



CENTER FOR TRADE UNION & WORKERS SERVICES (CTUWS)

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Declaration of Principles

The Legislative Framework of Trade Union and Labour Action: Criteria for Suggested Amendment

It has become necessary, may be in an unprecedented manner, to revise the legislative framework of trade union action in our country. This necessity is manifested sometimes some times by the expression of anger, conflicts and protests in the absence of pertinent mechanisms to express interests and to negotiate thereon and other times in putting Egypt on the list of "individual Cases"^{*1} at the 97th Conference of the International Labour Organization because its laws contains violations of two international conventions pertinent to trade union freedoms and the freedom of association (Conventions No. 87 and 98).

This necessity declared itself several years ago in Egypt's social and economic assets which were set loose of the state's control such as the shrinkage of the public sector and the expansion of the private sector which does not allow for automatic or semi compulsory trade union membership or the check-off system of contributions. The ground under the very strict pyramidal trade union structure eroded and gave way to new grounds which do not support this sort of trade union structure. The new grounds became free from trade unions. At the same time, the law forbids formation of unions outside this structure ^{*2}.

In spite of the clear crisis of the trade union structure which is unable to organize the new workers in the private sector while its own organized membership is eroding, in spite of the dire need of the workers to have strong unions to express their demands and in stead of the urgent need of the society as a whole to enter into social dialogue through active mechanisms of protection against implosions, disasters and extremism, in spite of all this the old law still upholds its philosophy which is connected with the past. The aged law stands in clear opposition to basic labour standards and contravenes the international conventions which Egypt has endorsed. The law remains as it is while everything around it is changing. Although it was amended twice by Law No. 1 of 1981 and Law No. 12 of 1995, it was all the time moving against the current: it imposes more restrictions, violates more workers' rights and disregards any attempt to conform with criteria safeguarding core democratic and constitutional rights.

Thus, it is completely infeasible to talk about amending such a law which is blemished for being against the constitution, contravening international conventions and violating trade union rights.

^{*1} A special list for countries which violate basic labour standards and international labour conventions. It is sometimes called the "black list".

^{*2} Law No. 35 for 1976 and amendments

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Trade Union Concepts and Role: Between International Standards and the Trade Union Law

In its explanatory memorandum, the present trade union law (No. 35 for 1976) stipulated that “to enable trade unions to perform their role in building the state and realizing welfare for the society by active participation in industrial and social development, linking the workers with development plans and mobilizing the workers efforts to achieve their objectives by raising their professional efficiency, encouraging production competitiveness and innovative work and raising their cultural level...”. The law took into consideration “... the outcome of trade union action in Egypt, the development of international trade union thought, the objectives and responsibilities of the trade union organization to support and deepen the society’s rules and principles amongst the workers and to develop their technical and vocational capacities, organize their efforts to perform their pioneer role in building and developing the society, maintain the workers rights and gains, improve their work conditions and raise their cultural, social, economic and vocational levels”.

According to this provision the role of trade unions is to mobilize the workers capabilities to achieve the plans put by the society. According to this concept, trade unions are not supposed to have a distinct role to express the workers interests. Even though this provisions included the phrase “.. improve their work conditions...” it came after a long list of responsibilities of the trade union organization to support and deepen the values and principles of the society.

The trade union organizations prescribed by this law are far different from those established by the workers themselves to express their interests and negotiate for them with other social parties particularly with the employers and the state.

The trade union organizations which this law managed to empower - according to its explanatory memorandum – seem to be completely independent from the workers. They are formed by the state in order to mobilize the workers to achieve its plans. The state here is the sole representative of the society as a whole without any differentiation between the interests of its various parties. Hence, the diversity and multiplicity of the initiatives and the organizational forms that express the interests of these diversified parties and categories.

This “totalitarian” vision of the trade unions role is in complete harmony with the model suggested and imposed by the law for a “pyramidal” trade union structure based on three distinctive levels. Each level has prescribed rules, competences and internal bylaws which cover all the pertinent details. The vision considers any worker in the government and the public sector a member of a trade union organization automatically without having to take his opinion or seek his consent.

This concept is the sole justification for Article 52 of the law which is unprecedented in its nature. It obliges the establishments to cut off trade union subscriptions from the workers wages and transfer them to the general trade union according to a written demand. This article gives the general trade unions the right to collect these subscriptions through administrative seizure. Thus the issue seems to be a conflict between two parties on financial dues, while the workers who are the payers of these subscriptions are neither here nor there.

The wide gap between the trade unions regulated by the present law and those which are considered as columns of the civil society and its organizations (i.e. the unions formed by the workers to express their interests and to negotiate thereon) makes it very difficult to amend

this law. The issue is not limited to some provisions but includes its philosophy and principles.

A Law which Guarantees the Rights and Exercise of Rights OR a Law which Constrains Them?

Trade unions started as independent organizations formed by workers to defend their economic rights and as a means to practice pressure mechanisms and negotiations for improving work conditions. Across two centuries, trade unions developed to become one of the most important tools or perhaps the most important toll to realize social balance.

Modern capitalist society, perceived that labour relations are not just contractual relations such as all the other relations regulated by the civil law. They are relations between two economically and socially unequal parties. Legislative intervention is essential to protect the weaker party. This protection is not only important for securing the core human rights but also to preserve and develop human resources which are the most important element of production and to preserve the society and social stability.

Modern legislations acknowledged labour laws which developed from protecting women and children and work hours to include insurances rights, protection against risks and collective bargaining together with the related right to organization and to strike. So did well the international labour conventions throughout successive years and decades to safeguard the workers rights acknowledged by the international community particularly the rights confirmed by ILO's Declaration on Fundamental Principles and Rights at Work. Issued in 1998, this declaration expresses the need to activate these principles so that all the peoples of the world enjoy these rights which have been highlighted by the so called globalization. On the top of these fundamental principles and rights were the right of association and the right of collective negotiations. The declaration considered Convention 87 and Convention 98 as essential conventions which make even non party states to continuous supervision. This is a good indication that the main objective of legal provisions which regulate trade union action is to protect and guarantee trade union rights and to ensure the exercise of these rights.

The Egyptian Legislative System

The Egyptian legislative system is unique because it provides a special law for trade unions. This is contrary to all the other legal systems. The provisions which regulate the trade union action in Egypt do not represent a special section of the "Labour Law". This unique situation was completely crystallized with the issuance of the present law which cancelled Chapter Four of the then Labour Law No. 91 for 1959.

It goes without saying that extracting the articles that regulate trade union action from the Labour Law jeopardized the link between its provisions especially those related to collective bargaining, conciliation, arbitration, labour agreements and the right to strike. More serious is that separating trade union provisions from the labour law deviates the purpose of the law from regulating a part of the labour relations and makes it focus on the organizational structure of the unions, as if this structure is the core of trade unionism. At the same time, it does not guarantee or protect trade union freedoms. As a matter of fact, it puts more restrictions and preconditions for exercising these freedoms.

Basic Legislative Criteria: Rights to be Guaranteed

First: The workers should have the right to form their trade unions without the need to a prior license:

The right of association is a fundamental right which entails the other rights which are linked with it. To guarantee this right, it must be free from all restrictions. It is necessary in particular to:

- Cancel the paradigm of the sole trade union organization imposed by the present law which prohibits the formation of any other unions outside it.
- Cancel the pre-requirement of getting a license from any agency to form a trade union. It shall be sufficient to deposit documents which could be challenged later on if necessary. As a matter of fact, the law regulates the competent court to consider the appeals or disputes that may arise from its enforcement.
- The legal personality of a trade union including its activities and functions shall not depend on any procedure from any party other than the workers who are its founders.

Second: The Right to Join and to Withdraw

Every worker shall have the right to join or withdraw from the union he wants provided his approval to is internal regulations only. To secure this right, the law must contain the following guarantees:

- Abolish any form of arbitrary action against a worker because of joining or withdrawing from a trade union.
- Abolish any form of discrimination between the workers because of joining or withdrawing from a trade union.
- Abolish any act from the administrative bodies or the employers that may mean pressure or moral coercion on a worker to force him to join or withdraw from a trade union.
- Abolish any act from any administrative body or any employer (such as service termination, sanctions, etc.) that may entail abuse to the worker because of his trade union activity.
- Abolish any act from any employer meant to subjugate the union under the employer's authority or to affect the union in order to adopt certain situations.

Third: The Workers have the Right to Run Their Trade Union:

The general assembly of a trade union (whatever the number of its members might be and whatever the work place of its workers might be) has the upper authority of its organization including:

- The member workers who pay their subscriptions (members of the general assembly) have the right alone to put the bylaws and regulations which regulate the operation of their organization in full freedom without any pre-requirements of prior forms either by the law or from any other body.
- The general assembly alone has the right to put the rules to elect members of its executive council and the representatives of the workers and to hold them accountable for their actions or issue a vote of no confidence in them.

- The general assembly alone has the right to define its action programmes and organize its activities.
- The general assembly alone has the right to organize and administer the trade union, discuss its balance sheets and monitor its financial accountancy.
- The general assembly alone has the right to put the regulations which regulates its functions without preconditions of any prior forms.

Fourth: Trade Union Immunity Against Dissolution

- The law shall not entitle any administrative or executive body to dissolve a trade union or stop its activity.
- No one other than the general assembly shall have the right to dissolve a trade union.

Fifth: The Right to Unity and Solidarity

- The law shall secure for the trade unions the right to establish and join federations¹ or confederations according to their own discretion.
- The law should not stipulate any preconditions to establish federations such as thematic preconditions (for the sectors or geographical scope), formative preconditions related to the number of unions or federations required for foundation or any other conditions.
- The law shall secure for trade unions the right of affiliation to any international trade union federations without any preconditions or prior approvals.

Sixth: Collective Negotiations and Collective Labour Contracts

- Trade Unions shall have the right to make any collective negotiations or collective labour agreements with employers organizations without any preconditions other than the mutual agreement of the two parties; and particularly without any preconditions related to the size of the union, the number of its members or the date of its foundation.
- The law shall determine the competent administrative body (the government representative)² to organize mediation, conciliation and arbitration without having the right of objection to arbitrate awards except if they contravene the labour law provisions by lowering any of the worker's rights.
- Trade unions shall have the right to organize going in strikes.

Two Conclusive Remarks:

1. The Employers Organizations

By Separating the trade unions law from the labour law it becomes allocated for trade unions alone but does not address the employers organizations. Meanwhile, any negotiation or agreement required the presence of the two parties. Several bodies regulated by the labour law (such as the National Council for Wages, the Advisory Council for Labour and the committees which consider applications for establishment closure which affect labour) comprise representatives of the two parties. It is better o

¹ A federation may comprise a number of unions in one industrial sector or one geographical scope. A confederation consists from unions or federations.

² The ministry of Labour (or the Ministry of Manpower).

adopt the ideal formula as stipulated by international labour conventions which secure the right for both the workers and employers to establish and manage their organizations and ban the interference of any party in the organizations of the other party.

2. The Labour Law

The amendment of the trade unions legislative framework requires reviewing several provisions of Law No. 12 for 2003 particularly the provisions concerned with negotiations, conciliation, arbitration, collective agreements and the right to go in strike as well as the provisions related to the establishment of organizations in which trade unions are members. In addition, several provisions of this law must be reconsidered by virtue of the criticisms addressed by the 97th ILO Conference.