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**How to create and maintain civil society space?**

To whom it may concern,

The International Trade Union Confederation (ITUC) welcomes the opportunity to submit comments to the upcoming report of the High Commissioner for Human Rights about practical recommendation on how to create and maintain space for civil society. The ITUC is the global voice of the world’s working people representing 176 million workers in 162 countries and territories. Our primary mission is the promotion and defence of workers’ rights and interests, through international cooperation between trade unions, global campaigning and advocacy within the major global institutions. Workers are only able to improve their wages and working conditions when they have the right to freely associate, to contribute to social and economic policies and to hold government accountable when their concerns are not reflected in decision making processes. In the following we would like to point at necessary conditions for an enabling environment and at actions taken by trade unions where there are serious restrictions.

*Legal framework protecting fundamental rights*

The effective application of laws guaranteeing fundamental rights is essential for an enabling environment in which trade unions can operate freely. Governments should ratify international conventions in this regard and enact or amend legislation protecting fundamental rights. The national legal framework should explicitly provide for the right of workers to join and establish trade unions of their own choosing without discrimination of any kind.[[1]](#footnote-1) Legislation should include dissuasive sanctions against employers and public authorities for discriminating against workers who are engaged in peaceful and legitimate trade union activities.[[2]](#footnote-2) Legal requirements for the establishment of trade unions should not amount to a previous authorization procedure and should be limited to formalities.[[3]](#footnote-3)

In at least 57 countries, laws restrict the free establishment of trade unions without previous authorization limiting their ability to carry out peaceful and legitimate activities.[[4]](#footnote-4) Trade unions should have the right to draw up their internal constitutions and rules and therefore legislative provisions should not detail the internal functioning of the relevant organization as this can pose a serious risk of interference by public authorities.[[5]](#footnote-5) The legislation should also ensure that public authorities may not interfere in workers’ right to elect their representatives democratically by imposing undue eligibility or electoral process requirements.[[6]](#footnote-6) The internal administration of trade unions, including the financial administration, should be managed by workers without undue interference. National laws should stipulate the right of trade unions to organise their activities, including through demonstrations, strikes, petitions and publications without fear from reprisals from their employers, police and security forces or public authorities.[[7]](#footnote-7) This also needs to include their right to address political issues that affect the socio-economic context of their country.

In Georgia, the Saakashvili government pushed through Parliament a labour code in 2006 which fundamentally violated international and European Union labour standards, eliminating language protecting the right to form, join and participate in a union. The government also attacked basic requirements for employers to engage in collective bargaining, and union systems to collect membership dues. Thousands of workers feared joining a union when top managers in public and private enterprises openly threatened punishment for signing a union membership card. As a result of the government’s anti-union campaign, the Georgia Trade Union Confederation lost more than 100,000 members, many through dismissals or forced resignations by anti-union employers. In October 2012, after the parliamentary election victory of the Georgian Dream Coalition, a new government took power, which amended the labour code in mid-2013, reinstating the protection of the right join a union.[[8]](#footnote-8)

*Establish Institutions protecting and promoting rights*

The proper implementation of the law depends on efficient institutions monitoring and promoting the effective application of the law. Public institutions should receive necessary administrative and technical resources and capacities to safeguard fundamental rights. All too often, institutions for labour administration and inspections are often starved of financial, material and human resources and are in general not afforded the political support required for their efficient operation.

*Ensure freedom from violence and reprisals*

A climate of violence, coercion and threats of any type aimed at trade union leaders and their families does not encourage the free exercise and full enjoyment of fundamental rights. The environment of fear induced by threats to the life of trade unionists has inevitable repercussions on the exercise of trade union activities, and the exercise of these activities is possible only in a context of respect for basic human rights and in an atmosphere free of violence, pressure and threats of any kind.[[9]](#footnote-9) Governments should promote and defend a social climate where respect of the law is prevails. Measures should be taken to identify, bring to trial and convict the guilty parties. In Guatemala, where since 2004, at least 74 leaders and trade unionists have been killed and numerous acts of attempted murder, torture, kidnappings, break-ins and death threats, which have been committed, only 1.6 per cent of workers have joined trade unions.

*Ensure freedom from arbitrary arrests and detentions*

There has been immense increase in the number of arbitrary arrests and detentions of workers for exercising their rights in a legitimate and peaceful manner. According to the findings of the 2015 ITUC Global Rights Index, the number of countries where arbitrary arrests and detentions were used to silence and intimidate activists rose from 35 to 44 in the past year. For example, last year Hong Kong Commissioner of Police announced that “key organisers” of the Umbrella movement, including trade union leaders, would be arrested in response to the peaceful assemblies and protests carried out. In Europe, activists have been arrested or criminally charged for opposing austerity measures through strikes and protests, including in established democracies such as Spain. Freedom from arbitrary arrest and detention and the right to a fair and rapid trial are among the civil liberties which should be ensured by the authorities in order to guarantee the normal exercise of trade union rights. The apprehension and systematic or arbitrary interrogation by the police of trade union leaders and unionists involves a danger of abuse and could constitute a serious attack on trade union rights. The arrest of trade unionists against whom no charge is brought involves restrictions on freedom of association, and governments should adopt measures for issuing appropriate instructions to prevent the danger involved for trade union activities by such arrests.[[10]](#footnote-10) Police and security forces should be trained on engaging with trade unions during protests and strikes and should be held accountable in cases where they trespass rights of workers. Detained trade unionists should benefit from normal judicial proceedings and have the right to due process, in particular, the right to be informed of the charges brought against them, the right to have adequate time and facilities for the preparation of their defence and to communicate freely with counsel of their own choosing, and the right to a prompt trial by an impartial and independent judicial authority.

*Effective public consultations over laws and policies*

Governments should encourage public participation in decision making processes over laws and policies. Information-sharing, consultation, negotiation and joint decision-making mechanism can ensure inclusive and democratic policies and laws that meet the demands of the population and foster social cohesion and stability. Governments should promote the active participation of workers and their trade unions on socio-economic policies. Collaborative mechanisms should not only be established with regard to national laws and policies but also at workplace and community level. The effective and constructive participation of trade unions is only possible when the government provides all relevant information with respect to the issue. Trade unions must have the technical capacity to negotiate with governments on equal footing which cannot be achieved if they are unable to prepare and do not have sufficient knowledge about the issue. In this regard, technical resources and capacity building should be offered by public institutions when needed.

*Building trust*

Governments should engage with trade unions in order to build and maintain mutual trust. This might not be easy if there has been a history of conflict, suspicion and mistrust. It is therefore important that government demonstrates its commitment to recognise trade unions and their role. This can be done through direct engagements and meetings with high-level government representatives. More importantly, government should ensure that mutual decisions and outcomes of consultations are effectively implemented and reflected in the relevant legislative or policy instruments. Ability to deliver and compliance with commitments undertaken are essential components of the necessary trust that should prevail between the parties. The implementation itself should also be monitored and evaluated.

In Tunisia, a tripartite “Social Contract” was concluded on 14 January 2013. The Social Contract was the result of long and difficult negotiations between the most representative organisations of workers and employers, and the government. In the context of the political transition in Tunisia, the Social Contract aimed at paving the way for improvements in areas such as labour legislation and industrial relations, employment policies, social protection and vocational training, as well as balanced regional development. It also called for the establishment of a National Council for Social Dialogue to ensure its implementation.

In Spain, after the Franco regime, in October 1977, the social partners signed several agreements to consolidate the political transition to democracy and to reform the economy. These agreements, known as the “Pactos de la Moncloa”, facilitated the adoption of a new Constitution in 1978 which established in its Article 37(1) that the law shall guarantee the right to collective labour bargaining between workers’ and employers’ representatives, as well as the binding force of the agreements. The role of workers’ and employers’ organizations was therefore recognized in the 1978 Constitution.[[11]](#footnote-11)

*Mobilisation members and organising workers*

In countries where the political space for trade unions has been limited and attacks against fundamental rights are prevalent, trade unions respond by mobilising their membership and organising affected workers. Despite legal and practical restrictions with regard to the establishment and registrations, trade unionists who were able to return from exile back to Myanmar in 2012 organised more than 18,000 workers within 6 months. Indonesia’s main trade union centres KSBSI, KSPI and KSPSI launched a national campaign over minimum wages and labour laws with a 25,000-strong demonstration of workers in Jakarta this September.

*Building alliances with civil society*

Workers do not exist in isolation form their communities which is why trade unions have often advocated for issues that affect workers and their communities beyond the strict confines of the workplace and have wide networks and experience in co-operating with civil society. For example, the Crisis in Zimbabwe Coalition, a conglomeration of more than 350 civic society organisations, was indeed initiated by the Zimbabwe Congress of Trade Unions in order to develop collective response by civil society to the multi-faceted crisis of governance and legitimacy in the country. Another example includes Chile, where trade unions have joined the struggle of students for universal and democratic public education and transparency in government. On 28 March 2015, more than 100,000 people took to the streets, and a fortnight later, over 200,000 demonstrated nationwide expressing their discontent with the inadequacy of the current education reform undertaken.

*Political lobbying and litigation*

Where rights are under attack trade unions will try to engage with the government and public authorities in order to highlight the impact of practices that violate the rights of workers and advocate for changes. Where this is not possible, trade unions will seek legal avenues through litigation in national and international courts. Extensive political lobbying by trade unions led to the adoption of the new Iraqi labour law, which includes most amendments proposed by Iraqi unions, allows for collective bargaining, including for workers without a union; further limits child labour; provides improved protections against discrimination at work and, for the first time, against sexual harassment at work. The law also enshrines the right to strike, banned since 1987.[[12]](#footnote-12)

*International solidarity actions*

There are 328 national trade unions affiliated to the ITUC. Trade unions engage in global campaign and advocacy when fundamental rights come under severe attacks in a country. Material and legal assistance is provided to workers and their families who become targets of violations and abuses. Trade unions are also supported through capacity building and technical expertise.

 Yours sincerely,



 General Secretary

1. ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) [↑](#footnote-ref-1)
2. ILO Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (ILO Digest), 2006, paras. 769-854 [↑](#footnote-ref-2)
3. ILO Digest, paras. 272-308 [↑](#footnote-ref-3)
4. ITUC Global Rights Index (http://www.ituc-csi.org/ituc-global-rights-index-names) [↑](#footnote-ref-4)
5. ILO Digest, paras. 369-387 [↑](#footnote-ref-5)
6. ILO Digest, paras. 388-453 [↑](#footnote-ref-6)
7. ILO Digest, paras. 495-519; 520-676 [↑](#footnote-ref-7)
8. Solidarity Center, Georgia (<http://www.solidaritycenter.org/where-we-work/europe-central-asia/georgia/#sthash.TL96y0JA.dpuf>) [↑](#footnote-ref-8)
9. ILO Digest, para. 35 [↑](#footnote-ref-9)
10. ILO Digest, para. 35 [↑](#footnote-ref-10)
11. ILO, National Tripartite Dialogue- an improved guide for governance, 2013 [↑](#footnote-ref-11)
12. Solidarity Center, Workers win new labour law in Iraq (http://www.solidaritycenter.org/workers-win-new-labor-law-in-iraq/) [↑](#footnote-ref-12)