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THE REVIEW OF CONCLUDING OBSERVATIONS OF THE HUMAN RIGHTS COMMITTEE AND CESCR ADOPTED IN 2023

In 2023 the Human Rights Committee (HRC) held three sessions and considered the reports of Egypt, Panama, Peru, Sri Lanka, Turkmenistan, Zambia, Brazil, Burundi, Colombia, Cyprus, Lesotho, State of Palestine, Uganda, Iran, Kuwait, Republic of Korea, Trinidad and Tobago, United States of America, Venezuela¹. It analyzed the problems of forced labour, freedom of association, child labour and discrimination. The Committee on Economic, Social and Cultural Rights (CESCR) held two sessions and adopted the concluding observations in respect of Cambodia, China, China (Hong Kong), China (Macau), Lithuania, Panama, Portugal, Yemen, Armenia, Brazil, Chad, France, Qatar and the State of Palestine². It considered among others the issues of informal labour, minimum wage, protection of trade unions, domestic workers and migrants' rights. Provided the wide scope of the concluding observations, the review will be focused on a few points raised in the concluding observations: the protection of the right to a minimum wage; the right to collective bargaining; labour rights in the special economic zones and the issue of migrant work in Kuwait and Qatar.

I - MIGRANT LABOUR EXPLOITATION IN KUWAIT AND QUATAR

Despite certain positive changes in the regulation of labour and the stay of migrant workers in Kuwait and Qatar, the majority of migrant workers in these countries still are legally bound to their employers in particular through the existence of the so called « absconding » criminal offense. Absconding charges are filed by employers against workers who absent themselves from work, however, there is little recognition of the reasons why an employee might do so and the ways in which these charges continue to be misused³. This year both the HRC (in respect of Kuwait) and the CESCR (in respect of Qatar) were concerned with this problem. The number of the charges has grown in the Covid period. Kuwait's Public Authority for Manpower had even annulled all « absconding » cases lodged, acknowledging

1 Sessions no. 138-140: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/SessionsList.aspx?Treaty=CCPR

2 Sessions no. 73-74, all the concluding observations are available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/SessionsList.aspx?Treaty=CESCR

3 V. Saraswathi, « Huroob, Runaway, Absconding: Trapping Migrants in Extreme Abuse », *Migrant Rights*, 30 September 2020: <https://www.migrant-rights.org/2020/09/huroob-runaway-absconding-trapping-migrants-in-extreme-abuse/>

that many were falsely filed by employers⁴. « Absconding » is very linked with the widespread practice of retaining employees' passports. Workers choose to leave their jobs, and sponsors, without their passports, and search for any type of illegal work, that is to say, work that is different from that which is specified in the contract⁵. As Davidson notes, research on migrant workers suggests that « running away from legal sponsors to work illegally in the informal economy is a strategy by which some migrants manage to secure greater personal freedom, and to pay off their debts and remit money to dependents, albeit under constant threat of detection and deportation »⁶.

The United Nations in Kuwait has been actively working to protect migrant workers, acknowledging their vulnerability and the need for solidarity, action, humanitarian support, and respect for human rights. Efforts include developing guidelines and recommendations for dealing with migrants and mitigating socio-economic impacts of the pandemic, with many recommendations being adopted by the authorities⁷.

The CEACR recommended Qatar to amend Act no. 21 of 2015 to decriminalize the acts of absconding or leaving a job without the employer's permission. It also provided the list of recommendations tackling the root causes of migrants' rights violations. In particular, it recommended to increase the number and capacities of labour inspectors focusing on migrant workers in low-wage sectors; strengthen cooperation between countries of origin and destination to enhance corporate governance and hold employers, including subcontractors and other corporate actors involved in temporary labour migration, accountable for labour rights violations; further improve the wage protection system through better monitoring, enforcement, and remedial measures, ensuring timely and full payment of wages by employers and imposing sanctions on those who fail to comply.

The HRC has adopted similar recommendations in respect of Kuwait urging it to improve the situation of migrant workers, including domestic workers, through in particular repealing or amending laws criminalizing "absconding" and other measures aimed at reducing employer control (ex. ensuring legal recourse and protection and facilitating abuse reporting). Despite the fact that there are no norms on wages or any other working conditions in the ICCPR, the HRC tackled this issue as a part of the norms prohibiting forced labour. It recommended to replace the kafala system with residence permits that allow domestic workers to change employers

4 « Kuwait : Investigation Finds Many "Absconding" Cases Filed by Employers against Workers False, Annuls All Lodged during COVID-19 », *Business & Human Rights Resource Centre*, 10 juillet 2020 : <https://www.business-humanrights.org/en/latest-news/kuwait-investigation-finds-many-absconding-cases-filed-by-employers-against-workers-false-annuls-all-lodged-during-covid-19/>

5 D. Al Rayes, *Laws without enforcement: the case of unskilled foreign workers in Kuwait*, Thèse de doctorat, Université métropolitaine de Londres, 2019.

6 J. Davidson, « Troubling Freedom: Migration, Debt, and Modern Slavery », *Migration Studies*, no. 1, 2013, p. 1.

7 « Protecting Migrant Workers in Kuwait | United Nations in Kuwait », 3 juillet 2020: https://kuwait.un.org/en/_105294-protecting-migrant-workers-kuwait

without penalties and to implement background checks on employers and ensure timely wage payments and entitlement to paid leave.

Provided the absence of free trade agreements between Gulf Cooperation Council and either EU or USA, which normally impose a labour clause, it seems difficult to impose the recommendations of Kuwait or Qatar. However, they still can be considered as important contributions to the protection of migrant workers, as these documents should be disseminated by the states, thus contributing to the awareness raising, if the states comply with this obligation. Also, these materials might be used by the multinational companies recruiting migrant workers in these countries and considering the risks of non-compliance with UN human rights standards as the risk to their reputation.

II - LABOUR RIGHTS IN THE SPECIAL ECONOMIC ZONES

Export processing zones (EPZs) have frequently been criticized for labour rights abuses. The authorities in many developing countries tended to lower or repeal labour or tax regulations in such zones creating precarious employment but making these places attractive for investors⁸. Common issues reported in such zones include suppression of independent trade unions and collective bargaining rights, poor occupational health and safety practices, excessive overtime expectations, and overall failure to adhere to International Labour Organization (ILO) core labour standards⁹.

For example, recent in-depth studies of EPZs in Honduras, Kenya and Cambodia using interviews and site visits uncovered widespread allegations of forced overtime, union busting tactics, gender discrimination, and hazardous working environments¹⁰.

This issue was considered by various human rights bodies in the past. For example, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association stated in the report that « the States often weaken labour rights in order to attract investment, establishing special export processing zones where freedoms of peaceful assembly and of association are either sharply curtailed or explicitly prohibited. States may also use investor agreements as excuses to weaken labour standards »¹¹.

The CESCR in its General comment no. 23 (2016) on the right to just and favourable conditions of work noted that « workers in special economic, free trade and export processing zones are often denied the right to just and favourable conditions of work through non-enforcement of labour legislation ». It also criticized

8 See, for example, UNCTAD, World Investment Report 2019: Special Economic Zones, 2019: https://unctad.org/system/files/official-document/wir2019_en.pdf

9 ILO, *Promoting decent work and protecting fundamental principles and rights at work in export processing zones*, 2017: https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---ifp_seed/documents/publication/wcms_584474.pdf

10 Amnesty International, *What I'm doing is not a crime*, 2020: <https://www.amnesty.org/en/documents/amr01/3101/2020/en/>; Nova et al., *Labour Rights Violations in Export Processing Zones*, 2022, <https://doi.org/10.1177/14649934221109753>

11 UN General Assembly, *Rights to freedom of peaceful assembly and of association*, A/71/385, 14 September 2016: <https://www.refworld.org/reference/themreport/unga/2016/en/112993>

Bangladesh in 2018 for very limited scope of the Bangladesh Labour Act, 2006 (as amended up to 2013) which did not cover the export processing zones and urged to ensure that investment incentives do not compromise the labour and social protection of workers¹².

In 2023, the issue attracted the attention of the CESCR again. In particular, considering the report of Cambodia the Committee expressed the concern about the negative impacts that business activities and large development projects, including in the Special Economic Zones, have on the enjoyment of economic, social and cultural rights, in particular on access to land, the right to an adequate standard of living, labour rights and the right to health. It asked the state to provide in a transparent and comprehensive manner information concerning Special Economic Zones, including assessments of their impacts on land, local communities, workers' rights and the environment and consider the introduction of mandatory human rights due diligence.

III - MINIMUM WAGE

The right to a decent minimum wage is the pain point of international labour law. Although the need to ensure decent minimum wage was one of the key reasons for the inclusion of the motto that labour is not a commodity to the ILO Constitution and the Declaration of Philadelphia¹³, none of the ILO standards sets a clear benchmark for establishing decent minimum wage. However, the article 7 of the ICSECR and the General comment no. 23 provide certain rules to establish the decency of wage. In particular, the wage should ensure to the workers « a decent living for themselves and their families ». Based on this norm the CESCR in 2023 considered the issue of minimum wages highlighting concerns about the adequacy of the minimum wage to ensure a decent standard of living for workers and their families, and the application of the minimum wage across different sectors and regions. It formulated the number of recommendations.

In particular, in respect of Cambodia it urges legislative and administrative measures to ensure the minimum wage applies to all labour sectors and provides a decent living standard. Panama was recommended to ensure the minimum wage applies universally. Chad - to strengthen the application of the minimum wage, establish a review policy, improve reporting mechanisms for abuse, and provide resources for effective labour inspection. France - to ensure that the minimum wage is sufficient by indexing it to the cost of living.

In addition to the previously mentioned countries, China (specifically in the context of Hong Kong) was also under scrutiny by the Committee. The CESCR's recommendations focus on ensuring that the statutory minimum wage applies to all types of employment, including those traditionally excluded, such as student employees and live-in domestic workers.

12 Committee on Economic, Social and Cultural Rights. Concluding observations on the initial report of Bangladesh, 18 April 2018.

13 A. Perulli, « La Déclaration de Philadelphie », *Document de travail CSDLE « Massimo D'Antona »*, no.143/2018: <https://aei.pitt.edu/100471/>

Conclusion

In 2023, the UN human rights treaty bodies - the Human Rights Committee and the Committee on Economic, Social and Cultural Rights - continued to highlight the key labour rights issues in their concluding observations. The list of those issues remains very long and largely unchanged. In this review the focus was made upon the exploitation and abuse of migrant workers, as evidenced by the observations on Kuwait and Qatar. Despite some reforms, problematic practices like criminalizing « absconding » and retaining worker passports perpetuate forced labour conditions and require legal changes which were recommended by both committees. The committees also expressed concerns about systemic labour rights violations in export processing zones and special economic zones. Citing recent evidence, they recommended strengthening the legislation on workers' rights in these zones, ensuring human rights impact assessments in investment projects, and mandatory due diligence to address substandard working conditions. Finally, the adequacy of minimum wages was questioned in several countries as not ensuring a decent standard of living for workers or not covering all the workers as required under international law.