



British Embassy
Astana



LEGAL OPINION
on compliance of international legal acts ratified by the Republic of
Kazakhstan with the basic socioeconomic principles on business
and human rights

Almaty, 2013

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I. GENERAL

1. Background

The Republic of Kazakhstan (**hereinafter – RK**) is striving to receive a permanent observer status in four committees (the Investment Committee, the Education Policy Committee, the Committee for Agriculture, and the Committee on Industry, Innovation and Entrepreneurship) of the Organisation for Economic Co-operation and Development (**hereinafter – OECD**) to gain an opportunity for developing and implementing a more efficient national economic policy.

One of the OECD priorities consists in increasing responsible conduct of business enterprises (especially in the extractive sector). OECD recommends adhering to the principle of proportion, transparency and non-discrimination. According to OECD, Kazakhstan should make its legal system more independent, the public procurement system more transparent, and pay more attention to protection of human rights in the business sphere.

Any economic policy, including the policy of recovery from crisis, entails enormous implications involving distribution of finance within a country and is therefore fraught with violation of socioeconomic rights of citizens. It is common knowledge that previous crises had a particularly grave effect on the least protected strata of the population leading to violations of their inherent rights.

The on-going financial crisis and economic decline remain one of the main concerns both for the public authorities and for businessmen who are trying to improve economic governance, fill in regulatory gaps and identify measures for overcoming the existing situation.

Restoration of a healthy global economy requires the return to the state of relevant functions of financial markets' regulator. In addition, negative impact of external factors related to the global financial crisis may be mitigated by returning to the government its inherent role of collective actions' organiser both on the national and global levels.²

Social injustice originates, first and foremost, when governments in the process of determining the limits of social and economic rights neglect the connection between these sort of rights and indirectly protected fundamental rights; when other factors interfere with this process of setting the limits, apart from the demand to protect the relevant fundamental rights, above all ignorance as well as personal, group, class, and other interests; or when the laws regulating the establishment and functioning of social and economic relations, e.g. lax laws, the civil code or laws with a narrower coverage, are being applied without account taken for inner connections between those rights and indirectly protected fundamental rights, i.e. disregarding the possible consequences for

¹ This Legal Opinion was prepared by the Research Institute of Financial and Tax Law for the Legal Policy Research Centre with technical support of the British Embassy in Kazakhstan. The views and opinions presented in the Legal Opinion do not reflect the position of the British Embassy in Kazakhstan.

² See The Stiglitz Report Reforming the International Monetary and Financial Systems in the Wake of the Global Crisis. Report of a UN Commission of Financial Experts (Moscow, 2010), p.60.

those rights under the circumstances of a specific country.³

Business offers multiple opportunities owing to the transformation of production factors into goods or services, stimulating economic development. However, entities stimulating business far too often lead to decisions that inflict damage on the exercise of human rights.

In this connection, the Human Rights Council, in its resolution 17/4, has unanimously approved the Guiding Principles on Business and Human Rights. Today the Guiding Principles have become a universally accepted norm aimed at the prevention and liquidation of negative impact of business activities on human rights.

In 2005, the Secretary General, on request of the Human Rights Commission, appointed Professor John Ruggie as Special Representative on the issue of human rights and transnational corporations and other business enterprises with the mandate to identify and clarify standards of corporate responsibility and accountability with regard to human rights and deliberate the issue of the role of the state in this regard.

2. International Legal Acts and Laws and Regulations of the Republic of Kazakhstan Reviewed

During the preparation of the legal opinion, the Expert used the following international legal acts:

- 1) The Universal Declaration of Human Rights (adopted and declared by General Assembly Resolution 217 A (III) on 10 December 1948) (**the Declaration**);
- 2) The International Covenant on Civil and Political Rights of 16 December 1966, ratified by Law of the Republic of Kazakhstan of 28 November 2005 No. 91-III ZRK on Ratification of the International Covenant on Civil and Political Rights (**the Covenant on Civil Rights**);
- 3) The International Covenant on Economic, Social and Cultural Rights of 16 December 1966, ratified by Law of the Republic of Kazakhstan of 21 November 2005 No. 87-III ZRK on Ratification of the International Covenant on Economic, Social and Cultural Rights (**the Covenant on Economic Rights**);
- 4) ILO Declaration on Fundamental Principles and Rights at Work of 18 June 1998 (**ILO Declaration on Fundamental Principles**);
- 5) ILO Convention No. 29 concerning Forced or Compulsory Labour of 28 June 1930, ratified by Law of the Republic of Kazakhstan of 14 December 2000 No. 120-II on Ratification of the Convention concerning Forced or Compulsory Labour (**ILO Convention No. 29**);
- 6) ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise of 09 July 1948, ratified by Law of the Republic of Kazakhstan of 30 December 1999 No. 29-II on Ratification by the Republic of Kazakhstan of the 1948 Convention concerning Freedom of Association and Protection of the Right to Organise (**ILO Convention No. 87**);
- 7) ILO Convention No. 98 concerning the Right to Organise and Bargain Collectively of 01 July 1949, ratified by Law of the Republic of Kazakhstan of 14 December 2000 No. 118-II on Ratification of the Convention concerning the Right to Organise and Bargain Collectively (**ILO Convention No. 98**);
- 8) ILO Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value of 06 June 1951, ratified by Law of the Republic of Kazakhstan of 14

³ See I. Kuchuradi, *Social and Global Justice*, Voprosy Filosofii (2003, 2), p.23.

December 2000 No. 115-II on Ratification of the Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (**ILO Convention No. 100**);

9) ILO Convention No. 105 concerning the Abolition of Forced Labour of 25 June 1957, ratified by Law of the Republic of Kazakhstan of 14 December 2000 No. 117-II on Ratification of the Convention concerning the Abolition of Forced Labour (**ILO Convention No. 105**);

10) ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation of 25 June 1958, ratified by Law of the Republic of Kazakhstan of 20 July 1999 No. 444-I on Ratification by the Republic of Kazakhstan of the 1958 Convention concerning Discrimination in Respect of Employment and Occupation (**ILO Convention No. 111**);

11) ILO Convention No. 138 concerning Minimum Age for Admission to Employment of 26 June 1973, ratified by Law of the Republic of Kazakhstan of 14 December 2000 No. 116-II on Ratification of the Convention concerning Minimum Age for Admission to Employment (**ILO Convention No. 138**);

12) ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of 17 June 1999, ratified by Law of the Republic of Kazakhstan of 26 December 2002 No. 367-II on Ratification of the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention 182) (**ILO Convention No. 182**);

13) The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights. United Nations document E/CN.4/1985/4, Annex (1985) (**the Siracusa Principles**).

The following laws and regulations of the Republic of Kazakhstan were used in the preparation of the legal opinion:

- 1) The Constitution of the Republic of Kazakhstan of 30 August 1995, as amended (**the RK Constitution**);
- 2) The Labour Code of the Republic of Kazakhstan of 15 May 2007 No. 251-III, as amended (**RK LC**);
- 3) The Civil Procedure Code of the Republic of Kazakhstan of 13 July 1999 No. 411-I, as amended (**CPC**);
- 4) The Law of the Republic of Kazakhstan of 07 February 2005 No. 30-III 3PK on Compulsory Insurance of Employees against Occupational Hazards, as amended (**the Law on Compulsory Insurance of Employees against Occupational Hazards**);
- 5) The Criminal Code of the Republic of Kazakhstan of 16 July 1997 No. 167-I (**RK CC**);
- 6) The Law of the Republic of Kazakhstan of 09 April 1993 No. 2107-XII on Trade Unions (as amended as of 29 April 2009) (**the Law on Trade Unions**).

II. CORRESPONDENCE OF INTERNATIONAL LEGAL ACTS RATIFIED BY THE RK, NATIONAL LEGISLATION AND THE GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

Part II of this Legal Opinion contains an analysis of compliance of the national legislation with international legal commitments of the Republic of Kazakhstan, and with the guiding principles of business and human rights.

1. General

The Republic of Kazakhstan, having ratified international legal acts has committed to exercise the rights recognised by those documents by any adequate means, including the adoption of legislative measures.

This part of the Legal Opinion will present a comparative analysis of the regulations of the Republic of Kazakhstan and international legal acts mentioned in John Ruggie's Report concerning the observance and protection of socioeconomic human rights.

On the basis of the research, the Expert will try to establish which international legal acts ratified by the RK are directly related to the Ruggie Principles and to understand to what extent the provisions of the Kazakhstan law comply with the international commitments assumed by the RK.

2. Interconnection of Provisions of International Law and the RK Legislation within the Context of Implementation of the Ruggie Principles

This section of the Legal Opinion will overview the international legal acts on human rights directly related to the Ruggie Principles.

2.1. Provisions of the Universal Declaration of Human Rights Directly Related to the Ruggie Principles and Aimed at Observance of Human Rights by States and Businesses

According to Article 2 of the Declaration, *everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination (Article 7 of the Declaration).

In keeping with Article 8 of the Declaration, *everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.*

According to Article 20 of the Declaration, *everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association.*

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. Everyone has the right to form and to join trade unions for the protection of his interests (Article 23 of the Declaration).

Article 24 of the Declaration prescribes that everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

These provisions of the Declaration are reproduced in the RK Constitution.

According to Article 13 (2) of the RK Constitution, *everyone shall have the right to judicial defence of his rights and freedoms.*

Everyone shall be equal before the law and court. No one shall be subject to any discrimination for reasons of origin, social, property status, occupation, sex, race, nationality, language, attitude towards religion, convictions, place of residence or any other circumstances (Article 14 of the RK Constitution).

Everyone shall have the right to freedom of labour, and the free choice of occupation and profession. Involuntary labour shall be permitted only on a sentence of court or in the conditions of a state of emergency or martial law. Everyone shall have the right to safe and hygienic working conditions, to just remuneration for labour without discrimination, as well as to social protection against unemployment. The right to individual and collective labour disputes with the use of methods for resolving them, stipulated by law including the right to strike, shall be recognised. Everyone shall have the right to rest. Working labour agreements stipulating the length of working time, days- off and holidays, and paid annual leave shall be guaranteed by law (Article 24 of the RK Constitution). According to Article 23 (15) of the RK Labour Code, the employer shall provide the employee with annual paid vacation.

In keeping with Article 32 of the RK Constitution, Citizens of the Republic of Kazakhstan shall have the right to peacefully and without arms assemble, hold meetings, rallies and demonstrations, street processions and pickets. The use of this right may be restricted by law in the interests of state security, public order, protection of health, rights and freedoms of other persons.

Therefore, the comparison of provisions of the RK Constitution and the Declaration confirms the assumption that the constitutional norms are based on the Universal Declaration of Human Rights. The basic international acts on human rights were used during the elaboration of the RK Constitution.⁴

2.2. Provisions of the International Covenant on Civil and Political Rights Obliging States and Businesses to Observe Human Rights

According to Article 2 (3) of the International Covenant on Civil and Political Rights, each State Party to the present Covenant undertakes: (a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) to ensure that *any person*

⁴ For details, please see: welcoming address of RK President Nursultan Nazarbaev to participants of the research and practice conference *Universal Declaration of Human Rights and implementation of its fundamental principles in the Constitution of the Republic of Kazakhstan* (02 December 2008): "The Universal Declaration is the first universal international document on human rights. Its adoption by the UN General Assembly on 10 December 1948 was an event of true historic importance. The preamble of this document states that all peoples and all nations shall strive to promote respect for human rights and freedoms and to secure their universal and effective recognition and observance. From the moment of independence, Kazakhstan has been consistently pursuing this policy. **The basic international acts on human rights were used during the elaboration of the Constitution of the Republic of Kazakhstan, first and foremost, the Universal Declaration of Human Rights.** Our country, which has proclaimed itself a democratic, secular, legal and social state, recognises its highest values to an individual, his life, rights and freedoms. These rights are inherent, absolute and inalienable, and determining the contents and application of legal acts. Our **Constitution obligates the legislators** to proceed from this provision, above all, and **to make human rights the cornerstone.**" <http://www.zakon.kz/127590-gossekreter-rk-vystupil-na.html>. See also, Zh.M. Abdildin, *The RK Constitution is Based on the Universal Declaration of Human Rights* // Kazinform (28 October 2005), <http://www.zakon.kz/66011-konstitucija-rk-osnovana-na-vseobshejj.html> (in Russian).

claiming such a remedy *shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) to ensure that the competent authorities shall enforce such remedies when granted.*

According to Article 8 (3) of the Covenant on Civil and Political Rights, *no one shall be required to perform forced or compulsory labour.*⁵

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others (Article 21 of the Covenant on Civil and Political Rights).

In accordance with Article 22 of the Covenant on Civil and Political Rights, *everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.* No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

In keeping with Article 22 (3) of the Covenant on Civil and Political Rights, nothing in this article shall authorise *States Parties* to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize *to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice the guarantees* provided for in that Convention.

According to Article 26 of the Covenant on Civil and Political Rights, *all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

Many provisions of the Covenant on Civil and Political Rights are identical to provisions of the Universal Declaration of Human Rights and special ILO conventions regulating certain labour and employment rights.

Kazakhstan has joined the fundamental international covenants on civil, political, economic, social and cultural rights.

Much has been done by now to ensure adequate exercise of everyone's right to legal protection. The country has functioning economic, administrative and juvenile courts, and in cases prescribed by law legal proceedings involve the participation of jurors. The right of sanctioning arrest has been assigned to courts. The country has imposed a moratorium on death penalty. The institution of the position of Human Rights Commissioner has strengthened institutional guarantees of observance of human rights and freedoms. However, law enforcement practice shows that there is more work to be done to improve the efficiency of courts and enhance trust in the legal system.

⁵ For more detail, please see analysis of ILO Convention No. 105 concerning the abolition of forced labour.

2.3. Provisions of the International Covenant on Economic, Social and Cultural Rights Obliging States and Businesses to Respect Human Rights

According to Article 2 of the International Covenant on Economic Rights, *the States Parties to present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

According to Article 6, the States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. The Steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.⁶ The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with: (i) *fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;* (ii) *a decent living for themselves and their families in accordance with the provisions of the present Covenant;*

(b) *Safe and healthy working conditions;*

(c) equal opportunity for everyone *to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*

(d) *rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays (Article 7 of the Covenant on Economic Rights).*⁷

Article 8 (1) prescribes that the States Parties to the present Covenant undertake to ensure:

(a) *the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;*

(b) *the right of trade unions to establish national federations of confederations and the right of the latter to form or join international trade-union organizations;*

(c) *the right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;*

⁶ According to Art. 140 (3) and Art. 143 (3) of the RK Labour Code, the employer shall create the conditions for employees undergoing occupational training, re-training or to combine work with study as envisaged by this Code, agreements, collective bargaining agreements and employment contracts. Employees undergoing occupational training, re-training and further training shall enjoy the guarantees envisaged by this Code, collective bargaining agreements and employment contracts.

⁷ According to Art. 317 (6) of the RK Labour Code, the employer shall create the necessary sanitary and hygiene conditions for employees, provide for repairs to special clothing and footwear of employees, supply them with means of protective treatment, washing and disinfectant, a first aid kit, milk, therapeutic and healthy meals in accordance with the standards established by the state labour authority.

(d) *the right to strike*, provided that it is exercised in conformity with the laws of the particular country.⁸

The Republic of Kazakhstan has assumed international commitments and prescribed the right to strike in its legislation.

According to the ILO Committee, the right to strike is a right the employees and their organisations are entitled to and any restrictions of this right should not be excessive, and lawful exercise of this right should not entail prejudiced sanctions. The ILO Committee also notes that *restrictions of strikes in Kazakhstan are excessive and the very participation in strikes most frequently entails various sanctions*. According to the Human Rights Watch report, *the treatment of strikers in Kazakhstan constitutes not only a violation of its international commitments, but the republic's domestic legislation as well*.⁹

According to Article 2 of the International Covenant on Economic Rights, the States Parties recognise the right of everyone to social security, including social insurance. This provision of the Covenant is reflected in Article 28 of the RK Constitution: a citizen of the Republic of Kazakhstan shall be guaranteed a minimum wage and pension, and guaranteed social security in old age. In case of disease, disability or loss of a breadwinner and other legal grounds. Voluntary social insurance, creation of additional forms of social security, and charity shall be encouraged.¹⁰

2.4. Provisions of the ILO Declaration on Fundamental Principles and Rights at Work Obliging States and Businesses to Respect Human Rights

According to the ILO Declaration on Fundamental Principles, *all Members have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith the principles concerning the fundamental rights*, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.¹¹

3. Provisions of the Fundamental ILO Conventions

The fundamental ILO Conventions can be categorised, on the basis of their sphere of regulation, into four groups:

- (1) regulating relations in the sphere of **forced labour**;
- (2) regulating relations in the sphere of **freedom of association**;

⁸ Art. 298 (1) of the RK Labour Code prescribes that employees may decide to call a strike if mediation procedures have failed to resolve the collective labour dispute, as well as in cases when the employer refuses to participate in the mediation procedures or does not fulfil the agreement achieved in the course of resolution of the collective labour dispute. According to Art. 298 (4) of the RK Labour Code, participation in a strike shall be voluntary. No-one may be compelled to participate or refuse to participate in a strike.

⁹ http://www.vb.kg/world/2012/09/11/199098_doklad_human_rayts_votch_osparivaet_oficialnyu_versiu_janaozens_kih_sobytyi.html.

¹⁰ ***Similar provisions are fixed in subpara (13) of Art. 23 (2) of the RK Labour Code and subpara (1) of Art. 8 (2) of the Law on Compulsory Insurance of Employees against Occupational Hazards.***

¹¹ One of the fundamental principles of the RK labour relations, that **no-one's rights may be restricted in the sphere of labour, apart from cases and in a manner envisaged by the laws of the Republic of Kazakhstan** (Art. 5 of the RK Labour Code), stems from Article 12 of the RK Constitution and fully complies with the ILO Declaration on Fundamental Principles and Rights at Work.

(3) regulating **non-admission and prohibition of discrimination**;

(4) regulating provisions in the sphere of **child labour**.

3.1. Provisions of the ILO Conventions Regulating Relations in the Sphere of Forced Labour

3.1.1. Provisions of ILO Convention No. 29 Concerning Forced or Compulsory Labour

According to Article 2 (1) of ILO Convention No. 29, the term *forced or compulsory labour* shall mean *all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily*.

The term forced or compulsory labour *shall not include*:

(a) any work or service exacted in virtue of *compulsory military service* laws for work of a purely military character;

(b) any work or service which forms part of the *normal civic obligations* of the citizens of a fully self-governing country;

(c) any work or service exacted from any person *as a consequence of a conviction in a court of law*, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

(d) any work or service exacted *in cases of emergency*, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;

(e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as *normal civic obligations* incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.¹²

3.1.2. Provisions of ILO Convention No. 105 concerning the Abolition of Forced Labour

According to Article 1 of the Convention, each Member of the International Labour Organisation which ratifies Convention No. 105 *undertakes to suppress and not to make use of any form of forced or compulsory labour*:

(a) *As a means of political coercion* or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;

(b) *As a method of mobilising and using labour for purposes of economic development*;

(c) *As a means of labour discipline*;

(d) *As a punishment for having participated in strikes*;

¹² The position of the Republic of Kazakhstan with respect to forced labour is presented in the analysis of ILO Convention No. 105 concerning the Abolition of Forced Labour.

(e) As a means of racial, social, national or religious discrimination.

Article 8 of the KR Labour Code *prohibits forced labour in the KR* and practically reproduces the concept of forced labour presented in ILO Convention No. 29.

Forced labour shall mean any work or services required from any person under threat of any punishment, for fulfilment of which this person has not offered its services voluntarily, with the exception of work: (a) required from someone by virtue of a court sentence that has come into legal effect, on the condition that the work will be performed under the supervision and control of state authorities and that the person performing it is not yielded or handed over to any individuals and (or) legal entities; (b) required under the conditions of an emergency or martial law.

The provision on the prohibition of forced labour is fixed by Article 24 of the RK Constitution. Involuntary labour shall be permitted only on decision of the state and shall not be permitted on the will of companies of any other private institutions.

Therefore, the aforementioned provisions in the RK fully comply with the international legal acts (the Covenant on Civil Rights, ILO Conventions, the Guiding Principles on Business and Human Rights, etc.).

3.2. Provisions of ILO Conventions Regulating Relations in the Sphere of Freedom of Association

3.2.1. Provisions of ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise

According to Article 2 of ILO Convention No. 87, workers and employers, without distinction whatsoever, shall have *the right to establish* and, subject only to the rules of the organisation concerned, to join *organisations of their own choosing without previous authorisation*.

It should be noted that in this Convention the term **organisation** means any *organisation of workers or of employers for furthering and defending the interests of workers or of employers* (Article 10 of ILO Convention No. 87).

In keeping with Article 3 of ILO Convention No. 87, workers' and employers' organizations shall have *the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes*. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

In order to meet their responsibility to respect human rights, the Ruggie Report says, business enterprises should have in place policies and processes appropriate to their size and circumstances, including: (a) *a policy statement* expressing their commitment to respect human rights; (b) appropriate *operational policies and procedures* that enable them to identify, prevent, mitigate and account for their human rights performance; (c) *procedures* that enable them to remediate any adverse human rights impacts they cause or contribute to through their activities and relationships.

The policies and procedures on observance of human rights should supposedly be prescribed by such binding documents as articles of association and memorandum of incorporation. The Report also suggests that the States should actively support business enterprises in this respect. In this case, there is a risk of violation by the State of Article 3 of ILO Convention No. 87.

This is why the legislation of the Republic of Kazakhstan does not contain provisions obliging business enterprises to regulate the policy of observance and protection of human rights and

damage compensation procedures in the event of their violation in their constitutive documents. To most companies, the regulation of their policies of human rights observance is their right rather than their obligation.

Workers' and employers' organizations *shall not be liable to be dissolved or suspended* by administrative authority. They shall have *the right to establish and join federations and confederations* and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers. The acquisition of *legal personality* by workers' and employers' organizations, federations and confederations shall not be made subject to conditions of such a character as to restrict their activities.

One of the key provisions of ILO Convention No. 87 is that the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention (Article 8 (2) of ILO Convention No. 87).

On the whole, the RK labour legislation complies with the legal standards embedded in ILO Convention No. 87.

According to Article 22 (8) of the RK Labour Code, the employee shall have *the right to association*, including *the right to create a trades union or other association*, and be a member thereof for the purpose of representation and protection of his labour rights, unless otherwise envisaged by the laws of the Republic of Kazakhstan.

The employer, in accordance with the terms and conditions of the collective bargaining agreement, *shall create conditions for the activities of a trades union* operating within the organisation (Article 266 (2) of the RK Labour Code).

According to Article 4 of the Law on Trade Unions, RK citizens shall have *the right to unite in trade unions*. Trade unions shall be created on the basis of equality of their members. The number of trade unions created within the frames of one occupation (occupational groups) shall not be restricted. All trade unions shall be granted equal legal opportunities. Prevention of creating a trade union as well as impeding its operations shall be punishable by law.

Article 5 (4) of the RK Constitution imposes restrictions on activities of trade unions. In particular, *activities of political parties and trade unions of other states, religious parties as well as financing political parties and trade unions by foreign legal entities and citizens, foreign states and international organizations shall not be permitted in the Republic*.

Therefore, the RK labour legislation provides citizens the right to association, obliges employers to create conditions for the operation of trade unions, and concerns guarantees provided by the Constitution in respect of freedom of association and protection of the right to organise. However, unlike the Convention, the financing of political parties and trade unions by foreign legal entities is prohibited. This restricts the rights of foreign citizens and international organisations to participate in the activities of trade unions.

3.2.2. Provisions of ILO Convention No. 98 concerning the Right to Organise and Bargain Collectively

Article 1 of ILO Convention No. 98 stipulates that *workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment*. Such protection shall apply more particularly in respect of acts calculated to:

(a) Make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) Cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this article (Article 2 of ILO Convention No. 98).

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements (Article 4 of ILO Convention No. 98).

This provision is reflected in the RK legislation.

According to Article 7 of the Law on Trade Unions, *membership in a trade union shall not entail any restriction of labour, socioeconomic, political, personal rights and freedoms of citizens guaranteed by law. Employment, promotion and cancellation of an employment contract on the employer's initiative on grounds of the employee's membership in a certain trade union, joining it or withdrawal from it shall be prohibited.*

Therefore, the principle of non-discrimination is one of the fundamental principles of any type of activity. This principle is embedded both in international legal acts and in the RK legislation.

3.3. Provisions of Conventions Regulating Prevention and Prohibition of Discrimination

3.3.1. Provisions of ILO Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value

According to Article 2 (1) of ILO Convention No. 100, each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, *ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.*

This principle may be applied by means of: (a) national laws or regulations; (b) legally established or recognised machinery for wage determination; (c) collective agreements between employers and workers; or (d) a combination of these various means.

Provisions of ILO Convention No. 100 are reflected in the RK labour legislation.

E.g., according to subpara 15) of Article 22 (1) of the RK Labour Code, the employee shall have the right to equal payment for equal labour without any discrimination.

3.3.2. Provisions of ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation

According to Article 2, each Member for which ILO Convention No. 111 is in force undertakes to *declare and pursue a national policy designed to promote, by methods appropriate to national*

conditions and practice, *equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination* in respect thereof.

Each Member for which ILO Convention No. 111 is in force undertakes, by methods appropriate to national conditions and practice:

- (a) *to seek the co-operation of employers' and workers' organisations* and other appropriate bodies in promoting the acceptance and observance of this policy;
- (b) to enact such *legislation* and to promote such *educational programmes* as may be calculated to secure the acceptance and observance of the policy;
- (c) *to repeal any statutory provisions* and modify any *administrative instructions or practices* which are inconsistent with the policy;
- (d) to pursue the policy in respect of employment under the *direct control of a national authority*;
- (e) to ensure observance of the policy in the activities of *vocational guidance, vocational training and placement services* under the direction of a national authority;
- (f) to indicate in its *annual reports* on the application of the Convention the action taken in pursuance of the policy and the *results* secured by such action (Article 3 of ILO Convention No. 111).

Provisions of ILO Convention No. 111 are reflected in the RK labour legislation.

According to Article 7 of the RK Labour Code, *everyone shall have equal opportunities to exercise their rights and freedoms in the sphere of labour. No-one may be subjected to any discrimination in exercising their labour rights depending on sex, age, physical disabilities, race, nationality, language, material, social or official position, place of residence, attitude to religion, political convictions, tribe or social stratum or membership of public associations.*

It is prohibited to violate equality of rights and opportunities in concluding an employment contract (Article 25 (1) of the RK Labour Code).

Therefore, the principle of human rights observance and elimination of discrimination in the labour sphere is reflected in ILO Convention No. 111, Article 14 (4) of the RL Constitution, and provisions of the RK Labour Code.

3.4. Provisions of Conventions Regulating the Situation in the Sphere of Child Labour

3.4.1 Provisions of ILO Convention No. 138 concerning Minimum Age for Admission to Employment

Article 3 (1) of ILO Convention No. 138 prescribes that *the minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.*

The types of employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist.

Notwithstanding the above, national laws or regulations or the competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity (Article 3 (3) of ILO Convention No. 138).

Unlike the general provision contained in Article 3 (1) of ILO Convention No. 138, Article 30 (1) of the RK Labour Code prescribes that *it is permitted to conclude employment contracts with citizens who have reached **the age of sixteen years***.

Moreover, with the written consent of one parent, guardian or adoptive parent, an employment contract may be concluded with: (1) citizens who have reached the age of **fifteen years**, in cases when they have received a secondary education in a general educational institution; (2) pupils who have reached the age of **fourteen years** for performance, during time free from study, of work that is not harmful to the health and does not disrupt the study process; (3) persons who have **not reached the age of fourteen years**, in cinematography, theatrical and concert organisations and circuses, for participation in creating and (or) performing works without detriment to the health or moral development and in observance of the conditions of the labour legislation (Article 30 (2) of the RK Labour Code).

In these cases, *the employment contract shall be signed by a parent, guardian or adoptive parent as well as by the minor* (Article 30 (3) of the RK Labour Code).

Therefore, despite the fact that the RK legislation provides for a younger age of employment or other work, provisions of the RK Labour Code oblige the employer to guarantee adequate working conditions and safety of employees who have not reached the age of sixteen years.

3.4.2. Provisions of ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

It should be noted from the very beginning that for the purposes of this Convention, the term “**the worst forms of child labour**” comprises:

(a) *all forms of **slavery** or practices similar to slavery, such as **the sale and trafficking of children, debt bondage and serfdom** and forced or compulsory labour, including forced or compulsory recruitment of children for use **in armed conflict***;

(b) *the use, procuring or offering of a child **for prostitution, for the production of pornography** or for pornographic performances*;

(c) *the use, procuring or offering of a child for **illicit activities**, in particular for the **production and trafficking of drugs** as defined in the relevant international treaties*;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to **harm the health, safety or morals of children** (Article 3 of ILO Convention No. 182).

The problem of child labour exists globally, both in developed and developing countries. International experience shows that *child labour does not only inflict serious damage on physical and psycho-social development of a child, but also **has a negative impact on development of human resources and national socioeconomic development as a whole***. During the past few years Kazakhstan has covered a long way from a constituent republic of the former Soviet Union with a socialist model of economy and centralised governance to an independent state with the most dynamically developing economy in the Central Asian region. As the national economy develops, ***the labour market is becoming increasingly formalised***. This results in the elimination of some typical urban forms of child labour (e.g. haggling or newspaper sale) and *concentration of child labour* mainly in two spheres – *agriculture and the urban informal economic sector*.¹³

¹³ Please, see, Joint Action Plan for the Elimination of the Worst Forms of Child Labour and Implementation of ILO International Convention No. 182 in the Republic of Kazakhstan for 2009–2011.

The RK legislation *prohibits the worst forms of child labour*, and the violation of its norms entails *criminal responsibility*. Such responsibility is imposed under Article 131 of the RK Criminal Code – involvement of a juvenile in criminal activity, Article 132 of the RK Criminal Code – involvement of a juvenile into the commission of anti-social acts; Article 132-1 of the RK Criminal Code – involvement of a juvenile into prostitution; Article 133 of the RK Criminal Code – trading in juveniles.

4. Recommendations for the Improvement of the Legislation in the Sphere of Youth Policy

To develop business as a whole, it is necessary to develop it among young people, in particular, at the same time improving the youth policy legislation.

It is not accidental that Nursultan Nazarbaev, in his article *Social Modernisation of Labour: Twenty Steps towards a Society of Free Labour*, pointed out the need to modernise the law on state youth policy. Legal provisions are needed on employment guarantees and social benefits for young specialists, and procedures for organising practical work with young people.¹⁴

It is recommended to combine the harmonisation of the RK legislation on young labour, business, education, social guarantees for young people with effective EurAsEC documents with implementation of internationally accepted standards in the Kazakh laws and regulations.

Proceeding from the above, it is recommended to highlight and harmonise the following *main areas* of legal support of the youth policy on the common labour market.

I. In the legislative sphere regulating business activities:

(a) create a legal environment for business activity of young people in the industrial, research, technological, and innovation spheres, and in service provision to the population;

(b) provide state support to business activity of young people, including soft lending and investment in young people's businesses, granting state guarantees to young people who do not have collateral property, and organising regional research and business centres and business support centres;

(c) institute a common system of measures of socioeconomic, organisational and legal support of entrepreneurial, agricultural (farming) activity of young people, young families pooling their efforts for discharging such activities.

II. In the sphere of financial legislation:

(a) establish norms ensuring priority crediting and investment in young people's businesses, develop new forms and mechanisms of its financial support;

(b) unify procedures for educational loans and grants provision.

III. In the sphere of labour legislation, creating a new legal framework for:

(a) work out a common approach to addressing the problem of young employment by state entities and the private economic sector;

(b) implement a common approach to employment and dismissal of workers, unify the labour remuneration and health protection systems;

¹⁴ Please, see, Nursultan Nazarbaev, *Social Modernisation of Labour: Twenty Steps towards a Society of Free Labour // Kazakhstanskaya Pravda*, 2012, 10 July.

(c) ensure secondary employment, organise seasonal employment for students, in part, through the system of public jobs, develop a system of interstate youth labour exchanges;

(d) set annual *quotas of jobs for graduates* of educational institutions;

(e) set annual *quotas of jobs for persons* completing their compulsory term of military service;

(f) unified *regulation of working hours, overtime work*, paid vacations, taking into account the age of employment, studies and vocational training.

IV. In the sphere of social legislation:

(a) ensure legislative support of social *security* of young workers and provision of guaranteed *allowances* and *benefits* in cases of unemployment, childbearing, vocational training, and disability;

(b) ensure *equal opportunities* of employment to all social and demographic groups of young people.

V. In the sphere of tax legislation:

(a) *grant tax exemptions* for enterprises implementing *youth training programmes*;

(b) *grant tax exemptions for youth business entities*, as well as preferential taxation terms for a working migrant aged under 25 years, a citizen of the Commonwealth member state;

(c) *unify procedures for the payment of taxes and levies* for a working migrant aged under 25 years, a citizen of the Commonwealth member state.

VI. In the sphere of education legislation:

(a) create *preferential conditions for young people* undergoing professional internship or professional training at educational institutions while continuing work;

(b) grant *educational loans* and awarding scholarships and grants for talented youth on a competition basis.

If a EurAsEC member state applies a *special legal act* regulating state youth policy, it is recommended to introduce relevant amendments and additions to it.

In addition, it is recommended to introduce special provisions in national legal acts of the Commonwealth states to regulate *procedures for referring citizens for work outside their national territories and attracting workforce to countries*; to provide all economic entities, irrespective of the form of ownership, and persons engaged in business activities without registering a legal entity, if they have a relevant special permit (license), with the right to delegate certain categories of young citizens of the Commonwealth states for work outside their national territories and attracting workforce to countries; to guarantee labour migrants from EurAsEC countries the recognition throughout the entire territory of diplomas, education certificates, relevant documents certifying the conferral of a title, grade, qualification, and other documents required for employment purposes issued by the Commonwealth state of origin, and the length of service on preferential and professional terms.¹⁵

¹⁵ Please, see, Annex 1 to Resolution No. 4-19 of the Eurasian Economic Community Parliamentary Assembly of 16 July 2003, *Recommendations for Harmonising National Legal Acts in the Sphere of Youth Policy on the Common Labour Market of the Eurasian Economic Community*.

Observance of human rights by business enterprises is a binding requirement, but international acts allow the possibility of introducing exceptions from this regulation by states under particular circumstances.

The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights can be cited as an example.

5. Siracusa Principles on the Introduction and Application of a Public Emergency and Consequent Derogation Measures

Article 29 (2) of the Universal Declaration of Human Rights says: “*In the exercise of his rights and freedoms, **everyone shall be subject only to such limitations as are determined by law** solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.*”

All procedures prescribed by the International Covenant on Civil and Political Rights are aimed at the *fundamental goal of protecting human rights*. Article 5 (1) of the Covenant on Civil Rights describes specific restrictions of the measures implemented on the basis of the Covenant on Civil Rights: “*Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.*”

The aforementioned universal provisions are applied in full measure, but if the situation poses a **threat to the life of a nation**, the states have a right to derogate from their obligations.

According to Article 61 of the Siracusa Principles, **derogation from rights** recognised under international law in order to respond to a threat to the life of the nation **is not exercised in a legal vacuum**. It is authorised by law and as such it is subject to several legal principles of general application.

For example, a proclamation of a public emergency shall be made in good faith based upon an objective assessment of the situation in order to determine to what extent, if any, it poses a threat to the life of the nation. A proclamation of a public emergency, and consequent derogations from Covenant obligations, that are not made in good faith are violations of international law (Article 62 of the Siracusa Principles). The *provisions of the Covenant on Civil Rights* allowing for certain derogations in a public emergency *are to be interpreted restrictively*.

In a public emergency the rule of law shall still prevail. Derogation is an authorised and limited prerogative in order to respond adequately to a threat to the life of the nation. *The derogating state shall burden of justifying its actions* (Article 64 of the Siracusa Principles).

Lawful proclamation of a public emergency allows derogation from certain obligations, but does not give them the right of overall derogation from their international commitments. Special focus in this regard should be made on international obligations used during public emergencies in accordance with the Geneva Conventions and the ILO Conventions.

The RK legislation also envisages the possibility of derogation from the overall legal regime in cases of emergencies.

III. SUMMARY

With the adoption of the Universal Declaration of Human Rights, the United Nations Member States have committed to jointly promote the implementation of 30 articles on human rights which

were collected and presented in the form of a single document for the first time in history. Many of these rights, in various forms, are presently part of the constitutional laws of democratic countries.

The Universal Declaration of Human Rights is globally recognised as a standard, but its provisions are of an advisory nature. In this connection, the main task of the United Nations Human Rights Commission in the period from 1948 to 1966 was the elaboration of international human rights act based on the postulates of the Declaration that would create effective mechanisms for its gradual implementation and compulsory observance.

This work of the Human Rights Commission had two principal outcomes: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Both Covenants were recognised as international standards in 1976. These international legal acts constitute a single International Bill of Rights.

The international legal norms aimed at human rights protection are gradually being developed and are, on the whole, capable of ensuring every person's wellbeing. The most acute problem today is the implementation of the international human rights standards in the legal systems of states.

The Bill of Rights remains a declarative document in many countries. Violations of human rights are widely spread. According to various sources, specifically the 2009 Amnesty International Report, people are being subjected to torture or abuse in 81 countries, unjust legal prosecution in 54 countries, and in 77 countries freedom of expression is restricted. Women, children, dissidents and media representatives are the most frequent targets of harassments. Human rights are often violated in the business sphere.

The international legal provisions reviewed in this Legal Opinion are fundamental in the sphere of observance of human and citizens' rights and freedoms. States that have ratified these documents must introduce amendments and additions to their national legislations in keeping with the assumed international commitments.

At present, the legislation of the Republic of Kazakhstan does not fully comply with the international human rights standards. Some human rights protection documents are not ratified yet. Nevertheless, the main provisions concerning the observance and protection of human rights are prescribed by the Republic's laws and regulations. Kazakhstan is gradually harmonising its legislative framework with the ratified international acts. The key challenge today is ensuring practical implementation of the principles on business and human rights.

IV. GENERAL RECOMMENDATIONS ON THE INTRODUCTION OF AMENDMENTS AND ADDITIONS TO THE LEGISLATION OF THE REPUBLIC OF KAZAKHSTAN

The Republic of Kazakhstan has ratified all the basic human rights conventions, but one of the crucial factors of human rights observance is the inclusion of provisions of those conventions into the effective legislation and strict compliance with them.

To improve its labour legislation, the Republic of Kazakhstan needs to take measures to enhance compliance with ILO Conventions No. 138 concerning Minimum Age for Admission to Employment and No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

Specifically, labour conditions of underage employees working in the creative sectors require improvement. It is necessary to oblige the employer to register the age of the underage employee at the time of employment. Provisions should also be introduced in connection with independent vocational internship of underage students at their own initiative, extending the coverage of the Law of the Republic of Kazakhstan on Labour Safety and Protection to include persons undergoing vocational practical training.

In order to implement provisions on gender equality, attention should be focused on the Ombudsman's proposal to provide a framework for ensuring equal right and freedoms to men and women. A legal provision is efficient if it is supported with a relevant enforcement mechanism, including adequate responsibility.

International organisations have developed various recommendations for Kazakhstan regarding observance of human rights. One of the recommendations issued by the UN Committee is the adoption of measures to raise the degree of awareness among the workers of the judicial, legislative and administrative authorities, civil society and the public of provisions of the Covenant on Civil and Political Rights obliging states and business enterprises to observe human rights, the Optional Protocol and Concluding Observations in respect of the State, as well as the Covenant on Economic, Social and Cultural Rights obliging states and business enterprises to observe human rights.

The key factor of effective observance of human rights in a country is the existence of a functioning national human rights protection mechanism, including an independent legal system restoring the violated human rights in accordance with international standards.

Attention should be given to the procedure of implementation of international treaty provisions, from their ratification by the supreme legislative authority, harmonising the national legislation with the international acts, to actual application of international treaty provisions in the legal practice of courts, law enforcement and other authorised public agencies.

Adequate protection of human rights at the national level makes it unnecessary to file individual appeals to the UN Human Rights Committee. As the level of trust toward the RK legal system is currently low¹⁶ and decisions of the UN Human Rights Committee are of an advisory nature, Kazakhstan ought to extend its citizens' rights to legal protection by joining the Council of Europe and acceding to the European Convention for the Protection of Human Rights and Fundamental Freedoms. In accordance with this Convention, citizens whose rights were violated, after covering all legal protection stages in the Republic of Kazakhstan, could apply to the European Court on Human Rights whose decisions are binding.

It is recommended that the Republic of Kazakhstan focus more closely on citizens' freedom of association. The state authorities are recommended to respect individuals' rights to association, organisation, creation of trade unions, and peaceful congregations, irrespective of the fact whether their views correspond to the official position of the governing state authorities or not.

Respect and encouragement of employees' freedom of association and their rights to set up independent trade unions, to strike and bargain collectively with the employer, *inter alia*, stems from Kazakhstan's obligations under the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Republic's membership in the ILO.

To ensure observance of human rights by business enterprises, Kazakhstan is recommended to ensure respect of international labour standards by all private, public, and international companies and enterprises in the RK. Companies guilty of violations should be held responsible in accordance with law.

To ensure efficiency of inspections and reviews of violations of citizens' human rights, it is recommended that the powers of the labour inspection authorities be extended to enable them to fully investigate all complaints concerning labour rights violations filed by employees. The labour inspection authorities should be staffed with sufficient personnel with an adequate level of

¹⁶ See, e.g., <http://newskaz.ru/politics/20110225/1189848.html>;
<http://kloop.kz/blog/2012/07/24/vsego-10-grazhdan-kazahstana-polnostyu-doverayayut-sudebnoy-sisteme/>.

qualification for consideration of labour rights violation. It is recommended to provide all economic courts and labour inspection authorities with the texts of all line ILO Conventions in Russian and in Kazakh.¹⁷

Kazakhstan is recommended to stop illegal application of excessively broad and ambiguous criminal provisions, such as the accusation of “social strife incitement” or “appeals towards forceful overthrow of the constitutional order,” for detaining and arresting persons standing up for labour rights or spreading information about them. To harmonise the criminal legislation with the international human rights standards, Article 164 of the RK Criminal Code should be cancelled or amended.

Some international organisations recommend that Kazakhstan’s partners, including countries of the European Union and the United States, consistently raise the issues of labour rights violations in Kazakhstan at the highest level. International partners must call upon the Government of Kazakhstan to defend employees’ rights recognised by international conventions and the legislative and practical level, including the freedom of association, the right to organise and bargain collectively.

The Human Rights Watch, in its report “Striking Oil, Striking Workers: Violations of Labour Rights in Kazakhstan’s Oil Sector,” recommends that the ILO should draw the attention of the RK Government to international standards on setting up trade unions, collective bargaining, freedom of association, and the right to strike. In the opinion of the Human Rights Watch, the RK Government should present a clear schedule of reforming its Labour Code for the purpose of bringing it in line with ILO Conventions No. 87 concerning Freedom of Association and Protection of the Right to Organise and No. 98 concerning the Right to Organise and Bargain Collectively. It is necessary to call upon the Government of the Republic of Kazakhstan to fulfil the 1996 recommendation of the Committee on freedom of association and take measures to amend Article 5 of the Constitution in order to lift the ban on financial support of national trade unions by international trade union associations.

All national and international companies investing in the RK enterprises should guarantee independent trade unions to freely exercise their rights, in part, by: access of trade union leaders to work places of trade union members without impediments or unjustified restrictions; allowing trade unions to use conference halls for holding their meetings after working hours or, with the management’s consent, during working hours, without impediments or unjustified restrictions; ensure that all workers are fully informed and prepared as regards their rights and means of their exercising, by providing access to information on labour rights. To elaborate or revise the existing corporate labour provisions to include provisions on protection of labour and other rights of the employees of the companies, their subcontractors, affiliates, and other counterparties. To render expert support in drawing up in-house labour provisions in compliance with the international human rights standards. To develop the mechanisms for monitoring compliance of in-house labour provisions, including independent control.

All these measures recommended for enterprises are aimed at ensuring compliance with the principle of due care of human rights to be observed by all organisations in the process of their activities.

February, 2013

¹⁷ See, also, http://www.vb.kg/world/2012/09/11/199098_doklad_human_rayts_votch_osparivaet_oficialnyu_versiu_janaozens_kih_sobytiy.html.