

**Submission to the UN Committee on Economic, Social and Cultural Rights
for the 62nd Pre-Sessional Working Group (03 April 2018 - 06 April 2018)
March 2018**

Human Rights Watch welcomes the opportunity to contribute to the establishment of the list of issues for the review by the Committee of Kazakhstan's implementation of the International Covenant on Economic, Social and Cultural Rights.

Our contribution to the Committee's Pre-Sessional Working Group will focus on the legal framework regulating the right to form and join trade unions in Kazakhstan and the ongoing crackdown against the independent trade union movement and its leaders.

Article 8 – The right of everyone to form and join trade unions

Legal framework

After unresolved labor strikes in the oil sector in 2011 ended in a violent clash between striking oil workers, other people, and law enforcement in December that year, leaving at least 12 dead and more injured, the Kazakh government moved to tighten controls over trade unions, and in July 2012 called for the adoption of a new trade union law that it disingenuously claimed would better regulate employer-employee relations and “modernize trade union institutions.”

Kazakhstan's trade union law, which was ultimately adopted in June 2014, 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, a provision which seriously undermines workers' right to freely determine their structures.

Kazakh law bans outright certain categories of workers from forming unions, including judges, firefighters, prison staff, police, and prosecutors, and prohibits trade unions in Kazakhstan from receiving any financial support from their international trade union affiliates, which a new labor code, adopted in November 2015, failed to remedy.

In July 2017, Kazakhstan's Parliament adopted limited revisions to the 2014 trade union law that did not match the reforms Kazakhstan's Deputy Minister of Labor announced would be forthcoming at the International Labor Conference in June 2017. Instead of bringing the law closer into compliance with ILO standards on freedom of association, the limited amendments specified that courts can liquidate trade unions on the basis of complaints filed by local administrative bodies, and removed from law the right of trade unions to appeal liquidation decisions in court.

Restrictions on the right to strike

The right to strike is guaranteed in Kazakhstan's constitution and Labor Code, but all "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."

In 2014, Kazakhstan introduced to the Criminal Code a new offense of "actions provoking continued participation in a strike declared illegal by the court," which carries a maximum prison sentence of three years. While the right to strike is not absolute in international law, the ILO has determined that criminal sanctions for those who participate in peaceful strikes is an excessive punishment.

Forced closure of trade unions

In a serious blow to the independent trade union movement in Kazakhstan, a court on January 4 2017 [shut down the country's largest independent trade union confederation](#), the Confederation of Independent Trade Unions of Kazakhstan, under the 2014 trade union law. The confederation, despite repeated efforts, had been unable to complete the burdensome registration process and the Justice Ministry appealed to the court in December 2016 to close it down. In the court process that led to the closure of the Confederation the court denied the union the opportunity to fairly present its case or defend itself. It refused to postpone the hearing to allow sufficient time to prepare, and denied all motions by the union, such as requests to question witnesses.

The government also closed three affiliated unions – for domestic workers, health care employees, and metalworkers. In August 2017, the Supreme Court rejected considering the appeal of the Trade Union of Social and Domestic Workers against its forced closure.

Retaliation against trade union activists

Human Rights Watch documented how Kazakh authorities have retaliated against trade union leaders, labor activists, and workers, including threatening to dismiss or dismissing activists from places of employment, or placing activists under government surveillance, in a November 2016 report entitled "[We Are Not the Enemy](#)." Authorities have also used the threat of criminal investigation against trade union leaders, or have imprisoned them, in apparent retaliation for their labor rights activism.

In January 2017, approximately 400 oil workers in western Kazakhstan staged a peaceful hunger strike to protest the closure of the Confederation of Independent Trade Unions of Kazakhstan. A court found the strike illegal and the next day, authorities detained two trade union leaders who helped lead the strike: Amin Eleusinov and Nurbek Kushakbaev. On April 7, 2017, an Astana court [sentenced Nurbek Kushakbaev to two and a half years in prison](#) on the thoroughly unjustified criminal charge of "calling on workers to continue an illegal strike." On June 1, his sentence was upheld on appeal. On November 30, Kazakhstan's Supreme Court declined to review the case. On May 16, another court in Astana [sentenced Amin Yeleusinov to two years in prison](#) on politically motivated embezzlement charges. Kushakbaev and Yeleusinov were banned from any trade union activities for two and five years, respectively.

On June 1, Larisa Kharkova, the leader of the now-banned Confederation of Independent Trade Unions, was indicted on politically-motivated criminal charges of large scale embezzlement and fraud, which carry a maximum sentence of 12 years in prison. Authorities opened the case against Kharkova days after workers in Kazakhstan began protesting the January 4 closure of the Confederation. In bringing this case, Kazakh authorities appear to have retaliated against Kharkova for her independent trade union activism. On July 25, a court convicted Larisa Kharkova of abuse of office and sentenced her to 400 hours of community service, four years of restrictions on her freedom of movement, and banned her from holding a leadership position in any nongovernmental organization, such as a trade union, for five years. On 29 September, an appeal court upheld the verdict against Larisa Kharkova. In February 2018, the compulsory community service component of her sentence was withdrawn by court order, but other restrictions remain.

Response from the International Labour Organisation (ILO)

The trade union law contravenes several aspects of the right to freedom of association enshrined in International Labour Organization (ILO) Conventions 87 and 98, and the United Nations' International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights.

The ILO has repeatedly expressed concern about the registration and mandatory affiliation requirements in Kazakhstan's Trade Union Law, including at its annual June conference in 2015, 2016, and 2017, and expressly called on Kazakhstan to amend the trade union law to bring it in compliance with Convention 98 and to ensure that the Confederation of Independent Trade Unions of Kazakhstan can operate. At time of writing, however, the government had not addressed the ILO's conclusions.

Recommendations

Human Rights Watch invites the UN Committee on Economic, Social and Cultural Rights to ask the Government of Kazakhstan:

- What steps have been taken by the Government to ensure its compliance with the conclusions of the ILO Committee on the Application of Standards?
- What changes, if any, to the 2014 Trade Union Law and the 2015 Labor Code is the Government of Kazakhstan considering, and what timeline is it considering for the revision of these laws?

Human Rights Watch invites the UN Committee on Economic, Social and Cultural Rights to recommend the Government of Kazakhstan to:

- Comply fully with the conclusions adopted in 2015, 2016, and 2017 by the ILO Committee on the Application of Standards;
- Have the court-ordered closure of the Confederation of Independent Trade Unions of Kazakhstan set aside and allow the KNPRK to operate without interference;
- End the harassment of independent trade union activists, including by lifting restrictions on and quashing the conviction of Larisa Kharkova, and releasing trade union activists Amin Yeleusinov and Nurbek Kushakbaev from prison;

- Revise the 2014 Trade Union Law to allow trade unions to register and function in line with international protections and standards;
- Revise the 2015 Labor Code by lifting broad restrictions and prohibitions on the right to strike and clearly define provisions for collective bargaining.

More information:

HRW report - November 23, 2016

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

<https://www.hrw.org/report/2016/11/23/we-are-not-enemy/violations-workers-rights-kazakhstan>