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## **International Centre for Trade Union Rights**

*Centro Internacional para los Derechos Sindicales*  
*Centre International pour les Droits Syndicaux*

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ICTUR was founded to  
defend and extend trade union rights and  
to raise awareness of these rights and their violations  
around the world

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## Attn:

**Prime Minister Narendra Modi**  
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## CC:

Shri Santosh Kumar Gangwar, Minister of State (Independent Charge)  
for Labour and Employment  
Shri Jitendra Kumar Sagar, Chief Labour Commissioner (Central)  
Shri Rajan Verma, Additional Chief Labour Commissioner (Central)  
Clément Nyaletsossi Voule, United Nations Special Rapporteur on the  
rights to freedom of peaceful assembly and of association  
International Trade Union Confederation  
CITU, INTUC, AITUC, AIRTW

## **November 2018**

Dear President,

The International Centre for Trade Union Rights is writing to express serious concerns about widespread attacks on trade union rights in India. In recent months, repression of organised labour has been reported across the country, including mass arrests and dismissals of striking workers, police violence, interference with union premises and criminalisation of industrial action.

ICTUR is particularly concerned about the following developments that have come to our attention:

### ***Haryana***

Haryana roadways employees went on strike in mid-October to protest privatisation plans. Over two hundred thousand government employees reportedly observed the strike over several weeks. It is understood that during this time, the government took severe measures to intimidate and coerce workers, including mass arrests of strikers and union officials under the pretext of the Haryana Essential Services Maintenance Act (ESMA). It is reported that over 1400 cases were filed under the ESMA leading to 241 arrests; another 418 workers were arrested under provisions of the Indian Penal Code; around 400 employees were

terminated and a further 400 suspended. On the weekend of 27-28 October, it is reported that 14 union leaders and officials were arrested including Inder Singh Badhana, Ajad Singh Gill and Babu Lal Yadav. It is further reported that the government sealed the Faridabad offices of the All India Road Transport Workers Federation (AIRTWF), All India Trade Union Congress (AITUC) and Indian National Trade Union Congress (INTUC). On 31 October, ICTUR understands that police deployed teargas and charged and attacked protestors with batons in Fatehabad district, leaving many victims with injuries.

Following a decision of the Haryana High Court in November, it is reported that the government is ordered to immediately reinstate all suspended and dismissed employees, to refrain from further arrest or coercion of workers or union officials, and withdraw all cases filed under the ESMA.

### ***Tamil Nadu***

Workers at the Yamaha India, Royal Enfield and Myoung Shin India Automotive (MSI) plants in the SIPCOT Industrial Estate, Oragadam have been subject to mass arrests in retaliation for industrial action. Workers are protesting cuts to wages, conditions and the victimisation of union organisers. In July this year, workers at Yamaha the plant formed a new union - India Yamaha Motor Thozhilalar Sangam, affiliated to the Centre of Indian Trade Unions (CITU) - but company management refused to recognise the union and dismissed two of its organisers. Police broke up a protest demanding their reinstatement on 2 October near the Kanchipuram bus terminus, arresting 500 workers who were released the same day. The disputes at Royal Enfield and MSI also concern the victimisation of workers trying to form unions, as well as wages and conditions. ICTUR understands that on 23 October around 1500-2000 workers from the three plants were arrested in Oragadam and later released without charge. The workers were marching to the Kanchipuram administration office to request an intervention in their dispute.

### ***Karnataka***

In response to a petition filed by Wonderla Holdings Ltd., Justice Raghvendra S Chauhan of the Karnataka High Court declared in November that individuals holding union office be denied the special status of 'protected workman' if they are facing even 'minor charges'. The judge stated that such charges against an executive or other office bearer of a registered trade union need not have resulted in an actual conviction in order for them to be denied this legal status, which protects them from dismissal or other action by employers.

### ***Federal industrial relations***

ICTUR is also deeply concerned about the threatened erosion of trade union rights under proposals for wide ranging reform of federal labour laws in India. Changes to the law aimed at making it easier to impose mass retrenchments, undermine or hinder collective bargaining, limit occupational health and safety protection and privatise social security have been strongly condemned by the International Trade Union Confederation (ITUC). The ITUC further complains that its affiliate - the INTUC, representing more than 30 million workers - has been excluded from key tripartite processes 'on spurious grounds'. In November the General Secretary of CITU expressed concern that the proposed reforms to industrial relations laws will make it 'almost impossible to have a trade union'.

**ICTUR calls on the government to adhere to the ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998, which**

**commits all ILO members to respect and promote the principles of freedom of association and the effective recognition of the right to collective bargaining, as enshrined in ILO Conventions 87 and 98. Freedom of association is further guaranteed under Article 19(1)(c) of the Constitution of India 1950.**

#### ***Police conduct***

The ILO's Committee on Freedom of Association has precisely stated that 'the use of police for strike-breaking purposes is an infringement of trade union rights' (*Freedom of Association: Compilation of decisions of the Committee on Freedom of Association*, ILO, 6th Edition, 2018, para. 931). The CFA further notes that 'authorities should resort to calling in the police in a strike situation only if there is a genuine threat to public order', that such intervention 'should be in proportion to the threat to public order', and that governments must take action 'to avoid the danger of excessive violence' (*Freedom of Association*, para. 935). Interference by police or military forces with trade union premises may also constitute 'a serious and unjustifiable interference in trade union activities' (*Freedom of Association*, para. 280). The ILO fundamental Conventions clearly require that 'all allegations of violence against workers who are organizing or otherwise defending workers' interests 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' (*Freedom of Association*, para. 101).

#### ***Mass arrests***

The CFA has stated 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'; 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'; this is the case, 'even where they are merely summoned or questioned for a short period' (*Freedom of Association*, paras. 120-6, 970-4). In particular, arrests of strikers 'on a large scale involve a serious risk of abuse and place freedom of association in grave jeopardy' (*Freedom of Association*, para. 975). In all such cases, 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).

#### ***Essential services***

With regard to laws limiting industrial action in 'essential services', the CFA has stated categorically that services in transport generally, including metropolitan transport, *do not* constitute essential services (*Freedom of Association*, para. 842). In application of such laws, the CFA has further noted that – in determining situations in which a strike could be prohibited – 'the criterion which has to be established is the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population' (*Freedom of Association*, para. 836). This is clearly not the case in the Haryana roadways strike. While recognising that stoppages in the transport sector 'might disturb the normal life of the community', the CFA has refuted that such transport stoppages cause a 'state of acute national emergency' which would justify their prohibition (*Freedom of Association*, para. 923).

#### ***Union officials***

The denial of legal protections to workplace representatives on the basis of unsubstantiated or minor criminal charges further violates freedom of

association. The CFA has emphasised that adequate protection against anti-union discrimination in respect of employment (including dismissal, demotion, transfer or other prejudicial measures) is ‘particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they should have a guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions’ (*Freedom of Association*, para. 1117). Dismissals of trade union representatives can ‘fatally compromise’ workers attempts to organise, ‘as it not only deprives the workers of their representatives, but also has an intimidating effect on other workers who could have envisaged assuming trade union functions or simply join the union’ (*Freedom of Association*, para. 1131). The Karnataka High Court’s denial of the status of ‘protected workman’ on the basis of a vaguely defined and wide range of conduct – which does not necessarily making it inappropriate for persons concerned to hold positions of trust such as trade union office – runs counter to the right of workers to elect their representatives in full freedom (*Freedom of Association*, paras. 625-9). The ILO Committee has clearly stated that such interference with holders of union office ‘could be justified only with reference to criminal charges unconnected with trade union activities, and are serious enough to impugn the personal integrity of the individual concerned’ (*Freedom of Association*, para. 627).

### ***Social dialogue***

The INTUC is one of the largest national trade unions in India. The CFA has observed that the exclusion of such organisations from taking participation in relevant tripartite structures is an infringement of the principles of freedom of association (*Freedom of Association*, para. 1574).

**In observance of the principles articulated in the 1998 ILO Declaration and the clarifications provided by the ILO Committee on Freedom of Association, ICTUR urges the government to ensure that all those arrested in the incidents detailed above are immediately released, all charges against them are dropped and that appropriate remedial action is implemented to victims of police attacks and arbitrary detention. ICTUR further calls on the government to urgently investigate each of these cases, to promptly give effect to the recommendations of the ILO supervisory bodies, and where necessary to undertake reform of the criminal and civil law to ensure that workers are afforded adequate protection in the exercise of their fundamental rights to organise and defend their interests. ICTUR will report these incidents in the journal *International Union Rights*, established in 1993, which is read in more than 100 countries.**

Yours faithfully,



Daniel Blackburn, Director