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Conseil national des droits de l'Homme

MEMORANDUM ON DRAFT ORGANIC LAW N° 97-15 DEFINING THE CONDITIONS AND PROCEDURES FOR EXERCISING THE RIGHT TO STRIKE

SUMMARY

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27 THEMATIC & 12 GENERAL RECOMMENDATIONS

**TO EXPAND GUARANTEES FOR THE
EFFECTIVENESS OF THE RIGHT TO STRIKE,
SAFEGUARD TRADE UNION FREEDOM, AND
PRESERVE THE RIGHT TO PEACEFUL STRIKE
AGAINST ANY UNLAWFUL RESTRICTIONS
OR CRIMINAL PENALTIES**

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“The exercise of the right to strike is an explicit, constitutional guarantee and a fundamental component of trade union freedom.”

— Ms. Amina Bouayach, Chairperson of the National Human Rights Council (CNDH), at the presentation of the CNDH's memorandum on draft organic law n° 97-15, outlining the conditions and procedures for exercising the right to strike.

CNDH Chairperson further emphasized that the right to strike enables workers and employees to legitimately defend their economic and social interests, and ensure that their rights are prioritized within the workplace.

In its memorandum submitted to the Speaker of the House of Representatives, the CNDH underscores the need to establish all conditions and guarantees that render the decision to strike an **exceptional measure**. This involves ensuring adequate working conditions, cultivating a climate of trust between employers and workers, and establishing mechanisms for resolving labour disputes through dialogue and negotiation, without compromising any guarantees that enable the various categories of workers and employees to exercise their right to strike and protect their rights, both during negotiations and while exercising that right.

SAFEGUARDING TRADE UNION FREEDOM IN MOROCCO AND PRESERVING THE RIGHT TO PEACEFUL STRIKE AGAINST ANY UNLAWFUL RESTRICTIONS OR CRIMINAL PENALTIES

In its reading of the provisions of the draft organic law outlining the conditions and procedures for exercising the right to strike, the National Human Rights Council stressed, in light of constitutional, international, and UN protections as well as comparative jurisprudence, that **no penal sanctions may be imposed on any worker for participating in a peaceful strike**. The Council stated that such penalties “conflict severely with other fundamental human rights, especially if the strike is peaceful and legitimate.” Accordingly, CNDH recommends omitting references to the Criminal Code in the section on penalties in the draft organic law—particularly when no violence or threats are involved—and omitting any mention of “severe criminal penalties” from the draft organic law, which must remain “**the sole legislation regulating the exercise of the right to strike,**” as stated in the Council's memorandum.

The memorandum also calls for omitting any reference to the “requisition” procedure to ensure the continuity of services, which is inconsistent with Morocco’s international commitments.

On the other hand, the CNDH notes that **respect for internal union processes and independence in announcing a strike** must be prioritized. It stressed the need to omit any provision that would require unions to disclose the date and place of the general assembly before it convenes and personal information about workers needed for meeting minutes.

In this context, the CNDH considers that requiring unions to inform the employer and involve parties outside their organization **“is not consistent with the principles of trade union freedom”** as guaranteed by the Constitution and international instruments. This requirement **“is a violation of trade unions’ freedom”** in declaring strikes based on their councils’ and bodies’ decisions, as dictated by their independence and internal democratic processes.

The CNDH’s memorandum states that the phrase “any strike for political purposes is prohibited” in the draft law is overly broad, which could hinder the development of an effective legal framework in situations where it is difficult to distinguish between trade unionism and politics. This is particularly relevant for strikes aiming to address economic and social policy issues affecting the working class. It also emphasizes that **preventing a national strike in response to the social and labour impacts of government economic policies, for instance, is “a serious violation of the freedom of association and trade union rights.”** Therefore, the CNDH recommends omitting the paragraph stipulating the absolute prohibition of all strikes for political purposes, while limiting the legitimate prohibition solely to purely political strikes.

Regarding the restriction of the right to strike for public employee groups, the CNDH’s memorandum recommends the necessity of limiting the list of categories that are not entitled to exercise this right in alignment with the principles of the International Labour Organization (ILO). It also recommends transferring certain categories to those requiring a minimum level of service **while providing them with “alternative guarantees for collective bargaining as a compensation for this restriction.”**

Furthermore, the CNDH asserts that the prohibition on strikes should not extend to entire ministries or sectors as outlined in the organic law. Instead,

any restrictions should be narrowly applied only to specific groups exercising authority in the name of the State.

This approach should ensure that no other employee groups, including those in technical positions and others, are excluded from their right to strike.

ENSURING THE CONTINUITY OF SERVICES & GUARANTEES FOR THE SUSTAINED PROTECTION OF THE RIGHT TO STRIKE

Regarding the establishment of minimum service standards, the CNDH recommends omitting the provision in the draft organic law that allows local authorities to determine this level. The CNDH emphasizes the need to prioritize **institutionalizing social dialogue and encouraging collective bargaining**. In this context, the memorandum suggests including collective employment agreements within private sector enterprises to address issues related to setting these minimum service standards.

The CNDH notes in its memorandum that the list of essential services included in the draft law includes sectors that are not qualified by international standards to be “essential services whose interruption of which would endanger the life, personal safety or health of the whole or part of the population.” In this context, the CNDH recommends that **the organic law should include the fundamental principles for defining vital sectors**, while allowing the specific list of facilities and sectors to be determined later in a subordinate legislation that can be amended in response to evolving social and economic developments. The CNDH also stresses the need to take into account the principle of sustainability, noting that a facility deemed vital today may not retain this status in the future.

The concept of essential services, which may justify restrictions or prohibitions on the right to strike, **is not inherently static**. A service deemed non-essential could become essential if a strike extends beyond a certain duration or scale. In this context, the memorandum emphasizes the need for a **participatory approach and a tripartite mechanism involving employers’ organizations, labor unions, and the government to establish minimum service standards, taking into account the specific characteristics of each sector or facility**.

ENHANCING THE EFFECTIVENESS OF THE RIGHT TO STRIKE: RECOMMENDATIONS FOR EXPANDING ACCESS

The Council's memorandum recommends expanding the group of parties entitled to exercise the right to strike and broadening the definition of a strike to include the defense of both individual and collective moral and professional interests of workers. It emphasizes the legitimacy of all forms of strikes, including sympathy and rolling strikes, etc. It further highlights the importance of upholding the principles of organization, peacefulness, and responsibility during strikes, with a clear commitment to avoiding any form of violence or intimidation. Additionally, it stresses the necessity of safeguarding each individual's freedom to choose whether to participate in a strike or continue working, free from any pressure, retaliation, or obstruction by either striking workers or employers.

In addition to the responsibility of striking workers to respect the freedom of work for non-strikers, the memorandum emphasizes that any strike must be carried out peacefully, without threatening the safety of individuals or causing damage to the workplace. However, it considers the **prevention of striking workers from remaining on-site and the imposition of fines for such actions as a “restriction on the right to strike.”** Accordingly, the CNDH recommends omitting the article that prohibits striking workers from occupying the workplace during a strike, as well as the article imposing fines for obstructing the freedom to work. The Council also suggests establishing an agreement between workers and employers that outlines rules to protect both the continuity of services and the integrity of property during strikes within the workplace.

While pay deduction during a strike are consistent with the principles of trade union freedom, **according to the Committee on Freedom of Association and aligned with the International Labour Organization standards**, the CNDH memorandum emphasizes the importance of adhering to the principle of proportionality between the duration of the work stoppage and the amount deducted under the “no-work-no-pay” principle or what is known as “dies non”. Moreover, it is crucial to define the **exceptional circumstances in which this principle may not apply** such as when the strike arises from delays in salary payments, infringements on union freedoms, or demands for compliance with labor law.

Reference Framework:

In addition to the provisions of the Constitution and the requirements of the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR), the proposals and recommendations in the CNDH's memorandum are based on:

- ILO Convention No. 87 on the Freedom of Association and Protection of the Right to Organize;
- ILO Convention No. 98 on the Right to Organize and Collective Bargaining;
- Tripartite Consultation (International Labour Standards) Convention No. 144;
- Labour Relations (Public Service) Convention No. 151;
- Collective Bargaining Convention No. 154;
- Reports of the ILO Committee on Freedom of Association (CFA) and the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR).

RECOMMENDATIONS BASED ON 11 FUNDAMENTAL PRINCIPLES AND GUIDED BY 13 INTERNATIONAL EXPERIENCES

Along with the Constitution, international and regional human rights instruments, the deliberations of convention committees, and memoranda from national trade union organizations, the memorandum on Draft Organic Law No. 97-15—defining the conditions and procedures for exercising the right to strike—was informed by comparative experiences and best practices from **13 countries**: Jordan, Germany, Uruguay, Ireland, Italy, Sweden, France, Finland, Canada, South Korea, Hungary, the United Kingdom, and the United States.

The memorandum includes a section on CNDH's thematic observations on the draft organic law, which is organized into ten main headings. These address the absence of a preamble (formal note); strike definition and forms; authorized strike parties; substantive restrictions on the right to strike; procedural restrictions; emergency interim measures; mandating the notification of employers on details of general assembly meeting; prohibiting workplace occupation during strikes; principle of "No work, no pay" (dies non) ; penalties, miscellaneous, and final provisions.

In addition to the reference framework upon which the memorandum is grounded, it also includes a main section outlining the general principles and **eleven foundations** that should guide the regulation of the right to strike.

These fundamental principles are as follows:

- Enshrining trade union freedoms;
- Respecting the freedom of work, peacefulness and responsibility;
- Non-discrimination (guaranteeing equality for all individuals, regardless of gender, race, religion, social status, or participation in a strike, and ensuring fair treatment across unions, including both the most and least representative ones);
- Continuity of essential services and protection of crucial facilities;
- Balance (particularly between trade union rights and public interest. For instance, **the draft organic law lacks provisions for equitable emergency interim measures allowing employers sole authority to initiate such actions without granting similar access to inspection officers or workers.**);
- Dialogue and consultation according to the tripartite mechanism principle (employers' organizations - trade unions – government ;)
- Employers' responsibility (protecting workers' representatives, providing an adequate and equitable working environment, safeguarding workers' rights... ;)
- Procedural justice (ensuring clarity and transparency in the procedures for announcing strike decisions and collective bargaining with relevant parties, and ensuring reasonable timeframes and procedural clarity

- for organizing the right to strike...);
- Voluntary conciliation or compulsory arbitration (Promoting fair and effective resolution of labor disputes through voluntary or, in exceptional cases, compulsory arbitration. This applies particularly during acute national crises or when strikes affect essential services critical to public health, safety, or welfare.);
 - Legitimacy and proportionality in any restrictions on the right to strike;
 - Restricting authority intervention (limiting the use of force to instances of absolute necessity, avoiding excessive violence, respecting peaceful sit-ins, as long as do not obstruct other's freedom of work, restricting the security forces interventions solely to cases posing a serious threat to public order and legal stability...)

ANNEX

SUMMARY TABLE OF CNDH'S RECOMMENDATIONS

LIST OF GENERAL RECOMMENDATIONS

Summary Table of CNDH’s Recommendations

| Requirement | Recommendation |
|---|--|
| 1 Inclusion of a Preamble | <p>Adding a preamble or a distinct article outlining the fundamental principles guiding the provisions of the organic law on the right to strike. This should include a clear commitment to protecting trade union freedom, ensuring balance between the rights and responsibilities of all parties involved, and safeguarding citizens’ rights by maintaining essential services during strikes.</p> |
| 2 Strike definition (Article 2) Strike forms (Article 12) | <ul style="list-style-type: none"> • Expanding the definition of the right to strike to encompass the defense of both individual and collective moral and professional interests of workers, aligns with Article 396 of the Labour Code, which stipulates that professional unions aim to “defend the economic, social, moral and professional interests, both individual and collective, of their members.” • Recognizing the legitimacy of all forms of strike actions, including sympathy and rotating strikes, as long as they are organized, peaceful, and do not obstruct the freedom of work, in line with the spirit and intent of this organic law. |

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| <p>3</p> | <p>Parties entitled to declare and carry out a strike (Articles 3 and 4)</p> | <ul style="list-style-type: none"> • Expanding the groups entitled to exercise the right to strike to encompass workers not traditionally covered by the Labour Code or the Public Service Law. This should involve those whose work is organized under other legal frameworks, such as the Maritime Trade Code and the December 24, 1960, Decree for the mining sector, as well as non-salaried professionals across various fields, including liberal professions, self-contractors, self-employed individuals, temporary workers, subcontractors, and other relevant groups in sectors not necessarily regulated by the Labour Code or public service. • Defining the role of less representative (i.e., not the most representative) trade unions in paragraph (c) of Article 3, particularly in cases where the strike pertains to the rights of individuals or smaller groups within an enterprise or institution. |
| <p>4</p> | <p>Categories of public sector employees prohibited from striking (Article 33)</p> | <ul style="list-style-type: none"> • Narrowing the list of public employee categories not entitled to exercise the right to strike in alignment with ILO principles, reclassifying some into categories that require minimum service, and ensuring alternative guarantees for collective bargaining as compensation for this restriction. The CNDH also recommends limiting this prohibition to some roles within some identified ministries or sectors, rather than applying it broadly. This restriction should apply only to public servants exercising authority in the name of the State as outlined by ILO principles. |

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| 5 | Essential services, critical facilities and minimum service (Article 34) | <ul style="list-style-type: none"> • Institutionalizing social dialogue, promoting collective bargaining, and establishing collective labor agreements within enterprises to address issues related to minimum service standards. This process should adopt a participatory approach and involve a tripartite mechanism that includes representatives of employers' organizations, labor unions, and the government, ensuring that the specific characteristics of each sector or service are taken into account. • Outlining methods for organizing crucial facilities, including the scope and duration of essential services, within a subordinate legislation or collective agreements prior to exercising the right to strike. These guidelines should be straightforward and practical to implement. • Omitting the provision in Article 34 that mandates the involvement of local authorities in determining minimum service. |
| 6 | Strike for political purposes (Article 5, Paragraph 2) | <ul style="list-style-type: none"> • Omitting the paragraph 2 of Article 5 which prohibits strikes for political purposes, or replacing it with the following: "Strikes for purely political purposes are prohibited." |
| 7 | Prohibiting or suspending strikes for a specified period during epidemics, natural disasters and national crises (Article 28) | <ul style="list-style-type: none"> • Entrusting strike suspension decisions to independent and neutral parties. |

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| 8 | Prior procedures and timeframes (Articles 7, 16, 18, 19, 21 and 22) | <ul style="list-style-type: none"> • Consolidating all time limits into a single, unified, straightforward timeframe, including exceptions, to ensure that the process is reasonable and uncomplicated. • Ensuring that Organic Law No. 97-15 is consistent with the Labour Code, particularly Book V on “Monitoring Bodies” and Book VI on “Mechanisms for Settling Collective Labour Disputes” outlined in Articles 551-581¹. |
| 9 | Quorum (Article 16) | <ul style="list-style-type: none"> • Reducing the required quorum for the general assembly to announce a strike decision, in line with ILO standards. |
| 10 | Reporting the details of the general assembly (Article 16) | <ul style="list-style-type: none"> • Omitting requirements to announce the date and location of the general assembly in advance and to disclose workers personal information (e.g. national identity card numbers, signatures, etc.) for meeting minutes. This respects the internal processes and independence (autonomy) of unions, in line with Article 8 of the 2011 Constitution. |

¹- Article 551 stipulates that any labor dispute likely to lead to a collective conflict shall be subject to an attempt at conciliation before the labour representative at the prefecture or province, the labour inspection agent, or the regional or national commission of inquiry and conciliation, depending on the nature of the collective conflict. Article 556 stipulates that if conciliation efforts fail, the regional labour representative, the labour inspection agent, or one of the parties shall submit the collective labor dispute to the regional commission of inquiry and conciliation within three days.

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| 11 | Emergency interim proceedings (Articles 20, 25 and 29) | <ul style="list-style-type: none"> • Granting equal access to emergency interim proceedings for both workers and employers, upholding the principle of "balance" to protect the rights and interests of all parties in line with ILO standards. • Establishing emergency measures to respond to immediate danger threatens employee health and safety, filling the gap in the draft organic law that currently does not allow employees to seek this kind of interventions. |
| 12 | Occupation of workplaces during the strike period (Article 27) | <ul style="list-style-type: none"> • Removing article 27's Ban on workplace occupation • Requiring mutual agreement on service continuity and safeguard property integrity rules during workplace strikes. |
| 13 | Penalties for workplace occupation (Article 40) | <ul style="list-style-type: none"> • Omitting Articles 27 and 40 of the draft organic law that penalize workplace occupation. <p>Stipulating an agreement between workers and employers on rules to protect the continuity of services and integrity of property during strikes at the workplace.</p> |
| 14 | Pay withholding during the strike period (Article 14) | <ul style="list-style-type: none"> • Outlining exceptional cases where the "no work no pay" principle may not apply when a strike is instigated due to the employer's failure to pay salaries, while ensuring that all administrative procedures are followed prior to any deductions. |

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| 15 | Chapter V: Penalties | <p>Omitting references to the Criminal Code in the Chapter on Penalties if no violence or threats are involved in the strikes, as outlined in Article 13.</p> <p>Omitting provisions on “most severe criminal penalties” in Chapter V, particularly in Articles 39, 40 and 41.</p> <p>Omitting or amending texts referring to other legislative and regulatory texts, establishing Organic Law No. 97-15 as the sole legislation regulating the right to strike. Any reference to other texts should be clearly defined and consistent with paragraph 3 of Article 7, which refers to “collective labour agreements if applicable.”</p> |
| 16 | Chapter VI: Miscellaneous, Final Provisions (Article 47, Paragraph 2) | <p>Omitting the reference to requisition outlined in paragraph 2 of Article 47; which states that public authorities may, when necessary, resort to requisition procedures to ensure the continuity of essential services and secure the supply of basic goods to the market.</p> |

List of General Recommendations

- Ratifying ILO Convention No. 87 (C087) on Freedom of Association and Protection of the Right to Organize (1948);
- Institutionalizing social dialogue across diverse sectors, thus enabling different social stakeholders to jointly reflect on means to enhancing working environment within enterprises. This approach aims to promote a sustainable balance in employer-employee relations, proactively anticipate labour disputes, and mitigate or reduce the likelihood of strikes;
- Transforming Organic Law No. 9715- into a more concise framework that emphasizes the fundamental principles for defining the conditions and procedures for exercising the right to strike. This should be in line with the spirit of the Constitution, and enshrining this right rather than stipulating deterrent provisions restricting its exercise;
- Ensure the harmony of this organic law with constitutional provisions protecting trade union freedoms, the Labour Code -particularly Books V and VI on the “Mechanisms for Settling Collective Labour Disputes” in Articles 551581-- and other pertinent legal texts.
- Strengthening mechanisms for resolving collective labor disputes and managing negotiation processes and collective bargaining demands through a proactive approach to reduce and minimize the potential for strikes;
- Expediting the issuance of Draft Law No. 2419- on Labour Unions;
- Developing specialization within the social judiciary system and providing adequate and necessary financial and human resources;
- Encouraging the conclusion of collective labour agreements to promote social peace within enterprises, and the establishment of protocols in the private sector;
- Establishing an effective institutional framework for collective labour relations in the public sector;

- Operationalizing the Commissions of Inquiry and Conciliation and reinforcing their role;
- Strengthening the labour inspection body and equipping it with adequate human and financial resources;
- Reviewing the Dahir of October 29, 1962 on worker representation in enterprises (elections of workers' representatives);
- Repealing or amending Article 288 of the Moroccan Criminal Code and reviewing its content to ensure its provisions do not conflict with the exercise of trade union freedom. This article stipulates criminal penalties for those who instigate or encourage the continuation of a collective work stoppage, including imprisonment from one month to two years and fines ranging from one hundred and twenty and five thousand Moroccan dirhams, which is incongruent with the right to strike. It also raises several issues that affect trade union freedom in general and the right to strike in particular, through numerous prosecutions and convictions against unionists and workers for exercising their rights. Repealing this article from the national criminal system is one of the pressing demands of the trade unions, civil society and human rights defenders, in line with the recommendation of the UN Committee on Economic, Social and Cultural Rights (CESCR). During Morocco's submission of its fourth periodic report, the CESCR recommended that Morocco "bring Article 288 of the Criminal Code into line with Article 8 of the Covenant [International Covenant on Economic, Social and Cultural Rights] and make it easier to establish trade unions²." The Committee further recommended that the country adopt legislation on the exercise of the right to strike and the operation of trade unions. "Until such legislation is adopted," the Committee invited Morocco "to facilitate the establishment of trade unions on the basis of article 8 of the Covenant."³

2- Committee on Economic, Social and Cultural Rights. Concluding Observations on the Fourth Periodic Report of Morocco. 22 October 2015 E/C.12/MAR/CO/4

3- Ibid.