

Global Detention Project and Migrant-Rights.org

**Joint Submission to
the UN Committee on the Elimination of Discrimination
against Women (CEDAW)**

69th session (19th February – 9 March 2018)

Saudi Arabia

Geneva, January 2018

Issues related to immigration detention



**GLOBAL
DETENTION
PROJECT**



Introduction

The Global Detention Project (GDP) and Migrant-Rights.org welcome the opportunity to provide information relevant to the consideration of the Combined third and fourth periodic reports of Saudi Arabia to CEDAW (due in 2013 and received by the United Nations on 29 August 2016) and Replies of Saudi Arabia to the List of issues of 9 November 2017¹ with respect to the implementation of the Convention on the Elimination of All Forms of Discrimination against Women.

The GDP is an independent research centre based in Geneva that investigates immigration-related detention. As per the GDP's mandate, this submission focuses on the State party's laws and practices concerning detention for immigration-related reasons.

Migrant-Rights.org is a Gulf Cooperation Council (GCC)-based advocacy platform working to advance the rights of migrant workers. It aims to change perspectives towards migrant workers by improving access to information on migration in the Gulf region and its migration corridors and promoting informed, local discussion on migration issues. Both off and online, Migrant-Rights.org engages residents, local businesses, and employers to challenge perspectives towards migrants and improve working conditions for some of the region's most vulnerable workers.

This joint submission updates the Global Detention Project's submission to CEDAW of June 2017, which contains relevant background information on the practice of immigration detention and the legal framework in Saudi Arabia. This joint submission is made in light of CEDAW's General Recommendation No. 26 on women migrant workers adopted on 5 December 2008.²

I. Immigration detention context - women migrants

The Kingdom of Saudi Arabia (KSA) holds one of the lowest levels of ratification of core international human rights treaties and has not ratified the main instruments relevant to immigration detention and protection against arbitrary detention, including the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention against Torture (which provides for national prevention mechanisms and detention monitoring visits), the Migrant Workers Convention, the Refugee Convention and the Convention on Statelessness.

The KSA has made implementation of the few human rights norms it has subscribed to conditional upon respect for the norms of Islam and Sharia law. In a context where women citizens are often discriminated against in law and policies (as emphasized in

¹ UN Index: [CEDAW/C/SAU/Q/3-4](https://documents.un.org/prod/ods.nsf/xpSearchResultsM.xsp) and [CEDAW/C/SAU/Q/3-4/Add.1](https://documents.un.org/prod/ods.nsf/xpSearchResultsM.xsp) and <https://documents.un.org/prod/ods.nsf/xpSearchResultsM.xsp>

² UN Index: [CEDAW/C/2009/WP.1/R](https://documents.un.org/prod/ods.nsf/xpSearchResultsM.xsp), in particular see § 16 (j) "The rights of women migrant workers in detention, whether they are documented or undocumented: States parties should ensure that women migrant workers who are in detention do not suffer discrimination or gender-based violence, and that pregnant and breastfeeding mothers as well as women in ill health have access to appropriate services. They should review, eliminate or reform laws, regulations, or policies that result in a disproportionate number of women migrant workers being detained for migration-related reasons (articles 2 (d) and 5)"

CEDAW's recommendations in 2008³), foreign women and in particular migrant domestic workers are even more unlikely to access protection from abuse and redress after suffering violations of their rights under the Convention on the Elimination of All Forms of Discrimination against Women and related international human rights norms and standards.

As other countries in the Gulf Cooperation Council, the Kingdom of Saudi Arabia has long been an important destination for migrant workers especially from across Asia, the Middle East and the Horn of Africa who represent 37% of the population. According to United Nations 2017 statistics, the KSA hosts 12.2 million migrants, 31% of whom are women (3.78 million).⁴ Women migrants thus represent 12% of the total population in Saudi Arabia. This submission highlights some of the specific discriminatory practices based on gender that lead to abuse, detention (and frequent abuse in detention) of migrant women based on their immigration status.

Mass deportation leading to detention. To drive down the numbers of migrants, the authorities have launched a number of mass deportation campaigns. Academic researchers who interviewed Ethiopian women returnees during the 2013/2014 deportation campaign said they feared rape in detention centres because Saudi guards and policemen slept next to them. They reported instances of harassment and rape⁵ (see CEDAW General Recommendation 35 updating 19 – Gender Based Violence).

As part of a campaign entitled “A Homeland With no Illegals,” Saudi authorities launched a mass deportation operation in November 2017. The campaign is ongoing at the time of writing. Since then the Saudi authorities detained around 455,963 persons for violating its residency and labour laws, including many women.⁶ According to the latest report,⁷ among those who were detained:

- 104,488 were deported (compare with 65,715 by December 31)
- 74,180 were awaiting deportation (compare with 49,703 by December 31).
- 68,114 were referred to their embassies to issue “travel documents”
- 78,247 were handed instant fines but were not detained

The Ministry does not provide gender disaggregated data for migrants placed in immigration detention.

Trafficked persons, especially women. The U.S. State Department's Trafficking in Persons Report (TIP Report) criticizes Saudi authorities for failing to implement procedures to systematically identify victims and reports that Saudi officials even admit that trafficking victims are sometimes detained and deported. According to the 2017 TIP Report,⁸ “Government officials continued to arrest, deport, imprison, and

³ Concluding comments of the Committee on the Elimination of Discrimination against Women - Saudi Arabia, CEDAW/C/SAU/CO/2, 8 April 2008,

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/SAU/CO/2&Lang=En.

⁴ Department of Economic and Social Affairs Population Division, International Migration Report 2017, United Nations.

⁵ De Regt, Marina, Tafesse, Medareshaw, Deported before experiencing the good sides of migration: Ethiopians returning from Saudi Arabia, African and Black Diaspora: An International Journal Vol. 9, Iss. 2, 2016

⁶ Elias Meseret, Ethiopians deported en masse by Saudi Arabia allege abuse, 28 December 2017, Associated Press. For the last numbers of detainees and deportees, see the Twitter account of the Saudi Ministry of Interior in Arabic:

<https://twitter.com/MOISaudiArabia/status/955843221569097728>

⁷ @MOISaudiArabia, @MOISaudiArabia available in Arabic only.

penalize some domestic workers who fled their employers and undocumented foreign workers, some of whom could be potential trafficking victims.”⁸

According to Migrants-Right.org findings Filipino women who are trafficked, as defined by Saudi law, are sent to “shelters” not defined by KSA as detention centres but that may amount to detention facilities if women held there do not have freedom of movement.

Legal Framework. Saudi Arabia does not have a comprehensive migration policy. However, the Residence Regulations (No. 17/2/25/1337 of 1952), which contains a set of laws pertaining to immigration status and the rights of non-citizens, provides norms concerning the detention and incarceration of non-citizens for immigration-related reasons. Additionally, the Labour Law provides penalties for violations of immigration-related statutes. However, Labour Law does not apply to migrant domestic workers, the majority of whom are women who are thus discriminated against.

These laws, however, generally relate to criminal punishments and do not make reference to administrative immigration-related detention. It is often unclear to what extent one can separate immigration detention from criminal incarceration, and many cases of foreigners being held in prison awaiting deportation tend to describe the detentions as being related to criminal procedures.

According to Saudi Arabia reports⁹, the authorities have taken measures to “enforce the ban on the retention of workers’ passports pursuant to Cabinet Decision No. 166, referred to in paragraph 23 of the report. The Ministry of Labour and Social Development imposes the statutory fine on those who violate the ban. “ This measure would protect abused domestic workers who run away from violent employers and are treated as “illegal” migrants and may be detained, as their employers have retained their passports. However, as reported by two Saudi columnists in daily newspapers the Cabinet Decision No. 166 above is not enforced.”¹⁰

In specific incidents, female domestic workers are transferred to what is referred to as “the Center for Housemaid Affairs.” It is not a detention centre per se. However, many migrant women sent to it end up being deported. The specific incidents are: 1) Domestic workers who arrived in the kingdom but their sponsor did not pick them up (male workers arriving in the country do not require sponsor pick up). If the worker does not get picked up by her employer she is either transferred to another Saudi employer interested in her service or deported. 2) Runaway domestic workers found on “the street” by the police or those who filed a labour dispute with the police or the ministry of labour: the domestic worker’s case is investigated, possibly by the Ministry of Labour or the police or both. If it is not resolved, she might end up being deported.

Conditions in detention. According to Migrant-Rights.org research there is at least one detention centre in almost every administrative region in Saudi Arabia. The major airports that fly international flights are only located in Jeddah, Riyadh and Dammam (Eastern Province). Detainees in regional detention centres are transferred by buses to either the deportation centres in large cities or directly to airports to fly them out of

⁸ U.S. Department of State, Trafficking in Persons Report 2017.

⁹ § 81 of the replies of Saudi Arabia to the List of issues and § 23 of Saudi Arabia Combined 3rd and 4th Periodic Report”.

¹⁰ Available in Arabic only: <http://www.alwatan.com.sa/Articles/Detail.aspx?ArticleID=16306> and <http://www.al-madina.com/article/49077/>

the country. The regional detention centres have worse conditions than the ones in main cities. A 2010 report by the government-managed National Society for Human Rights (NSHR) describes the "miserable" and "painful" conditions of the immigrant detention center in Asir region, adding that the detention centre is even "worse than horrible".¹¹ A 2011 "socio-legal" study about domestic workers in Saudi Arabia and the Emirates reported that "governmental shelters" in Riyadh, Jeddah, and Damman were commonly referred to as "deportation centres" by domestic workers interviewed for the study.

The U.S. State Department's 2014 Country Reports on Human Rights Practices on Saudi Arabia makes reference to detention conditions, generally, citing a report by the National Society for Human Rights who, after visiting 16 jails across the kingdom, reported that there is overcrowding, with most jails operating at double their capacities. Their report specifically mentions the women's section of the Deportation and Detention Centres in Jeddah as being the worst. Concerns regarding detention conditions raised in the report included improperly trained wardens, lack of access to prompt medical treatment, holding prisoners beyond the end of sentences and failure to inform prisoners of their rights.

In February 2014, Human Rights Watch (HRW) researchers in Mogadishu interviewed a woman who had been detained for nine days with her two children, 7 and 9, and her sister's three children before deportation. "The room we stayed in with 150 other women and children was extremely hot and there was no air conditioning," she said. "The children were sick. My son was vomiting and his stomach was very bloated. There were no mattresses. People just slept on the floor."¹² According to the HRW report "IOM publicly said that many of the deportees [to Somalia] are in poor health because of their prolonged detention in substandard conditions before they were deported. Some had suffered physical and psychological trauma or had respiratory illnesses, including pneumonia. IOM noted that "a significant number may have been subjected to ill-treatment." There are also reports of sexual harassment in detention centres and deportation procedures take longer for women migrants.¹³

II. CEDAW (Convention) Article 2 (f) and (g) - custom, laws and practices which constitute discrimination against women

According to the findings of Migrant-Rights.org, a stunning 99.6 percent of all domestic workers and personal assistants in the Kingdom are foreigners: women domestic workers work 63.7 hours per week on average.

Among gendered root causes leading to irregular status for many migrant women or exposing them to abuse is that unlike their male counterparts, they mostly work as domestic workers. Domestic workers are isolated with little access to resources outside their employers and non-existent legal support and limited other assistance when they escape abusive employers. This reinforces their "subordinate position and

¹¹ http://www.alwatan.com.sa/Local/News_Detail.aspx?ArticleID=13023 available in Arabic only.

¹² Human Rights Watch, Saudi Arabia: 12,000 Somalis Expelled. 18 February 2014.

¹³ MD Rasooldeen, Foreign missions disappointed at slow deportation process, Arab News, 26 June 2013, <http://www.arabnews.com/news/456212>.

stereotyped roles” as highlighted in para 10 of General Recommendation 35 on gender-based violence.

Another discriminatory factor is that contrary to male migrant workers in other employment sectors, domestic workers are not protected by labour law. They are vulnerable to physical abuse, are exposed to extremely long working hours, lack of privacy, and lack of freedom of movement which can all lead to “torture, cruel, inhuman or degrading treatment” (para 16 of General Recommendation 35). This combined with the on-going retention of passports despite this being illegal, together with the employers control over job transfer / exiting the country – generates illegal status which leads to detention.

Other root causes leading to detention include lack of timely renewal of work visa and inability to transfer to another employer.

For instance, according to an activist working with Filipinos interviewed by the Global Detention Project, of the 1.2 million Filipino workers in Saudi Arabia, the vast majority are “undocumented” mostly because they have either left their official employer – after generally entering the KSA via legal channel. Others have overstayed their permits, at times due to the impossibility of returning to their home countries as their employers are withholding their passports and the authorities refuse to grant them an exit visa.

III. Key Questions for Saudi Arabia in Light of CEDAW’s General Recommendations No. 26 on Women Migrant Workers and General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19

Despite the dire situation above, the Combined third and fourth periodic reports of Saudi Arabia¹⁴ and the Replies of Saudi Arabia to be reviewed by CEDAW fail to address the situation of migrant women in immigration detention in Saudi Arabia in light of massive deportation campaigns. The reports also fail to address the situation of domestic workers running away from abusive employers who are not afforded the opportunity to defend their case in court.

Issues to be raised by CEDAW:

- **Prevention:** What measures are the authorities putting in place to prevent women migrant domestic workers from being placed in detention? Are the authorities investigating the root causes- discriminatory treatment - that lead migrant domestic workers to become undocumented? What mechanisms are in place to ensure that victims of trafficking are not detained? What mechanism is in place to identify victims of trafficking in detention centres?
- **Protection:** What measures are in place to ensure that once detained, women domestic workers are not further exploited and subjected to sexual abuse while in detention? Are statistics available about women detained with children?

¹⁴ Committee on the Elimination of Discrimination against Women, " Combined third and fourth periodic reports of States parties due in 2013 – Saudi Arabia," CEDAW/C/SAU/3-4, 29 August 2016, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSAU%2f3-4&Lang=en.

What is being done to ensure the health and safety of children detained with their mothers?

- Looking at root causes leading to migrant becoming undocumented, detained and deported, there is a need to improve the investigation of and prosecution of crimes of physical violence that lead so many of them to flee their employers.
 - A process must be put in place to ensure that employers are prosecuted and do not repeat the cycle with another migrant worker.
 - As for domestic workers the focus should be on protection of migrant women from arbitrary detention, and from abuse when detained (irrespective of the reasons that led to them being detained).
- As per its Statute, and as described in the Combined third and fourth periodic reports of Saudi Arabia to CEDAW (§ 30) and Replies by Saudi Arabia to the list of issues (§ 28,) the Human Rights Commission is mandated to visit detention centres and to receive human rights complaints:¹⁵
 - Did the Commission visit detention centres holding women migrant workers (including domestic workers) during the government deportation processes following the 2013, 2014 and 2017 expulsion campaigns?
 - What is the mechanism for women migrant workers (including domestic workers) held in detention centres to access the Human Rights Commission send complaints about human rights issues?
- Are women placed in immigration detention held in facilities monitored by women wardens?

Contact Information:

Global Detention Project
admin@globaldetentionproject.org
www.globaldetentionproject.org

Migrant-rights.org
info@migrant-rights.org
www.migrant-rights.org

¹⁵ Statute of Human Rights Commission, Council of Ministers Resolution No. 207 Dated 8 Sha'ban 1426H / 12 September 2005, [Official] Translation of Saudi Laws, First Edition 2010. See Article 5 "(6) "Visit prisons and detention centers at any time without permission from the competent authority and bring reports on them before the President of the Council of Ministers. 5 (7) Receive and verify complaints related to human rights and take legal measures pertaining to them."

Global Detention Project
3 rue de Varembe
1202 Geneva, Switzerland
globaldetentionproject.org
+41 (0) 22 733 08 97
admin@globaldetentionproject