

Position Paper

Violation of Human Rights, and the Constitution and threat National Security

On the proposed amendments to the Jordanian Penal Code Art. 183

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Introduction

Within the next few weeks, the Jordanian Parliament is expected to bring together a broad array of representatives with the purpose of discussing proposed amendments to the Jordanian Penal Code. Such amendments, which specifically concern Article 183, would lead to the criminalization of workers' strikes in the public and private sectors, imposing such penalties as fines and imprisonment.

Concerning these amendments, the Phenix Center's Jordan Labour Watch unit wishes to point out the following:

1. At a time the trade unionists and human right activists were expecting concrete government steps to amend the legislative system governing the right to work and other related rights, such as the freedom of association, collective bargaining and the right to social protection. This is mostly achieved by developing and amending a country's legislative documents.

Jordan's political actors are required to respect and apply international standards regarding decent work, which are vital to maintaining an equilibrium in labour relations and other aspects of social coexistence and tackling the imbalances which threaten the Kingdom's security and wellbeing. Contrary to helping to alleviate the burdens already borne by workers, the proposed amendments to the Penal Code will bring about the amplification of existing tensions and imbalances in labour relations, and create deeper rifts within Jordanian society.

2. The proposed amendments to the national Penal Code are fundamentally incompatible with numerous human rights principles, as well as detrimental to the observance of social, political and economic rights which are necessary for the preservation of peace, democracy, and inclusive development in Jordan.
3. The right to strike, as enshrined in the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, is to be protected by national legislative bodies. It falls under the broad array of rights protected under the principle of freedom of expression, which calls upon States not to implement such measures as the criminalization of strikes, which will be made illegal under the proposed amendments.
4. The UN Committee on Economic, Social and Cultural Rights (CESCR) requires all parties to the ICESCR (which Jordan has been a part of since 2006) to clearly recognize and protect these rights through their national legislations. Accordingly, the CESCR has repeatedly condemned restrictions imposed by States on the right to strike. Namely, Art. 8.1/D clearly states that while the protection of such rights falls under national jurisdiction, such provisions may not be interpreted as granting States the right to unilaterally revoke or impede their citizen's ability to exercise their prerogatives.
5. The CESCR has added that signatory States are obliged to remove any restrictions which are contrary to the promotion of public well-being, as well as to the preservation of national security, public order, public health, and the fundamental rights of citizens. In addition, the International Labour Organisation (ILO) has also established key standards in regards to the right to strike. In accordance with Art. 8.3 of the International Covenant on Economic, Social and Cultural Rights, States cannot be exempt from ensuring the protection of the rights established through this and other agreements.
6. While both the CESCR and the ILO Committee on Freedom of Association contemplate the possibility of imposing temporary restrictions on the exercise of these rights, namely where such fundamental public services and institutions as healthcare, electricity, water, communications, judicial control, prisons, air traffic control, and others are concerned, it is also stated that the effects of such restrictions must be alleviated through the provision of additional guarantees and forms of compensation to those workers who are thereby deprived of their right to mobilize in pursuit of the advancement of their social and economic interests. Namely, the fair conduct of collective bargaining must at all times be safeguarded through employment of due procedures, tools and mechanisms, including swift and impartial mediation and arbitration.
7. While both the CESCR and the ILO Committee on Freedom of Association do admit the imposition of restrictions on the right to strike in emergency situations affecting the normal functioning of society, such as war, internal conflict, natural disasters and health crises, it is stipulated that the satisfaction of such criteria should be determined by an independent body, and not left to the complete discretion of the national government.
8. The proposed amendments to the Jordanian Penal Code will affect workers in such sectors as health, electricity, water, telecommunications, education, transportation and the judiciary, denying them their right to strike in a way that is contrary to the observance of universal human rights and international labour standards.

Moreover, while the imposition of such restrictions should normally be accompanied by the awarding of additional benefits to the affected workers, as a means of compensation, Jordan's government has yet to introduce any laws providing for such guarantees.

9. At the national level, the Jordanian Constitution implicitly guarantees the right of workers to strike in Art. 128.1, which states: "The laws issued in accordance with this Constitution for the regulation of rights and freedoms may not influence the essence of such rights or affect their fundamentals." In addition, articles 134, 135 and 136 of the Jordanian Labour Code, as well as Law No.1998/8 on the Conditions and Procedures for Strikes, only require workers in vital sectors who intend to strike to notify the authorities four weeks in advance; their provisions do not altogether nullify the right of workers to strike. Hence, the proposed amendments are incompatible with the country's Constitution and Labour Code alike.
10. Denying workers in the public and private sectors their right to strike will deprive them of peaceful means through which to express their dissatisfaction and call for improvement of their working and living conditions, leaving only non-peaceful means at their disposal. This will pose threats to national security and stability, putting the country's future at stake.
11. Depriving workers of this fundamental tool while simultaneously preventing them from forming independent and democratic trade unions is wont to deepen social inequalities and imbalances and work against the preservation of cohesion across society. Maintaining such cohesion is the main instrument through which social, economic and political stability may be ensured.
12. If enacted, these amendments to the Penal Code would deprive large segments of Jordan's population of their fundamental human rights, and bring about dire socioeconomic consequences. The rights to freedom of expression, freedom of assembly, and the right to strike are all closely interlinked. If the purpose of social, political and economic reform is to broaden the array of rights enjoyed by citizens, these amendments would undeniably represent a step back in the country's development.
13. The fundamental priority is that governments learn to consider the issue of workers' strikes and protests from a holistic perspective. These issues are best addressed through the reform of labour policies and the improvement of working conditions, which are the main factors prompting workers to strike. Moreover, the implementation of fair and adequate mediation and arbitration mechanisms, and the lifting of restraints on the right to organize in the public and private sectors, enabling workers to freely form and join independent and democratic trade unions, are key to ensuring the peaceful resolution of social tensions. Lastly, it is important that, wherever it is deemed necessary to restrict the rights of citizens, additional guarantees and compensation mechanisms must be put in place, so as to continuously address the urgent needs of Jordanians, and to ensure compliance with the principles enshrined in such documents as regard international labour standards, the Constitution, and the Constitutional Court decision No.6/2013.