

MICHAEL SOMMER
PRESIDENT
PRÉSIDENT
PRÄSIDENT
PRESIDENTE

SHARAN BURROW
GENERAL SECRETARY
SECRÉTAIRE GÉNÉRALE
GENERALSEKRETÄRIN
SECRETARIA GENERAL

President Mohamed Morsi
Heliopolis Palace
Cairo, Egypt

HSV/HTUR

5 December 2012

Egypt's Labour Rights Obligations

Dear President Morsi

As you know, the roots of the 2011 revolution, which ultimately led to your election this year, are found in the actions taken by independent trade unions, which posed a direct challenge both to the Mubarak regime and the official trade union body - the Egyptian Trade Union Federation (ETUF). With the revolution successful, it appeared that the right to freedom of association, which had for so long been denied in law and practice, was finally to become a reality for Egypt's workers. However, the actions taken in recent weeks have called into serious question your government's commitment to fundamental labour rights. Indeed, the International Trade Union Confederation (ITUC), which represents over 176 million workers around the world, is deeply concerned that rather than moving forward towards a free and democratic trade union movement, we are witnessing a return to the past system of government control.

Below are our key concerns:

1. On November 22, you issued Law 96 of 2012, "On the Protection of the Revolution." While framed as a tool for prosecuting the officials of the previous regime for the violent crimes committed against protestors during the revolution, the law goes far beyond that purpose. For example, Article 4 lists several additional offenses of the Penal Code that the special court established by the law may hear. Many of the listed crimes are extremely vague and could be employed to place unacceptable limits on speech, the press and assembly – key concerns for workers. Of particular concern from a trade union perspective are those offenses listed in Section 15 of Book Three of the Penal Code. This prohibits all workers who perform a public service or work in a public utility from striking. The same section criminalizes efforts of workers to prevent third parties from working. Part 13 of Book 2 criminalizes the interruption of traffic, which could also apply in the situation of a labour rally or strike. Under Article 5 of Law 96, those accused of committing the stipulated crimes may be imprisoned based on a decision by the prosecutor general or his representative for a period of up to six months.
2. On November 26, you issued an amendment to Law No. 35 of 1976, the law governing trade unions, which states that persons over 60 years of age cannot serve on the executive boards of unions. This is a serious act of interference with the fundamental right

of workers to elect their representatives and administer their organizations. The law also provides that new board elections will be held in six months, with the Ministry of Labour empower to fill any vacancies in the interim period. The provision is certain to affect several trade unions. We are of course worried that the Minister will use this power to fill vacancies with representatives close to your government, putting these unions firmly under its control.

3. The proposed Constitution, approved by Constituent Assembly on November 29, contains several provisions that run afoul of the international labour standards enshrined in the core conventions of the International Labour Organization (ILO). Indeed, no reference is made to these conventions or any other human rights instrument, nor does the proposed Constitution establish the primacy of ratified treaties over national law.

Below are some of our concerns:

Freedom of Association: Article 52 recognizes the right of trade unions to form and operate freely and insulates unions against administrative dissolution. However, Article 53 limits the extent to which unions are free to organize their structures by providing that only one union may be allowed per profession. Indeed, the ILO Committee on Freedom of Association has clearly stated that “The existence of an organization in a specific occupation should not constitute an obstacle to the establishment of another organization, if the workers so wish.” The establishment of a single union per occupation rule is inherently undemocratic and has been used in other countries to insulate incumbent, pro-government unions from challenge.

Non-Discrimination: While the principle of non-discrimination between men and women, including in employment, is found in the preamble (principle 4), there is no specific language in the body of the constitution which clearly establishes the right of non-discrimination between men and women, nor any reference to equality between men and women. At best, Article 33 provides a general statement of equal rights and duties without discrimination. Notably, previous drafts had listed the specific bases for non-discrimination, including sex, which was eliminated in the final draft. Indeed, the only mention of women in the body of the constitution is Article 10, which refers to the moral character of the Egyptian family and locates the role of women in society relative to her duties to the family. As such the draft constitution fails to protect women’s rights and the principle of gender equality.

Forced Labour: Article 63 provides, “There shall be no forced labour except in accordance with the law.” The ILO has identified extremely limited circumstances under which the state may resort to forced labour; none of those limitations are found in the proposed constitution. To the contrary, this article appears to give the legislature complete discretion to define when forced labour may be exacted, providing no protection whatsoever.

Child Labour: The constitution bars child labour before passing the age of compulsory education, which we understand to be 14 years of age in Egypt. However, when Egypt ratified Convention 138, the Child Labour Convention, it specified a minimum age of 15. Further, the provision barring work in jobs “that are not fit for a child’s age” is too vague to provide meaningful guarantees against, for example, the worst forms of child labour.

Further, **Article 11** appears to give the government sweeping powers to “safeguard ethics, public morality and public order” which “shall be regulated by law.” While a state has an obligation to, for example, safeguard public order, there are numerous laws currently on the books that far exceed any reasonable exercise of authority and instead infringe on fundamental human rights. Thus, we are deeply concerned that fundamental rights of speech and association, for example, may be limited or prohibited.

Article 31 forbids insults or showing contempt, which could be broadly interpreted to limit otherwise legitimate speech - in a labour context or otherwise.

Finally, we have reviewed the draft of the law circulated by your government that is meant to replace Law 35 of 1976. This simply cannot serve as the new trade union law, as numerous articles deviate from the rights to freedom of association, to organize and to bargain collectively enshrined in ILO Conventions 87 and 98, both of which Egypt ratified over 50 years ago.

The international trade union movement had tremendous hope for a new Egypt following the revolution and was excited that our brothers and sisters might at last have a chance to build a vibrant, democratic trade union movement. We are concerned that this may no longer be the case. Thus, we urge you to ensure that Egypt’s Constitution and laws give full effect to international human rights, and in particular the fundamental rights of workers. Failure to do so will only betray the revolution and set Egypt on a course for further confrontation.

Sincerely,

A handwritten signature in black ink, appearing to be 'A. B...', written in a cursive style.

General Secretary

cc:

Guy Ryder, Director General
International Labour Organization (ILO)