

## **(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* (6<sup>th</sup> edition, 2019); and the reference book *Trade Unions of the World* (8<sup>th</sup> edition, 2021).

## **(2) Our concerns**

Our primary concerns with respect to trade union rights in Sudan are focussed on:

- The dissolution of all existing trade unions
- The development of the new trade union law
- The arrest and harassment of former trade union officers

We are encouraged by Sudan’s recent ratification of ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise (1948) and we welcome this positive step. However, the current situation for trade union rights is in stark contradiction with the obligations accepted under Convention No. 87.

### **(3) 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)). In 1986, Sudan 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”.

Sudan has additionally been a member of the International Labour Organisation ("ILO") since 1956, although it has ratified just 18 international labour Conventions during this time. We note, however, that among this small overall number of ratifications are all eight of the ILO’s ‘fundamental’ instruments, including (in 1957) ILO Convention No. 98 on the Right to Organise and Collective Bargaining (1949), and we welcome in particular the recent ratification (17<sup>th</sup> March 2021) of ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise (1948).

### **(4) Previous UPR cycle**

Within the previous UPR cycle Sudan did accept several recommendations that concerned the need to improve respect for freedom of association, specifically: A - 138.98 Take necessary measures to guarantee full respect for freedom of expression and freedom of association (France); A - 138.99 Take adequate measures to effectively safeguard the freedoms of expression, association and assembly (Cyprus); A - 138.101 Guarantee the right to freedom of peaceful assembly and association in line with the with the International Covenant on Civil and Political Rights and amend existing legislation that is in violation of it (Germany).

Also commenting on freedom of association principles, Amnesty International said ‘Sudan

also agreed to respect the rights to freedom of expression, association and assembly by allowing human rights defenders, political dissidents and journalists to express their views freely in line with international human rights law. Amnesty International regrets Sudan's failure to date to implement many of these recommendations; on the contrary it continues to suppress freedom of expression, association assembly, and to arbitrarily arrest political opponents'<sup>1</sup>. Human Rights Watch added: 'Freedoms of association and assembly are severely restricted, as Sudanese security forces repeatedly used excessive and lethal force against peaceful protesters, such as during the September 2013 anti-austerity protests, when more than 170 civilians were shot dead on the streets of Khartoum and other towns. In the run-up to, during, and after the April 2015 elections, the government continued its crackdown on the media, civil society groups, and opposition parties through arrests and detentions'<sup>2</sup>.

#### **(5) Background: political and human rights context**

Mass protests erupted in Sudan in Sept. 2013, after the announcement of fuel subsidy cuts, resulting in the mass arrest of protesters and deployment of lethal force at demonstrations. Seventeen members of the Sudanese Communist Party, as well as other opposition leaders, were arrested, and the Sudanese Doctors' Union reported that 210 protesters were killed in Khartoum alone. In Dec. 2018 austerity measures saw spikes in fuel and food costs (the price of bread reportedly tripled overnight), sparking widespread discontent. Protests by doctors, angry at acute shortages in hospitals, and port workers facing privatisation and layoffs, were held alongside street protests at price hikes. In March 2019 a so-called 'general strike' was announced and rallies were held outside army headquarters. On 11 April, Omar El Bashir was deposed and the ruling National Congress Party (NCP) was removed from power in a coup led by a section of the military, who gave way to the temporary rule of the

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<sup>1</sup> [https://www.upr-info.org/sites/default/files/document/sudan/session\\_25\\_-\\_may\\_2016/ai\\_-\\_amnesty\\_international.pdf](https://www.upr-info.org/sites/default/files/document/sudan/session_25_-_may_2016/ai_-_amnesty_international.pdf)

<sup>2</sup> [https://www.upr-info.org/sites/default/files/document/sudan/session\\_25\\_-\\_may\\_2016/hrw\\_human\\_rights\\_watch\\_e\\_main.pdf](https://www.upr-info.org/sites/default/files/document/sudan/session_25_-_may_2016/hrw_human_rights_watch_e_main.pdf)

Transitional Military Council (TMC). Mass protests continued, even as many protestors were killed in June 2019 in violent attacks by the former regime's Rapid Support Forces (RSF) militia. On 17 August 2019 a new ruling body was announced, the 'Sovereignty Council', in which military and civilians would share power. Sweeping reforms were rapidly introduced which saw the boards of the Central Bank of Sudan and other banks sacked, the accounts of dozens of former regime leaders frozen, and actions launched to close down dozens of media organisations and newspapers. On 14 Dec. 2019 this process was extended with a decree formally dissolving all trade unions.

## **(6) Trade Union Situation and Developments**

The Sudan Workers' Trade Union Federation (SWTUF), founded in 1950, has for decades operated within a legally prescribed monopoly single trade union structure, under which all unions were required to belong to it. The Trade Unions Act 2010 preserved the monopoly of the SWTUF as the sole legal federation. The Public Registrar is provided under the Act with broad discretion to deny registration, including on grounds that an established trade union already exists. The Registrar is granted powers to dissolve unions for violating provisions of the Act. Violations of provisions of the Act are punishable by fines and/or imprisonment. These are clear inconsistencies with the obligations that Sudan has accepted under ILO Convention No. 87 (see Section 8, below on 'Monopoly Position of Trade Union Centre', 'Dissolution of Trade Unions', etc.), and which furthermore breach Sudan's existing obligations under the freedom of association principles established by the United Nations instruments ICESCR and ICCPR. There is therefore a clear rationale for the reform of Sudan's trade union law.

Despite the restrictions, some independent union organising did take place, including notably among the Professional Associations, and in the 1990s with the formation of the Legitimate Sudan Workers' Trade Union Federation (SW(L)TUF). In July 1999, the government arrested fourteen members of the SW(L)TUF's executive committee – including the President and Secretary General – when it attempted to hold a meeting in Khartoum. Other groups also exist, and independent trade union activism increased

particularly into the last years of the al Bashir regime, notably with the emergence of the Sudanese Professionals Association, and among dockworkers in Port Sudan, both of which organisations were at the forefront of agitation from mid-2018.

On 14 Dec. 2019, following the establishment of the Sovereignty Council a decree was issued formally dissolving all trade unions and the professional associations, and the following day police and military units raided the SWTUF headquarters, seized union assets and froze bank accounts. Both the SWTUF's traditional allies, such as the regional trade union confederation OATUU, and those with a more distant relationship from the SWTUF, notably the global trade union body ITUC, have condemned the forced closure of the SWTUF. The SW(L)TUF has submitted a complaint to the ILO's Freedom of Association Committee concerning the closure of the unions<sup>3</sup>.

The Sovereignty Council has committed to a process of transition to democracy and as part of this process it has engaged in the production of a draft Trade Union Bill. According to reports received by ICTUR the Council claims that this process is now complete and the Bill is ready for adoption. However, with the trade unions formally closed down by law there are real questions as to whether a sufficient consultative process has really taken place. While it is true that some trade unionists continue to operate informally and play some role in State-level consultations, our understanding is that there is considerable dissatisfaction with the proposed draft (as confirmed by ICTUR's long-established Sudan correspondents). We are aware also that alternative views and disputes exist within (what remains of) the trade unions, where rival groups are vying for control.

Finally, we are concerned by reports of on-going harassment of trade unionists associated with the SWTUF, including the following cases:

- In late March 2020 the former President of the SWTUF was prevented from leaving

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<sup>3</sup> Case No 3376 (Sudan) - Complaint date: 03-FEB-20

Sudan Workers' (Legitimate) Trade Unions' Federation (SWTUF)

Sudan to attend an Arab Labour Organisation meeting in Oman.

- on 16 Aug. 2020, an arrest warrant was issued for a representative of the journalists' union for presiding over and representing an 'illegal' organisation (a union ordered dissolved) in regional and international activities.
- and we have (incomplete – though reported by the regional trade union confederation OATUU) information concerning the alleged arrest and detention of the former President of the Workers' Union of the National Audit Office and of the SWTUF's former Economist<sup>4</sup>.

## **(7) Analysis**

There are clear reasons to revise Sudan's trade union legislation, and we commend the Sovereignty Council for taking the progressive step of ratifying ILO Convention No. 87 prior to the introduction of new legislation. However, without a viable and lawfully functioning trade union movement in the country there is no possibility to comply with the consultation requirements as outlined by the ILO's Committee on Freedom of Association regarding the introduction of legislation affecting trade union rights (see Section 8, below, 'Consultation', which is not only 'essential' but should be 'in depth').

The current situation of acrimony surrounding the draft Bill is a predictable outcome of the dissolution of all trade unions, the impact of which was compounded by the failure swiftly to re-establish a functioning trade union movement. In our view, the restoration of prior-existing trade unions and / or the hosting of trade union assemblies and the election of steering committees for the trade union bodies ought to precede reform of the trade union law. Only in a context in which a functioning trade union movement exists can it be consulted on the proposed legal reforms. Without this, ad-hoc consultation lacks transparency, legitimacy, and democratic accountability. We further add that all

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<sup>4</sup> <https://oatuu.org/2021/03/11/persecution-of-trade-unionists-continues-in-sudan/>

trade union currents in the country must be able to participate in any re-constitutive process.

## **(8) Freedom of Association principles**

### **Monopoly position of trade union centre**

Concerning the monopoly position of the central trade union imposed under the 2010 Act, the ILO's Committee on Freedom of Association has consistently stated that 'While it is generally to the advantage of workers and employers to avoid the proliferation of competing organisations, a monopoly situation imposed by law is at variance with the principle of free choice of workers' and employers' organisations' (Freedom of Association. Compilation of decisions of the Committee on Freedom of Association, International Labour Office – Geneva: ILO, 6th edition, 2018, para. 486) and that 'Unity within the trade union movement should not be imposed by the State through legislation because this would be contrary to the principles of freedom of association' (*Freedom of Association*, para. 487). Further, the Committee has also affirmed that 'The requirement that a trade union is obliged to obtain the recommendation of a specific central organisation in order to be duly recognised constitutes an obstacle for workers to establish freely the organisation of their own choosing and is therefore contrary to freedom of association' (*Freedom of Association*, para. 497).

### **Dissolution of unions**

Regarding the dissolution of trade unions, the Committee has stated that 'Cancellation of a trade union's registration should only be possible through judicial channels' (*Freedom of Association*, 990) and that 'Dissolution by the executive branch of the government pursuant to a law conferring full powers, or acting in the exercise of legislative functions, like dissolution by virtue of administrative powers, does not ensure the right of defence which normal judicial procedure alone can guarantee and which the Committee considers essential'

(*Freedom of Association*, para. 993), further adding that the requirement for judicial determination would apply ‘even during an emergency situation’ (*Freedom of Association*, para. 994).

### **Assets of the dissolved union**

The Committee has accepted that ‘when an organisation is dissolved, its assets should be provisionally sequestered and eventually distributed among its former members or handed over to the organisation that succeeds it, meaning the organisation or organisations which pursue the aims for which the dissolved union was established, and which pursue them in the same spirit’ (*Freedom of Association*, para. 1009), and that ‘following a change from a situation of trade union monopoly to a situation of trade union pluralism’, the Committee has emphasised that the ‘redistribution of this property must aim to ensure that all the trade unions are guaranteed on an equal footing the possibility of effectively exercising their activities in a fully independent manner’ (*Freedom of Association*, para. 1011).

### **Consultation**

The involvement of trade unions in the legislative consultation process should be ‘in-depth’ and is ‘essential’ where the subject matter concerns trade union rights, as the Committee has said ‘Any changes to the scope and exercise of trade union rights should, as a matter of importance, be subject to in-depth consultations with the most representative organisations, in order to find, as far as possible, shared solutions’ (*Freedom of Association*, para. 1542) and that ‘It is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be preceded by full and detailed consultations with the appropriate organisations of workers and employers’ (*Freedom of Association*, para. 1544).

### **Arrests**

‘The arrest, even if only briefly, of trade union leaders and trade unionists, and of the leaders of employers’ organisations, for exercising legitimate activities in relation with their right of association constitutes a violation of the principles of freedom of association’ (*Freedom of Association*, para. 122).

## **(9) Recommendations**

The submitting organisation calls on Sudan to:

### **Dissolution of Trade Unions**

- Take swift action to restore a functioning trade union movement, either by restoring (all) pre-existing unions and / or by implementing measures to facilitate open, fair and transparent elections for trade union steering committees
- Ensure that any assets and property sequestered from dissolved unions are returned to either the members or to an appropriate successor organisation in compliance with ILO principles (see section 8 of the above submission).

### **New Trade Union Legislation**

- Ensure that ‘in-depth’ consultation takes place with functioning legal trade unions on the development of new trade union legislation

- Ensure that the substantive and procedural provisions of new legislation comply with the requirements of ILO freedom of association principles (in particular with regard to matters cited in section 8 of the above submission).

**Arrest and harassment of trade unionists**

- Cease arrests and harassment of trade unionists on grounds relating to their legitimate trade union activities

**Generally, in all of these matters:**

- Seek the assistance of the ILO and other relevant UN agencies in making amendments to domestic law and practice.