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JOINT UPR SUBMISSION SAUDI ARABIA

To whom it may concern,

The International Trade Union Confederation (ITUC), representing 207 million workers in 163 countries, and the Arab Trade Union Confederation (ATUC) jointly file this submission to the Universal Periodic Review of the Kingdom of Saudi Arabia. The primary mission of the ITUC and ATUC is the promotion of workers' rights and interests. Our main areas of activity include human and labour rights; economy, society and the workplace; equality and non-discrimination; and international solidarity. The ITUC has general consultative status with the ECOSOC.

Yours sincerely,



Mustapha Tlili, ATUC General Secretary



Sharan Burrow, ITUC General Secretary

JOINT SUBMISSION

Summary

This report examines the conditions and challenges that both national and foreign workers face in Saudi Arabia. Saudi Arabia has taken inadequate steps in recent years, and significant action remains necessary in order for the country to be in compliance with international human rights norms. This report looks primarily at the visa sponsorship system, the state of freedom of association, and the practical challenges that workers face in Saudi Arabia.

Saudi Arabia hosts nearly 11 million migrant workers from a hundred countries including Indonesia, Philippines, Sri Lanka, Nepal, and Ethiopia. While these workers are labeled “guest workers,” the conditions they are exposed to and treatment they receive from the employers are nothing like what a guest would expect from a host. Domestic workers who are hidden behind closed doors in private homes often face physical and psychological abuse, restriction of movement, and sexual violence by the employers. The visa sponsorship, or the *kafala* system that binds the worker’s immigration status to the employer, creates systematic exploitation and endangering of workers. Due to the employers’ control over the employees’ mobility, unfair contract terms, and manipulation by the recruiting agencies, migrant workers are forced into slavery-like working conditions without the means for redress and assistance.

Freedom of Association does not exist in Saudi Arabia. Trade unions are completely barred in the country, and organising is criminalised. Strikes, demonstrations, and advocacy organisations are also banned. There is no minimum wage in the country, and collective bargaining for wages and conditions is also barred. While the government has allowed for the creation of ‘worker committees,’ provided with the role of making recommendations on workplace conditions, the restrictions on the formation of these organisations severely undermine it. Moreover, employers wield too much power and potential control, undermining any independence or true Freedom of Association.

Workers continue to suffer insurmountable obstacles in the realisation of fundamental labor rights. The nation’s recent reforms are weak; do little to overcome the glaring violations of international law. This is clear in the continued, widespread and severe discrimination, both through law and in practice, against women, minorities, and migrant workers in the country. Migrant workers, especially domestic workers, face abuse at every level as the few mechanisms created for their protection have not borne their intended effects. The complete lack of collective labour rights, coupled with the *kafala* system and its attendant consequences have facilitated and entrenched conditions mirroring that of forced labour.

International Obligations

The fundamental rights referenced in this report are firmly established in international law. Although Saudi Arabia has not ratified the ICCPR or the ICESCR, Saudi Arabia has ratified a number of ILO Conventions, including: Convention 29 (Forced Labor), Convention 105 (Abolition of Forced Labor), Convention 100 (Equal Remuneration), Convention 111 (Discrimination in Employment and Occupation), Convention 138 (Minimum Age), and Convention 182 (Worst Forms of Child Labor). Saudi Arabia has also ratified the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Slavery Convention, and the Supplementary Convention on the Abolition of Slavery.

The Kafala System

The *kafala* system binds migrant worker's immigration status to his or her sponsor (*kafeel*) for a contract period, usually of two years. In a relationship bound by the *kafala* system, the sponsor is responsible for the worker's resident status and livelihood. Moreover, the sponsor has control over the worker's ability to transfer to another employer, or to return to his or her own country. For these reasons, the amount of power that the employer exerts over the worker resembles a slavery-like ownership of the worker and facilitates serious exploitation of workers.

1. Restriction of Movement and Return to Home Country

Migrant workers' freedom of movement is still severely restricted, despite the Government's contention that the *kafala* system has been abolished. Under the Council of Ministers Decision No. 310, domestic workers cannot refuse work absent a "legitimate" reason, a determination subject to the country's lengthy immigration and justice system, which is already largely inaccessible. No law otherwise provides domestic workers with the right to transfer work or return home without their employer's consent, and therefore the barriers to freedom of movement remain functionally equivalent to those of the *kafala* system.

When a migrant worker is able to transfer to another employer, the transfer is often completed in an opaque way and without a simultaneous transfer of a residency permit (*iqama*). Due to this, the government and civil society organisations can easily lose track of migrant workers' whereabouts, exposing these workers to more vulnerable conditions and even to human trafficking.

Often the employers confiscate the passports of the migrant workers, with which they can blackmail migrant workers so that they will not exercise their right to complain or to demand their salaries. For example, the United Seemac Co. (Seemac), a medium-sized construction operator with a workforce predominantly consisting of migrant workers, used such blackmailing on its employees. Seemac retained the workers' passports, requiring the workers to sign a false statement that they received all of their salaries if they wanted their passports back.

Additionally, migrant domestic workers face physical confinement and restriction of mobility. Employers often times confiscate their passports claiming they fear that migrant domestic workers, almost entirely comprised of women, would run away with a foreigner and become pregnant. This assertion is based on a patriarchal notion that specifically restricts the female workers' movement due to their gender. Along with the passports, the employers also confiscate the workers' residency permits, or fail to obtain them in the first place, severely restricting the workers' mobility and forcing them into undocumented, unclear status. Some workers also report extreme physical confinement in the house, sexual abuse, verbal abuse and intimidation, starvation, and restriction from communicating with their own families.

Another serious impediment in migrant workers' right to movement would be a requirement of an "exit visa" when they wish to exit the country. In order for a worker to exit Saudi Arabia before a contract ends, the worker needs to attain both an exit visa from the employer and a court order to do so. An exit can be "legalised" once the employer signs a consent form and the Ministry of Foreign Affairs stamps it, and this process gives the employers an unreasonable amount of power over migrant workers' freedom of movement and a right to return to their home countries. It is commonplace for employers to require workers to sign a quitclaim prior to giving consent for exit.

The legal obstacles that the workers face transgress Article 13 of the Universal Declaration of Human Rights (UDHR), which articulates that everyone has rights to "freedom of movement and residence within the borders of each state" and to "leave any country, including [their] own, and to return to [their] country." The *kafala* system and the requirements imposed for the exit visa deny migrant workers of these important rights. Moreover, the Government has failed to protect migrant workers by failing to investigate and punish employers who unlawfully confiscated passports and physically confined in the houses, leading to a serious restriction of their mobility. While there have been measures to stop the employers' confiscation of passports from their employees, many migrant workers have still reported that their employers retained their passports.

2. Slavery by Another Name

According to Article 1 of the Slavery Convention, practice of slavery is found where a person exercises “powers attaching to the right of ownership” over another person. Slavery is internationally illegal, both by the Slavery Convention and by customary norm, and it has also been officially banned in Saudi Arabia since 1964. Yet many of the conditions and challenges that migrant workers face once they enter into employment resembles that of slavery.

Recruitment agencies charge high recruitment fees to the employers for employing migrant workers, which the employers would often use as a justification for restricting the workers’ movement and withholding, even deducting, their wages. This so-called “financial investment” that the employers make, along with the *kafala* system that grants a power to govern the workers’ ability to exit the country, has given some employers something akin to ownership over migrant workers. Thus, the employers can justify their actions in isolating and abusing migrant workers, forcing them into a slavery-like relationship and conditions.

Moreover, recruitment agencies often do not provide migrant workers with any specific information about the work or the contract between the employers and the workers. Thus, the employers can easily manipulate and abuse the employees who are not aware of the terms in the contract. This systematically endangers workers, subjecting them to a range of inhumane treatment including sexual assault. These conditions have the concomitant impact of causing psychological harm as well. For example, some migrant domestic workers have referred to their employers as “master” or “owner,” and have described their recruitment experience as being “sold.” As a consular officer from a labour-sending country explained, often the employers would treat their employees “like chattel, slaves, like cattle.” One worker, Ms. CD (pseudonym), stated that in the eyes of the employers “[they] are gods and you are their slaves.” Ms. CD was extremely underpaid, underfed, and despite the original offer to work as a hospital nurse, was forced to work in homecare. Despite her consistent complaints to her supervisor, she was never transferred to a job she initially signed up for. Ms. CD had to endure physical injuries and sleep deprivation. Her employer had placed a security camera in her room and would knock on her door demanding that she be working all the time instead of sleeping. After over a year of attempting to escape, Ms. CD was finally allowed to return to the Philippines, but not before signing a quitclaim.

On top of the inhumane conditions, sexual violence against female migrant workers is widespread within the visa sponsor relationships. This violence is perpetrated not only by employers but also by the police and state agents, as the following case illustrates. Ms. AB (pseudonym), originally from the Philippines, was employed as a domestic worker. Her employer abused her and other workers by hitting their hands and throwing food at them. One day, her employer said that she wanted her to be a surrogate mother--and that if she agreed, the employer would let her return to the Philippines as she wished. When she refused, her employer locked her in a room for a week without anything to eat. On another occasion, her employer’s relative entered her room and raped her. Eventually, Ms. AB sought shelter by escaping with the help of a friend, but the situation did not get better for her. Out in the street and without documentation, Ms. AB was stopped by the police, brought to the station and raped by three of the officers. With nowhere to turn, her employer gave her an ultimatum: Ms. AB would either sign a quitclaim and be allowed to go back to the Philippines, or else her employer would find a way to get her back into jail. When Ms. AB went to the Philippine Embassy in her last attempt to escape, she was told she could go home only if she would first have sex with the embassy officials, in what is now known as the “sex-for-flight” scheme.

3. Employers’ Impunity for Grave Violations of Fundamental Rights

In the face of abusive and inhumane treatment, migrant workers see an absence of protective legal mechanisms and means for proper redress. Employers go unpunished for their atrocious violation of migrant workers’ rights. In fact, employers are very rarely prosecuted for their abuse of migrant workers, while migrant workers more often face criminal charges for reasons out of their control. In 2011, most of the 4,550 Indonesian migrant workers who were deported from Saudi Arabia were female domestic workers who had run away from their employers due to physical and sexual abuse, or non-payment of wages.

Migrant workers face criminal charges when they run away from their original employers as a result of abuse, because of their binding contract with the employers under the *kafala* system. If the worker breaches the contract before its end, the sponsoring employer can file a case of abscondment (a criminal offense) with the

police, and the worker will either face deportation or be liable for the initial recruitment fees, limiting her chance to receive proper support as a victim. Even when the workers seek legal redress for violations of their rights, the cases are often dismissed or delayed due to a lack of evidence, language barrier, and slow judicial process. While the penal code provides for punishment in cases of forced labour, it is limited to negligible fines rather than more appropriate criminal sanctions. In the domestic context, employers can easily hide evidence of abuse because labour inspectors are usually not allowed in houses and have no way of investigating the abusive living and working conditions. Moreover, labour inspectors have largely focused on immigration issues and neglected issues such as working hours, wages, health and safety, child labour, and forced labour.

Employers often take advantage of the fact that these migrant workers do not have access or are not familiar with the terms of the contract. Sometimes, due to the fact that migrant workers do not speak Arabic, the employers would change the crucial terms in the employment contract, forcing the workers to agree to unfair conditions. Combining the unfair contract terms with the systematic exploitation of the *kafala* system, the worker is denied means of redress, leaving the sponsor with no accountability for abusive actions that violate the worker's fundamental rights.

Freedom of Association

Workers in Saudi Arabia do not have Freedom of Association. In addition to being denied an array of fundamental rights, the few rights that do exist are not meaningfully protected. The Labour Code fails to provide for collective bargaining, and employer discretion in setting terms and conditions is paramount. Freedom of Association is most compromised by the fact that trade unions are completely barred. While some workers, under limited conditions, are allowed to form worker committees, these organisations are not free from interference, nor given the liberty to organise themselves independently, and they can be dissolved by administrative authority. The limited protections that do exist rarely extend to foreign workers, and domestic workers are completely excluded from the Labour Code. These factors entrench the severe asymmetry between employer and employee, creating conditions that range from precarious to forced labour.

1. Trade Unions Barred, Worker Committees as Composed are No Substitute

Trade unions are effectively banned in Saudi Arabia, and workers who try to form a union can be dismissed, imprisoned or, in the case of migrant workers, deported. The worker committee, provided for in 2002, is the only form of worker organisation. The number of worker committees in the country remains unclear, though a 2005 survey revealed only 12 out of 13,553 business organisations had formed such committees. While the Government may point to the fact that such committees have participated in ILO procedures as a legitimising factor, several considerations make clear that the effectiveness of these organisations pale in comparison to trade unions. Moreover, several sources indicate that the Government understands the creation of such committees to rest on the discretion of the employer. In February of 2004, Deputy Minister of Labour and Social Affairs Ahmad al-Mansour was quoted as saying that the Ministry "will not force companies to form workers' committees." In another instance, Dr. Abdullah S. Dahlan stated at the ILO: "We invite banks, industrial and commercial firms, among others, to come and make the hard decision--if it is a hard decision for them--to establish their own workers' committees." These committees organised by the employer do virtually nothing to advance Freedom of Association, and more likely severely undermine it.

The competency of worker committees is limited to making recommendations on working conditions, health and safety standards, productivity, and managing the funds collected through the fines imposed on workers. Worker committees can only be created in workplaces with more than 100 workers, may only comprise of Saudi nationals, and membership must be approved by the Government. Membership is limited to 3-9 workers, who must be 25 years of age and have at least two years of work experience with the company. Both the Ministry of Labour and Social Affairs and the company's management have the right to send a representative to committee meetings. Moreover, the meetings must take place in the company, and the minutes of these meetings must be sent to the company's management. The Ministry of Labour and Social

Affairs also maintains the right to dissolve a worker committee for violating regulations or threatening public security. Further entrenching the asymmetry between employer and employee are employers' organisations, which, unlike worker committees, are independent bodies in the country. These factors completely undermine all power and legitimacy of these committees, and with it any measure of Freedom of Association. Lastly, the exclusion of foreign workers from participating in worker committees is a form of discrimination that precludes the majority of the workforce from participating in collective employee organisation.

2. Collective Bargaining, Strikes, and Demonstrations are Barred

Despite the ostensible role of worker committees to make recommendations over working conditions, collective bargaining is virtually nonexistent in Saudi Arabia. While Article 115 of the Labour Code provides that the Council of Ministers has the right to determine minimum wages, there is no national minimum wage and wages are largely left to the employer's discretion. The Labour Code does not protect a foreign worker's right to equal pay, as Article 80--the sole article addressing the issue--only prevents a foreign worker from being paid more than a Saudi national of equal qualifications. Article 119 of the Labour Code allows an employer to fine workers directly up to five day's pay for each violation of the employer's disciplinary policy, which, in workplaces of twenty or more employees, may be drawn up by the employer under Article 125. Foreign workers are taken advantage of due to the fact that the contracts are written in Arabic, and even where a copy is made in another language the Arabic version prevails. Some workers have been able to recognise their contractual rights and stand up for them only after becoming proficient in Arabic.

Freedom of Association is further undermined by the fact that strikes, public demonstrations, and advocacy organisations are illegal. NGOs in Saudi Arabia are severely repressed, and human rights defenders have been criminalised.

The abhorrent labour conditions of so many workers in Saudi Arabia are inextricably linked to the absence of their fundamental rights. The minimal protections that do exist are neither adequately enforced nor built to provide meaningful redress. The absolute discretion of the employer over terms and conditions of employment foster the conditions that range from precariousness to forced labor. The vulnerability of foreign workers--who comprise the majority of the workforce--is exacerbated by these factors. The asymmetry of power between employer and employee cannot be meaningfully ameliorated without substantial changes to the nation's labor law, including provisions that assure the fundamental right of Freedom of Association and collective bargaining rights.

Challenges Workers Face in Practice

Despite the proliferation of bilateral agreements, and new government programs, workers continue to be without meaningful protection from the gravest violations of human rights. This is most clear for migrant workers, who face abusive employer practices, such as the retention of passports, non-payment of wages, indecent conditions of work, deprivation of liberty and physical and sexual abuse. The nation's judiciary and enforcement mechanisms have failed to provide victims of abuses meaningful redress. Where the judiciary does act, employers have failed to comply with orders. Severe and widespread discrimination against women continues both in law and practice, affecting women's employment in direct and indirect ways. Discrimination is also pronounced against workers from the nation's southern tribes, black Saudi nationals, and foreign workers. Foreign workers are extremely restricted both in law and practice from exercising fundamental rights at work. Moreover, the Kingdom's recent expulsion campaigns against undocumented migrants have targeted particular nationalities, and have been carried out with violence and impunity. Illegal recruitment and fee practices create conditions of bonded labor for many foreign workers, and human trafficking, including of children, continues.

1. The Shortcomings of Recent Initiatives

The government's attempts to ameliorate the challenges faced by workers have largely failed. While some reforms have increased workforce opportunities for women, they still have an incredibly low workforce participation rate, are still limited in the jobs available, are often still segregated in the workplace, and, despite its reform, continue to be burdened by the practice of guardianship approval in employment. The recent labour law reforms implemented through Ministerial Decision No. 1982 introduced or raised fines for employer violations, and included prohibitions on confiscating migrant workers' passports, failing to pay salaries on time, and failing to provide copies of contracts to employees. Moreover, domestic workers are still excluded from the Labour Law, they do not benefit from these reforms. While bilateral agreements have proliferated as a means of protecting migrant workers, these are failing in practice, often as a result of the unequal bargaining power between labour-receiving and labour-sending countries. The Special Rapporteur on extreme poverty and human rights has noted that such agreements cannot make up for the domestic enforcement gap, as foreign countries are not well placed to enforce those bilateral agreements. Moreover, the plethora of agreements contributes to differential treatment of workers based on nationality.

Government initiatives like the domestic worker hotline and shelters for domestic workers facing abuse have not been effective. While the Ministry of Labour and Social Development gives domestic workers free SIM cards upon arrival in the Kingdom, many employers confiscate them. Nonetheless, the new Government hotline had received 165,095 calls from domestic workers. Disappointingly, however, the Ministry could provide no details of how many of those calls were from female domestic workers, the nature of the complaints, the number of cases resulting in enforcement actions, or the number of employers sanctioned for violating the regulations when asked by the Special Rapporteur on extreme poverty and human rights. The Kingdom has initiated government-run shelters to serve a similar function to those run by embassies. The Ministry of Labour and Social Development has stated that nine shelters are in place, and that in 2015-2016 some 7,226 women stayed for an average of 15 days. However, in stark contradiction with several other studies, the Government stated that only a small minority of those women had complaints about abuse by their employer or the non-payment of salaries. The Special Rapporteur on extreme poverty and human rights noted that in the future, female domestic workers will be much worse off in government-run shelters than in those run by embassies, unless the former will provide essential advisory, counseling and other services, and the Government is prepared to be more transparent about the situation, which is unlikely in the short term and even less so if the centers are privatised, as has been suggested.

2. Practical Challenges Faced by Women

Saudi Arabia still has no sexual harassment law in place (laws criminalising domestic violence were not in place until 2013). While the guardianship system has undergone some changes in which women are no longer required to have their guardian's permission to gain employment, employers still insist on this requirement in practice. Despite the government's obligations under the ILO Convention on Equal Remuneration, there is no regulation requiring equal pay for equal work, and in the private sector the average monthly wage of Saudi women workers was 58 percent of the average of monthly wage of Saudi men. Articles 160 and 161 of the Labour Code prohibits women from working in hazardous workplaces or at night, and their workplaces are often segregated. Migrant domestic workers face challenges in getting legal aid when their employers mistreat them, and even in cases of severe physical abuse law enforcers have not handled such cases absent international media and pressure campaigns. Moreover, many instances of rape, sexual abuse, and sexual harassment go unreported by victims due to either the belief that the law will not protect them, or the fear that they may face criminal counter charges. An employer may raise criminal counter charges to retaliate in other cases too, such as where a worker demands payment, or attempts to leave. The threat of criminal counter charges is very real, as the common charges are ambiguous and thus overly broad (e.g., witchcraft, or immoral behavior) and the evidentiary burden that women must meet in court is discriminatorily high. The effect of such failures of the judiciary is that women who seek redress are often victimised anew.

3. Practical Challenges Faced by Minorities and Migrant Workers

Discrimination based on race, disability, national origin and sexual orientation pose substantial direct and indirect limits on employment. Despite the Kingdom's obligation under the Convention for the Elimination of

Racial Discrimination (CERD), such discrimination persists in the country against Saudis with African lineage, based on tribal or non-tribal lineage, against foreign workers, and against the Shia minority. The government's 'Saudisation' initiative has included a series of massive deportation campaigns aimed at removing 'illegal workers.' Some campaigns have targeted specific nationalities, as indicated by a spokesperson for the Riyadh police who stated that the government was spending some 1 million Saudi Ryals daily to detain 'illegal Ethiopians.' Migrant workers who face detention and deportation endure serious abuses, including attacks by security forces, inadequate detention conditions, and abuse in detention prior to deportation. Ethiopian immigrants have stated on multiple occasions that policemen armed with machetes and guns have attacked migrant workers in their homes, and that firearms were discharged and swords were used without provocation. In one event, Saudi policemen entered a home and forcibly removed all of the men, after which they gang-raped a woman inside.

Conclusion and Recommendations

The operation of *kafala* sponsorship system continues to deny migrant workers' fundamental human rights. While many of these violations of fundamental human rights in the workplace are perpetrated by private actors, most notably employers, Saudi Arabia is responsible for the institutional structure that facilitates and perpetuates them as well as the failure to provide redress to the victims. More must be done to end the climate of impunity for these serious violations.

1. The Government should ratify ILO Conventions 87 and 98 on Freedom of Association and Collective Bargaining, and ensure effective implementation and enforcement of the rights therein.
2. Ratify the ILO Protocol on Convention 29 and implement criminal sanctions beyond fines in cases of forced labour, and ensure that victims have access to appropriate and effective remedies irrespective of their legal status.
3. Take immediate steps to effectively provide migrant workers with the freedom to change employers, particularly by removing employer discretion from the exit visa requirement, to eliminate the restriction of movement, including the exit permit requirement, and infringement of fundamental rights on migrant workers.
4. Take immediate steps to eliminate discrimination against ethnic, racial and religious minorities and foreign workers in all aspects of employment. The Government should adopt legislation specifically prohibiting employment discrimination on all of these bases, and ensure effective means of redress for victims.
5. Increase women's access to the labour market by eliminating all restrictions on women's employment.
6. Reform the Saudi Labour Code to include domestic workers and increase resources and enforcement of existing support mechanisms. Include private homes within the responsibility of labour inspectors.
7. Increase resources for the protection of foreign workers, specifically toward strengthening mechanisms for reporting violations, and toward providing legal assistance and shelter for workers who have been subjected to abuse and harassment.
8. Take measures to ensure that there is not a climate of impunity for workplace offenses that rise to the level of criminal misconduct by employers and state actors. In doing so the Government should take further steps to comply with ILO Convention 81, specifically by mandating that labour inspectors focus on the enforcement of working conditions.