

Mandates of the Special Rapporteur on extreme poverty and human rights; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on contemporary forms of slavery, including its causes and consequences

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extreme poverty and human rights; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the human rights of migrants; and Special Rapporteur on contemporary forms of slavery, including its causes and consequences, pursuant to Human Rights Council resolutions 35/19, 26/22, 26/19, 24/3.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegedly abusive labour practices of a Saudi construction operator, the United Seemac Co., in violation of the human rights of its migrant workers.

According to the information received:

The United Seemac Co. ("Seemac") is a medium-sized Saudi construction operator, registered with the Ministry of Commerce and Industry as a limited-liability company since 6 December 1990 (Registration number: 1010080784). Seemac is reportedly owned by Mr. Mohammed bin Ibrahim bin Abdullah Owaideh and managed by a handful of Saudi nationals. Its workforce predominantly consists of migrant workers, notably from India, Indonesia, Egypt, Pakistan, the Philippines, Sudan and Yemen.

Seemac's migrant workers have been allegedly subject to various forms of abuse and exploitation, including non-payment of salaries, the withholding of passports, and inadequate and unhygienic living conditions in the company's residential complexes. It has been reported that the workers have not received salaries for almost two years since January 2015. In 2015 and 2016, the company has only made *ad hoc* payments for the months of January, April, May, June, October and November 2015, and January 2016. In 2017, the company allegedly has not paid its workers at all.

In January 2016, 63 of Seemac's migrant workers filed a complaint with the Saudi Labour Board to demand payment of unpaid salaries. On 10 May 2016, the Labour Board ordered Seemac to pay 35,000 Saudi riyals per worker to compensate for the unpaid salaries, but the company never complied with the order. Although the Labour Board issued an arrest warrant for Seemac's owner, the Saudi law enforcement allegedly took no action to execute the warrant. On 25

September 2016, the workers began a sit-in protest at the company's headquarters in Riyadh. After approximately two weeks of protest, Seemac's management promised the workers that they would soon pay their salaries. However, this commitment was not honoured. In May 2017, 17 of the concerned workers have filed a new complaint with the Labour Board. The company representative failed to appear at the first hearing on 21 May 2017 and the matter is still pending.

Seemac's migrant workers are reportedly accommodated in the company's residential complexes in Riyadh and Khamis Mushait, which provide a standard of living below the bare minimum. The workers reportedly have had no running water or electricity for a month and the services have been frequently cut off in the past as Seemac failed to pay the utility bills on time. The lack of running water and electricity has particularly affected the workers during warm months when the temperature reaches over 40 degrees. Many workers share the same bathrooms and when the water is cut off, they have to go to mosques to use the toilet or wash themselves. The workers live in cramped conditions and some sleep outside due to overcrowding.

Furthermore, the residence permits of the migrant workers have expired, due to Seemac's failure to apply for their renewal. In July 2016, police officers arrived at Seemac's residential complex and arrested 11 of Seemac's workers without a valid residence permit. Although the workers explained to the police that they had a pending labour dispute with their employer, they were arrested in any event and detained for a week under inhumane conditions. They were held in cells without mattresses or air-conditioning, and the guards did not provide them with drinking water, telling them to drink from the toilet if they were thirsty. The workers were eventually returned to the company's compound after it posted bail for them. Given the lack of valid residence permits, most of the workers are reportedly too frightened to leave the company's complex due to the risk of arrest.

The workers have not been able to transfer to another employer or to simply leave the country, as the company retained the workers' passports and refused to grant permission necessary for them to transfer to another employer. Seemac's management reportedly told the workers that if they wish to have their passports back, they would have to sign a statement certifying that they have received all the salaries owed to them. While the company eventually returned the workers' passports to them early this year, the company still exercises significant control over the workers' movements by withholding exit visas necessary for migrant workers to leave the country. Seemac has reportedly indicated that the workers need to accept a payment for a single month and sign a statement renouncing all their rights to unpaid salaries, if they wish to have exit visas to leave the country.

To date, over half of Seemac's roughly 500 migrant workers have left the country on these terms, as they were unable to survive without income. Some 200 migrant workers who still remain with Seemac reportedly cannot afford basic food items for themselves, let alone send remittances to their families. The residency permits

of many of the workers have reportedly expired last month and they fear possible arrest and detention.

While we do not wish to prejudge the accuracy of these allegations, we express serious concerns over alleged violations of the human rights of the concerned migrant workers, including the rights to just and favourable remuneration and conditions of work, to an adequate standard of living, and to freedom of movement. Article 23, paragraph 3 of the Universal Declaration of Human Rights (UDHR) guarantees everyone who works of “the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity...”. In this regard, the term “remuneration” goes beyond the mere notion of “wage” or “salary”, but includes “additional direct or indirect allowances in cash or in kind paid by the employer to the employee that should be of a fair and reasonable amount, such as grants, contributions to health insurance, housing and food allowances, and on-site affordable childcare facilities”.¹ Remuneration in this sense must be sufficient to enable the worker and his or her family to ensure a decent living for themselves and to enjoy other human rights, such as “social security, health care, education and an adequate standard of living, including food, water and sanitation, housing, clothing and additional expenses such as commuting costs”.² In particular, decent remuneration is an important pre-requisite to the enjoyment of the right to an adequate standard of living, guaranteed under article 25 of the UDHR.³ It goes without saying that salaries and wages should be “paid in a regular, timely fashion and in full”⁴ to be able to contribute to an adequate standard of living. The non-payment of salaries for such an extended period of time, combined with the inadequate living conditions in the company’s compound, seem to indicate *prima facie* violations of the rights to just and favourable remuneration and conditions of work, and to an adequate standard of living of the concerned workers and their families. Furthermore, article 13 of the UDHR guarantees the right to freedom of movement and to leave a country. Legal and bureaucratic barriers, such as a requirement for approval from employers, are considered incompatible with the full enjoyment of this right⁵ and are not permissible unless they meet strict criteria set out in international human rights law.⁶ These human rights are universal and must be guaranteed to all, including non-nationals such as migrant workers, regardless of legal status and documentation.⁷

¹ Committee on Economic, Social and Cultural Rights, General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, para. 7.

² Ibid, para. 18.

³ Ibid, para. 1.

⁴ Ibid, para. 10.

⁵ See Human Rights Committee, General Comments adopted by the Human Rights Committee under article 40, paragraph 4, of the International Covenant on Civil and Political Rights, CCPR/C/21/Rev.1/Add.9, para. 17.

⁶ The criteria are fleshed out in article 12, paragraph 3 of the International Covenant on Civil and Political Rights, which provides that the rights to freedom of movement and to leave any country “...shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.”

⁷ See Economic, Social and Cultural Rights, General Comment No. 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural

In this context, we wish to underline that States have a tripartite obligation under international human rights law to respect, protect and promote human rights. Saudi Arabia is obliged to *protect* the human rights of all persons within its territory and subject to its jurisdiction against abuses by third parties, including business enterprises. The UN Guiding Principles on Business and Human Rights (contained in A/HRC/7/31), which the Human Rights Council unanimously adopted in 2011 following years of consultations with Governments, civil society and the business community, specifically provide that the duty to protect human rights requires “taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication”.⁸ States should, inter alia, “[e]nforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps” and “[p]rovide effective guidance to business enterprises on how to respect human rights throughout their operations”.⁹ On the basis of the above allegations, it appears that there is a systematic failure by the Saudi authorities to effectively enforce relevant legislation and regulations in place to guarantee the human rights of the migrant workers and to take appropriate steps, such as regular and effective labour inspections, to prevent violations in the first place.

We also express concern over the sponsorship (*kafala*) system that continues to exist in the Kingdom of Saudi Arabia. With due respect to your Excellency’s Government’s position that such a system does not exist in the Kingdom, we note that the fundamental elements of the sponsorship system largely remain intact and still dictate the employer-migrant worker relationship in the country. The legal residency status of migrant workers is tied to the employer throughout their contract period and they are not at liberty to resign or terminate their employment or leave the country without the consent of the employer. The migrant workers are also required to obtain the approval of the current employer if they wish to transfer to another employer, except under narrowly defined circumstances.¹⁰ The amendments to the Labour Law introduced over the last few years have not changed the architecture of the sponsorship system and the employer still retains significant control over the legal residency status of migrants workers, their choice of employment, and their movements within and out of the country. These factors inevitably lead to a significant power imbalance within the employment relationship and may give rise to conditions akin to slavery or forced labour. The International Labour Organization’s Committee of Experts on the Application of Conventions and

Rights), E/C.12/GC/20, para. 30; Committee on the Elimination of Racial Discrimination, General recommendation XXX on discrimination against non-citizens (2005).

⁸ Guiding Principles on Business and Human Rights, Guiding Principle 1.

⁹ Guiding Principles on Business and Human Rights, Guiding Principle 3.

¹⁰ The Labour Law has been recently amended to allow migrant workers to transfer to another employer without the approval of the current employer in one of the following situations: (a) if the employer has failed to renew the workers’ residency permit; (b) the workers’ wages have not been paid for three consecutive months and at any time during the year that follows the due date of the third month of delay; or (c) the worker has denounced a commercial cover-up activity involving the employer, with evidence to this effect and without involvement on his/her part. International Labour Organization, Regional Office for Arab States, Employment-Migrant Worker Relationships in the Middle East: Exploring scope for internal labour market mobility and fair migration (White paper, February 2017), at 13-14.

Recommendations (CEACR) has stated in its observations with regard to the Forced Labour Convention 1930 (No. 29) that the so-called visa “sponsorship system” in certain countries in the Middle East “may be conducive to the exaction of forced labour”¹¹ and often noted in its observations on Saudi Arabia “the vulnerable situation of migrant workers...who are often confronted with employment policies such as the visa “sponsorship” system and subjected to abusive employer practices such as the retention of passports, non-payment of wages, deprivation of liberty and physical and sexual abuse which cause their employment to be transformed into situations that could amount to forced labour”.¹² A number of international human rights experts and bodies, including the Special Rapporteur on the human rights of migrants, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination, have also expressed concern that the sponsorship system increases vulnerability of migrant workers to the risk of abuse and exploitation.¹³

We wish to take this opportunity to highlight that fundamental reforms of the sponsorship system are not only warranted from human rights perspectives, but also desirable from economic and social perspectives. The recent study by the International Labour Organization on the sponsorship system in the Middle East has concluded that reforming the sponsorship system “in a way which disassociates a worker’s immigration status from their employer’s control, and enables a migrant worker to resign or terminate his/her employment contract by giving reasonable notice and without losing valid immigration status, can have significant economic, social and administrative benefits”.¹⁴ Such reforms would, *inter alia*, enhance internal labour mobility, contribute to the better matching of the skills of migrant workers with industry and employer needs, provide incentives for investment in human capital, and lead to higher overall productivity.¹⁵

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

¹¹ Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation, Report for discussion at the Tripartite Meeting of Experts concerning the possible adoption of an ILO instrument to supplement the Forced Labour Convention, 1930 (No.29), 11-15 February 2013, at para. 44.

¹² Observations (CEACR) – adopted 2012, published 102nd ILC session (2013), Forced Labour Convention, 1930 (No. 29) – Saudi Arabia (Ratification: 1978), available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3056782,103208,Saudi%20Arabia,2012;

¹³ See Report of the Special Rapporteur on the human rights of migrants, A/HRC/26/35, paragraphs 38-39; Committee on Economic, Social and Cultural Rights, General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, para. 47(e). Committee on the Elimination of Racial Discrimination, Concluding observations on the combined second to fifth periodic reports of Oman, CERD/C/OMN/CO/2-5 (2016); Committee on the Elimination of Racial Discrimination, Concluding observations of the Committee on the Elimination of Racial Discrimination on Kuwait, CERD/C/KWT/CO/15-20 (2012).

¹⁴ International Labour Organization, Regional Office for Arab States, *Employment-Migrant Worker Relationships in the Middle East: Exploring scope for internal labour market mobility and fair migration* (White paper, February 2017).

¹⁵ *Ibid.*

1. Please provide any additional information and/or comment(s) you may have on the above allegations.
2. Please provide information on any measures or steps undertaken by your Excellency's Government to enforce the Labour Board's order of 10 May 2016 and to compensate the workers for the salaries owed to them since January 2015, as well as all other plans or steps undertaken to effectively protect all the rights of the workers concerned and ensure their proper compensation for all the damages they have endured.
3. Please also provide information on any measures or steps undertaken by your Excellency's Government to punish Seemac's conduct in contravention of domestic legislation, such as the provision of inadequate living conditions, retention of the workers' passports, and failure to renew their residence permits.
4. Have labour inspections ever been carried out at Seemac? If so, please indicate when they were carried out and details of the findings.
5. Please indicate any plans or steps undertaken to fundamentally reform the sponsorship system, so that the worker's residence status is no longer tied to the employer and the worker has the freedom to resign or terminate his/her employment or transfer to another employer without the consent of the existing employer.
6. Please provide information about the measures that the Government has taken, or is considering to take, to ensure that the individuals affected have access to an effective remedy, including adequate compensation, in line with the UN Guiding Principles on Business and Human Rights.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration. Furthermore, we may publicly express our concerns as, in our view, the information is sufficiently reliable and indicates a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

Please note that this communication has been also addressed to the management of the United Seemac Co. and also transmitted to the Governments of India, Indonesia, Egypt, Pakistan, the Philippines, Sudan and Yemen, for their information.

Please accept, Excellency, the assurances of our highest consideration.

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