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UPR Submission Kazakhstan

To the UPR Secretariat,

The International Trade Union Confederation (ITUC), representing 207 million workers in 163 countries, would like to make a written contribution to the Universal Periodic Review of Kazakhstan during the 34th session of the working group.

The primary mission of the ITUC is the promotion of workers' rights and interests. Our main areas of activity include human and labour rights; economy, society and the workplace; equality and non-discrimination; and international solidarity. The ITUC enjoys general consultative status with the ECOSOC.

Yours sincerely,



Sharan Burrow, General Secretary

I. Summary

Contrary to the commitments the country undertook during the last UPR in 2014, the Government of Kazakhstan has further restricted the right to freedom of association and the right to collective bargaining. Legislative changes adopted in 2014 and 2015 have contributed to the denial of fundamental rights. Thousands of workers have been deprived of their rights through the dissolution of a national trade union without which sectoral and workplace unions are unable to maintain their registration under the national law. Moreover, trade unionists have faced severe violence and criminal prosecution whenever they have engaged in peaceful and legitimate activities protected under international human rights law.

II. Obligations undertaken by Kazakhstan under international law

Kazakhstan has ratified 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 Convention (1949). In addition, Kazakhstan has ratified the International Covenant on Civil and Political Rights, which protects the right to freedom of association, including the right to form and join a trade union. Moreover, the country has ratified the International Covenant on Economic, Social and Cultural Rights and thus undertaken the obligation to respect the right to form and join the trade unions freely under article 18 of this treaty.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has repeatedly expressed concern over the violation of the rights set out in ILO Convention No.87 and No.98 in law and in practice. As a result, the ILO Conference Committee of the Application of Standards (CAS) has examined Kazakhstan's failure to guarantee the rights to freedom of association and collective bargaining in 2015, 2016 and 2017. In addition, the Committee on Freedom of Association continues to review a complaint. Some of the critical recommendations of the ILO supervisory bodies have called on the government to bring its laws in line with ILO standards and to ensure that workers are able to register trade unions without previous authorisation and with the ability to freely determine the structure of their organisations.

The Special Rapporteur on the rights to freedom of peaceful assembly and of association carried out an official visit to Kazakhstan from 19 to 27 January 2015 to assess the situation of freedom of peaceful assembly and of association in the country, upon the Government's invitation. The Rapporteur specifically expressed concern that the right to strike is limited by various preliminary mediation procedures that are mandatory before a strike can be deemed legal and found that the legal framework regulating strikes to be more focused on limiting strikes than on facilitating the exercise of the right to freedom of association.

During 2014 UPR, the government received and formally noted several recommendations concerning the necessity to remove legislative provisions, including criminal provisions, restricting peaceful assemblies. Kazakhstan also formally noted the recommendation to abolish the requirement of mandatory registrations and memberships in umbrella associations and trade unions and the recommendation to modify parts of the trade union law that unduly restrict freedom of association in order to ensure the ability of all workers to form and join independent trade unions. Kazakhstan undertook to take steps to ensure that the right to peaceful assembly is not hindered as well as several recommendations with regard to the strengthening of the impartiality and independence of the judiciary and fair trial guarantees. The government also committed to intensify the efforts to not allow, in practice, the use as evidence confessions obtained under the use of torture or by other illegal methods as well as the recommendation to strengthen domestic mechanisms to prevent arbitrary arrest and detention.

III. Regressive legislative changes

In 2014 and 2015, Kazakhstan adopted legislative changes that are seriously impeding the right to freedom of association and the right to collective bargaining. The 2014 Law on Trade Unions (LTU) imposes mandatory affiliation of trade unions to regional or sectorial federations. It denies trade unions the right to freely form and join organisations of their choosing. With the introduction of the LTU, all existing trade unions were required to undergo an extremely burdensome re-registration procedure. This included for example the obligation to register regional and sectoral structures in more than half of all regions and main cities. The loss of registration for a national trade union can have serious implications for trade unions at the workplace or regional level given that each organisation must be affiliated to a national trade union in order to maintain its own registration. In addition to the difficulty to meet such a high threshold, the administrative procedures for re-registration posed enormous difficulties to workers. The vague wording of the procedure led to arbitrary and discretionary decisions by registration officers in practice as evidenced under the subsequent section. Furthermore, the government adopted a new Labour Code in 2015, which puts numerous far-reaching restrictions on the right to strike. The government has the authority to declare virtually any sector of the economy or enterprise as a “hazardous” in order to impose an outright prohibition of the right to strike. In addition, the Criminal Code allows for sentencing trade union leaders to prison for “inciting discord” or for “calling on workers to participate in an illegal strike”. This is very problematic given that the right to strike is severely restricted effectively meaning that workers may face imprisonment for exercising the rights guaranteed under international human rights law and international labour standards.

IV. Cancellation of registration and dissolution of independent trade unions

The government has deliberately used the excessive formalities prescribed under the 2014 LTU to discourage the establishment of the independent unions and to restrict the right to organise. As a result, the Confederation of Independent Trade Unions of Kazakhstan (CITUC/ KNPRK) and its member organisations are now under serious threat of permanent dissolution.

Trade unions have been subjected to overly complicated, inconsistent and ultimately arbitrary registration procedures. In numerous instances, registration has been denied for minor mistakes in the application form. Such mistakes include: absence of the postal code,¹ inadequate description of the union logo,² failure to indicate the name of the region in the postal address,³ minor differences in wording in the Russian and Kazakh language versions,⁴ underpayment of the registration fee by 0,5 tenge (around 0,0015 EUR),⁵ and typographical errors in the statute.⁶ Other reasons for refusal of registration included affiliation to international federations, which is a right recognised under ILO

¹ Refusal to re-register “Trade Union of Workers in the Construction Sector – Decent Work”, Copies of Orders of the RK Justice Ministry, dated 13 July 2015 and dated 25 August 2015.

² Refusal to re-register “Trade Union of Workers in the Construction Sector – Decent Work”, Copies of Orders of the RK Justice Ministry, dated 13 July 2015 and dated 25 August 2015; Refusal to register “Sectoral Trade Union of Workers in Mass Media, PR, Advertising and Publishing – Decent Work”, Copy of the Order of the RK Justice Ministry, 16 July 2015.

³ Refusal to register “The Trade Union of Workers at the LPP Oil Construction Company”, see: Copy of the decision by the Mangistauskii Oblast Specialised Inter-district Economy Court of 12 November 2015, on Case No. 2-2769/5-2015.

⁴ Refusal to re-register one of the affiliates of the “Sectoral Trade Union of Workers in Health and Social Development”, Copies of Orders of the Aktyubinskii Oblast, dated 25 November 2016 and Order of the Mangistauskii Oblast, dated 25 October 2016.

⁵ Refusal to re-register the branch office of the Health Worker’ Union in Mangistauskii Oblast, Copy of the Order of the Mangistauskii Justice Department, dated 14 September 2016.

⁶ Refusal to re-register one of the affiliates of the “Sectoral Trade Union of Workers in Health and Social Development”, Copy of the Order of the Yuzhno-Kazakhstanskii Oblast Justice Department no. 69.

Convention No.87.⁷ Some unions have been denied registration on more than 25 occasions. Overall, more than 30 member organisations of the CITUC/KNPRK have been denied re-registration, including:

- Confederation of Free Trade Unions of the Yuzhno-Kazakhstanskii Oblast;
- Independent Trade Union of Medical Workers of the Municipal Hospital for Infectious Diseases, Shymkent;
- Confederation of Free Trade Unions of the Karaganda Oblast;
- Independent Trade Union of Medical Workers of the Clinic of MKTU;
- Trade Union of Workers in the Construction Sector "Decent Work";
- Independent Trade Union of Workers in Emergency Medical Service;
- Saryagashskii District Trade Union Committee of Medical Workers;
- Trade Union Committee of Education, Culture and Sports Workers of Shymkent;
- Independent Trade Union of Medical Workers in Kentau;
- Independent Trade Union of Medical Workers of TsAKhTiG;
- Independent Trade Union of Workers "Vodokanal";
- Trade Union of Faculty Employees of the Medical Institute of Shymkent;
- Independent Trade Union of Medical Workers of the Diagnostic Center";
- Trade union of Workers of the Kazakh-Turkish University named after A. Yasawi

The government's refusal to register the member organisations of the CITUC/KNPRK meant that the confederation was unable to demonstrate presence in more than half of the regions within the 6-month deadline prescribed by the law. Consequently, the Ministry of Justice requested the de-registration of CITUC/KNPRK. On 4 January 2017, the economic court in Shymkent ordered the permanent dissolution of the union. On 28 March 2017, the union was de-registered and since then has made numerous unsuccessful attempts to secure registration as a new structure. As of March 2019, the organisation is still not registered effectively depriving thousands of workers from their right to freedom of association.

V. Violent attacks against trade unionists

Trade union leaders are frequently subjected to threats, intimidation and physical assault by unidentified assailants. The climate of violence and insecurity for trade unionists has been reinforced by the absence of effective investigations and judgments against guilty parties creating a situation of impunity, which is extremely damaging to the exercise of fundamental rights in Kazakhstan. On 10 November 2018, unknown assailants assaulted Dimitri Sinyavskiy, the Chairman of the Karaganda Regional Branch of the Sectorial Union of Fuel and Energy Workers. He has suffered serious bodily harm, including craniocerebral injury, a broken arm and other traumas. Prior to the assault, he was subjected to death threats over phone related to his trade union activity. The ILO Committee of Experts noted with deep concern the alleged beating and injuries suffered by the trade union leader and urged the government to investigate the matter without delay and to bring the perpetrators to justice. The government has claimed that an investigation has been launched but there has been no progress in bringing those responsible to justice.

VI. Crackdown on hunger strike and protests

Trade unionists have faced grave consequences for carrying out peaceful and legitimate activities and protests, which are important aspects of their right to freedom of assembly. On 5 January 2017, around 300 workers employed at the LPP "Oil Construction Company" started a peaceful hunger strike to protest against the dissolution of the CITUC/KNPRK. On 19 January, the Mangistau regional court declared the hunger strike illegal and ordered workers to leave the company's premises. On 22 January, the Mangistau regional court fined 15 workers around 45 380 tenge (around 137 EUR) each for organising an illegal strike. On January 23, the same court ordered each of the protesters to pay 124

⁷ Refusal to re-register "Local Trade Union of Workers at DZO KMG", Copy of the Order of the Mangistauskii Oblast Justice Department, dated 24 February 2016.

000 tenge (around 375 EUR) for the damage allegedly caused to the company from the hunger strike – a sum several times higher than a minimum monthly wage.⁸ Moreover, the judge turned down a request from the oil workers to grant them more time to prepare their defense and to secure legal representation.⁹ As repeatedly highlighted by the ILO Committee on Freedom of Association, the right to strike and to organise union meetings are essential aspects of trade union rights, and measures taken by the authorities to ensure the observance of the law should not prevent unions from organising meetings.

VII. Criminal charges and sanctions against trade unionists

Public authorities have actively targeted trade unionists for false criminal charges in retaliation for the legitimate exercise of their fundamental rights. Trade unionists are facing trumped-up charges with the purpose to prevent them from engaging in trade union activities. The criminalisation of trade union activities creates an atmosphere of fear and intimidation curbing the enjoyment of the right to freedom of association.

Two trade unionists have been subjected to criminal prosecution and damages claims for organising a peaceful hunger strike in protest of the registration challenges workers described above. Amin Yeleusinov and Nurbek Kushakbayev were put on trial in retaliation for the hunger strike that took place in January 2017 (see section IV) based on false allegations that they were involved in the embezzlement of trade union funds and the instigation of an illegal strike. The judicial proceedings against the trade unionists were marred by serious irregularities. Yeleusinov was blackmailed into making a false confession, which had been drafted by prison staff and video-taped without the presence of his lawyer. Kushakbayev was convicted despite the fact that he was not even in the country when the protest took place. The trade unionists were sentenced to two and two-and-a-half years' imprisonment respectively. Although they were released on parole in 2018, they remain barred from union activities for two and five years respectively. In addition, Kushakbayev has been ordered to pay his company 2 525 199 717 tenge (around 75 000 EUR) in damages.

Larissa Kharkova, president of the dissolved CITUC/KNPRK, has equally been subjected to criminal prosecution in retaliation for leading an independent trade union. She has been subjected to an investigation based on false allegation related to the embezzlement of trade union funds and fraud. On 25 July 2017, the Enbekshinskii District Court in Shymkent sentenced her to 100 hours of community service and 4 years of restriction of freedom of movement. She has also been banned from holding a leadership position in a trade union for five years. The prosecution did not present any material evidence of financial misconduct or pecuniary damages.

A similar tactic is now being used against Yerban Blatabai, the leader of the Sectoral Union of Fuel and Energy Workers. Mr Blatabai is also subjected to a criminal investigation for the alleged embezzlement of trade union funds amounting to 10 800 000 tenge (around 26 000 EUR). Once again, the allegations are baseless without any substantiation of pecuniary damages. Nevertheless, the offices of the union have been searched and all internal documentation has been seized as part of the investigation. In addition, the investigative authorities imposed a restraining order freezing all his assets in December 2018.

VIII. Recommendations

Kazakhstan has failed to take the necessary steps in order to bring its laws and practices into compliance with international human rights norms. Therefore, we request that during the 2019 UPR Kazakhstan is called upon to take the following actions:

⁸ Minimum monthly wage in Kazakhstan is estimated at 22 859 tenge (around 53,74 EUR).

⁹ Human Rights Watch press release: Kazakhstan – Two union leaders arrested available at: <https://www.hrw.org/news/2017/01/26/kazakhstan-2-union-leaders-arrested>

- Unconditional drop all criminal charges against trade unionists for engaging in peaceful and legitimate activities;
- Ensure that acts of anti-union violence are swiftly investigated and that remedies and dissuasive sanctions are applied;
- Expeditiously complete the pending trade union registration of CITUC/KNPRK, its affiliates and other unions and ensure that workers are able to register trade unions through a simple, objective and transparent process and without a requirement for previous authorisation;
- Suspend the application of the legal provisions contained in the Trade Union Law, the Labour Code and the Criminal Code that contradict international labour standards and bring these laws into compliance with ILO Convention No.87 on Freedom of Association and ILO Convention No. 98 on the Right to Organise and Collective Bargaining;
- Ensure transparency and adequate consultations with the trade unions with regard to legislation that concerns their fundamental rights at the workplace;
- Fully comply with the recommendations of the ILO supervisory bodies, including the ILO Committee of Experts on the Application of Conventions and Recommendations, the ILO Committee on the Application of Standards and the 2018 ILO High Level Mission.