



The UAE’s Draft Labor Law Human Rights Watch’s Comments and Recommendations

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Introduction

The United Arab Emirates (UAE) is currently considering revisions to its main labor law. Like other countries in the Gulf, the UAE is heavily reliant upon the labor of migrant workers, primarily from South Asia. According to figures from 2005, 95 percent of the UAE's labor pool, some 2.7 million workers, are migrants, many of whom work in the construction and domestic service industries. Meaningful reforms in the new labor law would have a significant and positive impact across South Asia and the Gulf and, if the final version of the law integrates key labor protections, it could become a leading model for the region.

Unfortunately, major omissions and provisions in violation of well-established international labor standards plague the draft law, which the government opened for public review and comment on February 5, 2007. Areas in urgent need of further reform include the exclusion of provisions on workers' rights to organize and bargain collectively; the prohibition of strikes; the exclusion of certain categories of workers, such as domestic and farming and grazing workers, from the protections of the labor law; ambiguity regarding the minimum age of employment; the prohibition of women from certain categories of work; the absence of provisions banning the confiscation of passports and other identity documents and requiring employment contracts to be made available in workers' native languages; and inadequate and unenforced penalties for violations of the law.

A 2006 Human Rights Watch report, "Building Towers, Cheating Workers: Exploitation of Migrant Construction Workers in the United Arab Emirates," highlighted significant labor abuses, such as extremely low wages, routine withholding of wages for months at a time, and the confiscation of worker passports as "security" to keep workers from quitting. When combined with worker indebtedness resulting from unlawful "recruiting fees," these abuses create conditions that, in the worst cases, constitute forced labor. The report also highlighted high rates of injury and death among construction workers, who have little assurance that employers will cover health care costs.

The report emphasized that the problem in the UAE is not merely that these labor abuses occur, but that the government has breached its duty to enforce its own laws and regulate the conduct of employers. We found that the UAE is failing to investigate and prosecute employers who violate labor laws; failing to establish a transparent, well-documented, and accessible system for the resolution of labor disputes; and failing to implement the country's minimum wage law. Moreover, the government has refused to allow workers to seek improvement in their working conditions by organizing trade unions or bargaining collectively with their employers. In September 2006, the Ministry of Labor issued a resolution banning striking migrant workers from further employment in the country for at least one year, a measure that has led to the deportation of striking workers.

Human Rights Watch also described abuses against migrant domestic workers in the UAE as part of a 2006 report, "Swept Under the Rug: Abuses against Domestic Workers Around the World." Domestic workers, excluded even from the protections of existing UAE labor law, report a long list of abuses committed by employers and labor agents, including forced confinement in the workplace; non-payment of wages for months or years; and excessively long working hours with no rest days. In some cases, domestic workers experience physical or sexual abuse, or are trapped in situations of forced labor. The UAE falls far behind other governments that have extended equal labor protection to domestic workers, such as Hong Kong and South Africa.

The Ministry of Labor's publication of the draft law and request for comments represent a significant step toward legislative transparency in the UAE. In addition, the Ministry's actions demonstrate an exemplary willingness to engage the public in dialogue regarding issues of great importance to the rights of workers in the country. Human Rights Watch hopes that this open process yields a draft law that fully upholds internationally recognized workers' rights standards and becomes a model for the enactment and amendment of laws for the UAE and for the entire region.

Certain provisions in the draft labor law include positive reforms and should be retained in the final legislation. For example, Article 15 requires employers to pay the expenses of migrant workers' travel, employment permits, medical examinations,

and other required administrative costs. In addition, Article 85 requires employers to cover the cost of workers' health care, including coverage of migrant workers upon arrival in the country. These provisions provide important protections that, if enforced, could help prevent workers' unjust indebtedness that increases the risk of egregious labor exploitation and conditions akin to debt bondage or other forms of forced labor.

In accordance with the Ministry's request, Human Rights Watch offers the following comments on the draft law. We note at the outset that our comments are in no way meant to be comprehensive. We have simply highlighted areas of concern where we hope to provide constructive suggestions. Human Rights Watch urges the UAE government not only to create a law that respects international human rights standards, but also to ensure that the Ministry of Labor fulfills the requirements set out in the law regarding implementing resolutions, such as establishing a minimum wage.

Human Rights Watch also notes that the real test of a country's respect for workers' rights and compliance with international human rights law does not rest solely in the language contained in the country's laws; rather, it rests equally in the government's serious enforcement of its laws regulating the conduct of employers, its creation of institutions that fairly resolve disputes between workers and employers, and its aggressive investigation and prosecution of employers who violate its laws. We hope that the UAE will match its commitment to reforming its labor laws with a commitment to enforcing them.

Recommendations for Further Reform

Rights to Freedom of Association and Collective Bargaining

Recommendation: Amend the UAE labor law to comply with international standards and explicitly protect workers' right to organize. The law should provide for the formation of independent unions free from employer and government interference. The unions should be empowered to represent workers effectively and efficiently

and allowed to draw up their rules, elect their representatives, and operate in full freedom. All workers, regardless of their citizenship, should have the right to join trade unions and be allowed to participate fully and have active representation and voting rights.

Recommendation: Amend the UAE labor law to uphold international norms on the right to bargain collectively by explicitly requiring that upon request of a workers' organization, an employer and the representative labor organization bargain in good faith over terms and conditions of employment, including wages and hours, to reach a collective agreement. The law should extend the right to bargain collectively to labor federations and confederations and should not restrict the scope of negotiable issues.

Workers' rights to freedom of association, to form and join trade unions, and bargain collectively are well established under international human rights law. The Universal Declaration of Human Rights (UDHR) recognizes that everyone "has the right to form and to join trade unions for the protection of his interests." This right is further elaborated in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which together with the UDHR form the international bill of rights. The ICCPR states that "everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests" and requires parties to "adopt such legislative... measures as may be necessary to give effect to the rights recognized in the present Covenant." The ICESCR similarly recognizes "[t]he right of everyone to form trade unions and join the trade union of his choice" and requires states to "take steps... to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." While the UAE is not a party to the ICCPR or the ICESCR, they constitute authoritative sources and guidelines that reflect international best practice.

The UAE is also a member of the International Labour Organization (ILO). The ILO Declaration on Fundamental Principles and Rights at Work (ILO Declaration) lists "freedom of association and the effective recognition of the right to collective

bargaining” as one of the “fundamental rights,” which all ILO members, including the UAE, have an obligation to protect. The ILO Declaration states that “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.” The ILO Committee on Freedom of Association has stated, “When a State decides to become a Member of the Organization, it accepts the fundamental principles embodied in the Constitution and the Declaration of Philadelphia, including the principles of freedom of association.” It has also noted that ILO members, by virtue of their membership are “bound to respect a certain number of general rules which have been established for the common good.... Among these principles, freedom of association has become a customary rule above the Conventions.”

In violation of international standards, however, UAE labor law presently contains no provisions on workers’ rights to organize or bargain collectively. In March 2006, the Ministry of Labor announced that it would institute a new law permitting trade union activities by the end of the year. However, no such law was issued. The new proposed law continues the failure of the UAE’s existing law to recognize workers’ rights to organize and bargain collectively by remaining silent on these basic workers’ rights.

Without the rights to organize and bargain collectively, workers are largely unable to join forces to raise workplace concerns with their employers and government bodies and are significantly impeded from collectively seeking structural reforms. Because the law does not permit workers to organize or form unions, it deprives them of institutions that can represent their interests. The right to form unions stems from the widespread recognition that they are the most important vehicle for workers to communicate grievances with relevant government bodies, to negotiate with employers and to seek structural reforms.

Right to Strike

Recommendation: Amend UAE labor law to guarantee workers' right to strike, including by establishing explicit procedures for workers to exercise this right, such as strike voting requirements and strike notification rules.

Recommendation: Amend Articles 155 through 166 of the proposed UAE labor law to provide for binding arbitration in cases of collective labor disputes only upon workers' request and only in very limited circumstances, such as cases of first contract negotiations and cases in which workers have grievances related to the application or interpretation of a collective agreement but continue to be denied the right to strike to address them. To ensure that workers are "able to participate in determining and implementing the procedure, which should furthermore provide sufficient guarantees of impartiality and rapidity," as required by the ILO, UAE law should also be amended to provide that workers' representatives on the Group Labour Disputes Conciliation Committee be selected by workers not "appointed by an order made by the Minister," as Article 158 of the proposed law requires.

Workers' right to strike is guaranteed under international law. The ICESCR recognizes "the right to strike," and in its second meeting in 1952, the ILO Committee on Freedom of Association recognized the right to strike as an "essential element of trade union rights." In 1994, the ILO Committee of Experts on the Application of Conventions and Recommendations (ILO Committee of Experts) similarly stated that the "right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87."

In violation of international standards, however, Article 162 of the proposed UAE labor law effectively bans strikes, stating "It shall be strictly prohibited to engage in a work stoppage, whether wholly or partially, or firm shutdown by reason of or during group labour disputes." The law defines a group labor dispute as "any dispute between an employer and his workers, which is connected in issue with the common

interest of all or a group of the workers in a certain firm, occupation, trade or professional sector” (Article 155). The proposed law allows employers to suspend a worker “accused of committing... an offence associated with strike” (Article 114) and to dismiss without notice any worker who “starts a work stoppage, or instigates or participates in such acts” (Article 122). In addition, a September 2006 Ministry of Labor resolution banned migrant workers who go on strike from further employment in the country for at least one year, a measure that has led to the deportation of striking workers. Although international law permits limited restrictions on the right to strike, such as in essential services, during severe national crises, or for certain high-level public servants, the UAE proposed ban goes far beyond what is permissible and flies in the face of international norms.

In addition, the proposed law further violates workers’ right to strike in Articles 155 through 166 by requiring that all group labor disputes not amicably resolved among the parties be referred to the Group Labour Disputes Conciliation Committee for binding resolution. Under the proposed law, the Committee’s decision shall be “final and enforceable” unless appealed to a court, whose judicial decision becomes binding on the parties. The ILO Committee of Experts has found that such mandatory binding arbitration violates international standards, noting:

A... very serious prohibition may also result in practice from the cumulative effect of the provisions relating to collective labour disputes under which, at the request of one of the parties or at the discretion of the public authorities, disputes must be referred to a compulsory arbitration procedure leading to a final award which is binding on the parties concerned. These systems make it possible to prohibit virtually all strikes or to end them quickly: such a prohibition seriously limits the means available to trade unions to further and defend the interests of their members, as well as their right to organize their activities and to formulate their programmes, and is not compatible with Article 3 of Convention No. 87.

Repeal of Worker Exclusions

Recommendation: Amend the proposed UAE labor law to repeal Article 4 exclusions of security workers; domestic workers employed in private households; farming and grazing workers; and public workers. Limited exclusions may be permitted for certain officials engaged in the administration of the state.

International human rights law protects a spectrum of workers' rights and allows only very limited restrictions on these rights. For example, as discussed above, in certain circumstances narrow limitations on the right to strike are permissible. Similarly, ILO Convention 98 concerning the Right to Organise and Collective Bargaining “does not deal with the position of public servants engaged in the administration of the State” and allows national laws and regulations to determine the “extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police.”

Article 4 of the proposed UAE labor law goes far beyond such permissible restrictions and fails to meet international standards by excluding all public workers, security workers, domestic workers employed in private households, and most farming and grazing workers from the rights and protections set forth in the law.

The Case of Domestic Workers

Recommendation: Extend equal protection of the UAE labor law to domestic workers instead of relying solely upon a new standard contract to safeguard their rights.

The UAE's proposal to introduce a new standard contract for domestic workers is not a sufficient substitution for equal protection under the national labor laws. Domestic workers employed in private households are at particularly high risk of labor exploitation, including extremely long hours of work without a guaranteed minimum wage or overtime pay; no rest days; incomplete and irregular payment of wages; and restrictions on communication and freedom of movement. Inadequate monitoring by an independent or government agency helps perpetuate these abuses by ensuring that they are largely undetected by authorities and by creating an environment of impunity for employers.

Relying upon separate and weaker protections in a standard contract to protect domestic workers' rights rather than extending equal protection of the labor law to domestic workers constitutes unjustifiable disparate impact discrimination as prohibited under non-discrimination principles enshrined in international law. The ICCPR, the Convention on the Elimination of All Forms of Discrimination against Women (to which the UAE acceded in October 2004), and the Migrant Workers Convention prohibit discrimination on the basis of such distinctions as sex, language, national or social origin, or other status. International law also guarantees equality before the law and equal protection under the law.

Laws, regulations, policies, and practices that are neutral on their face can have a discriminatory impact. The exclusion of domestic workers from national labor laws, while neutral on paper in its focus on a form of employment, has a disparate impact on women and girls since the overwhelming majority of domestic workers are female. The lesser protection extended to domestic work reflects discrimination against a form of work usually performed by women and girls and that involves tasks associated with traditional female domestic roles such as cleaning, child care, and cooking.

No legitimate reasons exist for these exclusions. Therefore, the unequal protection of domestic workers under national laws constitutes impermissible disparate impact discrimination on the basis of sex.

Child Labor

Recommendation: Amend the proposed UAE labor law ensure that there is no confusion in respect of the minimum age of employment and that all articles regulating child labor clearly relate only to children from 15 to 18 years of age.

The proposed labor law contains many protections that would go a long way towards guaranteeing the rights of children and child workers. Nonetheless, several provisions could undermine these important protections.

The proposed law includes an internal contradiction that could generate confusion regarding the minimum age of employment. It explicitly bans employers from hiring children under 15, in compliance with ILO Convention 138 concerning the Minimum Age for Admission to Employment that establishes 15 as the minimum age of employment. Nonetheless, in Article 1, a child is defined as a person “of thirteen years of age but below eighteen years of age,” and could give rise to confusion that articles regulating child labor could apply to 13- and 14-year-old children who should not be working.

Sex Discrimination

Recommendation: Amend Articles 25-35 of the proposed UAE labor law to repeal all limitations on the employment of women and guarantee women access to the same employment and vocational training opportunities as men.

Recommendation: Amend Article 35 of the proposed UAE labor law to eliminate the requirement that a woman’s husband or guardian be held punitively responsible for observance of provisions outlined in the chapter on women and children workers. Recognize adult women’s full legal capacity and treat them equally with adult men.

International law clearly prohibits employment discrimination. The Universal Declaration of Human Rights recognizes that there shall be no discrimination based on gender in the enjoyment of the right to work, to free choice of employment or to just and favorable conditions of work and explicitly that all have the right to equal pay for equal work. This is further articulated in the ICESCR which protects the “equal right of men and women to the enjoyment of all economic, social, and cultural rights” in the Convention, including the “right to work.” The Convention on the Elimination of All Forms of Discrimination Against Women explicitly guarantees the right of women “to the same employment opportunities” as men, including the “right to free choice of profession and employment” and the right “to equal remuneration... and to equal treatment in respect of work of equal value.” Similarly, the ILO Declaration includes “the elimination of discrimination in respect of employment

and occupation” among the fundamental workers’ rights that all ILO members have a duty to uphold.

In violation of international standards, however, the proposed UAE labor law prohibits night work for women except in certain enumerated circumstances, bans women from “any job that is hazardous, arduous or physically or morally detrimental or on any other work as may be specified in a resolution by the Minister, after consulting the concerned authorities” (Article 30), and suggests that women have less capacity by limiting vocational training programs to “the actual endurance of children and women” (Article 34).

The ILO Committee of Experts has found that “a blanket prohibition on women's night work... cannot be defended from the viewpoint of the principle of non-discrimination” and that “qualifications based on a distinction between ‘heavy work’ and ‘light work’... amount to a veiled distinction between the sexes that may unfairly and unreasonably impede the promotion of women to jobs to which they would otherwise have access.” Commenting on the insidious effect of such laws, the ILO Committee of Experts 2001 General Survey has called for “...a critical re-examination of provisions which are assumed to be ‘protective’ towards women, but which in fact have the effect of hindering the achievement of effective equality by perpetuating or consolidating their disadvantaged employment situation.” Instead of excluding women from night work and certain types of work, the government should endeavor to make working conditions safe and secure for men and women and to let women decide whether or not to work at a particular time or profession.

Furthermore, Article 35 of the proposed law holds a woman’s husband or guardian punitively responsible for observing the restrictions on women’s work, violating international law by treating women workers as minors with restricted legal capacity rather than as competent adults with full and independent legal capacity and identity. In addition to being discriminatory, the proposed provision subjects women to the control of their male guardians, who may impose further restrictions on women’s employment opportunities. As discussed above, international law guarantees equality before the law and the entitlement of all persons to equal protection of the law.

Prevention of Deception, Restrictions on Movement, and Forced Labor

Recommendation: Amend Article 2 of the proposed UAE labor law to stipulate that employment contracts be entered into and legally enforceable in both Arabic and a language that the worker understands and speaks fluently; stipulate that instructions issued to workers from government agencies or employers also be available in both Arabic and the worker’s language.

Recommendation: Amend the proposed UAE labor law to protect the right of all workers to hold their own passports and other identity documents.

International law prohibits forced labor, which the Forced Labour Convention defines as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” According to the ILO, deception about types and terms of employment and retention of identity documents are among the conditions giving rise to involuntary work. ILO Recommendation 151 on Migrant Workers stipulates that a “migrant worker should, during paid working hours and immediately after beginning his employment, be provided with sufficient information in his mother tongue or, if that is not possible, in a language with which he is familiar, on the essential elements of laws and regulations.”

Article 21 of the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families states, “It shall be unlawful for anyone, other than a public official duly authorized by law, to confiscate... identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits.” In 2001, the Dubai Court of Cassation ruled that employers are prohibited from confiscating the passport of employees because it violates the worker’s right to travel.

The draft labor law proposed by the UAE does not mandate measures that would prevent practices contributing to forced labor, such as ensuring that workers are able to read their employment contracts and retain control over their travel documents.

Documentation by the ILO, Human Rights Watch, and other national and international institutions shows that unscrupulous employers and labor recruiters at times take advantage of migrant workers' language barriers, lack of familiarity with local law and practice, and fear of dismissal and deportation to deceive migrant workers about their terms of employment, including type of work, salary, and working conditions. An important remedy for this type of exploitation is requiring employers to provide official translations of employment contracts in the native language of the employee and making the translated version enforceable with equal force as the Arabic version in any legal proceeding.

Human Rights Watch has also found that employers customarily confiscate workers' passports and other identity documents. The government of the UAE has a positive obligation to prevent such practices that lead to labor exploitation and, in the most egregious cases, to situations akin to or amounting to forced labor. The UAE should give the Court of Cassation's ban on the confiscation of passports the force of law by explicitly prohibiting the practice in the new labor law and including financial and criminal penalties for employers who violate the law.

Penalties for Violation of Law

Recommendation: Amend Article 183 of the proposed UAE labor law to mandate imprisonment for egregious violations of the law and to increase the maximum fine for unlawful conduct significantly in order to provide an effective deterrent to employer violations of labor rights.

International law requires that where rights are violated, that there be an appropriate remedy (see for example Article 8 of the Universal Declaration of Human Rights). Positive obligations to protect basic rights also require measures be taken to deter violations of those rights. Such deterrent measures may be in the form of appropriate and meaningful penalties for those who violate laws that protect basic rights. For example, the ILO Committee on Freedom of Association has specifically called for the enactment of adequate mechanisms and penalties to deter employers from interfering with workers' rights to organize and bargain collectively, calling on states to enact legislation to "establish sufficiently dissuasive sanctions against acts of interference by employers against workers and workers' organizations."

Article 183 falls short of international standards in failing to provide sufficient remedies or sanctions to deter violations of UAE labor law. The current maximum financial penalty of 12,000 dirhams (approximately \$3,268) is barely a slap on the wrist for employers who withhold tens of millions of dirhams in wages and reap untold financial rewards by failing to take other necessary measures to uphold the rights protected in the law. Human Rights Watch calls on the UAE government to show real commitment to deterring worker exploitation by amending the law to provide effective penalties for violations and by vigorously and aggressively applying them against violating employers.

Conclusion

Human Rights Watch commends the UAE Ministry of Labor for inviting public comments concerning its draft labor law. In Human Rights Watch's view, the draft law falls short of international labor standards in a number of critical areas. We hope that our recommendations prove useful, and that the UAE takes advantage of this open process to revise the serious flaws in its draft labor law.