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**Chair of Parliamentary Committee  
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On behalf of the International Lawyers Assisting Workers (ILAW) Network, which is comprised of over 400 labour lawyers and scholars in over 50 countries, including Ukraine, we write to express our very serious concerns regarding the decision of the Parliamentary Committee on Social Policy and Veterans Protection to consider and adopt Draft Law 2681 at the plenary session of the parliament. These amendments appear identical to the amendments introduced in December 2019, and which were criticized by the UN and trade unions worldwide as an attack on workers' rights in Ukraine.<sup>1</sup> Drafted without prior consultations with trade unions, these wholly unnecessary amendments violate ILO fundamental conventions which Ukraine has ratified, and in some cases violate the Constitution of Ukraine.<sup>2</sup> There appears to be no possible motivation for these amendments other than to weaken the trade union movement. We therefore urge that these amendments be withdrawn.

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<sup>1</sup> See, UN, Committee on Economic, Social and Cultural Rights, Concluding observations on the seventh periodic report of Ukraine, E/C.12/UKR/CO/7, 2 April 2020, paras 27-8, ("The Committee is concerned that amendments proposed by the State party in December 2019 to its labour laws (draft laws Nos. 2681 and 2682) will weaken the powers of trade unions, including the right to strike, resulting in violations of article 8 of the Covenant and other international standards (art. 8). The Committee urges the State party to review the draft law on amendments to some legislative acts of Ukraine (regarding some issues of trade union activities) (No. 2681) and the draft law on strikes and lockouts (No. 2682), with a view to ensuring the effectiveness of collective bargaining and of the right to union representation, in compliance with article 8 of the Covenant and the provisions of the International Labour Organization Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It also recommends that the State party ensure the protection of trade union activists from assaults, victimization and harassment.")

<sup>2</sup> These amendments also violate several articles of the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights, both of which Ukraine ratified.

Below are just some of our concerns with the proposed amendments:

1. The bill limits the number of trade unions in an enterprise to no more than two. Currently, the law imposes no limit on the number of unions in an enterprise. ILO Convention 87 provides that all workers have a right to form or join a trade union of their choosing<sup>3</sup> and the ILO Committee on Freedom of Association has repeatedly noted that, while trade union unity may be desirable, legislated limits on the number of trade unions violate the right to freedom of association.<sup>4</sup> Today, numerous large companies have more than 2 unions; it is unclear what would happen in these circumstances should the amendment be enacted.

2. The bill mandates the establishment of “control commissions” in all trade unions. The procedure for establishing a control commission and exercising its powers will be determined by the statute of the trade union. Third parties who are not members of trade unions may be included in the control commission. The motivation for the proposal is unclear, as there appears no need to impose greater internal checks on trade unions than what they already have established in their own statutes. The requirement to establish a control commission would in our view violate the right of trade unions to organize their activities freely, to adopt their own statutes and to establish their own structures.<sup>5</sup> The inclusion of non-union members on such commissions, if not freely chosen (such as government appointed members), could also affect the trade union’s independence.

3. The bill would remove the current obligation of employers to deduct dues from union members’ pay and transfer the dues to the appropriate union.<sup>6</sup> Union members should be able to have their employer deduct their membership dues through their paycheck. While it may still be possible to include dues deduction in collective agreements, this would remain to be negotiated and may be refused by the employer in order to frustrate the funding of the union.

4. The bill would prohibit collective bargaining with trade unions that include “managerial” staff among their members. However, the amendment includes no definition of this term and could be interpreted broadly to refuse to bargain with unions whose members include, for example, those who perform occasional supervisory work but are not responsible for the management decisions of the enterprise.<sup>7</sup>

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<sup>3</sup>Convention 87, Article 2

<sup>4</sup>See, Committee on Freedom of Association, Compilation of Decisions ¶¶ 475-95 (on trade union pluralism).

<sup>5</sup>See, Committee on Freedom of Association, Compilation of Decisions ¶ 676 (“The Committee recalls that in accordance with Article 3 of Convention No. 87 the Government is required to refrain from any interference which would restrict the right of workers and employers organisations to elect their representatives in full freedom, to organise their activities and to formulate their programmes.”)

<sup>6</sup> See, e.g., Compilation of Decisions ¶ 695 (“Workers should have the possibility of opting for deductions from their wages under the check-off system to be paid to trade union organizations of their choice, even if they are not the most representative.”)

<sup>7</sup>See, e.g., Compilation of Decisions ¶ 382 (“As regards provisions which prohibit supervisory employees from joining workers’ organizations, the Committee has taken the view that the expression “supervisors” should be limited to cover only those persons who genuinely represent the interests of employers.”).

5. The bill would eliminate the right of trade unions to request information from the employer necessary to determine whether the law or the collective agreement has been violated or otherwise for the purposes of collective bargaining. However, employers must provide the facilities and relevant information to conduct the work of trade unions.<sup>8</sup>

6. The bill would deprive trade unions the opportunity to submit proposals to draft laws before their submission and consideration by the executive authorities and deny them the right to participate in the consideration of their proposals by the executive authorities. According to the current legislation, draft legislation on issues related to the development and implementation of state social and economic policy, regulation of labour, social and economic relations are required to be submitted to the trade union organizations by the committees of the Verkhovna Rada of Ukraine for their input. This amendment is an affront to tripartism, which is a bedrock principle of the ILO.

7. The bill requires the forced transfer to the state of all trade union property which was in their possession as of 24 August 1991 (when Ukraine declared its independence). The government has argued that that all such property belonged to the USSR and as such is state property which belongs to the successor entity – the GOU. However, much trade union property was acquired by member dues and were not state property at the time of the independence of Ukraine. Further, the property has been in the consistent possession of trade unions for nearly 30 years since independence. The confiscation of union property by the state, and in particular without due process, is a significant violation of the right to freedom of association.<sup>9</sup>

8. The bill sets a minimum membership of a trade union at least 10 persons, up from 3 currently. There appears no reasoned basis for the government to make this change. While legislation may require an appropriate minimum membership, we note that in the case of Ukraine, this would exclude many workers from the ability to form or join a union – namely those who are employed in micro and small enterprises.<sup>10</sup> While technically possible to associate through a sectoral union, e.g. workers of small commercial enterprises, Ukrainian law vests most rights with enterprise unions and very few with sectoral unions (e.g. access to worksites to represent members).

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<sup>8</sup> See, ILO Recommendation 143, Art 16 (“The management should make available to workers' representatives, under the conditions and to the extent which may be determined by the methods of implementation referred to in Paragraph 1 of this Recommendation, such material facilities and information as may be necessary for the exercise of their functions.”)

<sup>9</sup> See, Compilation of Decisions ¶ 275 (“the right to adequate protection of trade union property is one of those civil liberties which are essential for the normal exercise of trade union rights); ¶ 288 (“The confiscation of trade union property by the authorities, without a court order, constitutes an infringement of the right of trade unions to own property and undue interference in trade union activities.”)

<sup>10</sup> See, e.g., Compilation of Decisions ¶ 441 (“While a minimum membership requirement is not in itself incompatible with Convention No. 87, the number should be fixed in a reasonable manner so that the establishment of organizations is not hindered. What constitutes a reasonable number may vary according to the particular conditions in which a restriction is imposed.”)

For all of these reasons, we urge the government to withdraw these proposed amendments. Should the Trade Union Law need amendment, it should be done in consultation with representative trade unions and consistent with ILO conventions and recommendations.

Sincerely

The ILAW Network

cc:

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