

Universal Periodic Review Submission

Country: The United Arab Emirates
Organisation: Mafiwasta.

Information on Submitting Organisation

Mafiwasta is an organisation dedicated to the improvement of migrant workers' rights in the UAE. It was founded in 2005 by contractors working in the oil industry in Abu Dhabi as a means of drawing international attention to the plight of the country's migrant workers. Mafiwasta has previously submitted complaints to the International Labour Organisation and Mafiwasta founder and co-director Nick McGeehan is, along with Dr David Keane of Brunel University, the co-author of the only authoritative legal paper to address the issue.¹

Executive Summary

Since the first oil flowed from the Umm Shaif offshore field in 1962, the United Arab Emirates (UAE), comprising 7 semi-autonomous Emirates, has seen phenomenal economic growth. The UAE had an OPEC quota of 2.53 million barrels per day in May 2007, making it the third largest producer of oil and gas in the world, after Saudi Arabia and Iran respectively. Exact figures are not available, but according to *Human Rights Watch*, "95 percent of the UAE's labor pool, some 2.7 million workers, are migrants". Thus millions of south Asians currently reside in the country as **migrant workers**, principally Indians, Pakistanis, Bangladeshis, Nepalese and Sri Lankans. Exploitation of these workers, ranging from non-payment of wages to physical abuse, is not simply commonplace or widespread; it is systematic. The UAE's labour laws are wholly biased in favour of employers and the mechanisms used to enforce the laws are completely ineffective. The government agency in charge, the Ministry of Labour and Social Affairs, has neither the ability nor the willingness to execute its brief. Furthermore, there is evidence to suggest that the government as a whole, far from acting to protect workers, is an active participant in the abuse, profiting directly from a system which keeps a large migrant workforce in conditions of **debt bondage**. While the state's human rights obligations are limited by the fact that it has not signed the International Convention on the Protection of Migrant Workers and their Families 1993, there are violations of international human rights law taking place. The UAE, despite ratifying the International Convention on the Elimination of All Forms of Racial Discrimination 1965, is home to **systematic racial discrimination** against its south Asian non-citizens. Although the UAE is also in violation of its obligations under the terms of the Convention on the Elimination of Discrimination Against Women (the case of the UAE's **domestic workers** is also a pressing concern) and the Convention on the Rights of the Child, this submission will address this issue as one of racial discrimination, outlining the most egregious abuses and the level of state responsibility for those abuses.

1. Introduction

The UAE acceded to the International Convention on the Elimination of Racial Discrimination 1965 on 20 June 1974. *Mafiwasta* submit that violations of migrant workers' rights continue to raise serious concerns, and question the UAE's compliance with its Convention obligations in a number of areas. It should be pointed out that while there is *de jure*

¹ Keane D. and McGeehan N. *Enforcing Migrant Workers' Rights in the UAE* (February 2008) International Journal on Minority and Group Rights

discrimination against non-nationals and non-Arabs in the UAE's 1980 Federal Law on the Regulation of Labour Relations², it is the more serious issue of the *de facto* discrimination suffered by unskilled south Asian migrants which is the primary area of concern. Using CERD General Recommendation XXX on discrimination against non-citizens as a template, seven instances of discrimination against non-citizens in the UAE will be highlighted: housing, access to justice, expulsion and deportation of citizens, passport retention, debt bondage, and domestic workers.

2. Housing

Reports of appalling housing conditions for migrant workers in the UAE, who reside in segregated labour camps, are widespread. Sometimes this is acknowledged by the UAE government. For example, the *Gulf News* quotes Rajeh Al Fahel, Head of the Health Education Section at the Ministry of Health, who stated he was "shocked at the conditions the men in workers accommodation...live in". A further report asserts that "cramped living conditions and poor wages make migrant workers 'highly susceptible' to communicable diseases which often develop into serious health problems"; the reference to a health risk was in the context of "the Al Mussafah labour accommodation area where an estimated 12,000 workers often share cramped rooms containing up to 20 beds." The UAE government insists that accommodation is the responsibility of companies. This is in clear violation of the government's obligations under article 5 of the Convention, which holds the state responsible for ensuring the right to housing is granted without racial discrimination.

3. Administration of Justice

Workers wishing to file a complaint frequently encounter difficulties. Aggrieved employees (who are in the majority of South Asian origin) must submit a written complaint in either Arabic or English, the two official languages of the UAE, to the Ministry of Labour and to their employer. Furthermore, the *Gulf News* reports how on 23 September 2005, thirty-eight South Asians were prevented from making a complaint because they could not afford to pay a 20dhs typing charge. The men had instead brought a handwritten complaint, which was rejected. In addition, Ministry staff informed the men that they would each have to submit an individual complaint (and each incur an individual charge), when in fact labour law allows for the submission of joint complaints. The officials involved either did not know the law or deliberately broke the law in order to obstruct a complaint. The men, whose grievance was that they had not been paid for 5 months, were ultimately unable to lodge an official complaint. There is a general reluctance on behalf of workers to make a complaint. One Ministry official was quoted as saying: "we only recognize it [abuses] when there's a complaint, but there's rarely a complaint. Workers are too scared or they've paid money for their visa and they have to pay that back". The closing of access to justice for migrant workers in the UAE represents an infringement of article 5(a) and is a racially discriminatory practice in violation of the UAE's Convention obligations.

4. Expulsion and Deportation of Citizens

On 11 March 2007, local press reported that 3,500 workers from ETA Ascon, had stopped work, demanding pay rises and improved conditions. According to a company spokesman, it was a peaceful protest which ended with the employees returning to work. The

² Article 10 Chapter 2, Federal Law No. 8 for 1980 on Regulation of Labour Relations states "Where National workers are not available, preference in employment shall be given to: 1) workers of other Arab nationalities 2) workers of other nationalities".

following day, the same newspaper reported that 200 workers of the same company were to be deported, following riots in which a company bus was damaged and a manager was attacked. No reason was given for the sudden outbreak of violence but the report did contain details of the offer ETA Ascon made to its employees which provides a clue as to why the protest turned violent: a pay increase of 2 dirhams (\$0.55) per day and a return air fare home every two years. The paper quoted Abdullah Saeed Bin Suloom, head of the labour inspection unit at the Labour Ministry and member of the Permanent Committee of Labour Affairs in Dubai (PCLAD), who was in negotiations with the workers and the company: "Although the workers' claims are illegal, we agreed with the company's raising their salaries before the end of the contract period." By the 15 March 2007, a mere three days after the reported riot, 65 workers had already been deported. No reports were made of arrests or trials or convictions, or due process of any kind. The Minister of Labour ordered that 250 work permits be issued to the company free of charge to replace the deported workers. He stated: "[T]his is being done to compensate the company", who claimed to have lost 4 million dirhams as a result of the protest. In October 2007, a larger strike involving thousands rather than hundreds of workers led to a senior ministry official announcing publicly that 4000 workers would be deported. "The appropriate bodies have been contacted to carry out the necessary measures [for their deportation]," said Humaid bin Deemas. The status of these workers remains unclear.

5. Passport Retention

In 2001, a Dubai Court of Cassation stated that "it is not permitted for an employer to confiscate the passport of an employee and prevent him from his natural right to travel and move whatever the nature of the relationship that ties them together."³ The retention of passports is nonetheless commonplace in the UAE. All of the migrant workers interviewed by *Human Rights Watch* had had their passports confiscated. Despite the 2001 decision, there appears to be confusion in the judiciary over the illegality of the confiscation of migrant workers' passports. In November 2007, a Dubai court tried a woman for the crime of stealing her own passport from her employer. The Eritrean national claimed she stole the passport because she wanted to fly home. The domestic worker was also accused of stealing jewellery and cash but the public prosecution's insistence on including the 'theft' of the passport as part of the alleged crime, in direct contradiction of the Court of Cassation's verdict six years earlier, suggests that there is not so much a disregard for the law as institutional confusion and misunderstanding. The Government, unlike sections of the judiciary, is fully aware of the illegality of the practice but, in the words of Human Rights Watch, 'has not taken any steps to put an end to it', in contravention of paragraph 34 of General Recommendation XXX.

6. Labour and Employment Rights

The UAE has not signed core 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. These core Conventions are described as being "among the founding principles of the ILO", and form part of the most fundamental international labour law requirements. Trade unions do not exist in the UAE and strikes and lock-outs are expressly banned.⁴ The prohibition applies to citizens as well as non-citizens; however, its *de facto* effect is to discriminate solely against non-citizens – citizens have little need of trade union representation since the 1980 labour law states that 'work is an established right of nationals'. This right is included in the provisions of the draft labour law of 2007. Unlike citizens, migrant workers (who

³ Ruling by Dubai Court of Cassation, Case # 268 (2001), October 27, 2001.

⁴ Article 14, Ministerial Resolution No. 307 (2003).

comprise 95% of the workforce) can be summarily dismissed if, for instance, an employer does not wish to pay wages or end of service contract benefits. The absence of trade union legislation underpins the entire system of worker exploitation and is compounded by the limited access to domestic avenues of legal redress. The UAE first promised the introduction of trade unions in July 2004, although the rhetoric of the government contrasts sharply with the reality. The UAE 's repeated false promises on the introduction of trade unions reflect its thus far well-founded belief that the concerns of the international community can be assuaged with promises and initiatives.

7. Debt Bondage

There is strong evidence to suggest that debt bondage is widespread in the United Arab Emirates and that the government is failing to meet its obligations, outlined in Section VII, paragraph 34 of General Recommendation XXX, to “take effective measures to prevent and redress the problem of debt bondage”. A *Human Rights Watch* report substantiates the view that debt bondage is endemic in the UAE and questions the government’s willingness to tackle the problem. The practice of charging migrant workers for their recruitment, rendering them in debt for several years, is widespread. Yet:

[The UAE Government] has made little effort to punish recruiting agents who persist in making these charges, or the employers who are complicit, nor has it acted against the circumvention of the law by UAE employers and recruitment agents who ‘outsource’ charging workers fees to recruitment agents located in source countries. The federal government’s effort to counter employers’ withholding of wages has been sporadic, at best.⁵

Under international law, debt bondage is classed as a practice similar to slavery⁶ and slavery’s status as a norm of *jus cogens* burdens states with both positive and negative obligations. Not only is the State failing to meet its obligations to stop debt bondage, it is an active participant in the abuse, and one of the principal beneficiaries. As *Human Rights Watch* point out, the country’s labour laws are ostensibly strong, but the lack of proper enforcement mechanisms and the proscription of trade unions render those laws obsolete, thus underpinning an exploitative labour market which leaves its unskilled workers open to systematic abuse by private individuals. It is important to stress that the line between the private and public sector is so muddled as to render it non-existent. In Dubai, this is the situation to such an extent that the federal government of Dubai is regularly credited with making takeover bids for private enterprises, and openly exhorts its prominent role in the booming construction business. In October 2005, the *Gulf News* reported that the value of construction contracts in the Gulf was \$221.4 billion and that the vast majority of these contracts were in the hands of “government entities.”⁷ The UAE’s failure to include provisions on freedom of association and collective bargaining in its draft labour law of 2005, despite repeated promises to introduce trade union legislation, provides further proof of a government aware of a problem but unwilling to act, because to do so would have serious financial repercussions for the powerful families who run both the country and its most profitable enterprises.

⁵ Human Rights Watch, ‘Building Towers, Cheating Workers’ November 2006

⁶ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3, entered into force 30 April 1957.

⁷ *Gulf News*, ‘Construction Grows \$4b a Week’, 20 October 2005. Figures used in the report are taken from the *Middle East Economic Digest*. Available at: <http://archive.gulfnews.com/articles/05/10/20/187788.html>

8. Domestic Workers

The UAE opened its draft labour law to public review on 5 February 2007. *Human Rights Watch* issued a response which stated in its introduction that: “Unfortunately, major omissions and provisions in violation of well-established international labour relations plague the draft law.”⁸ Domestic workers are excluded from the provisions of the draft law despite the fact, as outlined by Amnesty International in a 2005 report on the Gulf states, that they face multiple abuses and are “often discriminated against, exploited, even abandoned in their host countries”.⁹ The scarcity of reliable data on the migrant population is of particular cause for concern where domestic workers are concerned. No data on the demographic composition of the population is publicly available, indeed it is highly doubtful that the relevant government bodies are in possession of the relevant data that would facilitate the UAE meeting its obligations under CERD General Recommendation 9 which states that States Parties should “endeavour to include in their reports under Article 9 relevant information on the demographic composition of the population referred to in the provisions of Article 1 of the Convention.” A recent report into domestic workers in neighbouring Saudi Arabia found that “employers often face no punishment for committing abuses including months or years of unpaid wages, forced confinement, and physical and sexual violence, while some domestic workers face imprisonment or lashings for spurious charges of theft, adultery, or “witchcraft.””¹⁰ Domestic workers in the UAE come from the same south Asian countries, are denied access to justice, and work under the ‘kafala’ sponsorship system whereby they may not change employers without permission. Although no data exists on the UAE’s domestic workers *Mafiwasta* expresses concern that conditions in the UAE are equally dismal.

9. Conclusion

The involvement of the government in the system of exploitation is the reason why domestic UAE labour laws will never be effective. The government is deeply involved in industry, and the line between private and public enterprise is so blurred that it must be considered non-existent. The UAE government is profiting enormously from migrant labour, and has no incentive to improve workers’ rights. This is extremely difficult to justify. It is shameful in a state of untold wealth that the most basic rights are not granted to migrant workers. In the interests of common justice, improvements must be immediately made to conditions of accommodation, working times in summer, safety regulations, holidays, complaints procedures; and equal status must be granted to domestic workers, almost exclusively women, who have no protection. The Council has the rare opportunity of challenging representatives of the UAE about their basic and institutionalised failures to live up to the responsibilities voluntarily assumed by the ratification of CERD, CEDAW and the CRC. The above summary provides numerous examples of UAE failing in its obligations under international human rights law and treaties, and *Mafiwasta* urges the Council to treat these issues affecting migrant workers as an urgent priority.

⁸ Human Rights Watch, ‘The UAE’s Draft Labor Law: Comments and Recommendations’, (Human Rights Watch, 2007)

⁹ <http://web.amnesty.org/wire/May2005/GCC>

¹⁰ Human Rights Watch ‘As If I Am Not Human: Abuses Against Asian Domestic Workers in Saudi Arabia’ July 2008