

(1) Submitting Organisation/s

The International Centre for Trade Union Rights (ICTUR) was founded in 1987 in order to defend, extend, and raise awareness of trade union rights and their violations worldwide. ICTUR was founded in response to 'an attack on trade union rights by transnational employers' and 'to take up the struggle for liberation from neo-colonialist and transnational corporation exploitation'. ICTUR is a network of unions, lawyers and human rights organisations.

ICTUR has consultative (roster) status with the UN ECOSOC and it is accredited to the ILO Special List of INGOs, since 1993. ICTUR's main activities include monitoring labour rights, letter writing, trial observations, research and publishing. ICTUR provides information to international human rights processes and assists trade unions in this work. ICTUR publishes: *International Union Rights* journal (since 1993, 4 editions per year); the *World Map of Freedom of Association* (5th edition, 2017); and the reference book *Trade Unions of the World* (7th edition, 2016).

(2) Our concerns

Our primary concerns with respect to trade union rights in Saudi Arabia are:

- **Absolute barriers to freedom of association and trade union rights**
- **The application of labour rights to migrant workers**
- **The situation of domestic workers**

(3) International Human Rights Obligations

Saudi Arabia has not ratified either of the two key UN instruments on human rights, the International Covenant on Economic, Social and Cultural Rights ("CESCR") and the International Covenant on Civil and Political Rights ("CCPR"). Neither has the Kingdom ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise (1948), and ILO Convention No. 98 on the Right to Organise and Collective Bargaining (1949).

However, the cornerstone of the international human rights system, the Universal Declaration of Human Rights, makes it clear that "everyone has the right to form and to join trade unions for the protection of his interests" (Article 23(4)). In addition, under various international treaties, Saudi Arabia has accepted further obligations to implement and respect labour rights, and to promote and respect the rights of workers.

Saudi Arabia has been a member of the International Labour Organization ("ILO") since 1976, and has ratified 16 ILO Conventions, including six of the eight core Conventions. Further obligations to uphold the principles of freedom of association also stem directly from the Kingdom's membership of the ILO¹. Saudi Arabia currently holds a position of deputy member of the ILO Governing Body.

Saudi Arabia has also made specific commitments to uphold human rights standards in respect of sex and race discrimination with its ratifications of the Convention on the Elimination of All Forms of Discrimination against Women in 2000 and the International Convention on the Elimination of All Forms of Racial Discrimination in 1997.

¹ Constitution of the ILO; and ILO Declaration of Fundamental Principles and Rights at Work, Article 2 ('all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining')

Further commitments apply under the regional Arab Charter on Human Rights, since 2009, and the Gulf Cooperation Council Human Rights Declaration since 2014.

(4) Previous UPR cycle

Within the previous UPR cycle:

Several States urged Saudi Arabia to **ratify international human rights instruments**, among which Spain, Japan, Romania and Iraq urged Saudi Arabia to consider ratification of both the ICESCR and the ICCPR (A - 138.11, A - 138.12, A - 138.17, and A - 138.18)². These recommendations were accepted by Saudi Arabia.

Several States urged Saudi Arabia to **improve freedom of association** (A – 138.48, A – 138.49, A – 138.51, A – 138.53, A – 138.70)³. These recommendations, addressing in particular the NGO sector, were accepted by Saudi Arabia. Other recommendations, including those addressing ILO Conventions on freedom of association, were not accepted in the previous review.

Numerous States urged Saudi Arabia to **tackle the situation of migrant workers** (A – 138.197 - A – 138.215)⁴. All of these recommendations were accepted by Saudi Arabia. Amnesty International noted that ‘migrant workers, a third of the population, are inadequately protected by labour laws and vulnerable to exploitation and abuse by employers’⁵. Amnesty called on the government ‘to reform national labour laws so that migrant workers have adequate protection against abuses by employers and the state’⁶. Migrant workers are at higher risk of unlawful imprisonment due to lack of knowledge of local norms and laws and communication barriers. JS4 recommended improving the access of women migrant workers to meaningful redress mechanisms⁷.

Sri Lanka and the Philippines specifically urged Saudi Arabia to **improve the situation of domestic workers** (A – 138.202 and A – 138.214)⁸. Both of these recommendations were accepted by Saudi Arabia. Amnesty International noted that ‘women domestic workers are at particular risk of sexual violence and other abuses’⁹. Many other civil society recommendations called for ‘abolishing the kafala system; extending labour protections to domestic and agricultural workers’¹⁰.

Freedom of association

The Basic Law¹¹ contains no explicit recognition or protection for the rights of freedom of association or of assembly. Article 26 of the Basic Law emphasises a commitment to the protection of human rights, but it does not specify what these rights are, and adds that rights are

² Report of the Working Group on the Universal Periodic Review, Saudi Arabia, (26/12/2013), A/HRC/25/3

³ Report of the Working Group, UPR (2013)

⁴ *ibid.*

⁵ Stakeholder Report for the Universal Periodic Review of Saudi Arabia 2013, Amnesty International

⁶ Amnesty International Submission (2013)

⁷ Stakeholder Report for the Universal Periodic Review of Saudi Arabia 2013, JS4

⁸ Report of the Working Group, UPR (2013)

⁹ Amnesty International Submission (2013)

¹⁰ Stakeholder Reports for the Universal Periodic Review of Saudi Arabia 2013, JS3, JS4 and Human Rights Watch

¹¹ Basic Rule of Governance (Basic Law), Royal Decree No. A/90, 1992, Article 26

protected only so far as they are 'in accordance with Sharia'¹². This commitment to protect human rights ought in theory to protect freedom of association, since all of the instruments comprising the International Bill of Rights protect that right. However, the reality is that without explicit recognition and protection under domestic law anyone exercising these rights is placed at risk of repression, prosecution, and serious criminal penalties. Amnesty International has said that the 'Saudi Arabian authorities are consistently abusing the country's vague laws to deprive human rights defenders and others of their liberty'¹³. Despite a recent NGO law, the work of most NGOs remains within traditional confines of 'charity', and 'no NGOs in Saudi Arabia ... are allowed to work on human rights'¹⁴.

There is no legal framework for collective bargaining, and hence no real industrial relations system, other than a rigid conciliation and arbitration system, that brings disputes between workers and employers into its ambit irrespective of their wishes¹⁵. In practice, this system is ineffective at protecting workers' rights (see cases below). Furthermore, the Labour Law prohibits any worker from taking action that might place any pressure on an employer or on another worker that is 'inconsistent with the freedom of work'¹⁶. This provision frustrates trade union rights in the Kingdom. There are no reports of effective trade unions in the Kingdom.

Law reforms in 2001 created a role for workers' committees¹⁷. The submitting organisation was unable to obtain a reliable translation of these regulations (even the ILO only indicates that it has an 'unofficial French translation'¹⁸, and even this is not available online), but a number of secondary sources agree that the regulations establish a right to form these organisations only in large enterprises that employ more than 100 Saudi citizens as workers. Their role is said to be limited to suggesting recommendations on working conditions, health and safety standards, and productivity¹⁹. These organisations apparently can represent migrant workers²⁰, but it is unclear whether this happens in practice. Foreign workers are not, according to ITUC, allowed to serve on the executive of the workers' committees²¹.

The government must approve the statutes and membership of the workers' committees, and the Minister of Labour and Social Affairs as well as the company management have the right to send a representative to the committee meetings. The minutes of the meetings must also be submitted to management and then passed on to the Minister. Finally, public demonstrations of a political nature are prohibited, and the Ministry can dissolve a workers' committee if it violates regulations or threatens public security. In practice, very few workers' committees have been established, and those that do exist play a tame role. Outside of the legal framework, however, informal and spontaneous worker organizing and demonstrations do occur, from time to time:

- In 2016 the Binladin Group terminated the jobs of 77,000 migrant workers and issued final exit visas for them to leave the country. Workers, owed months of wages, lacked any effective formal channels for resolving their grievances - resulting in widespread unrest. In January 2017 dozens of these workers were reportedly sentenced to lashings and jail

¹² *ibid.*, Article 26

¹³ 'Saudi Arabia: Un Expert Working Group Highlights Appalling Record On Unlawful Detention Of Peaceful Activists', press release, Amnesty International (23 November 2015), at: <https://www.amnesty.org/en/press-releases/2015/11/saudi-arabia-un-expert-working-group-highlights-appalling-record-on-unlawful-detention-of-peaceful-activists/>

¹⁴ Report of the Special Rapporteur on extreme poverty and human rights on his mission to Saudi Arabia, Human Rights Council, Thirty-fifth session, 6-23 June 2017, A/HRC/35/26/Add.3, p14.

¹⁵ Labour Law, Royal Decree No. M/51, 2005, Part XIV

¹⁶ Labour Law (2005), Article 20

¹⁷ Decision on application of Rules regarding the establishment of works councils further to Resolution No. 12, 2001, approved by Ministerial Decree No. 1691

¹⁸ NATLEX, Saudi Arabia, ILO, at: http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=62100&p_country=SAU

¹⁹ Annual Survey Survey of Violations of Trade Union Rights, ITUC (20012)

²⁰ *Boost for workers' rights in Saudi Arabia*, ILO (18/04/2002), press release, at: http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_007782/lang--en/index.htm and *Workers' Committees and Employee Voice in Kingdom of Saudi Arabia*, Abdulmonem Hamdan Alzalabani, paper for the 15th IIRA World Congress: The New World of Work, Organisations & Employment, Sydney, Australia, 24-28/08/2009

²¹ ITUC Survey (2012)

terms ranging from 45 days to four months.

- Also in 2016 workers – comprising both Saudi and migrant workers from both the general service and skilled professional categories of staff – participated in strike action in protest at unpaid wages in the private Saad Specialist Hospital in Khobar. Media coverage indicated that the strike enjoyed the tacit support of the local authorities, who were concerned by the private employer's failure to pay staff.

The cases outlined above demonstrate the seriousness of the industrial relations vacuum that exists in Saudi Arabia, in which serious unrest can result where ineffective dispute resolution procedures fail, with public order and worker welfare implications. These indicate the potential benefits that would accrue to workers, to the authorities, and to public order by introducing effective industrial relations and freedom of association provisions to resolve disputes.

Migrant workers

There are said to be some 9 million migrant workers in Saudi Arabia, equivalent to a third of the population, or between half and two-thirds of the total workforce. A system of sponsorship – the kafala system – provides the framework under which these millions of workers enter. The majority are from Asia. Most are employed in construction and service sectors, and as domestic workers – this latter group have even fewer protections. As non-citizens, all migrants are at risk of discrimination in access to education, social security, housing, water and sanitation frequently lacking health insurance, social security, and other services.

Recent reforms to the system have seen some improvements, but contemporaneous policies aimed at reducing the numbers of undocumented migrants have caused further problems.

- In 2013 tens of thousands of undocumented migrants were detained and deported. These workers had, on the whole, arrived lawfully under the kafala system. By mid-2014 as many as 427,000 undocumented workers had been deported. This precipitated a wave of unrest: violent attacks on migrants by police and citizens were reported.
- In October 2015, a package of 38 amendments to the Labour Law went into effect. These promised an end to the practice of employers confiscating migrants' passports, new powers to prevent non-payment of wages, and boosting requirements to provide copies of contracts to employees.

Despite the reforms, many migrants still fear retaliation by their employers, detention by the State, or deportation, and they continue to encounter great difficulties in accessing information enforcing rights they supposedly do have. Further reform is urgently required.

Domestic workers

Saudi Arabia is one of the world's largest employers of domestic workers. But abuse and exploitation is rife in this sector. Domestic workers fall into a uniquely disadvantaged category among other migrant workers as they are exempted from the general provisions of the labour law²². Until 2013 this exclusion was total. However, the situation improved somewhat with Order No. 310 of 7 September 2013, which introduced legal protection for nine hours of rest every day, one day off per week, and one month of paid vacation every two years. The authorities also issued a guide booklet on domestic workers' rights, and established a hotline in eight different languages. The reforms were welcome but did not go far enough.

²² Labour Law (2005), Article 7

- The situation of migrant domestic workers remains one of particular vulnerability, partly due to the failure to enforce the law, and partly due to the need for further reforms. Domestic workers continue to face abusive employer practices, such as retention of passports, non-payment of wages, poor conditions of work, limitations to their liberty, and physical and sexual abuse. Domestic employment in such situations can amount to forced labour situations.

(9) Context and analysis

Migrant domestic workers have been recognized by the ILO as a category of workers who are particularly at risk of discrimination, abuse and exploitative working and living conditions. The ILO Multilateral Framework on Labour Migration²³ adopted in 2006 explained how principles on non-discrimination and equality should be applied to protect workers in practice.

The ILO's Committee on Freedom of Association (CFA) has stated clearly that: 'all workers, without distinction whatsoever, including without discrimination in regard to occupation, should have the right to establish and join organizations of their own choosing' (*Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Fifth Edition, 2006, para. 216). This right is specifically recognised for migrant workers (*Digest*, para. 214-5) and domestic workers (*Digest*, para. 267). The CFA has observed that 'legislation should be made flexible so as to permit the organizations to elect their leaders freely and without hindrance, and to permit foreign workers access to trade union posts, at least after a reasonable period of residence in the host country' (*Digest*, para. 420).

The CFA has also noted that 'the establishment of a trade union may be considerably hindered, or even rendered impossible, when legislation fixes the minimum number of members of a trade union at obviously too high a figure, as is the case, for example, where legislation requires that a union must have at least 50 founder members' (*Digest*, para. 284), and 'the legal requirement laid down in the Labour Code for a minimum of 30 workers to establish a trade union should be reduced in order not to hinder the establishment of trade unions at enterprises, especially taking into account the very significant proportion of small enterprises in the country' (*Digest*, para. 286).

Despite commitments made in both previous Reviews, Saudi Arabia has not yet ratified the main international instruments on freedom of association. This means that law and practice in the Kingdom is not properly scrutinized by international monitoring systems, and leads to a shortage of clear, independent information. Limited contacts with UN supervisory systems and rapporteurs²⁴ compound this problematic situation. In 2017 a UN Special Rapporteur noted that 'at present, despite the 2015 non-government organization (NGO) law, there is almost no meaningful engagement with civil society or human rights groups'²⁵ further emphasizing that 'there are no NGOs in Saudi Arabia that are allowed to work on human rights'²⁶. Similarly, due to a lack of legislation and a repressive climate for informal activism there are no trade unions functioning in the country. Each of these factors limited the availability of clear information.

(11) Recommendations

The International Centre for Trade Union Rights calls on Saudi Arabia to take the following steps to improve human rights compliance:

²³ http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_178672.pdf

²⁴ Report of the Special Rapporteur on extreme poverty and human rights on his mission to Saudi Arabia, Human Rights Council, Thirty-fifth session, 6-23 June 2017, A/HRC/35/26/Add.3, p3

²⁵ *ibid.*, p10

²⁶ *ibid.*, p14

International treaties and agencies

- Ratify the International Covenant on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966)
- ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)
- Ratify ILO Conventions No.98 (Right to Organise and Collective Bargaining (1949) and No.87 (Freedom of Association and Protection of the Right to Organise (1948)
- Ratify ILO Convention No. 97 (Migration for Employment Convention (Revised) (1949), and Convention No. 143 (Migrant workers (Supplementary provisions) (1975)
- Ratify ILO Convention No. 189 on Decent Work for Domestic Workers (2011)
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Constitutional reform

- Introduce specific recognition and protection for the principles of freedom of assembly and association to the Basic Rule of Governance (Basic Law)

Improve freedom of association

- Establish a trade union law in compliance with ILO standards
- Amend Article 20 of the Labour and Workmen Law to remove obstacles to trade union activities
- Under the Works Committees Regulations, reduce the threshold number of employees for forming an organisation
- Under the Works Committees Regulations, remove requirements that employees be Saudi citizens to meet the qualifying threshold to be members of Works Committees
- Under the Works Committees Regulations, remove provisions permitting the Minister of Labour and Social Affairs and company management to attend committee meetings, and requiring that minutes be submitted to management and to the Minister

Migrant workers

- Legislate to enable migrant workers to exercise full freedom of association and to join and to seek leadership positions in associations, committees, and unions
- Continue the process of law reform and support for law enforcement to ensure that migrant workers enjoy full protection of their civil and political and social, economic, and cultural rights

Domestic workers

- Improve enforcement of legislation to protect the rights of domestic workers
- Provide domestic workers with full access to information, and effective legal and advisory services

Consultation

Plan and implement the above reforms in full consultation with national, regional and international workers' organisations, specifically:

- The Labour Committees
- ITUC
- ILO, particularly its Bureau for Workers' Activities (ACTRAV)