(1) Submitting Organisation

The International Centre for Trade Union Rights (ICTUR) was founded in 1987 in order to defend, extend, and raise awareness of trade union rights and their violations worldwide. ICTUR was founded in response to 'an attack on trade union rights by transnational employers' and 'to take up the struggle for liberation from neo-colonialist and transnational corporation exploitation'. ICTUR is a network of unions, lawyers and human rights organisations.

ICTUR has consultative (roster) status with the UN ECOSOC and it is accredited to the ILO Special List of INGOs, since 1993. ICTUR's main activities include monitoring labour rights, letter writing, trial observations, research and publishing. ICTUR provides information to international human rights processes and assists trade unions in this work. ICTUR publishes: *International Union Rights* journal (since 1993, 4 editions per year); the *World Map of Freedom of Association* (6th edition, 2019); and the reference book *Trade Unions of the World* (7th edition, 2016).

(4) International Human Rights Obligations

The Universal Declaration of Human Rights makes it clear that "everyone has the right to form and to join trade unions for the protection of his interests" (Article 23(4)). Egypt ratified ILO Convention No. 87 on the Freedom of Association and Protection of the Right to Organise in 1957. It ratified ILO Convention No. 98 on the Right to Organise and Collective Bargaining in 1957. It has ratified 64 (of which 62 are in force) international labour Conventions, including ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise (1948), and ILO Convention No. 98 on the Right to Organise and Collective Bargaining (1949).

In 1982, Egypt ratified both the International Covenant on Economic, Social and Cultural Rights ("CESCR") and the International Covenant on Civil and Political Rights ("CCPR"). The CESCR obliges State parties to ensure the right to form and join trade unions of their own choice, including at national and international level. It further states that trade unions have the right to function freely and to take strike action (Article 8). The CCPR stipulates that, "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".

(5) Previous UPR cycle

Within the previous UPR cycle:

Egypt did accept several recommendations that concerned the need to improve respect for freedom of association A – 165.210, A - 166.220, A - 166.221, A – 166.245, A - 166.246. But it did not accept Lithuania's call for the government to 'recognize independent unions as well as remove restrictions to peaceful demonstrations' N - 166.211.

Amnesty International noted that national law 'fails to uphold the rights to work and to form and join trade unions. Successive governments have not implemented a system for a fair minimum wage.22 The Law on Trade Unions (Law 35 of 1976) mandates a single national trade union federation to which all trade unions must belong. The Penal Code and other legislation punish striking workers with imprisonment and heavy fines'.

(5) Background

The Egyptian Trade Union Federation (ETUF) was established in 1957. It is the largest trade union centre in the Arab world, and throughout most of its existence the ETUF enjoyed a legally prescribed monopoly single trade union structure, under which all unions were required to belong to it. Outside of the ETUF structures, independent union organizing did occur, as did strikes and protests, and from 2009 (and accelerating after 2011) some of these organisations did obtain a form of recognition from the Labour Ministry and were able to function, even forming national level confederations. In March 2016, the government called an abrupt halt to this semi-formal practice, and declared that all independent trade unions in Egypt were invalidated, strictly applying the law from 1976 on trade union monopoly. The Director General of the ILO wrote to Egypt to express concern at this move[1].

On 5 December 2017, Egypt's parliament adopted the Trade Union and Protection of the Right to Association Act 213, replacing the old 35/1976 Act. The new Act was signed into law by President

[1] ILO press release (8 April 2016) 'ILO Director-General expresses concern over freedom of association in Egypt', at: https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_468116/lang--en/index.htm

Abdel Fattah el-Sissi on 18 December 2017. Overall, the Act preserved the status of the old ETUF unions, while establishing a framework under which new unions could obtain recognition. This framework, however, set unreasonably high thresholds for organising, and criminalised any trade union activities taking place outside of the formal legal framework. It also contained numerous examples of overly prescriptive bureaucratic intervention and regulation of all aspects of trade union activity, including a prescriptive model for union elections, constitutional documents, internal democracy, and financial affairs. A further aspect of the law potentially criminalises trade unionists for receiving foreign funding.

This new registration model, combined with associated laws criminalising strikes and protests on various grounds, creates an extremely difficult situation for workers to organise. The situation in practice also remained extremely problematic, with many facing arrests and harassment for strikes and protests, and reporting practical difficulties obtaining registration. In 2018, trade union elections were held, but hundreds of candidates were said to have been excluded from standing in the early rounds and they have thus been prevented from participating as candidates in subsequent rounds[2]. In addition, the murder in 2016 of an Italian labour researcher, in which State agents were suspected of involvement, remains in impunity[3].

(6) Our concerns

The trade union law:

- sets restrictive thresholds for forming unions at all levels
- criminalises trade union activities by unregistered organisations
- criminalises receipt of foreign funding for trade unions
- criminalises the formation of unions with political identities

Associated laws:

[2] *Report of the Committee of Experts on the Application of Conventions and Recommendations*, 2016 (Egypt, Convention 87)
[3] 'Giulio Regeni: Italy names Egyptian agents as murder suspects' (29 November 2018), *The Guardian*, at: https://www.theguardian.com/world/2018/nov/29/giulio-regeni-murder-italy-names-egyptian-national-security-agents-suspects

- restrict and criminalise strike action in many situations
- criminalise unprotected assemblies and demonstrations

In practice:

- the 2016 murder of Italian labour researcher Giulio Regeni remains in impunity
- There have been many reported cases of the arrest and harassment of trade unionists

(7) Restrictions on trade union rights in law

The following elements of the new Trade Union Act are of particular concern:

Organising thresholds

Sections 11 and 12 of the Trade Union Act set minimum membership thresholds for the establishment of trade unions workplace committees that are a significant barrier to organising. Article 11 requires a minimum of 150 members to establish a workplace level trade union committee. According to figures cited with approval by the ILO, up to 90 percent of industrial facilities in Egypt employ less than 100 workers[4], so it will be impossible under this law to form workplace committees at the majority of workplaces. Although the law does clearly anticipate this problem, and provides a potential mechanism for organisers to overcome the barrier – by providing for the formation of multi-workplace committees covering clusters of smaller workplaces – this aspect of the law is still viewed by many a major barrier to freedom of association. For higher-tier organising, Article 12 is similarly restrictive, requiring at least 15 workplace committees and at least 20,000 members to form a trade union. And to form a trade union federation the barriers are still higher, Article 12 requires a minimum of ten affiliated unions and a membership of at least 200,000. For comparison, such a threshold, if applied in the

4 *Report of the Committee of Experts on the Application of Conventions and Recommendations,* 2016 (Egypt, Convention 87)

UK, for example, would ban most of the long-established national-level unions that are affiliated to the British TUC.

Unregistered trade union activity

Performing trade union-like activities or describing an organisation as a trade union without the protection of trade union registration is criminalised under Article 67. Combined with the substantial difficulties unions have reported in obtaining registration, and the overly restrictive organising thresholds, this section is highly problematic and criminalises legitimate trade union activity.

Foreign funding

When the new Trade Union Law was adapted it restricted foreign funding of trade unions, and potentially criminalized anyone receiving such funding under Articles 54 and 76.

Ban on 'political' orientation of trade unions

The formation of a trade union with a clear political identity contrary to Article 5 is punishable by criminal sanctions under Article 69.

Strike bans

There are numerous further aspects of associated legislation, including the Labour Code and the Criminal Code, that criminalise legitimate trade union activities and which place trade unionists at risk of serious criminal punishments. Examples include:

Law No. 107 of 2013, which bans unauthorized rallies and demonstrations and has been used to suppress independent labour activists organizing protests.

Articles 124, 124(a) and 347 of the Criminal Code, which make participation in or incitement to strike by 'civil servants' punishable with up to two years imprisonment. Section 124 criminalises strike action by 3 or more public officials / civil servants. Section 124A makes it an offence to incite such actions. And Section 124C extends the definition of 'civil servants' to include all hired workers working for the State - from central State agencies to local government and rural administration levels

Further, a proposed new Labour Law (not yet adopted) would prohibit strikes on numerous grounds and sectors and gives the authorities too wide a power to apply these restrictions on a case by case basis.

(8) Harassment of trade unionists in practice

In 2016, in a case without precedent that shocked academics and trade unionists the world over a young Italian academic, visiting the country to research its trade union movement, 'disappeared', and was tortured and murdered. Egyptian state agents have been implicated in his abduction, but the case remains shrouded in impunity.

In May 2016, hundreds of workers at the Ministry of Defence-owned Alexandria Shipyard Company organized a peaceful demonstration over safety and pay. On 25 May, the third day of protest, military police surrounded the company and closed its gates. The following day, military prosecutors issued arrest warrants for 25 of the workers; they were referred to a military court in

June 2016, and 14 of them were detained until October 2016. An estimated 1500 workers (out of a total of 2,400 workers) were unofficially suspended from their jobs[5].

In September 2016, employees of the Public Transport Authority planned to organise a peaceful protest over pay. On 23 September 2016 – one day before the protest was due to take place - police forces arrested six workers on charges of 'inciting' workers to participate in a strike, 'preventing workers from performing their duty' and 'belonging to a banned group'[6].

In February 2017, after a week-long partial strike, the administration of the state-run Zagazig University Hospital suspended twelve of the striking nurses pending disciplinary investigations. Police informed them that the prosecution had issued an arrest warrant against them on charges of inciting nurses to participate in the strike[7].

On 23 April 2017, police arrested nine workers from the Telecom Egypt Company in Cairo after they held a protest calling for an increase in their wages and the payment of their delayed allowances. On 24 April, workers from of company's branch in Giza organised another protest in solidarity calling for their colleagues' immediate release. Security forces arrested seven of the workers. All sixteen workers were referred to the office of the Public Prosecution on charges of participating in an unauthorised protest[8].

(9) Context and analysis

With regard to the State's obligation to properly investigate the killing of Guilio Regini, the ILO's Committee on Freedom of Association (CFA) has set out clearly the State's duty to protect trade

[5] 30 April 2017 report by Amnesty International
[6] 30 April 2017 report by Amnesty International
[7] 30 April 2017 report by Amnesty International
[8] 30 April 2017 report by Amnesty International

unionists from physical harm, and on the obligation of the State to ensure a robust response to the murder of trade unionists. The CFA has found that: 'the rights of workers 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' (Freedom of Association, para. 84). The Committee has further noted that an independent judicial inquiry should be instituted immediately to investigate assaults on the physical or moral integrity of individuals, in order to determine responsibility, punish those responsible and prevent repetition (Freedom of Association, para. 94). Failure to hold guilty parties to account creates a culture of impunity, 'which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights' (Freedom of Association, para. 106).

On the arrest of trade unionists, the ILO's Committee on Freedom of Association (CFA) has emphasized that: 'no one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike'[9], and the arrest and detention of trade unionists 'for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular'[10]. In particular, the arrests of strikers 'on a large scale involve a serious risk of abuse and place freedom of association in grave jeopardy'[11]. The CFA has further ruled that that 'the arrest, even if only briefly, of trade union leaders and trade unionists, and of the leaders of employers' organizations, for exercising legitimate activities in relation with their right of association constitutes a violation of the principles of freedom of association'[12]. In cases where trade unionists are arrested or deprived of their liberty it is 'incumbent upon the government' to show that such measures are 'in no way occasioned by the trade union activities of the individual concerned' (Freedom of Association, para. 158).

Regarding the removal of legal personality from trade unions, the CFA has stated that 'measures of suspension or dissolution by the administrative authority constitute serious infringements of the principles of freedom of association' and a 'clear violation of Article 4 of Convention No. 87'[13]. The CFA has further stated that 'the requirement of an excessively high minimum number of trade unions to establish a higher-level organization conflicts with Article 5 of Convention No. 87

[9] Freedom of Association, para. 156
[10] Freedom of Association, para. 123
[11] Freedom of Association, para. 975
[12] Freedom of Association, para.121
[13] Freedom of Association, para., para. 986-7

and with the principles of freedom of association'[14]. The CFA has described as 'obviously too high a figure', legislation which requires that a union must have at least 50 founder members[15]. This principle is particularly important in a country with a 'large proportion of small enterprises'[16].

(10) Recommendations

The International Centre for Trade Union Rights calls on Egypt to:

- Amend sections of the Trade Union Law to remove barriers to freedom of association, particularly the thresholds in Sections 11 and 12 and the provision criminalizing unregistered trade union activities in Section 67.
- Ensure that registration of trade unions is not withheld in practice in a manner incompatible with ILO principles on freedom of association;
- Cease prosecutions against trade unionists on grounds relating to their legitimate trade union activities, including specifically around: organizing; demonstrations; and strikes.
- Remove criminal penalties for striking and for incitement to strike (Criminal Code, section 402);
- Seek the assistance of the ILO and other relevant UN agencies in making amendments to domestic law and practice.

[14] Freedom of Association, para. 1018
[15] Freedom of Association, para. 437
[16] Freedom of Association, para. 439