NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

Submission

of the

New Zealand Council of Trade Unions

to the

Ministry of Foreign Affairs and Trade

on a possible Free Trade Agreement with

Russia, Belarus and Kazakhstan

22 December 2010

Contents

1. Introduction

1.1 The New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU) welcomes this opportunity to make a submission on a possible Free Trade Agreement (FTA) between New Zealand and Russia, Belarus, and Kazakhstan.

1.2 The CTU is the internationally recognised central trade union body in New Zealand. The CTU represents 39 affiliated unions with a membership of over 350,000 workers. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Runanga o Nga Kaimahi Maori o Aotearoa (Te Runanga) the Treaty partner of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Maori workers.

2. General CTU Approach to Trade Negotiations

2.1 The CTU policy approach on trade matters is to identify possible risks to the New Zealand economy and local businesses and other interests, whilst recognising the perceived advantages that some sectors may accrue from enhanced access to markets. The CTU has general concerns about the possible negative impacts of a neo liberal approach to free trade which can promote unrestricted access by multinational

corporations to land, resources, workers, culture, plant life, indigenous intellectual property rights, and so on without protections for the people of that country. These concerns are both for direct impacts and for unintended consequences of increased access.

2.2 The CTU understands that rules-based trade is intended to address issues relating to adherence to minimum standards and codes for operation, but notes concerns over inconsistent substance or application of many current rules, incomplete information considered in negotiating the rules, the inequalities of bargaining power between some parties, the inclusion and exclusion of certain issues, and the uneven enforcement of rules. We believe that New Zealand's international trade and investment policies should be driven by, and be consistent with, its economic and social development policies.

2.3 For the CTU, any analysis of the relative merits of a trade agreement or closer economic partnership must be based on empirically sound research, properly conducted net benefit analysis, and include consideration of:

- employment effects in New Zealand;
- adherence to core labour standards in the partner country;
- the contribution any proposed agreement will make to sustainable economic development in NZ;
- the impact on public and social services;
- the extent to which the agreement is based on principles which will advance equitable trading relations between countries; and
- the genuine application of the Treaty of Waitangi relationship.

2.4 The CTU continues to be highly concerned at the process followed in international trade and investment negotiations, particularly at the lack of openness which limits consultation on, and input into, the trade agreement documents.

3. General issues

3.1 The CTU has a number of concerns regarding Russia, Belarus, and Kazakhstan. This includes labour rights which demonstrate continued failure to enforce the Worst Forms of

Child Labour Convention in Russia and significant constraints on union activities in all three countries.

3.2 In this agreement we are also concerned about the impact of tariff reductions on New Zealand manufacturing sector, rules of origin, the impact on services (including education and financial services), protection of public services, investment issues including investor-state disputes processes, and Te Tiriti o Waitangi issues including the protection of traditional Maori intellectual and cultural property. We also support a general Treaty of Waitangi exception.

3.3 We note the paucity of information on the relationships between New Zealand and the three countries on your web site page which outlines the proposal for this negotiation. What little is given shows very weak economic relationships. Trade with Belarus and Kazakhstan is virtually non-existent: $630,000 exported to Belarus in 2009, mainly fish; $930,000 exported to Kazakhstan in 2009, mainly in machinery and butter and NZ$9 million in imports in 2009 (metals, sulphates and acids). Exports have continued to fall: in the year to September 2010, New Zealand exported only $535,000 in value to Belarus and $844,000 to Kazakhstan. Imports however rose sharply from Belarus, to $6.4 million in that year, mainly due to what appears to be a one-off import of fertilisers valued at $6.1 million in July 2010, while imports from Kazakhstan fell to $4.8 million.

3.4 Trade with Russia has on the whole been larger but very variable, with large crude oil imports in the last two years. Apart from the last two years, New Zealand has had a substantial trade surplus with Russia. Imports were $497.5 million in the year to September 2010 ($490.4 million of which was crude oil), $227.9 million the previous year ($218.8 million crude oil), but only $7.3 million in the year before that (2008). Imports averaged only $22 million per year in the decade to September 2008, with the previous crude oil import being in July 2003 ($54.5 million). Exports collapsed in 1998-99 following the effects of the late 1990s financial crisis on Russia, and have revived gradually since then but are still well behind their 1990s values. They were $220.1 million in the year to September 2010, $191.7 million the previous year and $233.4 million the year before that. By way of comparison, exports were $310 million in 1997. Virtually all of the exports were food: meat, dairy, fish, fruit, and cereal based products made up $198.4 million of the 2010 value.

3.5 While the pattern of New Zealand's exports and Russian imports suggests that there is considerable potential to export more agricultural products, the trade appears to be driven considerably more by economic circumstances than tariff barriers. The official

web site http://www.russian-customs-tariff.com lists dairy tariffs as only 15 percent and fish 10 percent. Meat can face higher tariffs and quotas.

3.6 We hope however this will not tempt negotiations to continue the short-sighted pursuit of lightly-processed agricultural exports paid for by concessions which reduce regulatory space for New Zealand's economic and social development as it has in other agreements.

3.7 Investment from the three countries appears to have been minimal with one recent and unsuccessful exception. The most prominent example has been the takeover of New Zealand Dairies Ltd in South Canterbury by Nutritek of Russia. Originally taking a minority interest, it met considerable local resistance from both farmers and minority shareholders but proceeded to 100 percent ownership in 2009. Nutritek is now in considerable financial trouble, its parent, Nutrinvestholdings, defaulting on a loan in June 2010, and is now reportedly trying to divest itself of the New Zealand investment. It says "NZDL no longer [fits] with Nutritek's longer-term global strategy"[1] despite earlier statements implying Nutritek was in for the long haul.

3.8 Other Russian investment includes a 216 hectare Northland farm owned by the Abramov Family Trust of Russia, purchased in 2009; and 136 hectares in forestry at Tauwhareparae, Tolaga Bay, Gisborne owned by Treloch Forest Trust of Russia purchased in 2003.

3.9 New Zealander and Russian resident Stephen Jennings reportedly owns half of Moscow-based investment bank Renaissance Capital. The global financial crisis forced him to sell half of his shares in the bank and at the same time it sacked 6,000 of its 22,000 staff in Africa and Europe[2].

3.10 With regard to commercial relations with Russia, and investment in particular, we note the high degree of corruption in that country. The Economist recently reported that the "bribes market" was now estimated to account for 20 percent of Russia's GDP or US$300 billion[3]. Transparency International (TI) places Russia at 154 in its 2010 Corruption Perception Index ranking of 178 countries[4], in which New Zealand ties for first place with Denmark and Singapore. TI's Global Corruption Barometer 2010 Report

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[1] "NZ - Dairy plant's future uncertain", *Meat Trade News Daily*, 6 December 2010, http://www.meattradenewsdaily.co.uk/news/061210/nz___dairy_plants_future_uncertain_.aspx
[2] "NZ is paying for its 'pandering' ways", by Jenni McManus, *The Press*, 8 April 2009, p.8.
[3] "The State of Russia", *The Economist*, 11 Dec 2010, p.25, http://www.economist.com/node/17674075?story_id=17674075.
[4] http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results

indicates that corruption is increasing, pervades almost all institutions including public institutions, judiciary, business and media, and government actions to fight it are ineffective[5]. Belarus is ranked 127 and is perceived to have high corruption levels (though not as high as Russia) and being somewhat less ineffective at addressing them. Kazakhstan is ranked 105 but is not rated on the Global Corruption Barometer by TI.

3.11 Russia's corruption is therefore deeply embedded. New Zealand firms will have difficulty having normal commercial relationships in such an environment, let alone safely increasing them. There is a high risk that New Zealand exporters and importers will be drawn into the culture of corruption in order to get business. We have particular concerns that negotiations will attempt to address this in ways which undermine New Zealand's own sovereignty, such as including Investor-State Disputes processes as part of the investment provisions of the agreement. We return to this below.

3.12 The other side of this picture is the desperate position of many Russian workers. During the break-up of the Soviet Union and the financial crisis of the late 1990s, many workers went for months without pay and were plunged into poverty. This repeated itself in the wake of the global financial crisis. In April 2009 it was reported that "wage arrears nationwide have reached 8.755 billion roubles (US$262 million), affecting half a million people. The Economic Development Ministry announced April 27 that 7.5 million Russians, comprising 10 percent of the workforce, are now jobless."[6]

3.13 Forbes Magazine reports that Moscow has the second highest number of billionaires of any city in the world[7]. This is one of the most corrupt countries in the world with grotesque contrasts of wealth and poverty, power and oppression, despite having resources, education and technology capable of bringing a dignified standard of living to all its residents.

4. Services

4.1 The CTU has raised significant concerns over many years about the liberalisation of trade in services. As a result of strenuous objections to New Zealand's draft initial offer on services in the Doha round of WTO negotiations, the Government revised the offer

[5] http://www.transparency.org/policy_research/surveys_indices/gcb/2010/results
[6] "Russia's Labor Tribulations Cast Shadow Over May Day Festivities", by Brian Whitmore, 30 April 2009, Radio Free Europe/Radio Liberty, http://www.rferl.org/content/Russias_Labor_Tribulations_Cast_Shadow_Over_May_Day_Festivities_/1619349.html
[7] "Cities with most Billionaires around the World", by Waqar Shaikh, http://www.infowhizz.com/cities-with-most-billionaires-around-the-world/

and established a set of guiding principles. We still believe that the principles are not strong enough, but as a minimum they establish a basis for analysis of any position on services. It is not clear whether, and if so how, they will be changed for this negotiation.

4.2 In particular, we have expressed our high level of concern at proposals for further inroads into domestic regulatory flexibility. This goes to the heart of union concerns about the way in which rules around services trade could restrict New Zealand domestic policy space on important regulatory matters.

4.3 This is a complex area on which we would want to make detailed submissions should it proceed further, but in brief, we are concerned that any tests of "necessity" or being "not more burdensome than necessary" for regulations would significantly constrain New Zealand from changing its regulatory settings away from "light-handed" ones which have in many cases shown themselves to be inadequate.

4.4 We note that the "roadmap" for the negotiations includes the provision that "The participants may consider disciplines for mutual recognition in different areas". We are very concerned that qualification and licensing requirements could constrain our quality, health and safety regulations and will have a range of effects on education including the accreditation of institutions, teacher recognition and other professional licensing, and other aspects of our education system. Mutual recognition of qualifications is a complex area which reflects strongly on the quality and reputation of institutions and education systems. It would be better addressed through separate agreement.

4.5 The roadmap also signals discussions on "movement of natural persons" in relation to trade in services and investment flows including "discussion of the simplification of the visas regime".

4.6 The CTU opposes binding commitments on migration (whether temporary movement or not) being made in the context of a trade agreement. We believe that migration policy and practice should be more flexible and able to respond to labour market conditions rather than being locked in, in this way. We are less concerned with working holiday schemes, but have concerns about any commitment to specific numbers of skilled workers for specified occupations, since there is no advance certainty of the level of demand for such workers, a situation which is emphasised in recessionary times. Regular reference to specific occupational categories on the long term skill shortages lists should be part of any agreement for temporary migration.

4.7 This also has relevance to fishing crew and related services which historically has been a significant aspect of the New Zealand-Russia relationship, which is dealt with further below.

4.8 Given the major concerns about Mode 4 in the context of trade negotiations, we urge the New Zealand government to adopt a best practice approach. This should include a tripartite overview of temporary migration, recognition that migrant workers are vulnerable workers, guaranteed access to unions and other independent advice for temporary migrants, leaflets in the relevant languages setting out employment rights, pastoral care, and an induction process.

4.9 There should be regular reviews of lists of migrant workers permitted in under any such agreement, to take account of New Zealand's changing future needs for skilled workers which may decrease with the return home of some skilled expatriates in response to current global economic pressures. The rules over admission of temporary workers to New Zealand should specify under what circumstances they will be permitted entry.

4.10 Our primary submission is that it is inappropriate to include migration commitments in a trade agreement. It is more flexible to deal with migration issues in a non-binding way that maintains the ability of the New Zealand Government to review migration levels as appropriate in the circumstances in any period.

4.11 No indication has been given as to which specific sectors are likely to be covered by services negotiations. We have indicated in many previous submissions our concern at the effect of services liberalisation on public services, education, health, social services, financial services, local film and broadcasting content, environmental services such as water treatment and waste management, outsourcing of call centres, backroom processing and in general, and other sectors.

4.12 The CTU is opposed to the use of the negative list approach to negotiating a free trade agreement. It carries major risks. If a trade sector is omitted from the FTA or is described in incomplete terms, there is the risk of needing future litigation to restore the missing terms as has happened in previous situations. Relying on predictions of what technologies, goods, and services may become subject to future trade between our countries is also overly risky. New financial services "products" which may present a risk to the economy or financial system are a very topical example. Identifying future developments, needs, and risks is inherently difficult. Given the speed of current technological advances, the CTU submits that it would be more prudent to opt for a

positive list approach in which commitments are explicitly listed, and additional trade areas and provisions are subject to further negotiation.

5. Fishing

5.1 Provision of Russian fishing vessels and crews has been a significant part of the New Zealand-Russia relationship, going back to before the break-up of the Soviet Union, although vessel numbers from Russia are smaller now than in the past. Because of legal restrictions on ownership of fishing quota, foreign vessels are either chartered by New Zealand quota-holders or in some cases lease fishing quota. Some of the crews were (and continue to be) Ukrainian and Lithuanian as well as Russian and other nationalities.

5.2 There have been continuing issues with exploitation of crew members, including very poor and unsafe working conditions on vessels, low pay, and repeated cases of failing to pay crew. Weak labour laws in Russia (see below) and difficulty in enforcing their employment rights in New Zealand make these workers very vulnerable to exploitative practices.

5.3 One example is the Russian owned vessel Aleksandr Ksenofonotov. In 2006 the Maritime Union of New Zealand and the International Transport Workers Federation intervened when approached by Ukrainian crew members aboard the vessel. Their documents showed their pay had been severely cut to a fraction of the hours worked, after heavy taxation under Russian law and large payments to the employer were all taken out of their pay. Then Maritime Union General Secretary Trevor Hanson said the concern was with some of the dubious practices that may go on in the home country where this labour is recruited. An “out of mind, out of sight” attitude with foreign crews was still prevalent, with crews involved in disputes often hurriedly sent home before their claims could be inspected under New Zealand regulations.

5.4 The resolution of the incident was reported in the national media ("Overseas fishing crew exploited in NZ waters", Fairfax, 2 June 2007) as follows. "ITF yesterday welcomed a determination from the Employment Relations Authority ruling in favour of a group of overseas crew members embroiled in a battle over pay with their Russian employer. The vessel, owned by DV Ryboproduckt Ltd (DVR), was on a time charter to a New Zealand company, Fish Market Holdings Ltd. The 49 Ukrainian crew members on the Aleksandr Ksenofonotov refused to leave the fishing vessel in Dunedin at the end of their employment agreement in November 2006, arguing that deductions made to their pay

were not lawful. [ITF spokesperson] Ms Whelan said DVR wanted to deduct money from their wages for air fares, accommodation and a daily food allowance."

5.5 The Maritime Union also assisted in recovering the unpaid wages of a Russian crew aboard an arrested ship the “Southern Pearl” in the Ports of Auckland in 2008. The crew had not been paid and were surviving on very poor food, with no milk, vegetables or fruit, and very little money.

5.6 The complexity of crewing and chartering arrangements adds to the difficulties crews face in these situations, often leading to considerable problems identifying the company or agent responsible.

5.7 We can provide further information on these matters on request.

5.8 CTU affiliates and many New Zealand fishing companies are concerned that the low pay and often appalling working conditions undermine employment of New Zealanders in the fishing industry, both on vessels and land-based, and undercut New Zealand fishing companies which employ New Zealanders.

5.9 We oppose any expansion of this relationship. Rather, there is an urgent need to improve conditions for crew on these vessels and improve their pay and employment security.

5.10 In the appendix we include an International Labour Office (ILO) report on Russia’s compliance with the ILO Accommodation of Crews (Fishermen) Convention, 1966, which is of significance to New Zealand in relation to Russian fishing in New Zealand fishing grounds. The report makes clear that the Russian government is not taking its responsibilities under the convention seriously and is failing to report to the ILO on how it intends to comply. This does not give confidence for any expansion of the New Zealand-Russia fishing relationship. Requirement to comply with this convention and to report fully to the ILO should be part of any agreement with Russia.

6. Tariffs

6.1 The CTU generally opposes unilateral reductions in tariffs but acknowledges that a managed and mutual reduction in tariffs in a bilateral context can result in benefits in some sectors alongside disadvantages in others.

6.2 The CTU would be most concerned if any tariff phase down in the context of this agreement was at a faster pace than that agreed with China or ASEAN.

6.3 Factors that need to be considered include the following points:

- agricultural commodity prices are more elastic than those of manufactured goods;
- New Zealand manufacturers face tough times already and are facing more challenges with the current recession. The CTU believes it is necessary to have an economic development strategy to promote manufacturing jobs in New Zealand, and that trade policies should accommodate this;
- the manufacturing sector needs a strong base to build value-added exports. There are significant benefits from a well-developed manufacturing sector including higher levels of R&D, greater rates of productivity improvement relative to other sectors, better learning and development when manufacturing and market are closer together, multiplier effects from links with other parts of the economy, and the importance of manufacturing to services growth. These benefits are in addition to the importance for employment and regional development.

6.4 The CTU believes that workers in sectors disadvantaged by the impacts of FTAs with countries with a significant manufacturing base should be given special consideration in provision for re-training and other support to find new areas of employment.

6.5 The approach to tariff negotiations should therefore be based on a long term strategy for value-added manufacturing from New Zealand rather than a simple acceptance that New Zealand is the source of commodity exports with some added value in agriculture but none elsewhere.

6.6 Robust Rules Of Origin need to be included in the agreement to protect against "leakage" of intermediate material and goods from countries neighbouring Russia, Belarus and Kazakhstan which do not already have tariff-free access to New Zealand. Some of these neighbours have very close economic relationships, especially with Russia, including aspects of economic integration.

6.7 The negotiations also should ensure that anti-dumping provisions are maintained.

7. Investment

7.1 We would oppose any compromising of New Zealand's current or future overseas investment rules. The facts outlined above regarding corruption in Russia should make the government even more cautious about liberalisation of investment into New Zealand.

7.2 As noted above, we would oppose a negative list approach to scheduling sectors covered by investment provisions, and equally would oppose an approach that covered all investment without exceptions.

7.3 It is important that any agreement underscores prudential measures, such as those for the protection of investors, depositors and insurance policy holders, to ensure the integrity and stability of the financial system, and to allow the New Zealand government to take actions that may extend well beyond normal operational prudential measures. There must be reservations for addressing balance of payments problems. In the current global financial crisis, there is a need for careful regulation of the financial sector, both domestically and internationally. This is not a time for further deregulation or relaxation of domestic screening provisions, nor of financial services.

7.4 The CTU has consistently raised concerns about investor-state arbitration provisions. Investor-state arbitration allows foreign investors to legally challenge government actions before secretive international arbitral tribunals. This means that foreign investors have the right to file damages claims as a result of laws, regulations or administrative actions at the national or local levels, even if they are enacted for legitimate public interest objectives, including public health, safety, labour rights or environmental protection.

7.5 The New Zealand Government should make clear at the outset of any negotiations that it will oppose investor-state arbitration.

7.6 It would be outrageous if investors from Russia, Belarus or Kazakhstan tainted by corruption were able to sue the New Zealand government over actions taken by it, local government or other official bodies. Even threats to sue can incur considerable cost and hamper needed government actions.

7.7 The New Zealand government may argue that it has an aggressive interest in protecting New Zealand investment in these three countries and supports investor-state disputes processes on that basis. Most New Zealand investors which are small companies in international terms. For small companies, such processes are impractical in any case, being very costly and time consuming. But even for larger investors, they are unlikely to

resolve issues that arise from the systemic corruption that exists. Investor-state arbitration processes are sledgehammers that cannot somehow create a sustainable investment environment out of one that is deeply flawed. At the best they might provide some compensation on an investor's exit.

7.8 Even that is unlikely. Russia has a history of not paying awards made by investor-state tribunals, and certainly will avoid paying as long as it can, at the very least increasing costs to the investor. For example, Luke Eric Peterson, an authority on investor-state arbitration awards, reporting on an award this year against the Russian Federation in favour of RosInvestCo UK Ltd, an affiliate of the U.S.-based hedge fund Elliot and Associates, using an international arbitration tribunal in Stockholm, Sweden, writes:

7.8.1 "The Russian government has yet to comment publicly on September's arbitral ruling, however lawyers for the Russian Federation have recently applied to the Swedish courts to set aside the arbitral award. Under Swedish law, the award can be challenged on certain narrow grounds prior to its becoming enforceable against the Russian Federation.

7.8.2 Indeed, Russia is already seeking to set aside an earlier 2007 jurisdictional ruling which paved the way for the arbitrators to reach their recent ruling on the merits. In the latest development in this ongoing challenge to the 2007 jurisdictional ruling, the Swedish Supreme Court ruled in November of this year that a lower court can hear the merits of a challenge lodged by Russia, which maintains that arbitrators lacked jurisdiction to hear RosInvestCo's claim.

7.8.3 In the event that RosInvestCo's victory is upheld in the Swedish courts, it remains to be seen what success the investor will have in collecting the arbitral award. As has been well chronicled, the Russian Federation has declined to pay an earlier arbitral ruling in favour of a German investor who was expropriated by Russia in the 1990s. That individual, Franz Sedelmayer, has fought for more than a decade to seize sufficient Russian assets in various jurisdictions in order to collect on his award."[8]

7.9 For all these reasons we strongly oppose investor-state disputes provisions in any agreement.

[8] "Exclusive: Arbitrators hold Russian Federation liable for expropriation of Yukos shareholdings; modest damages owed to affiliate of prominent U.S. Hedge Fund", by Luke Eric Peterson, 19 December 2010, http://www.iareporter.com/articles/20101220.

7.10 We would also oppose any Most Favoured Nation provision that allowed investors from Russia, Belarus or Kazakhstan to benefit from more favourable provisions in other New Zealand agreements.

8. Intellectual Property

8.1 We note New Zealand's position paper on Intellectual Property for the Transpacific Partnership Agreement negotiations which has been made public, and broadly support the position it takes, though we have reservations about many aspects of the WTO TRIPS agreement. We would oppose any extension of Intellectual Property provisions beyond TRIPS.

8.2 Our most immediate concerns in this area are that strengthening of IP rights should not increase the cost and availability of medicines and with regard to IP and the Treaty of Waitangi. If negotiations extend beyond TRIPS, we would like the opportunity to make further submissions.

8.3 The CTU suggests that protection of intellectual property relating to traditional Maori knowledge (matauranga) particularly of medical use of plants and of other collectively owned cultural knowledge should be provided for in the FTA in relation to the Treaty of Waitangi. We are mindful of the ongoing consideration by the Waitangi Tribunal in New Zealand of the WAI 262 'Intellectual Property, Flora & Fauna' Claim. The Maori healers' association - Nga Ringa Whakahaere - is closely associated with this Claim which was originally filed in 1991. They have expressed concern that the Crown and trans-national entities are presuming to own, regulate or use aspects of Maori cultural and intellectual property, and the native flora and fauna species for which Tangata Whenua (Maori) are Kaitiaki (guardians).

8.4 Given the commercial value in Asia of traditional medicines and of investment opportunities for marketing such remedies internationally, the CTU believes that special consideration may need to be given to protecting the status of traditional Maori healing knowledge and plants used in Rongoā Māori (traditional Māori medicine). At present the preparation of products in the traditional practice of rongoā Maori is exempt from the requirements of the Medicines Act, and their status may be problematic under trademark legislation. There is a need to protect Maori cultural and traditional knowledge, and intellectual property rights, from bio-prospecting and other misappropriation.

9. Labour Rights

9.1 We note with regret that the issue of Labour Rights is not included in the roadmap for this agreement. We strongly submit that inclusion of such provisions is a necessity.

9.2 The CTU has received from the International Trade Union Confederation (ITUC) 2009 reports on labour practices used in Russia and Belarus, describing severe constraints on union rights, and labour rights abuses in relation to union officials. Copies of these reports are attached in the appendix to this submission. We also append a report on ILO deliberations regarding Russia's observation of the Worst Forms of Child Labour Convention, and on the Accommodation of Crews (Fishermen) Convention, 1966. We have further reports, including from ILO Committees of Experts on the Application of Conventions and Recommendations on the three countries, which we can provide on request. These confirm the ITUC reports and provide further detail on the respective governments' compliance and noncompliance with ILO requests and the various international labour conventions.

9.3 We outline below some of the evidence presented in the reports.

9.4 The CTU raises these issues for consideration of Government to Government dialogue and for addressing labour rights issues in the trade agreement itself. The CTU seeks Government inclusion in any free trade agreement an effective labour rights provision that is an enforceable part of the agreement, and inspection rights to companies sending goods or temporary personnel to New Zealand. Labour provisions are needed to enable unions in New Zealand to monitor and protest about the labour conditions of workers producing goods and services sold under the agreement if these do not meet minimum standards.

9.5 Any Labour provision in this Agreement needs to make specific reference to core labour standards and include strong provisions to deal with complaints. We are currently working on a model for the TPP agreement and would offer a similar model for the present agreement.

9.6 Russia

9.7 The ITUC 2009 Annual Survey of Trade Union Rights Violations states the following regarding Russia:

9.7.1 Restrictive provisions of the Labour Code remain in force despite ILO criticism. The right to strike is limited to the point that virtually any strike is considered illegal, often

for bureaucratic reasons. Intimidation, culminating in dismissals and arrests continues to take place. At least three trade unionists and a woman trade union rights activist were assaulted, whilst at least two received death threats.

9.7.2 **Freedom of association**: Workers have the right to form and join trade unions. However, there are legal restrictions on the organisational structure of trade unions, the right to collective bargaining and the right to strike.

9.7.3 **Labour legislation**: The 2002 Labour Code of the Russian Federation substantially weakened trade union rights and the protection of organised workers.

9.7.4 Further to complaints by Russian trade unions, the ILO urged the government to amend the Labour Code to bring it in line with international labour standards. Around 300 amendments were introduced in 2006. However, just one of the recommendations of the ILO's Committee of Experts on the Application of Conventions and Recommendations was taken into account, and only partially. Some of the amendments introduced by the government made trade union activity even harder to carry out.

9.7.5 **Representation rules**: The Labour Code imposes rules concerning the structure of trade union organisations as a requirement for legal recognition and collective bargaining. "Primary group" trade unions, that is, company unions that are structural units of a higher-level trade union organisation, have priority for representing the workers vis-à-vis the employer in a given company. The amendments to the Labour Code reinforced this system, however if there is no "primary group" union in a company, or where the "primary group" union represents no more than 50% of the workers, the law allows workers to elect a different representative body.

9.7.6 **Collective bargaining**: The Labour Code does not allow collective bargaining for individual occupations or collective agreements covering them. The ILO's Committee on Freedom of Association recommended that the government change these provisions to enable trade unions to conduct negotiations and sign agreements on individual occupations. The recent amendments to Article 26 of the Labour Code still do not allow for the signing of such agreements, but only interregional ones.

9.7.7 For many trade unions, collective bargaining is made problematic by the fact that their structure is different from that required by the Labour Code: there may be no "primary group" union at the enterprise level, but another type of union, group of unions or even a trade union federation.

9.7.8 Only one collective agreement can be signed in each enterprise. According to the Labour Code, if there are several trade unions in an enterprise, they can form a joint representation body based on proportional representation (depending on the membership of each trade union) in order to conduct negotiations. This body must represent more than 50% of workers. A "primary group" union representing over half of the total workforce can, of its own accord, initiate collective bargaining on behalf of all the workers, without the need to create a joint representative body. If the unions fail to set up a joint body that represents more than 50% of the workforce, the workers can choose a primary group union or another body to represent them.

9.7.9 **Right to strike**: The Labour Code recognises the right to strike, but only under certain conditions. A strike can be held only to resolve a collective labour dispute. The law does not recognise the right to conduct solidarity strikes or strikes on issues related to state policies.

9.7.10 The Labour Code has a complicated procedure in place for putting forward demands with regard to collective labour disputes and calling a strike. There are many bureaucratic hurdles, which make it virtually impossible to hold a totally legal strike. These include the following: the duration of the strike has to be communicated beforehand, the union must re-issue its demands once collective bargaining has reached a stalemate, and a strike can only be held within two months of the strike ballot. A minimum amount of work in essential services is set by the authorities. Many categories of workers, including civil servants and railway workers, are not allowed to strike at all. Employers may bring in replacement workers during a strike. Most of the employers' requests to declare a strike illegal have been upheld by the courts.

9.8 The report also describes death threats and assaults on unionists and human rights activists, and growing interference and biased law enforcement by public authorities in union activities.

9.9 With regard to the Worst Forms of Child Labour Convention, 1999, the ILO Committee of Experts on the Application of Conventions and Recommendations states as follows:

> The Committee had noted that, according to the communication of the International Trade Union Confederation (ITUC), thousands of persons are trafficked from the Russian Federation to other countries, including Canada, China, Germany, Israel, Italy, Japan, Spain, Thailand and the United States.

Internal trafficking within the Russian Federation is also taking place; women are generally forced to work as prostitutes while men are trafficked into agricultural or construction work. There are said to be confirmed cases of children being trafficked for sexual exploitation. The Committee had further noted that the Committee on the Rights of the Child in its concluding observations (CRC/C/15/Add.274 of 30 September 2005, paragraph 80) while welcoming the recent introduction of norms prohibiting the trafficking of human beings in the Criminal Code, was concerned that not enough was being done to effectively implement these provisions. The Committee on the Rights of the Child also expressed its concern that protection measures for victims of trafficking of human beings were not fully in place and that reported acts of complicity between traffickers and state officials were not being fully investigated and punished.

9.10 Further:

The Committee further notes that, according to the Report of the UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography in Ukraine of 24 January 2007 (A/HRC/4/31/Add.2, paragraphs 48-49), the Russian Federation is also a destination country for boys and girls aged between 13 and 18 years trafficked from Ukraine. According to this report, half of the children trafficked across borders from Ukraine go to neighbouring countries, including the Russian Federation. The children trafficked across borders are exploited in street-vending, domestic labour, agriculture, dancing, employed as waiters/waitresses or to provide sexual services. Furthermore, according to the same report (paragraph 52), as of 30 June 2006, 120 unaccompanied children were repatriated to Ukraine from nine countries, among which the Russian Federation was mentioned in particular.

The Committee notes once again that, although the trafficking of children for labour or sexual exploitation is prohibited by law, it remains an issue of concern in practice. It also once again recalls that, by virtue of Article 3(a) of the Convention, the sale and trafficking of children is considered to be one of the worst forms of child labour and is therefore prohibited for children under 18 years of age. The Committee once again requests the Government to take the necessary measures as a matter of urgency to ensure that persons who traffic in children for labour or sexual exploitation are in practice prosecuted and that sufficiently effective and dissuasive penalties are imposed. In this regard, it once again requests the Government to provide information on the number of

infringements reported, investigations, prosecutions, convictions and penal sanctions applied for violations of the legal prohibitions on the sale and trafficking of children. The Committee also asks the Government to provide information on the status of the draft Law on Combating Trafficking in Human Beings and on the progress made in its enactment, if still pending before the Duma.

9.11 There is also detail on the lack of proper enforcement and action taken by the Russian Government.

9.12 We note in the section on Fishing above the concerns regarding the Accommodation of Crews (Fishermen) Convention, 1966.

9.13 Belarus

9.14 The ITUC 2009 Annual Survey of Trade Union Rights Violations states the following regarding Belarus:

9.14.1 Anti-union legislation and practice remained firmly in place, despite some steps by the government to consider the recommendations of the ILO Commission of Inquiry and involve independent unions in that process. Several arrests and assaults were reported during the year.

9.14.2 The 1996 Constitution transferred all powers to the president of Belarus, giving him the right to enact decrees that carry the weight of law. This constitution technically recognises the right of workers to form and join trade unions, but both the Trade Union Law of January 2000 and several presidential decrees contain serious violations of trade union rights.

9.14.3 At the beginning of 2004, Belarus was subject to the ILO Commission of Inquiry procedure. The Commission's report, published in October 2004, stated that trade union rights were blatantly violated in Belarus. The Commission adopted 12 recommendations aimed at bringing national law and practice into line with international standards. No tangible progress has been achieved so far. Some laws and by-laws adopted after the Commission of Inquiry ended its work brought up further restrictions on trade union freedoms. In 2008 the government took some steps towards implementing these recommendations, though they have not yet been transformed into legislative measures.

9.14.4 **Trade union registration**: Trade union registration is compulsory. Presidential Decree No. 2 of January 1999 required all previously registered trade unions at the

national, industry and enterprise level to re-register. If a trade union is not registered, its activities are banned and the organisation has to be dissolved. The long and complicated procedures include an obligation on the trade unions to provide the official address of their headquarters. This is often their workplace or the premises of the enterprise. A letter from the management confirming the address is usually required, making trade unions completely dependent on the good will of the employer. Trade unions are not allowed to register the home addresses of their leaders as the trade union's legal address, and commercial rent is often not an option, especially for small organisations.

9.14.5 The 2004 ILO Commission of Inquiry concluded that Decree No. 2 should be amended to eliminate the obstacles for registration and that trade union organisations must be registered regardless of whether they are able to provide a legal address.

9.14.6 The same decree sets forth minimum membership requirements at the national, branch and enterprise levels that are so high that they make it almost impossible to create new unions, and it undermines the position of existing ones. At the national level, there must be a minimum of 500 founding members representing the majority of the regions of Belarus. A list of names must be sent to the Ministry of Justice.

9.14.7 **Compulsory dissolutions**: In 2005 a number of amendments to laws and regulations were introduced to make trade unions' compulsory dissolution even easier. Trade unions' organisational structures, in other words, their primary and territorial organisations, may be deleted from the register by a decision of the registrar, without any court procedure. This can happen if the registrar issues a written warning that a trade union or its structure violated legislation or its own statutes, and the violations had not been eliminated within a month. Given that Belarusian legislation is incompatible with the ILO standards, this amendment allows for the administrative dissolution of trade unions that simply want to exercise their freedoms according to international standards. The registrar can also remove a trade union organisation from the register if their recorded data is no longer correct - for example, if they lose their legal address and cannot obtain a new one. In violation of the international labour standards, the law on mass activities and provisions on receiving foreign aid allow for dissolution of a union by a court decision.

9.14.8 **International cooperation restricted**: A number of Presidential decrees and ordinances lay down stringent conditions for the receipt of foreign assistance for

activities in the country. These decrees, applicable to trade unions and other civil society organisations, were an attempt to isolate independent trade unions from their partner organisations abroad and to limit the capacity of the unions to protest against continued violations of workers' rights.

9.14.9 In accordance with these Presidential decrees and ordinances no foreign assistance may be offered to non-governmental organisations, including trade unions, for holding seminars, meetings, gatherings, strikes, pickets, and so on, or for "propaganda activities" aimed at their own members, without the authorities' permission. Gratuitous organising of seminars, conferences and other public debates is considered as international technical assistance, and the organisers have to report on the organising and running of the events to the government's Commission for International Technical Cooperation. Such events also have to be registered with the Ministry of Finance, otherwise they would be considered illegal.

9.14.10 **Up to two years in prison for speaking out**: As of 2005, the Criminal Code stipulates that "Discrediting the Republic of Belarus" is punishable with arrest for up to six months or imprisonment for up to two years. According to the Code, "discrediting" means deliberately giving foreign states or foreign or international organisations "false statements" on the country's political, social or economic situation. Mr Stepan Sukhorenko, the chairman of the National Security Committee, who then presented the draft amendment to the Code to Parliament, explained that this offence was meant to deal with libellous statements, such as the information presented by some trade unionists that resulted in the "six month ultimatum" presented by the International Labour Organisation.

9.14.11 **Heavy limitations on the right to strike**: The January 2000 Labour Code imposes severe limitations on the right to strike. It sets out very complicated conciliation procedures that would take at least two months. The strike must also be held in the three months following the failure of the conciliation procedures. The president may suspend a strike for a period of up to three months or even cancel one, in the interests of national security, public order, public health, or when the rights and freedoms of others are threatened. Moreover, the duration of the strike must be specified in advance and a minimum service must be ensured. Strike participants may not receive financial aid or subsidies from foreign organisations.

9.14.12 **Draft Trade Union Law**: The 2004 ILO Commission of Inquiry ruled that anti-union legislation, including the above-mentioned decrees, should be repealed. The

government's approach was not to take measures pertaining to these individual pieces of legislation, but to promise that the new trade union law would resolve all problems.

9.14.13 In 2006, President Lukashenko approved a "Concept" of the new Law on Trade Unions, which was prepared without consulting the trade unions outside the FPB structures.

9.14.14 When the draft of the law saw the light of day in May 2007, the ITUC-affiliated Belarusian Congress of Democratic Trade Unions (BKDP) dubbed it "the law on state control over trade unions", since the draft gives authorities wide-range powers to inspect trade union documentation and activities. The government planned to keep the excessive minimum membership requirements and introduce quite a rigid framework for trade union activities. The registration procedure would remain long and cumbersome, with a number of loopholes allowing authorities to grant or deny registration at their discretion. ILO intervention convinced the government to abandon the draft law.

9.15 Surveying trade union rights in practice and violations in 2008, the ITUC considers that while "some initial steps have been taken and entry points identified for making some real changes in line with the Commission of Inquiry recommendations, … only time will tell whether the government will be able to follow through on its commitment. For the time being the situation remains controversial".

9.15.1 The Presidential Administration is attempting to control trade unions, and "spares no effort in suppressing protests and opposition by unions to the daily violations of trade union and human rights in Belarus. Not only does the government try to isolate these trade unions at the national level, but it also criminalises support at the international level."

9.15.2 Workers are actively discouraged from joining independent trade unions. Fixed-term contracts (which cover 90% of the total workforce) are often used to force workers out of independent trade unions. The government's response to criticism is that the law provides all necessary remedies. However, the ILO supervisory bodies have noted on several occasions that the Belarusian judiciary, in its present state, is not an adequate recourse for redressing trade union rights violations, and that complaints concerning trade union rights violations have either been totally ignored or routinely dismissed by prosecutors' offices.

9.15.3 On 20 December 2006, the European Union's Council of Ministers announced its decision to withdraw Belarus' benefits under the system of generalised special preferences (GSP). This decision was the culmination of nearly three years of monitoring violations of trade union rights and the government's reluctance to follow the Commission of Inquiry recommendations. While this decision gave Belarus six more months to fulfil its ILO obligations, no tangible progress could be noted, and the EU decision came into effect on 21 June 2007. The EU position regarding the implementation of international labour standards by the country was further confirmed at the International Labour Conference in June 2008.

9.16 The ITUC provides details of arrests of unionists, legal harassment of unions, and difficulties put in the road of union registration.

9.17 Kazakhstan

9.18 There is no ITUC report on Kazakhstan.

9.19 We do have a 2009 ILO Committee of Experts on the Application of Conventions and Recommendations report which is included in the appendix to this submission.

9.20 This reports the lack of cooperation the ILO has met from Kazakhstan in monitoring its adherence to the Freedom of Association and Protection of the Right to Organise Convention, 1948, to the Right to Organise and Collective Bargaining Convention, 1949, and to the Working Environment (Air Pollution, Noise and Vibration) Convention, 1977.

9.21 For both of the first two Conventions, the Committee had previously requested Kazakhstan to provide observations on ITUC comments, in the first case originally submitted in 2006 "referring to violations of Article 2 of the Convention in practice, in particular high registration cost, which makes registration of trade unions almost impossible" and in the second case "concerning interference by the employer in trade unions' internal affairs and activities and refusals to bargain collectively". No information had been provided by Kazakhstan.

9.22 The Committee was concerned that groups of public sector workers have no rights to organise, and that there were obstacles to the creation of free employers' organisations.

9.23 It outlines numerous barriers placed in the way of the rights to organise, to strike, and to affiliate in federations and with international organisations. It notes laws which appear to breach the Conventions.

9.24 For the third Convention, the Committee notes that the Kazakhstan government had repeatedly failed to respond to a request to comment on a situation where 80 Kazakhstan civil aviation workers “suffered occupational illness and became disabled as a result of excessive exposure to noise and vibration in their work”.

9.25 All three governments have highly questionable labour rights records, providing little confidence that degradation of labour rights will not be used to gain investment and trade advantages.

10. Other issues

10.1 While they are not mentioned in the Roadmap, we would be concerned if the agreement included competition or government procurement provisions and would want to make further submissions if these or other new areas were included.

10.2 We would support provisions which protected the ability of New Zealand authorities (local or central) to safeguard the environment and our ability to conserve natural resources and natural or artificial features of cultural or historical significance. However we do not agree that the purpose of a provision on the environment is to assist in trade in environmental goods and services. This should be addressed in the respective goods and services chapters rather than pretending they need special treatment.

10.3 We also reassert our strong view that there must be a much greater degree of openness in these negotiations and in similar negotiations, including regularly releasing draft texts and providing a process that gives real opportunity for public analysis and comment, with the potential to reject or amend the agreement before it is made binding.

11. Conclusion

11.1 The CTU has in this submission raised a range of issues, and in particular raised concerns in respect of the impact of the proposed agreement on services, economic development, labour rights, investment, and the Treaty of Waitangi.

11.2 The CTU requests ongoing consultation on these and other issues that impact on workers through the negotiation of an FTA with Russia, Belarus and Kazakhstan.

12. Appendix: labour rights reports on Russia, Belarus and Kazakhstan

Contents

Glossary:

ITUC – International Trade Union Confederation

ILO – International Labour Organisation

CEACR – Committee of Experts on the Application of Conventions and Recommendations

ITUC 2009 Annual Survey of Trade Union Rights Violations: Russian Federation

Population: 142,500,000 / **Capital:** Moscow
ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 – 182

The restrictive provisions of the Labour Code remain in force despite ILO criticism. The right to strike is limited to the point that virtually any strike is considered illegal, often for bureaucratic reasons. Intimidation, culminating in dismissals and arrests continues to take place. At least three trade unionists and a woman trade union rights activist were assaulted, whilst at least two received death threats.

Trade union rights in law

Freedom of association: Workers have the right to form and join trade unions. However, there are legal restrictions on the organisational structure of trade unions, the right to collective bargaining and the right to strike.

Labour legislation: The 2002 Labour Code of the Russian Federation substantially weakened trade union rights and the protection of organised workers.

Further to complaints by Russian trade unions, the ILO urged the government to amend the Labour Code to bring it in line with international labour standards. Around 300 amendments were introduced in 2006. However, just one of the recommendations of the ILO's Committee

of Experts on the Application of Conventions and Recommendations was taken into account, and only partially. Some of the amendments introduced by the government made trade union activity even harder to carry out.

Representation rules: The Labour Code imposes rules concerning the structure of trade union organisations as a requirement for legal recognition and collective bargaining. "Primary group" trade unions, that is, company unions that are structural units of a higher-level trade union organisation, have priority for representing the workers vis-à-vis the employer in a given company. The amendments to the Labour Code reinforced this system, however if there is no "primary group" union in a company, or where the "primary group" union represents no more than 50% of the workers, the law allows workers to elect a different representative body.

Collective bargaining: The Labour Code does not allow collective bargaining for individual occupations or collective agreements covering them. The ILO's Committee on Freedom of Association recommended that the government change these provisions to enable trade unions to conduct negotiations and sign agreements on individual occupations. The recent amendments to Article 26 of the Labour Code still do not allow for the signing of such agreements, but only interregional ones.

For many trade unions, collective bargaining is made problematic by the fact that their structure is different from that required by the Labour Code: there may be no "primary group" union at the enterprise level, but another type of union, group of unions or even a trade union federation.

Only one collective agreement can be signed in each enterprise. According to the Labour Code, if there are several trade unions in an enterprise, they can form a joint representation body based on proportional representation (depending on the membership of each trade union) in order to conduct negotiations. This body must represent more than 50% of workers. A "primary group" union representing over half of the total workforce can, of its own accord, initiate collective bargaining on behalf of all the workers, without the need to create a joint representative body. If the unions fail to set up a joint body that represents more than 50% of the workforce, the workers can choose a primary group union or another body to represent them.

Right to strike: The Labour Code recognises the right to strike, but only under certain conditions. A strike can be held only to resolve a collective labour dispute. The law does not recognise the right to conduct solidarity strikes or strikes on issues related to state policies.

The Labour Code has a complicated procedure in place for putting forward demands with regard to collective labour disputes and calling a strike. There are many bureaucratic hurdles, which make it virtually impossible to hold a totally legal strike. These include the following: the duration of the strike has to be communicated beforehand, the union must re-issue its demands once collective bargaining has reached a stalemate, and a strike can only be held within two months of the strike ballot. A minimum amount of work in essential services is set by the authorities. Many categories of workers, including civil servants and railway workers, are not allowed to strike at all. Employers may bring in replacement workers during a strike. Most of the employers' requests to declare a strike illegal have been upheld by the courts.

Trade union rights in practice and violations in 2008

Background: The global financial crisis and falling oil prices contributed to a wave of mass layoffs, increases in wage arrears and spontaneous protest actions. Several human rights

and trade union activists were assaulted.

Interference, favouritism and "government-sponsored" trade unions: The ITUC affiliates experienced growing interference by the public authorities. In September, just after the ITUC affiliates announced their demands for the World Day for Decent Work, many media channels reacted in a way that amounted to slander. The ITUC membership was described as "suspicious". In some regions, the governors warned the organisations of the Federation of Independent Trade Unions (FNPR) not to take part in the street actions during the World Day for Decent Work. The vice-governor of Pskov oblast attempted to make the local FNPR leaders sign a petition that would tarnish the FNPR's reputation.

The All-Russia Confederation of Labour (VKT) and Labour Confederation of Russia (KTR) reported that state officials of varying rank pushed trade union structural units to switch their affiliation for the Sotsprof confederation. The latter clearly enjoys privileged relations with the authorities, by behaving as a "helpful" trade union centre, and benefits from that cooperation. In a number of enterprises certain officials have promoted the creation of Sotsprof organisations to undermine the VKT-affiliated local unions.

Anti-union employers: Anti-union behaviour is not uncommon. Employers try to avoid trade union recognition, evade collective bargaining and even target trade union leaders and activists. Workers are often pressured into leaving trade unions. The refusal to transfer checked-off trade union fees is still common. Trade unions can be hampered both in home-grown enterprises and in Russian subsidiaries of multinationals. Several activists were dismissed during the year, although in some cases they were reinstated following trade union action or a court decision.

Biased law enforcement: The state registration authorities regular demand much more from trade unions prior to their registration than they do from commercial organisations.

Contract labour: Contract labour and temporary agency work have become more widespread. In many companies it has become an instrument for weakening existing trade unions. More agency workers have become interested in trade unions, but both the agencies and the companies tend to resist unionisation.

Assault, death threats and a lawsuit at Ford Motors: Last year this Survey reported an industrial dispute at the "Ford Motors" production plants 24 kilometres outside Saint-Petersburg. An anti-union employer was supported by the Leningrad Oblast Prosecutor's Office. On 29 January, the Leningrad Oblast court declared the strike illegal. Vladimir Lesik, the Vice-President of the local trade union, was warned that he could be prosecuted for misconduct. Later, another trade union leader was beaten up and received death threats.

On 8 November, Alexey Etmanov, the head of the local trade union and the co-chairman of the Inter-regional Trade Union of Automobile Industry Workers (ITUA, an affiliate of the VKT and the International Metalworkers' Federation) was attacked. Etmanov managed to scare his assailants away and treated it as an ordinary street crime. However, the next day the deputy-chairman of the factory trade union Vladimir Lesik received a phone call, informing him that the incident was a "light" warning related to the union's activities.

On 14 November, Etmanov was attacked again. The police eventually detained the assailant.
Meanwhile, the state authorities had been keeping an eye on the trade union. The tax inspectors showed a sudden interest in the ITUA right after its 2007 strike; some supportive trade unions were also placed under inspection. The inspectors requested various trade union documents, including membership lists. In October, however, the arbitration court ruled that the tax inspectors could not ask for the lists of trade union members.

The company decided, in its turn, to sue the workers for damages following the 2007 strike. 31 employees who had stopped working for just under one month were sued for RUR 4,500,000 (the equivalent of EUR 98,000). No decision had been reached by the end of the year.

More assaults at TagAZ: In June and July, Alexei Gramm and Sergei Bryzgalov, ITUA activists at OAO "TagAZ" (town of Taganrog) producing Hyundai cars, were assaulted after taking part in a picket at the entrance to the enterprise. Bryzgalov was later hospitalised. Only someone with access to the company's central computer could have been able to track when trade unionists were at the gates. Gramm and Bryzgalov were trying to get information about wages and compensation payments and to get the management to recognise their union. Another activist, Sergey Penchukov, was earlier told on the phone that he "would not survive" in Taganrog. Trade unionists turned to the police, but the investigation had not produced any results by the end of the year.

Update on Leroy Merlin: The campaign against the FNPR- and UNI-affiliated Torgovoye Yedinstvo trade union at Leroy Merlin Vostok, a Russian subsidiary of the French retail chain, continued throughout the year. In January and February, Ivan Kochura, whose work had not been complained about for several years prior to the establishment of the trade union, faced several disciplinary measures. On 13 April, just ten days after workers had picketed one of the stores protesting against the anti-union repression, Kochura was fired. Another activist was forced to leave the company when his schedule was made extremely inconvenient for someone with family responsibilities. UNI intervened with the Adeo Group head office, but the management ignored the situation. In December the district court refused to reinstate Kochura. However, by the time of writing the verdict had been overturned by the Moscow regional court and referred back for review.

Update on the railways: In 2007, the management of Russian Railways asked the authorities to have the Trade Union of Railway Locomotive Brigades (RPLBZ, a member of the ITUC-affiliated KTR) dissolved. At the start of 2008, all territorial and local organisations of the RPLBZ were evicted from their offices, sometimes with "help" from the transport militia. The Inter-regional Transport Prosecutor's Office launched an inspection into trade union activities. In the view of RPLBZ, this inspection was illegal, so the trade union refused to cooperate, but the prosecutors proceeded on the basis of the employer's evidence. Having concluded that the trade union did not comprise enough different territories, the Prosecutor's Office demanded that RPLBZ changes its constitution. The Moscow-based Lyublin court agreed with the Prosecutor's Office. RPLBZ was asked to re-register as an inter-regional, rather than a national-level trade union, which would create a lot of administrative problems. Meanwhile, the harassment of trade union members and their families continued, and at the time of writing the trade union organisation had been forced to leave the KTR for the Sotsprof confederation.

Demonstrators arrested: An IUF protest took place near a central Moscow Marks & Spencer branch on 6 March. Five participants, including the leader of the VKT, labour activists and a journalist for the trade union press, were briefly detained.

Human rights activist assaulted: A French activist belonging to the organisation "Convoi syndical", which works with trade unionists and other civil society organisations, Carine Clement, was attacked on 13 November in Moscow. She was hospitalised for 2 days. She had been intimidated earlier on a number of occasions.

ILO: CEACR: Individual Observation concerning Worst Forms of Child Labour Convention, 1999 (No. 182) Russian Federation (ratification: 2003) Published: 2009

Description:(CEACR Individual Observation)
Convention:C182
Country:(Russian Federation)
Subject classification: Elimination of Child Labour
Subject classification: Children and Young Persons
Subject: **Elimination of Child Labour and Protection of Children and Young Persons**
Display the document in: French Spanish
Document No. (ilolex): 062009RUS182

Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children. The Committee had noted that, according to the communication of the International Trade Union Confederation (ITUC), thousands of persons are trafficked from the Russian Federation to other countries, including Canada, China, Germany, Israel, Italy, Japan, Spain, Thailand and the United States. Internal trafficking within the Russian Federation is also taking place; women are generally forced to work as prostitutes while men are trafficked into agricultural or construction work. There are said to be confirmed cases of children being trafficked for sexual exploitation. The Committee had further noted that the Committee on the Rights of the Child in its concluding observations (CRC/C/15/Add.274 of 30 September 2005, paragraph 80) while welcoming the recent introduction of norms prohibiting the trafficking of human beings in the Criminal Code, was concerned that not enough was being done to effectively implement these provisions. The Committee on the Rights of the Child also expressed its concern that protection measures for victims of trafficking of human beings were not fully in place and that reported acts of complicity between traffickers and state officials were not being fully investigated and punished.

The Committee had observed that section 127.1 of the Criminal Code prohibits the sale and trafficking in human beings, defined as the purchase and sale of persons or their recruitment, transport, transfer, hiding or receipt, if committed for the purposes of exploitation. Subsection (2) of section 127.1 provides for a higher penalty when this offence is committed in relation to a known minor (defined in section 87 as a person aged 14 to 18 years). The Committee had also noted that subsection (2) of section 240 of the Criminal Code prohibits transporting another person across the state border of the Russian Federation for the purposes of engaging that person into prostitution or illegal detention abroad. A higher penalty is provided when this offence is committed against a minor. The Committee had noted the Government's information that, in 2002, ten cases of criminal proceedings for trafficking in minors were instituted, and 21 in 2003. In 2004, three cases of trafficking in minors were uncovered, of which two involved children aged between 1 and 3 years, and the other involved a child of 16 years.

The Committee had also noted the Government's information that during the period 2003-05, work had been under way on a draft Law on Combating Trafficking in Human Beings which is based on the Palermo Protocol and provides for appropriate measures to ensure legal protection and social rehabilitation for victims of trafficking. However, the Committee now notes that, according to information available at the Office, specific trafficking victim assistance legislation, pending before the Duma, was neither passed nor enacted in 2006.

The Committee further notes that, according to the Report of the UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography in Ukraine of 24 January 2007 (A/HRC/4/31/Add.2, paragraphs 48-49), the Russian Federation is also a destination country for boys and girls aged between 13 and 18 years trafficked from Ukraine. According to this report, half of the children trafficked across borders from Ukraine go to neighbouring countries, including the Russian Federation. The children trafficked across borders are exploited in street-vending, domestic labour, agriculture, dancing, employed as waiters/waitresses or to provide sexual services. Furthermore, according to the same report (paragraph 52), as of 30 June 2006, 120 unaccompanied children were repatriated to Ukraine from nine countries, among which the Russian Federation was mentioned in particular.

The Committee notes once again that, although the trafficking of children for labour or sexual exploitation is prohibited by law, it remains an issue of concern in practice. It also once again recalls that, by virtue of Article 3(a) of the Convention, the sale and trafficking of children is considered to be one of the worst forms of child labour and is therefore prohibited for children under 18 years of age. The Committee once again requests the Government to take the necessary measures as a matter of urgency to ensure that persons who traffic in children for labour or sexual exploitation are in practice prosecuted and that sufficiently effective and dissuasive penalties are imposed. In this regard, it once again requests the Government to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied for violations of the legal prohibitions on the sale and trafficking of children. The Committee also asks the Government to provide information on the status of the draft Law on Combating Trafficking in Human Beings and on the progress made in its enactment, if still pending before the Duma.

Article 7, paragraph 2. Effective and time-bound measures. Clause (a). Preventing the engagement of children in the worst forms of child labour. The Committee had previously noted the Government's information that efforts are being made to improve collaboration between the media and non-governmental organizations in combating cross-border trafficking in women and children. Thus, it was becoming increasingly common for the major television networks to broadcast programmes on trafficking in women and children, shedding light on this problem and explaining the work done by internal affairs officials to identify and prosecute traffickers in accordance with the new provisions of the Criminal Code. The Committee had also noted that, in 2004, the organization "Independent voluntary assistance centre for victims of sexual assault" ("Sisters") helped to conduct a series of one-day training sessions on the theme of "Making general use of Russian and international experience in combating trafficking in persons". The Committee had further observed that the association of women's crisis centres, "Let's stop violence!", has opened a national information line on the problem of preventing trafficking in persons. Its purpose is to provide information on Russian and international organizations that provide assistance to victims of trafficking in the Russian Federation and abroad, Russian embassies and consulates abroad and personal security plans for persons travelling abroad. Noting the absence of information in the Government's report, the Committee once again asks the Government to provide information on the impact of the above measures on preventing the sale and trafficking of children.

Clause (b). Direct assistance for the removal of children from the worst forms of child

labour and for their rehabilitation and social integration. The Committee had previously noted the Government's detailed information on a system of social institutions which provide for the rehabilitation and social integration of children engaged in the worst forms of child labour. In particular, it had noted that, compared to 2003, the number of establishments functioning within the social protection bodies of the constituent units of the Russian Federation and local self-government bodies had increased by 144, reaching 3,373 by 1 January 2005 (the corresponding figures were 3,059 in 2002 and 3,229 in 2003). It had also noted that social rehabilitation centres for minors, centres to provide social assistance to families and children, social shelters for children and adolescents, centres for children left without parental care, telephone hotlines for emergency psychological assistance and other measures were being actively developed. The development of social rehabilitation centres for minors was stepped up in 2004 (with the addition of 163 new centres compared to the year 2002). The Committee had also noted the Government's information that, in recent years, the Russian law enforcement authorities have been collaborating closely with organizations which help victims of violence. For example, the National Central Office of Interpol receives information from crisis centres on cases of unlawful detention and sexual exploitation abroad of Russian women, including under-age girls. Noting the absence of information in the Government's report, the Committee once again requests the Government to provide information on effective and time- bound measures taken to assist child victims of trafficking and to provide for their rehabilitation and social integration.

Article 8. International cooperation and assistance. 1. International cooperation. The Committee had previously noted that the Russian Federation is a member of Interpol, which helps cooperation between countries in the different regions especially in the fight against trafficking of children. The Committee had also noted that the Russian Federation has ratified the United Nations Convention against Transnational Organized Crime and its supplementary Protocols against Smuggling of Migrants by Land, Sea and Air, as well as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Noting the absence of information in the Government's report, the Committee once again asks the Government to provide information on any steps taken to assist other member States or on assistance received giving effect to the provisions of the Convention through enhanced international cooperation and assistance on the issue of combating the trafficking of children.

2. Regional cooperation. The Committee had noted the Government's information that, since 1998, joint operations have been under way with the countries of the Council of Baltic Sea States with a view to preventing cross-border smuggling of children. Under the auspices of that body's executive committee, so-called "contact officers", including some from the Russian Ministry of Internal Affairs, deal with specific cases requiring action to prevent trafficking in children for the purpose of sexual exploitation. The Committee had noted that, following a decision by the Interpol Operative Committee for the Baltic Sea States, available data on the cross-border smuggling of children for the purpose of prostitution were being analysed and the principal trafficking routes were being mapped. Noting the absence of information in the Government's report, the Committee once again asks the Government to provide information on regional cooperation with the countries of the Council of Baltic Sea States with a view to preventing cross-border trafficking of children.

The Committee is also addressing a direct request to the Government concerning other points.

The Government is asked to supply full particulars to the Conference at is 98th Session and to reply in detail to the present comments in 2009.

ILO: CEACR: Individual Observation concerning Accommodation of Crews (Fishermen) Convention, 1966 (No. 126) Russian Federation (ratification: 1969) Published: 2009

Description:(CEACR Individual Observation)
Convention:C126
Country:(Russian Federation)
Subject classification: Fishermen
Subject: **Fishermen**
Display the document in: French Spanish
Document No. (ilolex): 062009RUS126

The Committee notes the Government's report which is practically a repetition of general information already submitted in previous reports in 2003 and 2000. The Committee recalls its detailed comment addressed in 2005 and again in 2006 in which it requested the Government to clarify the state of law and practice and supply full particulars on the application of numerous provisions of the Convention. In the absence of any specific replies, the Committee is bound to ask once more the Government to supply concrete information, including copies of relevant laws, regulations or administrative instructions, on relevant measures taken or envisaged in relation to the following points: penalties for violations of the relevant legislation (Article 3(2)(d),(e) of the Convention); periodical and complaint-based inspection of fishing vessels (Article 5); bulkheads being watertight and gastight (Article 6(3)); prohibition of heating on board by open fires (Article 8(3)); indication of maximum sleeping room capacity (Article 10(9)); one wash basin for every six persons or less (Article 12(2)(c)); quality of soil and waste pipes and facilities for drying clothes (Article 12(7),(11)); sickbay required for vessels of 45.7 metres in length or over (Article 13(1)); alterations to existing vessels to ensure conformity with the Convention (Article 17(2)- (4)).

In addition, the Government is again requested to explain how the application of the following provisions is ensured: Article 6(2), (4), (7), (9)-(11), (13), (14); Article 8(2); Article 9(5); Article 10(1), (5), (13)-(26); Article 11(7), (8); and Article 16(6).

Furthermore, the Committee notes that the Government makes renewed reference to Order No. 30 of 2001 of the State Committee for Fishing regarding regulations on the registration of fishing vessels and their entitlements at maritime fishing ports, as providing for the monitoring of the application of the Convention through systematic inspections. The Committee notes, however, that the abovementioned Order, as amended by Order No. 176 of 2003 of the State Committee for Fishing, does not appear to contain any specific provisions concerning inspection of fishing vessels. It accordingly requests the Government to provide additional explanations in this regard.

Part V of the report form. The Committee notes that according to statistical information published by the UN Food and Agriculture Organization (FAO), in 2002, the offshore fleet comprised 2,500 fishing vessels, 17 per cent of which were large

vessels over 64 metres in length, 51 per cent were medium-sized vessels or 34-65 metres in length, and 32 per cent were small vessels, or 24- 34 metres in length. According to the same information, the fishing fleet in the last decade contracted by almost 40 per cent, especially larger vessels, while two-thirds of the fleet is very old. Finally, the fishing industry is believed to provide employment to more than 150,000 people, representing 1 per cent of total industrial employment. The Committee would appreciate if the Government would provide up to date information on the practical application of the Convention, including, for instance, statistics on the size of the fishing fleet broken down by vessel category and age, estimated employment, the number of enterprises active in the sector, the importance of fisheries in the national economy and current trends in fisheries, copies of official reports or studies of the State Committee for Fishing or other competent bodies, etc.

Finally, the Committee seizes this opportunity to draw the Government's attention to the new Work in Fishing Convention, 2007 (No. 188), which revises and brings up to date in an integrated manner most of the existing ILO fishing instruments. The new Convention provides a modern and flexible regulatory framework covering large fishing operations but also addressing the concerns of small-scale fishers. In particular, Annex III of the Work in Fishing Convention essentially reproduces the provisions of Convention No. 126 adding a new length-tonnage conversion rate (24 metres equivalent to 300 gross tonnage) and also the possibility to introduce, under certain conditions, limited "alternative requirements" as regards headroom, floor area per person, berth size and sanitary facilities. The Committee invites the Government to give due consideration to the new comprehensive standard on fishers' working and living conditions and to keep the Office informed of any decision it may take as regards its ratification.

The Government is asked to reply in detail to the present comments in 2009.

ITUC: 2009 Annual Survey of Trade Union Rights Violations: Belarus

Population: 9,700,000 / **Capital:** Minsk
ILO Core Conventions Ratified: 29 - 87 - 98 - 100 - 105 - 111 - 138 - 182

Anti-union legislation and practice remained firmly in place, despite some steps by the government to consider the recommendations of the ILO Commission of Inquiry and involve independent unions in that process. Several arrests and assaults were reported during the year.

Trade union rights in law

The 1996 Constitution transferred all powers to the president of Belarus, giving him the right to enact decrees that carry the weight of law. This constitution technically recognises the right of workers to form and join trade unions, but both the Trade Union Law of January 2000 and several presidential decrees contain serious violations of trade union rights.

At the beginning of 2004, Belarus was subject to the ILO Commission of Inquiry procedure. The Commission’s report, published in October 2004, stated that trade union rights were blatantly violated in Belarus. The Commission adopted 12 recommendations aimed at bringing national law and practice into line with international standards. No tangible progress has been achieved so far. Some laws and by-laws adopted after the Commission of Inquiry ended its work brought up further restrictions on trade union freedoms. In 2008 the government took some steps towards implementing these recommendations, though they

have not yet been transformed into legislative measures.

Trade union registration: Trade union registration is compulsory. Presidential Decree No. 2 of January 1999 required all previously registered trade unions at the national, industry and enterprise level to re-register. If a trade union is not registered, its activities are banned and the organisation has to be dissolved. The long and complicated procedures include an obligation on the trade unions to provide the official address of their headquarters. This is often their workplace or the premises of the enterprise. A letter from the management confirming the address is usually required, making trade unions completely dependent on the good will of the employer. Trade unions are not allowed to register the home addresses of their leaders as the trade union's legal address, and commercial rent is often not an option, especially for small organisations.

The 2004 ILO Commission of Inquiry concluded that Decree No. 2 should be amended to eliminate the obstacles for registration and that trade union organisations must be registered regardless of whether they are able to provide a legal address.

The same decree sets forth minimum membership requirements at the national, branch and enterprise levels that are so high that they make it almost impossible to create new unions, and it undermines the position of existing ones. At the national level, there must be a minimum of 500 founding members representing the majority of the regions of Belarus. A list of names must be sent to the Ministry of Justice.

Compulsory dissolutions: In 2005 a number of amendments to laws and regulations were introduced to make trade unions' compulsory dissolution even easier. Trade unions' organisational structures, in other words, their primary and territorial organisations, may be deleted from the register by a decision of the registrar, without any court procedure. This can happen if the registrar issues a written warning that a trade union or its structure violated legislation or its own statutes, and the violations had not been eliminated within a month. Given that Belarusian legislation is incompatible with the ILO standards, this amendment allows for the administrative dissolution of trade unions that simply want to exercise their freedoms according to international standards. The registrar can also remove a trade union organisation from the register if their recorded data is no longer correct - for example, if they lose their legal address and cannot obtain a new one. In violation of the international labour standards, the law on mass activities and provisions on receiving foreign aid allow for dissolution of a union by a court decision.

International cooperation restricted: A number of Presidential decrees and ordinances lay down stringent conditions for the receipt of foreign assistance for activities in the country. These decrees, applicable to trade unions and other civil society organisations, were an attempt to isolate independent trade unions from their partner organisations abroad and to limit the capacity of the unions to protest against continued violations of workers' rights.

In accordance with these Presidential decrees and ordinances no foreign assistance may be offered to non-governmental organisations, including trade unions, for holding seminars, meetings, gatherings, strikes, pickets, and so on, or for "propaganda activities" aimed at their own members, without the authorities' permission. Gratuitous organising of seminars, conferences and other public debates is considered as international technical assistance, and the organisers have to report on the organising and running of the events to the government's Commission for International Technical Cooperation. Such events also have to be registered with the Ministry of Finance, otherwise they would be considered illegal.

Up to two years in prison for speaking out: As of 2005, the Criminal Code stipulates that "Discrediting the Republic of Belarus" is punishable with arrest for up to six months or imprisonment for up to two years. According to the Code, "discrediting" means deliberately

giving foreign states or foreign or international organisations "false statements" on the country's political, social or economic situation. Mr Stepan Sukhorenko, the chairman of the National Security Committee, who then presented the draft amendment to the Code to Parliament, explained that this offence was meant to deal with libellous statements, such as the information presented by some trade unionists that resulted in the "six month ultimatum" presented by the International Labour Organisation.

Heavy limitations on the right to strike: The January 2000 Labour Code imposes severe limitations on the right to strike. It sets out very complicated conciliation procedures that would take at least two months. The strike must also be held in the three months following the failure of the conciliation procedures. The president may suspend a strike for a period of up to three months or even cancel one, in the interests of national security, public order, public health, or when the rights and freedoms of others are threatened. Moreover, the duration of the strike must be specified in advance and a minimum service must be ensured. Strike participants may not receive financial aid or subsidies from foreign organisations.

Draft Trade Union Law: The 2004 ILO Commission of Inquiry ruled that anti-union legislation, including the above-mentioned decrees, should be repealed. The government's approach was not to take measures pertaining to these individual pieces of legislation, but to promise that the new trade union law would resolve all problems.

In 2006, President Lukashenko approved a "Concept" of the new Law on Trade Unions, which was prepared without consulting the trade unions outside the FPB structures.
When the draft of the law saw the light of day in May 2007, the ITUC-affiliated Belarusian Congress of Democratic Trade Unions (BKDP) dubbed it "the law on state control over trade unions", since the draft gives authorities wide-range powers to inspect trade union documentation and activities. The government planned to keep the excessive minimum membership requirements and introduce quite a rigid framework for trade union activities. The registration procedure would remain long and cumbersome, with a number of loopholes allowing authorities to grant or deny registration at their discretion. ILO intervention convinced the government to abandon the draft law.

Trade union rights in practice and violations in 2008

Background: The efforts of the ILO, supported by the ITUC and its European structure "PERC", seem to have resulted in some understanding by the government of the importance of developing industrial relations based on international labour standards and good faith communication with the social partners. Some initial steps have been taken and entry points identified for making some real changes in line with the Commission of Inquiry recommendations, but only time will tell whether the government will be able to follow through on its commitment. For the time being the situation remains controversial.

Government control: The aim of President Lukashenko appears to be a return to the Soviet days when trade unions were the "social pillars" of the state, under the control of the party or, rather, the socalled "Presidential Administration", which now exercises the authority previously vested in the party.

The government spares no effort in suppressing protests and opposition by unions to the daily violations of trade union and human rights in Belarus. Not only does the government try to isolate these trade unions at the national level, but it also criminalises support at the international level.

Workers are actively discouraged from joining independent trade unions. Fixed-term contracts (which cover 90% of the total workforce) are often used to force workers out of

independent trade unions. The government's response to criticism is that the law provides all necessary remedies. However, the ILO supervisory bodies have noted on several occasions that the Belarusian judiciary, in its present state, is not an adequate recourse for redressing trade union rights violations, and that complaints concerning trade union rights violations have either been totally ignored or routinely dismissed by prosecutors' offices.

Anti-union policies bring the loss of EU trade benefits: On 20 December 2006, the European Union's Council of Ministers announced its decision to withdraw Belarus' benefits under the system of generalised special preferences (GSP). This decision was the culmination of nearly three years of monitoring violations of trade union rights and the government's reluctance to follow the Commission of Inquiry recommendations. While this decision gave Belarus six more months to fulfil its ILO obligations, no tangible progress could be noted, and the EU decision came into effect on 21 June 2007. The EU position regarding the implementation of international labour standards by the country was further confirmed at the International Labour Conference in June 2008.

Seeds of hope: Some improvement could be noted in social dialogue after the BKDP finally re-gained its official seat in the National Council for Labour and Social Issues (NCLSI) in 2007. The BKDP was also a signatory to the tripartite General Collective Agreement for 2009-2010. In November, the authorities issued an order returning a deduction on the rent for trade union offices and meeting rooms, which was a relief to the BKDP and its affiliates.

Arrests: Three activists from the Belarusian Free Trade Union (BFTU), Alexander Stepanenko, Roman Bogdanovich and Sergey Klyuev, were arrested and detained for 15 days in connection with their participation in a protest action of entrepreneurs on 10 January 2008. On 19 January 2008, Oleg Korban, another BFTU activist, was arrested and subsequently detained for ten days, when he brought a food parcel to his colleagues at the detention centre. Korban was charged with using obscene language in public places.

On 9 March 2008, following neighbours' complaints, the police arrested 32 young activists of the BFTU and the Free Metal Workers' Union (FMWU) at the office of the Congress of Democratic Trade Unions of Belarus (CDTU). The trade unionists were taken for identification purposes to the Minsk City Leninsky District Department of Internal Affairs and released a few hours later. The government explained to the ILO that the youngsters were taken in because they had "refused to give any reason for their presence in such large numbers".

On 26 March the Partizan district court of Minsk sentenced four members of the BFTU and the FMWU to between ten and 15 days in jail. Trade unionists, who had joined the unregistered Youth Front, were beaten up by the police the day before, during the gatherings on the occasion of Belarus People's Republic Anniversary.

Trade union registration: Despite the dissolution of the Republican Registration Commission, independent trade unions still face enormous legal and practical hurdles during the registration process. As in previous years, the ILO Committee on Freedom of Association had to deal with new cases of refusal to register independent trade unions.

For example, registration of the Rechitsa branch of the Radio-Electronic Workers' Union (REWU) has been pending since December 2007. On 11 February, the executive committee refused registration since the employer had revoked the guarantee letter containing the trade union's legal address. The REWU reported that the employer had been pressured by the local authorities into revoking the letter.

Update on BKDP office search: Following the December 2007 search of the BKDP premises (see previous edition of this Survey), a BKDP representative was asked to visit the

Ministry of Information. On arrival, BKDP Deputy President Nikolai Kanakh was asked to sign a report of "administrative offence" (misdemeanour). Apparently, the BKDP had broken the law by owning printing equipment that had been given to BKDP for safekeeping by a (currently suspended) ILO project, without obtaining permission from the Ministry of Information. On 21 February the court closed the case and ordered that the risograph be returned to the BKDP.

ILO: CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Kazakhstan (ratification: 2000) Published: 2009

Description:(CEACR Individual Observation)
Convention:C087
Country:(Kazakhstan)
Subject classification: Freedom of Association
Subject classification: Collective Bargaining and Agreements
Subject: **Freedom of Association, Collective Bargaining, and Industrial Relations**
Display the document in: French Spanish
Document No. (ilolex): 062009KAZ087

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations. The Committee had previously requested the Government to amend its legislation so as to ensure the right to organize of judges (article 23(2) of the Constitution and section 11(4) of the Law on Social Associations). The Committee notes the Government's explanation that judges have a special legal status within the State system and the particular nature of their function justifies the constitutional limitation of their rights. The Committee recalls that the only exceptions authorized by Convention No. 87 are members of the police and the armed forces and therefore once again requests the Government to take the necessary measures to ensure that judges can establish organization for defence and furtherance of their interests. It requests the Government to indicate the measures taken or envisaged in this respect.

The Committee recalls that it had previously requested the Government to specify the categories of workers covered by the term "law enforcement bodies" whose right to organize is restricted under the same provisions. The Committee notes from the Government's report, as well as from the definition provided for in section 256(2) of the Labour Code (2007), that firefighting and prison services are included in the definition of the "law enforcement bodies" and therefore, its personnel is excluded from the right to organize. The Committee considers that while exclusion from the right to organize of the armed forces and the police, as stated above, is not contrary to the provisions of Convention No. 87, the same cannot be said for fire service personnel and prison staff. The Committee is of the opinion that the functions exercised by these two categories of public servants should not justify their exclusion from the right to organize on the basis of Article 9 of the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 56). The Committee therefore requests the Government to ensure that fire service personnel and prison staff enjoy the right to organize. It requests the Government to indicate the measures taken or envisaged in this respect.

Right to establish organizations without previous authorization. The Committee notes that in its report, the Government makes reference to section 10(1) of the Law on

Social Associations, applicable to employers' organizations and providing for a minimum requirement of ten people to form an association. The Committee recalls that a requirement of a membership of at least ten employers to create an employers' organization is too high and likely to be an obstacle to the free creation of employers' organizations. It therefore requests the Government to take the necessary measures in order to amend its legislation so as to lower this requirement. It requests the Government to indicate the measures taken or envisaged in this respect.

The Committee recalls that it had previously requested the Government to provide its observations on the comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC), dated 10 August 2006, referring to violations of Article 2 of the Convention in practice, in particular high registration cost, which makes registration of trade unions almost impossible. In view that no information has been provided by the Government in this respect, the Committee once again requests the Government to provide its observations on the comments of the ICFTU.

Article 3. Right of organizations to organize their activities and to formulate their programmes. The Committee notes Chapter 32 of the Labour Code (2007) regulating collective labour disputes. The Committee understands that the process of settlement of collective labour disputes begins with the procedure provided for by section 289, which requires that claims of workers should be formulated at the meeting (conference) of employees gathering not less than half of the total workforce and adopted by the majority of those present. The Committee considers that trade unions should be free to regulate the procedure of submitting claims to the employer and that the legislation should not impede the functioning of a trade union by obliging a trade union to call a general meeting every time there is a claim to be made to an employer. The Committee therefore requests the Government to take the necessary measures in order to amend section 289 of the Labour Code so as to ensure the right of trade unions to submit claims to the employers without their prior approval by a general meeting of workers. It requests the Government to indicate the measures taken or envisaged in this respect.

The Committee notes that the right to strike is prohibited in the civil service (section 10(6) of the Law on Civil Service). Furthermore, according to section 231(2) of the Labour Code, public service employees cannot participate in any action impeding normal functioning of the service and their official duties. The Committee therefore understands that the right to strike of public servants is restricted or even prohibited. The Committee considers that the prohibition of the right to strike should be limited to public (or civil, as the case may be) servants exercising authority in the name of the State. The Committee notes that pursuant to section 230 of the Code, the list of services considered public was adopted by the Government on 27 September 2007 and concerns categories of workers who cannot be considered as exercising authority in the name of the State. With regard to the "civil service", while noting from the Government's report that teachers, doctors and bank employees are not civil servants, the Committee requests the Government to provide a full list of the services falling into this category. In the light of the above, the Committee requests the Government to take the necessary measures, including through amendment of the relevant legislative provisions, in order to ensure that the prohibition of the right to strike is limited only to public (or civil, as the case may be) servants exercising authority in the name of the State. It requests the Government to indicate the

measures taken or envisaged in this respect.

The Committee notes that pursuant to section 303(1) of the Labour Code, strikes are illegal in organizations carrying out dangerous industrial activities (subsection (1)) and in other cases provided for by the national legislation (subsection (5)). The Committee requests the Government to clarify which organizations fall into the category of organizations carrying out dangerous industrial activities and the categories of workers whose right to strike is so restricted. The Committee further requests the Government to indicate all other categories of workers whose right to strike is restricted by other legislative texts and to provide copies thereof.

The Committee further notes that according to section 303(2), in the rail and public transports, civil aviation and communications, a strike may be held if the necessary range of services, as determined on the basis of a prior agreement with the local executive authorities, is maintained. The Committee recalls that in situations in which a total prohibition of strikes would not appear to be justified (as in services mentioned above) and where, without calling into question the right to strike of the large majority of workers, one might consider ensuring that users' basic needs are met or that facilities operate safely or without interruption, the minimum service as a possible alternative to a total prohibition would be appropriate. However, in the view of the Committee, such a service should meet at least two requirements. Firstly, and this aspect is paramount, it must genuinely and exclusively be a minimum service, that is one which is limited to the operations which are strictly necessary to meet the basic needs of the population or the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear. Secondly, since this system restricts one of the essential means of pressure available to workers to defend their economic and social interests, their organizations should be able, if they so wish, to participate in defining such a service, along with employers and the public authorities. It would be highly desirable for negotiations on the definition and organization of the minimum service not to be held during a labour dispute, so that all parties can examine the matter with the necessary objectivity and detachment. The parties might also envisage the establishment of a joint or independent body responsible for examining rapidly and without formalities the difficulties raised by the definition and application of such a minimum service and empowered to issue enforceable decisions (see General Survey, op. cit., paragraphs 161 and 162). The Committee therefore requests the Government to amend section 303(2) of the Labour Code so as to ensure the application of these principles. It requests the Government to indicate the measures taken or envisaged in this respect.

The Committee notes that according to section 298(2) of the Labour Code, the decision to call a strike is taken by a meeting (conference) of workers (their representatives) gathering not less than half the total workforce and the decision is adopted if not less than two-thirds of those present at the meeting (conference) have voted for it. The Committee considers that while a requirement of a strike ballot does not, in principle, raise problems of compatibility with the Convention, the ballot method, the quorum and the majority required should not be such that the exercise of the right to strike becomes very difficult, or even impossible in practice; if a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast and that the required quorum and majority are fixed at reasonable level (see General Survey, op. cit., paragraph 170). In these

circumstances, the Committee considers that while the quorum provided for by section 298(2) seems to be compatible with the freedom of association principles, the requirement that a decision to strike should be taken by two- thirds of those present at the meeting is excessive and limits the right to strike. The Committee therefore requests the Government to amend section 298(2) of the Labour Code so as to lower this requirement and so as to ensure that account is taken only of the votes cast in determining the outcome of a strike ballot. The Committee requests the Government to indicate the measures taken or envisaged in this respect.

The Committee notes that section 299(2)(2) of the Labour Code imposes the obligation to indicate, in the strike notice, its possible duration. The Committee requests the Government to indicate whether workers or their organizations can declare a strike for an indefinite period of time.

Article 5. Right of organizations to establish federations and confederations and to affiliate with international organizations. For several years, the Committee had been requesting the Government to amend section 106 of the Civil Code and article 5(4) of the Constitution so as to lift the ban on financial assistance to national trade unions by an international organization. The Committee notes that the Government reiterates that other than monetary, the financial assistance also includes such forms of support as property, equipment, motorized transport, communications and printing equipment. The Committee considers 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. The Committee therefore once again requests the Government to take steps to amend section 106 of the Civil Code, as well as article 5 of the Constitution, so as to lift this prohibition and to indicate the measures taken or envisaged in this respect.

ILO: CEACR: Individual Observation concerning Right to Organise and Collective Bargaining Convention, 1949 (No. 98) Kazakhstan (ratification: 2001) Published: 2009

Description:(CEACR Individual Observation)
Convention:C098
Country:(Kazakhstan)
Subject classification: Freedom of Association
Subject classification: Collective Bargaining and Agreements
Subject: **Freedom of Association, Collective Bargaining, and Industrial Relations**
Display the document in: French Spanish
Document No. (ilolex): 062009KAZ098

The Committee recalls that in its previous comments it had requested the Government to institute an independent investigation into the comments concerning interference by the employer in trade unions' internal affairs and activities and refusals to bargain collectively submitted by the International Confederation of Free Trade Unions (ICFTU). The Committee regrets that no information has been provided by the Government in this respect. The Committee reiterates its request and trusts that the Government will be more cooperative in the future.

Articles 1, 2 and 4 of the Convention. The Committee had previously requested the Government to specify the categories of worker covered by the term "law enforcement bodies" whose right to organize is restricted under article 23(2) of the Constitution and section 11(4) of the Law on Social Associations. The Committee notes from the Government's report, as well as from the definition provided for in section 256(2) of the Labour Code (2007), that fire-fighting and prison services are included in the definition of the "law enforcement bodies" and therefore excluded from the right to organize and to bargain collectively. The Committee considers that while the armed forces and the police can be excluded from the application of the Convention, the same cannot be said for fire service personnel and prison staff. The Committee therefore requests the Government to take the necessary measures to ensure that these categories of worker enjoy the rights afforded by the Convention.

Article 1. The Committee notes sections 14, 170 and 177 of the Labour Code, as well as section 141 of the Criminal Code (1997) which provide for an adequate protection against anti-union discrimination.

Article 2. The Committee had previously noted that sections 4(4) and 18(2) of the Law on Trade Unions prohibited acts of interference in the affairs of workers' organizations and requested the Government to provide details on the procedures available to trade unions in cases of infringement, as well as the specific sanctions provided by the legislation. The Committee notes sections 150 and 150-1 of the Criminal Code concerning interference in the activities of social organizations and interference in the legitimate activities of workers' representatives, respectively, and providing for a penalty equivalent to up to five times the monthly wage or imprisonment to be imposed on an "official" found guilty of committing the offence using his or her position. The Committee requests the Government to clarify whether this provision applies in both the public and the private sectors.

Article 4. The Committee notes that according to section 282(2) of the Labour Code, workers who are not members of any trade union may either authorize an existing trade union or choose another representative for the purposes of collective bargaining. If several workers' representatives exist at the enterprise, they can establish a joint representative body to negotiate a collective agreement. The Committee considers that when a representative trade union exists and functions at the enterprise, allowing other workers' representatives to bargain collectively could not only undermine the position of the trade union concerned, but also infringe upon the rights guaranteed under Article 4 of the Convention. The Committee therefore requests the Government to amend its legislation so as to ensure that where there exist in the same undertaking both a trade union representative and an elected representative, the existence of the latter is not used to undermine the position of the union in the collective bargaining process. It requests the Government to indicate the measures taken or envisaged in this respect.

The Committee notes that the obligation imposed on the employer to conclude a collective agreement was repealed (once the Law on Collective Agreements was repealed) and that section 281 of the Labour Code enshrines the principle of free and voluntary negotiations. The Committee notes, however, that under section 91 of the Code on Administrative Breaches (2001), an unfounded refusal to conclude a collective agreement is punished by a fine. The Committee recalls that the legislation, which imposes an obligation to achieve a result, particularly when

sanctions are used in order to ensure that an agreement is concluded, is contrary to the principle of free and voluntary negotiations. The Committee therefore requests the Government to provide information on the application of section 91 of the Code in practice.

Article 6. The Committee notes that civil and public servants enjoy collective bargaining rights under section 8 of the Law on Civil Service and section 236 of the Labour Code, respectively. It notes, in this respect, the list of collective agreements concluded in the civil service between various trade unions and the relevant ministries.

ILO: CEACR: Individual Observation concerning Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148) Kazakhstan (ratification: 1996) Published: 2009

Description:(CEACR Individual Observation)
Convention:C148
Country:(Kazakhstan)
Subject classification: Physical Hazards, Noise and Vibration
Subject: **Occupational Safety and Health**
Display the document in: French Spanish
Document No. (ilolex): 062009KAZ148

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

REPETITION
Start of repetition

Article 11, paragraph 4, of the Convention. No adverse effect on the social security rights of workers. With reference to its previous comments and the observations by the Air Crew Trade Union of Alma Ata submitted in 1998, the Committee notes the general information provided by the Government concerning the provisions in the Civil Code on obligations arising as a result of injury, and the Act concerning compulsory civil liability insurance for employers from harm to the life and health of workers and that this information does not address the specific situation of the 80 members of staff of the Kazakhstan civil aviation that allegedly suffered occupational illness and became disabled as a result of excessive exposure to noise and vibration in their work. With reference to the observations made by the Air Crew Trade Union of Alma Ata, submitted already some time ago, and its previous comments, the Committee urges the Government to take any appropriate action and to provide full particulars regarding the rights of the workers involved under social security or social insurance legislation that may have been adversely affected in this regard.

The Committee is addressing a request on other matters directly to the Government.

End of repetition

The Committee hopes that the Government will make every effort to take the necessary action in the very near future.