

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN KUWAIT

**REPORT FOR THE WTO GENERAL COUNCIL REVIEW OF THE
TRADE POLICIES OF KUWAIT**

(Geneva, 7 and 9 February, 2011)

EXECUTIVE SUMMARY

Kuwait has ratified seven 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 Kuwait accepted at Singapore, Geneva and Doha 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.

There are legal restrictions on organising; special limitations on foreign workers bar a large part of the workforce from organising at all. Unions' bargaining power is further reduced by the anti-union stance of the government and many limitations to the right to strike.

The law discriminates against some categories of workers including women and stateless persons. Women face a sizeable pay gap and are underrepresented in highly skilled positions. 100,000 stateless persons are not entitled to permanent employment and mainly perform informal economic activities.

The law prohibits child labour but there are serious concerns about the situation of underage domestic servants who are employed in Kuwait with forged documents that show a higher age.

The sponsorship system makes migrant workers vulnerable to various forms of forced labour and exploitation. Especially in domestic services, the government fails to prevent or prosecute forced labour or to identify and protect victims of forced labour and abuse.

INTERNATIONALLY RECOGNISED CORE LABOUR STANDARDS IN KUWAIT

Introduction

This report on the respect of internationally recognised core labour standards in Kuwait 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 affiliate in Kuwait is the Kuwait Trade Union Federation (KTUF) which has a membership of 35,000 persons covering various areas of employment in Kuwait.

I. Freedom of Association and the Right to Collective Bargaining

Kuwait ratified ILO Convention No. 87 (1948) on Freedom of Association and Protection of the Right to Organise in 1961 and Convention No. 98 (1949) on the Right to Organise and Collective Bargaining in 2007.

In 2010, Kuwait enacted a new Labour Code but restrictions on trade union rights remain significant. The right to form or join a union is granted to Kuwaiti nationals but foreign workers are only allowed to join a union; they are barred from electing officers or being elected. Additionally, migrant workers need a certificate of good conduct and moral standing. The law also stipulates that every union needs at least 15 national Kuwaiti members and 100 members in total in order to be certified by the state. This condition affects organising for 80 per cent of the country's workforce. Union membership is further weakened by the exclusion of domestic workers from the Labour Code. The Maritime Act or of the Oil Sector Labour Law also set special rules on unionisation in these two sectors.

The new Labour Code provides for greater trade union pluralism at the grassroots level, but still allows only one union per sector and only one general union, the Kuwait Trade Union Federation (KTUF). The Ministry of Social Affairs and Labour has refused several unions certification because there were other existing unions in the same sector.

Unions are not adequately protected against employer or state actions that aim at limiting union membership and bargaining power. The law protects workers from unfair dismissal on the grounds of union activities but not from other forms of anti-union

discrimination. There is no protection against interference by employers and the authorities are allowed to interfere in union activities. Trade unions are barred from conducting activities considered to constitute “political activism”. As the Minister’s approval is needed in order to make investments or receive donations, the government has a strong say in many union actions.

A union can be dissolved in various ways. The courts can mandate the dismantlement of unions deemed to violate laws or threaten public order and morals, or after a demand by the Ministry of Labour. Furthermore, a union can be dissolved by the Emir’s decree.

The right to collective bargaining is recognised only for the private sector. In the public sector, the government engages in “consultation” with the Government Workers’ Federation on issues raised by public workers, but not in collective bargaining. Even in the private sector collective bargaining rarely takes place. The restrictive conditions on organising of foreign workers as well as on registering new unions, the restriction of proper bargaining procedures for the public workers, the lack of protection against anti-union discrimination and the general anti-union stance of the government make collective bargaining exceptional.

In the private sector, in the event of an unresolved dispute, the union or the employers can ask for the Ministry’s mediation and in case mediation fails the dispute is then referred to a compulsory arbitration court, a two-month procedure that must be exhausted before industrial action is possible. Even then unions need permission from the Ministry of Interior before declaring a strike. When a strike begins, there is no legal protection for strikers against retribution by state or employers. These conditions and lack of protection make it virtually impossible for authorised strikes to take place.

Notwithstanding this, unauthorised strikes and protests take place in Kuwait. In March 2010, some 300 Egyptian employees of a cleaning and contracting company staged a protest against the non-payment of 8 months’ wages. The workers had entered extreme financial distress as they could not afford meals and faced eviction for non-payment of rent, despite the company’s responsibility to take care of accommodation. The employers threatened the workers with dismissals and deportation. As a response, the government barred two cleaning companies from public procurement tenders for only three months, a measure which is not dissuasive of such behaviour.

The authorities have exercised their powers to stop strikes. In March 2010, the Kuwaiti Council of Ministers took legal action to prevent a strike of the Ports Foundation Workers’ Union which represents 930 workers. The dockers demanded the update of staff benefits and career development policy which was last reviewed in the 1970s. Prior to the call for a strike, the workers had engaged in two years of dialogue and all steps required by law before the decision to call a strike had been taken. In another case, 88 bus drivers of the Public Transport Company were sacked after holding a strike protesting at a wage cut and demanding the payment of an allowance to which 2,900 workers were entitled.

In 2010 and 2011, as in previous years, oil workers, customs officers, and aviation workers held unauthorised strikes. In most of the cases the state authorities took harsh measures against the workers and used replacement workers in an effort to undermine the strikes. In December 2011, the Justice Minister Ahmed Al Mulaifi stated that strikes are prohibited and that international conventions which guarantee workers' rights are not applicable to him.

Union members are not always genuinely represented by their officials. In September 2010, 200 employees of the Ministry of Communications called for the dissolution of the union's board of directors and the election of a new board. The board members were accused of denying registering new members, deferring the appointment of new members on the board and insufficient reporting of activities to the members.

In August 2010, undocumented workers from the Philippines accused their employer of unfair labour practices as well as physical and sexual abuse. The authorities claimed that they were not entitled to protection because they were undocumented migrants. All but three workers decided to return to their workplace the next day and one of the three was deported.

The government has made use of the legal restriction on the existence of new unions in sectors where a union already exists. For instance, the government continues to deny recognition to several public sector and oil sector unions because sectoral unions already exist.

There is one export processing zone in Kuwait; the Kuwait Free Trade Zone (KFTZ) at Shuwaikh Port. There are no special laws or exemptions from regular labour laws in that zone.

Summary

There are legal restrictions on organising; special limitations on foreign workers bar a large part of the workforce from organising at all. Unions' bargaining power is further reduced by the anti-union stance of the government and many limitations to the right to strike.

II. Discrimination and Equal Remuneration

Kuwait has not ratified ILO Convention No. 100 (1951) on Equal Remuneration but ratified ILO Convention No. 111 (1958) on Discrimination (Employment and Occupation) in 1966.

The law stipulates that women's remuneration should be equal to that of a man for "same work". The stipulation falls short of the international standard for 'equal remuneration between men and women for work of equal value'. Article 29 of the Constitution guarantees equality without discrimination on grounds of gender, language,

religion and other grounds. However, the absence of comprehensive legal provisions defining and prohibiting discrimination against women renders the constitutional principle unenforceable. The UN Committee on the Elimination of Discrimination against Women (CEDAW) has found many discriminatory provisions in the Personal Status Act, the Civil Code, the Nationality Act, the Education Act and the Private Sector Labour Act. Several of these provisions concern women's employment. For instance, the Private Sector Labour Law of 2010 prohibits employment of women at night, employment of women in dangerous, hard or harmful to health trades and "*such jobs which are violating their morals and based on the utilization of their femininity in a manner which is not in line with the public morals*".

The government has established mechanisms on women's equality, including the Coordination Committee on Women's Affairs, which advises the government and the parliament's Committee on Women's Affairs. However, the impact and effectiveness of the Coordination Committee is not clear.

In practice, only 47 per cent of Kuwaiti native women are part of the workforce. Women face a gender pay gap of 34 per cent and they are underrepresented in senior and management jobs, although women account for 53 per cent of public workers. Only 14 per cent of highly skilled jobs are occupied by women.

Many women working as domestic workers are left unprotected as the law's scope does not cover them. The difficulty of access of labour inspectors and other law enforcement officials to homes makes domestic workers particularly vulnerable to various forms of exploitation as well as sexual harassment.

In a case that could result in a landmark decision and create new legal grounds with regard to the employment rights of women, the Supreme Judicial Council rejected the application of a female law graduate to become a public prosecutor in April 2010. The Council based their decision on grounds of gender and explicit legal requirements laid out in the Constitution that ban women from serving in prosecutorial positions. On the other hand, in July 2010, the authorities allowed women police officers, previously restricted to deskwork, to work in public, for instance on patrols.

There is no law prohibiting sexual harassment at the workplace. Recently, the authorities established a women police task force, which intervenes in cases of sexual harassment in public venues.

There over 100,000 stateless persons in Kuwait who are known as *Bidun*. Although the *Bidun* had equal rights until the 1980s, the government then started laying off stateless persons from the administration and public offices and denied their access to public services as well as certificates and legal documents which were available to Kuwaiti citizens. In April 2011, the government allowed eleven 'civil, social and humanitarian facilities' for registered *Bidun* individuals, which include education and healthcare, public sector employment and certificates. Previously, stateless persons were not entitled to passports, driver's licenses and other documents the lack of which caused

them to be significantly less employable. The *Bidun* remain deprived of their right to a national identity card, without which their permanent employment is impossible because they cannot be registered by their employers. Consequently they find only limited opportunities to work and they mainly perform informal economic activities or self-employment. Thus, the *Bidun* also do not enjoy social protection benefits, among others pensions, healthcare, childcare and training.

The law prohibits discrimination against disabled persons and mandates special access to buildings. The government provides subsidies for disabled persons but refused such provision to non-citizens. A June 2010 law included the *Bidun* in the persons entitled to the subsidies, reformed the subsidies regime and stipulated a quantitative reservation of 4 per cent of disabled persons to enterprises with more than 50 employees. The Higher Council for the Affairs of Disabled Persons manages the special issues related to the well-being and the integration of such individuals.

The law establishes imprisonment penalties for homosexuals. It is clear that gay, bisexual and transgendered persons would face discrimination in employment as well as such sanctions.

There is no information on discrimination against persons with HIV/AIDS. No workplace programmes for persons living with HIV/AIDS are known.

Summary

The law discriminates against some categories of workers including women and stateless persons. Women face a sizeable pay gap and are underrepresented in highly skilled positions. 100,000 stateless persons are not entitled to permanent employment and mainly perform informal economic activities.

III. Child Labour

Kuwait ratified ILO Convention No. 138 (1973) on the Minimum Age in 1999 and Convention No. 182 (1999) on the Worst Forms of Child Labour in 2000.

Act No. 38 of 1964 establishes the minimum age for admission to employment at the age of 15. However, there is no age limit for domestic workers because they are excluded from the law's scope. A Ministerial Decree of 2004 obliges the employers of children between 14 and 18 years of age to record the child workers, as well as the type of work. Children between 15 and 18 years of age are not allowed to perform hazardous work as described or catalogued in a list of hazardous occupations which was last updated in 2010. Working children are not allowed to work for more than six hours a day.

In practice, there are serious concerns about the situation of child domestic servants and possible forced labour. It is reported that underage domestic servants from Asia have travelled on forged documents that show higher ages and are employed in

Kuwait. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) noted in an Individual Direct Request that “*according to the information available at the Office, there were credible reports of foreign women and girls having migrated to Kuwait as domestic workers who were coerced into situations of debt bondage or involuntary servitude and that Kuwait was a destination country for children trafficked primarily from Bangladesh, India, Indonesia, Pakistan, Philippines and Sri Lanka for the purposes of sexual and labour exploitation.*” Similar concerns have also been raised by reports under the UN Convention on the Rights of the Child.

Summary

The law prohibits child labour but there are serious concerns about the situation of underage domestic servants who are employed in Kuwait with forged documents that show a higher age.

IV. Forced Labour

Kuwait ratified Convention No. 29 (1930) on Forced Labour in 1968 and Convention No. 105 (1957) on the Abolition of Forced Labour in 1961.

The law prohibits forced labour but there is no specific anti-trafficking law. The Criminal Code is used to punish trafficking offenses. The Code also prohibits forced prostitution and prescribes imprisonment of five to seven years depending on the age of the victim. The government has recently adopted a regulation prohibiting employers in the construction and oil sectors from withholding the travel documents of their employees. However domestic servitude, which is the sector where the mass of the abuses are recorded, is not covered by this regulation.

Recruitment agents and kinship networks help Asian migrants to leave their country for a job opportunity in Kuwait and other Middle East countries. Reportedly, many migrants pay high fees for the employment opportunity they buy before reaching the destination. Such migrants are at high risk of being coerced into forced labour and indeed many become indebted peons.

In Kuwait, there are 660,000 female migrants working in domestic servitude and private cleaning services. Men usually work in construction, oil industry, transportation, public cleaning and sanitation. Migrants sometimes get a contract before leaving their country or upon arrival; nonetheless the agreed payment, working time, benefits and other employment issues are often not respected. It is also reported that many sponsors withhold the migrant's pay, passport and other documents. Female workers undertaking housekeeping and domestic services are often confined in the house's premises and may suffer abuse and sexual exploitation. In 2009 foreign embassies received more than 10,000 complaints about labour exploitation as well as physical, psychological and sexual abuse.

The sponsorship system of employment regulates the entry and employment of migrant labour. The worker's permit of employment and residence status is pegged to the employer's consent to hire the worker. Without such consent, the worker is not free to quit or must face imprisonment, fines and deportation.

Some domestic workers flee the homes where they are exploited but there is only one shelter which it is reported to have closed. Many runaway women reportedly end up victims of pimps who force them into prostitution while preventing their arrest. The sponsorship system does not provide for victim identification. A revision of the rules in 2011 allows for an investigation before deportation of the runaway but domestic services are excluded.

Reports find that Kuwait authorities do not arrest nationals for trafficking even for cases of systematic abuse and that in practice there are no arrests or convictions for trafficking. In 2010, a man that forced women into prostitution was arrested. However, cases not related to commercial sexual exploitation are treated with civil penalties such as fines.

The government promised an ILO technical assistance mission in February 2010 to replace the sponsorship system with migration regulations that comply with international standards, and said the same to the UN Human Rights Council in September. The government enacted Law No. 6 of 2010 which established a Public Authority for Labour Force but according to the CEACR, the law does not abolish the sponsorship system.

The Kuwait Trade Union Federation (KTUF) and the General Federation of Nepalese Trade Unions (GEFONT) have recently signed a memorandum of understanding aiming at promoting cooperation of the two countries' governments, monitoring recruitment agencies, promoting a role for the unions in the protection of migrants' rights in various ways and taking joint actions toward the respect of workers' rights.

Summary

The sponsorship system makes migrant workers vulnerable to various forms of forced labour and exploitation. Especially in domestic services, the government fails to prevent or prosecute forced labour or to identify and protect victims of forced labour and abuse.

Recommendations

1. The Labour Code should not set different thresholds and requirements for union recognition applied only to migrants and should not discriminate against foreign workers.
2. The law restraining the number of unions per sector and mandating one general confederation needs to be abolished, in line with ILO core conventions.
3. The law should be amended to protect workers from all forms of anti-union discrimination, entailing provisions to protect unions effectively from employers' or state interference.
4. The government's powers over trade union economic activities should be revoked.
5. The government should start engaging in collective bargaining in the public sector. In the private sector collective bargaining should be promoted to establish good industrial relations and in the conduct dispute settlement between workers and employers.
6. The law should guarantee protection for strikers against retribution by the state or employers. Procedures for establishing a strike need to be reformed in line with ILO core conventions.
7. The government should ratify and implement ILO Convention No. 100 (1951) on Equal Remuneration and legally provide for 'equal remuneration between men and women for work of equal value'. It should enact a comprehensive law defining and prohibiting discrimination against women in compliance with the constitutional principle.
8. Discriminatory provisions in the Personal Status Act, the Civil Code, the Nationality Act, the Education Act and the Private Sector Labour Act concerning women's employment should be repealed.
9. Sexual harassment at the workplace should be outlawed, sanctions should be specified and complaints mechanisms need to be established.
10. The government needs to establish action programmes to reduce the gender pay gap and the underrepresentation of women in senior and management positions.
11. The *Bidun* stateless persons should be given full equality with Kuwaiti nationals with regard to all their rights.
12. Lesbian, gay, bisexual and transgendered persons' employment rights should be protected and respected.
13. The government should promote workplace programmes for persons living with HIV/AIDS.
14. The sponsorship system that regulates the entry and employment of migrant labour should be abolished and replaced with immigration procedures that comply with international standards with regard to the freedom of employees to leave their job.

15. The Labour Code should extend its protection to domestic workers. The government should reform its legislation and provide legal redress and legal, medical and psychological assistance to domestic workers who fall victims of abuse, forced labour, and other labour crimes.
16. A complaints mechanism with high standards of protection, investigations and prosecution procedures should be urgently established for migrant workers whose rights are abused, and shelters for such workers provided.
17. Investigations should urgently commence on cases of underage domestic servants.
18. The government should legislate and implement a special law on anti-trafficking.
19. The WTO should draw the attention of Kuwait's authorities to the commitments they undertook to observe core labour standards at the Singapore and Doha Ministerial Conferences. It should request that the ILO intensify its work with the Government of Kuwait 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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