**Trade Union Written Submission to the General Comment on article 21 (right to peaceful assembly) of the International Covenant on Civil and Political Rights**

The International Trade Union Confederation, Public Services International, the International Transport Workers’ Federation and the Solidarity Centre (“trade unions”) welcome the opportunity to make a written contribution to inform the preparation of the General Comment on article 21 (right to peaceful assembly) of the International Covenant on Civil and Political Rights.

***Importance of the right to peaceful assembly and its relationship to other freedoms***

The right of workers, without distinction, to form or join trade unions and to carry out activities in furtherance of the aims of the union, including strikes, is protected and regulated in international law under the right to freedom of association. At the same time, trade unions also often engage in public meetings and demonstrations over matters that affect their members and the interests of workers generally, which also implicate the right to free assembly. In some cases, in particular when a strike leaves the workplace and enters into the public sphere, such as during a protest or general strike, the right to assembly is also implicated. The interdependence between freedom of assembly and freedom of association has long been established and continuously reaffirmed.[[1]](#footnote-1) Freedom of assembly is also an avenue for leveraging the legitimate demands of workers for their workplaces and communities in order to achieve improvements in their conditions and to participate in decision making directly affecting their lives.

Trade unions have played an important role in effecting societal change, including through public protest. For example, the mass mobilisation campaign led by the Congress of South African Trade Unions was critical in bringing an end the apartheid regime. In 2010-11, mass protests led by the UGTT contributed to the democratic transformation of Tunisia, a fact recognised by the Nobel Committee. It is not surprising therefore that repressive governments have sought to limit or ban public protest. In January 2019, for example, when the Zimbabwe Congress of Trade Unions (ZCTU) took to the streets to protest the increase in living costs, including a 150% increase in the cost of fuel, the police cracked down violently on the demonstrators resulting in the death of 12 people and the arrest of over 200 workers, including the president and general secretary of the ZCTU. In January 2019, 150 million Indian workers took to the streets in the largest strike in history in order to demand fair labour laws.

In many countries, however, governments use limitations on public assembly that violate international norms, to limit the exercise of workers’ and union rights, including in the workplace. It is therefore critically important to protect and defend the right to peaceful assembly in the present context where progressive democracies have come under threat through a crackdown on this fundamental right throughout the world.

***Scope of the right to peaceful assembly***

The right to free assembly is clearly implicated in the workers’ rights context when workers and their organisations engage in public meetings, demonstrations and strikes of a public character. In many cases, a workplace disputes and strikes can spill over into protests and become inextricably intertwined. For example, on 14 September 2018, about 10,000 construction workers working at the construction site of the third Istanbul Airport walked off their job to start a spontaneous and peaceful protest against the high number of workplace fatalities and poor and unsafe working conditions. The construction company called in the military police, which interfered in the protest and arrested about 600 workers from their dormitories. It is therefore of paramount importance that workers’ protests be afforded the same protection as other meetings and assemblies under the scope of article 21 of the ICCPR.

***Peaceful character of an assembly and its protection***

Public assemblies enjoy protection when they are peaceful, both for the participants and the general public. While violence is clearly unacceptable, there is a distinction between violence and disruption. In drawing specific attention to the injustices for which redress is demanded, protests and strikes are by their nature disruptive. Thus, the mere fact of the disruptive nature of the assembly does not remove its protection under Article 21.

However, governments use the alleged incitement to violence as a pretext in order to justify restrictions to the right to freedom of assembly. For example, in 2016, Han Sang-gyun, the president of the Korean Confederation of Trade Unions, was sentenced to five years imprisonment (later commuted to three years on appeal) for his role in organising a mass mobilisation of 130,000 people against the Park government in November 2015. This mass mobilization sparked a series of large protests culminating in the candlelight vigil movement and a demonstration by one million people a year later.

The charges against Mr Han included “special obstruction of official duty”, “special obstruction of official goods” and “general obstruction of traffic”. While the organisers notified public authorities in advance about the protest, the government argued that the protestors deviated from the declared route of the assembly. The UN Working Group on Arbitrary Detention declared Mr Han’s detention as arbitrary. In its response, the government argued that the slogan “Let’s show that we can paralyse Seoul,” was a call for violence and thus warranted police interference and arrest. This case is one of numerous examples where notification requirements are abused, both by requiring excessive detail to obtain a permit as well as intolerance for minor deviations from permitted protest. It is crucial to avoid any disqualification of a strike action or a workers’ protest from the protection afforded by article 21 of the ICCPR based on its mere disruptive nature.

In the Americas, the Inter-American Commission on Human Rights has explained that public demonstrations and other forms of protest deserve “maximum protection.” Only compelling public safety reasons can justify state suppression of a protest and that the use of force must be “exceptional” in these cases. Nonviolent assemblies and demonstrations, including roadblocks, cannot be considered prima facie evidence of “public disorder,” or a threat to others.[[2]](#footnote-2) States also must not place undue legislative or administrative restrictions on the right to protest.[[3]](#footnote-3) Blocking traffic by a protest should be permitted so long as it is carried out in a peaceful manner and does not endanger the life, safety or health of persons. Indeed, the right of assembly should prevail given its character as a fundamental right.

In this regard, we would like to recall that the IACHR has held that there is a “general presumption” in favor of the right to public protest and that states therefore have an obligation,

“*to promote a safe and propitious environment so that individuals and groups can use the public space to express their opinions and make complaints, in accordance with international norms and standards in this area. The excessive use of force, criminalization and other inadequate responses by the State to social protests not only violate the rights to freedom of expression and assembly, but also cause serious violations of other fundamental rights such as the rights to life, personal integrity and freedom and judicial guarantees, and can have serious impacts on the exercise of social rights*.”

***Restrictions to the right to peaceful assembly***

According to article 21 of the ICCPR, “*No restrictions may be placed in the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health and morals or the protection of the rights and freedoms of others*.”

The limitations foreseen above should be interpreted in a restrictive manner so as to avoid undue restriction of the right to peaceful assembly. In this regard, two points should be made in relation to strike actions. Firstly, Article 21 does not envisage economic reasons as a valid ground to restrict the right to peaceful assembly. A similar approach has been taken by the ILO supervisory bodies which re-affirmed that “economic restrictions should not be invoked as a justification for restrictions on the right to strike”.[[4]](#footnote-4)

Secondly, a state of emergency should always be scrutinised in light of the imperative need to uphold and protect the right to peaceful assembly. In several countries, the declaration or prolongation of the state of emergency has been used as a coercive tool to curb any opposition, including workers’ organisations. nThis is the case in the Philippines, where the extension of the martial law on Mindanao has led to further crackdowns on workers and their unions. Similarly in Turkey, since the failed coup of July 2016, civil liberties have been severely downtrodden and trade unions and their members have been systematically targeted under the guise of the state of emergency.[[5]](#footnote-5)

Furthermore, legal requirements to hold a peaceful assembly should not unduly restrict this fundamental right. In many countries, state legislation on strike action is excessively restrictive and effectively impedes workers and their organisations to exercise their right to strike. According to our 2018 Global Rights Index,[[6]](#footnote-6) strikes have been severely restricted, in law or in practice, in 123 out of 142 countries surveyed, a significant increase from 116 out of 139 countries in 2017.

Similarly, in conformity with the wording of Article 21 of the ICCPR, the right to peaceful assembly should not be subject to prior authorisation by the State. In his report, the Special Rapporteur stressed that “the right to peaceful assembly is fundamental; its exercise does not require the permission of the State”.[[7]](#footnote-7) In practice, there is an increase in the number of workers’ demonstrations that have been preventively banned by national authorities without valid grounds. For example, in 2017 May Day celebrations have been prohibited in Bahrain, Belarus, Cambodia, China and Egypt, and severely repressed in Gabon and Iran.

The right of workers and their organisations to organise and hold peaceful assemblies is an essential element of their freedom of association. Therefore, prior authorisation should not be required. When it comes to strikes, specifically those with a public character, legal requirements and procedures should not be so complicated as to make it practically impossible to declare it; and the protection afforded to peaceful assemblies should also cover their preparation, including the planning, publication, advertisement of the event.

***States’ obligations to respect, protect and fulfil the right to freedom of peaceful assembly***

By becoming parties to the ICCPR, States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.

* Respecting the right to peaceful assembly

In the context of workers’ right to peaceful assembly, states are obliged to respect the rights to peaceful assembly by refraining from interfering, directly or indirectly, with its exercise. As we underlined in the previous section, this obligation entails that restrictions on the right to peaceful assembly are permissible only where prescribed by law and as necessary in a democratic society in the furtherance of the legitimate interests enumerated in Article 21 of the ICCPR.

Therefore it is of crucial importance that the national legislation establish and maintain a conducive and permissive environment for all people, including workers and their organisations, to enjoy and exercise their right to peaceful assembly.

In practice however, we have observed over the past five years a dramatic increase in the number of countries where freedom of assembly (including strike actions) is restricted or banned.[[8]](#footnote-8)

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| --- | --- | --- | --- | --- | --- |
| Year | 2014 | 2015 | 2016 | 2017 | 2018 |
| Number of countries surveyed | 139 | 141 | 141 | 139 | 142 |
| Number of countries where freedom of assembly is restricted or banned | 36 | 41 | 50 | 50 | 54 |

The degree of prohibition on strike action ranges from opportunistic bans - as was the case in Zimbabwe in the banking sector in 2017 or in Australia with the decision of the High Court to allow further grounds to lift protection on industrial actions[[9]](#footnote-9) - to blanket bans in entire industries, like in Turkey where the government systematically bans all strikes in the rubber, glass, mining and metal sectors, arguing that they are “prejudicial to national security”. Other countries have simply stifled all protests, like Saudi Arabia.

Over the last five years, the number of countries where violence during protests was recorded increased drastically.

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| --- | --- | --- | --- | --- | --- |
| Year | 2014 | 2015 | 2016 | 2017 | 2018 |
| Number of countries surveyed | 139 | 141 | 141 | 139 | 142 |
| Number of countries where protests were violently repressed | 41 | 36 | 52 | 59 | 65 |

There is a significant rise worldwide in the number of workers’ meetings and protests that have been violently repressed by state authorities (for example in Argentina, Bahrain, Bangladesh, Brazil, Cambodia, Cameroon, Chile, Colombia, Comoros, Côte d’Ivoire, Democratic Republic of Congo, Georgia, Guinea, Haiti, Honduras, India, Iran, Italy, Mauritania, Mexico, Morocco, Nigeria, South Africa, Turkey).[[10]](#footnote-10)

In a staggering number of countries, the degree of brutality with which workers are met is also extremely worrying. State authorities do not hesitate to call in police forces and even the army to suppress protests. Many reports describe that enforcement authorities systematically use water cannon, pepper spray, tear gas, etc. on protesters and resort to extreme violence to disperse peaceful demonstrations, charging with batons and firing rubber bullets, and sometimes real bullets (as was the case in Côte d’Ivoire and Guinea in 2017).

Many workers and union leaders have been severely injured or killed during protests.

In Haiti, protests organised in the textile sector in May and June 2017 to demand an increase in the minimum wage were met with police brutality. Many workers were beaten and injured by the police, including at least 16 women who were also undressed and filmed by the police. In Guinea, At least five people were killed by bullets, 30 injured and 12 arrested in the violence that broke out during demonstrations organised by striking teachers in Conakry on 20 February 2017.

There has also been a significant increase in arbitrary arrests during assemblies and protests in the last five years.

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| --- | --- | --- | --- | --- | --- |
| Year | 2014 | 2015 | 2016 | 2017 | 2018 |
| Number of countries surveyed | 139 | 141 | 141 | 139 | 142 |
| Number of countries where workers have been arrested during protests | 35 | 44 | 45 | 43 | 59 |

For example, in Turkey, at least 237 people were arrested and 669 were detained only in February 2017, in application of the State of Emergency Decree No. 687 of 2017, while over 2,200 Madras public employees were arrested during a picket in India.

Furthermore, there is a worrying trend worldwide to criminalise the exercise of the right to strike. In early 2018 in Spain, two UGT representative faced prison terms of up to seven years for their participation in the general strike of 2012 against austerity measures. They were tried under section 315.3 of the Spanish criminal code, a legislative vestige of the Franco era which the government revived to curb public protests. Most striking is the fact that their presence at the plant premises during the events was not demonstrated and they were charged based on a list of names supplied by the management. In Kazakhstan, two CNTUK leaders were sentenced to two-and-a-half years in prison, heavy fines and a ban from engaging in any “public activities” for two years, for organising a hunger strike in the oil sector. Finally, in Egypt, the Prime Minister issued in October 2017 an order to refer cases of protest, strike and sit-in to State Security Courts after they have been tried by the general courts.

Moreover, in many countries in 2017, workers were impeded from holding union meetings and assemblies by the authorities or their employers (for example in Argentina, Australia, Cameroon, Chad, Côte d’Ivoire, Fiji, Guinea, Malawi, Mauritania, Myanmar, Pakistan, Peru, United States of America).[[11]](#footnote-11)

- Protecting the right to peaceful assembly

In the context of workers’ rights, States are obligated to protect peaceful assemblies from interference by non-State actors, which includes an obligation to take steps to prevent, punish and provide redress for abuses through effective laws and adjudication.

In practice however, many workers are still victim of summary dismissals and retaliatory measures when they exercise their right to peaceful assembly, as was the case in Cambodia, 588 workers were summarily dismissed after a strike at Gawon Apparel factory. Other examples can be found in Algeria, Argentina, Egypt, Kenya, and the Philippines. Similarly, In India, workers and their families from Tayo Rolls, a Tata Steel subsidiary, were brutally beaten up by the police while peacefully protesting in front of the gates of the steel plant in Jamshedpur, on 22 September 2017.

***Fulfilling the right to peaceful assembly***

States parties to the ICCPR are obligated to establish accessible and effective complaint mechanisms that can promptly investigate allegations of abuses related to the rights to freedom of peaceful assembly.

Unfortunately in practice, many workers still have no access to adequate and effective remedy where their right to peaceful assembly has been violated. What is worse, in many countries they are afraid to access those remedies because doing so would place them in a dangerous position. For example in Guatemala and Honduras, the pervasive climate of extreme violence against workers and other civil society actors, combined with total impunity for perpetrators, have made the ability to engage in public protest extremely dangerous. Such situations affect the enjoyment not only of the rights to association and assembly but also of other human rights, including the right to life, to security and physical and moral integrity of the person.

States must adopt and implement measures to ensure that where the right to peaceful assembly has been unduly restricted, victims have the right to obtain redress, including adequate compensation and sanctions against the employer.

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***The role of transnational actors***

Private actors, including multinational companies, are frequently responsible for denying workers the ability to carry out peaceful strikes and protests. As described in the previous section, this is frequently done through dismissal and other forms of discrimination such as demotion in the employment of workers, who participate in strikes and protests. Companies hire private security and thugs in order to intimidate workers to ensure that they refrain from joining protests. Without a binding rules for businesses operating globally, the charge is left to voluntary corporate social responsibility initiatives, which have been notoriously weak, in particular when it comes to freedom of association and assembly. The global trade union movement reiterates the urgent need for an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.

1. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/71/385, 14 September 2016, paragraphs 2 and 16 [↑](#footnote-ref-1)
2. Cfr. CIDH. Informe sobre seguridad ciudadana y derechos humanos. Washington: Organización de Estados

Americanos, 2009, párrafo 197. [↑](#footnote-ref-2)
3. Cfr. CIDH. Informe Anual 2016. Volumen II: Informe de la Relatoría Especial para la Libertad de Expresión.

Washington: Organización de Estados Americanos, 2017, párrafo 47. [↑](#footnote-ref-3)
4. See Committee on Freedom of Association, Compilation of decisions, sixth edition (2018), paragraph 791 [↑](#footnote-ref-4)
5. https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22853&LangID=E [↑](#footnote-ref-5)
6. <https://www.ituc-csi.org/IMG/pdf/ituc-global-rights-index-2018-en-final-2.pdf> Every year, the ITUC documents violations of internationally recognized collective labour rights, including the right to peaceful assembly and the right to strike, by governments and employers. The methodology is grounded in standards of fundamental rights at work, based on international human rights law, and in particular ILO Conventions Nos. 87 and 98, as well as the jurisprudence developed by the ILO supervisory bodies. [↑](#footnote-ref-6)
7. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/71/385, 14 September 2016, paragraph 77 [↑](#footnote-ref-7)
8. Statistics drawn from the ITUC Global Rights Index, editions 2014 to 2018 [↑](#footnote-ref-8)
9. <http://www.hcourt.gov.au/assets/publications/judgment-summaries/2017/hca-54-2017-12-06.pdf> [↑](#footnote-ref-9)
10. Data drawn from the ITUC Survey : <https://survey.ituc-csi.org/> [↑](#footnote-ref-10)
11. Data drawn from the ITUC Survey : https://survey.ituc-csi.org/ [↑](#footnote-ref-11)