rights Watch interview with Aibek A., Aktau, June 16, 2016.

¹⁷⁸ Copy of court decision on file with Human Rights Watch.

¹⁷⁹ See the interview of Adil Niyazov, head of Techno Trading LTD confirming that “We took the ultimate measures against the six activists, that is, we terminated their contracts...for being absent at work for more than three hours”, “Techno Trading LTD head on protesting workers” [“Глава Techno Trading LTD о протесте рабочих”] March 14, 2016, <https://www.youtube.com/watch?v=931Fz2GHAXw> (accessed November 4, 2016). Mr. Niyazov also stated “the rest of the workers were severely reprimanded.”

¹⁸⁰ Human Rights Watch interview with Askhat A., Aktau, June 16, 2016. At the time of writing, workers had challenged their dismissals in court and were at the appeals stage.

Nurlan N., one of the TOO TechnoTrading workers who was fired after the strike, told Human Rights Watch that he had just returned to work after some days off and only participated in the strike for half a day:

They summoned me to the police station—said that [the company] lost 17-18 million tenge (US\$47,000-50,000) because we stood for three days at Zhetibay [the location of the strike]. And they want to hang it on us, six guys... [But] how could they hang 17 million tenge on just us? I was only out there for half a day.¹⁸¹

Another worker, Aibek A., who was fired shortly after the strike told Human Rights Watch that he believes he was singled out and fired in retaliation for participating in the mediation commission set up after the strike. Aibek A., who is married with five children, has not been able to find work since his dismissal: “I tried to apply for work [all over], but it’s all the same. [They say] we’re in an economically difficult situation. Companies are firing workers, they’re not hiring.”¹⁸²

Human Rights Watch sent a letter to TOO Techno Trading seeking their views on the labor dispute detailed above, but did not receive a response from the company by publication.

Another spontaneous strike leading to legal action against workers took place in western Kazakhstan in May 2015. Approximately 140 workers at KazStroyService, an engineering, procurement and construction company servicing a gas processing plant at the Chinarevski oil field, about 40 kilometers from Uralsk, downed their tools demanding their shifts be reduced from 30 to 15 days and that an environmental allowance be included in their wages.¹⁸³ In a letter to Human Rights Watch, KazStroyService stated that “the employer was open to dialogue, and in response to the demands of the workers, gave a well-founded, exhaustive answer that 30 day shifts do not violate labor legislation, [and] existing shift lengths (of 30 days) were agreed upon in labor and collective agreements, upon hiring each worker.”¹⁸⁴

¹⁸¹ Human Rights Watch interview with Nurlan N., Aktau, June 16, 2016.

¹⁸² Human Rights Watch interview with Aibek A., Aktau, June 16, 2016.

¹⁸³ Letter from S. Zhanasov, General Director of KazStroyService to Human Rights Watch, October 28, 2016.

¹⁸⁴ Ibid.

According to local media reports, company management, the local labor inspectorate, as well as representatives of the prosecutor's and mayor's offices sent their representatives to the site.¹⁸⁵ Workers stayed on strike for three days, after which KazStroyService agreed to raise employees' wages by 15 percent.¹⁸⁶

The company also filed a complaint requesting the court to find the workers' strike unlawful and hold eight of the workers who allegedly participated in the strike accountable for their "unlawful actions," and suspended three workers, Nurbolat Esmagulov, Salamat Shapai, and Nurlybek Gabdollov, from work without pay pending review of the company's lawsuit.¹⁸⁷ In its letter, KazStroyService explained "the employer appealed to court to protect its lawful rights, that were violated by the actions of the workers who had signed labor agreements with the employer to fulfill specific work but did not."¹⁸⁸

The case went to court, but on July 31, 2015, the court declined to consider the suit against the workers.¹⁸⁹ KazStroyService in its letter to Human Rights Watch clarified that the three workers who had been suspended were reinstated and "were paid full financial compensation" for the duration of their forced suspension.¹⁹⁰

According to research carried out by the Confederation of Free Trade Unions of Kazakhstan (KSPK, now KNPKR), 28 industrial disputes took place in western Kazakhstan in the first

¹⁸⁵ "Construction workers in Uralsk go on strike," ["В Уральске сотрудники строительной компании вышли бастовать"], *Novosti Kursiv*, May 12, 2015, http://www.kursiv.kz/news/kompanii/v_uralske_sotrudniki_stroitelnoy_kompanii_vyshli_bastovat__736/ (accessed on August 5, 2016).

¹⁸⁶ Urnaliev, Sanat, "Strikers in Chinarev oil field promised a raise" ["Бастовавшим на Чинаревском месторождении обещают надбавку"], *Radio Azattyk*, May 13, 2015, <http://rus.azattyq.org/a/27013617.html> (accessed on August 5, 2016).

¹⁸⁷ Letter from S. Zhanasov, General Director of KazStroyService to Human Rights Watch, October 28, 2016. "Lawsuit filed against striking workers in WKR" ["На бастовавших рабочих в ЗКО руководство подало в суд"], *Infopolis*, June 26, 2015, <https://informburo.kz/novosti/na-bastovavshih-rabochih-ao-ngsk-kazstroysevis-rukovodstvo-podalo-v-sud-7318.html> (accessed August 5, 2016).

¹⁸⁸ Letter from S. Zhanasov, General Director of KazStroyService to Human Rights Watch, October 28, 2016.

¹⁸⁹ Urnaliev, Sanat, "The Uralsk strike case goes unreviewed" ["Дело о забастовке близ Уральска осталось без рассмотрения"], *Radio Azattyk*, August 4, 2015, <http://rus.azattyq.org/a/27169254.html> (accessed August 5, 2016).

¹⁹⁰ Letter from S. Zhanasov, General Director of KazStroyService to Human Rights Watch, October 28, 2016.

half of 2015, the majority of which were found illegal by courts.¹⁹¹ The Federation of Trade Unions of Kazakhstan reported that 80 strikes took place between 2012 and 2015.¹⁹²

Under international human rights law, 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. 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.”¹⁹³

¹⁹¹ “28 strikes took place in Kazakhstan since the start of the year” [“В Казахстане с начала года прошло 28 забастовок”], *RadioTochka*, July 10, 2015, <http://radiotochka.kz/12785-v-kazahstane-s-nachala-goda-proshlo-28-zabastovok.html> (accessed September 29, 2016).

¹⁹² Vaal, Tamara, “Trade unions in Kazakhstan resolved 80 labor conflicts in three years” [“80 трудовых конфликтов за три года решили профсоюзы в Казахстане”], *Vlast.kz*, June 9, 2015, <http://vlast.kz/novosti/11466-80-trudovyh-konfliktov-za-tri-goda-resili-profsouzy-v-kazahstane.html> (accessed September 6, 2016)

¹⁹³ 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), http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:2224882.

IV. Key Responsibilities of Companies

While governments have the primary responsibility under international law to promote and ensure respect for human rights, companies also have internationally recognized responsibilities regarding human rights, including workers' rights.

The United Nations (UN) Guiding Principles on Business and Human Rights, which the UN Human Rights Council endorsed in 2011, recognize that all companies should respect human rights, avoid complicity in abuses, and ensure that any abuses that occur in spite of these efforts are adequately remedied. The Guiding Principles specify that businesses should exercise human rights due diligence to identify human rights risks associated with their operations, take effective steps to prevent or mitigate those risks, and ensure that the victims of any abuses that occur despite those efforts have access to remedies.¹⁹⁴ The Guiding Principles are widely accepted as an authoritative articulation of businesses' human rights responsibilities.

The Organisation for Economic Co-operation and Development (OECD), with which Kazakhstan is pursuing greater engagement, has set out guidelines for responsible behavior by multinational firms, incorporating the concept of human rights due diligence and the content of International Labour Organization (ILO) core labor standards. 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.¹⁹⁵

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

¹⁹⁴ UN Human Rights Council, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect, and Remedy’ Framework.” The UN Human Rights Council endorsed the Guiding Principles in Resolution 17/4, A/HRC/17/L.17/Rev1.1.

¹⁹⁵ *OECD Guidelines for Multinational Enterprises (2011 Edition): Recommendations for Responsible Business Conduct in a Global Context*, May 25, 2011, <http://www.oecd.org/daf/inv/mne/oecdguidelinesformultinationalenterprises.htm> (accessed July 28, 2016).

association and the right to organize as well as collective bargaining.¹⁹⁶ 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."¹⁹⁷

To meet their responsibility to respect human rights, businesses should have policies and processes appropriate to their size and circumstances.¹⁹⁸ In particular, national and international companies operating in Kazakhstan should meet their responsibility to carry out due diligence by identifying potential adverse human rights impacts and ways to prevent them.¹⁹⁹ Human rights due diligence activity should be ongoing and not a one time effort.²⁰⁰

Companies should 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 abuses through ongoing internal processes and periodic independent reviews, and take action to correct any identified problems. Companies should also vet potential business associates to avoid forming business relationships 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).

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 should cooperate fully with formally

¹⁹⁶ 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 ed. 2006, paras. 7, 42-56.

¹⁹⁷ ILO Freedom of Association Digest of Principles of the Freedom of Association Committee of the Governing Body of the ILO Fifth (revised) ed. 2006, paras. 859, 761.

¹⁹⁸ Guiding Principles on Business and Human Rights, Principles 14 and 15.

¹⁹⁹ Guiding Principles on Business and Human Rights, Principle 17.

²⁰⁰ *Ibid.*

established mechanisms to provide recourse for victims and accountability for violations, including judicial avenues, as appropriate.

V. Violations of the Right to Freedom of Assembly

Although peaceful assembly is guaranteed in Kazakhstan's Constitution and is a fundamental right protected under Article 21 of the International Covenant on Civil and Political Rights, the Kazakh government places heavy restrictions on the right to peaceful assembly. Those, including workers, who attempt to exercise their right to express dissenting views through peaceful protest encounter interference by law enforcement, and are often prevented from gathering altogether.

In January 2015, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, said after a visit to Kazakhstan that the country had "very limited space for the expression of dissenting views."²⁰¹ Kiai concluded that the "[g]overnment's approach to regulating assemblies deprives the right of its meaning."²⁰² Kazakhstan has ignored repeated calls by UN human rights bodies and others to bring its law regulating peaceful assemblies in line with international standards.

Erlan Baltabai, a union chairman in southern Kazakhstan, told Human Rights Watch that his union wanted to hold a public meeting in September 2013, but they did not receive permission from the local authorities:

We approached the Shymkent city mayor's office, [but] they told us that we didn't put together our application correctly. We wanted to hold the protest at the factory, but there are specific places where you can hold a protest. The designated area is far from the factory and that's not what we want. We want to be seen by management. Why would we hold our meeting so far away?²⁰³

Baltabai told Human Rights Watch that union members were unable to hold their protest.²⁰⁴

²⁰¹ Kiai, Maina, Statement By The United Nations Special Rapporteur On The Rights To Freedom Of Peaceful Assembly And Of Association At The Conclusion Of His Visit To The Republic Of Kazakhstan, January 27, 2015, <http://freeassembly.net/news/statement-kazakhstan> (accessed September 6, 2016).

²⁰² Ibid.

²⁰³ Human Rights Watch interview, Erlan Baltabai, Shymkent, September 25, 2015.

²⁰⁴ Ibid.

In another example, a group of workers who represent half a dozen unions in the Mangistau region of western Kazakhstan applied for permission with the Mangistau regional mayor's office to hold a peaceful protest against proposed changes to the Labor Code in Zakharov Park in Aktau on August 14, 2015.²⁰⁵ In response, the mayor's office denied them permission as they had "not fulfilled the requirement under the law on public assemblies to request permission at least 10 days in advance," and because "the venue of the meeting with many people can damage Zakharov Park and its nearby territory and can be life-threatening to children who are enrolled in the local school."²⁰⁶

Between June and December 2015, the Oil Construction Company trade union applied for permission with the city mayor's office at least four times to hold peaceful gatherings in Aktau, on June 26, on November 18, on November 26, and on December 9. The response of the mayor's office each time was to deny the trade union permission to gather, citing various reasons including that other events were scheduled to take place those days and the city prosecutor's office ordered a temporary halt to meetings in Aktau.²⁰⁷ None of the written denials offered the OCC trade union an alternative location or day and time to stage their peaceful protests.

In Karaganda, Marat Mirgayazov, chairman of the trade union of coal miners *Korgau*, told Human Rights Watch that when his union received notice in February 2014 that ArcelorMittal Temirtau unilaterally decided to end the collective agreement starting on April 1, 2014, the collective decided to hold a peaceful protest.²⁰⁸

Korgau applied twice in early 2014 with the local authorities for permission to hold a meeting, in accordance with Kazakh law, ten days in advance, but were denied, Mirgayazov said.

²⁰⁵ Copy of request on file with Human Rights Watch. See also: Toiken, Saniya, "Oil workers criticize new draft Labor Code," ["Нефтяники критикуют проект нового трудового кодекса"], *Radio Azattyk*, August 11, 2015, <http://rus.azattyq.org/content/mangistau-neftyaniki-trudovoy-kodex-nedovolstvo/27182340.html> (accessed August 15, 2016).

²⁰⁶ Copy of denial on file with Human Rights Watch.

²⁰⁷ Copies of denials on file with Human Rights Watch.

²⁰⁸ Human Rights Watch interview with Marat Mirgayazov, Karaganda, November 1, 2014. See also: "Miners pushed to protest" ["Шахтеров до митинга довели"], *Nasha Yarmarka*, February 21, 2014, <http://nasha-yarmarka.kz/ru/news/id/1509> (accessed August 5, 2016).

We decided to hold a [public] meeting. Twice we applied for two different dates, and twice [the mayor's office] didn't give us permission. [Their explanation was] that they were holding other holiday events. But people were prepared to hold the meeting. We would have presented our position [on the cancellation of the collective agreement].²⁰⁹

Previously, Human Rights Watch documented restrictions on the right to peaceful assembly in the context of labor disputes in western Kazakhstan in 2011, including the forcible dispersal of striking oil workers who staged a peaceful march in Aktau, a port city in western Kazakhstan, on June 5, 2011.²¹⁰

The government of Kazakhstan should ensure that workers have the right to express their views peacefully and without undue restrictions or interference, including through peaceful assembly, gatherings, and protests. To that end, the government should take steps to lift undue restrictions and regulations on the right to peaceful assembly, amending the law on public assemblies in accordance with the International Covenant on Civil and Political Rights, to which Kazakhstan is a party.

²⁰⁹ Human Rights Watch interview with Marat Mirgayazov, Karaganda, November 1, 2014.

²¹⁰ Human Rights Watch, *Striking Oil, Striking Workers: Violations of Labor Rights in Kazakhstan's Oil Sector*, (New York: Human Rights Watch, 2012), <https://www.hrw.org/report/2012/09/10/striking-oil-striking-workers/violations-labor-rights-kazakhstans-oil-sector#e10a08>, section 3.

VI. Protection and Redress

The Kazakhstan government has an obligation to uphold national laws and international laws and standards designed to protect workers from abuses. The labor inspectorate under the Ministry of Healthcare and Social Protection is responsible for monitoring employers' adherence to labor laws, including reviewing complaints submitted to the ministry by workers and employers.²¹¹

Workers and union leaders may also appeal to law enforcement bodies, such as the prosecutor's office or the police, or directly to the courts for certain issues, or to local and regional administration offices, or *akimats*. Workers may also appeal to the human rights ombudsman in Astana, who was quoted in a media interview in March 2014 saying, "We primarily work on the appeals we receive from citizens, including those on labor rights. These materials appear in our annual reports, which we present to the head of state."²¹²

A number of labor union representatives told Human Rights Watch that in response to complaints regarding labor disputes, government bodies had provided inconsistent responses.

Some reported that in response to their appeals to local law enforcement, regional administration offices, or the prosecutor general's office, these government structures ignored or were ineffective in helping resolve the situation. For example, in October 2013, Sultan S., a trade union chairman in western Kazakhstan, appealed to the regional prosecutor's office to take measures against the management of the service company where his trade union members worked, for interfering in their trade union activities. Months later, he had still received no response.²¹³

In other instances, union leaders told Human Rights Watch that the authorities played a positive role in helping resolving labor disputes. Marat Mirgayazov, chairman of *Korgau*

²¹¹ Labor Code, art. 17.

²¹² "Ombudsman recommended that ArcelorMittal Temirtau prevent social tensions" ["Омбудсмен рекомендовал компании "АрселорМиттал Темиртау" не допускать социальную напряженность"], *Radio Tochka*, March 28, 2014, <http://radiotochka.kz/1943-.html> (accessed August 5, 2016). See also: "Rules for appeals", website of the Human Rights Ombudsman of the Republic of Kazakhstan: <http://www.ombudsman.kz/en/about/ombudsman.php>.

²¹³ Human Rights Watch interview with Sultan S., Aktau, September 18, 2015.

trade union, told Human Rights Watch that in his experience, the regional mayor's office has played a positive role in helping resolve labor disputes in the context of the work of a tripartite commission.²¹⁴ Another trade union leader, from Aktau, Askhat A., told Human Rights Watch that the mayor's office in Mangistau region also played a helpful role in the context of a labor dispute at TechnoTrading in mid-2014. After the *akimat* intervened, the company agreed to raise wages by 20 percent.²¹⁵

[The workers] presented our demands to our employers about receiving higher wages and making changes to the collective agreement to include social benefits. ...[T]he reaction of the employers was immediate, but they didn't really resolve anything. [It only happened] with the interference of the Akim... The *akimat* is the face of government here, so they have the power to pressure companies.²¹⁶

In March 2014, the office of Kazakhstan's Ombudsman issued a rare statement of concern about social tensions at the workplace of ArcelorMittal Temirtau, a steel plant, around the time that the company had announced its intention to unilaterally cancel the collective agreement with the trade union of miners *Korgau*. The Ombudsman's statement noted many articles in the media "about the unresolved labor relations and discussions about laying off workers" and "the need for further measures to prevent social tensions in the workplace, taking into account the constitutional rights and interests of workers."²¹⁷ Tensions cooled after months of negotiations, and in April 2014, *Korgau* and ArcelorMittal Temirtau concluded a new collective agreement.

²¹⁴ Human Rights Watch interview with Marat Mirgayazov, Karaganda, November 1, 2014.

²¹⁵ Human Rights Watch interview with Askhat A., Aktau, April 20, 2015. See also: Toiken Saniya, "Oil company workers ask to look at falling prices" ["В нефтяной компании рабочих просят оглянуться на падение цен"], *Radio Azattyk*, August 17, 2015, <http://rus.azattyq.org/content/too-techno-trading-ltd-mangystaumunaigaz-zhetibay/27193484.html> (accessed September 6, 2016).

²¹⁶ *Ibid.*

²¹⁷ "The Ombudsman's office sent ArcelorMittal Temirtau leadership a note expressing its concern about the social tensions at the enterprise" ["Учреждение Омбудсмана направило в адрес руководства АО «АрселорМиттал Темиртау» обращение, в котором выражена обеспокоенность сохраняющейся социальной напряженностью на предприятии"], Website of the Office of the Ombudsman in Kazakhstan, March 26, 2014, <http://www.ombudsman.kz/news/detail.php?ID=2248> (accessed August 5, 2016).

However, the following year ArcelorMittal Temirtau twice issued orders to cut the wages of its local staff by 25 percent.²¹⁸ On the first occasion, after ArcelorMittal announced in early February that it intended to cut wages for local staff by 25 percent, trade unions protested, and tripartite negotiations ensued.²¹⁹ Then again, in late July, ArcelorMittal Temirtau announced plans to cut wages by 25 percent starting on August 1, again prompting tripartite negotiations.²²⁰

On both occasions, the Karaganda regional prosecutor's office and the Ministry of Healthcare and Social Protection's labor inspectorate responded swiftly to complaints by trade unions representing workers employed at ArcelorMittal Temirtau. The labor inspectorate reviewed ArcelorMittal Temirtau's compliance with labor laws, following which it instructed the company to withdraw plans to cut wages.²²¹ Although ArcelorMittal Temirtau initially contested the labor inspectorate's orders,²²² on both occasions it ultimately scrapped plans to cut wages.²²³ Human Rights Watch sent a letter to ArcelorMittal Temirtau seeking the company's perspectives on actions it took to cut wages in 2015, but did not receive a response by publication.

²¹⁸ Human Rights Watch telephone interview with Marat Mirgayazov, October 25, 2016.

²¹⁹ Ibid.

²²⁰ Ibid. See also: "Head of «ArcelorMittal Temirtau» explained reduction in salaries," *KazInform*, July 28, 2015, http://www.inform.kz/en/head-of-arcelormittal-temirtau-explained-reduction-in-salaries_a2801257 (accessed October 25, 2016).

²²¹ "ArcelorMittal Temirtau employees to receive full salary," *TengriNews*, February 11, 2015, <https://en.tengrinews.kz/companies/ArcelorMittal-Temirtau-employees-to-receive-full-salary-258915/> (accessed August 26, 2016); and Kamalova, Gyuzel, "ArcelorMittal Temirtau and local labor authorities locked in battle over wages cuts," *TengriNews*, August 14, 2015, <https://en.tengrinews.kz/companies/ArcelorMittal-Temirtau-and-local-labor-authorities-locked-in-261597> (accessed September 29, 2016).

²²² "Labor Inspectorate files court complaint against ArcelorMittal Temirtau" ["Инспекция труда подала в суд на «АрселорМиттал Темиртау»"], *Radio Azattyk*, August 17, 2015, <http://rus.azattyq.org/content/news/27192755.html> (accessed September 29, 2016).

²²³ Veber, Elena, "ArcelorMittal put aside decision to cut wages" ["«АрселорМиттал» отложила решение о сокращении зарплаты"], *Radio Azattyk*, August 21, 2015, <http://rus.azattyq.org/a/27200899.html> (accessed September 29, 2016).

Acknowledgments

This report was researched and written by Mihra Rittmann, researcher in the Europe and Central Asia Division of Human Rights Watch. A consultant for the Europe and Central Asia Division, whom Human Rights Watch would like to thank but is not naming for security reasons, contributed with research assistance and translation. Neil Miller, intern in the Europe and Central Asia division provided background research and assistance.

Hugh Williamson, director of the Europe and Central Asia Division edited the report. Jane Buchanan, associate director of the Europe and Central Asia Division, reviewed the report and provided valuable feedback. Arvind Ganesan, director of the Business and Human Rights Program, reviewed the report. Philippe Dam, advocacy director in the Europe and Central Asia Division reviewed the report and contributed to the recommendations. Aisling Reidy, senior legal advisor, provided Legal review, and Tom Porteous, deputy program director provided Program review.

Yevgeniy Zhovtis, Director of the Kazakhstan International Bureau for Human Rights and Rule of Law, read the report and provided expert feedback.

Kathryn Zehr, associate in the Europe and Central Asia division, provided editorial and production assistance. The report was prepared for publication by Olivia Hunter, publications associate, Fitzroy Hepkins, administrative manager, and Jose Martinez, senior coordinator. Translation of the report was prepared by Igor Gerbich.

Human Rights Watch would like to thank all of the trade union leaders, worker activists, and workers who agreed to speak to us and tell us about their experiences and the challenges of labor activism in Kazakhstan, sometimes at personal risk.

Annex I: Human Rights Watch Letter to Minister of Healthcare and Social Development of the Republic of Kazakhstan

Ms. Tamara Duisenova
Minister of Healthcare and Social Development of the Republic of Kazakhstan
House of Ministers
8 Orynbor Street
0100000 Astana
Kazakhstan

Dear Tamara Kasymovna,

On behalf of Human Rights Watch, please accept my regards.

Human Rights Watch is currently preparing a report on freedom of association for trade unions in Kazakhstan, focusing on the right to organize and carry out union activities, including the right to strike.

The report will review new labor and trade union legislation in Kazakhstan and trade union activism, in order to assess workers' efforts to organize and bargain collectively and the authorities' response, and will scrutinize laws and activities for their compliance with international standards on workers' freedom of association, the right to organize, and the right to strike.

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 research to collect relevant facts through interviews with government officials, country and thematic experts, local human rights advocates, and victims of human rights violations themselves. We report on these violations in press releases, advocacy documents, and reports. In recent years, we have published reports on workers' rights in countries such as the United States, China, Tunisia, and Vietnam.

The international standards referenced in the report include the 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 became a party to both the ICCPR and ICESCR.

During visits to Kazakhstan between September 2014 and June 2016, Human Rights Watch interviewed over 40 trade union and worker activists and human rights activists and found that workers in several industries in Kazakhstan face interference in organizing and effectively defending their interests in the workplace.

Human Rights Watch also found that the legislative framework regulating labor relations, such as the 2014 trade union law and the 2015 labor code, undermine and restrict freedoms guaranteed by international labor and human rights conventions. These concerns are shared by the International Labor Organization's Committee on the Application of Standards, which issued conclusions on Kazakhstan in 2015 and 2016 calling for amendments to both pieces of legislation.

We would like to ensure that any forthcoming reporting reflects both worker and government information and perspectives. To this end, Human Rights Watch has already engaged with your ministry in a meeting with your vice minister, Mr. Birzhan Nurymbetov, during the International Labor Conference (ILC) in Geneva, for an exchange of views following the ILC hearing on Kazakhstan in June 2016. We appreciated the constructive exchange.

We look forward to your answers to our questions and any additional relevant information you wish to provide on the information and questions below.

Threats and Reprisals Against Labor Activists

Several independent trade union leaders in western and southern Kazakhstan, regions with strategically important industries, such as the oil and gas sector and mining industry,

reported that government authorities surveilled them and in some instances security service personnel questioned them about their legitimate trade union activities. Trade union leaders described how their efforts to organize workers into active unions led to pressure by company management on trade union members to leave the union, sometimes under threat of dismissal, and how, in some cases, companies took punitive action against more outspoken activists. In a handful of cases, trade union leaders and worker activists told Human Rights Watch that the authorities threatened them with criminal charges, apparently in retaliation for their activism.

In regard to the above, could you please provide answers to the following questions:

1. What steps does the Ministry of Healthcare and Social Protection take to ensure that workers in Kazakhstan are protected from discrimination and harassment by their employers, and from undue government surveillance?
2. Beyond social partnership agreements at the national level, does the Ministry formally engage with trade unions either at the national or industrial level? If so, in what way?
3. Does the Ministry check up on companies to assess their compliance with national and international labor rights legislation? If so, how frequently?
4. Between January 2012 and June 2016, how many complaints has the Ministry of Healthcare and Social development received from workers in Kazakhstan about a) harassment by company management and b) unlawful dismissal for union activity?

2014 Trade Union Law

Although your ministry said publicly that the trade union law was adopted with the aim of better regulating employee-employer relations and to modernize trade unions in Kazakhstan, the law has come under concerted criticism by local and global trade unions, as well as international bodies including the ILO's Committee on the Application of Standards, which concluded two years in a row, in 2015 and 2016, that Kazakhstan must take steps to amend restrictive provisions in the law so that it complies with ILO Convention 87.

Kazakhstan's labor code limits who can join unions. Only citizens of Kazakhstan can join trade unions and certain categories of workers are explicitly prohibited from forming unions, including judges, firefighters, and prison staff. The trade union law obliges trade unions seeking registration to go through a burdensome two-step process that requires not only formal registration with the Ministry of Justice, but a second additional requirement that trade unions confirm their status as national, industrial, local or territorial trade unions.

Trade union leaders interviewed by Human Rights Watch reported difficulties and delays reregistering within one year of the adoption of the law. In some cases, trade unions were unable to successfully reregister within the one-year time frame stipulated in the law.

In regard to the above, could you please provide answers to the following questions:

1. Given widespread criticism of the 2014 Trade Union law, what steps does the Ministry envisage to address key provisions where the law falls short of international labor rights standards, in particular with respect to a) mandatory affiliation and b) burdensome registration requirements?
2. What steps did the Ministry take to assist trade unions in Kazakhstan to reregister, or register anew, in accordance with the requirements of the trade union law?
3. Are you aware of any trade unions who were unable to reregister, or who were denied reregistration? If so, on what grounds? How many trade unions were denied reregistration in the year following the adoption of the new trade union law?
4. Could you please provide information about how many of the following types of trade unions are currently registered in Kazakhstan
 - a) national associations of trade unions;
 - b) industrial trade unions, as well as information about which industries they represent;
 - c) local trade unions; and
 - d) territorial associations of trade unions?

5. Will your ministry initiate amendments to the labor code to allow judges, firefighters, and law enforcement to unionize, in accordance with international legislation?

Restrictions on Trade Union Affiliation

Kazakh law prohibits unions in Kazakhstan from receiving any financial support from global trade unions affiliates. In addition, Kazakhstan's constitution and legislation on public associations prohibit foreign unions from operating in the country.

The ILO's Committee on the Application of Standards has repeatedly called on Kazakhstan to amend the constitution and laws to allow for foreign funding.

In regard to the above, could you please provide answers to the following question:

1. What steps does the Ministry envisage taking to address incompatibilities in Kazakhstan's constitution and other labor legislation to allow foreign funding to reach Kazakh trade unions?

2015 Labor Code

Following the adoption of the 2014 Trade Union law, Kazakhstan adopted a new Labor Code in November 2015. Although trade unions in Kazakhstan provided critical feedback on various drafts of the bill, as did the International Labor Organization, which was requested by the government of Kazakhstan to provide expert comments, the government ignored some recommendations made by the ILO and by trade unions that, if adopted, would have helped bring the law into compliance with international labor standards.

In the new labor code, collective bargaining requirements remain overly burdensome on workers and require them to go through lengthy mediation procedures before they can exercise their constitutional and internationally protected right to strike. In addition, the labor code bans strikes at "hazardous production facilities," but does not clearly define which industries qualify as "hazardous production facilities" and consequently, which categories of workers are prohibited from going on strike.

Workers also expressed serious concern that the labor code gives wide discretion to companies to dismiss or fire employees without just cause, due to the vague wording of the law.

Your ministry has stated that the Labor Code was drafted with a view to “clearly define the limits of state intervention in labor relations,” but workers and an expert interviewed by Human Rights Watch expressed concern that the position of workers vis-à-vis their employers has been weakened by the reduction in the labor code of social and economic guarantees by the state.

In regard to the above, could you please provide answers to the following question:

1. What steps, if any, is the Ministry currently taking to amend the 2015 Labor Code so that it is in full compliance with international standards on freedom of association, the right to strike, and freedom to organize?

Collective Bargaining

Collective bargaining in Kazakhstan can take place at the company, industrial, and national level. Kazakhstan’s Labor Code and Trade Union Law give trade unions the right to carry out negotiations and to conclude collective bargaining agreements. The Labor Code lays out the content and structure of collective agreements, which includes, for example, the terms of employment and working conditions.

Labor legislation in Kazakhstan does not fully provide independent trade unions the conditions to engage in free and voluntary collective bargaining as is stipulated in international law. The International Labor Organization’s Committee of Experts on the Application of Conventions and Recommendations (CEACR) found that collective bargaining requirements “may constitute an obstacle to the exercise of collective bargaining rights by trade unions” and “considers that a representative union should have the right to present its demands to the employer without prior approval by an enterprise workforce.”²²⁴ The ILO’s CEARC requested the government to “amend section 289 of the

²²⁴ CEACR: Direct Request concerning Right to Organise and Collective Bargaining Convention, 1949 (No. 98) Kazakhstan (*Ratification: 2001*), adopted 2014, published 104th ILC session (2015), http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3189275,103542,Kazakhstan,2014 (accessed July 25, 2016).

Labour Code,” but the new labor code, adopted in November 2014, did not address the ILO’s recommendations.

Human Rights Watch documented cases in which company managers interfered in collective bargaining negotiations, or delayed concluding and signing on to collective agreements with independent trade unions.

In regard to the above, could you please provide answers to the following questions:

1. Please comment on the Ministry’s efforts to amend the labor code to lower the threshold of numbers of workers it takes to initiate collective bargaining negotiations, as per ILO recommendations?
2. Where workers have written to your Ministry with complaint that employers are delaying or declining to participate in collective bargaining negotiations, what steps has your ministry taken to address their concerns?

Restrictions on the Right to Strike

The right to strike is guaranteed in Kazakhstan’s constitution and labor code. However, “railway transport and civil aviation workers, medical workers, and service providers (i.e. public transport, water supply, electricity, heat, and communications)” are prohibited from going on strike, as are workers at “hazardous production facilities,” and “in other cases envisaged by the laws of the Republic of Kazakhstan.”

The right to strike is not absolute in international law, and thus may be subject to restriction, but only in so far as necessary and proportionate and in a manner that does not undermine the essence of the right. In addition, penalties related to going on strike must be *proportionate* to the offense committed. The ILO has determined that criminal sanctions for those who participate in peaceful strikes is an excessive punishment. Yet, Kazakhstan’s Criminal Code, adopted in 2014, introduces a new offense of “actions provoking continued participation in a strike that has been declared illegal by a court,” which carries a maximum sentence of three years in prison.

In regard to the above, could you please provide answers to the following questions:

1. Please comment on the Ministry'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 ILO conventions to which Kazakhstan is party?
2. Please clarify which industries fall under the category of "hazardous production facilities" such that workers employed in such industries are banned from the right to strike?
3. How many strikes, sanctioned or unsanctioned, were recorded in Kazakhstan each year between January 2012 and June 2016? How many of the recorded strikes were found illegal by courts each year between 2012 and 2016?

Human Rights Watch believes it is essential to engage in fair, balanced, and accurate reporting. We welcome your perspective and will reflect your views in our upcoming report on the information described below. We look forward to your comments on the above issues, as well as any additional comments or material you wish to provide.

We respectfully invite you to provide a written response to this letter by September 1, 2016, 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 xxxxxxxxxxxx or by fax to +1 212 736 1300.

Sincerely,

Hugh Williamson
Executive Director
Europe and Central Asia Division
Human Rights Watch

Annex 2: Response from the Ministry of Foreign Affairs

Republic of Kazakhstan
Ministry of Foreign Affairs

Copy: Non-governmental organization
«Human Rights Watch»
Europe and Central
Asia Division

Having examined your letter regarding rights of trade unions in Kazakhstan, the Ministry of Health and Social Development of the Republic of Kazakhstan (hereafter - the Ministry) reports the following.

On June 2-10, 2016, the delegation of Kazakhstan, member state of the International Labor Organization (hereafter - ILO), took part in the work of the 105th session of the International Labor Conference in Geneva, Switzerland.

During the conference, the Government of the Republic of Kazakhstan presented a report on compliance with the provisions of the ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize, ratified by the law No. 29-II of the Republic of Kazakhstan dated December 30, 1999 (hereafter - the Convention No. 87).

During the conference, the ILO Committee of Experts on the Application of Conventions and Recommendations (hereafter - the ILO Committee) provided a number of observations to the Government of the Republic of Kazakhstan on the implementation of the Convention 87 provisions, concerning the aspects of state regulation of the trade unions and employees' associations work in Kazakhstan.

In turn, we would like to inform that the Kazakhstan government is committed to follow up the observations made by the ILO Committee.

Given the international focus of the questions raised in your letter, we would like to suggest to send the letter through diplomatic channels.

We hope that our joint work will give an impetus to further fruitful cooperation.

Appendix: "Human Rights Watch" letter

Acting Executive Secretary J. Omarov

Annex 3: Human Rights Watch Letter to KazStroyService Group

October 5, 2016

General Director of KazStroyService Group

Mr. Pankaj Jain

KazStroyService

Business Center “Alatau Grand”

28B Timiryazeva St.

050040 Almaty

Kazakhstan

Tel: +7 7272 66 96 96

Via facsimile: +7 7272 58 31 71

Dear Mr. Pankaj Jain,

On behalf of Human Rights Watch, please accept my regards.

Human Rights Watch is currently preparing a report on freedom of association for trade unions in Kazakhstan, focusing on the right to organize and carry out union activities, including the right to strike.

The report will review new labor and trade union legislation in Kazakhstan and trade union activism, in order to assess workers’ efforts to organize and bargain collectively and the authorities’ response, and will scrutinize laws and activities for their compliance with international standards on workers’ freedom of association, the right to organize, and the right to strike.

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 research to collect relevant facts through interviews with government officials,

country and thematic experts, local human rights advocates, and victims of human rights violations themselves. We report on these violations in press releases, advocacy documents, and reports. In recent years, we have published reports on workers' rights in countries such as the United States, China, Tunisia, and Vietnam.

The international standards referenced in the report include the 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 became a party to both the ICCPR and ICESCR.

While governments have the primary responsibility to promote and ensure respect for human rights, companies also have internationally recognized responsibilities regarding human rights, including workers' rights. The United Nations (UN) Guiding Principles on Business and Human Rights, which the UN Human Rights Council endorsed in 2011, recognize that all companies should respect human rights, avoid complicity in abuses, and ensure that any abuses that occur in spite of these efforts are adequately remedied.

During visits to Kazakhstan between September 2014 and June 2016, Human Rights Watch spoke with a range of trade union activists in Kazakhstan who described company interference in their trade union activities. We also collected information from media reports on labor disputes in Kazakhstan, including about the labor dispute at KazStroyService in May 2015.

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

Strike and Apparent Retaliatory Dismissals

According to media reports, workers at KazStroyService staged a spontaneous strike at the Chinarevskii oil field in May 2015. Approximately 140 workers went on strike to demand an

increase in pay for work done on Sundays. Workers were on strike for three days, after which KazStroyService management agreed to raise employees' wages by 15 percent.

Media also reported that while some of the workers' demands were fulfilled, KazStroyService in June filed a suit requesting the court to find the strike unlawful and to hold eight of the workers who allegedly participated in the strike accountable. Authorities charged three of the workers – Nurbolat Ismagulov, Salamat Shapai and Nurlybek Gabdollov – with organizing an unsanctioned strike. The Uralsk court on August 4, 2015 declined to consider the suit.

The three workers filed a counterclaim against the company on grounds that they had been unlawfully suspended and their pay withheld, and won their case in court on August 24. According to media reports, KazStroyService appealed.

1. Could you kindly confirm that in response to the spontaneous industrial action in May 2015, KazStroyService filed a lawsuit requesting that the spontaneous strike be found unlawful and the authorities sanction eight of your employees, including Nurbolat Ismagulov, Salamat Shapai and Nurlybek Gabdollov?
2. Could you kindly confirm that KazStroyService suspended without pay the aforementioned three workers? Did your company take action against any other workers for participating in the spontaneous strike in May 2015?
3. If true that KazStroyService filed a complaint, could you kindly explain how these actions are consistent with the right to freedom of association and the right to strike, as enshrined in UN and ILO treaties to which Kazakhstan is a party?

Corporate Responsibility and Freedom of Association

On the Human Resource page of its website, KazStroyService states that the company “abides with all labour legislations and laws of the land in whichever country it operates.”

1. Could you please comment on the measures and policies in place to ensure that all KazStroyService employees are aware of their rights under international and Kazakh law, including their right to join trade unions, bargain collectively, and go on strike?

2. What steps is your company taking to implement the UN Guiding Principles in relation to labor issues and other human rights issues?

Human Rights Watch believes it is essential to engage in fair and accurate reporting. We welcome your perspective on the events described above and your explanation of how KazStroyService's 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 October 28, 2016 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 xxxxxxxxxxxxxx or by facsimile 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

Annex 4: Response from KazStroyService

KazStroyService

Outgoing №101-3/1266 on Oct 28, 2016

To the Human Rights Watch

Director of the Europe &

Central Asia Division

Mr. Hugh Williamson

Dear Hugh Williamson,

In our response we refer to your query of October 5, 2016.

The Ural branch of KazStroyService Group (further – branch, Employer) workers' spontaneous strike that took place on May 11-13, 2015 at the Chinarev oil field, West Kazakhstan Region (site UKPG-3), was held in breach of Republic of Kazakhstan [RK] labor legislation.

We consider the actions of the workers of Ural branch illegal based on the following:

1. The workers did not observe the procedures for filing and asserting their claims, article 289 of Labor law of RK.
2. The procedures for mediation were not observed (articles 291-294 of Labor Law of RK), no representation body was elected.
3. Workers had decided to stop work in breach of points 1,2,3 of article 298, Labor law of RK.

Work stoppage caused material loss to the company, had a negative effect on morale of the staff and the image of KazStroyService Group in general.

In order to declare the strike and the actions of the branch workers on stopping work illegal, the Employer first appealed to the Prosecutors office in May 2015, and then, upon their

advice, filed a legal claim to Uralsk court №2. However, after more than two months of proceedings, on the 31st of July 2015, the court ruled not to consider the claim. **In spite of the obvious illegality of the strike, not one worker was fired either during or after the strike.**

The claims were aimed at resolving 2 issues:

1. Shortening the length of the work shift from 30 days to 15 days (the off shift correspondingly);
2. Fixing an environmental wage increment.

The employer was open to dialogue, and gave a well-founded, exhaustive answer that 30 day shifts do not violate labor legislation, [and] existing shift lengths (of 30 days) were agreed upon in labor and collective agreements, upon hiring each worker.

As for the wage increment, it was explained to the workers that all the due environmental increments were being paid according to workplace certification on working conditions, which was conducted at the company by a specialized organization. As a result of the workplace certification on working conditions, workers received the following specialized surcharges for harmful working conditions: 1. gas cutter; 2. gas welders; 3. insulators; 4. painters; 5. sandblast operators; 6. electrical/gas welders. In addition, the Employer assured the workers in a letter that despite the slow progress in this project, KazStroyService Group has been paying its workers a bonus of 10% from their salary, which the Employer plans to increase up to 20% as the volume of work increases.

The Employer thus had called workers to engage in legal negotiations. **After the workers' illegal strike, held in breach of articles of Labor Code of RK, which regulates the right of workers to strike, the Employer appealed to the court to protect its lawful rights, that were violated by the actions of workers who had signed labor agreements with the Employer to perform specific work but did not do so.**

The issue here is not trampling workers' rights to a legal strike ([which must take place] in accordance with the required procedures preceding such a strike, including written notification about the start date and the probable duration, not later than 5 days in advance) but the adjudication of the workers' actions as illegal. Eight individuals workers, including Gabdolov N.O., Shapai S.B., and Esmagulov N.I. were identified as defendants in

a lawsuit to find their actions illegal. Management decided to suspend these individuals from work for the duration of the lawsuit in order to prevent further violations at work and constant breaks from work due to the need to take them to hearings (site UKPG-3 is located 120 km away from Uralsk).

Therefore, an order №027/LS, signed by the director of the branch, was issued to suspend Gabdolov N.O., Shapai S.B., and Esmagulov N.I. from work. [The company] considered that upon conclusion of the lawsuit these workers would be reinstated at work and would be compensated for the period of forced unemployment. The company resorted to such extreme measures in order to guarantee smooth work flow without escalating this situation; the lawsuit was being unduly prolonged, [and] there wasn't a clear decision on the issue despite the fact that the company was thoroughly inspected by State bodies right after the strike, **and not one violation of labor or tax legislation on the part of the Employer was found.** Later, previously suspended [employees] Gabdolov N.O., Shapai S.B., and Esmagulov N.I. were reinstated at work and **were paid the full financial compensation for forced unemployment.**

Regarding the measures KazStroyService Group takes in order to inform its workers, we would like to clarify the following.

Being a joint-stock company, the KazStroyService Group regularly reveals and posts company information on the Depository of Financial reporting website www.dfo.kz, and also publishes audit reports in "Kazakhstanskaya Pravda." In addition, an annual QAQC audit is conducted, and there is an internal audit service [at the company].

KazStroyService Group is certified according to international certifications: ISO 9001:2008, ISO 29 001:2010, ISO 14001:2004, ISO 50 001:2011, OHSAS 18001:2007. These certificates apply to the following sectors of activity: design, delivery, and building and installation work.

In 2008, KazStroyService adopted a Unified Health and Safety Management System (UHSMS). In 2013, due to changes in legislation UHSMS was re-published at Health and Safety Management System (HSMS). The purpose of this policy is to incorporate a set of regulations, instructions, and guidelines to implement organizational and preventative measures to ensure safe and healthy working conditions for workers.

As part of overall disclosure and the information system informing workers of their rights, here are some of the workers' rights stated in each employment agreement:

- to participate through their representatives in collective bargaining negotiations for a draft collective agreement, as well as the right to read through the signed agreement and join the collective agreement;
- right to association, including the right to create labor or other unions, as well as membership in these unions with the purpose of representing and protecting their labor rights;
- right to settlement of individual and collective disputes, including the right to strike in the manner prescribed by the Labor law of RK and other laws;
- the right to compensation for harm caused to health in connection with the performance of work duties;
- right to guarantees and compensations;
- right to protection of their rights and interests by any means not contradicting the law of RK;
- right to equal pay for equal work without any discrimination;
- right to appeal for a resolution of a labor dispute to the conciliation committee and the court in the manner prescribed by Labor Cole of RK, etc.

The employment agreement is signed in duplicate; one of the copies is given to the worker. Please also note that, when hiring, the employer presents the internal policies, including Internal code of conduct, Regulations on compensation, Collective agreement, and other documents regulating workplace relations.

The main documents regulating workplace relations, that is, the Collective agreement, Internal code of conduct, Code of business conduct, Basecamp residential regulations, are displayed on billboards in accessible places at each basecamp.

In addition, there is a hotline in our company and the phone number for the hotline is also posted on billboards in all basecamps and branches. Any worker can call and ask questions or receive any information.

There are also occasional awareness raising sessions. The head of HR and the chairman of union come directly to the project sites where they hold meetings explaining workers' rights, collective agreement provisions, and responding to any questions.

KazStroyService Group recognizes and respects the UN guidelines on labor issues and human rights. With respect to labor issues it is confirmed by accurate and complete regulation of employer-employee relations in regulations and normative documents. So, upon entry into employment, each employee signs an employment agreement which stipulates the key aspects of the work process. Furthermore, our company has a set of provisions and mechanisms necessary to respect and protect workers' rights.

One of the key documents dealing with workers' rights is Regulations on compensation, which is approved by the Board of Directors. The Regulations on compensation stipulates social benefits for workers, which are much higher than the minimum stipulated by the legislation of RK.

Any worker can join the existing labor union. The Employer, with the participation of the Labor Union, has entered into a collective agreement with the workers, which regulates the employer's and employee's rights and obligations in settling labor and socioeconomic issues. The purpose of the collective agreement is the comprehensive regulation of labor relations, providing a combination of regulatory and legal ordering of relations so that the statutory legal provisions could be implemented most effectively taking into account the interests of the employees and the employer.

Also, the organization has (in the headquarters and branches) continuing conciliation committees, which include members of Labor Union, for settling labor disputes.

If you should need any further information so that you can use complete and accurate data, please contact us.

Yours respectfully,

General Director [Signature] Janasov S.



Following extended, unresolved labor strikes in western Kazakhstan in 2011 the Kazakh government announced it would take steps to better regulate labor relations and “modernize trade union institutions.” But rather than improve labor relations, a new trade union law, labor code, and criminal code have increased restrictions and controls over workers and trade unions in Kazakhstan.

“We Are Not The Enemy”: *Violations of Workers’ Rights in Kazakhstan* details the significant legal and practical obstacles workers in Kazakhstan must overcome to organize and to defend their interests in the workplace. The report reviews a 2014 trade union law and its impact on workers’ rights, including the introduction of burdensome registration requirements and limitations on the right of workers to freely choose their structures. The report also documents the harassment, surveillance, and, in some cases, spurious legal prosecution or dismissal of trade union leaders and worker activists in apparent retaliation for their labor activism, as well as restrictions on collective bargaining, the right to strike, and freedom of assembly..

The report urges the government of Kazakhstan to implement much-needed reforms and legislative amendments, and bring national trade union and labor laws in line with international labor and human rights standards. It also urges companies operating in Kazakhstan to ensure that employees do not face retaliation or harassment for trade union activism. It urges Kazakhstan’s partners to call on the government to respect trade union’s freedom of association, as well as the right to peaceful assembly and expression, in accordance with international law.

(above) Workers on strike at TechnoTrading LTD service company, Mangistau region, June 3, 2016. © 2016 Sania Tolken (RFE/RL)

(front cover) Workers at the ArcelorMittal steel plant in Temirtau, June 13, 2012. © 2012 Reuters