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ITUC/LEX

Submission to the call for inputs for the development of tools to assist in promoting and protecting human rights in the context of peaceful protests

Dear Mr Voule,

Please find attached the submission on behalf of the International Trade Union Confederation (ITUC) to the call for inputs from the mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association for the development of practical tools to assist law enforcement bodies in promoting and protecting human rights in the context of peaceful protests, to be presented at the 55th session of the UN Human Rights Council (Implementation of UN HRC Resolution 50/21)

Yours sincerely,



Owen Tudor
Deputy General Secretary

**Call for inputs from the mandate of the Special Rapporteur on the rights to freedom of peaceful assembly and of association for the development of practical tools to assist law enforcement bodies in promoting and protecting human rights in the context of peaceful protests, to be presented at the 55th session of the UN Human Rights Council
Implementation of UN HRC Resolution 50/21**

ITUC submission

Freedom of assembly, the right to organize public meetings, including demonstrations in support of social and economic demands, constitutes a fundamental aspect of trade union rights. The ILO monitoring bodies – e.g. Committee of Experts on the Application of Conventions and Recommendations (CEACR) and Committee on Freedom of Association (CFA) - have repeatedly underlined that workers should enjoy the right to peaceful demonstration to defend their occupational interests.¹

The use of excessive violence and extreme police brutality to repress strikes, protests and demonstrations of workers continues to violate workers' rights globally. According to the most recent ITUC Global Rights Index² workers were exposed to violence in 50 countries in 2022, nearly one third or all countries in the Global Rights Index and a worrying increase from 45 countries in 2021. In many countries, strikes and social protests were repressed with disproportionate force by the state armed forces and the police.

In Myanmar, the response from the junta to the Civil Disobedience Movement (CDM) is brutal, with mass arrests and killings. Many union activists are in detention, others have been killed or are in hiding. To date, 17,481 people – including many trade unionists – have been arrested, with 13,680 still in detention. 2,892 people have been killed by the junta. On 13 September 2022, five trade unionists were violently attacked and arrested by military security officers in Yangon. The unionists were arrested on their way to a peaceful protest, calling on the United Nations (UN) to recognise the National Unity Government of Myanmar and its permanent representative at the UN, U Kyaw Moe Tun. During the protest, a group of security officers in plain clothes appeared, using sticks to beat the protestors and firing a few shots. Twenty-nine protestors were arrested. Trade union leaders and members from the Industrial Workers' Federation of Myanmar, the Building and Wood Workers Federation of Myanmar (BWFM), and the Confederation of Trade Unions of Myanmar (CTUM) were among the 29.

Eswatini descended into a spiral of violence and repression as 2021 pro-democracy protests were met with extreme police brutality. At least 72 protestors were killed by police and government forces; hundreds more were injured and others detained, while some remained missing. Some activists went into hiding and others fled into exile. On 13 October 2021 a bus driver was shot dead and another injured during clashes with police as drivers took part in a wage protest in the small town of Malkerns. Further to the killing, transport workers joined in the wider protests in the country, calling for democratic reforms, and blocked several key roads across country. The following day, police shot and killed an individual at a roadblock in Mpaka town. On 20 October, security forces cracked down on protests in Mbabane and Manzini, killing one and injuring at least 80, including 30 by gunshot. The next day the government banned all protests and shut down the social media platform Facebook. Marches

¹ ILO Compilation of CFA decisions paras. 190-201; 202-232; General Survey 1994 paras. 35-39; General Survey 2012 paras. 59-6

² https://files.mutualcdn.com/ituc/files/2022-ITUC-Rights-Index-Exec-Summ-EN_2022-08-10-062736.pdf

banned In December 2021, Prince Simelane, brother of King Mswati III and acting housing minister and major general of the Army, banned all protests in the country amid growing calls for democratic reforms. Minister Prince Simelane directed all town councils not to issue permits allowing citizens to protest in towns. As a result, the Swaziland National Association of Teachers (SNAT) was denied permission to march across the city on 15 December. They had planned to deliver a petition to demand a salary review and an end to the casualisation of the labour force and union bashing

In Sierra Leone, several peaceful protests organised in August 2022 over the ever-rising cost of living were brutally suppressed, killing at least twenty-one persons. Police indiscriminately fired live bullets and tear gas into the crowd as protesters were marching in the capital Freetown. Frustrations had been exacerbated by rising prices for basic goods in a country where more than half the population of around 8 million live below the poverty line.

In Peru, the democratic protests, organised after the parliamentary coup and strongly supported by the coalition of trade unions, were heavily repressed by the police. As of February 2023, more than 60 people had lost their lives, while 2,000 more were injured and another 1,000 protesters were arrested. Trade unions, rural workers' organisations and other civil society groups have been illegally raided, as have universities throughout the country. Trade unions also denounced the Boluarte government's violent response to the protests and its various tactics to prevent workers from protesting, such as a travel ban to the capital, the centre of the mass demonstrations, and refusal to sit down with trade unions for dialogue.

May Day demonstrations are often banned or disrupted by police, as was the case in 2021 in Turkey³ and Zimbabwe.⁴

In Iran, workers held marches across the country for May Day 2022 despite attempts at repression by government forces. In total, over 230 teachers were arrested for participating. In Tehran, despite the presence of armed security forces which had surrounded the Islamic parliament a number of teachers marched to one of the city's parks, holding banners of protest and posters of imprisoned teachers on this day of freedom and equality. In Bushehr, police forces stormed a gathering of teachers in the morning, beating and arresting at least twelve of them. On 12 May, teachers in more than forty cities across Iran gathered to protest against the continued detention of their colleagues. In Yasuj, security forces were deployed in front of the General Directorate of Education to prevent teachers from gathering, and when the teachers tried to gather and protest, more than 50 were arrested and detained.

Some countries also adopt extremely repressive laws entailing heavy prison sentences to prevent demonstrations and assemblies.

In Belarus, new legislation was introduced to penalise unauthorised demonstrations with imprisonment for up to three years, further closing democratic space in the country. On 8 June 2021, President Alexander Lukashenko signed new legislation that punishes those accused of participating in unauthorised demonstrations with imprisonment for up to three years. Those who are found to have participated in or promoted "extremist activity" would face up to six years in jail. The definition of "extremist activity" is not clearly defined in the new legislation, and fear arose that the new provisions will be used to suppress any dissent. This new law follows laws enacted on 24 May 2021 making it compulsory to obtain a permit from the authorities to organise mass event.

³ <https://www.globalrightsindex.org/en/2022/countries/tur>

⁴ <https://www.globalrightsindex.org/en/2022/countries/zwe>

A key component of workers' right to peaceful assembly is their capacity to organize strike actions at their workplace. In practice, workers and trade unionists are often faced with hostile response by employers, including hiring private security forces to disperse, often brutally, strikers or calling police to crackdown on collective actions.

In Cambodia, there were repeated incidents of police attacks, between June and August 2022, on former and current workers demonstrating outside the leading hotel and casino establishment. The local authorities arrested dozens of union activists, and police officers forcibly removed strikers from the site, dragging them onto buses that took them away from the casino. At least ten protesters were injured on 27 June 2022 when police violently broke up a group of former and current casino workers. In another incident on 22 July, a terminated worker was struck in the face, and fell to the road while she and other protesters tried to walk up to the establishment. There were more violent clashes, notably on 11 August when strikers from the Labour Rights Supported Union of Khmer Employees of the establishment (LRSU), who were trying to get access to the area in front of the casino, were attacked as they attempted to move past metal barricades. Around 80 police and mixed security forces then began violently hitting, kicking and shoving the mostly women union members to stop them from passing the barricades. At least 17 women were injured during the clash. One woman was reportedly hit in the face by a uniformed officer, rendering her momentarily unconscious and bleeding from a gash on her nose.

In Turkey, in January 2022, police stormed the an automotive factory in Kocaeli province (a supplier for a number of the biggest multinational companies in the automotive sector) and dispersed peacefully striking workers with pepper gas. They arrested workers, including United Metalworkers' Union Gebze No. 2 branch chair and the branch secretary and took them out of the factory in five detention minibuses. Police continued to spray pepper gas on workers who tried to prevent the detention vehicles from leaving the factory. Two people fainted during the intervention. One worker had his leg broken. One hundred eight people in total – 106 workers and union representatives at the factory and two executives of the DGD-SEN Union who came to the factory in support – were taken to the Gebze District Security Directorate. All were released only after giving their statements.

In the Philippines forty-four employees of a pasta-making company were arrested on 15 December 2021 for going on strike. They were charged with illegal assembly, disobedience to a person in authority, and "alarm and scandal" and were released from jail after 36 hours, pending further investigation. The strike was called after workers learned they would be laid off on 24 December. It was brutally repressed by the police, who used water cannons and truncheons on the strikers, dragging them into a police van.

In some countries, repression of strikes has been institutionalized through industrial police.

In Bangladesh, at least five people were killed and dozens injured on 17 April 2021 after the industrial police opened fire on a crowd of workers protesting to demand unpaid wages and a pay rise at a power plant establishment, a construction site of the coal-fired plant in the south-eastern city of Chittogram. The workers were protesting over unpaid wages, unscheduled cuts in their working hours and for a Ramadan holiday and reduced hours during the religious festival.

In India, Central Industrial Security Force (CISF) officers baton-charged contract workers employed by the National Thermal Power Corporation (NTPC) on 22 August 2022. The CISF

was attempting to disperse a demonstration at the gates of the power station in Ramagundam, Peddapalli district in Telangana. The workers were protesting to demand management negotiate a new work agreement. More than twenty protestors were injured and sent to hospital.

Furthermore, the COVID-19 pandemic has presented a great public health crisis as well as social and economic crisis. Many governments have adopted containment measures, including lockdowns and related restrictions in an effort to prevent the spread of the virus that affected the exercise of workers' right to peaceful assembly and demonstration. The CEACR observed that in the context of the pandemic, physical distancing measures and restrictions on freedom of assembly have affected, directly or indirectly, the realization of the right to organize and to collective bargaining. Situations of confinement made it more difficult for workers to have direct contact with their representatives, and at times impeded elections to renew the terms of office of union leaders and the processes of consultation and collective bargaining.

The government in Guatemala prohibited public meetings due to the health emergency caused by COVID19 – as a result workers could not voice their grievances or elect their representatives in case the time limit for the holding of their offices has elapsed.

The government of Hong Kong introduced a ban on public gatherings of more than 4 persons under the Prevention and Control of Disease (Prohibition on Group Gatherings) Regulation (Cap. 599G) as part of anti-COVID19 response and used this regulation to block applications for public demonstrations, including those organized by trade unions, including commemoration of Labour Day. The authorities rejected applications submitted by the HKCTU, ignoring the proposed safety measures, such as marching in small groups with social distancing. Between May and August 2021, HKCTU, the HAEA, the GUHKST and other unions had been harassed, cordoned, reported their ID, photographed and videotaped or ticketed by police officers to disrupt them from communicating trade union messages to the public by setting up street booths under the prolonged ban on public gatherings under Cap 599G. Several trade union leaders and members, including the General Secretary of the HKCTU, who took part in small demonstrations were arrested, prosecuted and given suspended jail sentences of up to 18 months and fines.

COVID restrictions have also been used as a pretext to ban or impede trade unions' activities, including organising of strike actions.

In Korea, the first vice president of the Korean Confederation of Trade Unions (KCTU), was arrested and detained on 4 May 2022 for his leading role in organising a general strike on 20 October 2021. He led the strike in part because, at the time, KCTU President was already in detention on similar charges. Like the president, the vice-president of the KCTU was charged with violation of the Infectious Disease Control Act on Demonstration and Assembly, despite the KCTU's proper observance of COVID-19 protocols. On 5 August 2022, the Seoul Central Municipal Court ruled that there was no legal justification to continue to hold the vice-president of KCTU. He was released after 94 days in detention.

Protests organized by trade union organizations are fully protected by the principles of freedom of association.⁵ Permission to hold public meetings and demonstrations, which is an important trade union right, should not be arbitrarily refused. The authorities should refrain

⁵ 2018 ILO CFA Digest, para 210.

from any interference which would restrict this right or impede the lawful exercise thereof. Where trade unionists are arrested or charged for breaching public order in such circumstances, they should be entitled to refer the matter promptly to judicial authorities, with all guarantees of due process, so that the court may assess whether these measures were justified and, where necessary, order remediation. If the authorities choose to prohibit a demonstration invoking e.g. maintenance of public order - they should ensure that workers have effective access to their right of peaceful assembly - by reaching agreement with the organizers of a demonstration to enable it to be held in some other place where there would be no fear of disturbances.

As repeatedly underlined by the ILO monitoring bodies, the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected. Consequently, the intervention of the forces of order during trade union demonstration should not result in violence, should be limited to cases of genuine necessity and should be in due proportion to the danger to law and order that the authorities are attempting to control. Governments should take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations. The police authorities should be given precise instructions so that, in cases where public order is not seriously threatened, people are not arrested simply for having organized or participated in a demonstration. Accordingly, all allegations of violence against workers who are organizing peaceful protests and demonstrations should be thoroughly investigated and full consideration should be given to any possible direct or indirect relation that the violent act may have with trade union activity. Furthermore, the mere fact of initiating an investigation does not mark the end of the Government's work; rather, the Government must do all within its power to ensure that such investigations lead to the identification and punishment of the perpetrators.

As regards the exercise of the workers' right to peaceful assembly and demonstration in the times of crisis such as COVID 19, the ILO Committee on Application of the Conventions and Recommendations (CEACR) has considered the topic of application of the relevant international labour standards in the context of such crisis in its report of 2021.⁶ CEACR has recalled that crisis situations "cannot be used to justify restrictions on the civil liberties that are essential to the proper exercise of trade union rights, except in circumstances of extreme gravity and on condition that any measures affecting [their] application are limited in scope and duration to what is strictly necessary to deal with the situation in question". (para 52). CEACR also underlined the importance of social dialogue during the crisis response, in line with the the guidance provided by the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205).

We are providing information and the examples listed above in the hope of supporting the development of practical tools to assist in promoting and protecting human rights in the context of peaceful protests.

⁶ Application of International Labour Standards in times of crisis: the importance of international labour standards and effective and authoritative supervision in the context of the COVID-19 pandemic; available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_771042.pdf