

**BEFORE THE UNITED STATES
TRADE REPRESENTATIVE**

UPDATE TO THE 2008-2009 PETITIONS TO REMOVE

IRAQ

**FROM THE LIST OF ELIGIBLE BENEFICIARY DEVELOPING COUNTRIES
PURSUANT TO SECTION 19 USC § 2462(d) OF THE GENERALIZED SYSTEM OF
PREFERENCES (GSP)**

filed by

**THE AMERICAN FEDERATION OF LABOR & CONGRESS OF INDUSTRIAL
ORGANIZATIONS (AFL-CIO)**

DECEMBER 2011

Information Required Under 15 CFR § 2007

1. *Petitioner:* AFL-CIO, 815 16th Street, N.W., Washington, D.C., 20006
2. *Country Subject to Review:* Iraq
3. *Section of Law Warranting Review:* 19 U.S.C. § 2642(d) (worker rights).
4. *Reason for Filing:* The Iraqi Government has not and is not taking steps to afford internationally recognized worker rights. Although Iraq has been the subject of several prior petitions seeking removal from the list of eligible beneficiary developing countries on the basis of serious violations of internationally recognized workers' rights, this request includes new information warranting further consideration.

Note: This submission supplements, but does not replace, the petitions previously submitted regarding Iraq. Its focus is on the new draft labor law. Other sections included in prior petitions, including section on "Labor Law in Practice" sections from the 2008 and 2009 petitions are hereby incorporated by reference.

Introduction

More than eight years since the fall of the Hussein regime, there is still no permanent labor law in Iraq and no law governing the industrial relations system. Whereas many other laws have been introduced or changed, the 1987 Iraq Labor Law remains as the legal framework governing labor and trade union activities. After many pronouncements of proposed changes, a new draft law was recently published. The proposed legislation will fail to secure Iraqi workers with Core Labor Standards (CLS) as defined by the International Labor Organization (ILO). The key problems with the draft law are detailed below. The draft has also removed from the statute the previous Chapter on Trade Union Organization that regulates trade union work in Iraq. There has been no indication thus far, if and when a separate law on trade unions would be introduced that would provide better compliance with CLS.

1. Proposed New Labor Law

A. Issues of Freedom of Association and the Right to Collective Bargaining

FOA The draft law fails to adequately protect freedom of association and the right to bargain collectively for public sector workers. As most formal-sector jobs in Iraq are in the public sector, this effectively disenfranchises the majority of Iraqi workers from the rights to free association and collective bargaining. Article 3.2.a of the proposed law clearly excludes staff from all government departments and the broader public sector from coverage. This exclusion is based on the 1987 Trade Union Organization Law, which classified all persons in Government employment as civil servants and therefore covered by the Civil Employment Law #24/1960. The 1960 legislation did not include language that would allow employees to join unions of their

own choosing and the applicable statute from the Saddam regime, the 1987 Trade Union Organization Law, prohibited government workers from joining trade unions.

The lack of the right to organize into independent trade unions has the collateral impact of disallowing these workers from engaging in collective bargaining to improve the terms and conditions of their employment. Such a prohibition is in violation of ILO Conventions 87 and 98 on freedom of association and the right to bargain collectively.

Article 4 of the draft also states that workers covered by the provisions of this Law shall be entitled to a periodic annual increment due when they complete a full year of work with the same employer. The proportion of such increment shall be determined by instructions issued by the Minister of Labor. Such a provision can undermine collective bargaining agreements, and it is unclear from the draft what criteria the Ministry would use to make this decision.

In terms of the rights to collective bargaining, there are additional restrictions in Article 137.1, which states that an employer may not refuse to bargain with a registered labor union representing more than fifty percent of the work force, by implication allowing the employer not to negotiate with trade union organizations that represent less than fifty per cent of employees. This would be a violation of the right to collective bargaining. Article 137.2 would allow multiple unions, that in combination represent more than fifty per cent of the work force, to negotiate with the employer. It is unclear how the two Articles will work together and also unclear how a trade union would be able to show that it represented a requisite percentage of the workforce. Because of this ambiguity, the draft appears to give the employer the right to refuse to negotiate unless the majority of the workforce are members of a single registered trade union.

Whereas the draft recognizes the role of foreign workers in Iraq, there is no reference to their rights to form or join trade unions. The right of *all* workers in member States of the ILO to belong to trade unions is protected by several Conventions Nos. 87 and 98 in particular, and by the Constitution of the ILO, so that this basic principle must be respected even in countries whose governments have not ratified particular Conventions. In addition, the Conventions and Recommendations concerning migrant workers contain several references to the obligation to guarantee the trade union rights accorded to local workers to migrant workers as well.

B. Other Core Labor Standard Issues

The draft law indicates that it prohibits child and forced labor, yet in both cases it is conspicuously weak in terms of the mechanisms that would be used to ensure these prohibitions. Chapter 11, which focuses on protection of minors, concentrates its attention on “juveniles” aged between 15 – 18 years of age. There is no mention of the employment of children below the age of 15 in the Chapter so it is unclear what prohibitions and sanctions are in place to protect against child exploitation. The Chapter includes a statement about forced labor, but fails to clearly specify procedures to be used to identify, investigate, or deter such behavior.

2. **The 1987 Law Still in Effect**

Because a new Labor Law has not yet been passed, the 1987 Trade Union Organization Law, which effectively outlaws independent labor unions, law remains in effect. This law effectively abolished right to collectively bargain and the right to strike, as well as the minimum wage. All public sector workers (the majority of formal sector workers in Iraq at the time) were reclassified as "civil-service" and prohibited from unionization. Workers' committees could be formed in the private sector, but only in worksites employing more than 50 workers, which represented only about 8% of the workforce in Iraq at the time. By law, these workers committees were required to affiliate with the state-controlled federation of workers, an arm of the Ba'ath security apparatus.

For years, US Department of State Country Report on Human Rights Practices has also noted severe restrictions of trade union rights in law.

Earlier this year, the US State Department observed that the 1987 Labor Law effectively eliminated the right of association in the public sector and severely limited unions' capacity to act in the private sector:

Labor Law 150 of 1987 is still in effect and states that trade union organizations should "play an effective role in the organization of labor relations, in the protection of workers' rights, and in the development of their personalities." However, it declares virtually all public sector workers to be government "executives," and therefore legally ineligible to form or to join unions. The rights of migrant workers are not covered under this law. The provision in effect eliminated unions and the right of association from the large public sector.

In the private sector, the 1987 Trade Union Organization Law states that employees can form workers' committees, with limited rights of association, in private-sector work sites employing more than 50 workers. Originally, this was also intended to remove the right of association from a majority of private-sector workers because most private-sector businesses employ fewer than 50 workers. Decree 8750 of 2005, which cancelled unions' leadership boards, froze their assets, and formed an interministerial committee to administer unions' assets and assess their capacity to resume activity, also inhibited union activity.¹

As to organization and collective action, the State Department has noted:

The constitution states that every citizen has the right to demonstrate and strike peacefully in accordance with the law; however, the 1987 labor code rules out the existence of public sector labor unions capable of carrying out industrial action and prohibits striking in the public and private sectors. Strikers were harassed and threatened for striking during the year. In March, the media reported that security forces (army and police) dispersed an oil worker demonstration in Basra and arrested two demonstrators. According to October 10 press reports, Hassan Juma'a and Falih Abood, the president and general secretary, respectively, of the Federation of Oil

¹ State Department, 2010 Country Reports on Human Rights Practices – Iraq, April 8, 2011, available online at <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154462.htm>

Employees of Iraq were banned from travel outside the country. In June, the authorities surrounded protesting longshoremen in Basra and transferred union leaders hundreds of miles from their homes.²

3. **Examples of Violations of Freedom of Association and the Right to Organize and Bargain Collectively**

A. Human Trafficking and Other Migrant Worker Exploitation

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According to the 2011 Trafficking in Person Report, "Iraq is a source and destination country for men, women, and children subjected to sex trafficking and forced labor. Iraqi women and girls are subjected to conditions of trafficking within the country and in Syria, Lebanon, Jordan, Kuwait, the United Arab Emirates, Turkey, Iran, Yemen, and Saudi Arabia for forced prostitution and sexual exploitation within households."³ According to Iraqi labor leaders and the report, "Iraq is also a destination country for men and women who migrate from Bangladesh, India, Indonesia, Nepal, the Philippines, Sri Lanka, Thailand, Pakistan, Georgia, Jordan, and Uganda and are subsequently subjected to involuntary servitude as construction workers, security guards, cleaners, handymen, and domestic workers."⁴ The State Department concludes that the Government of Iraq does not fully comply with the minimum standards for the elimination of trafficking even though it is making efforts to do so. Due to apparent lack of effort to punish traffickers or proactively identify victims, the State Department placed Iraq on the Tier 2 Watch List for the third consecutive year.⁵

Abuse of foreign workers' rights has not abated in recent years. Foreign workers lured to Iraq by unscrupulous labor recruiters do not make the promised wages and live in fear of being deported before even earning enough to pay the original recruitment fees.⁶ Iraqi labor leaders sharply criticize government policies that condone the development of an exploited, unprotected underclass of foreign workers while at the same time developing no plan for job training and placement to stave off widespread unemployment and poverty among Iraqi workers. For OI ca

Conclusion

For the first time in decades, the trade union movement in Iraq is growing independently. Yet, very significant impediments remain. The new draft labor law does little to make the necessary changes desperately needed in Iraq. The primary deficiencies are the lack of language clearly securing the right to freedom of association in both the public and private sectors, the right for workers to join *independent* trade unions, and clear guidance on employer responsibility to engage in collective bargaining. There is nothing in the draft to give guidance to the

² *Id.*

³ 2011 Trafficking in Persons Report, US Department of State, p. 196, <http://www.state.gov/documents/organization/164454.pdf>.

⁴ *Id.* at 197.

⁵ *Id.*

⁶ See, e.g., Muhanad Mohammed, Iraq's Foreign Workers Fret over Labor Crackdown, *Reuters*, July 6, 2011 (<http://www.reuters.com/article/2011/07/06/us-iraq-labour-deportations-idUSTRE7652WE20110706>); Michael S. Schmidt, Foreign Workers Stranded Without Money or Visas, *New York Times*, August 25, 2011 (http://www.nytimes.com/2011/08/26/world/middleeast/26iraq.html?_r=1&pagewanted=all).

representative status of a trade union. There is nothing in the draft outlining the necessary protections for trade union activists carrying out their legitimate role as representatives of workers. The most significant deficiency is that it keeps intact the restrictions on public worker organizing that were imposed in 1987 under the Saddam Hussein regime. A new labor code that fully recognizes the core International Labor Organization Conventions would be a major step toward an independent, democratic Iraq.

The AFL-CIO strongly encourages the President to make the implementation of a new labor law, fully compliant with ILO core labor standards, developed in a transparent manner with social partners, and prepared in conjunction with the ILO, a prerequisite for the further extension of GSP beneficiary status to Iraq. If the government of Iraq fails to expeditiously act to replace the 1987 labor code with a law in full compliance with core labor standards, GSP eligibility for Iraq should be withdrawn.