

(1) Submitting Organisation

The International Centre for Trade Union Rights (ICTUR) was founded in 1987 in order to defend, extend, and raise awareness of trade union rights and their violations worldwide. ICTUR was founded in response to ‘an attack on trade union rights by transnational employers’ and ‘to take up the struggle for liberation from neo-colonialist and transnational corporation exploitation’. ICTUR is a network of unions, lawyers and human rights organisations.

ICTUR has consultative (roster) status with the UN ECOSOC and it is accredited to the ILO Special List of INGOs, since 1993. ICTUR’s main activities include monitoring labour rights, letter writing, trial observations, research and publishing. ICTUR provides information to international human rights processes and assists trade unions in this work. ICTUR publishes: *International Union Rights* journal (since 1993, 4 editions per year); the *World Map of Freedom of Association* (6th edition, 2019); and the reference book *Trade Unions of the World* (7th edition, 2016).

(2) Background

From July through to December 2011 a series of strikes by oilworkers in south-western Kazakhstan, centred around the city of Zhanaozen, were the site of serious human rights violations, which were raised by NGOs participating in the Second Review of the UPR. At least 16 people were killed, and dozens more received gunshot wounds as a result of police violence. Grave concerns were raised around impunity for perpetrators, prosecution of protestors, the treatment of those taken into detention, and threats, harassment and violence against witnesses.

In response to the Zhanaozen strikes, in 2014, the 1993 trade union law was abolished and replaced with Laws No. 211-V and 212-V. A new Labour Code followed in 2015, and reforms were also made to the criminal code. These reforms in no way addressed the problems that had caused an industrial dispute to escalate into bloody violence, but rather attempted to eradicate independent trade unionism by requiring their re-registration and mandatory integration of all unions into mass national structures, on penalty of dissolution and loss of legal status.

Following the 2014 reforms, several unions and one national confederation (the Confederation of Free Trade Unions of Kazakhstan - KSPK). were unable to achieve permanent re-registration. Numerous legal actions were brought against the leaders of these organisations and criminal sentences were passed against them. As recently as November 2018 further cases of violence, harassment and intimidation were being reported against them.

(3) Our concerns

Our primary concerns with respect to trade union rights in Kazakhstan are:

- **Unfair trials, witness intimidation, and continuing impunity for perpetrators of the Zhanaozen killings and anti-union violence**
- **Introduction of a restrictive trade union law, de-registration of existing trade union structures, and failure to permit trade unions to re-register**
- **Legal harassment and new cases of violence against trade unionists**

(4) International Human Rights Obligations

The Universal Declaration of Human Rights makes it clear that “everyone has the right to form and to join trade unions for the protection of his interests” (Article 23(4)). Kazakhstan has additionally been an member of the International Labour Organization ("ILO") since 1993, and has ratified 24 international labour Conventions including ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise (1948), and ILO Convention No. 98 on the Right to Organise and Collective Bargaining (1949).

In 2006, Kazakhstan ratified both the International Covenant on Economic, Social and Cultural Rights ("CESCR") and the International Covenant on Civil and Political Rights ("CCPR"). The CESCR obliges State parties to ensure the right to form and join trade unions of their own choice, including at national and international level. It further states that trade unions have the right to function freely and to take strike action (Article 8). The CCPR stipulates 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”.

(5) Previous UPR cycle

Within the previous UPR cycle:

Kazakhstan accepted a number of recommendations concerning the continuing improvement of its human rights capacity¹, but only a single recommendation concerning freedom of association². But the country did not accept a number of other key recommendations, general calls to improve freedom of association presented by the Czech Republic, Slovenia, Switzerland and Mexico³. Kazakhstan also further did not accept that it should ‘modify or repeal parts of the trade union law that unduly restrict freedom of association to ensure the ability of all workers to form and join independent trade unions’ (United States of America)⁴ or that it should ‘abolish the requirement of mandatory registrations and memberships in umbrella associations and trade unions’ (Germany)⁵.

In a positive indication, Kazakhstan accepted numerous recommendations calling for action to address the serious problems that beset the criminal legal process, including specifically the use of evidence obtained under torture, the need to investigate complaints of torture, and the need for action to address misconduct and violence by law enforcement agencies⁶. However, the problems referred to in this report surrounding the 2011 cases have not yet been addressed.

(6) Anti-union violence, legal harassment, and impunity

During 2011, a series of strikes by oilworkers in south-western Kazakhstan, centered around the city of Zhanaozen, were the site of serious human rights violations, including the violent dispersal by police of picket lines and workers’ demonstrations, and the killing of a local union leader on 2

¹ A – 125.9 – A – 125.19

² **A – 124.29**

³ N – 126.35, N - 126.42, N – 126.44, and N - 126.48

⁴ N - 126.29

⁶ A – 124.15 – A -124.19, A – 125.24, A – 125.48, A – 125.49 and A – 126.19).

August 2011 and the killing of a family member of another local union leader on 24 August 2011. On 16 December 2011 a rally in Zhanaozen was the scene of serious public order disturbances before being violently attacked by armed police, who fired into fleeing crowds. At least 16 people were killed. The State Prosecutor's Office acknowledged that at least 64 people sustained gunshot wounds. Several police officers were charged and eventually convicted after international outrage, but strike leaders, lawyers, and activists were also prosecuted. The resulting trials were criticised for a lack of fairness and for witness intimidation. At least one witness was killed⁷.

Even some years after the event, the State has not yet carried out a full and open investigation. Cases were opened against five police officers, who were convicted in May 2012. However, dozens of other officers discharged firearms on that day, and senior officials responsible have not been identified or charged. Furthermore, most of the 37 defendants who faced trial for their part in the protests alleged that they had suffered torture and or ill-treatment whilst in detention⁸. The violence that occurred from July to December was similarly not properly investigated, including the killing of at least two people linked to the protests.

Over recent years there have been fewer internationally reported cases of violence against trade unionists. However, a number of recent cases are of serious concern:

- On 12 September 2017, an unidentifiable object was discovered attached to the bottom of an KNPRK official's car⁹.
- On 14 September 2017, the car belonging to the son of an FNPRK leader was set on fire¹⁰.
- on 27 September 2017, an unknown driver created a dangerous situation on the road, which resulted in a car accident in Almaty involving the husband of the same KNPRK official apparently targeted in the 12 September incident¹¹.

⁷ Striking Oil, Striking Workers: Violations of Labor Rights in Kazakhstan's Oil Sector, Human Rights Watch report, 2012

⁸ Striking Oil, Striking Workers: Violations of Labor Rights in Kazakhstan's Oil Sector, Human Rights Watch report, 2012

⁹ Committee on Freedom of Association, Report No 386, June 2018, Case No 3283 (Kazakhstan)

¹⁰ Committee on Freedom of Association, Report No 386, June 2018, Case No 3283 (Kazakhstan)

¹¹ Committee on Freedom of Association, Report No 386, June 2018, Case No 3283 (Kazakhstan)

- On 10 November 2018: prior to a pre-arranged meeting with international trade union representatives, a local union leader was violently attacked by two unidentified assailants. He had previously received threats¹².

Several unions have been investigated and prosecuted for alleged criminal offences arising from their participation in trade union activities, including strike actions, and from alleged fraud in relation to the holding of trade union funds:

On 9 January 2017 the authorities opened a criminal case against a national leader of the FNPRK on charges of “misappropriation or embezzlement of assets” (Article 189 of the Criminal Code) and “fraud” (Article 190 of the Criminal Code), searched her home and confiscated her computer. She was convicted on 25 July 2017, and her conviction was sustained on appeal at a hearing on 29 September 2017 of the South Kazakhstan Regional Appeal Court in the city of Shymkent. She was sentenced to four years of restricted movement, a five-year ban on holding office in any NGO or public organisation and 100 hours of compulsory labour per year for “abuse of office” (Article 250 of the Criminal Code)¹³.

In the period 19–24 January 2017, sixty-three oil workers were detained, brought before the court, and fined. On 7 April 2017 an oil-sector trade unionist was sentenced to two and a half years in prison under Article 402 of the Criminal Code, for inciting workers to participate in an unauthorized strike. He was ordered to pay compensation to the company, and was banned from involvement in civic activism for two years after his release. Another leader of the union was also arrested at the same time. He was charged under Article 189 of the Criminal Code for ‘misappropriation or embezzlement’ of property. Both were released on parole in 2018, but the conviction and charges against them were not overturned¹⁴.

On 25 September 2018, a criminal case was initiated against another union leader accusing him of fraudulently taking possession of trade union membership dues. As in previous prosecutions on similar grounds against other union leaders, the leader concerned has insisted that the funds are in his supervision as chairman of the union, and can be accounted for as such.

¹² ITUC Letter to President of the Republic of Kazakhstan, 13 November 2018

¹³ Committee on Freedom of Association, Report No 386, June 2018, Case No 3283 (Kazakhstan)

¹⁴ Committee on Freedom of Association, Report No 386, June 2018, Case No 3283 (Kazakhstan)

(7) New Trade Union Law, 2014

The law establishes the following tiered levels of trade union organisations:

- primary (workplace)
- local
- branch (sectoral federation)
- territorial
- republican association (confederation / national centre)

Primary unions operate within the workplace, and can be formed by as few as three members (section 15(1), but organisations at this level lack (and cannot acquire) distinct legal personality, and can exist only as sub-divisions of local and branch unions, as per section 15. Above the primary level, all lower tier organisations are legally required to affiliate to the higher tier organisations in a structure mapped out by sections 12(3), 13(3) and 14(4). They must demonstrate that they fulfil this requirement within six months of registration, under section 10(2).

The crux of the problem with the 2014 reforms hinges on two inter-related requirements, which:

- oblige local level, branch and territorial trade unions to affiliate with higher-tier unions – sections 10(2), 12(3), 13(3) and 14(4)
- oblige higher-tier unions to affiliate local, branch and territorial unions across a wide geographic base – sections 10(2) and 11(3)

And the inter-action of these requirements with a further related requirement, that:

- a branch union can only be registered if it represents no less than half of the total workforce within the ‘branch’ (sector). Its structures or affiliation base must also include more than half of all regions, cities of national significance, and the capital, as specified under section 13(2).

This branch representation requirement establishes both an unreasonably high threshold for sector level organising and appears to establish monopoly trade unionism within the sectors, since only one organisation can represent more than 50 percent of all workers within a given sector.

Crucially, the law provides for the authorities to dissolve any trade union structures that fail to comply with the requirements of the new law under section 10(2) / 10(3).

(8) De-registration of the KSPK / KNPRK federation

Emblematic of the situation that has faced smaller trade unions across the country is the de-registration of the Confederation of Free Trade Unions of Kazakhstan (KSPK). Obligated to re-register under the 2014 law, like all trade union organisations, KSPK attempted to register on 25 May 2015, but it was turned down, ostensibly on grounds relating to its constitutional provisions. The confederation addressed these concerns, and on 8 June 2015 it submitted another application for registration, which was returned on 22 June 2015. On this occasion it was criticised for failing to demonstrate that its affiliation base covered more than half of the regions, cities of republican importance, and the capital of Kazakhstan. This decision appears hard to square with the text of the 2014 law, which appears to provide an organisation with a further six months after its registration to comply with these requirements. The confederation made another attempt to register, but this was also declined on 21 July 2015, this time reportedly on grounds relating to property ownership. On 15 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)¹⁵.

Ten months later, the Justice Ministry brought a case against the confederation in the Economic Court in Shymkent in southern Kazakhstan on 5 December 2016, calling for its dissolution for alleged failure to meet legal requirements on registration under Article 11(3) of the 2014 Law on Trade Unions. The confederation's lawyers claim that the Shymkent Court rejected motions to postpone the start of the trial and also denied them the opportunity to question witnesses. On 4 January 2017 the Court ordered the dissolution of the confederation. This decision was upheld on appeal, during a one-hour long court hearing, as a result of which the confederation was de-registered on 28 March 2018. At least three further attempts to re-register the confederation were rejected during 2018: on 6 August; and on 27 August, when it applied under the name Congress of Free Trade Unions of Kazakhstan; and on 4 September 2018, following the approval by the authorities of yet another new name (the Confederation of Free Trade Unions). Ultimately, the

¹⁵ Committee on Freedom of Association, Report No 386, June 2018, Case No 3283 (Kazakhstan)

confederation was denied registration on all these occasions, and is not currently recognised as a legal entity within Kazakhstan¹⁶.

(9) Context and analysis

The ILO's Committee on Freedom of Association (CFA) has called for the institution of independent judicial inquiries to investigate incidents of violence against trade unionists, 'in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events'¹⁷. The Committee has urged governments to ensure that Public Prosecutors systematically investigate and identify 'possible anti-union motives behind the offences under investigation'¹⁸. Failure to protect against such acts or hold guilty parties to account creates a culture of impunity, 'which can only reinforce a climate of fear and uncertainty highly detrimental to the exercise of trade union rights'¹⁹.

On the arrest of trade unionists, the CFA has emphasized that: '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'²⁰, and that 'the arrest, even if only briefly, of trade union leaders and trade unionists, and of the leaders of employers' organizations, for exercising legitimate activities in relation with their right of association constitutes a violation of the principles of freedom of association'²¹.

The ILO's Committee on Freedom of Association (CFA) has stated that 'measures of suspension or dissolution by the administrative authority constitute serious infringements of the principles of freedom of association' and a 'clear violation of Article 4 of Convention No. 87'²². The ILO Committee of Experts on the Application of Conventions and Recommendations has expressly urged 'the Government to take all necessary measures to ensure that the KNPRK and its affiliates are able to fully exercise their trade union rights and are given the autonomy and independence needed to

¹⁶ Committee on Freedom of Association, Report No 386, June 2018, Case No 3283 (Kazakhstan)

¹⁷ Freedom of Association: *Compilation of decisions*, 2018, paras. 81-89 and 94

¹⁸ Freedom of Association, para. 107

¹⁹ Freedom of Association, paras. 90, 96-99, 102, 106

²⁰ Freedom of Association, para. 156

²¹ Freedom of Association, para. 121

²² Freedom of Association, para., para. 986-7

fulfil their mandate and to represent their constituents'²³.

(10) Recommendations

The International Centre for Trade Union Rights calls on Kazakhstan to:

- Establish prompt, effective, and independent investigations into all cases of violence against trade unionists, including the events of the 16th of December 2011 in Zhanaozen and cases of harassment, violence and suspicious deaths that preceded these events;
- Identify the perpetrators and ensure that they are brought to justice;
- Conduct a thorough and impartial investigation into the allegations of ill-treatment and torture during criminal investigations, overturn unsafe convictions, and bring the perpetrators to justice;
- Amend sections 10(2), 11(3), 12(3), 13(2), 13(3) and 14(4) of the Trade Union Law 2014 to remove barriers to freedom of association;
- Ensure that registration of trade unions is not withheld in a manner incompatible with ILO principles on freedom of association;
- Cease prosecutions against trade unionists on grounds relating to their legitimate trade union activities, specifically prosecutions based around sections 189 and 190 of the Criminal Code, which have been used against trade unionists holding funds on trust following the de-registration and refusal to re-register their organisations;
- Remove criminal penalties for incitement to strike (Criminal Code, section 402);
- Seek the assistance of the ILO and other relevant UN agencies in making amendments to domestic law and practice.

²³ Report of the Committee of Experts on the Application of Conventions and Recommendations, ILC.107/III(A). International Labour Organisation, 2018). – **update to a 2019 quote???**