Egypt's Draft Labour Code

A Human Rights Analysis

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This paper was written by Bisan Kassab, an economic researcher, and Mahmoud Nagy, a researcher at the Civil Liberties Unit at the Egyptian Initiative for Personal Rights (EIPR).

Introduction

After months of preliminary discussions, the new draft labour law has once again returned to the drafting stage, aiming to «strike a balance between the rights of employers and employees, satisfying all parties and striving to achieve the public interest». This was stated by Minister of Parliamentary Affairs Alaa el-Din Fouad[1], after the draft law was met with objections from employers represented at the chamber of commerce and industry and official trade unions.

The government assumes that the new draft law it submitted to the parliament addresses the deficiencies resulted since the implementation of the currently implemented labour law (2003), according to the section on the philosophy of the proposed law, whether regarding the incompatibility of some of its articles with the 2014 constitution and international labour charters and conventions, or the imbalance between the parties, and the failure of amicable attempts to settle labour disputes.

The draft law, which regulates labour relations for nearly 25 million workers and employees, and has been undergoing amendment by the government for seven years, aims – as it states – to link wages to production «to reassure national and foreign investors and motivate workers, to maximise their productivity», among other goals. However, it ignores the link between wages and the inflation rates and prices hikes, which affects «the balance and justice between the two parties to the employment relationship», which the law sets as one of its goals.

Although the draft law has many positive amendments that guarantee the workers' rights better than the current law, it ignores many flaws and contradictions in the 2003 law, leaving them unamended. Some introduced articles infringed on the workers' rights, including the right to strike. The amendments to the law also included that «the call for or announcement of a strike could be banned in exceptional circumstances» without specifying these circumstances.

1 Enterprise Newsletter, 11 December 2022 Edition.

This paper discusses several aspects of the draft law, focusing on the articles that regulate wages, allowances, strikes, employment contracts, termination of the employment relationship, irregular labour conditions, and some rights of female employees. It proposes amendments to these articles, which predominantly would affect the stability of labour relations among employers, employees and society. The amendments proposed in this paper aim to ensure that employees retain the professional and economic rights stipulated in the Egyptian constitution and international conventions.

1. Annual pay rises

The current labour law stipulates – in its third article – that the workers subject to the provisions of the Law «shall be entitled to a periodic annual raise of not less than 7% of the basic salary… until the National Council for Wages issues the decisions regulating the payment of that raise». Meanwhile, Article 12 of the government-proposed amendments stipulates that the workers subject to the provisions of the law «shall be entitled to a periodic annual raise of not less than 3%, on its due date, of the social insurance salary. This increment shall be payable after one year from the date of appointment or the due date of the previous periodic increment, in light of the rules governing this raise, which shall be issued by the National Council for Wages».[2]

The amendments define the basic salary as «the salary provided for in the employment contract and the allowances thereto». In contrast, the social insurance salary is «the salary upon which the social insurance contributions are reckoned».

During the amendments' discussion at the parliament, the majority of MPs saw that the 3% raise in social insurance salary is in practice greater than

2 Current Labour Law (no. 12 / 2003), Manshurat Qanuniya, | قانون العمل رقم 12 لسنة 2003 منشورات قانونية

the 7% raise of the basic salary[3], as it is calculated as a proportion of a larger amount, since the social insurance salary is greater than the basic one.

However, this logic ignores the fact that the rate of increase in both cases is not based on the gross salary, and that the rate in both cases will not be sufficient to compensate workers for the annual inflation rates, as it has been much lower than the actual inflation rates in Egypt for most of the past 40 years.

To clarify this point, we give an example of a worker whose gross salary is 3,000 LE and whose basic salary is 1,500 LE, as in many establishments. In this case, the increase – based on the current situation – will be 105 pounds, while it will be 66.75 pounds based on the new amendments, assuming that the social insurance salary is 2,225 pounds.

The previous example is based on a study conducted by the National Organisation for Social Insurance (NOSI). The NOSI's statistics show that the average percentage of the basic salary from the salaries of the insured is estimated at 40% of the total basic contributions, which represents 2.8% of the total salaries of the insured.[4]

This estimate is based on a general average, which means that a large number of workers will be affected by this amendment, namely those whose 3% of their social insurance salaries represent less than 7% of their basic salaries.

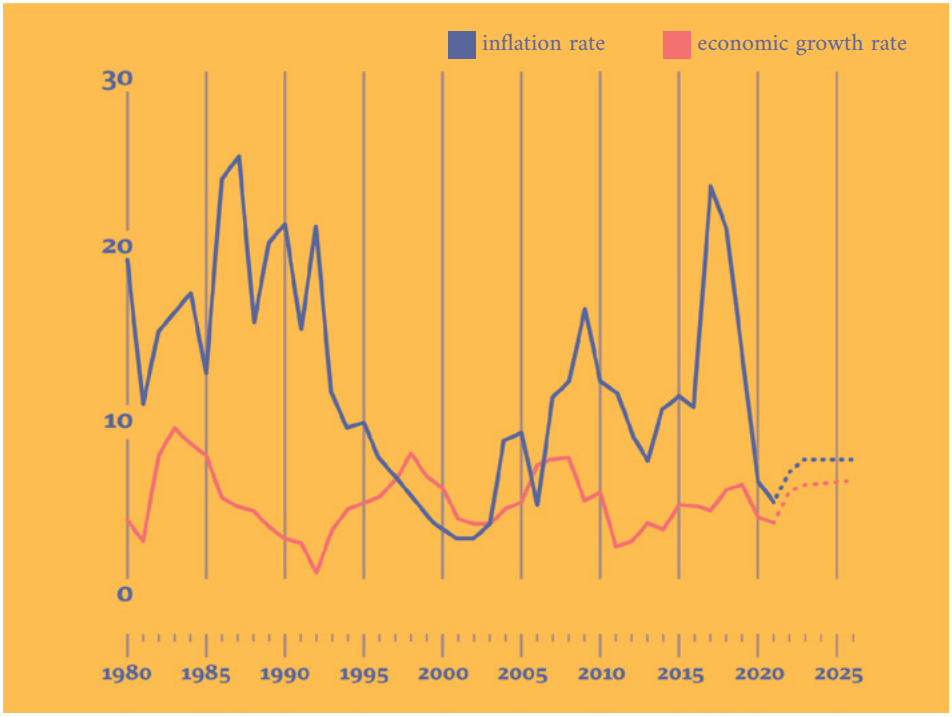
The significance of this draft law and its amendments can only be understood by understanding the general context related to inflation rates. Recalling the above-mentioned example, if the inflation rate was 7% in a year, which is relatively low in the context of Egypt's inflation rates, historically; the worker will need a pay raise equivalent to the inflation rate, i.e. 7% of his gross salary (around 210 pounds), which neither the existing law nor the proposed amendments provide.

3 Mohamed Taha Eleiwa, public event convened by The Centre for Trade Union and Worker Services (CTUWS), "the labour law bill: amendments proposed by the Senate and the labour force demands", http://bit.ly/3Haoqm9 .

4 Communique sent from the head of the National Authority for Social Insurance to the Minister of Labour مشروع قانون العمل الجديد وتقرير مجلس الشيوخ بمراجعته - ديسمبر 2021 | منشورات قانونية

The following figure shows the development of the general inflation rate in Egypt from 1980 to 2021, in addition to the expected data until 2026. During those long years, the inflation rate only reached the 3% level or below in only three years: 2000, 2001 and 2002.

Fluctuations in Inflation Rate in Egypt over 40 years



Source: *IMF forecasts before the recent crisis*

The IMF expected an inflation rate of 6-7% for 2022 to 2026, but the figures went far beyond that, as the average rate of consumer prices increased by 13.8% in urban areas in 2022.

Thus, priority should be given to linking the annual pay rise to the average inflation rate announced by the Central Agency for Public Mobilisation and Statistics (CAPMAS), as a percentage of the gross salary.

2. Regulation of the right to strike

Article 15 of the 2014 constitution stipulates that «peaceful strike is a right regulated by law»[5]. Article 8 of the International Covenant on Economic, Social and Cultural Rights also linked the right to strike to conditions and labour relations that are fair and satisfactory to all parties[6], as well as the right to form trade unions and practise their activities freely, including strikes of all kinds, to promote the workers' economic and social interests.

Article 192 of the Labour Law in place stipulates that «workers shall have the right to stage peaceful strikes. A strike shall be announced and organised through their trade union organisations to defend their vocational, economic and social interests, within the limits and according to the rules and procedures prescribed in the present law. In case the workers of the establishment that has a trade union committee intend to stage a strike where it is allowed by the present law, the trade union committee shall – following approval of the board of the concerned general trade union with the majority of two-thirds of its members – notify each of the employer and the concerned administrative authority, at least ten days before the date determined for the strike, by registered letter with acknowledgement of receipt. Suppose the establishment has no trade union committee. In that case, the notice on the workers' intention to stage the strike shall be sent to the concerned general trade union, and the latter shall – following approval of its board of directors with the majority prescribed in the previous clause – attend to sending the said notice. In all cases, the notice shall comprise the strike's reasons and timeframe».

This article was divided into several articles in the new draft law to regulate the procedures for the exercise of a peaceful strike, which significantly restricts this right.

5 Nour Ali, Provisions Regulation Strike in the New Labour Law Bill after it was passed by the Senate, 31 January 2022.. نشر النصوص المنظمة للإضراب بمشروع قانون العمل بعد موافقة «الشيوخ» | برلمانى

6 See the International Covenant on Economic, Social and Cultural Rights, entered into force in December 1966. https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

The first of these is Article 204, which stipulates: «Without prejudice to Article 171 of this law[7], workers shall have the right to strike peacefully to demand what they deem to achieve their professional interests, after exhausting the methods of amicable settlement of disputes stipulated in this law. The announcement and organisation of the strike shall be through the concerned trade union organisation or the labour commissioner within the limits of the rules and procedures prescribed in this law.»

The new text restricts the scope of interests the strike defends by limiting them to professional interests, unlike the current law, which includes both professional and economic interests. The purpose of this restriction is unclear, but it likely aims to limit the practice of defending workers' interests to the disputes taking place inside the establishment only, to ensure that the practice will not extend to protesting deteriorating living conditions caused by government economic decisions that would affect the interests of workers in a particular sector.

The draft law defines the labour commissioner as «one of the employees at the establishment, whom the employees agree to authorise under an official document to represent them before the employer, in the absence of a trade union organisation». This new text does not exist in the law in place.

This amendment represents an attempt by the government to avoid the contradiction of the labour law with the law on trade union freedoms. It includes a small degree of relaxation of the restrictions in the current law, which requires the existence of a union committee in the establishment to take over the strike decision, with the approval of two-thirds of the board of directors of the general union concerned. This condition has always been insurmountable in

7 Article 171 stipulates that "Workplace proprietors are prohibited during the stages of collective dispute resolution from taking any measures or decisions that pertain to the subject of the dispute resolution or negotiation, except in necessary and urgent circumstances, provided that the measures and decisions are temporary.
Workers are also prohibited, during the aforementioned stages, from striking or announcing strike through their respective organisations, or the workers representative or commissioner depending on specific circumstances or organisational arrangements in each case."

light of the forced union unity through which all trade union committees have been incorporated under the historically pro-state general union of workers. The new draft law recognises the role of the so-called labour commissioner as an alternative to the trade union committee in case there is no trade union committee in the establishment – a frequent situation in light of the severe restrictions on union work in the private sector.

However, linking the trade union organisation or the labour commissioner to the right to strike is in itself prejudicial – in an unjustified manner – to the right to strike. It is conceivable how much pressure might be placed on the trade union committee or the labour commissioner to withdraw their approval of the strike.

Moreover, Article 205 of the amended draft law retains the same provision regarding prior notice to the employer and the competent administrative authority ten days in advance by a registered letter with acknowledgement of receipt, provided that the notice includes the reasons for the strike as well as the date of its start and end. These further insurmountable conditions enable the employer – the strongest player – to exert all pressures and take precautions in the face of the strike's impact, thus essentially undermining the value of the strike as a weapon in the hands of the weaker party to the business relationship.

Article 4 of the International Covenant on Economic, Social and Cultural Rights allows the states parties to the covenant to subject the rights set forth in it to the limitations determined by law, provided that these limitations are compatible with the nature of the right to be regulated.

The requirement of prior notice on the end date of the strike is a restriction of this right, not a regulatory measure aimed at ensuring that workers enjoy their right to strike.

A strike should continue until the workers achieve their demands, or part of them as a compromise resulting from collective negotiation. So, how can the workers expect the flexibility of the other party and the date of reaching a compromise ten days before the start of their strike?

Article 193 of the current law stipulates that «workers shall be prohibited to stage or announce the strike through their trade union organisations to modify the collective labour agreement during its validity period, and also during all stages and procedures of mediation and arbitration». The amendments carried the same provision in Article 206 with the deletion of only the last phrase which includes «the stages and procedures of mediation and arbitration». The legislator did not set a mechanism to amend the labour agreement in the event of a change in circumstances, whether within the establishment or in the economic context, in a way that violates the agreement while it is in force.

The most alarming amendment threatening the right to strike, is the one banning the call for, or announcement of, a strike in «exceptional circumstances», without specifying these circumstances, whether they relate to the establishment itself, the sector to which the establishment belongs, or the political or security situation in the country. This short addition to the law is a significant development that may extend the prohibition of the right to strike to the whole country indefinitely and for vague reasons.

3. Strike and strategic establishments

Article 194 of the current law stipulates that «staging or calling for a strike shall be prohibited in the strategic or vital establishments, where interrupting the work therein will result in disturbing national security or the basic services provided by them to the citizens. The prime minister shall issue a decree determining these establishments». Article 207 in the draft amendments retains the same prohibition in several sectors[8], with minor modifications in the wording.

The article explicitly restricts constitutional rights, in violation of the constitution and Egypt's obligations under international human rights conventions, which constitute an inherent component of Egyptian law once ratified.

8 Interview with Kamal Abbas, General Coordinator of the Centre for Trade Union and Workers Services (CTUWS).

Firstly, the draft law allows for depriving workers in strategic and vital establishments of the right to strike permanently through prime minister's decrees, without being linked to exceptional cases such as wars, natural disasters or declaring a state of emergency. This violates Article 15 of the constitution, and breaches Egypt's commitment to Article 8 of the International Covenant on Economic, Social and Cultural Rights.

Secondly, the right to strike is currently subject to former prime minister Atef Ebeid's decree No. 1185 of 2003 which identifies «the vital or strategic establishments in which strikes are prohibited». The decree stipulates that «strikes or even the call for them shall be prohibited in vital or strategic establishments where the suspension of work would cause disruption in the daily life of the public, or violate national security and basic services provided to citizens». It specified those establishments saying they include national security and military production facilities, hospitals, medical centres, pharmacies, bakeries, means of (sea, land and air) transportation, means of goods transportation, civil defence, drinking water, electricity, gas, sewage, and telecommunications facilities, seaports, lighthouses, airports, and educational institutions.

The decree considered many service establishments – whether governmental or private – as strategic or vital, and did not differentiate between various establishments or various jobs. This indicates that the goal is not to protect the daily life of citizens from turmoil but to use the decree as a pretext to evade the constitutional obligation.

The decree used, for example, the criterion of sectors and not establishments. It banned strikes in the entire telecom sector, so the telecom engineers in sectors that provide vital internet service become equal to the post office employees whose work may be limited to opening savings books and disbursing dues.

The same applies to the water and electricity establishments, where the decree equates– in terms of the prohibition of strikes – between workers, including engineers, whose job has to do with the provision of electricity and water to industrial facilities and homes on the one hand and workers who collect water and electricity bills on the other. The same also applies to the means of transportation,

where the decree did not distinguish between drivers and administrative workers.

Third, working in strategic or vital establishments should not be a reason to deprive workers of the right to strike or any other right. Of course, restrictions may be made with respect to a large part of civil and political rights, such as the right to strike and peaceful assembly, provided that the restriction is proportionate and without prejudice to the essence of the right, and with the aim of protecting rights in a democratic society.

For example, in the general comment No. 37 (2020)[9] on the right to peaceful assembly (Article 21 of the International Covenant on Civil and Political Rights), the Human Rights Committee acknowledged the principle of that conditional restriction. It stated: «While the right of peaceful assembly may in certain cases be limited…, the imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations on it... Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect».

The comment detailed the legitimate reasons for restricting the right to peaceful assembly: the interests of national security, public safety, public order, the protection of public health or morals, and the protection of the rights and freedoms of others.

In order to avoid a further interpretation which would nullify the right to strike, the Committee clarified that the issue of maintaining national security can be a reason for restrictions if such restrictions are necessary to «preserve the state's capacity to protect the existence of the nation, its territorial integrity or political independence against a credible threat or use of force». It added: «For the protection of ‹public safety' to be invoked as a ground for restrictions on the right of peaceful assembly, it must be established that the assembly

9 See General Comment no. 37 (2020) On Article 21 of the International Covenant on Civil and Political Rights - Right of Peaceful Assembly. OHCHR | Call for Comment: No. 37 on Article 21 of the International Covenant on Civil and Political Rights – Right of peaceful assembly

creates a real and significant risk to the safety of persons (to life or security of persons) or a similar risk of serious property damage.»

The Committee defines the «public order» as a set of fundamental principles on which society is founded, which also entails respect for human rights, including the right to strike and peaceful assembly. So, entire groups may be able to exercise their fundamental rights under the pretext of protecting public order based on respect for these rights.

The Committee's interpretation of legitimate restrictions shows that they are meant to protect the society and the state in rare and exceptional cases, in which assemblies, strikes or demonstrations deviate from their peaceful track, posing a threat to lives and public and private property. In this case, the authorities shall either declare a state of emergency, with its recognised constitutional and legal guarantees, or accurately identify the perpetrators and punish them per the laws prescribed for these crimes, without complete suspension of exercising the right.

Therefore, if there is a need to exclude specific susceptible sectors from the right to strike, this should be limited exclusively to workers in certain establishments or jobs, in a limited manner, and for clear and specific reasons. This should be stated in the law itself, not by an administrative decision so that the parliament can amend or delete from the list of such establishments and jobs. The referral of the whole matter to an administrative decision that is not subject to parliamentary supervision, and the fact that the decision-maker is the prime minister, would violate this constitutional right. The prime minister should not assume a role of a judge between the two parties regarding employment relationships because he is an employer, since the government owns many of the establishments included in this long list of sectors prohibited from strike.

Egyptian courts have a legacy of following the same approach as the Committee in their rulings when addressing the unconstitutional restriction of the right to strike. For example, the Emergency Supreme State Security Court, in

Case No. 4190 of 1986 - Azbakeya[10], acquitted the railway workers – who were accused of disrupting the operation of trains – based on Egypt's signature of the International Covenant on Economic, Social and

Cultural Rights, which stipulated in Article 8 the right to strike, provided that it is exercised in conformity with the laws of the particular country.

The court said in its ruling: «This text indicates firmly that the state acceding to the Covenant shall guarantee the right to strike in the sense that it has become recognised as a legitimate right in principle, and may not be abolished and prohibited completely; otherwise this would fully confiscate the right itself. The countries acceding to the Covenant shall regulate this established right, provided that domestic legislation shall regulate its exercise. There is a difference between the emergence of restrictions on the exercise of this right and the imposition of such restrictions. The lack of regulations for this right does not mean in any way abolishing it or postponing it until such regulations are developed. Otherwise, any state could derogate its obligation after regulations have been set to exercise that right.»

This ruling was the reason for decriminalising strikes, and later, its adoption in the labour Law. In recent years, strikes were staged in some establishments specified by the prime minister's decree without prejudice to public safety or national security. In 2016, doctors at the Matareya Teaching Hospital staged a partial strike to protest the assault by non-commissioned police officers on two doctors while on duty[11], for refusing to «forge» a medical report.

As a result, the Doctors Syndicate called for an emergency meeting to «take the necessary decisions that ensure the preservation of the dignity of doctors, and their protection during their work». This large-scale strike did not

10 See Ruling of Cairo Supreme Emergency State Security Court, Case no. 4190/86 Azbakeya (121 North Plenary), accessed at: حكم في دعوي إضراب عمال السكة الحديد سنة 1986 – قضايا

11 Mina Ghaly, Matareya Teaching Hospital doctors stage strike to protest police sub-officers physical assault on their colleague, Al Masry Al Youm, 28 January 2016. Accessed at إضراب أطباء «المطرية التعليمي» لاعتداء أمناء شرطة على أحد زملائهم | المصري اليوم.

significantly violate the patients' rights or the safety of health facilities. More similar cases can be cited in this regard to show that the cabinet's decree is inappropriate and violates the Constitution.

4. Regulation and termination of employment contracts

The articles regulating employment contracts in the draft law do not address the problems between employees and employers under the current law but rather open the door to legalising existing violations of workers' rights with regard to temporary employment contracts.

The principle of employment contracts is that they are indefinite unless they are related to the nature of the employer's business. However, Article 70 of the draft law stipulates that «an individual employment contract shall be concluded for an indefinite period, or for a fixed period of not less than one year, and the contract may be renewed by agreement of the two parties for other similar periods». Article 71 also stipulates that «a contract shall be considered indefinite since its conclusion in the following cases:

- If it is not a written document
- If it does not specify a duration
- If it is a fixed-term contract that the two parties continue to apply following the expiration date
- If it is a fixed-term contract renewed upon mutual agreement by the two parties for a period/periods exceeding four years

The outright conclusion of fixed-term employment contracts represents a serious violation of the security of labour relations. Moreover, the fact that fixed-term contracts could be renewed for up to four years before they are treated as open contracts would legalise the exploitation of workers and violate their rights, which was previously done by circumventing the law.

The explanatory memorandum of the draft law itself explains that the principle of employment contracts is that they are indefinite. The «individual employment contract» chapter notes that «the principle of the employment contract is to conclude it without a specific date range, and it may be concluded with a specific period of not less than one year and may – upon agreement – be renewed for other similar periods to ensure the worker will have a stable and continuous employment relationship, and to avoid the practical problems that workers used to face when concluding fixed-term contracts».

Open and fixed-term contracts should not be treated equally, as the nature of each work is different. The first article of the draft law in item (6) defines temporary work as work related to the employer's business. Its implementation requires a specific period or is limited to a specific work and – therefore – ends by the end of that work. So, it is not a contracting option in general but is related to work of a temporary nature.

However, the condition of turning the fixed-term employment contract into a permanent one by renewing it for a period of more than four years, meaning the worker continues to perform work that is essential in the nature of the employer's business for four years under a fixed-term contract that is renewed annually, is a circumvention of this definition. In practice, it deprives the worker of job stability. It keeps him threatened with the non-renewal of his contract for four consecutive years, a situation in which he cannot demand the improvement of his professional and economic conditions, or join the trade union for fear of not renewing his contract.

This apparent contradiction between the articles of the draft law and its explanatory memorandum, can be avoided by referring to a text proposed by the Ministry of Manpower in 2016, which is consistent with the definitions contained in the law regarding temporary work. The text stipulates that «the individual employment contract shall be concluded for an indefinite period, and may be concluded for a specified period in the case of carrying out seasonal work or other activities where it is not possible – by their nature or by custom – to resort to open contracts».

Based on the aforementioned Articles 70 and 71, a worker's employment in a permanent job with a fixed-term contract contradicts the current law. It is inconsistent with the judicial rulings that considered that the fixed-term contract becomes open if it lasts more than two consecutive years[12], which consequently affects the employment termination process. Suppose the employer terminates the employment relationship two years after the conclusion of the fixed-term contract. In that case, this shall be considered an arbitrary dismissal requiring the worker to be compensated with two months' salary for each year of service.

This situation is different under Articles 131 and 133 of the draft law, which regulates the termination of the employment relationship[13]. Article 131 stipulates: «Without prejudice to the provisions of Articles 71 and 70, the fixed-term employment contract shall end upon the expiry of its term, and if the employment contract is renewed for a period not exceeding four years, either party may terminate it subject to a written notice two months before the termination. If the employer makes the termination, the worker shall receive compensation equivalent to two months' salaries for each year of service.»

Article 133 stipulates that «if the employment contract is (permanently) indefinite, either of the parties may terminate it subject to a notice three months in advance». The article contradicts the articles of Chapter V of the law on the duties and accountability of workers, as Article 125 stipulates that «the jurisdiction to impose the penalty of dismissal from work shall be undertaken by the competent labour court, and the rest of disciplinary sanctions shall be undertaken by the employer or whomever he delegates for that, and in all cases the worker may not be dismissed unless he commits a serious mistake». The article specified the serious mistakes in eight items.

12 Safaa Essam El Din, Khaled Ali Critiques the Labour Law: Allows for Termination and Child Labour, Al Manassa, 19 January 2022. Accessed at خالد علي يفند قانون العمل: يتيح الفصل التعسفي وعمالة الأطفال | المنصة

13 Mohamed Shoman and Nourhan Ashraf, "the full text of the labour law bill after the Joint Committee of the Senate approved it", Cairo 24 December 2021. Accessed at www.cairo24.com

Thus, Article 133 allows for the dismissal of a worker without referring to the labour court, which is considered an arbitrary dismissal codified by the new draft law, which contradicts Article 125 of the same draft law.

This contradiction also exists in the current labour Law No. 12 of 2003, where Article 68 stipulates that the labour court shall undertake the jurisdiction to impose the penalty of dismissal from service. Article 69 specifies the cases in which a worker may be dismissed, while Article 110 stipulates that «if the employment contract is for an indefinite period, each of its two parties may terminate it on condition of notifying the other party in writing before such termination».

Therefore, the new draft law did not avoid the ambiguities and problems that caused contradiction among the articles of the law, allowing the employer to use these articles to dismiss the worker without disciplinary measures, but rather confirmed and strengthened them. According to the Center for Trade Union and Workers Services, this contradiction amounted to different rulings of labour courts in cases of arbitrary dismissal, as sometimes a court rules – in favour of the worker – that the dismissal decision violates Article 69, and other times it considers the dismissal decision to be termination of the employment contract by the employer in accordance with Article 110.

The new draft law reproduces the fundamental flaws in the current law by allowing for an apparent contradiction between the articles, which stipulate that the jurisdiction of dismissal shall be undertaken by the labour court and specify the cases in which a worker may be dismissed. Other articles stipulate the employer's right to terminate an open employment contract upon notice, without the worker committing any violation in the first place.

Accordingly, the articles on the termination of the individual employment relationship in the new draft law are considered a codification of arbitrary dismissal, as they regulate the termination of an open employment contract, which does not end except in specific cases. These cases include mutual consent between the two parties, the resignation of the worker, dismissal of the worker through the labour court, termination by the employer – which is considered arbitrary dismissal, and natural causes such as the worker's death, retirement or inability to work.

5. Irregular labour

The current labour law stipulates: «The competent ministry shall draw the policy of and follow up the employment of irregular labour, particularly seasonal agricultural labourers, maritime workers, miners, quarry workers, and construction workers. The competent minister, in consultation with the concerned ministers and the General Federation of Egyptian Trade Unions, shall issue decisions on setting the rules governing the employment of these categories, and the requirements for their occupational safety and health, transportation and subsistence, as well as the financial and administrative regulations governing this employment.» This provision is not considered a clear framework of rules governing the living conditions of irregular workers, and in practice refers their fate to administrative decisions that have yet to be voted on by parliament.

The new amendments retained only the first paragraph of the abovementioned provision and took the rest out, introducing a new text. The new article - No. 32 of the draft law - stipulates that «a fund shall be established for the protection and employment of irregular workers. The fund shall have a legal disposition and be affiliated with the competent minister. A decree shall be issued by the prime minister to form the fund's board of directors under the chairmanship of the competent minister, specifying its terms of reference, the system of its work and the financial transactions of the board chairman and members. The decree shall also specify the branches of the fund in governorates, the prescribed fees and the system of collecting them from the employer who employs irregular labour, with at least 1% and not more than 3% of what the wages make up of the work carried out.

The competent minister, in consultation with the minister concerned with social insurance, shall also issue a decree on the financial and administrative regulations of the fund, including the rules governing the employment of irregular workers, the services provided to them, the conditions for benefiting from them, the requirements for their occupational safety and health, transportation and subsistence, as well as the resources of the fund, the aspects of their expenditure, and the procedures for their disposal in accordance with this law.

The fund shall have an assigned account in the treasury single account at the Central Bank of Egypt. The fund shall prepare financial position statements annually, the Central Auditing Organisation shall supervise its funds, and its surplus funds shall be transferred to the public treasury.»

The abovementioned text maintained the same spirit as the old text in referring to the entire fate of irregular labour to administrative decisions again, as if those administrative bodies were imposing a whole law to govern the status of irregular labour without oversight by parliament. Moreover, it is unclear how the sums collected from employers are spent, which may tempt the administrative bodies to «save» them to transfer them to the public treasury.

The danger of this provision lies in the fact that it deals with a category of workers who are likely to obtain fewer rights by virtue of the same law, as if they were a marginal group or a minority. Official figures[14] show that 44.7% of irregular labour are women and 47.3% are men.

The best approach to ensuring the economic and social rights of the workers in the labour Law is to detail all the functions of this fund and how its funds are managed. The law should also explicitly stipulate the rights of irregular workers and the acceptable minimum conditions, such as their working conditions, without any administrative decisions being made outside the scope of the law.

6. Rights of female workers

The draft law submitted by the government to parliament included a positive amendment to Article 91 of the current labour Law, which stipulates that «a female worker who has spent ten months in the service of one or more employers shall be entitled to ninety days of maternity leave with a compen-

14 Mona Ezzat, Irregular labour: precarious working conditions and a double dose of discrimination against women, the Alternative Policy Solutions Centre. | حلول للسياسات البديلة العمالة غير المنتظمة: ظروف عمل هشة وتمييز مضاعف ضد النساء

sation equal to her gross salary, including the period preceding and following delivery… A female worker may not be required to work during the 45 days following childbirth. Maternity leave shall not be entitled more than twice throughout the female worker's service period».

The period of maternity leave in the new draft law was increased to four months, including the period before and after delivery. The draft law stipulates that this leave shall be paid, and a female worker shall be entitled to such leave at most three times throughout her service period. The increase in the length of leave was among the «rare» amendments introduced by the Senate to the draft law.

Although the draft law included additional rights for female workers, it can be more compatible with these rights. The 12-week period stipulated in the current law is less than the minimum standards approved by the International Labour Organization (ILO) which currently include a minimum of 14 weeks of paid maternity leave, according to Convention No. 183[15], to which Egypt is not a signatory[16].

The same convention urges states to extend the paid maternity leave to a minimum of 18 weeks, two weeks more than the leave stated in the new draft law.

The World Health Organization's standards for healthy baby feeding recommend that babies are fed nothing but breast milk for their first six months[17], which may require extending maternity leave by up to six months. Some international cases provide alternatives to fill this gap between the 18 paid

15 Maternity and paternity at work, International Labor Organization, ilo.org/sites/default/files/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_242615.pdf .

16 International Labor Organization, Up-to-date conventions and protocols not ratified by Egypt, Up-to-date Conventions not ratified by Egypt .

17 Joint press release by the WHO, UNICEF and the International Baby Food Action Network (IBFAN), "laws protecting natural breastfeeding in most countries are inadequate". Accessed at World Health Organization (WHO)

weeks and the end of the six months - 24 weeks - necessary to complete the breastfeeding period without any additional feeding other than breast milk, allowing for an additional period after the paid leave, during which the bulk of the salary – 80% or 90% – is paid.

These cases could be useful to consider.

The draft law also introduced paid paternity leave, which began with seven days in the original bill. Still, the Senate amended it to one day upon the manpower minister's rejection. Justifying his rejection, the minister said: «We take into account that the husband should stand with his wife during childbirth, but we are also keen not to disrupt the production process.» The minister's remarks reflect a lack of understanding of the concept of parents' shared responsibility towards their children and the familial responsibility shouldered by fathers.

Meanwhile, Article 56 of the new draft law – which carries a slight amendment to Article 96 of the current law – obliges «the employer who employs one hundred or more female workers in one place to establish a nursery or entrust a nursery with the care of the female workers' children under the terms and conditions specified in the executive regulations of the Child Law. Establishments located in one area and employing less than one hundred female workers each shall participate in the implementation of the obligation stipulated in the preceding paragraph, subject to the terms and conditions specified in the executive regulations of the Child Law».

This article enshrines women's exclusive responsibility for raising children, in contravention of the convention on the Elimination of All Forms of Discrimination against Women, to which Egypt is a signatory. It is dangerous because it is considered a directive from the legislator and the government that drafted the law, rather than being just a social custom. Limiting the benefits associated with the traditional family roles to women and not men would actually lead the private sector to avoid employment of women. For these two reasons, these benefits should be provided to both men and women as partners in family tasks, and the establishments that employ workers with children should provide these benefits.

One of the most significant weaknesses in the draft labour law concerning the rights of female workers is that it excludes female domestic workers on the grounds that they are exclusively engaged in household work, leaving a large number of female workers without legal protection of their rights in the event of a dispute, and without minimum labour rights. Although more than one draft law has been submitted to regulate the relationship between female domestic workers, employers, and employment offices, there is nothing that prevents those workers from being covered by the labour law, as a large number of them are considered to be irregular workers covered by the law.

Recommendations

- The amended labour law is an extension of policies that favour employers and investors over employees who have been working for decades in a situation where the living standards of wage earners are declining, poverty rates among them are increasing, and their share of GDP is declining. Some of the amendments might exacerbate these conditions and pave the way for legalising existing violations of workers' rights related to fixed-term contracts. They might also seriously affect labour relations and reduce the workers' opportunities to defend their rights, such as strikes, through legal and constitutional channels. Therefore, the philosophy of the law needs to be amended in a way that restores some balance to rights in line with the international agreements to which Egypt is committed.
- The role of societal dialogue must be activated during the discussion of the law in the House of Representatives. Hearing sessions must be held for various labour organisations, trade unions, and civil society organisations and their contributions should be considered in parliamentary discussions of the law.
- Article 12 on allowances should be amended to provide for a percentage of the gross salary linked to the inflation rate announced by the Central Agency for Public Mobilisation and Statistics, instead of 3% of the social insurance salary.

- The articles regulating strikes should be amended to ensure that workers enjoy their right to all kinds of peaceful strikes, upon notification, and to start their strike without setting an end date. The article allowing the prohibition of strikes in unspecified exceptional circumstances should be repealed.

- No specific sectors should be banned from exercising their constitutional right to strike as long as this right does not threaten lives or public and private property. If there is a fundamental necessity for such a ban, it must be clarified in the law. It should not be issued by administrative decisions that are not monitored by parliament. Specific facilities and functions should also be identified, not depriving entire sectors of their constitutional right, as is the case now.

- Articles 70 and 71 regulating the termination of the individual employment relationship should be redrafted, as they include confusing and contradictory provisions, and allow for the arbitrary dismissal of workers and reproduce the flaws of the current labour law. The cases of fixed-term contracts detailed in Article 70, such as seasonal work whose term ends with the end of the agreed work mission, should be specified. The third item in Article 71 should also be amended to stipulate that the fixed-term contract is considered a permanent contract in the event of its renewal for a period of two years, based on the definition of temporary work stipulated in the draft law submitted by the Ministry of Manpower in 2016, which says: «An individual employment contract shall be concluded for an indefinite period, and may be concluded for a fixed period in the case of seasonal work or other activities in which indefinite contracts cannot be resorted to by virtue of their nature or customs».

- The new labour law should detail all the functions of the fund for the protection and employment of irregular workers that will be established and clarify how its funds will be run. It should also explicitly stipulate the rights of irregular workers and the acceptable minimum limits without any administrative decisions taken outside the scope of the law.

- The labour law should cover female domestic workers, as many of them are considered irregular workers covered by the law.
- The benefits of childcare within families should be provided to both men and women as partners in family tasks, and the establishments that employ workers with children should provide these benefits. Also, the amendment proposed by the minister of manpower to reduce paternity leave during childbirth to one day should be repealed.