

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN SAUDI ARABIA

**REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE
TRADE POLICIES OF SAUDI ARABIA**

(Geneva, 25 and 27 January 2012)

EXECUTIVE SUMMARY

Saudi Arabia has ratified six core ILO labour Conventions. In view of restrictions on the trade union rights of workers, discrimination, child labour, and forced labour, determined measures are needed to comply with the commitments set out in the WTO Ministerial Declarations over 1996-2001, and in the ILO's Declaration on Fundamental Principles and Rights at Work and its 2008 Social Justice Declaration.

Saudi Arabia has however not ratified either of the two ILO core conventions on trade union rights to organise and collective bargaining (Conventions 87 & 98). Unions, collective bargaining and strikes are not allowed by law. Workers' committees exist but can only meet with the participation of the employer and the government. The law has been enforced against various strikes that have occurred.

The law discriminates against women, who face significant difficulties in finding employment. Those who work earn disproportionately little income. There are also extreme cases of abuses of migrant workers' rights, especially female migrant domestic workers.

Child labour is prohibited but occurs in Saudi Arabia. Victims of its worst forms are mainly migrant child domestic workers and Asian girls trafficked for prostitution.

Saudi Arabia's law and systems do not protect migrant workers, especially domestic workers, against abuses and conditions akin to slavery. Thousands of workers are victims of extreme treatment, work long hours, live in confined conditions and in general are deprived of their basic freedoms. The authorities have repeatedly failed to address the issue adequately and redress these violations.

The deliberate lack of respect for fundamental rights in law and practice by Saudi Arabia is reflected in negative pressures against trade unions throughout the Gulf countries.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN SAUDI ARABIA

Introduction

This report on the respect of internationally recognised core labour standards in Saudi Arabia is one of the series the ITUC is producing in accordance with the Ministerial Declaration adopted at the first Ministerial Conference of the World Trade Organisation (WTO) (Singapore, 9-13 December 1996) in which Ministers stated: "We renew our commitment to the observance of internationally recognised core labour standards." The fourth Ministerial Conference (Doha, 9-14 November 2001) reaffirmed this commitment. These standards were further upheld in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work adopted by the 174 member countries of the ILO at the International Labour Conference in June 1998 and in the Declaration on Social Justice for a Fair Globalisation adopted unanimously by the ILO in 2008.

The ITUC has no affiliate in Saudi Arabia as trade unions are banned, as elaborated below.

I. Freedom of Association and the Right to Collective Bargaining

Saudi Arabia has not ratified ILO Convention No. 87 (1948) on Freedom of Association and Protection of the Right to Organise, or Convention No. 98 (1949) on the Right to Organise and Collective Bargaining.

The Labour Code does not allow workers the right to form unions and prescribes penalties for those who try to undertake organising. Workers are allowed to have workers' committees in enterprises with more than 100 workers, but the employer and the Ministry have the right to participate in the committee and receive the minutes of every meeting. The many foreign workers in Saudi Arabia are barred from serving in such committees. Only one committee is allowed per workplace and the government must approve their statutes and membership lists. The competences of workers' committees are limited to working conditions, health and safety issues and productivity. The Ministry of Labour can dissolve a workers' committee for violating regulations or threatening public security.

The law does not provide for collective bargaining or strikes. Public demonstrations are also prohibited.

The ban on organising is enforced strictly in practice too and collective bargaining does not take place.

Despite the strike ban, some unauthorised strikes do take place, frequently as a result of non-payment of wages. Among other such reports, on March 23 2010 approximately 80 workers of the Habona General Hospital went on strike protesting at a four-month non-payment of their wages. Migrant workers have also staged strikes, however the government has responded ruthlessly in such cases. In May 2010, approximately 30 Nepalese cleaners at the King Abdulaziz international airport were deported after they went on strike over the non-payment of salaries and substandard accommodation conditions. In October, 16 Chinese workers were arrested for participating in a strike involving at least 100 Chinese workers in a rail construction project. The strikers demanded a salary increase and improved working and living conditions.

Summary

Unions, collective bargaining and strikes are not allowed by law. Employees are allowed to organise workers' committees with the participation of the government and the employer. The law was enforced on some strikes that occurred.

II. Discrimination and Equal Remuneration

Saudi Arabia ratified both ILO Convention No. 100 (1951) on Equal Remuneration and ILO Convention No. 111 (1958) on Discrimination (Employment and Occupation) in 1978.

Saudi Arabian law discriminates against women and women are deprived even of their basic rights. In September 2010 a Ministerial Order provided that “*any discrimination in wages shall be prohibited between male and female workers for work of equal value*” but there is no information on the Order's application in practice. There are no laws criminalising violence against women nor prohibiting sexual harassment at the workplace. Women are not discriminated against as employers as well as employees: discriminatory provisions provide different obligations for owning or running a business and investing, depending on sex.

Women must seek permission of their guardian in order to perform work that is not “*deemed appropriate for a woman*”. This provision is interpreted broadly. Partly because of this, Saudi women account for only 4 per cent of the total workforce and 10.7 per cent of the national Saudi workforce. Women have difficulty finding employment but some women are employed in education and health-care, and in recent years also in ministries and social services. However, women are disproportionately concentrated in low skilled, low paid jobs. The labour market is segregated and the average working woman earns only 16 per cent of what a working man earns. Moreover, women and men are often kept in separate departments at the workplace. Women are essentially barred from a wide spectrum of professions, such as legal services and engineering, because they are not allowed to enrol in schools of those academic disciplines.

Other prohibitions that women face affect their employability. For example, women are not allowed to drive and many public transportation companies, including those with the largest network and range in Riyadh and Jeddah, do not allow women in their buses: consequently, every employer has to pay for personal transportation costs of female employees.

There is limited information on sexual harassment at the workplace. Raising a complaint is also problematic. In rape cases, the courts routinely punish both the victim and the perpetrator and the approach is similar for sexual harassment at the workplace or elsewhere. In January 2010, a court sentenced a woman to severe flogging and two years' imprisonment for filing "spurious" harassment complaints against court officials and for "*visiting government offices without a male guardian*". One of the two judges was the alleged perpetrator.

There is no law prohibiting discrimination against disabilities and building accessibility is not required by law. The Labour Code provides that enterprises with more than 25 workers allocate at least 4 per cent of their positions to persons with disabilities. However, information on the application of this provision in practice is limited.

The law prohibits racial discrimination. However, reports show that persons of non-Arab African and Asian origin were often victims of violence including at the workplace. In most of the cases, domestic workers were victims of exploitation in conditions akin to slavery. Similar conditions are faced by many migrant workers in other sectors (see part IV on Forced Labour). The Shia minority also face discrimination in various aspects of life, including in employment. The ILO Committee of Experts on Application of Conventions (CEACR) and Recommendations has identified weaknesses in the existing system: "*lack of effective inspection, complaints mechanisms and enforcement regarding issues of discrimination, linked to lack of physical access, lack of awareness among judges and members of the commissions of discrimination issues, and the absence of women on the courts and commissions.*" In practice, the violations are numerous and the CEACR has previously noted the potential for the Human Rights Commission to take a leading role in this area.

Homosexuality is punishable by death or flogging. Reporting discrimination against lesbian, gay, bisexual or transgender workers to the authorities could threaten their lives.

The law stipulates the deportation of every migrant worker who is found to be HIV positive at the test upon arrival or when hospitalised for other reasons. There are no recorded HIV/AIDS workplace programmes.

Summary

The law discriminates against women, and women face difficulties in finding employment. Those who work earn disproportionately little income. There are also

extreme cases of abuses of migrant workers' rights, especially female migrant domestic workers.

III. Child Labour

Saudi Arabia ratified ILO Convention No. 138 (1973) on the Minimum Age in 1978 and Convention No 182 (1999) on the Worst Forms of Child Labour in 2001.

The Labour Code sets the minimum age for admission to work at 15 years of age but it excludes agricultural workers and domestic workers. Children are allowed to be employed in family enterprises as well as family farms and herds. The Code stipulates that children younger than 18 years old may not perform hazardous work such as mining. It is not clear whether this provision, as well as the Ministerial Order of 2003 which identifies the types of hazardous work in which the employment of young persons is not authorised, apply to children employed as domestic workers and in agriculture. Moreover, CEACR has criticised the fact that the laws do not impose “*sufficiently effective and dissuasive penalties for the offence of hiring children for the purpose of begging.*” The laws also prohibit trafficking, including for the purpose of forced labour, but not forced child labour. According to CEACR, the laws also fail to sufficiently protect children from camel jockeying.

Child labour occurs in Saudi Arabia. The 2007 UNICEF Trafficking Report estimated that in Saudi Arabia there are over 83,000 children selling small goods and begging on the streets. Moreover, it is also reported that children from Asian countries like Cambodia, trafficked with forged age documents, work as domestic workers. The UNESCO Trafficking Statistics Project estimates that approximately 10 per cent of female prostitutes are under 18 years of age. The majority of these girls were trafficked from Indonesia to Saudi Arabia for the purpose of sexual exploitation. Furthermore, reports show that child labour is on the rise.

The Ministry of Justice has prosecuted few cases of alleged child labour violations. Special centres in big cities deal with the problem of beggary.

Summary

Child labour is prohibited but occurs in Saudi Arabia. Victims of its worst forms are mainly migrant child domestic workers and Asian girls trafficked for prostitution.

IV. Forced Labour

Saudi Arabia ratified both Convention No. 29 (1930) on Forced Labour and Convention No. 105 (1958) on the Abolition of Forced Labour in 1978.

The Labour Code prohibits forced labour and prescribes penalties for offenders. The 2009 Suppression of the Trafficking in Persons Act criminalises all forms of human trafficking providing for up to 15 years' imprisonment and fines of up to USD 266,000. The law is supplemented by a decision of the Council of Ministers which prohibits the practice of withholding workers' travel documents and establishes the right of trafficking victims to remain in Saudi Arabia during an investigation while providing incentives to participate in the prosecution procedure. However a 2005 Royal Decree excludes all domestic workers, depriving them of rights granted to other workers including a weekly day off and maximum working hours.

Approximately 8.3 million migrants, who make up 90 to 95 per cent of the private sector workforce, are legally employed in Saudi Arabia. There are 1.5 million female domestic servants mainly from Asian countries, especially Indonesia and Philippines. Many reports show extreme use of violence, intimidation, confinement and threats against many migrant workers, especially female domestic workers. Migrant workers are forced to work long hours, often all day long with little to no time for rest. They do not enjoy a rest day and when they fall ill it is up to their employer to decide if they should adapt their tasks. Domestic workers' accommodation is usually poor as they are often given only a parking place or a storage room to sleep. Moreover, they lack access to medical services due to the limitations imposed on their mobility.

The HRW reports: *“We documented several cases of physical and psychological abuse by employers, and in some cases by agents. Examples of abuse included beatings, deliberate burnings with hot irons, threats, insults, and forms of humiliation such as shaving a domestic worker’s head. Food deprivation was a common abuse. We interviewed women who reported rape, attempted rape, and sexual harassment, typically by male employers or their sons, and in some instances, by other foreign workers whom they had approached for assistance.”*

With regards to migrants' work permits a “sponsor” system, also known as *kafala system*, ties migrant workers to particular employers, limiting their options and freedom. A migrant worker is not allowed to change employer or leave the country without written consent of the employer. Workers cannot leave their job and in case a worker escapes the employer, then she/he cannot search for a new job, nor leave the country. This system in conjunction with the practice of confiscating travel documents and withholding wages puts workers under conditions akin to slavery. In case of a violation of the Labour Code's provisions on forced labour, the law prescribes fines and the banning of an employer from being a “sponsor”.

The Labour Code does not apply to domestic employees, many of whom are practically slaves, and agricultural workers. Such workers may have to seek assistance from their Embassies to be returned. Indeed, Human Rights Watch has documented numerous cases where workers were unable to escape from abusive conditions or even to return home upon completion of their contracts because their employer denied them permission to leave the country.

The workers are recruited, usually in Asia, by labour brokers and recruitment companies which send them to recruiters in Saudi Arabia. According to the Human Rights Watch (HRW) report *“As If I Am Not Human”*, commissioned especially concerning the problems domestic workers face in Saudi Arabia, *“[t]he business of recruiting workers in Asia and placing them with employers in the Middle East has thrived as migration flows grew exponentially in the past few decades. In labour-sending countries, recruiters may charge exorbitant fees, provide incomplete or misleading information about working conditions, and, in Indonesia, subject women and girls to forced confinement for months and other pre-departure abuses in training centres.”* Similar cases of confinement to “training centres” have been reported recently by the ITUC in Cambodia.

The authorities repeatedly discourage complaints by not showing interest, refusing to start prosecution and even deporting victims of torture without further investigations. Saudi authorities frequently prosecuted sexually abused victims who endeavoured to file complaints against their employers and employers' sons under allegations of adultery, fornication, or other moral “misconduct.”

Courts have routinely failed to protect workers who became victims of cruel torture. Indeed, a Saudi court awarded a tortured Indonesian domestic worker a mere US\$670 in compensation for being severely beaten and confined in a cellar with little food for a month in 2005. The victim developed gangrene resulting in amputations. In practice, reports of torture of domestic workers being unfairly treated by the Saudi authorities are numerous. After Saudi Arabia beheaded a 54-year old Indonesian grandmother in June 2011, for stabbing her Saudi employer to death, Indonesia declared a moratorium on the migration of its nationals for domestic employment. However, Saudi Arabia stopped issuing work visas for domestic workers from the Philippines and Indonesia because of increased tensions between the sending countries and Saudi Arabia.

The authorities have often failed to protect victims and redress the violations by providing complaints procedures and immediate investigations and prosecutions. For example, in August 2010, a 49 year old Sri-Lankan domestic worker was repatriated after being tortured by her employers who had driven nails into her arms, legs and forehead because she had complained about her long working hours. The authorities denied her medical services and she was operated on only in Sri Lanka. In November 2010, a 23 year old Indonesian woman was admitted to hospital in Medina suffering from scissor incisions to her face, burns and a broken finger. She reported being tortured by her employers since her first day at work. The same month, the corpse of another tortured Indonesian worker was discovered. After international outrage her torturers and murderers were arrested.

In 2010, the authorities processed just 23 cases of trafficking which resulted in 13 investigations and 10 prosecutions and one conviction. This was the case of a 54-year old Saudi woman who tortured her Indonesian domestic servant. The court sentenced the perpetrator to three years' imprisonment but denied to award compensation.

The CEACR has urged the government to launch an investigation into the foreign sponsorship system, to follow up issues relating to discrimination and the abuses of migrant workers, particularly the situation of female domestic workers, in a systematic manner and to put discrimination issues at the heart of national equality policy.

Summary

Saudi Arabia's law and systems do not protect migrant workers, especially domestic workers, against abuses and conditions akin to slavery. Thousands of workers are victims of extreme treatment, work long hours, live in confined conditions and in general are deprived of their basic freedoms. The authorities have repeatedly failed to address the issue adequately and redress these violations.

Recommendations

1. Saudi Arabia must urgently ratify ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise and Convention No. 98 on the Right to Organise and Collective Bargaining.
2. Saudi Arabia must grant all workers the right to organise, collectively bargain and strike.
3. The authorities must stop repressing strikes and other forms of industrial action and protest.
4. The scope of the Labour Code needs to be extended to all domestic workers, migrant workers and agricultural workers.
5. Major legal changes are required to ensure equality of treatment, including in the workplace. Cultural and traditional barriers have further limited women's participation in the workforce and created a segregated labour market. Saudi Arabia should undertake significant positive action programmes to reform these systems in order to remove obstacles to women's participation in the workforce and to close the gender pay gap.
6. The authorities should start investigating, prosecuting and convicting when there are sexual harassment offences and offer significant protections to the victims to ensure they can make complaints without fear of the consequences.
7. The government should adopt a zero-tolerance approach to human rights abuses against migrant workers.
8. The government should be pro-active in promoting sensitisation around issues of discrimination, particularly on grounds of gender, race, nationality and religion.
9. Saudi Arabia should adopt a comprehensive law for disabled persons which would prohibit discrimination, prescribe penalties for offenders against their rights and provide disabled persons with assistance to find employment and improve their skills.
10. The authorities should promote workplace programmes for persons living with HIV/AIDS.
11. Children should not be allowed to work in family-owned enterprises, domestic servitude or agriculture at any age. Saudi Arabia needs to establish a framework for young workers that is consistent with ILO Convention No. 138 on the Minimum Age.
12. The government should establish sufficiently stringent penalties against those who procure or force children into beggary.
13. The Saudi Arabian authorities should repeal the kafala system of recruitment and documentation of foreign workers in order to grant them freedom to choose their employer and to leave the country when they want. The penalties for forced labour, abuse, harassment, sexual exploitation and any other form

of labour exploitation should become sufficiently dissuasive and the judiciary should be encouraged to make use of them.

14. The police should urgently initiate investigations into human rights abuses and conditions faced by migrant workers and, particularly, female migrant domestic workers. The police and the courts should begin prosecutions and achieve convictions of guilty parties in such cases. The authorities should involve the victims and the embassies of victims' country of origin in prosecutions.
15. Health, psychological, legal and other services should be provided to victims of forced labour along with temporary permits and accommodation, especially for victims of torture and abuse. Such persons should not be deported.
16. The government of Saudi Arabia, in cooperation with sending countries, should investigate and shut down recruitment companies in Asian and other countries and in Saudi Arabia itself which are involved in labour and sex trafficking.
17. The Labour Inspectorate need to be adequately funded. Labour inspectors should be properly trained and should ensure the full application of the law including in currently informal and unregistered economic activity.
18. The WTO should draw the attention of the Saudi Arabian authorities to the commitments to observe core labour standards that were adopted at the Singapore and Doha Ministerial Conferences. It should request that the ILO intensify its work with the Government of Saudi Arabia in these areas and provide a report to the WTO General Council on the occasion of the next trade policy review.

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