THE RIGHTS OF MIGRANT DOMESTIC WORKERS: A CASE STUDY OF THE GULF COOPERATION COUNCIL COUNTRIES

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ABSTRACT

Domestic workers play an imperative role in the Gulf Cooperation Council (GCC) countries' households. It is rare to find a household without a domestic worker in the GCC. However, domestic workers are more vulnerable because they are usually excluded from the protections offered in labor laws and live inside of the household. Furthermore, the demand for domestic workers will likely increase rather than decrease due to the growing number of women participating in the job market and the growing age of GCC citizens. This dissertation reviews domestic worker laws that were adopted by the GCC countries taking into account these vulnerabilities. Different GCC countries have been working on improving the conditions for domestic workers in their states by adopting laws and regulations. The issue of domestic workers in the GCC is a complex matter with socio-economical, cultural, and legal implications that need to be contextualized in light of the history of the sponsorship system in the GCC. This dissertation looks into the best practices adopted by some countries in the GCC that are worth spreading to other GCC countries and addresses critiques from human rights organizations to improve the situation for domestic workers.

Taking into account domestic workers vulnerabilities, this dissertation shows that abolishing the sponsorship system — as human rights organizations advocate — would cause problems as it would create more vulnerabilities for workers and increase resistance from employers. Moreover, the concept of sponsorship is deeply ingrained in conceptions of obligations owed between migrant domestic workers and employers in the Gulf region. This dissertation argues that the concept of sponsorship should be reformed rather than abolished by shifting the sponsorship system from individual employers to the state and a regional recruitment body.

This dissertation proposes creating a unified contract for domestic workers heading to GCC countries and also proposes a unified law for domestic workers in all GCC countries. The dissertation proposes establishment of a GCC body to handle the recruitment of migrant domestic workers heading to the GCC countries, which will be beneficial for the well-being of workers and address the attacks on the GCC regarding the sponsorship system.

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CHAPTER 1: INTRODUCTION

There are 150.3 million migrant workers worldwide.¹ Of these, 68 million are domestic workers² and 3.77 million of them work in the GCC.³ In accordance with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, a migrant worker is defined as "a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national." Domestic worker is defined in the Convention Concerning Decent Work for Domestic Workers (Convention on Domestic Workers)⁵ as "any person engaged in domestic work within an employment relationship."

Domestic workers are one of the most vulnerable people, because they are usually excluded from the protections offered in labor laws and they often live inside the household where they work, rarely leaving. More than half of all domestic workers are female migrant domestic workers. The number of migrant domestic workers continues to increase, year after year, which means protections need to be put in place to protect those workers.

Reports from human rights organizations indicate that female migrant domestic workers in the Gulf Cooperation Council (GCC) countries are the most vulnerable due to the *Kafala* system (sponsorship system).⁷ This system prohibits a worker, whether a migrant worker or

 $^{^{\}rm 1}$ Int'l Lab. Org. [ILO], ILO Global Estimates on Migrant Workers (2015),

http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms 436343.pdf.

² Domestic Workers, INT'L LABOUR. ORG. [ILO], http://www.ilo.org/global/topics/domestic-workers/lang-it/index.htm (last visited June 22, 2018).

³ Marie-Jose Tayah & Hadi Assaf, *The Future of Domestic Workers in the Countries of the Gulf Cooperation Council*, ABU DHABI DIALOGUE (May 8, 2018), http://abudhabidialogue.org.ae/sites/default/files/document-library/2018_Future%20of%20Domestic%20Work%20Study.pdf.

⁴ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families art. 2, 30 I.L.M. 1517 (Dec. 1990) [hereinafter Protection of Migrant Rights Convention].

⁵ Int'l Lab. Org., Convention (No. 189) Concerning Decent Work for Domestic Workers (Jun. 16. 2001), http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189 [hereinafter Domestic Workers Convention].

⁷ PRIYANKA MOTAPARTHY, HUMAN RIGHTS WATCH, WALLS AT EVERY TURN: ABUSE OF MIGRANT DOMESTIC WORKERS THROUGH KUWAIT SPONSORSHIP SYSTEM (2010), https://www.hrw.org/report/2010/10/06/walls-every-turn/abuse-migrant-domestic-workers-through-kuwaits-sponsorship-system; AMNESTY INTERNATIONAL, "MY SLEEP IS MY BREAK": EXPLOITATION OF MIGRANT DOMESTIC WORKERS IN QATAR (2014),

https://www.amnesty.org/en/documents/mde22/004/2014/en/; Human Rights Watch, "As If I Am Not Human": Abuses Against Asian Domestic Workers in Saudi Arabia (2008), https://www.hrw.org/report/2008/07/07/ifi-am-not-human/abuses-against-asian-domestic-workers-saudi-arabia; Human Rights Watch, "I Already Bought You": Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab

migrant domestic worker, from working in the GCC without a local sponsor who is legally and financially responsible for the worker.

This system, which was codified in the region in the 1950s, has long been rooted in the Gulf region. There are multiple theories regarding its origin in the region. Some tie the *Kafala* system's creation to traditional notions of Bedouin protection and hospitality;⁸ others attribute it to the United Kingdom's colonialization practices throughout the region, attempting to regulate the labor industry.⁹

Furthermore, reports suggest that some employers of migrant domestic workers abuse the sponsorship system, while placing more respect on a traditional employment relationship.¹⁰ The current sponsorship system ultimately provides more power to the employer and creates an unbalanced relationship with migrant domestic workers; while most sponsors are respectful of the employment relationship with the migrant domestic worker, some abuse those imbalances.

Many human rights experts and multiple international organizations, including the International Labor Organization (ILO), have called upon the GCC countries to abolish the *Kafala* system. But abolishing the system without a proper replacement will leave the region in chaos, especially since migrant workers in most GCC countries outnumber the nationals. Some system for regulating the entry of migrant domestic workers, protecting migrant domestic workers, and recognizing the legitimate interest of employers must be in place.

Ultimately, this dissertation proposes shifting the sponsorship system from employer sponsorship to government sponsorship as opposed to abolishing the system in order to address the imbalance of the power dynamic in the sponsorship system. The proposal emphasizes creation of a regional body that will serve as the sponsor for migrant domestic workers heading to the region. That body will have the right to transfer workers from one employer to another in certain conditions, which intends to address the abuses some employers commit under the current sponsorship system.

EMIRATES (2014), https://www.hrw.org/report/2014/10/22/i-already-bought-you/abuse-and-exploitation-female-migrant-domestic-workers-united; HUMAN RIGHTS WATCH, "I WAS SOLD": ABUSE AND EXPLOITATION OF MIGRANT DOMESTIC WORKERS IN OMAN (2016), https://www.hrw.org/report/2016/07/13/i-was-sold/abuse-and-exploitation-migrant-domestic-workers-oman#page.

⁸ Hanan Malaeb, The "Kafala" System and Human Rights: Time for a Decision, 29 ARAB L.Q. 307 (2015).

⁹ Omar Al-Shehabi, *The Modern Origins of the Kafala Sponsorship System in the Gulf Arab States* (2017) (unpublished manuscript) (on file with author).

¹⁰ MOTAPARTHY, *supra* note 7; MY SLEEP IS MY BREAK, *supra* note 7; As IF I AM NOT HUMAN, *supra* note 7; I ALREADY BOUGHT YOU, *supra* note 7; I WAS SOLD, *supra* note 7.

Cases of abuse towards domestic workers are not only found in the GCC, but also in many other countries around the world. Domestic workers (migrant or otherwise) worldwide are vulnerable because they often live inside the household (their place of employment) and their movement may be restricted. Domestic workers need increased protections and regulations to protect their rights as cases of abused domestic workers are common in many parts of the world, even in the most developed countries where the rule of law is respected and followed.

This dissertation examines international efforts to enhance protections through the adoption of an agreement on the rights of migrant domestic workers — the Convention on Domestic Workers — which was adopted in 2011 and entered into force in 2013, guaranteeing minimum protections to domestic workers. The dissertation then analyzes the individual GCC countries and the steps these member nations have taken to protect the rights of migrant domestic workers in their jurisdiction. Regional steps are being taken by the GCC, primarily surrounding the Abu Dhabi Dialogue, where countries of origin meet with countries of destination to improve the situation for migrant domestic workers as well as to share and develop best practices for dealing with domestic workers. Developments in this area continue to improve in most of the GCC countries, providing a template for how the region should properly address and protect migrant domestic workers.

Almost all GCC countries exclude domestic workers from the protections offered under domestic labor laws. Only Bahrain includes domestic workers in its labor law; yet, certain gaps in protections for domestic workers under Bahrain's labor law still need to be filled, including regulating working hours and sick leave, as well as enforcing a minimum wage. All GCC countries are taking steps to improve the situation for migrant domestic workers in their countries, which means that there is a true political will to improve the situation for domestic workers in the region. When research for this dissertation began, only three GCC countries had laws regarding domestic workers — Bahrain, the Kingdom of Saudi Arabia, and Kuwait; during this study, both Qatar and the United Arab Emirates (U.A.E.) adopted laws on domestic workers, which were then incorporated into the dissertation. The GCC countries are on the right path by adopting laws and regulations to set some minimum standards to protect the rights of migrant domestic workers. While these laws may not necessarily conform exactly to the international

¹¹ Christine Chin, In Service and Servitude: Foreign Female Domestic Workers and the Malaysian Modernity Project (1998).

standard, they are a step in the right direction. They create a base for the protection offered to migrant domestic workers. This dissertation offers an overview of the laws and regulation in place within the GCC, the gaps in those laws and how they can be improved.

An important component of this dissertation was a survey conducted with both employers and domestic workers in Kuwait, Bahrain, and Saudi Arabia. The survey results are not representative of all domestic workers and employers in these countries — the domestic worker's questionnaire was circulated in Kuwait and Bahrain to domestic workers in embassy shelters while the employer's questionnaire was conducted through the snowball method 12 however, the survey intended to find out what problems domestic workers face in those countries, how migrant domestic workers were treated, and whether they were trained prior to coming to the region. The survey also explored how employers treat domestic workers, asking employers whether they allow their domestic workers to take a day off, have a cell phone, and leave the household on their day off. The results from these questionnaires are incorporated into this research to enhance the proposed model for regional reform. One of the main findings is the fact that many employers and domestic workers were unaware of the laws and regulations in place that protect both the worker and the employer. For instance, the survey in Kuwait showed that only 11% knew of the domestic workers law while 89% did not know about the domestic workers law. In Bahrain only 9.9% knew about the while 90.9% did not knew about the domestic workers law which is embedded in the labor law. In Saudi Arabia only one knew about the law and seventeen did not know about the domestic workers legislation. There needs to be more awareness about the laws in place since those laws protect both the employer and the employee. I discuss this more in Chapter 9.

A key issue for this dissertation is how legal consciousness is transmitted. I use both the words transplant and spreading. Transplant is used when there is legal change through the borrowing of foreign laws and institutions. Spreading is used on a wider range for practices other than laws and regulations. I use the word spreading for the idea of an awareness campaign. Transplant, on the other hand, can be seen in the GCC adopting domestic workers laws and the spreading of additional practices such as the wage protection system, which originated in the U.A.E. and spread to other GCC countries. Yet there remains a lack of knowledge and a gap

¹² The questionnaire was originally sent to a certain number of people who were instructed to complete the survey and then send it to their friends and acquaintances to complete.

about the transplanted laws that needs to be filled. The filling of this knowledge is what I mean by spreading.

Finally, this dissertation recommends reforms to the *Kafala* system. The dissertation looks into the best practices some GCC countries are implementing, which are worth spreading to other GCC countries. These include: setting up a shelter program and establishing a minimum wage for domestic workers, as in Kuwait;¹³ extending the wage protection system to include migrant domestic workers and establishing a centralized online portal (Musaned), as in Saudi Arabia;¹⁴ including an inspection clause in the domestic workers law, the establishment of the *Tadbeer* center, and furthermore, the establishment of special chamber in court for domestic workers as the one established in Abu Dhabi in the U.A.E.;¹⁵ creating a domestic agency, the Labor Market Regulatory Authority, and promoting an awareness campaign, as in Bahrain.¹⁶ These are some of the best practices worth noting in the laws of GCC countries because they help improve the situation for migrant domestic workers in the GCC. This dissertation also examines shifting the sponsorship system away from a private employer sponsor to the government, focusing on how that could improve the situation for migrant domestic workers and, maybe in the future, all migrant workers in the GCC.

While international division appears prominent lately as some regional bodies reconsider their partnership and cooperation — specifically the United Kingdom's exit from the European Union and the renegotiation of the NAFTA agreement — the GCC is getting closer to achieving unity and moving from "cooperation" to "union."

Chapter 2 begins by exploring the Domestic Workers Convention and NGO perspectives on the domestic workers situation in the GCC. It concludes by providing an overview of the GCC and the Abu Dhabi Dialogue. Chapters 3-7 look into the case studies of each of the GCC countries picked to examine their domestic efforts to improve the situation for migrant domestic workers. Chapter 9 provides the proposal of this dissertation: establishing a regional body to handle the recruitment of migrant domestic workers for the GCC. Chapter 10 looks at creating a unified law for domestic workers in the GCC. Finally, Chapter 11 proposes a unified standardized contract for domestic workers.

¹³ See discussion infra Chapter 3.

¹⁴ See discussion infra Chapter 5.

¹⁵ See discussion infra Chapter 7.

¹⁶ See discussion infra Chapter 4.

This dissertation acknowledges different layers of migration and what it involves while proposing ways to improve transnational migration practices between countries of origin and countries of destination. Ultimately, to improve the situation for migrant domestic workers, countries of origin and countries of destination need to work together to reform and then enforce effective laws and regulations. Some countries of origin celebrate their migrant domestic workers by calling them heroes for the work they do and the significant remittances sent back home. However, countries of origin need to improve their laws and regulations in relation to international migration, specifically laws regarding recruitment fees. As countries of origin unite and demand more rights for their nationals working abroad, the GCC countries should also work together and create a united front to negotiate resolutions to the issues faced by domestic workers. A huge part of the solution is to raise awareness of the issues and the rights of migrant domestic workers throughout the GCC region, as the survey results indicate that many employers remain unaware of the laws and regulations governing domestic workers.¹⁷ The foundation for reform was set by adopting laws and regulation governing domestic work in most GCC states. Now, it is time to build upon that base and raise awareness of these laws and regulations to make sure the laws are implemented, not only in the books. Kindly note that this paper is current as of December 2017; any information released later will not be found in this dissertation.

^{17 .}

¹⁷ See Appendices 1-5.

CHAPTER 2: BACKGROUND

A. The ILO Convention Regarding Decent Work for Domestic Workers and the GCC Countries: A Comparative Study

The adoption of the International Labor Organization (ILO) Convention of Decent Work for Domestic Workers (Domestic Workers Convention) denotes a remarkable step towards awarding minimum standards of protection to domestic workers. There are more than 53 million domestic workers worldwide and 83% of them are female domestic workers. Roughly 50% of those domestic workers are migrant women. Those numbers demonstrate a true need to offer protection to domestic workers and regulate the sector of domestic work. The Domestic Workers Convention acknowledges domestic workers as other kinds of workers.

Created in 1919 as part of the Treaty of Versailles that ended World War I, the ILO initiates efforts to articulate, promote, and implement universal labor standards. In 1946, the ILO became the first specialized agency of the United Nations.²² The core labor standards of the ILO are the right to freedom of association²³ and collective bargaining,²⁴ the elimination of all forms of forced and compulsory labor,²⁵ abolition of child labor,²⁶ and the elimination of discrimination in employment.²⁷ The ILO core labor standards are not just workers' rights but fundamental human rights.²⁸

¹⁸ Martin Oelz, *The ILO Domestic Workers Convention and Recommendation: A Window of Opportunity for Social Justice*, 153 INT'L LAB. REV. 143, 143 (2014).

¹⁹ *Id.* at 145.

²⁰ Adelle Blackett, *The Decent Work for Domestic Workers Convention and Recommendation*, 106 Am. J. INT'L L. 778 (2012).

²¹ *Id.* at 783.

²² Peggie R. Smith, *Work Like Any Other, Work Like No Other: Establishing Decent Work for Domestic Workers*, 51 EMPLOYEE R. & EMPLY. POL'Y J. 157 (2011).

²³ James Atleson, et al., International Labor Law: Cases and Material on Workers' Rights in the Global Economy 60 (2008).

²⁴ *Id*.

²⁵ *Id*.

²⁶ *Id*.

²⁷ *Id*.

²⁸ *Id.* at 61.

i. The Convention of Decent Work for Domestic Workers

The ILO was established in 1919 as part of the Treaty of Versailles that ended World War I.²⁹ In 1946, the ILO became the first specialized agency of the United Nations.³⁰ The core labor standards of the ILO are the right to freedom of association³¹ and collective bargaining,³² the elimination of all forms of forced and compulsory labor,³³ abolition of child labor,³⁴ and the elimination of discrimination in employment.³⁵ The ILO core labor standards are not just workers' rights but fundamental human rights.³⁶ Attempts to internationally regulate domestic work dates back to 1936, where it was originally discussed in an ILO meeting.³⁷ An attempt to adopt an international treaty on domestic work occurred in 1965, however, the treaty was unsuccessful and, at the end, a resolution was passed instead.³⁸

At its 100th International Labor Conference, in 2011, the Decent Work for Domestic Workers Convention was adopted.³⁹ The Domestic Workers Convention was adopted due to the joint efforts of the global union federation and the domestic workers organization.⁴⁰ The ILO adoption of the Domestic Workers Convention marks an important era in the rights of domestic workers, especially migrant domestic workers, as the Convention recognizes in its preamble that many domestic workers are migrants. In twenty-seven articles, nineteen of which are functional articles while eight are related to ratification,⁴¹ the Convention sets the minimum standards that should be applied to domestic workers. Even though many of the provisions leave details of the actual legislation to the discretion of the state, the Convention sets important milestones for domestic workers. In this chapter, I explore the rights provided to domestic workers in light of the Convention and the relevant GCC states' legislation on migrant domestic workers. Along with the Convention, its accompanying recommendations are also reviewed; while not binding

²⁹ Smith, *supra* note 22, at 157.

³⁰ Id

³¹ ATLESON, ET AL., *supra* note 23, at 60.

³² *Id*.

³³ *Id*.

 $^{^{34}}$ *Id*.

³⁵ *Id*.

³⁶ *Id*. at 60.

³⁷ Heather E. Murray, Hope for Reform Springs Eternal: How the Sponsorship System, Domestic Laws and Traditional Customs Fail to Protect Migrant Domestic Workers in GCC Countries, 45 CORNELL INT'L L.J. 465 (2013).

 $^{^{38}}$ Id.

³⁹ Domestic Workers Convention, *supra* note 5.

⁴⁰ Murray, *supra* note 37, at 481.

⁴¹ Domestic Workers Convention, *supra* note 5.

on member states, the twenty-six articles⁴² explain the objectives of the Convention in more detail.

The convention is set in twenty-seven articles, nineteen of which are functional articles while eight are related to the ratification of the convention.⁴³ The recommendations are set in twenty-six articles. The convention is binding on member states, while the recommendations set guidelines and are non-binding.

The Convention entered into force on September 5, 2013, following its ratification by the Philippines, the second country to ratify the Convention; the first country to ratify the Convention was Uruguay. 44 As of April 2018, the Convention has been ratified by twenty-five states. Most countries that ratified the Convention are not "sending" countries (those that send migrant workers to other countries); in fact, many sending countries — such as India, Nepal, Sri Lanka, and Ethiopia — did not ratify the Convention. Some destination countries ratified the Convention; however, most were European countries such as Germany, Finland, Italy, and Portugal.⁴⁵ Also, many Latin American countries ratified the Convention, including Argentina, Colombia, Chile, Costa Rica, Ecuador, and most recently, Brazil. Although all the GCC states voted in favor of its creation, none have ratified the Convention. In fact, the GCC made a number of reservations during the 100th session on certain provisions including leaving the household during resting hours; the reservation made by the GCC was that this should be something that both parties should be free to negotiate. 46 The GCC also raised issues with regards to working hours.⁴⁷ Here the GCC stated that it was too hard to calculate the working hours due to the fact that the domestic worker lives inside of the household and the nature of the job varies from one day to the next. The last reservation the GCC made addressed HIV testing for domestic workers.

⁴² Domestic Workers Recommendations No. 201, art. 2 (June 16, 2011), http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:2551502:NO [hereinafter Domestic Workers Recommendations No. 201].

⁴³ Domestic Workers Convention, *supra* note 5.

⁴⁴ *Domestic Workers Convention: Labor Rights Treaty to Take Effect*, HUMAN RIGHTS WATCH (Aug. 6, 2012, 8:39 AM), https://www.hrw.org/news/2012/08/06/domestic-workers-convention-labor-rights-treaty-take-effect.

⁴⁵ Ratifications of C189-Domestic Workers Convention, 2011, INT'L LAB. ORG., http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:2551460 (last visited May 3, 2017).

⁴⁶ Copy of the final report of the third meeting of the team assigned to study and recommend the decent work convention of domestic workers (on file with the author).

⁴⁷ *Id*.

GCC countries disagreed with the ILO that the test was needed to protect the families where the domestic worker lived and worked.⁴⁸

Notably, all GCC countries were influenced by ILO C189 — reflected in their national legislations — as well as certain aspects of the Convention. Just as the Convention begins by defining the terms "domestic work" and "domestic workers," each of the GCC states' legislation also provides for a specific definition of domestic workers. While each GCC country has a different naming convention for its domestic workers legislation, the definition of domestic workers remains similar.

Convention Provisions

Below are the topics covered by the convention for domestic workers alongside similar legislation from GCC states:

1) The fundamental principles of the ILO

Article 3 of the Convention covers the core principles of the ILO — collective bargaining and freedom of association. These core principles are problematic for many GCC countries. Even though collective bargaining and freedom of association are one of the core standards of the ILO, they are not fully implemented ideas in the GCC — the only country who partially implements these ideas is Bahrain by allowing expatriates in the private sector to join unions. Therefore, this provision was not adopted in any GCC country's legislation on foreign domestic workers.

2) Decent working conditions and decent living conditions

Article 6 of the Convention stipulates that a domestic worker shall enjoy a fair working condition and be provided with decent living conditions. All GCC countries stipulate similar provisions in their laws for migrant domestic workers. Article 11 of the Kuwaiti law states that the domestic worker shall be provided with suitable housing that enables decent living condition⁵⁰ and the Saudi law, in Article 7(5), states that a domestic worker shall be provided with decent living.⁵¹ The Qatari law, in Article 7, obligates the employer to provide the domestic

⁴⁸ *Id*.

⁴⁹ Domestic Workers Convention, *supra* note 5.

⁵⁰ Qanoon Al-Amalah Al-Manzleyah [Domestic Workers Law] of 2015, Promulgated by Amiri Decree No. 68 of 2015, art. 11 (July 27, 2015) (Kuwait).

⁵¹ Laehat Al-Amalah Al-Mazeleyah [Household Regulation on Service Workers and Similar Categories], Resolution No. 310, art. 7(5) (July 7, 2013) (Saudi Arabia).

worker with proper accommodation, food, and healthcare.⁵² While the U.A.E. law also obligates the employer to provide a decent living in Article 15 of the law.⁵³

3) Setting a minimum age for domestic workers

Article 4 of the Convention requires a minimum age for domestic workers. Qatar sets a minimum age of eighteen (not to exceed sixty),⁵⁴ while Kuwait sets a minimum age of twenty-one (not to exceed sixty).⁵⁵ Saudi Arabia does not set a minimum age for domestic workers nor does the U.A.E.

4) Wages

Article 12 of the Convention covers wages and states that wages may be paid in cash or through bank transfer, bank cheque, postal cheque, or money order. All GCC countries have a provision on wage payment for domestic workers. Kuwait, for instance, in Article 7 of the domestic workers law, states that the worker shall be paid in cash or via transfer receipts.⁵⁶ Qatar, on the other hand, states in Article 8 that wages shall be paid through the bank account of the domestic worker or in cash, provided a receipt is exchanged.⁵⁷ Article 7(3.4) of the Saudi Arabian law states that the domestic worker shall be paid at the end of each month through cash or cheque.⁵⁸ Recently Saudi Arabia included domestic workers in its wage protection program, which helps keep tabs on whether the domestic worker was paid the agreed salary.

5) Working hours and leisure

Article 10 of the Convention covers working hours and weekly days off, requiring at least twenty-four hours off be incorporated into national laws. The set hours differ between GCC countries. For instance, in Kuwait the law limits the working hours to twelve and includes rest

⁵² Qanoon Al-Mstakhdmeen Fee el Manazel [Migrant Domestic Workers Law], Law No. 15 of 2017, art. 7 (Aug. 22, 2017) (Qatar).

⁵³ Qanoon Amalah Al-Khedmah Al-Mosaeda [Domestic Workers Law], Federal Law No. 10 of 2017, art. 15 (June 11, 2017) (U.A.E.).

⁵⁴ Migrant Domestic Workers Law, art. 5 (Qatar).

⁵⁵ Qanoon Al-Amalah Al-Manzleyah [Domestic Workers Law] of 2015, Promulgated by Amiri Decree No. 68 of 2015, art. 21 (July 27, 2015) (Kuwait); Ministerial Decision No. 2302/2016, Qwaed w Ejraat Tanfeeth Ahkam Al-Qanoon Ragam 68 Lesanat 2015 [Implementing Regulations of Law Number 68 of 2015 Regarding Domestic Workers] (July 10, 2016) (Kuwait).

⁵⁶ *Id.* art. 7.

⁵⁷ Migrant Domestic Workers Law, art. 8 (Qatar).

⁵⁸ Laehat Al-Amalah Al-Mazeleyah [Household Regulation on Service Workers and Similar Categories], Resolution No. 310, art. 7(3.4) (July 7, 2013) (Saudi Arabia).

periods.⁵⁹ The Qatari law limits the working hours to ten,⁶⁰ while Saudi Arabia requires at least nine resting hours at night, which makes fifteen working hours a day.⁶¹ Bahrain did not include working hours in its provision of labor laws that cover domestic workers. The U.A.E. limits to twelve working hours.⁶² Here, all GCC provisions fails to apply the same working hour limitations as included in their labor law regulating the private sector, which is eight working hours in all GCC countries. As the Convention states, the working hours set for domestic workers should not be different than those set for regular workers.

As for days off (twenty-four consecutive hours), mentioned in Article 10 of the Convention, Kuwait provides for a day off in Article 22⁶³ and Qatar provides for a day off in Article 13 of their domestic workers laws. The U.A.E. provides for a day off in accordance with Article 12(1) whereas, the worker is entitled to a day off, although the worker can, instead, be paid for working on his/her day off. Saudi Arabia also provides for a day off for its domestic workers via Article 8 of its domestic worker regulation. Bahrain, on the other hand, does not provide for a day off for domestic workers in the labor law provisions that apply to domestic workers.

6) Annual leave

Article 10 also covers incorporation of annual leave into the national legislation. Here all GCC states actually include annual leave in their national legislation. For instance, Article 22 of the Kuwait domestic workers law states that domestic workers are entitled to an annual leave; however, the legislature failed to specify how many days of leave the domestic worker should receive. The Bahrain legislation grants domestic workers thirty days off per year of service, while the Saudi legislature grants domestic workers thirty days for every two years of service.

⁵⁹ Domestic Workers Law, art. 22 (Kuwait).

⁶⁰ Migrant Domestic Workers Law, art. 12 (Qatar).

⁶¹ Household Regulation on Service Workers and Similar Categories, art. 7(6) (Saudi Arabia).

⁶² Qanoon Amalah Al-Khedmah Al-Mosaeda [Domestic Workers Law], Federal Law No. 10 of 2017, art. 12 (June 11, 2017) (U.A.E.).

⁶³ Domestic Workers Law, art. 22 (Kuwait).

⁶⁴ Migrant Domestic Workers Law, art. 13 (Qatar).

⁶⁵ Domestic Workers Law, art. 22 (Kuwait).

⁶⁶ Qanoon Al-Amal Fe Al-Gedaa Al-Ahali [Labor Law in the Private Sector], Law No. 36 of 2012, art. 58 (Aug. 10, 2012) (Bahr.).

⁶⁷ Household Regulation on Service Workers and Similar Categories, art. 10 (Saudi Arabia).

The U.A.E. legislation, similar to Bahrain, set annual leave at thirty days per year⁶⁸ and the Qatar legislature set annual leave at three weeks for every year of service.⁶⁹

7) Written contract

Article 7 of the Convention requires a written contract that contains specific information. All GCC countries have adopted a standardized contract for migrant domestic workers. Most provisions mentioned in Article 7 of the Convention are met in the GCC standardized contracts, such as name, occupation and address of the worker, country and starting date of the contract, method of payment, accommodation, annual leave, and daily and weekly rest periods.

Furthermore, the Convention's recommendation is that additional information be present in the contract such as job description, sick leave, as well as overtime and standby payment. Most GCC countries include sick leave in their laws and regulations, however, the Kuwaiti legislature failed to include sick leave in its law for domestic workers. While the Saudi law sets sick leave at thirty days, ⁷⁰ the U.A.E. law sets sick leave to fifteen days paid leave and fifteen days non-paid sick leave. ⁷¹ Meanwhile, the Qatari law covers sick leave but does not specify the duration of sick leave granted. ⁷²

8) End of service

Although the Convention did not discuss end of service entitlement, all GCC countries provide for an end of service entitlement in the law. Kuwait sets the end of service entitlement in the amount of one month's salary for every year of service⁷³ while Saudi Arabia sets the end of service to one month's salary for every four years of service. On the other hand, Qatar sets the end of service entitlement at three weeks' salary for every year of service⁷⁴ and the U.A.E. sets it at fourteen days' wages for every year of service.

9) Passport retention

⁶⁸ Domestic Workers Law, art. 13 (U.A.E.).

⁶⁹ Migrant Domestic Workers Law, art. 14 (Qatar).

⁷⁰ Household Regulation on Service Workers and Similar Categories, art. 11 (Saudi Arabia).

⁷¹ Domestic Workers Law, art. 14 (U.A.E.).

⁷² Migrant Domestic Workers Law, art. 7 (Qatar).

⁷³ Qanoon Al-Amalah Al-Manzleyah [Domestic Workers Law] of 2015, Promulgated by Amiri Decree No. 68 of 2015, art. 23 (July 27, 2015) (Kuwait).

⁷⁴ Migrant Domestic Workers Law, art. 15 (Qatar).

⁷⁵ Domestic Workers Law, art. 26 (U.A.E.).

All GCC countries prohibits passport confiscation in compliance with Article 9(C) of the Convention, which states that the domestic worker is entitled to keep all traveling documents in the worker's possession. While some GCC countries mention this in their domestic workers law, such as the U.A.E. legislation, ⁷⁶ some use regulations to enforce this issue. Other countries have it in different legislation, such as the Bahraini Penal Code, which prohibits and criminalizes the retention of others' passports.⁷⁷

Minimum wage 10)

The Convention, in Article 11, requires state parties set a minimum wage. The only country that has set a minimum wage for domestic workers though is Kuwait, which is set at 60 K.D. (\$199 USD) per month. ⁷⁸ Qatar recently announced that it set a minimum wage for migrant workers, but it is not clear if that applies to domestic workers. ⁷⁹ This provision may not be applicable to Bahrain since Bahrain does not set a minimum wage for any workers — whether foreigners or nationals.

11) Inspection provision

Article 17 of the Convention states that each country shall take measures to conduct a labor inspection. Here, only the U.A.E. law gives authority to inspection units to check on private households, and then only in specific cases. Whereas, the Kuwait law grants authority to check on recruitment agencies, 80 other GCC countries have failed to include a provision on inspection for migrant domestic workers.

Recommendation Provisions

The Convention is broad in its interpretation and relies heavily on the national legislation of member states for implementation. In the beginning, the idea was to adopt only non-binding recommendations but eventually it was decided that the Convention be binding on the member states and that the Recommendation contain non-binding provisions.⁸¹

⁷⁶ *Id.* art. 15(9).

⁷⁷ U.S. DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT: BAHRAIN (2017), https://www.state.gov/j/tip/rls/tiprpt/countries/2017/271141.htm.

⁷⁸ Qanoon Al-Amalah Al-Manzleyah [Domestic Workers Law] of 2015, Promulgated by Amiri Decree No. 68 of 2015 (July 27, 2015) (Kuwait).

⁷⁹ Qatar Sets Minimum Wage for Workers, QATAR TRIBUNE (Nov. 17, 2017), http://www.qatar-tribune.com/newsdetails/id/96460.

⁸⁰ Domestic Workers Law (Kuwait).

⁸¹ Stuart C. Rosewarne, The ILO's Domestic Worker Convention (C189): Challenging the Gendered Disadvantage of Asia's Foreign Domestic Workers?, 4 GLOBAL LAB. J. (2013).

In twenty-six articles, the non-binding Recommendation sets out the following provisions:

1) Freedom of association:

Article 2 advocates that domestic workers enjoy freedom of association by eliminating any legislation or administrative restriction on establishing their own organization.⁸² So far, none of the GCC countries have a domestic workers organization.

2) HIV and Pregnancy testing:

Article 3 protects the confidentiality of personal data — such as HIV or pregnancy testing — preventing disclosure. 83 All GCC countries made reservations on this provision.

3) Additional information for contract:

Article 6 suggests that the terms of employment include:

- Job description;
- Sick leave and any other personal leave;
- Any other payment to which a domestic worker is entitled;
- Details of accommodations provided;
- Any authorized deductions from the worker's remuneration.

The article also encourages establishment of a model contract that should be available free of charge to domestic workers and employers.⁸⁴ As previously noted, most GCC countries have adopted a standardized contract for domestic workers and most of the provisions provided in Article 6 are included in the standardized contracts.

4) Dispute settlement:

Article 7 suggests member states establish mechanisms for domestic workers to report cases of abuse, harassment, or violence.⁸⁵ Establishing a simplified way to file complaints is essential, as is the need for an efficient mechanism. Most GCC countries have adopted a complaint mechanism for domestic workers where attempts are initially made to settle the dispute amicably; if that does not work, then the matter is referred to courts.

⁸² Domestic Workers Recommendations No. 201, *supra* note 42.

⁸³ *Id.* art. 3.

⁸⁴ *Id.* art. 6.

⁸⁵ *Id.* art. 7.

5) Hours of work:

Article 8 addresses hours of work, overtime, and standby, suggesting they be accurately recorded. Although it is hard to accomplish, regulating working hours for domestic workers is important and it should be the responsibility of the employer. Again, most GCC countries include provisions on regulated working hours for domestic workers; however, there is only partial implementation on overtime as some countries have included it in their domestic workers law while others have not.

6) Weekly days off:

Articles 10 and 11 encourage members to ensure that domestic workers are entitled to suitable periods of rest weekly, including at least twenty-four consecutive hours. Weekly rest can be accumulated over a period of longer than seven days but should not exceed fourteen days for domestic workers under these articles.⁸⁷ Most GCC laws entitle domestic workers to a weekly day off. All GCC countries provide domestic workers with a day off in their legislation, the only country that does not mention a day off is Bahrain.

Under Article 13, time spent by domestic workers accompanying the household members on holiday should not be counted as part of their paid annual leave.⁸⁸ This practice was actually common with many employers; thus, it was important to include it in the recommendations. Article 9 of the Qatari law prohibits forcing a worker to work outside of Qatar.⁸⁹ Furthermore, Saudi Arabian law prohibits a domestic worker from working for others or from working in another job than that stated in the contract.⁹⁰ While the Kuwaiti law, in Article 45, limits the working of domestic worker to the state of Kuwait,⁹¹ the domestic worker is allowed to work abroad if the consent of the domestic worker was granted.⁹² As for the U.A.E. law, a domestic worker shall not work for another employer uncles in accordance with the law.⁹³

7) Adequate accommodations:

⁸⁶ *Id.* art. 8.

⁸⁷ *Id.* arts. 10, 11.

⁸⁸ *Id.* art. 13.

⁸⁹ Migrant Domestic Workers Law, art. 9 (Qatar).

⁹⁰ Laehat Al-Amalah Al-Mazeleyah [Household Regulation on Service Workers and Similar Categories], Resolution No. 310, art.2 (July 7, 2013) (Saudi Arabia).

⁹¹ Qanoon Al-Amalah Al-Manzleyah [Domestic Workers Law] of 2015, Promulgated by Amiri Decree No. 68 of 2015 art. 45 (July 27, 2015) (Kuwait).

⁹² *Id.* art. 46.

⁹³ Qanoon Amalah Al-Khedmah Al-Mosaeda [Domestic Workers Law], Federal Law No. 10 of 2017, art. 15(6) (June 11, 2017) (U.A.E.).

Article 17 urges adequate food and shelter be provided to the domestic worker in the form of a private and separate room, access to suitable sanitary facilities, and meals of good quality. Many recorded instances occurred where domestic workers were provided inadequate accommodations — such as under the stairs, in the kitchen, or even the bathroom — so it was important to incorporate this provision. A similar provision was also added in most GCC countries laws on domestic workers;

8) Adequate notice:

Article 18 supports adequate termination notice to domestic workers, providing sufficient time to seek new employment. Adequate notice from both parties should be respected and awarded prior to ending a working relationship. Most GCC countries laws require adequate notice before terminating the contract.

9) Emergency hotline:

Article 21 suggests the establishment of a national hotline (with interpretation for domestic workers who need assistance), the development of a network of emergency housing, and efforts to raise awareness of employer obligations. Countries of origin for migrant domestic workers should assist in the effective protection of these workers, by informing them of their rights before departure, establishing legal assistance funds, and ensuring social services and specialized consular services through any appropriate measures. ⁹⁶ This important provision puts the obligation on countries of origin, some of which have already started providing their workers with predeparture orientation. ⁹⁷

10) Recruitment agencies:

Article 23 advocates that member states promote good practices by private employment agencies dealing with domestic workers. 98 Most GCC countries' laws have chapters on recruitment agencies or separate laws that cover recruitment agencies.

11) Inspection:

⁹⁴ *Id.* art. 17.

⁹⁵ *Id.* art. 18.

⁹⁶ *Id.* art. 21.

⁹⁷ Interview with labor attaché of sending country.

⁹⁸ Domestic Workers Law, art. 22 (U.A.E.).

Article 24 encourages member states to consider conditions under which labor inspectors or other officials entrusted with enforcing provisions applicable to domestic work should be allowed to enter household premises where the work is carried out, mindful of domestic privacy laws. ⁹⁹ This provision has already been adopted by the U.A.E. in its domestic workers law and it is a practices that is worth spreading to other GCC countries.

Article 25 allows members to effectively collect data necessary to support effective policy making on domestic work. Data is essential in shaping policy making and recommendations, however, a lack of sufficient data remains in the sphere of domestic workers in the GCC. An example of the data required would be the number of absconded domestic workers, the number of employed domestic worker and their nationality, as well as the number of complaints by domestic worker and employers alike.

12) Cooperation between sending and receiving countries:

Article 26 encourages members to cooperate at bilateral, regional, and global levels to enhance the protections for domestic workers, especially to prevent forced labor and trafficking in persons. Many countries of origin and destination have previously signed bilateral agreements to offer protections to domestic workers but new agreements are being reached and signed between countries of destination and countries of origin in order to offer more protection to both sides and address new issues that keep arising. The Abu Dhabi dialogue — a conference between countries of origin and countries of destination — is a step toward achieving this recommendation, which is discussed further later in this chapter. 102

ii. Conclusion

The ILO Convention on Decent Work for Domestic Workers offers minimum standards of protection for domestic workers including limited working hours, weekly days off, wage payments, freedom of association, and collective bargaining. The Convention acknowledges domestic work as equivalent to other kinds of work and domestic workers as equivalent to other workers with equivalent rights.¹⁰³ Although all the GCC states voted in favor of its creation,

⁹⁹ *Id.* art. 23.

¹⁰⁰ *Id.* art. 25.

¹⁰¹ *Id.* art. 26.

¹⁰² See discussion infra Chapter 2, Section C.

¹⁰³ Blackett, *supra* note 20, at 783.

none have ratified the Convention. Most sending countries have not ratified the Convention while some destination countries ratified the Convention; overall, the Convention has not gained much momentum with only twenty-six ratifying countries.¹⁰⁴

However, most GCC states have adopted a majority of the provisions in the Convention and its related recommendations in their domestic workers law with some variation from one country to another. Indeed, the national laws adopted by the GCC states were influenced, to a degree, by the adoption of C-189. Yet, a number of provisions are still not incorporated by some GCC countries, including freedom of association and collective bargaining. Thus, the GCC states are not ready to adopt the Convention. GCC countries have tried to transplant the Convention into their national legislation, however, a number of provisions have not adequately transferred. If the GCC countries ratify the Convention they will be bound by the obligations therein, so many GCC countries are not prepared to ratify the agreement. The Convention, however, provides a baseline for GCC states when considering a regional approach.

B. NGO Reports on the Status of Domestic Workers in the GCC

i. Introduction

This section looks in-depth at the role of NGO reports in commenting on and generating change in domestic worker legislation in GCC countries. The role of NGOs in this endeavor has been mixed. While some have brought attention to certain problems that need fixed, some tend to stereotype or exaggerate a complex situation. Both human rights NGOs and the ILO condemn the status of domestic workers in the region. Both have called for reform and the abolishment of the sponsorship system. ¹⁰⁵

One cannot deny the important role international NGOs played in improving and reforming laws and regulations broadly and in specific countries. These efforts to conform with human rights standards demonstrate a point Boven discussed at length in his paper, "The Role of NGOs in International Human Rights Standard Setting: A Prerequisite of Democracy." NGOs played a key role in reforming and adopting national laws regarding migrant domestic workers. Most reforms occurred shortly after the publication of such reports, a clear indication that reports

¹⁰⁴ Domestic Workers Convention, *supra* note 5.

¹⁰⁵ MOTAPARTHY, *supra* note 7.

¹⁰⁶ Theo Van Boven, *The Role of Non-Governmental Organizations in International Human Rights Standard-Setting: A Prerequisite of Democracy*, 20 CAL. W. INT'L L.J. 217 (1990).

issued by NGOs played a role in improving the situation for migrant domestic workers in the Gulf. Not only the reports but also the work and advocacy of the human rights organizations in publishing and promoting these reports may lead to improvements.

Indeed, external influences have played a major role in the change and reform of the *Kafala* system, as I will discuss. But, I will argue, change should come from within and from the people who are affected by the system. As stated before, the system has long been rooted and embedded in the region and one should try to find alternatives to the system that protect both the domestic worker and the employer. Reforming the *Kafala* system is not an easy task. It does not resonate with local ideas to abolish a system that has been operating since the 1950s. Yet the GCC countries are realizing that change needs to take place and a lot of the GCC countries are loosening their restriction on the *Kafala* system. The flexi permit is an example, where an irregular worker can now sponsor him/her self and reside legally in the country in Bahrain.

However, the reports' emphasis on the abuses taking place in specific GCC countries cannot occur without shedding light on the greater employment relationship. Indeed, there are abuses but also many positive employment relationships, which the reports missed. Samuel Moyn described how NGOs often get it wrong and that the naming and shaming approach may no longer work. Furthermore, human rights organizations often failed to factor the economic situation into their approaches when addressing the situation and proposed reforms. Human rights NGO's analyzed the situation through short-term country reports while not taking into consideration the function of the sponsorship system. The importance of shedding light on those reports is to build upon the research and help improve the situation of domestic workers in the GCC countries.

Human Rights Watch and Amnesty International described the situation and the main complaints domestic workers face in the GCC. Yet, governments of the GCC maintain that the abuses domestic workers highlighted in the reports are individual cases and not a reflection of the overall situation that domestic workers face in the GCC. This position is supported to the extent that the number of interviews conducted with domestic workers is not a true indicator of the whole situation in the GCC, which some reports acknowledged in their methodology.

 $^{^{107}}$ Samuel Moyn, *How the Human Rights Movement Failed*, N.Y. TIMES (Apr. 23, 2018), https://www.nytimes.com/2018/04/23/opinion/human-rights-movement-failed.html. 108 *Id.*

For instance, while the report on Kuwait¹⁰⁹ indicates that 10,000 complaints were filed by domestic workers in 2010, there were 600,000 domestic workers in Kuwait that year,¹¹⁰ so the complaints represent only 1.67% of all domestic workers. At the same time, the number might be low due to the fact that it is hard for migrant domestic workers to file a complaint. However, one cannot deny that the reports played a role in encouraging adoption of legislation on domestic workers in many GCC countries, along with the existence of political will within the GCC to improve the situation for domestic workers.

The reports assessed here were all written prior to the adoption of domestic workers legislation in the GCC. The situation has changed and improved, if not drastically, at least for the better in many GCC countries since these reports were published; many regulations and laws were adopted to address the problems that the reports highlighted. Human Rights Watch recognizes this and regularly updates the domestic worker situation on its website, highlighting newly adopted laws and regulations as well as gaps the legislation still needs to address.

Finally, the complaints mentioned in these reports are not only found in the GCC but around the world as domestic workers are the most vulnerable kind of workers. Cases of physical abuse, nonpayment of wages, long working hours, and no days off are found in other destination countries around the world including Canada, ¹¹¹ Malaysia, ¹¹² Singapore, ¹¹³ and the United States. ¹¹⁴

ii. The Reports

Both Amnesty International and Human Rights Watch produced numerous reports on domestic workers in the Gulf region. A report on Saudi Arabia, "As if am not Human," was published in 2008, 115 followed by a report on Kuwait, "Walls at Every Turn," published in

¹⁰⁹ MOTAPARTHY, *supra* note 7.

¹¹⁰ *Id*.

¹¹¹ David Marincola, *Domestic Service Work in Canada: The Living and Working Conditions 1940s to Present*, 10 (2011) (unpublished thesis, York University), http://hdl.handle.net/10315/9866.

¹¹² Cambodia/Malaysia: Domestic Workers Face Abuse: Extend Labor Protections to Migrant Women and Girls at Home, Abroad, Hum. Rts. Watch (Oct. 31, 2011), https://www.hrw.org/news/2011/10/31/cambodia/malaysia-domestic-workers-face-abuse.

¹¹³ Singapore: Domestic Workers Suffer Grave Abuses, Hum. Rts. Watch (Dec. 7, 2005, 7:00PM), https://www.hrw.org/news/2005/12/07/singapore-domestic-workers-suffer-grave-abuses.

¹¹⁴ STEFANI BONATO & MCKENNA COLL, ET AL., DOMESTIC WORKERS' RIGHTS IN THE UNITED STATEs (2005), www.law.unc.edu/documents/clinicalprograms/domesticworkersreport.pdf.

¹¹⁵ As If I Am Not Human, *supra* note 7.

2010.¹¹⁶ Two reports were published in 2014 — on Qatar, "My Sleep is My Break," and on the United Arab Emirates, "I Already Bought You." A report on Oman, "I Was Sold," was published in 2016. While there is no report that covers Bahrain specifically, Bahrain is mentioned in a Human Rights Watch report along with other states.

All reports call for reforming the sponsorship system and, occasionally, even repealing the sponsorship system.¹²⁰ Both the ILO as well as many United Nations Human Rights experts and bodies have called on the Gulf states to abolish the sponsorship system.¹²¹

Since these reports were published, a number of positive steps occurred within the six GCC countries. Bahrain included domestic workers in its new labor law in 2012¹²² while Saudi Arabia adopted an annex to it labor law legislation on domestic workers in 2013.¹²³ Kuwait adopted domestic workers legislation in 2015 and established a governmentally owned company to handle the recruitment of domestic workers, which started operating in 2017.¹²⁴ Both the U.A.E. and Qatar adopted domestic workers legislation in 2017¹²⁵ and Oman is considering adding domestic workers to its labor law protections.¹²⁶

¹¹⁶ MOTAPARTHY, *supra* note 7.

¹¹⁷ MY SLEEP IS MY BREAK, *supra* note 7.

¹¹⁸ I ALREADY BOUGHT YOU, *supra* note 7.

¹¹⁹ I WAS SOLD, *supra* note 7.

¹²⁰ MOTAPARTHY, *supra* note 7; MY SLEEP IS MY BREAK, *supra* note 7; AS IF I AM NOT HUMAN, *supra* note 7; I ALREADY BOUGHT YOU, *supra* note 7; I WAS SOLD, *supra* note 7.

¹²¹ Amena Baker, *U.N. Expert on Labor Abuse Urges Qatar to End Sponsorship System*, REUTERS (Nov. 10, 2013, 10:29 AM), https://www.reuters.com/article/us-qatar-humanrights/u-n-expert-on-labor-abuse-urges-qatar-to-end-sponsorship-system-idUSBRE9A90C420131110; *UN Special Rapporteur Urges Kuwait to Abolish the "Kafala" System to Decrease Exploitation of Migrant Workers*, U.N. NEWS CENTRE (Sept. 17, 2016), https://business-humanrights.org/en/un-special-rapporteur-urges-kuwait-to-abolish-the-"kafala"-system-to-descrease-exploitation-of-migrant-workers.

¹²² Qanoon Al-Amal Fe Al-Gedaa Al-Ahali [Labor Law in the Private Sector], Law No. 36 of 2012, art. 2(B) (Aug. 10, 2012) (Bahr.).

¹²³ Neil Churchill, *New Workers Law Passed in Saudi Arabia*, GULF NEWS (July 17, 2013), gulfbusiness.com/new-workers-law-passed-in-saudi-arabia/.

¹²⁴ Qanoon Al-Amalah Al-Manzleyah [Domestic Workers Law] of 2015, Promulgated by Amiri Decree No. 68 of 2015 (July 27, 2015) (Kuwait); Kuwait: New Law a Breakthrough for Domestic Workers, Hum. Rts. Watch (June 30, 2015), https://www.hrw.org/news/2015/06/30/kuwait-new-law-breakthrough-domestic-workers; Al-Dorah Company for Domestic Workers to Start Operating by the End of the Month, Anna Harkw (Aug. 15, 2017), annaharkw.net/المنز للعمالة-المنز للقاحالة-المنز للقاحالة-المنز للقاحالة-المنز للقاحالة-المنز للقاحالة-المنز للقاحالة-المنز للعمالة-المنز للعمالة-ال

¹²⁵ *Qatar Passes Law to Protect Employment Right of Domestic Workers*, THE GUARDIAN (Aug. 23, 2017), https://www.theguardian.com/global-development/2017/aug/23/qatar-passes-law-protect-employment-rights-domestic-workers; Samir Salama, *FNC Passes Draft Law on Domestic Workers*, GULF NEWS (May 31, 2017), http://gulfnews.com/news/uae/government/fnc-passes-draft-law-on-domestic-workers-1.2036023 (U.A.E.). ¹²⁶ I WAS SOLD, *supra* note 7.

Below is a summary of the reports on domestic workers in different GCC countries – Saudi Arabia, Kuwait, the U.A.E., Oman, and Oatar. 127

iii. Human Rights Watch Report on Saudi Arabia

The 2008 Human Rights Watch report on Saudi Arabia mentioned an annex to the labor law on the issue of domestic workers. The report also addressed the problems and abuses that domestic workers faced in Saudi Arabia. Like other countries in the Gulf, the reported abuses ranged from long working hours, withholding of wages, nonpayment of wages, and inadequate living conditions, to physical and sexual abuse. Unpaid wages were the number one complaint by domestic workers in Saudi Arabia. The Saudi authority has since adopted legislation specifically on the issue of domestic workers — offering domestic workers a weekly day off, annual leave, sick leave, and end of service entitlements. Saudi Arabia also created a web portal and a hotline for abused domestic workers.

The report mentions the domestic workers shelter in Riyadh that was established in 1997 by the Ministry of Social Affairs. In cooperation with both the Ministry of Interior and the Ministry of Labor, the shelter houses 1,000–1,500 domestic workers.¹³¹

The report also mentioned Saudi Arabian interest in reforming the *Kafala* system (the sponsorship system). The objective was to replace it with three or four recruitment agencies that would serve as foreign sponsors; the proposal was also mentioned in an ILO paper on reforming the sponsorship system in the Gulf.¹³²

As the second largest remittance sender after the United States, Saudi Arabia houses over 8 million migrants — roughly one-third of the Saudi population of 24.7 million. The report stated that the push factors for migrant domestic workers to leave their countries are poverty, lack of job opportunities, the desire to finance the education of siblings or children, and to build

¹²⁷ Since there was no report on Bahrain alone, it was not included in the summaries.

¹²⁸ As If I Am Not Human, *supra* note 7.

¹²⁹ Laehat Al-Amalah Al-Mazeleyah [Household Regulation on Service Workers and Similar Categories], Resolution No. 310 (July 7, 2013) (Saudi Arabia).

¹³⁰ Complaints and Disputes, Musaned, https://visa.musaned.com.sa/#/portal/complaints (last visited Sept. 20, 2018).

¹³¹ As If I AM NOT HUMAN, *supra* note 7.

¹³² Reform of the Kafala (Sponsorship) System, INT'L LAB. ORG., Pol'y B. No. 2, http://www.ilo.org/dyn/migpractice/docs/132/PB2.pdf.

¹³³ As If I AM NOT HUMAN, *supra* note 7.

or repair homes and pay loans.¹³⁴ The pull factors, on the other hand, are the high salaries promised to domestic workers.¹³⁵ Workers travel only to have the promised salary amount change once they arrive in Saudi Arabia. A number of domestic workers interviewed in the report indicated that "contract substitution" occurred or that they were promised an amount of money and once they arrived the salary changed or was not what was promised.¹³⁶

The report indicated that Saudi Arabia adopted a new labor law, however, it fell short by failing to include domestic workers in its coverage. The report also mentioned some of the steps that the Saudi government pursued to enhance the situation for domestic workers, particularly since Saudi Arabia requires an exit permit — permission from the sponsor for the domestic worker to leave the country.¹³⁷ The reforms the Saudi government took include exempting migrant workers from the exit permit requirement if they have not been paid for three months or they cannot locate their employer. Another positive step the government took included creating a guide book in different languages to advise workers of their rights and ways to file complaints.¹³⁸ The Ministry of Labor also issued executive regulations that outline the responsibilities of recruitment agencies and forbid agents from accepting any fees from the workers.¹³⁹

iv. Human Rights Watch Report on Kuwait

The 2010 Human Rights Watch report on Kuwait found 660,000 domestic workers in Kuwait — the second largest population of domestic workers in the Middle East, following Saudi Arabia. Domestic workers constitute over one-third of the population; they are mostly women predominantly from South Asia or Southeast Asia, although a growing number are from Africa. Africa.

The report was based on interviews with forty-nine domestic workers in Kuwait, local employers, Kuwaiti lawyers, members of civil society, and governmental officials. Kuwait, like other GCC countries, excludes domestic workers from the protections offered in its labor law. ¹⁴² Kuwait revised its labor law in 2010; however, the new labor law still excludes domestic workers

¹³⁵ *Id*.

¹³⁴ *Id*.

¹³⁶ *Id*.

¹³⁷ *Id*.

¹³⁸ *Id*.

¹³⁹ *Id*.

¹⁴⁰ MOTAPARTHY, *supra* note 7.

¹⁴¹ *Id*.

¹⁴² *Id*.

from its protection.¹⁴³ The report noted existence of a draft law, prepared by MP Saleh Ashor, which offered domestic workers much needed protections. Since the report was published, Kuwait has adopted a domestic workers law on domestic workers limiting daily working hours to twelve hours, providing a weekly day off, guaranteeing an end of service entitlement, requiring annual leave, and setting a minimum wage.¹⁴⁴

The push factors for domestic workers mentioned in the report are financial reasons that include investing in a small business, supporting a child, and buying a house. Another push factor is the few employment opportunities at home, while the chief pull factor is higher salaries in countries of destination.¹⁴⁵

According to the report, the main complaints were nonpayment of wages and long working hours without rest. The report also observed complaints of: physical, sexual, and psychological abuse; passport confiscation; denial of adequate food and health care; and, restriction of freedom of movement along with abuses conducted by recruitment agencies.¹⁴⁶

Kuwait has a standardized contract, first issued in 2004 and revised in 2006, which was the main protection for domestic workers when the report was published. The standardized contract offered a weekly day off, two months of paid leave for every two years of service, rest breaks for every three hours of continuous work, proper accommodations, medical treatment, and round-trip tickets.

When the report was published, the government shelter for domestic workers — which opened in September 2007 — had capacity for 50–60 women. Domestic workers were not able to check themselves into the shelter; instead their respective embassy had to check them into the shelter. The report noted that in 2009 there were 150–600 domestic workers who lived in embassy shelters and that embassy shelters were usually overcrowded and underfunded. 148

The report attributed the abuses domestic workers faced to the restrictive *Kafala* system and the alien residency law under which the employer is obligated to report if a domestic worker is absent from work without permission for more than a week.¹⁴⁹

¹⁴³ Id

¹⁴⁴ Qanoon Al-Amalah Al-Manzleyah [Domestic Workers Law] of 2015, Promulgated by Amiri Decree No. 68 of 2015 (July 27, 2015) (Kuwait).

¹⁴⁵ MOTAPARTHY, *supra* note 7.

¹⁴⁶ *Id*.

¹⁴⁷ *Id*.

¹⁴⁸ *Id*.

¹⁴⁹ *Id*.

The report acknowledged positive steps Kuwait took to curb bad practices under the sponsorship system. In 2007, a Labor Ministry decree prohibited employers from confiscating workers passports and a 2009 Labor Ministry decree permitted workers to change jobs without a sponsor's consent. However, those decrees are inapplicable to domestic workers.

v. Human Rights Watch Report on United Arab Emirates

The 2014 Human Rights Watch report on the United Arab Emirates found 146,000 female migrant domestic workers in the U.A.E., recognizing that migrant workers represent 88.5% of the population in the U.A.E. The U.A.E., like other GCC countries, excludes domestic workers from labor law protections in accordance with Article 3(c) of the Labor Law. The report mentioned a draft law under consideration in the U.A.E. to offer domestic workers much needed protections. The report mentioned a draft law under consideration in the U.A.E. to offer domestic workers much needed protections.

The report was based on interviews with ninety-nine female domestic workers in the U.A.E. A number of abuses domestic workers faced in the U.A.E. were identified in the report including: contract substitution; physical, sexual and psychological abuse; passport confiscation; violation of freedom of movement; denial of food and adequate living conditions; wage abuse; long working hours without rest; and denial of adequate health care. 154

The U.A.E.'s standardized contract was revised in 2014 and includes one day off per week and eight hours of rest daily. According to the report, no official shelter for domestic workers exists in the U.A.E., although the report acknowledges a number of shelters for women and children victims of domestic violence, child abuse, and trafficking. The shelters are located in Sharjah, Abu Dhabi, and Ras Al-Khaimah and have hotlines available to contact the shelters; the shelters have also conducted a number of awareness campaigns. 156

The report also acknowledged that the U.A.E. took steps to address the issue of domestic workers and labor migration by initiating the Abu Dhabi Dialogue in 2008, which aimed to

¹⁵⁰ *Id*.

¹⁵¹ I ALREADY BOUGHT YOU, *supra* note 7.

¹⁵² *Id*.

¹⁵³ *Id*.

¹⁵⁴ *Id*.

¹⁵⁵ *Id*.

¹⁵⁶ *Id*.

achieve a regional agenda for regulating labor migration between sending and receiving countries. 157

Moreover, the report recognized steps the U.A.E. took to improve the specific situation of migrant workers domestically including revising the standardized contract for domestic workers, creating a draft law for domestic workers, fining employers if the employer makes the worker pay recruitment fees, regulating recruitment agencies, introducing the wage protection system in 2009 by the Ministry of Labor (which applies to labor workers and not domestic workers), improving human trafficking measures, and changing the *Kafala* system.¹⁵⁸

vi. Human Rights Watch Report on Oman

The 2016 Human Rights Watch report stated that there were 130,000 female migrant domestic workers in Oman, ¹⁵⁹ of the more than 2 million non-Omani nationals, which essentially consists of almost half of Oman's population of 4.4 million. Migrant workers in Oman typically come from South Asian and African countries. ¹⁶⁰ The pull factors include the promise of decent working salaries and good working conditions.

The report was based on interviews with fifty-nine female domestic workers in Oman¹⁶¹ as well as lawyers, embassy workers, and social workers. The report indicated that Oman reformed its labor law in recent years and was considering further revisions extending the labor law to protect domestic workers, since Article 2(3) of the current law excluded domestic workers from its protection.¹⁶²

According to the report, Oman issued a standardized employment contract for domestic workers in 2011. The Omani standardized contract offers domestic workers one day off per week and thirty days of paid leave every two years while requiring employers to provide adequate food, accommodation, and medical treatment. It also requires the employer to provide the worker with weekly day off. Furthermore, the 2004 regulation on domestic workers requires payment of

¹⁵⁸ *Id*.

¹⁵⁷ *Id*.

¹⁵⁹ I WAS SOLD, *supra* note 7.

¹⁶⁰ Id

¹⁶¹ *Id*.

¹⁶² *Id*.

wages within seven days from the end of each month, adequate food and accommodation, medical treatment, and roundtrip tickets. 163

Again, this report noted that the ILO and UN organs called on Gulf countries to end the Kafala system and grant domestic workers full labor protections. In 2011, Oman told the Human Rights Council that it was looking for alternatives to the sponsorship systems; 164 however, in 2016, the UN Committee on the Elimination of Racial Discrimination again expressed concerns about the *Kafala* system and called on Oman to abolish the system. ¹⁶⁵

Interestingly, the report indicated that a number of domestic workers were trafficked from the U.A.E. and became victims of forced labor in Oman, transferred to work from Al-Ain, in the U.A.E. across the border to Burami, Oman. 166 The report also mentioned a black market of visa trading where an employer allows the worker to work for another employers in exchange for a fee, which places the worker in an irregular and vulnerable migration situation. ¹⁶⁷ Moreover, although Oman prohibits passport confiscation, the practice still exists. According to a 2006 circular by the Ministry of Manpower, passport confiscation is prohibited without the worker's consent or a court order. 168

The report also mentions that while Oman has a shelter for trafficking victims, there is no shelter for abused domestic workers. Some embassies in Oman run their own domestic workers shelters for their nationals. 169

According to the report, the abuses that domestic workers face are due to the Kafala system, which ties a worker to the employer legally and financially. ¹⁷⁰ The main complaints from domestic workers were non-payment of wages, long working hours, no breaks or days off, inadequate food or living conditions, as well as physical, verbal, and sexual abuses. The complaints also included passport confiscation, contract substitution, slavery, forced labor, and trafficking. 171

¹⁶⁴ *Id*.

¹⁶³ *Id*.

¹⁶⁵ *Id*.

¹⁶⁶ *Id*.

¹⁶⁷ *Id*.

¹⁶⁸ *Id*.

¹⁶⁹ *Id*.

¹⁷⁰ *Id*.

¹⁷¹ *Id*.

vii. Amnesty International Report on Qatar

A 2014 Amnesty International report found around 132,401 foreign nationals — 84,164 women and 48,237 men — employed in domestic work in Qatar. The report specifically noted that Labor Law No. 14 of 2004 excludes domestic workers from the protections offered in its labor law (article 3). 173

The report was based on interviews with fifty-four domestic workers and Qatari authorities, which included the Ministry of Interior, the Ministry of Labor, the Supreme Council for Family Affairs, the Hamad Medical Corporation, the Qatar Foundation for the Protection of Women and Children, and the Qatari Foundation for Combating Human Trafficking. Interviews were also conducted with activists, community leaders that help domestic workers, the embassies of sending countries, and recruitment agencies.¹⁷⁴

The report found between 100 and 150 recruitment agencies in Qatar. The government operates a ranking system for the recruitment agencies and most recruitment agencies held a poor ranking.¹⁷⁵ The report indicated that the probation period is three months. During this probation period, the agency is obligated to replace the domestic worker with a new one at no additional cost; however, if the employer wishes to replace the domestic worker following the probation period the employer must pay a new recruitment fee and plane ticket costs for a new domestic worker.¹⁷⁶

One of the main complaints from domestic workers was contract substitution — where the terms of the contract in the country of origin were different from those that applied in Qatar. The government of Qatar responded to Amnesty International's finding by creating an internet portal to connect employers with potential employees and then all agreements between the employer and employee are registered in the portal.¹⁷⁷

The main abuses domestic workers reported were long working hours with no days off, low salaries or nonpayment of salaries, abuses conducted by recruitment agencies, inadequate

¹⁷² MY SLEEP IS MY BREAK, *supra* note 7

¹⁷³ Id.

¹⁷⁴ *Id*.

¹⁷⁵ *Id*.

¹⁷⁶ *Id*.

¹⁷⁷ *Id*.

accommodations, restrictions on movement and communication, and passport confiscation as well as verbal, psychological, physical, and sexual abuses.¹⁷⁸

The report also indicated that a draft law for domestic workers had yet to be adopted. The report was published, Qatar adopted a new law that governs the rights of migrant domestic workers and includes a weekly day off, three weeks of annual leave, ten hour working days, and three weeks of end service payments for every year of service.

viii. A Summary of the NGO's Reports

Table 1: Summary of NGO Reports

	Recommendation	Main Complaints	Report	Date Release	of
Kuwait	Reform Kuwait's sponsorship system. In particular, remove provisions on absconding, including any criminal penalties. Repeal or amend all articles and regulations under the Aliens' Residence Law to enable foreign workers to change employers without losing valid immigration status and without having to obtain employer's permission.	1. Non-payment of wages 2. Sexual, physical, and psychological abuses 3. Denial of adequate food and health care 4. Restriction on movement 5. Passport confiscation 6. Forced confinement in the workplace 7. Excessive work	Walls at Every Turn: Abuse of Migrant Domestic Workers through Kuwait's Sponsorship System, by Priyanka Motaparthy, https://www.hrw.org/repo rt/2010/10/06/walls- every-turn/abuse- migrant-domestic- workers-through-kuwaits- sponsorship-system	October 2010	6,
Qatar	Remove the requirement in the Sponsorship Law for foreign nationals to obtain the permission of their current employer before moving jobs or leaving the country	 Long working hours No days off Low salary or non-payment of wages Inadequate food or living conditions Restriction on movement Verbal, physical, and sexual abuse 	Qatar: 'My sleep is my break': Exploitation of migrant domestic workers in Qatar, by Mustafa Qadri, https://www.amnesty.org/en/documents/mde22/004/2014/en/	_	
Oman	Repeal or amend all articles and implementing regulations of the Foreign Residency Law and other laws that give individual employers control over domestic workers' immigration status, freedom of movement, and freedom to terminate employment;	 Non-payment of wages Long working hours No breaks or days off Inadequate food or living conditions Verbal, physical, and sexual abuse Passport confiscation 	"I Was Sold": Abuse and Exploitation of Migrant Domestic Workers in Oman, by Rothna Begum, https://www.hrw.org/report/2016/07/13/i-was-sold/abuse-and-exploitation-migrant-domestic-workers-	July 13, 2016	

¹⁷⁸ *Id*.

¹⁷⁹ *Id*.

¹⁸⁰ *Id*.

		T		,
U.A.E.	Reform the <i>Kafala</i> system by amending the Foreign Residency Law and its implementing regulations and other laws so that domestic workers can terminate and transfer employment, at will and without employer consent, before and after completion of contract; Remove "absconding" provisions in existing laws. Reform the <i>Kafala</i> sponsorship system by repealing or amending all articles and regulations under the Federal Law No. 6 of 1973 on the Entry and Residence of Foreigners and its implementing regulations, so as to allow domestic workers to transfer employment without employer consent and without losing valid immigration status. Remove sanctions on "absconding," including deportation and bans	 Verbal, physical, sexual, and psychological abuse Wage abuses, excessive work, and lack of rest Passport confiscation, restricted communication, and confinement Inadequate food and living conditions Forced labor, trafficking, and slavery 	"I Already Bought You": Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates, by Rothna Begum, https://www.hrw.org/repo rt/2014/10/22/i-already- bought-you/abuse-and- exploitation-female- migrant-domestic- workers-united	October 22, 2014
Saudi Arabia	on future work. Reform the visa sponsorship system so that workers' visas are no longer tied to individual sponsors, and they are able to transfer employment or leave the country at will.	Non-payment of wages and underpayment Physical, sexual, and psychological abuse Food deprivation Excessive work	"As If I Am Not Human": Abuses against Asian Domestic Workers in Saudi Arabia, by Nisha Varia, https://www.hrw.org/repo rt/2008/07/07/if-i-am-not- human/abuses-against- asian-domestic-workers- saudi-arabia	July 7, 2008
Bahrain	Reform the visa sponsorship system so that workers' visas are no longer tied to individual employers serving as immigration sponsors; Ensure that workers can change employers without losing legal status and without having to obtain their first employer's permission, and that they are able to leave the country without being required to first secure the consent of their employer.		Slow Reform: Protection of Migrant Domestic Workers in Asia and the Middle East, by Nisha Varia, https://www.hrw.org/report/2010/04/27/slow-reform/protection-migrant-domestic-workers-asia-and-middle-east	April 27, 2010

All reports examined domestic work through the feminization of migration lens in which female is considered the dominant gender migrating for domestic work.

ix. Conclusion

According to the reports, the main abuses domestic workers faced were long working hours, withholding of wages, withholding of passports and identification cards, verbal abuse, physical abuse, and in extreme cases sexual abuse. In addition to no weekly days off and inadequate living conditions, some contract substitution occurred — where domestic workers were given a contract in their home country but once they arrive in the country of destination their contract is switched for another contract with less wages. Multiple reports called to repeal the sponsorship system and allow domestic workers to change from one employer to another.

The reports shed light on the problems domestic workers face in the GCC, which are incorporated in the proposal explained later in this dissertation. Ultimately, reforming the sponsorship system gradually instead of calling to abolish the system is more beneficial for workers as it shifts responsibility to the states through collaboration in the GCC and enactment of uniform laws. The reforms should come from within the GCC instead of abolishing the whole system. The best practices of each GCC country can be spread to other GCC countries through diffusion.

The proposal addresses the imbalances in the sponsorship system by shifting sponsorship from the employer to the GCC body and giving the GCC body the power to change the employers if certain conditions are met. Under this mechanism, the proposal at the end of the dissertation addresses a large part of the criticism that the sponsorship system endured.

The proposal also addresses the issue of abuse that domestic workers may encounter by simplifying the complaint mechanism and introducing a conciliation process prior to going to court; the domestic worker can reside in either the governmental shelter or an embassy shelter and the residency will be extended during that period without fear of violating the immigration laws in any given GCC country.

The proposed unified law for domestic workers at the end of this dissertation addresses the above-mentioned issues — especially contract substitution — by introducing a unified GCC standardized contract to limit contract substitutions. Furthermore, since many reports indicated that domestic workers worked long hours, usually more than twenty hours per day, Article 17 of

the proposed unified law of domestic workers sets standardized working hours and prohibits exceeding ten daily working hours. The proposal also addresses the number one complaint of domestic workers, which is non-payment of wages or payment of less than the agreed amount by suggesting the introduction of the wage protection system. These are a major complaint that needs to be addressed as per the NGO reports. Accordingly, wages of domestic workers are to be paid by the wage payment system set by the GCC body to ensure that payment is made by employers to their domestic workers on time and without any decrease in wages. Article 5 in the GCC unified law will ensure that proper and adequate accommodation is provided to domestic workers. Under Article 6 of the unified GCC law, the employer is prohibited from withholding personal identification papers or passports. The provision attempts to address employers withholding passports, a complaint of the sponsorship system mentioned in many reports.

Abuses to domestic workers happens all around the world and are not only restricted to the GCC countries. Indeed, some abuses occur due to the *Kafala* system but most working relationships are respectful of the rights of domestic workers. Abolishing the sponsorship system is a western idea that is gaining more momentum in the GCC. Here it is called labor mobility instead of abolishing the *Kafala* system. There needs to be a proper replacement of the *Kafala* system with something else. That is what is proposed in this dissertation; however, the western ideas of freedom of mobility may be hard to implement because migrants in some GCC countries outnumber nationals. Bahrain sets an example; it implements the idea of labor mobility by allowing migrant workers to transfer from one employer to another. Employers did not approve of these changes, thus, the law was changed again so that a migrant worker can change employers after working for the employer for one year. Saudi Arabia allows a worker to change his sponsor if the sponsor is nowhere to be found or has not paid the worker's wages. These measures do not provide complete labor mobility but do take steps towards more freedom of movement.

C. The Gulf Cooperation Countries

i. Introduction

This section provides context for the efforts to improve the regulation of migrant domestic workers in the Gulf region. It starts with an investigation into the GCC because this dissertation ultimately argues that effective regulation of migrant domestic workers in the region

must call upon the resources and cooperation enabled by the existence of the GCC. The matter of domestic workers is regional and, thus, solutions must be regional as well. While solutions must also respect country sovereignty, voluntary cooperation across national borders is an important piece of the puzzle for more effective migrant domestic worker regulation and protection. This section lays out the background of the formation of the GCC and its important Abu Dhabi dialogue.

The GCC is composed of six countries: Kuwait, Oman, Bahrain, Qatar, The Kingdom of Saudi Arabia and the United Arab Emirates.¹⁸¹ On May 28, 1981, the six countries met in Abu Dhabi and signed the Charter of the Gulf Cooperation Council, ¹⁸² creating a cooperative framework joining the six states to effect coordination, integration, and inter-connection to achieve unity, under Article 4 of the GCC Charter. ¹⁸³ Article 4 also emphasizes the deepening and strengthening of relations, links, and areas of cooperation among the citizens. ¹⁸⁴

The GCC Charter, in Article 4, states that the basic objectives are:

- 1. To effect co-ordination, integration and inter-connection between member states in all fields in order to achieve unity between them.
- 2. To deepen and strengthen relations, links, and areas of cooperation now prevailing between citizens of GCC countries in various fields.
- 3. To formulate similar regulations in various fields including the following:
 - Economic and financial affairs.
 - Commerce, customs, and communications.
 - Education and culture.
 - Social and health affairs.
 - Information and tourism.
 - Legislative and administrative affairs.
- 4. To stimulate scientific and technological progress in the fields of industry, mining, agriculture, water and animal resources; to establish scientific research; to establish joint ventures and encourage cooperation by the private sector for the good of their peoples.¹⁸⁵

¹⁸¹ About GCC: Objectives, GULF COOP. COUNCIL, http://www.gcc-sg.org/en-us/AboutGCC/Pages/StartingPointsAndGoals.aspx (last visited Feb. 15, 2017). ¹⁸² Id

¹⁸³ Cooperation Council for the Arab States Charter, 26 I.L.M. 1131 (May 25, 1981) [hereinafter GCC Charter], http://www.gcc-sg.org/en-us/AboutGCC/Pages/Primarylaw.aspx.

¹⁸⁴ About GCC, supra note 181.

¹⁸⁵ GCC Charter, *supra* note 183, art. 4.

Many of these objectives are integrated with regulating labor markets, including the market for migrant domestic workers. Economic and financial affairs is a matter involving economics as well as social and health affairs, which requires legislation and administration.

ii. The History Behind Establishing the GCC

According to Esteqlal Al-Azmi, there are two primary reasons (economic and political) for establishing the GCC. The main economic reason for establishing the GCC is to lower dependency and diversify the economy and sources of income as the GCC tries to find an agricultural and industrial base to secure the needs of the region. The political reason for establishing the GCC stems from the war in Iraq from 1980 until 1990, which played a role in the formation and adoption of the GCC. Furthermore, the Iranian revolution from 1978–1979 left behind an eager expansionist regime, which the GCC sought to unify and address. The establishment of a military cooperation was not one of the original goals, yet the GCC recognized this objective later as well.

Cooperation in the region goes back to 1981, with the adoption of the Common Economic Agreement.¹⁹⁰ The Supreme Council adopted the Common Economic Agreement at its 2nd Session in November 1981.¹⁹¹ The Agreement draws the plan for the joint economic action and the phases of the economic integration and cooperation among the GCC States.¹⁹²

Moreover, the Supreme Council adopted a newer Economic Agreement at its 22nd Session, in December 2001, enhancing developments in the joint action over the first two decades after the establishment of the GCC and with international developments and challenges in the economic field. The new Agreement has shifted the approach from the stage of coordination to the stage of integration, according to specific mechanisms and schemes.¹⁹³

Again, many of these objectives relate to domestic worker regulation, including the international economic relations between the Gulf states and other countries, which involves

 $^{^{186}}$ Estequal Al-Azmi, Kuwait Foreign Policy Towards the GCC 68 (2005).

¹⁸⁷ *Id*.

¹⁸⁸ *Id*.

¹⁸⁹ *Id.* at 69.

¹⁹⁰ Joint Action Process, GULF COOP. COUNCIL, http://www.gcc-sg.org/en-

us/CooperationAndAchievments/Achievements/EconomicCooperation/JointActionProcess/Pages/TheUifiedEconomicAgreement198.aspx (last visited Sept. 20, 2018).

¹⁹¹ See id.

¹⁹² *Id*.

¹⁹³ See id.

agreement with sending countries to improve the situation for transnational migration. Also, integration in e-commerce can be achieved by providing a unified website to help GCC nationals recruit domestic workers from countries of origin.

Furthermore, the GCC, through its Ministerial Council adopted a human rights office that works under the Supreme Council. 194 Here, the human rights office can adopt the regional body proposed in Chapter 9. The office handles everything related to human rights in the GCC and created a number of workshops to promote human rights in the region so countries can learn and gain knowledge from one another in the field of human rights.¹⁹⁵ The GCC also adopted a number of guidelines for unifying laws and judicial cooperation in the region, such as the unifying penal code guideline, 196 providing space to propose a unifying guideline law for domestic workers.

The GCC structure can be diagrammed as follows:



Figure 1: The GCC Structure

The structure of the GCC is important as this dissertation highlights a number of components for cooperation that would be essential to regulating migration and the work conditions of migrant domestic workers on a regional basis.

The Supreme Council

"The Supreme Council of the GCC is the highest authority of the organization. It is composed of the heads of the Member States. Its presidency rotates periodically among the

¹⁹⁶ *Id*.

¹⁹⁴ Legal and Judicial Cooperation, GULF COOP. COUNCIL, http://www.gcc-sg.org/enus/CooperationAndAchievements/Achievements/LegalandJudicialCooperation/Pages/Legalandjudicialcooperation.a spx (last visited Sept. 20, 2018).

 $^{^{195}}$ *Id*.

Member States in alphabetical order when it meets in an ordinary session each year.¹⁹⁷ Beneath the Supreme Council is the Dispute Settlement Commission, which is constituted by the Supreme Council when disputes arise out of the interpretation of the terms of the charter."¹⁹⁸

The Ministerial Council

"The Ministerial Council is composed of the Foreign Ministers of all the Member States or other ministers deputizing for them. The Council is presided over by the Member State, which presided over the last ordinary session of the Supreme Council. It convenes its ordinary sessions once every three months." The functions of the Ministerial Council include, among other things, formulating policies and making recommendations for promotion of cooperation among the Member States and achieving coordination among the Member States for implementation of the ongoing projects. It submits its decisions in the form of recommendations to the Supreme Council for approval. The Ministerial Council is also responsible for preparations to hold meetings of the Supreme Council and prepare its agenda. Because of its responsibilities, the Ministerial Council can recommend increased cooperation among Gulf States on matters involving migrant domestic workers.

The Secretariat General

The Secretariat General is composed of the Secretary General, eight Assistant Secretaries General, and the Directors General.²⁰¹ The broad functions of the Secretariat General are preparing special studies relating to cooperation, coordinating, planning and programming for common action, as well as preparing periodical reports on the work done by the GCC, following up on implementation of its decisions, preparing reports and studies by demand of either the Supreme Council or the Ministerial Council, making arrangements for holding the meetings of various organs, finalizing the agenda, and drafting resolutions.²⁰² Here, the Secretariat General can be commissioned to prepare a report about the situation of migrant domestic workers in the GCC to recommend how to improve the situation for migrant domestic workers and employers. An important step toward more regional cooperation for regulating migrant domestic workers

¹⁹⁷ About GCC: Organizational Structure, GULF COOP. COUNCIL, http://www.gcc-sg.org/en-us/AboutGCC/Pages/OrganizationalStructure.aspx (last visited Sept. 20, 2018).

¹⁹⁶ Id.

¹⁹⁹ *Id*.

²⁰⁰ *Id*.

²⁰¹ *Id*.

²⁰² *Id*.

may be a study and report by the Secretariat of the GCC regarding the current situation concerning migrant domestic workers in the Gulf states region.

One of the key aspects of the Abu Dhabi dialogue was the aspiration of gradually moving from a cooperation to a union. This union would be somewhat along the same lines as the European Union — integrating markets, eliminating or lowering border barriers, and lessening migration restrictions. Thus, much like the EU, moving towards a union affects immigration and the movement of workers across national borders. Policy makers in the GCC should attend to this with respect to migrant domestic workers, which is an important aspect of worker migration across the Gulf States and between Gulf State countries. To move towards a union is to move towards addressing and unifying regulations for domestic workers. This also provides the opportunity to select from among the best practices of GCC member countries to create a uniform regulation of best practices across the union. This dissertation ultimately proposes more effective legislation throughout the Gulf region for the adoption of uniform best practices as well as for the recruitment and working conditions of domestic workers.

Much has been written on moving from a cooperation to a union.²⁰³ Although Oman opted to stay out of any talks addressing unionization, there are still calls to move from cooperation to union in 2012,²⁰⁴ although delay the creation of a monetary union (establishing a unified currency).²⁰⁵ In moving from a cooperation to a union, the GCC will most likely have a unified immigration system in place.

iii. Recent Development and Accomplishments

The GCC also implemented a number of strategies for national polices based on what the Supreme Council adopted in planning, population, industry, oil, and agricultural areas. Here the GCC can adopt general strategies and policies on the issue of domestic workers to promote national policy development. As cooperation has already been demonstrated in different areas, now is the time to address the issue of domestic workers and start implementing new polices on this relevant and timely concern.

²⁰³ Al-Entegal Min Taawen Ela Etihad [Moving from a Cooperation to a Union], AL-HURAH (May 13, 2012), https://www.alhurra.com/a/199221.html; Sabah Naoosh, Ayen Al-Omlah Al-Khaleejeyah Al-Mwahada [Where is the Unified GCC Currency?], AL-JAZEERAH (Feb. 17, 2015), http://www.aljazeera.net/news/ebusiness/2015/2/17/; Khaled Al-Garbi, The End of the Common Market and Monetary Gulf, GULF-ECONOMIC NEWS. (Feb. 7, 2017), http://www.aleqt.com/2017/02/07/article_1133006.html.

²⁰⁴ Moving from a Cooperation to a Union, supra note 203; Naoosh, supra note 203.

²⁰⁵ Moving from a Cooperation to a Union, supra note 203; Naoosh, supra note 203.

The GCC is also working on unifying its laws, regulations and procedures in economic areas. The Supreme Council has adopted forty standard laws, most of which are for reference although some are binding. Here, the Supreme Council can adopt a unified law for domestic workers that binds GCC countries; the law can start as mere reference and move to becoming binding on the member states.

Furthermore, the GCC established a number of joint institutions to enhance economic cooperation among Member States to reduce costs. Those institutions include: 206

- Gulf Investment Organization
- GCC Standardization Organization
- Commercial Arbitration Center
- Patents Office
- Technical Office for Telecommunications
- GCC ATM Network²⁰⁷

Here, an organization can be established under the GCC to handle the recruitment of migrant domestic workers to the GCC. This is explained further in Chapter 9, as it will enhance the economic cooperation between Member States and will help cut the cost of recruitment fees employers endure when hiring migrant domestic workers.

The GCC is also developing a unified position on issues of international economy, collective negotiation, and economic dialogue with other countries and economic groups such as the EU, the United States, Japan, and China. As a unit, GCC countries can negotiate better terms for GCC employers and sending countries. That was the purpose of the Abu Dhabi Dialogue — where the GCC entered into talks with sending counties as a unified front and tried to address problems and pose solutions to the situation of transnational migration.

There is also significant cooperation in different fields between GCC countries — such as communication, telecommunication, and electricity — which are important but not relevant to the topic of this dissertation. This cooperation, however, demonstrates the ability to call on GCC countries to cooperate on the domestic workers issue by studying the issue to determine what problems domestic workers face, what problems employers face, how to address these problems,

²⁰⁶ Moving from a Cooperation to a Union, supra note 203.

²⁰⁷ *Id*.

how to improve the situations for domestic workers and employers, and what kind of legislations and regulations need adopted.

The GCC is moving towards unity and cooperation in different fields. Cooperation stands strong and, in each GCC meeting, more opportunities are sought to strengthen cooperation. Indeed, while an ongoing feud exists between some GCC countries, it is expected to be resolved soon. Most recently, GCC countries participated as a united front in the Abu Dhabi Dialogue to improve the mobility and recruitment of migrant domestic workers heading to the GCC countries. The Abu Dhabi Dialogue marks a turning point in bringing the sending and receiving countries together to discuss how to improve the situations for migrant workers headed to the Gulf region.

iv. The Abu Dhabi Dialogue

Due to the growing number of migrants, both countries of origin and destination countries decided to cooperate and meet to enhance and find better solutions for labor mobility and recruitment. The Abu Dhabi Dialogue aims to discover the best practices that participating countries follow and is fully sponsored by the United Arab Emirates.

The Abu Dhabi Dialogue, established in 2008,²⁰⁸ brings together governments from Asian countries of labor origin (Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, The Philippines, Sri Lanka, Thailand and Vietnam)²⁰⁹ and destination countries (Saudi, Bahrain, Oman, Qatar, the U.A.E., Kuwait, Yemen, Malaysia, and Singapore)²¹⁰ to promote constructive dialogue and cooperation.²¹¹

Prior to the establishment of the Abu Dhabi dialogue, only countries of origin gathered in the hopes of providing better protections to their citizen workers and learning best practices from one another.²¹² It was actually at the request of Asian governments that the first Ministerial Consultation for Asian Labor Origin Countries was held in April 2003 in Colombo, Sri Lanka.²¹³ Ten countries took part in the consultation, which was organized by the International

²⁰⁸ ABU DHABI DIALOGUE, http://abudhabidialogue.org.ae/about-abu-dhabi-dialogue (last visited Sept. 20, 2018).

²⁰⁹ Ministerial Consultation Final Report, ABU DHABI DIALOGUE (Jan. 2008), http://abudhabidialogue.org.ae/sites/default/files/document-library/Final% 2086

http://abudhabidialogue.org.ae/sites/default/files/document-library/Final%20Report.pdf. $^{210}\, Id$

²¹¹ ABU DHABI DIALOGUE, *supra* note 208.

²¹² Overview of Colombo Process, COLOMBO PROCESS, http://colomboprocess.org/about-the-colombo-process (last visited Sept. 20, 2018).

²¹³ Id.

Organization of Migrants (IOM), an intergovernmental organization established in 1951.²¹⁴ The IOM has 169 member states²¹⁵ and works to defend the human rights of migrant workers,²¹⁶ promote international cooperation on migration issues,²¹⁷ aid in migration problems and ensure the management of migration.²¹⁸

At this stage, a number of recommendations were made regarding workers abroad, including providing workers with pre-departure orientation and a skill passport (discussed later) as well as introducing the wage protection system and online platforms for recruitment.

Although the second round of Ministerial Consultation was held in Manila, the Philippines, in September 2004,²¹⁹ these ministerial consultations became known as "The Colombo Process." Today there are twelve Colombo process countries: Bangladesh, India, the Philippines, Vietnam, Nepal, Pakistan, Sri Lanka, China, Cambodia, Indonesia, Thailand, and Afghanistan.²²¹

The third meeting was held in Bali, Indonesia, in September 2005.²²² This meeting actually included the participation of destination countries as observers such as Kuwait, Qatar, Korea, Bahrain, Saudi, the U.A.E., Italy, and Malaysia.²²³

The fourth ministerial consultation process took place in Abu Dhabi in January 2008.²²⁴ The meetings were hosted and funded by the U.A.E. and the theme was "Contractual labor mobility in Asia: Key partnerships for development between countries of origin and destination." The Ministerial Consultation, referred to as the "Abu Dhabi Dialogue," brought together the Colombo Process countries with the Gulf Cooperation Council (GCC) countries. Participants also included Yemen, Malaysia, and Singapore. The idea was to create a platform to discover

²¹⁴ INT'L ORG. FOR MIGRATION, www.iom.int/about-iom (last visited Sept. 20, 2018).

²¹⁵ *Id*.

²¹⁶ *Id*.

²¹⁷ *Id*.

²¹⁸ *Id*.

²¹⁹ Ministerial Consultation Abu Dhabi Declaration, ABU DHABI DIALOGUE (Jan. 2008), http://abudhabidialogue.org.ae/sites/default/files/document-library/Declaration.pdf.

²²¹ Overview of Colombo Process, supra note 212.

²²² Ministerial Consultation, supra note 219.

²²³ Id.

²²⁴ ABU DHABI DIALOGUE, *supra* note 208.

²²⁵ *Id*.

²²⁶ *Id*.

²²⁷ *Id*.

and discuss the best practices for addressing temporary workers and migrants to create intergovernmental cooperation.

The main issues addressed during the Abu Dhabi Dialogue were:

- 1. Protecting migrant workers during cross border migration;
- 2. Improving the knowledge base;
- 3. Developing a human resources development perspective;
- 4. Ensuring the integrity of recruitment systems;
- 5. Ensuring safe and successful return;
- 6. Conceptualizing labor mobility as a cyclical process;
- 7. Making partnerships work for development;
- 8. Piloting programs to improve the conditions for migrant workers overseas.

Following the Abu Dhabi Dialogue, the fifth meeting took place in Manila in 2012, where countries agreed to:

- Enhance the employability and skills of workers;²²⁸
- Improve the recruitment process;²²⁹
- Ensure a better balance between labor supply and demand; ²³⁰
- Facilitate worker adaptation to foreign employment;²³¹
- Respond effectively to problems;²³²
- Adequately prepare workers for return;²³³
- Recognize knowledge and skills acquired through employment abroad;²³⁴
- Facilitate the re-employment and reintegration of returning workers. ²³⁵

Both countries of destination and countries of origin benefit from raising the skills of the workers heading to the GCC countries. Since recruitment is a problematic area where many

²²⁸ Framework of Regional Collaboration, ABU DHABI DIALOGUE (Apr. 18, 2012), http://abudhabidialogue.org.ae/sites/default/files/document-library/Framework%20of%20Regional%20Collaboration.pdf.

²²⁹ *Id*.

 $^{^{230}}$ *Id*.

²³¹ *Id*.

²³² *Id*.

²³³ *Id*.

²³⁴ *Id*.

²³⁵ *Id*.

workers end up in debt bondage situations and some end up abused by recruitment agencies or employers, it is imperative to address and improve the recruitment process.

Destination countries cannot always meet the huge demand for labor workers by the GCC states, which leads to high recruitment fees that employers pay. Addressing the needs between countries of origin and countries of destination is a great way to lower recruitment fees and curb the practices of some recruitment agencies. There are a lot of domestic workers who wish to work abroad and countries of origin should facilitate that connection and help their citizens (with the help of destination countries) find a balance between the supply and demand for workers in the region.

Countries of origin should prepare the workers prior to leaving the country to help them thrive in the destination country. For example, pre-employment orientation — where the domestic worker decides whether to join the work force abroad or not — is an effort from the Philippines to provide this type of preparation. Furthermore, a pre-departure orientation, where the worker is taught about the country of destination and some of the language, is offered in Sri Lanka, the Philippines, and Bangladesh.

Domestic workers should be taught what to do and where to go if there is a problem — an imperative skill since domestic workers are the most vulnerable to exploitation due to the nature of their job and their residence inside the household. Here, countries of origin play a role in teaching domestic workers what to do if a domestic worker faces problems but countries of destination should also provide domestic worker with hotlines, methods to file for redress in case of dispute with the employers, and a place to stay while the worker pursues a case against the employer.

Reintegration of the worker after spending years away from their family is also an important topic that the Abu Dhabi Dialogue discusses. Countries of origin must deal with this as many workers find it hard to reintegrate after missing out on a lot of milestones in their families. Countries of origin should provide workers with opportunities whether it was work opportunities or other opportunities such as volunteering to teach new workers heading to the Gulf states since they have the firsthand experience. Also, countries of origin should provide returned workers with finance lectures in order for them to start their own businesses and remain in the country for work.

The sixth meeting took place in Kuwait in 2014. During the Kuwait meetings, a number of best practices and pilot programs were discussed, such as the call center in Oman and the skill passport in Kuwait. The skill passport basically requires workers heading to Kuwait to take an exam in their country of origin, reflecting the skills each worker possesses. The pilot program will take place in India, Pakistan and the Philippines; the occupations that will be tested include cooks, electricians, mechanics, and painters. Another pilot program is run by the U.A.E. and Kuwait, similar to the skill passport. The pilot program is in cooperation with three sending countries — the Philippines, India, and Pakistan — where pre-selected workers in construction and services heading to the two Gulf states are tested on their skills before departure. This also will provide a chance for the worker to be tested again to upgrade their occupational status.

The Philippines discussed its model for a comprehensive information and orientation program where it holds pre-employment orientation, pre-departure orientation, post-arrival orientation, and reintegration as workers often face reverse culture shock when returning home after completing their contract.²⁴⁰

Saudi Arabia presented its improved labor dispute mechanism; while its old system took a long time to settle a dispute,²⁴¹ the improved system includes alternative dispute mechanisms where the dispute can be settled amicably (both parties meet in no more than three sessions to try to settle the matter).²⁴² If the dispute is not resolved, the case moves to the Court of First Instance where a judgment is rendered; any appeal then moves to the higher court where the final judgement is rendered by a maximum of four sessions.²⁴³ Thus, the resolution of a case should not exceed thirteen weeks to be resolved and final.²⁴⁴

²³⁶ Pilot Project on Skill Development, Certification, Upgrading and Recognition: United Arab Emirates and Kuwait, ABU DHABI DIALOGUE (Apr. 24, 2018), http://abudhabidialogue.org.ae/sites/default/files/document-library/Pilot%20Project%20on%20Skills_Project%20Document.pdf.

²³⁷ *Id*.

²³⁸ *Id*.

²³⁹ *Id*.

²⁴⁰ Gov't of Philippines, *Comprehensive Information and Orientation Programme for Migrant Workers*, ABU DHABI DIALOGUE (Nov. 27, 2014), http://abudhabidialogue.org.ae/sites/default/files/document-

library/Regional % 20 Model % 20 for % 20 A % 20 Comprehensive % 20 Information % 20 and % 20 Orientation % 20 Program % 20 for % 20 Migrant % 20 Workers.pdf.

²⁴¹ Project for the Development of Labor Dispute Settlement Bodies in the Kingdom of Saudi Arabia, ABU DHABI DIALOGUE (Nov. 27, 2014), http://abudhabidialogue.org.ae/sites/default/files/document-library/Labor%20Disputes%20Settlement%20Mechanism%20KSA.pdf.

²⁴² *Id*.

²⁴³ *Id*.

²⁴⁴ *Id*.

At this session, Sri Lanka presented its "New Web-based Module for Foreign & Local Agents," where a foreign agency can create a job order, get it certified by the foreign mission, get it confirmed by the local agency, and then approved by the body proposed in place. He Bangladesh also presented its pre-departure orientation program at this session. The government, through its Bureau of Manpower employment and training of the Ministry of Expatriates' Welfare and Overseas Employment, designed a country-specific pre-departure orientation to explain the laws and regulations of the destination country as well as the services, conditions, working environment, climate, food, habits, culture, etc. Migrant workers are taught via mass media or in-person orientation; there are also guest speakers, group sessions, and lectures. There is also mandatory pre-departure orientation for domestic workers from Bangladesh and female domestic workers are obligated to attend a mandatory twenty-one-day training on housekeeping. Also, country-specific booklets are available for workers from Oman, the U.A.E., Kuwait, Libya, Qatar, Saudi, Bahrain, Singapore, Malaysia, and South Korea.

The ILO also submitted a proposal for regulating migration flow between countries of origin and countries of destination.²⁵² The proposal aimed to reduce migration costs, prevent abuse in the recruitment process, and protect workers' rights.²⁵³ Moreover, the proposal aimed to improve regulations and strengthen oversight of private recruitment agencies.²⁵⁴

The U.A.E. submitted its model of wage protection system, ²⁵⁵ which was later adopted by all other GCC countries, while Sri Lanka shared its Web-Based Recruitment System (WBRS), pre-departure orientation, and migration management techniques. ²⁵⁶

²⁴⁵ *Id*.

²⁴⁶ *Id*.

²⁴⁷ *Pre-departure Orientation Program of Bangladesh*, ABU DHABI DIALOGUE (Nov. 27, 2014), http://abudhabidialogue.org.ae/sites/default/files/document-library/Pre-departure%20Orientation%20Program%20-%20Bangladesh.pdf.

²⁴⁸ *Id*.

²⁴⁹ *Id*.

²⁵⁰ *Id*.

²⁵¹ *Id*.

²⁵² *ILO Proposal for Consideration by Delegates*, ABU DHABI DIALOGUE (Nov. 5, 2014), http://abudhabidialogue.org.ae/sites/default/files/document-

library/ILO%20Proposal%20on%20Fair%20Recruitment.pdf.

²⁵³ *Id*.

²⁵⁴ Id.

²⁵⁵ Wage Protection Systems in the GCC, ABU DHABI DIALOGUE (Nov. 26, 2014), http://abudhabidialogue.org.ae/sites/default/files/document-library/Wage% 20Protection% 20System% 20UAE.pdf.

Overall, the best practices offered by various GCC and sending countries during the Abu Dhabi Dialogue were:

- 1. The Musaned platform from Saudi Arabia;
- 2. A wage payment system, introduced by the U.A.E. and later adopted by the other GCC states;
- 3. A pre-departure orientation that some of the sending countries adopted to inform migrant domestic workers of their rights and the culture of the destination countries:
- 4. Web-based recruitment systems;
- 5. Labor dispute mechanisms to handle disputes between the worker and employer in a speedy manner;
- 6. Booklets for migrant domestic workers specialized in each country;
- 7. Pre-departure orientation, pre-employment orientation, and post-arrival orientation.
- 8. Consideration of government-to-government recruiting schemes, similar to the system between the Philippines and Korea.

The seventh meeting took place in Dubai. During the Dubai meeting, held in May 2016, concluding recommendations were adopted by Kuwait, Oman, the U.A.E., Saudi Arabia, Qatar, Bahrain, Bangladesh, India, Indonesia, Malaysia, Pakistan, India, Nepal, the Philippines, Sri Lanka, Thailand and Vietnam. The meeting also included a number of observers — international organizations, NGOs, and other countries. The meeting discussed:

1. Finding alternative labor recruitment methods and enhancing regulations relating to recruitment by exploring a number of recruitment methods adopted by some countries such as Indonesia, ²⁵⁷ India, ²⁵⁸ and Bangladesh; ²⁵⁹

²⁵⁶ Sharing of Best Practices Sri Lanka, ABU DHABI DIALOGUE (Nov. 26, 2014), http://abudhabidialogue.org.ae/sites/default/files/document-library/Sharing%20of%20Best%20Practices%20-%20Sri%20Lanka.pdf.

²⁵⁷ *Indonesia Labour Market Information Network*, ABU DHABI DIALOGUE (Apr. 16, 2008), http://abudhabidialogue.org.ae/sites/default/files/document-

 $library/Labour\%\ 20 market\%\ 20 information\%\ 20 network\%\ 20 as\%\ 20 an...r\%\ 20 migration\%\ 20\%\ 28 Study\%\ 20 of\%\ 20 Indonesia\%\ E2\%\ 80\%\ 99s\%\ 20 LMI\%\ 29.pdf.$

²⁵⁸ *Indian Ministry of External Affairs Overseas Employment Division*, EMIGRATE, https://emigrate.gov.in/ext/ (last visited May 5, 2016).

- 2. Labor mobility in destination countries such as the U.A.E. model and how to develop better mobility for workers;
- 3. Adopting bilateral and multilateral agreements to enhance the conditions of recruitment from countries of origin to countries of destination;
- 4. Considering government-to-government recruitment;
- 5. Utilizing technology to match employers with employees;
- 6. Adopting pre-departure and post-arrival programs such as the one conducted by the Philippines, which was developed with support from the IOM, consisting of cultural training on the GCC. A technical working group composed of Kuwait, Sri Lanka, the Philippines and the U.A.E. was established to create the program for interested countries of destination and countries of origin.

All of these are excellent recommendations that should be further pursued and are discussed in greater detail in Chapter 9.

The eighth meeting took place in Sri Lanka, Colombo, in January 2017. The following countries took part in the meetings: Kuwait, Qatar, Oman, the U.A.E., Saudi Arabia, Bahrain, Afghanistan, Sri Lanka, India, Indonesia, Nepal, Malaysia, the Philippines, and Pakistan.

Concluding observations and recommendations included:

- 1. The success of labor recruitment pilot programs between the U.A.E., Kerala (an Indian state) and Nepal.²⁶⁰ Moreover, the progress of pilot programs that are taking part between the Philippines and the U.A.E., Sri Lanka and the U.A.E., and Saudi Arabia and Bangladesh were noted for review at future meetings. Expansion of the orientation programs includes pre-employment orientation programs for workers to know their rights and be informed more about the jobs that they are going to handle;²⁶¹
- 2. Skill certification and mutual recognition;²⁶²

²⁵⁹ Bangladesh: Major Initiatives on Migration Management and Some Good Practices, ABU DHABI DIALOGUE (Apr. 16, 2008), http://abudhabidialogue.org.ae/assets/8d477e4b/bangladesh-major-initiatives-on-migration-management-and-some-good-practices.aspx (last visited Sept. 20, 2018).

²⁶⁰ The Colombo Declaration (Jan. 24, 2017), https://www.ilo.org/wcmsp5/groups/public/---arabstates/---robeirut/documents/meetingdocument/wcms_542917.pdf.

²⁶² *Id*.

- 3. Pre-departure training from countries of origin achieved by cooperation and collaboration between both sending and receiving countries where a unification process for skilled and unskilled work should be recognized and achieved;²⁶³
- 4. Technology to facilitate and improve the outcomes of labor mobility in Asia;
- 5. Electronic platforms for domestic workers, like Musaned, as a model other countries can follow to enhance the recruitment process and labor mobility between countries with maintaining the privacy of the personal data shared;
- 6. On global consultations: the adoption of a "Global Compact on Safe, Orderly and Regular Migration";
- 7. With the growing number of migrants heading from Asian countries to the Gulf region for temporary work contracts, a recognition of the importance of keeping dialogue going and informing member states of progress and achievements.

While countries of destination focus on the quality of labor workers heading to their region, countries of origin focus more on the reintegration of labor workers when returning from work abroad. Both countries of destination and countries of origin tried to find a solution to the best recruitment practices for cross-country recruitment and migration. There is a true desire to find a solution to the problems that countries of destination and countries of origin face and that is seen in the continuous meetings between the countries as well as the pilot programs the countries are implementing with the help of the IOM and ILO. The Abu Dhabi Dialogue continues to meet regularly and the last meeting was held in May 2018. 265

The Abu Dhabi Dialogue is a step in the right direction towards regulating and sharing best practices between sending and receiving countries and towards improving labor mobility between sending and receiving countries. The member states of the Abu Dhabi Dialogue open new doors and discussions between sending and receiving states. The recommendations established in those meetings are more effective and precise from other recommendations since they come from the countries who are directly involved in these issues. What is missing at those meetings though is the presence of migrant domestic workers and employers. Adding employers and domestic workers to the dialogue could be beneficial as they play an imperative role and

 $^{^{263}}$ Id.

²⁶⁴ Gov't of Philippines, *supra* note 240.

²⁶⁵ Interactive Timeline, ABU DHABI DIALOGUE, http://abudhabidialogue.org.ae/timeline (last visited Sept. 20, 2018).

their voices need to be heard since many of the proposed ideas directly affect them. Thus, one recommendation is to include these voices in meetings where appropriate and feasible.

The next part of this dissertation looks at the facts on the ground in selected receiving and sending states. The purpose of this detailed inquiry is to search for and identify best practices as they are emerging in the region. Through this process, recommendations for future progress, consistent with the conditions and traditions in the region, can be identified that present the most feasible starting point for future development of migrant domestic worker regulation and protection in the region.

CHAPTER 3: A CASE STUDY OF KUWAIT

A. Introduction

This chapter discusses the contemporary situation for migrant domestic workers in Kuwait, as well as the history of the sponsorship system and, most importantly, new legislation the Kuwaiti Parliament passed in 2015 on migrant domestic workers. The Kuwaiti experience is especially important and illuminating because Kuwait is the first Gulf State to pass reform legislation for migrant domestic workers as extensive and ambitious as the new law. Although the implementing regulations are new and Kuwait's experience continues to unfold, these developments may herald paths for reform initiatives throughout the region. This part will start by outlining the basics of the new law, and then move to discuss the situations the law responded to, as well as preliminary indications of success and continuing challenges this reform experience poses.

B. Background

Kuwait is a small country in the heart of the Arabian Gulf with more than 4 million people residing in the state.²⁶⁶ According to a recent census, the number of Kuwaiti nationals declined from 31% to 30%, while expatriates (the number of foreigners residing in Kuwait) increased from 69% to 70%.²⁶⁷ Kuwait houses more than 150 nationalities from around the world²⁶⁸ with Indian, Egyptian, and Bangladeshi the top three nationalities for migrant workers.²⁶⁹ Kuwait is also considered a destination country for migrant domestic workers who work in private households. In 2016, there were 661,414 migrant domestic workers in Kuwait —

²⁶⁶ The Statistic Service System, Pub. Auth. CIV. Info, https://www.paci.gov.kw/stat/TimeSeries.aspx (last visited Jan. 22, 2019) (Kuwait).

²⁶⁷ *Id*.

²⁶⁸ Central Statistical Office Results of 2011, AL-WATAN NEWS. (Mar. 18, 2012), http://alwatan.kuwait.tt/articledetails.aspx?Id=180302 (Kuwait).

²⁶⁹ The Domestic Workers' Law Came to Address the Legislative Deficit and Regulate the Relationship Between the Parties, AL-QABAS NEWS. (Aug. 3, 2016), http://alqabas.com/156612/ (Kuwait).

300,025 male and 361,389 female domestic workers.²⁷⁰ Migrant domestic workers tend to come from India, the Philippines, and Sri Lanka.²⁷¹

Migrant domestic workers often face long working hours, non-payment of wages, and confiscation of personal documents.²⁷² In light of these problems, the GCC countries are now looking to reform their respective sponsorship systems for migrant domestic workers. The sponsorship system ties a foreign worker to a citizen, legally and financially, to enter the country and obtain legal status.²⁷³ In addition, most countries — including Kuwait — exclude domestic workers from the protections offered under labor laws.²⁷⁴ This section looks into the sponsorship system in Kuwait to examine what domestic workers face under the current sponsorship system as well as sponsor obligations. It concludes by analyzing the recent developments in Kuwait to help improve the situation of migrant domestic workers through the enactment of new protective legislation — Law No. 68 of 2015 and Law No. 69 of 2015.²⁷⁵

i. The Sponsorship System

The sponsorship system is known as *Netham Al-Kafala* in the Kuwaiti Law and is derived from the Foreign Residency Law, which was adopted in 1959.²⁷⁶ The sponsorship system ties a foreign worker to a national (sponsor or *kafeel*) as a form of immigration control;²⁷⁷ the sponsor is legally responsible for the worker and undertakes all administrative work related to the worker's residency, including health insurance, residency permits, visa approval, employment fees, and health inspection. A sponsor can be an individual, an institution, or a company.

Sponsors are legally responsible for any wrongdoing that the worker commits. For example, if the foreign worker is a driver under sponsorship of the *kafeel* and he gets into car accident, the *kafeel* is legally responsible for paying the civil compensation. Although

²⁷⁰ Id

²⁷¹ *Id.* There are 300,024 Indian domestic workers, 156,910 Filipino domestic workers, and 74,044 Sri Lankan domestic workers. *See also There are 900,000 Indian Workers in Kuwait and 29,000 have Immigration Problems*, AL-QABAS NEWS. (Sept. 8, 2016), http://alqabas.com/234655/ (Kuwait).

²⁷² MOTAPARTHY, *supra* note 7.

²⁷³ *Id*.

²⁷⁴ Qanoon Al-Amal [Labor Law] of 2010, Promulgated by Amiri Decree No. 6 of 2010 (Feb. 21, 2010) (Kuwait).

²⁷⁵ Qanoon Al-Amalah Al-Manzleyah [Domestic Workers Law] of 2015, Promulgated by Amiri Decree No. 68 of 2015 (July 27, 2015) (Kuwait); Qanoon Ensha Sharekat Estgdam Al-Amalah Al-Mazelyah [The Establishment of a Closed Shareholding Company for the Recruitment and Employment of Domestic Workers] of 2015, Promulgated by Amiri Decree No. 69 of 2015 (July 27, 2015) (Kuwait).

²⁷⁶ Qanoon Egamat Al-Ajaneb [Foreign Residency Law] of 1959, Promulgated by Amiri Decree No. 17 of 1959, (Dec. 5, 1959) (Kuwait).

²⁷⁷ MOTAPARTHY, *supra* note 7.

immigration control is arguably something that the state should regulate, the sponsorship system shifts responsibility to the sponsor.²⁷⁸ The sponsorship system is supposed to protect sponsors and workers but some sponsors tend to use the system to their advantage.

Many scholars and human rights organization argue that the sponsorship system is the reason why migrant workers and migrant domestic workers are exploited in Kuwait and elsewhere in the Gulf States.²⁷⁹ They argue that the sponsorship system leaves foreign workers vulnerable as it limits their ability to travel or change employers.²⁸⁰ Some also describe the sponsorship system as modern day slavery. 281 Moreover, these critics argue, this system leaves foreign workers at the mercy of the sponsor; if the sponsor decides to cancel a worker's residency, the migrant is rendered an illegal resident. Indeed, these problems occur, but the problem needs to be examined deeply before determining the best avenue for legal reform on this matter. Abolishing the sponsorship system in the Gulf leaves a void. If employers are not responsible for ensuring the well-being of the workers they sponsor, then what institution will assume this responsibility? Moreover, sponsorship is deeply ingrained in conceptions of obligations owed between migrant domestic workers and employers in the Gulf region concepts that will continue to define the nature of the relationship and must be retained. This section argues that the concept of sponsorship should be reformed rather than abolished in order to create an effective system of protection for employers that is implemented by employers and monitored by the state.

²⁷⁸ BINA FERNANDEZ, GULF LABOR MARKETS & MIGRATION, ESSENTIAL YET INVISIBLE: MIGRANT DOMESTIC WORKERS IN THE GCC (Apr. 2014), http://cadmus.eui.eu/bitstream/handle/1814/32148/GLMM%20ExpNote_04-2014.pdf?sequence=1&isAllowed=y.

²⁷⁹ Human Rights Watch, Exported and Exposed: Abuses Against Sri Lanka Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates 115 (2007),

https://www.hrw.org/reports/2007/srilanka1107/5.htm#_Toc181614252; MOTAPARTHY, *supra* note 7; Human Rights Watch, Slow Reforms: Protections of Migrant Domestic Workers in Asia and the Middle East 9 (2010), https://www.hrw.org/sites/default/files/reports/wrd0410webwcover.pdf; My Sleep is My Break, *supra* note 7.

²⁸⁰ EXPORTED AND EXPOSED, *supra* note 279, at 115; MOTAPARTHY, *supra* note 7; SLOW REFORMS, *supra* note 279, at 9; MY SLEEP IS MY BREAK, *supra* note 7.

²⁸¹ INTERNATIONAL HUMAN RIGHTS CLINIC, THE PROTECTION OF THE RIGHTS OF MIGRANT DOMESTIC WORKERS IN A COUNTRY OF ORIGIN AND A COUNTRY OF DESTINATION: CASE STUDIES OF THE PHILIPPINES AND KUWAIT 15 (2013), http://protectionproject.org/wp-content/uploads/2013/11/Domestic-Workers-Report-2013_Electronic-Version.pdf.

ii. The History of the Sponsorship System

A key factor in considering reforms is how the sponsorship system began. Some scholars assert that the sponsorship system in Kuwait started as early as the Pearl Era in Kuwait. Prior to the discovery of oil in Kuwait the main source of income was from the sea — specifically trading with India and pearl diving. Kuwait's economy relied on pearl diving until the Japanese invented artificial pearls and oil was discovered in Kuwait.

Some assert that sponsorships arose when the *Nukhtha* (the ship captain) would sponsor the *Ghwas* (sailors and pearl divers) on pearl diving journeys, which would last for more than four months at sea.²⁸⁵ The ship captain would be responsible for providing food and shelter during the journey and the sailor would be paid at the end of the journey, after subtracting the food and shelter expenses from the sailor's earnings.

Others date the Kuwaiti sponsorship system to the discovery of oil in 1938 and the need to regulate the foreign labor workers entering the country to help extract and export the oil, although the first shipment of crude oil did not take place till 1946.²⁸⁶ The population of Kuwait increased dramatically after the oil boom.²⁸⁷

On the other hand, some link the origins of the Kuwaiti sponsorship system to the adoption of a nationality law and the establishment of official borders, which required the adoption of new laws on borders, migration, and nationality. Kuwait began to regulate exit and entry to the country.

Some scholars also link the sponsorship system to the Bedouin principles of hospitality, which set obligations on the treatment and protection of foreign guests.²⁸⁸ According to Bedouin hospitality, strangers are greeted and welcomed with a feast and treated with respect; they remain under the protection of the Bedouin until they decide to leave.

²⁸² ANH NGA LONGVA, WALLS BUILT ON SAND: MIGRATION, EXCLUSION AND SOCIETY IN KUWAIT 20 (1997).

²⁸³ SEIF AL-SHAMLAN, TAREKH AL-GOS ALA LOLO FE AL-KUWAIT W EL KHLEEJ [THE HISTORY OF PEARL DIVING IN KUWAIT AND THE GCC] 259 (1989).

²⁸⁴ *Id*.

²⁸⁵ *Id.* at 263.

²⁸⁶ MIMONAH AL-SABAH, TAREKH AL-KUWAIT [KUWAIT HISTORY AND CULTURE] 407 (1998).

²⁸⁷ Id.

²⁸⁸ Malaeb, *supra* note 8, at 307; G. Beaugé, *La Kafala: Un Système de Gestion Transitoire*, 2 REV. EUR. DES MIGRATIONS INT'L 109 (1986).

Perhaps the most accurate account of the factors underlying the creation of the sponsorship system focuses on British colonization.²⁸⁹ The British wanted to regulate the workers coming to pearl dive in Bahrain in the 1920s.²⁹⁰ When the British came to Bahrain they needed a way to regulate labor and the main labor in Bahrain was pearl diving.²⁹¹ They established the same process seen today in the sponsorship system — there was a *kafeel* and obtaining a visa was tied to a sponsor,²⁹² who occasionally needed to pay a deposit before undertaking legal responsibility for a foreign worker.²⁹³ The system established in Bahrain later moved to Kuwait and other GCC countries, showing that diffusion of the sponsorship system is very much embedded in the history of the Gulf region.

The history of Kuwait can help establish the time of the adoption of the sponsorship system. It is unclear when Kuwait was established, although historical evidence suggests it was during the 1600s.²⁹⁴ Historians and archaeologists, however, found ruins in Kuwait that date back to the bronze ages during the Delmon era.²⁹⁵ Ruins found on Ikaros Island, which is now known as Filaka Island, date back to 3000 B.C.²⁹⁶ Other ruins found on the island date back to the Greeks and Alexander the Great.²⁹⁷ Nevertheless, and for the purposes of this dissertation, a detailed look into domestic worker regulation starts with the establishment of modern Kuwait as a country with laws and regulations. As defined by international law, a place is considered a country when three conditions are met: land, government, and people.²⁹⁸

Modern Kuwait began when a tribe called the Otob, also known as "Okhwan Salem," migrated from the Najed²⁹⁹ due to severe drought.³⁰⁰ Kuwait used to be known as Qurin and Khadmah in old maps.³⁰¹ It was the Otob tribe who gave it its new name. The Otob tribe was composed of three families (Al-Sabah, Al-Jalahma, Al-Khalefah).³⁰² Kuwait is a short form for

²⁸⁹ Al-Shehabi, *supra* note 9.

²⁹⁰ *Id*.

²⁹¹ *Id*.

²⁹² Interview with Omar Al-Shehabi, Associate Professor in Political Economy at Gust University, Kuwait (Jan. 14, 2018)

²⁹³ *Id*.

²⁹⁴ AL-SABAH, *supra* note 286, at 70-71.

²⁹⁵ *Id.* at 22.

²⁹⁶ *Id.* at 29.

²⁹⁷ *Id.* at 36.

²⁹⁸ RASHID AL-ENZI, AL QANON AL DAWLI AL-AAM [PUBLIC INTERNATIONAL LAW] 111 (1997).

²⁹⁹ ABDULAZIZ RASHID, KUWAIT HISTORY 31 (1978).

³⁰⁰ LONGVA, supra note 282, at 19.

³⁰¹ AL-SABAH, *supra* note 286, at 73.

³⁰² *Id.* at 75.

Koot — a hut where ammunition was kept, which is how the country got its name.³⁰³ There was an understanding between the Otob that Al-Sabah would handle governance and rule, while Al-Khalefah would handle the economy, and Al-Jalahma would work in the sea.³⁰⁴

Kuwait had its first customary constitution in 1756,³⁰⁵ where the division of responsibilities between families was defined. The first ruler of Kuwait was Shabah Al-Awal.³⁰⁶ It was also during that time that the number of people migrating to Kuwait started to increase due to business growth in the country. In 1921, the first written constitution was adopted following the death of Sheikh Salem Al-Mubarak.³⁰⁷ Under the 1921 constitution an elected body was established to handle the affairs of the state alongside the ruler and president.³⁰⁸ In 1938, the third constitution was adopted and elections took place.³⁰⁹

In 1961, Kuwait got its independence from the British. While Kuwait was not a British colony, it was tied to Britain by a protection agreement. The agreement was signed in 1899 between Kuwait and the United Kingdom, where the United Kingdom agreed to protect the state of Kuwait from the Ottoman Empire and the tribal wars occurring in the region. Under the rule of Shikieh Abudlallah Al-Salem, Kuwait obtained its independence. Following independence, a transition period occurred where the current constitution was drafted and prepared — the foundation year. In November 1962, the current constitution of Kuwait was adopted.

The Foreign Residency Law, however, was adopted in 1959 — prior to the independence of Kuwait. Many reforms and new laws were adopted in Kuwait in the 1950s as the country witnessed a number of developments in different industries prior to its independence, which led to complex issues and the need for administrative regulations and governmental bodies.³¹⁴ This meant it needed to be revised afterwards. In 1963 a number of amendments were made to the

³⁰³ *Id.* at 73; RASHID, *supra* note 299, at 30; AL-SHAMLAN, *supra* note 283, at 102.

³⁰⁴ AL-SABAH, *supra* note 286, at 75-80; MOHAMMED ALMOQATEI, THE KUWAITI CONSTITUTIONAL SYSTEM AND POLITICAL INSTITUTIONS 73 (2006).

³⁰⁵ ALMOQATEI, *supra* note 304, at 73.

³⁰⁶ AL-SABAH, *supra* note 286, at 103; RASHID, *supra* note 299, at 87; AL-SHAMLAN, *supra* note 283, at 102.

³⁰⁷ ALMOQATEI, *supra* note 304, at 74.

³⁰⁸ *Id.* at 82; AL-SABAH, *supra* note 286, at 135.

³⁰⁹ ALMOQATEI, *supra* note 304, at 86-90.

³¹⁰ AL-SABAH, *supra* note 286, at 9-10.

³¹¹ *Id.* at 445; ALMOQATEI, *supra* note 304, at 111.

³¹² ALMOOATEI, *supra* note 304, at 108.

 $^{^{313}}$ *Id*.

³¹⁴ OTHMAN ABDUMALIK, AL-NETHAM AL- DESTORI W ELMOASASAT AL-SEYASIYAH FE AL-KUWAIT: DERASAH TAHLILYAH NAGDEYAH FE EDAREH AL-NATHARI W FE WAGHIH AL-AMALI W WASIL ESLAHI [THE CONSTITUTIONAL SYSTEM AND THE POLITICAL INSTITUTIONS IN KUWAIT: AN ANALYTICAL, CRITICAL STUDY OF THE SYSTEM IN A HISTORICAL, THEORETICAL AND PRACTICAL FRAMEWORK] 137-144 (1989).

1959 law; changes in migration patterns result in continuing modification of the law, even today. The Foreign Residency Law covers all foreigners residing in Kuwait as well as visitors; it covers the entire Kuwaiti immigration system. There are many reasons why the Foreign Residency law was adopted prior to the independence of Kuwait. The 1950s witnessed many reforms and many new laws were adopted. In accordance with the definitive history provided by Othman Abudlmalik, Kuwait witnessed a number of developments in different industries prior to its independence, which led to complex issues and the need for administrative regulations³¹⁵ as well as a number of governmental bodies.

The first administrative department was established in 1899 during the governance of the seventh president of Kuwait Shiekh Mubarak Al-Sabah.³¹⁶ The department focused on customs.³¹⁷ It was later followed by a number of departments, including the municipal department, which was established in 1932,³¹⁸ Al-Maaref (Education), established in 1936, and health and finance in 1938.³¹⁹

In 1954, the government needed political reform due to the huge economic development Kuwait was undergoing from the growth of oil and related industries. As a result, on July 19, 1954, Kuwait passed a law to establish a higher committee. This committee established twenty-four governmental bodies,³²⁰ a large number for a country as small as Kuwait. The practice of these governmental bodies soon began to show some difficulties. Thus, the need was reexamined and, in February 1959, the number of departments was reduced.³²¹ In the same year, a number of other important laws passed, including the foreign residency law, the nationality law, the judiciary law, and labor laws for private and government sectors.

Prior to independence, the legislative process involved a proposal from either the higher council or a specific governmental department making a proposal, followed by an examination of the draft law by the higher council, and then possible ratification and publication.³²² Once a law was passed by the parliament it was sent to the president to ratify. The law was then published in

³¹⁵ Qanoon Egamat Al-Ajaneb [Foreign Residency Law] of 1959, Promulgated by Amiri Decree No. 17 of 1959 (Dec. 5, 1959) (Kuwait); ABDUMALIK, *supra* note 314, at 137-144.

³¹⁶ ABDUMALIK, *supra* note 314, at 135.

³¹⁷ *Id*.

³¹⁸ *Id*.

³¹⁹ *Id.* at 137.

³²⁰ *Id.* at 135-136.

³²¹ *Id.* at 136.

³²² *Id.* at 144.

the Kuwaiti Gazette. The first edition of the Kuwaiti Gazette was published on December 11, 1954.³²³ The legislative process remains basically the same to this day with the exception that the law is proposed by either the Members of Parliament (MP's) or by the government.³²⁴

In 1963, a number of amendments were made to the 1959 Foreign Residency Law that governs foreigners residing in the country. As migration patterns changed, the amendments to the law adapted and multiplied. The foreign residency law now covers foreigners residing in Kuwait and visitors — essentially, the Kuwaiti immigration system.³²⁵

C. Laws and Regulations Regarding Domestic Workers

Kuwaiti is a civil law country, which means that all laws and regulations are codified. Kuwaiti law is derived from the Egyptian law, which in return is derived from the French law. The Foreign Residence Law was codified in 1959 while the Labor Law was adopted in 1964, although later amended in Law No. 6 of 2010. The new labor law provided much needed protections for workers in the private sector, including increased sick leave days, increased annual leave days, increased maternity leave days, and increase in the end of service entitlements.³²⁶

The law includes migrant workers; however, Article 5 of the newly adopted labor law still excludes migrant domestic workers from its protections. A number of debates occurred regarding the exclusion of domestic workers from the law. Ultimately, due to the specific nature of domestic work, the legislators preferred to keep the exclusion as many parts of the labor law cannot be implemented for migrant domestic workers.³²⁷

Since migrant domestic workers were excluded from the labor law, the body of laws that regulated domestic workers prior to the adoption of the new 2015 law were:

- Foreign Residency Law No. 17/1959 and the amended laws;
- Civil Law (the standardized contract for domestic workers was issued by the Ministry of Interior);
- Penal Law;

³²³ *Id.* at 145.

³²⁴ *Id.* at 467.

³²⁵ Qanoon Egamat Al-Ajaneb [Foreign Residency Law] of 1959, Promulgated by Amiri Decree No. 17 of 1959 (Dec. 5, 1959) (Kuwait).

³²⁶ Qanoon Al-Amal [Labor Law] of 2010, Promulgated by Amiri Decree No. 6 of 2010 (Feb. 21, 2010) (Kuwait).

³²⁷ JAMAL AL-NAKAS, QANON AL-AMAL AL-KUWAITI DERASAH MOGARENAH [KUWAIT LABOUR LAW: A COMPARATIVE STUDY] 50 (2010).

• Ministerial Decree No. 618/1992 regarding the licensing of recruitment agencies (the decree was amended several times).

Moreover, a number of other regulations and ministerial decrees, discussed later, regulated domestic workers. The newly adopted Law No. 68/2015 fills gaps by offering more protections to migrant domestic workers and giving them the right to file complaints against their sponsors while simplifying the process. Under the old law and the body of general laws, migrant domestic workers had that right prior to 2015, but the way of demanding redress was hard and long.

One of the means adopted to safeguard and regulate domestic work was the adoption of the standardized contract issued by the Ministry of Interior. The standardized contract was first introduced by the Ministry of Interior in 2004,³²⁸ and later amended in 2006, 2009, 2010, 2014, and recently in 2016 in light of Law No. 68.

The idea behind a standardized contract was to offer protection to migrant domestic workers from the sponsor and the recruitment agency. The contract was a way to protect domestic workers from exploitation and protect their rights. Previously, this contract was regulated under the civil law; thus, any disputes arising from the contract were litigated in the civil chambers, which is often a lengthy litigation practice. In contrast, under the new law, the Department of Domestic Workers drafted a new standardized contract³²⁹ that regulates disputes in accordance with Law No. 68/2015. Any disputes that cannot be amicably settled between the worker and the sponsor will be referred to a specific chamber in court — the Labor Chamber.³³⁰ It is yet unclear if a new chamber will be established to handle domestic workers' disputes or if they will be included in same special chamber for labor disputes. Domestic workers will be exempted from paying any legal fees, similar to the rules under the labor law.³³¹

The Foreign Residency Law has been amended more than seventeen times. The latest amendment to the Foreign Residency Law took place in 2015, and ties residency length to the passport expiration date. Under the Foreign Residency Law, a sponsor has an obligation to report

³²⁸ MOTAPARTHY, *supra* note 7, at 35.

³²⁹ Ministerial Decision No. 2302/2016, Qwaed w Ejraat Tanfeeth Ahkam Al-Qanoon Ragam 68 Lesanat 2015 [Implementing Regulations of Law Number 68 of 2015 Regarding Domestic Workers] (July 10, 2016) (Kuwait). ³³⁰ Qanoon Al-Amalah Al-Manzleyah [Domestic Workers Law] of 2015, Promulgated by Amiri Decree No. 68 of 2015, art. 35 (July 27, 2015) (Kuwait). ³³¹ *Id*.

when a person under his/her sponsorships leaves or does not show up to work. 332 This situation was known as an absconding case; however, examination of the Foreign Residency Law shows there is no such thing as "absconding" in the law, although a sponsor does retain an obligation to report when the person under his/her sponsorship is missing for more than seven days.³³³ Failure to report leaves the sponsor legally responsible and punishable by law with a minimum of 200 Kuwaiti Dinars (KD) (\$658.8 USD) and maximum of 600 KD (\$1,977 USD) fine or imprisonment that does not exceed six months³³⁴ leading many sponsors to file absconding reports rather than risk punishment.

In the past the reports were filed in the police station. Now sponsors can report absconding domestic workers in the service centers (Markaz Al Khedma) provided by the Ministry of Interior.³³⁵ The absconding report that the sponsor files puts responsibility on the sponsor to pay the return ticket for the worker within three days of identifying and arresting the absconding worker.³³⁶ Both the Foreign Residency Law and the absconding report process show that the burden of ending illegal residency by a worker who has left his or her sponsor falls on the sponsor and not the worker.³³⁷ This leads to absconding migrant domestic workers remaining for extended time in deportation centers, embassy shelters, or governmental shelters, which raises questions regarding the extent of their detention. The question was addressed to a number of specialized professionals in this area. Although answers varied, they all agreed that if the matter is only an absconding case than the problem is easy to address and resolve. Thus, one proposal involves investigating the reasons for their departure and resolving the problem of long delays prior to workers in illegal residency leaving deportation centers as well as embassy and government shelters to return to their sending countries.

If, however, there is a criminal case against the worker, matters become complicated and the process takes longer. Criminal cases can arise when a sponsor accuses the migrant domestic worker of stealing — sometimes in an effort to avoid paying for the migrant domestic worker's plane ticket home. Other sponsors refuse to hand the workers their passports when they state they wish to leave the sponsor's employment. There is no clear number of cases for how often

³³² Qanoon Egamat Al-Ajaneb [Foreign Residency Law] of 1959, Promulgated by Amiri Decree No. 17 of 1959, art.

^{14 (}Dec. 5, 1959) (Kuwait).

³³³ Id.

³³⁴ *Id*.

³³⁵ Interview with Police Officer (Aug. 18, 2016).

³³⁶ Copy of an absconding report obtained from the service center.

³³⁷ Foreign Residency Law, art. 14 (Kuwait).

sponsors refuse to hand over the worker's passport but — during visits to the governmental shelter, the domestic workers department, and the deportation center — interviews established that many sponsors wanted to hand their domestic worker the passport after they left employment without their sponsor's agreement.

When asked in an interview why sending countries do not issue emergency travel documents for their citizen migrant workers, the Labor Attaché of a sending country answered that the first effort was to obtain the worker's passport and report retention of the passport to the Ministry of Foreign Affairs.³³⁸ This process takes time; thus, the worker is left in either the embassy shelter or the government shelter while the passport is obtained. Other sending countries issue a travel document for migrant domestic workers to return to their original country.

After the absconding report is filed, the worker's residency is cancelled by the police and a detention order for the worker is issued. If the worker is located by the police after an absconding report is filed by the sponsor, the sponsor is obligated to pay for the migrant domestic worker's plane ticket to the worker's original country. The worker is fingerprinted and released to the deportation unit where officials take the worker to the airport for a flight back to the original country. If the worker leaves sponsored employment, residency is cancelled, and the worker has up to three months to leave the country or obtain a new residency.³³⁹ If, however, the sponsor refuses to pay for the worker's plane ticket during the deportation proceedings, the government pays for the worker to go home. A case is then filed by the government against the sponsor to obtain the cost paid by the government for the plane ticket.

As already noted, there is a difference between migrant domestic workers and migrant workers in other sectors. Migrant workers are protected by the labor law whereas, migrant domestic workers work inside of households and are usually excluded from labor protections.³⁴⁰ The legal definitions for both migrant workers and migrant domestic workers are provided by Kuwaiti law in Labor Law No. 6/2010 and Domestic Workers Law No. 68/2015. Labor Law No. 6/2010 considers a labor worker any male or female who conducts a physical or mental work for

³³⁸ Interview with a labor attaché of a sending country (Aug. 11, 2016).

³³⁹ Foreign Residency Law, art. 14 (Kuwait).

³⁴⁰ Qanoon Al-Amal [Labor Law] of 2010, Promulgated by Amiri Decree No. 6 of 2010, art. 5 (Feb. 21, 2010) (Kuwait).

an employer under his administration and his supervision in exchange for money.³⁴¹ Domestic Workers Law No. 68/2015 considers a domestic worker any male or female who conducts manual labor inside of a private household for individuals in accordance with a written contract.³⁴²

Migrant domestic workers often face a number of unpleasant situations, including withholding of wages and passport confiscation, as well as physical and sexual abuse. As a result, a number of laws and regulations were put in place to address specific abuses migrant domestic workers often face.

Recruitment offices keep files with pictures and job experiences or descriptions for each potential migrant domestic worker. The sponsor picks a domestic worker from the file and the recruitment office contacts its counterpart recruitment office in the country of origin to inform the domestic worker. The migrant domestic worker must then conduct a health check and criminal check required by law in Kuwait to obtain an entrance permit. The sponsor signs the contract with the recruitment agency and pays either half the recruitment fees up front or the entire recruitment fee. The recruitment fees include the cost of the plane ticket for the domestic worker as it is the sponsor's responsibility to provide the plane ticket following the issuance of the entrance permit. The sponsor also provides health insurance and pays the residency fees for the migrant domestic worker; the residency permit can only be issued after another health check is conducted in Kuwait.

A recruitment agency needs a license to operate in Kuwait.³⁴³ Law No. 41/2004 was passed to regulate the recruitment agencies. Moreover, an amendment to Ministerial Decree No. 617/92 requires every recruitment agency by law to submit a 5,000 KD³⁴⁴ deposit in a bank account. This was later raised to 20,000 KD deposit by Ministerial Decree No. 313/2004,³⁴⁵ as

³⁴¹ *Id.* art. 1(3).

³⁴² Qanoon Al-Amalah Al-Manzleyah [Domestic Workers Law] of 2015, Promulgated by Amiri Decree No. 68 of 2015, art. 1(1) (July 27, 2015) (Kuwait).

³⁴³ *Id.* art. 2.

³⁴⁴ Ministerial Decree No. 313/2004, Qarar Wezari Mtalg Btaadeel Baeth Ahkam Al-Garar Al-Wezari Ragam 617/1992 Btantheem Gawaed w Ejraat Al-Hesol Ala Makateb Al-Khadam Al-Khsoseyen w Min Fee Hekmhum [Ministerial Resolution Regarding the Amendment Made to Some of the Provisions of Ministerial Decree No. 617/1992 that Regulates the Licensing of Recruitment Agencies] (Apr. 25, 2004) (Kuwait).

³⁴⁵ Ministerial Decree No. 1182/2010, Qarar Wezari Mtalg Btaadeel Baeth Ahkam Al-Garar Al-Wezari Ragam 617/1992 Btantheem Gawaed w Ejraat Al-Hesol Ala Makateb Bmkateb Alkhedmah Al-Khadam Al-Khsoseyen w Min Fee Hekmhum [Ministerial Resolution Regarding the Amendment Made to Some of the Provisions of Ministerial Decree No. 617/1992 that Regulates the Licensing of Recruitment Agencies] (Apr. 11, 2010) (Kuwait).

insurance against any wrongdoing the recruitment agency might commit.³⁴⁶ Under the new executive regulations of Law No. 68/2015, the deposit was raised to 40,000 KD.³⁴⁷ The money is paid to the sponsor for any wrongdoing by the recruitment agency.

D. Analysis of Law No. 68 and Law No. 69

Before analyzing Law No. 68 regarding domestic workers and Law No. 69 regarding the establishment of a closed shareholding company, it is important to understand what both laws entail.

i. Law No. 68 the Domestic Workers Law

In June 2015, Kuwait passed a new domestic workers law, known as Law No. 68, along with Law No. 69 regarding the establishment of a closed shareholding company for recruitment of domestic workers. The law passed after a marathon parliamentary session; changes were made to forty-eight articles during the first deliberation and after a number of discussions and changes made to several articles, the law passed the second deliberation with forty-seven of votes out of fifty parliament members.³⁴⁸

The two laws were the first to pass in a GCC country on the issue of migrant domestic workers. Although, Bahrain was the first of the six GCC countries to include domestic workers in its labor law,³⁴⁹ and the Kingdom of Saudi Arabia was the first to adopt an annex to domestic workers law,³⁵⁰ Kuwait was the first to create a governmentally-owned company that specializes in recruitment of domestic workers.³⁵¹ It was also the first country in the GCC to set a minimum wage for domestic workers.³⁵²

³⁴⁶ *Id*

Ministerial Decree No. 2194/2016 Al Laehaa Al-Tanfeethya Leganoon Al-Amalah Al Manzelyah Regam 68 Lesant 2015 [Executive Regulation Concerning Law Number 68 of 2015 Regarding Domestic Workers], art. 3 (June 27, 2016) (Kuwait).

³⁴⁸ Parliament Passes the Domestic Workers Law and the Domestic Workers Company and Sends it to the Government, AL-JARIDA NEWS. (June 25, 2015), http://www.aljarida.com/articles/1468480881755272700/(Kuwait).

³⁴⁹ Qanoon Al-Amal Fe Al-Gedaa Al-Ahali [Labor Law in the Private Sector], Law No. 36 of 2012, art. 2 (Aug. 10, 2012) (Bahr.)

³⁵⁰ Laehat Al-Amalah Al-Mazeleyah [Household Regulation on Service Workers and Similar Categories], Resolution No. 310 (July 7, 2013) (Saudi Arabia).

³⁵¹ Qanoon Ensha Sharekat Estgdam Al-Amalah Al-Mazelyah [The Establishment of a Closed Shareholding Company for the Recruitment and Employment of Domestic Workers] of 2015, Promulgated by Amiri Decree No. 69 of 2015 (July 27, 2015) (Kuwait).

³⁵² Qanoon Al-Amalah Al-Manzleyah [Domestic Workers Law] of 2015, Promulgated by Amiri Decree No. 68 of 2015, art. 19 (July 27, 2015) (Kuwait).

Indeed, since 2009, Kuwait drafted multiple laws on the issue of domestic workers. Yet, no real steps were taken until 2015, when a domestic worker bill finally made it to parliament for deliberation and passed the first and second deliberations. Nevertheless, the law underwent additional scrutiny before it was ultimately passed. The original committee to consider the bill, the Health and Social Committee of Parliament, took a long time reviewing the law. After amending it based on feedback from related sectors, including the Manpower Authority and the Ministry of Interior, the committee stalled and refused to pass the bill on to the Parliament for deliberation. With the bill blocked in the Health and Social Committee, Law Nos. 68 and 69 were introduced by MP Saleh Ashor and MP Kamel Al-Awadi (head of the Immigration Department in the Ministry of Interior prior to becoming a member of Parliament). They proposed the laws in the Finance Committee, and the bill was then sent to Parliament for deliberation. Some changes were introduced during the first deliberation and, in the second deliberation, the bill was discussed at length until it finally passed in the last session of parliament before the beginning of the summer holidays.

The law was published in the official gazette on July 27, 2015.³⁵³ However, a law does not enter into effect until the executive regulations are passed and published in the official gazette as well. The implementing ministry must pass the executive regulations, which explain to the public how the law will be implemented and clarifies the law. The implementing ministry for Law No. 68 is the Ministry of Interior.³⁵⁴ Under Article 72 of the Kuwaiti constitution, executive regulations must be passed by the president, the cabinet, or the specialized minister.³⁵⁵

Under Article 72 of the Kuwaiti constitution, there is a legal obligation to issue the executive regulations. Constitutional law scholars argue about the validity of the law without an executive regulation; three different opinions are often considered. Under the first scenario, a new law can be implemented without a regulation if the law does not need the regulation to explain how the law will be implemented and it is enough that it can stand on its own; Article 178 of the constitution supports this argument. Under the second scenario, a new law cannot be implemented without a regulation if the law is insufficient to be implemented on its own. In

³⁵³ Qanoon Al-Amalah Al-Manzleyah [Domestic Workers Law] of 2015, Promulgated by Amiri Decree No. 68 of 2015 (July 27, 2015) (Kuwait).

³⁵⁴ Id.

³⁵⁵ DISTOR AL KUWAIT [CONSTITUTION] art. 72 (Kuwait).

³⁵⁶ ALMOQATEI, *supra* note 304, at 280-288.

this case the law cannot be implemented without passing the regulations.³⁵⁷ According to the third scenario, a new law can be implemented immediately in part if it does not need the executive regulations to explain it or to function; the parts that need executive regulations cannot be implemented until the regulations are passed.³⁵⁸

The second scenario occurred under the domestic workers law because the law could not be implemented without regulations. Indeed, this fact was mentioned in more than one article in the law itself. On July 12, 2016, however, the executive regulations were passed, thus rendering the domestic workers law effective. Many members of Parliament welcomed the issuance of the executive regulations and said that if practice reveals any problems that were not foreseen in the law and executive regulations, the law would be amended.³⁵⁹

The law is composed of fifty-three articles and the executive regulations contain twenty-seven articles.³⁶⁰ While the law has come into force, it will be interesting to see its implementation; at the time of this writing many questions on implementation have not yet been resolved. Since July 2016, when the law first entered into force, more than 148 relevant cases have been sent to court.³⁶¹ Many migrant domestic workers received their entitlements (their unpaid salaries) through the Domestic Workers Department in the amount of 28,000 KD (\$91,920.39 USD).³⁶² Furthermore, employers have also been reimbursed more than half a million KD (\$1,641,453.59 USD) since July 2016.³⁶³

Although a body of law regulated domestic workers prior to the enactment of Law No. 68, the new law brings important protections to domestic workers. The new law specifically addresses the issues of domestic workers and the abuses they face through a host of provisions, including regulating working hours for domestic workers.³⁶⁴ Now, domestic workers may only work for twelve hours a day, which includes breaks, and domestic workers are entitled to eight

³⁵⁷ *Id*.

³⁵⁸ *Id*.

³⁵⁹ Mohammed Al-Sandan, Eshada Neyabeyah Bsdor Al-Laeha Al-Tanfetheya lel Amalah Al-Manzelayah [MP's Welcome the Release of the Executive Regulation for the Domestic Workers Law], AL-QABAS NEWS. (July 15, 2016), https://alqabas.com/129053/ (Kuwait).

³⁶⁰ Qanoon Al-Amalah Al-Manzleyah [Domestic Workers Law] of 2015, Promulgated by Amiri Decree No. 68 of 2015 (July 27, 2015) (Kuwait).

³⁶¹ Domestic Employment in Kuwait: Cases of Trafficking in Persons, AL-QABAS NEWS. (Apr. 24, 2017), http://alqabas.com/386729/ (Kuwait).

³⁶² *Id*.

³⁶³ *Id*.

³⁶⁴ Domestic Workers Law, art. 22(2) (Kuwait).

hours of rest at night.³⁶⁵ The newly standardized contract further specifies that the working hours not exceed five consecutive hours.³⁶⁶ Other provisions include:

- Requiring employers to provide domestic workers with one day off per week,³⁶⁷
 and paid leave for every year of service;³⁶⁸
- Requiring domestic worker consent before being assigned to work for another sponsor or to work abroad;³⁶⁹
- Obligating the sponsor to provide the domestic worker with adequate food, clothing, and shelter;³⁷⁰
- Requiring the sponsor to provide medical treatment for any injury that occurs during the job;³⁷¹
- Offering a simplified way to redress violations of its provisions, initially recommending an amicable session in the presence of both the sponsor and domestic worker to settle the matter; if the amicable session fails, the parties are referred to court to render a judgment on the matter;³⁷²
- Waiving legal fees for domestic workers;³⁷³
- Penalizing a sponsor for not fulfilling legal obligations to the domestic worker;³⁷⁴
- Providing domestic workers with over-time compensation;³⁷⁵
- Imposing an age limit of no less than twenty-one years old and no more than sixty years old for a domestic worker;³⁷⁶
- Requiring the sponsor to pay the domestic workers' salaries at the end of each month — failure to do so will penalize the sponsor;³⁷⁷

³⁶⁵ Ministerial Decision No. 2302/2016, Qwaed w Ejraat Tanfeeth Ahkam Al-Qanoon Ragam 68 Lesanat 2015 [Implementing Regulations of Law Number 68 of 2015 Regarding Domestic Workers] (July 10, 2016) (Kuwait). ³⁶⁶ Domestic Workers Law, art. 7 (Kuwait).

³⁶⁷ *Id.* art. 22(3).

³⁶⁸ *Id.* art. 23.

³⁶⁹ *Id.* art. 8.

³⁷⁰ *Id.* art. 11.

³⁷¹ *Id.* art. 22.

³⁷² *Id.* arts. 31, 35.

³⁷³ *Id.* art. 36.

³⁷⁴ *Id.* art. 27.

³⁷⁵ *Id.* art. 28.

³⁷⁶ *Id.* art. 21.

³⁷⁷ *Id.* art. 20.

- Prohibiting sponsors from withholding workers' passports without their consent;³⁷⁸
- Blocking the sponsor from issuing new entry visas to domestic workers if complaints against the sponsor by a domestic worker are proven accurate.

The law sets specific obligations for both the sponsor and the domestic worker, although the obligations for the sponsor are much more than those required by the domestic worker. There are only three obligations on the domestic worker whereas there are ten obligation on the employer — an indication that the law is pro-domestic workers.

However, is the law truly pro-domestic workers? The new law surpasses some of the obligations in the labor law itself — which covers all workers in the private sector, whether foreigners or Kuwaiti citizens — specifically the end of service clause.³⁷⁹ In the Kuwaiti labor law, the end of service clause is very detailed and specific. Articles 51, 52, and 53 explain that an end of service payment is calculated by adding the wages of fifteen days for every year of the first five years and the wages of thirty days for every year above the first five years. Essentially, if the laborer is paid \$500 USD a month and worked for five years in the company, the end of service payment will be calculated by dividing the \$500 USD by twenty-six (the number of working days each month), equaling \$19.20 USD/day. This is then multiplied by fifteen, which equals \$288 USD — the equivalent of the first fifteen days in accordance with Article 53. In the event that the period of service reaches five years and less than ten years, the worker is entitled to two thirds of the benefit. Thus, the final calculation will be \$288 USD multiplied by two thirds, which equals \$192 USD.

Prior to the passage of Law No. 68, migrant domestic workers did not receive end of service payments because they were not covered by the Labor Law.³⁸⁰ Now, Law No. 68

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³⁷⁸ *Id.* art. 12.

³⁷⁹ See Qanoon Al-Amal [Labor Law] of 2010, Promulgated by Amiri Decree No. 6 of 2010, arts. 51, 53 (Feb. 21, 2010) (Kuwait) ("Article 51: The worker shall be entitled to an end of service benefit as follows: . . . b. The worker shall be entitled to a 15 days remuneration for each of the first five years of service and one month remuneration for every year thereafter. The total of the end of service benefit should not exceed one-and-a-half-years of remuneration for employees who are paid on a monthly basis; Article 53: The worker shall be entitled to half of the end of service benefits stipulated in Article 51 in the event where he terminates the work contract which has an indefinite term and the period of service reaches not less than three years and not more than five years. In the event where the period of service reaches five years and less than 10 years, the worker shall be entitled to two thirds of the benefit and if the period of service exceeds 10 years, the worker shall be entitled to his entire benefit.").

³⁸⁰ *Id.* art. 5 ("The following shall be excluded from the application of this Law: Workers who are subject to other laws and to the provisions of those laws: Domestic workers: the competent minister shall issue a resolution concerning their affairs setting forth the rules that organize their relations with the employers").

provides end of service payments; however, the domestic workers law simplifies this entitlement to one month's payment for every year of service completed.³⁸¹ So, if the domestic worker receives the minimum wage required by law, which is \$198 USD a month, and worked for the household for five years (\$198 USD multiplied by five), the end of service payment will be \$990 USD. Ultimately, the end of service payment for the domestic worker is much higher than for the labor worker. This is only one example of how Law No. 68 improves the situation and legal protections for migrant domestic workers in Kuwait.

Unfortunately, there are still a number of gaps that the law fails to address. For instance, the law does not clarify the number of days of annual leave guaranteed. Also, the law does not add a statute of limitations for cases filed by either sponsors or domestic workers, while the Labor Law statute of limitations is one year. Furthermore, the legislators did not include sick leave in the law, unlike Saudi law which grants sick leave not to exceed thirty days. The law also sets the probation period for migrant domestic workers and their sponsors to six months — the legislators' aim was to stop the practices of some recruitment agencies who abused the relatively short 100-day probation period.

ii. Law No. 69 of 2015 Regarding the Establishment of a Closed Shareholding Company

Law No. 69 of 2015 addresses the establishment of a government-owned recruitment company for migrant domestic workers set up to compete with private recruitment agencies that currently exist. If the government-owned company works as expected and with only 10% profit, economically the other recruitment agencies will not be able to keep up. The company's bylaws, which set out the name of the company and its main duties, were published in the official governmental gazette on November 6, 2016. The company is called Al-Dorah Labor Company, established by law on October 26, 2016 as a closed Kuwaiti shareholding company.³⁸⁴ The main duties of the company are:

• To conduct all recruitment and operation of domestic workers inside of Kuwait in accordance to the related domestic workers laws;

³⁸¹ Qanoon Al-Amalah Al-Manzleyah [Domestic Workers Law] of 2015, Promulgated by Amiri Decree No. 68 of 2015, art. 23 (July 27, 2015) (Kuwait).

³⁸² Id.

³⁸³ Labor Law, art. 144 (Kuwait).

³⁸⁴ Bylaws of Al-Dorah Shareholding Co., art. 3 (on file with author).

- To provide all services related to house care and family;
- To provide domestic workers with qualified training in specialized centers that include training courses to educate domestic workers about Kuwaiti culture and traditions;
- To take all necessary measures to ensure that recruited domestic workers are free from infectious diseases;
- To maintain personal information of the recruited domestic worker and identification methods of each domestic worker using modern technology;
- To set the working conditions for all designated domestic workers and family care
 workers in a way that grantees fair wages and health services that are stipulated in
 the working contracts in accordance to the domestic workers law;
- To rent and establish buildings and also cars and tools and other things that may be needed to carry out the purpose of the company.

The equity capital of the company is set at three million KD.³⁸⁵ In accordance with Article 1 of Law No. 19 of 2016, the shares are divided as follows: 10% Kuwait Investment Authority, 10% Kuwait Airways, 10% Public Institution for Social Security, 10% The Public Authority for Minor Affairs, 60% Union of Consumer Cooperative Society.³⁸⁶ The company started operations in September 2017.³⁸⁷

It took fifteen months for Al-Dorah Labor Company to start operating after the law was published in the official gazette in 2016.³⁸⁸ Employees were recruited in June 2017 and the General Manager was appointed.³⁸⁹ The company started operations in August 2017.³⁹⁰ At first, the company only provided male domestic workers from India who worked as cooks and drivers. The company also introduced a sliding pay scale for workers with and without experience. However, while it was anticipated that the price of recruiting migrant domestic workers would decrease (due to the fact the it is a governmental company and its profit are limited to 10%),

³⁸⁵ *Id.* art. 8.

³⁸⁶ Qanoon Btagdeel al Fagra Al-Ola Min Al-Mada Al-Ola min Ganoon Ragam 69/2015 [Law No. 19 of 2016 to Amend the Law No. 69 of 2015, art. 1] of 2016, Promulgated by Amiri Decree No. 19 of 2016 (May 1, 2016) (Kuwait).

³⁸⁷ Domestic Workers Company Will Recruit Workers from all Countries Including Europe and Arab Countries, AL RAI NEWS. (May 15, 2017), http://www.alraimedia.com/ar/article/local/2017/05/15/765823/nr/kuwait (Kuwait). ³⁸⁸ Interview with HR manager of Al-Dorah Company (Jan. 9, 2018).

³⁸⁹ *Id*.

³⁹⁰ *Id*.

many were shocked at the prices the company released. When Al-Dorah started to offer female domestic workers from Sri Lanka, where the recruitment fees were 960 KD (\$3,204 USD), the price difference between Al-Dorah and the non-governmental recruitment agencies was only 40 KD — the recruitment fees for Sri Lankan domestic workers were far less from recruitment agencies. Many were frustrated by the recruitment fees and took to social media to express their dismay and disappointment with Al-Dorah.³⁹¹ Furthermore, an MP announced intent to propose a bill to shut down Al-Dorah recruitment company.³⁹² However, the company is only in its first stages and, with time, potentially the prices will decrease.

In a television interview, the general manager of the company, Saleh Al-Wehaib, announced that Al-Dorah signed agreements with three countries — India, Sri Lanka, and the Philippines — with other countries to soon follow. He also announced that the recruitment fee would be around 280 KD (\$925 USD), much lower than originally offered, and that the process would be conducted manually until the online website and portal were operational. He also mentioned that it would take thirty to forty-five days for the worker to arrive in Kuwait. ³⁹³ Furthermore, Al-Wehaib announced that the domestic worker would be under the sponsorship of the company for the duration of the six-month probation period in the new law. ³⁹⁴ This is an improvement over individual employers serving as sponsors.

iii. Recruitment Agencies

Today, it costs around 1400 KD (\$4,632 USD) to bring a Filipino domestic worker to Kuwait. If the Filipino domestic worker is a returning worker, recruitment agencies usually request higher fees because the worker is already in the country and can start working immediately. This is a great benefit to sponsors because they do not have wait three or four months for the domestic worker to come from the Philippines, since it is now harder to obtain a domestic worker. However, the recent surge in recruitment fees was perhaps one of the main factors that helped pass Law No. 68. As more and more regulations were put in place by the

³⁹¹ AlDurra (@AlDurra_KW), TWITTER (Jan. 20, 2018, 12:00 AM), https://twitter.com/AlDurra_KW/status/954624634690920448.

³⁹² Kathima, *MP Safa Al Hashem: I Will Submit a Proposal to Repeal the Law of Al-Durah Company*, YOUTUBE (Dec. 20, 2017), https://www.youtube.com/watch?v=ZPGzgnFhUmI.

³⁹³ Television interview with Saleh Al-Wehab, General Manager of Al-Dorah Company (Mar. 18, 2018). ³⁹⁴ *Id*.

government to address the abuses migrant domestic workers faced, recruitment fees increased, aggravating sponsors' dissatisfaction with the system.

In 2010, there were nearly 700 recruitment agencies.³⁹⁵ Today there are only 298 recruitment agencies; the number of recruitment agencies decreased even though the demand for domestic workers has increased. Since Law No. 68/2015 went into effect, the rules have become much tougher, although there were already a number of pending requests to start new recruitment agencies.³⁹⁶

The new law regulates the licensing of recruitment agencies.³⁹⁷ It was expected that when Law No. 69/2015 was implemented, the number of recruitment agencies would decrease due to the fact that the newly established government-sponsored company would profit by 10% as stated in its law.³⁹⁸ However, private recruitment agencies are still operating and strong.

Reportedly, some recruitment agencies encourage domestic workers to abscond from their sponsors. The recruitment agencies re-locate the workers by finding them new sponsors and obtain additional recruitment fees from a new sponsor without having to pay to bring a new domestic worker to Kuwait. Furthermore, under the old law, if a domestic worker returned to the recruitment agency within 100 days, the recruitment agency was responsible for paying to send the worker home as well as for the worker's accommodations while waiting to return home, since it fell under the probation period. The recruitment agencies started to challenge the system, encouraging domestic workers to run away or declare they no longer wished to work following the 100-day probation period. The recruitment agencies would essentially relocate migrant domestic workers by finding them new sponsors and the agencies would obtain additional recruitment fees from a new sponsor without paying to bring a new domestic worker to Kuwait. The recruitment agencies profited when a migrant domestic worker was returned by the sponsor to the recruitment agency as the agency would charge the next

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³⁹⁵ MOTAPARTHY, *supra* note 7.

³⁹⁶ Interview with Head of the Licensing Office for Recruitment Agencies (Aug. 4, 2016).

³⁹⁷ Qanoon Al-Amalah Al-Manzleyah [Domestic Workers Law] of 2015, Promulgated by Amiri Decree No. 68 of 2015, art. 2 (July 27, 2015) (Kuwait).

³⁹⁸ Qanoon Ensha Sharekat Estgdam Al-Amalah Al-Mazelyah [The Establishment of a Closed Shareholding Company for the Recruitment and Employment of Domestic Workers] of 2015, Promulgated by Amiri Decree No. 69 of 2015, art. 1 (July 27, 2015) (Kuwait).

³⁹⁹ Ministerial Decree No. 1182/2010, Qarar Wezxari Mtalg Btaadeel Baeth Ahkam Al-Garar Al-Wezari Ragam 617/1992 Btantheem Gawaed w Ejraat Al-Hesol Ala Makateb Bmkateb Alkhedmah Al-Khadam Al-Khsoseyen w Min Fee Hekmhum [Ministerial Resolution Regarding the Amendment Made to Some of the Provisions of Ministerial Decree No. 617/1992 that Regulates the Licensing of Recruitment Agencies], art. 12 (Apr. 11, 2010) (Kuwait).

sponsor higher fees since the domestic worker was already in the country and ready to start working right away. For example, a new migrant domestic worker m cost the sponsor 900-1000 KD (\$2,967-\$3,296 USD) while a returned domestic worker would cost 1,300 KD-1,600 KD (\$4,286-\$5,275 USD) depending on the nationality. This practice was considered a form of trafficking by some and is one of the reasons the sponsorship system came under attack. 400 Under Law No. 68, however, the probation period became six months, so the worker could not transfer sponsorship for six months. This legal reform was made to stop this practice by the recruitment agencies by delaying the transfer for six months.

iv. Embassy and Governmental Shelters

Numerous interviews with migrant domestic workers following the passage of Law No. 68,⁴⁰¹ provided valuable insight to inform the recommendations and evaluations proffered later in this dissertation. Most of the former migrant domestic workers surveyed reported maltreated and unpaid wages. Many were overworked and wished to go back home but refused to file cases against their sponsors.

Although all runaway migrant domestic workers are supposed to go to government-run shelters in Kuwait, not all end up in these shelters. Instead, some embassies in Kuwait run shelters for their migrant domestic workers. There are three embassy shelters in Kuwait, the Indian shelter, the Sri Lankan shelter, and the Filipino shelter. These shelters operate in accordance to Vienna Convention on Diplomatic Relations and its optional protocol, which states that one of the functions of the diplomatic mission is to protect the interest of nationals in the receiving states, within limits permitted by international law. Furthermore, under the Vienna Convention on Consular Relations "consular staff must protect, assist and help nationals and ensure that all nationals have appropriate legal representation to safeguard their rights and interest." Because the workers are in embassies, Kuwaiti law enforcement officials are unable to enforce the laws that require all migrant domestic workers who are not living with their sponsors to report to government-run shelters. Observations of government-run shelters did not

⁴⁰⁰ MOTAPARTHY, *supra* note 7.

⁴⁰¹ No details can be disclosed about the locations or types of facilities visited.

⁴⁰² U.S DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT: KUWAIT (2018), https://www.state.gov/documents/organization/282802.pdf.

⁴⁰³ Vienna Convention on Diplomatic Relations art. 3, Apr. 18, 1961, 596 U.N.T.S. 261[hereinafter VCDR].

⁴⁰⁴ Vienna Convention on Consular Relations art. 3, Apr. 24, 1963, 500 U.N.T.S. 95 [hereinafter VCCR].

suggest any maltreatment in government-run shelters; however, some migrant domestic workers who leave their sponsor's homes prefer to report to their embassies, where they are more likely to encounter others from their own countries who are in a similar situation.

Kuwait has operated a governmental shelter for domestic workers since 2007. At that time, the shelter only had capacity for forty cases. As the number of cases grew, there was a need to establish a bigger and better equipped shelter; the new shelter, opened in 2014, has maximum capacity for 500 cases. The shelter was established by the government to meet international standards and falls under the purview of the Manpower Authority, established in 2013. An number of governmental agencies participated in the establishment of the shelter and have offices in the shelter to facilitate the needs of the runaway migrant domestic workers. Those governmental agencies include the Ministry of Justice, the Ministry of Health, and the Ministry of Foreign Affairs.

The shelter is 100% financed by the government. A visit to the shelter shows well-tended residents who receive adequate nutrition, health care, counseling, and opportunities for activities. A car service is provided for residents who needed to attend doctor's appointments or take care of other needs, such as purchasing prescription eye wear. The residents appear reasonably content; indeed, some joke about not wanting to leave because the accommodations were so much better than what the residents had experienced previously or could be expected to experience when they had returned to their home countries. Although residents made light of the facilities they encountered, the comfort of the government shelter at present must be noted as part of the problem with the current sponsorship system and accompanying protections against sponsor abuse can create unbalanced incentives for domestic workers who legally should leave Kuwait due to lack of continuing sponsorship. As with many aspects of the sponsorship system, the accompanying problems are complex and difficult to untangle. No one solution will completely abolish the risks and dangers of abuse within the sponsorship regime.

⁴⁰⁵ Interview with Falah Al-Mutari, Head of Domestic Workers Shelter (Aug. 8, 2016).

⁴⁰⁶ *Id*.

⁴⁰⁷ *Id*.

⁴⁰⁸ *Id*.

⁴⁰⁹ *Id*.

⁴¹⁰ *Id*.

⁴¹¹ *Id*.

⁴¹² *Id*.

At present, the governmental shelter only accepts female migrant domestic workers. 413 There are future plans to expand the shelter as well as to open a number of shelters in different areas, including separate shelters for male migrant domestic workers. 414 Although not yet established, a budget was set to build a male shelter. 415 Based on observations at the shelter, residents are offered three meals a day and two snacks; the shelter also provides free medical treatment and a 24-hour clinic. 416 Usually, domestic workers are brought to the shelter by their embassy or the Ministry of Interior; sometimes international organizations bring domestic workers as well. 417 Under the old administration, the shelter was not allowed to accept voluntary admission; under the updated rules, the shelter now accepts migrant domestic workers who check in by themselves. 418 When a migrant domestic worker first arrives at the shelter, she is greeted by a social worker and asked to complete an admission form. She is then taken to a health inspection to make sure that she is free of any diseases. 419 If a domestic worker suffers from any medical condition she is provided with the necessary medicine and treatment. She is then taken for a screening investigation to ensure that she is not a trafficking victim; if she is determined by an investigator to have been trafficked, she is referred to the responsible authority for assistance. Finally, she is taken to the psychologist to assess her condition and start her file.⁴²⁰

The shelter started this first-of-its-kind program to address human trafficking with the help of the IOM in Kuwait. 421 The IOM Voluntary and Integration Program provides assistance for a year and follows the worker to make sure that she does not become a victim of trafficking again. 422 The Voluntary and Integration Program is especially effective because it ensures safe and sustainable return and significantly decreases the risk of future trafficking. 423 The IOM identifies victims of trafficking in collaboration with the Public Authority of Manpower (specifically the government shelter staff) as well as the Trafficking Unit at the Ministry of

⁴¹³ *Id*.

⁴¹⁵ TRAFFICKING IN PERSONS REPORT: KUWAIT, *supra* note 402.

⁴¹⁶ *Id*.

⁴¹⁸ Bylaws of the Domestic Workers Shelter, art. 4(1) (on file with author).

⁴¹⁹ Interview with Falah Al-Mutari, *supra* note 405.

⁴²¹ *Id.*; Interview with Eman Eraygat, Head of the IOM in Kuwait (Aug. 17, 2016).

⁴²² Interview with Falah Al-Mutari, *supra* note 405; Interview with Eman Erayqat, *supra* note 421.

⁴²³ Interview with Eman Erayqat, *supra* note 421.

Interior. The program is funded through the IOM Global Emergency Fund. So far more than fifty domestic workers have benefited from the program. 424

Kuwait is the first country to implement such a program and IOM offices in the domestic worker's home country provide additional assistance to the domestic workers for a year and monitor the progress of their business. The IOM has been operating in Kuwait since 1991 and reactivated its presence in 2003. The IOM in Kuwait is hoping the government of Kuwait will establish its own national fund in the near future.

During a 2016 visit to the shelter, 370 domestic workers were present.⁴²⁷ The numbers change on an hourly basis; thus, providing a specific number each month is hard. The shelter is working on creating a database, with the help of the IOM in Kuwait, that follows the admission process to calculate how many domestic workers are there at any given time. A recent report stated that more than 4,915 domestic workers were housed in the shelter from March 2015-March 2016, out of which 4,514 were able to resolve their problems and return home.⁴²⁸ The shelter is also working with the IOM to create an electronic database for the domestic workers coming in and out of the shelter in order to keep track of the domestic workers leaving and entering the shelter.⁴²⁹ Most complaints against sponsors are withholding wages, physical abuse (in extreme cases, sexual abuse), and confiscation of documents such as passports and IDs.

Domestic workers are free to leave the shelter throughout the day, though they must continue to live in the shelter since they are no longer legally able to live in Kuwait without a sponsor. While the shelter provides a car and driver for the migrant domestic workers if they need to go shopping or buy specific items, upon arrival each domestic worker is provided with basic toiletries.⁴³⁰

Those seeking to refute reports of rampant problems with sponsorship abuse of migrant domestic workers, however, point out that workers also commit widely reported crimes and other abuses against their sponsors. Reaching a conclusion on crimes committed by the sponsor and crimes committed by domestic workers requires examining those crimes and the gravity of those

⁴²⁴ *Id*.

⁴²⁵ *Id*.

⁴²⁶ *Id*.

⁴²⁷ Interview with Falah Al-Mutari, *supra* note 405.

⁴²⁸ Head of the Domestic Workers Shelter Received 4915 Cases Affected During a Year, AL-JARIDA NEWS. (May 9, 2016), https://issuu.com/aljaridanewspaper/docs/issue d3c36dec4d57dd (Kuwait).

⁴²⁹ Interview with Falah Al-Mutari, *supra* note 405.

⁴³⁰ *Id*.

crimes in a set period of time. Examination of this data shows that the number of crimes committed by both parties are increasing, 431 which is to be expected since the number of migrant domestic workers is increasing every year. 432

The best way to evaluate what is happening with migrant domestic workers in Kuwait is to look closely at reported facts, which may help the reader reach a conclusion on the matter. The reports show that crimes are committed by both parties — the employer/sponsor and employee/migrant domestic worker — and that both parties have problems and issues. Nevertheless, each person is entitled to be treated humanely and abuse to any one person is a tragedy that needs to be addressed. If anything, the reports provided below show the need to raise awareness to both perspectives and that both parties need to know their rights and obligations.

v. Crimes Committed by Sponsors

- 2009: A Filipina domestic worker was abused by the sponsor's son who hit her and physically abused her. 433
- 2009: A Filipina domestic worker was verbally abused by her sponsors. 434
- 2009: A Filipina domestic worker was physically assaulted by her sponsor after demanding to be returned to the recruitment agency.⁴³⁵
- 2010: A Filipina domestic worker was hit several times on the head by her sponsors; she sustained injuries from falling when she tried to escape.⁴³⁶
- 2011: A domestic worker jumped off a balcony and sustained severe injuries when she was locked in the house and a fire started while her sponsors were traveling.⁴³⁷
- 2015: A man was sentenced to death for abducting and raping a domestic worker.⁴³⁸

⁴³¹ Mohammed Ebrahim, *Bin Dorfah*, *Ameerah*, *Al-Khadam Sndook Aswad Memtalea Bl Awjaa w Al-Mashakel [Maids Are a Black Box Filled with Pain and Problems]*, AL-QABAS NEWS. (Apr. 29, 2017), https://algabas.com/388412/.

⁴³² Yearly Growth in Number of Current Residencies in Section 20 (Domestic Servant) by Country Group and Gender During The Years 2014–2017, Mig. STATISTICS BULL. (2017).

⁴³³ MOTAPARTHY, *supra* note 7, at 46.

⁴³⁴ *Id*.

⁴³⁵ *Id.* at 60.

⁴³⁶ *Id*.

⁴³⁷ Interview with Eman Erayqat, *supra* note 421.

- 2015: A doctor was sentenced to ten years in prison for torturing her domestic worker.⁴³⁹
- 2014: A Kuwaiti sponsor was charged with murder for fatally hitting his Asian domestic worker.⁴⁴⁰
- 2014: A domestic worker was not paid for two years until she ran away. 441
- 2014: A Kuwaiti couple was arrested for the murder of their Asian domestic worker after they beat her in their apartment and buried her body in the desert.⁴⁴²
- 2015: A Ugandan domestic worker was beaten and assaulted by her sponsors for taking a day off without their permission.⁴⁴³
- 2015: Two Filipina domestic workers were physically abused by their sponsors and sought refuge in their embassy.⁴⁴⁴
- 2015: A Filipina domestic worker was not paid for two months while she was transferred to four different sponsors. When the last sponsor said he was going to take her to Saudi Arabia, she ran away.⁴⁴⁵
- 2015: A domestic worker was abused by the sponsor's children, who choked her with a microphone cord.⁴⁴⁶
- 2016: A Zimbabwean female and Kuwaiti citizen were charged with human trafficking while running a recruitment agency and exploiting Zimbabwean workers after bringing them to Kuwait by promising them to work in high paying jobs. They were paid just 70 KD (\$231 USD).⁴⁴⁷

⁴³⁸ Masdar Amni: Al-Amalah Al-Manzeliyah tajawz Adadha 670 Alf Khademah w khadem [Security Source: The Number of Domestic Workers Exceeds 670,000], AL-ANBAA NEWS., (Nov. 11, 2011), http://www.alanba.com.kw/ar/kuwait-news/600511/10-11-2015-ألف-خادم-670-ألف-خادم (Kuwait).

⁴³⁹ Id

⁴⁴⁰ Ahmed Jamer, *Employer Admits to Beating Domestic Worker to Death*, KUWAIT TIMES (Jan. 15, 2014), http://news.kuwaittimes.net/employer-admits-beating-domestic-worker-death-beat-marks-victims-body/.

⁴⁴¹ Interview with Unnamed Domestic Worker (Aug. 11, 2016).

⁴⁴² Jamer, *supra* note 440.

⁴⁴³ Ben Garcia, *Trafficked Ugandan Domestic Helper Beaten for Taking Day Off*, KUWAIT TIMES (July 22, 2015), http://news.kuwaittimes.net/website/trafficked-ugandan-domestic-helper-beaten-for-taking-day-off/.

⁴⁴⁴ Ben Garcia, *Filipino Maids Suffer Months of Brutality – Job Opportunity Turns into a Nightmare*, KUWAIT TIMES (Oct. 7, 2015), http://news.kuwaittimes.net/website/filipino-maids-suffer-months-of-brutality-job-opportunity-turns-into-a-nightmare/.

⁴⁴⁵ Interview with Unnamed Domestic Worker (Aug. 11, 2016).

⁴⁴⁷ *Human Trafficking Racket Busted, Women Rescued*, KUWAIT TIMES (June 9, 2016), http://news.kuwaittimes.net/website/human-trafficking-racket-busted-women-rescued/.

- 2016: A Filipina domestic worker ran away after being paid less than her contract price. She worked illegally as a driver/domestic worker and drove for two years without proper documentations before being apprehended.⁴⁴⁸
- 2016: A domestic worker was not paid for four months. She spent six months with the sponsor until she ran away. 449
- 2016: A domestic worker was threatened by the recruitment agency, which said that it would kill her family back home if she did not work.⁴⁵⁰
- 2016: A domestic worker was raped by police officers while she was detained awaiting her papers. 451
- 2016: A Syrian national was found guilty of trafficking and was sentenced to fifteen years in prison after he raped and hit domestic workers and forced them to work in prostitution.⁴⁵²

vi. Sponsor Complaints

The main complaints from sponsors are high recruitment fees and crimes committed by domestic workers. Since high recruitment fees have already been discussed, this section focuses on reported incidents of crimes by domestic workers towards sponsors.

Recently, a number of violent crimes committed by domestic workers caused the issue of migrant domestic work to be discussed and addressed more openly. In accordance with a study by the National Bureau of Family Security, the number of crimes committed by domestic workers have increased significantly in the past few years. Most crimes were committed against children and newborns. The increase in the number of crimes came with a call to address the issue and add new monitoring technologies. Many commentators call for more monitoring and safeguards by the sponsors in light of the rise in migrant domestic worker crimes. As a result of the perceived high crime rate by certain nationalities of domestic workers into the sponsorship system, a ban was placed on recruitment from those countries.

⁴⁴⁸ Interview with Unnamed Domestic Worker (Aug. 11, 2016).

⁴⁴⁹ *Id*.

⁴⁵⁰ *Id*.

⁴⁵¹ I.A

⁴⁵² Interview with Unnamed Detective (Aug. 17, 2016).

⁴⁵³ Security Source, supra note 438.

⁴⁵⁴ These countries include Togo, Ghana, and Ethiopia under Administrative Resolution Nos. 95/2016 and 108/2016 by the Ministry of Interior and the Department of Immigration.

vii. Crimes Committed by Domestic Workers

The report indicated that most crimes were committed when the parents were outside of the household and that more than 1,000 severe crimes were committed in the past ten years. Here are some of the most notable crimes which were committed by migrant domestic workers in Kuwait include:

- 1994: A Sri Lankan domestic worker poisoned a 7-month-old infant by adding rat poison to his medicine while his parents were out of the house. 455
- 1995: A Filipina domestic worker kidnapped her sponsor's 3-year-old daughter for twelve hours in the Philippines embassy in order for the sponsor to release her passport so she could work for another family. After 12 hours of negotiations she agreed to release the daughter after she obtained her passport.⁴⁵⁶
- 1996: A domestic worker and the driver were found guilty of murdering their sponsor. They threw him in the courtyard of the house after hitting him with an iron and the door handle multiple times. The domestic worker then brought a knife from the kitchen and started stabbing him. After that the driver and the domestic worker buried the body in the courtyard.⁴⁵⁷
- 1997: A domestic worker was found urinating in the family drinking water; the
 father suspected there was something wrong with the water due to a bad smell.
 After further investigation, the domestic worker confessed to urinating in the
 water to poison the family.⁴⁵⁸
- 1997: Two domestic workers and a driver carried out an armed robbery. They tied the sponsors up, stole what was in the house, and left the country. 459
- 1997: Two domestic workers were found guilty of attempted murder after trying to poison the sponsor's newborn by adding poison to his milk.⁴⁶⁰

⁴⁵⁵ The Most Conspicuous Crimes of Domestic Labor in Kuwait; Abnormal Behavior and a Spirit of Revenge, AL-ANBAA NEWS. (Nov. 15, 2014), http://www.alanba.com.kw/ar/kuwait-news/513251/15-11-2014-أبرز-جرائم-العمالة--الكويت-سلوكيات-غير-سوية-وروح-انتقامية / (Kuwait).

⁴⁵⁶ *Id*.

⁴⁵⁷ *Id*.

⁴⁵⁸ *Id*.

⁴⁵⁹ *Id*.

⁴⁶⁰ *Id*.

- 1999: An Indian domestic worker killed her 80-year-old sponsor by suffocating her while she was asleep to steal her money and jewelry.
- 2002: An Indonesian domestic worker threw boiled water on a 2-year-old girl. Her 6-year-old brother was a witness to the crime and informed the mother who reported the incident to the police station.⁴⁶²
- 2003: A Nepalese domestic worker took a stick and inserted it in the private parts of two young girls a 5-year-old and a 7-year-old. The case was registered as a sexual assault.⁴⁶³
- 2004: A domestic worker killed a 5-year-old boy and tried to kill his 8-year-old sister who was admitted to the ICU. The domestic worker committed suicide by jumping from the third floor.⁴⁶⁴
- 2005: A domestic work tried to poison two young Kuwaitis by adding Clorox and pesticide to their drinks. When the young men started feeling unwell they went to the doctor who informed that they had been ingesting poison for a while.⁴⁶⁵
- 2006: A monitoring camera showed a domestic worker severely hitting a young child, slapping him, and dragging him across the floor. 466
- 2006: A domestic worker added Clorox to the family drinking water and the father discovered his daughter unconscious, the doctor informed him that she was poisoned.⁴⁶⁷
- 2006: A Filipina domestic worker tied a 9-month-old infant's private parts to stop him from urinating; he screamed for three days until the parents took him to the hospital the doctors discovered a very thin string on his penis. The domestic worker first denied the treatment but later confessed and said she did it to retaliate against the boy's mother's bad treatment of her.⁴⁶⁸

⁴⁶¹ *Id*.

⁴⁶² *Id*.

⁴⁶³ *Id*.

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⁴⁶⁴ *Id*.

⁴⁶⁵ *Id*.

⁴⁶⁶ *Id*.

⁴⁶⁷ *Id*.

⁴⁶⁸ *Id*.

- 2007: An Indonesian domestic worker mixed urine into a 6-year-old boy's milk.469
- 2007: An Asian domestic worker tried to kill her sponsor by stabbing her multiple times. When asked why she said that her sponsor usually screamed at her. 470
- 2007: A Filipina domestic worker killed a young girl by stabbing her twelve times. After that she went to the roof and tried unsuccessfully to commit suicide. She was sentenced to death.⁴⁷¹
- 2007: A Filipina domestic worker killed a 7-year-old boy and tried to kill his 12vear-old sister and 17-year-old sister, who fought back.⁴⁷²
- 2007: A Filipina domestic worker placed insects in a 2-year-old boy in some sort of magical ritual and sprayed him with a homemade insecticide.⁴⁷³
- 2009: An Ethiopian domestic worker tried to kill the sponsor's children. She stabbed a 12-year-old child multiple times while the other two children were able to flee.474
- 2008: A domestic worker killed her Lebanese sponsor only five days after arriving in Kuwait.⁴⁷⁵
- 2009: Five Filipino domestic workers and an Indian driver stole \$28,000 USD from their sponsor.⁴⁷⁶
- 2009: An Indonesian domestic worker tried to murder her sponsor's two infants (who were one-year old and one-and-half years old). She entered their rooms and started smothering them. The police were called and were able to save the boys' lives.477
- 2009: Two domestic workers and a driver stole two Rolexes valued at 26,000 KD (\$86,178 USD), a Chopard watch valued at 3,000 KD (\$9,943 USD), two rings

⁴⁷⁰ *Id*.

⁴⁶⁹ *Id*.

⁴⁷¹ *Id*.

⁴⁷² *Id*.

⁴⁷³ *Id*.

⁴⁷⁴ *Id*. ⁴⁷⁵ *Id*.

⁴⁷⁶ *Id*.

⁴⁷⁷ *Id*.

- valued at 8,000 KD (\$2,561 USD), and some cash around 50,000 KD (\$165,727 USD) overall.⁴⁷⁸
- 2010: A domestic worker broke a safe and stole jewelry worth 35,000 KD (\$116,009 USD).⁴⁷⁹
- 2010: An Ethiopian domestic worker tried to kill her sponsor's 12-year-old son by strangling him with a sheet.⁴⁸⁰
- 2010: A domestic worker took her passport and 30,000 KD (\$99,436 USD) worth of jewelry from her sponsors.⁴⁸¹
- 2011: An Asian domestic worker tried to kill two sisters, an 11-year-old and 9year-old. The girls survived after the older sister was able to escape and call her father, who called the police.⁴⁸²
- 2011: An Ethiopian domestic worker stabbed and killed the sponsor's daughter the night before her wedding. Although the daughter resisted and fought the domestic worker continued stabbing her until she died.⁴⁸³
- 2011: A Somali domestic worker stole 18,000 KD (\$59,661 USD) worth of jewelry from her sponsors. 484
- 2011: An Ethiopian domestic worker stabbed and dismembered a 25-year-old young lady on her wedding day, separating her head from her body. The police were able to arrest the domestic worker before she left the country.
- 2012: A Sri Lankan domestic worker killed her elderly sponsors and left the country hours after committing the crime.⁴⁸⁵
- 2012: An Indian domestic worker raped a 7-year-old girl. When the mother found blood in her daughter's underwear the daughter told her what the domestic worker did.486
- 2013: An Asian domestic worker stole 35,000 KD (\$116,009 USD).

⁴⁷⁹ *Id*.

⁴⁷⁸ *Id*.

⁴⁸⁰ *Id*.

⁴⁸¹ *Id*. ⁴⁸² *Id*.

⁴⁸³ *Id*.

⁴⁸⁴ *Id*.

⁴⁸⁵ *Id*. ⁴⁸⁶ *Id*.

- 2014: An Ethiopian domestic worker tried to unsuccessfully slaughter her sponsor, leaving her with cuts in her neck, ears and face. 487
- 2014: An Ethiopian domestic worker tortured an infant. The father submitted a medical report and discovered that the domestic worker would severely hit the infant every time he and his wife left the house.⁴⁸⁸
- 2014: A domestic worker sent a video of her hitting the sponsor's son before leaving the country.⁴⁸⁹
- 2014: A domestic worker stole jewelry worth 5000 KD (\$16,572 USD). 490
- 2014: A domestic worker killed a 4-year-old girl by inserting worms through the little girl's nose. The mother noticed that her little girl was acting strangely, was lazy and could hardly function. The mother decided to monitor the domestic worker. She tricked the domestic worker into thinking that she left the house when in fact she was hiding to see what the domestic worker would do. She heard her daughter saying one is enough today and when she entered she saw her inserting a worm in her daughter's nose. She immediately took her to the hospital. The doctors informed her that she was too late and that her daughter's brain was full of worms, and she only had a couple of days to live. The girl died a few days later.491
- 2014: An Ethiopian domestic worker killed a 19-year-old college student by stabbing him multiple times.⁴⁹²
- 2016: A Filipina domestic worker raped a 2-year-old girl to get back at the girl's mother.493

The number and severity of crimes committed by migrant domestic workers has been increasing, especially in recent years. 494 The crimes have opened a new debate with regards to the treatment of domestic workers. As previously noted, a ban was issued on certain nationalities working in some GCC states; however, certain countries are also now banning their citizens from

⁴⁸⁷ *Id*.

⁴⁸⁸ *Id*.

⁴⁸⁹ *Id*.

⁴⁹⁰ *Id*.

⁴⁹¹ *Id*.

⁴⁹² *Id*.

⁴⁹³ *Id*.

⁴⁹⁴ Ebrahim, *supra* note 431.

coming to work in the Gulf States — such as India and Indonesia. India, however, announced intent to lift its ban and no longer require a bank insurance payment of \$2,500 USD. As more restrictions are put in place, there is a need to protect both parties and try to find a solution to the problem. Shifting the sponsorship system from the employer to the government as an entity, will remove the power relationship between the domestic worker and employer/sponsor. The domestic worker will be able to move from an abusive employer, since the government agency or body will have the right to transfer the domestic worker from one employer to another if certain conditions are met. By simplifying the complaint mechanism, the number of crimes committed may decrease.

viii. Constitutional Court Rulings

Following the adoption of the domestic workers law, Law No. 68, recruitment agencies were disgruntled as the law extended the probation period from three to six months. Recruitment agencies challenged the law and its constitutionality.

Two cases were presented to the constitutional court regarding Law No. 68. The first case referred to Article 2, paragraph 3, on the conditions for obtaining a recruitment agency license; specifically, the case focused on the provision that the owner of the recruitment agency should obtain at least a high school diploma, which was challenged by a number of recruitment agencies. The case was filed on October 22, 2015 and the court rendered its judgment on December 16, 2015, siding with the recruitment agencies and declaring Article 2, paragraph 3 unconstitutional.

The second case hinged on Article 17, paragraphs 1 and 6, as well as Article 51 of Law No. 68. Article 17, paragraphs 1 and 6 covered the return of the domestic workers to their country of origin if they no longer wished to worker for the employer, or when domestic workers refused to work for the employer; Article 51 covered instances where migrant domestic workers absconded from the employer and the Ministry of Interior deported the domestic workers to their country of origin, after collecting the costs of travel from the party that sheltered the absconded workers, or from the recruitment agency if the party that sheltered the workers cannot be

⁴⁹⁵ Interview with Recruitment Agencies (Aug. 10, 2016).

⁴⁹⁶ AlFarhan, Nasser, Al-Samah Bstgdam AL-Khademat Alhendyat w Alasar len Tatajawaz 400 Dinar [Allowing the Recruitment of Indian Domestic Workers where Prices will not Exceed 400 Dinars], AL-RAI NEWS. (Sept. 5, 2017), http://www.alraimedia.com/ar/article/local/2017/09/05/788296/nr/kuwait (Kuwait).

reached. The case was filed on May 16, 2016 and the court rendered its judgment on December 21, 2016. The court dismissed the case and found these specific articles constitutional.⁴⁹⁷ The recruitment agencies challenged Article 17 of the domestic workers law which covered the obligations of the owner of the recruitment agency specifically clauses 1 and 6. Clause 1 covered when the worker cannot perform due to circumstances out of the hand of the employer. Clause 6 covered when the worker refuses to work or leave to an unknown place. In those cases, recruitment agencies have a legal obligation to return the recruitment fee to the employer the recruitment agencies rejected that and filed a suit in front of the constitutional court which dismissed the case.

ix. The Role of Civil Society in Kuwait

Unlike some GCC countries with a limited civil society sphere, civil society plays a significant role in Kuwait. The Kuwait Human Rights Society recently launched a campaign to raise awareness regarding labor laws in Kuwait. Sponsored by the Netherlands Embassy in Kuwait, the campaign provides the labor law in five languages commonly used by migrant workers. Posters are displayed on the social media accounts of the Kuwait Human Rights Society. The Kuwait Human Rights Society also created togetherkw.org — an app and a website to provide both migrant workers and migrant domestic workers with their rights as well as a hotline for migrant workers and migrant domestic workers to pose questions and inquiries and receive legal advice. The hotline also works in five different languages: Arabic, English, Indian, Filipino, and Urdu. The hotline has received 802 complaints so far — 243 in Indian, 101 in Urdu, 306 in Arabic, and 152 in English. This is a step forward to increase awareness and protect the rights of migrant workers and migrant domestic workers in Kuwait.

Operation Hope is also engaged in Kuwaiti civil society. Another non-profit in Kuwait, it provides winter clothes to non-nationals working in Kuwait as well as financial help for deprived

⁴⁹⁷ Case No. 5/2016 Mahakamat Al-Tamiyyz [Court of Cassation], 2016 (Kuwait). ⁴⁹⁸ TOGETHER, http://togetherkw.org (last visited Sept. 20, 2018).

⁴⁹⁹ Leaawel Marah Fe Dewal Al-Khaleej Mansa Elktorneyah letathgeef Al-Amal Al-Mohajarah Fee Al-Kuwait [For the First Time in the Gulf an Electronic Platform For Migrant Workers in Kuwait], KUWAIT HR (June 13, 2017), http://www.kuwaithr.org/news/society-news/item/739-212222.html (last visited Sept. 30 2018).

families. Operation Hope also offers embassy shelters basic needs such as clothes, blankets, and toiletries.⁵⁰⁰

Social Work Society is a non-profit that aims to protect and support vulnerable populations as well as advocate and enhance human rights in Kuwait. It was founded in 2005 by Shikah Bibi Al-Sabah.⁵⁰¹ Some of the work conducted by the Social Work Society includes discussions and lectures to students and universities on the rights of migrant domestic workers. It also provides pro bono legal help for migrant domestic workers and arranges meetings with public officials regarding the issue of migrant domestic workers.⁵⁰² In addition, the Kuwait Lawyers Association, in collaboration with the shelter of domestic workers, provides pro bono legal help for migrant domestic workers.⁵⁰³

The "We're Equal" Campaign from the Tolerance Spring Club (one of the programs offered by Human Line Organization — a non-governmental agency raising awareness of human rights), aimed to spread awareness of migrant domestic workers' rights and shed light on the issues migrant domestic workers face. The participants showcased art, performed poetry and presented photography to teach people about domestic workers' perspectives and their cultures.

An overall increase in awareness campaigns regarding the rights of migrant domestic workers, such as the "One Roof Campaign," aims to raise consciousness about domestic workers rights. The "One Roof Campaign" is a joint effort of the Human Line and the Social Work Society in collaboration with the Ministry of Interior. It provides legal guidance to all migrant domestic workers and their employers to reduce disputes that may arise between the domestic worker and sponsor. To raise awareness regarding the new laws governing domestic workers, the campaign provides booklets in fifteen languages, and share lectures, panel discussions, and short videos alongside a media campaign intent on changing social perceptions and attitudes towards domestic workers.

With the domestic workers' law in place setting the foundation, civil society plays an imperative role in building upon that base to raise awareness of the law and help people navigate the new law — especially domestic workers who may not be aware of the changes and their entitlement to these new rights. Furthermore, civil society may be helpful in the future to propose

⁵⁰⁰ OPERATION HOPE KUWAIT, http://www.nakhwah.org/en/organizations/740-Operation-Hope-Kuwait (last visited Jan. 15 2017).

⁵⁰¹ Who We Are, Soc. Work Soc'y, http://sws.org.kw/#about-us (last visited Sept. 20, 2018).

⁵⁰² Id.

⁵⁰³ Interview with Falah Al-Mutari, *supra* note 405.

changes to the law or its regulations, based on increased awareness and dealing with the domestic workers law.

x. Recent Developments

A resolution by the Ministerial Council, No. 614 of 2018, was issued to transfer the specialization of the Domestic Workers Department in the Ministry of Interior to the Manpower Authority so that the Ministry of Interior no longer has jurisdiction over recruitment agencies, domestic workers, or employers. Although it may be a welcomed step, transferring specialization to the Manpower Authority will result in decreased authority over employers and recruitment agencies such as that used by the Ministry of Interior on recruitment agencies and employers. Furthermore, while the Department of Domestic Workers dealt with complaints against recruitment agencies since 1994, its jurisdiction ended in 2015 with the new law and that is not the case with the manpower authority. Reportedly, the Department of Domestic Workers met with the Manpower Authority to help facilitate transition but it is still unknown how the Manpower Authority will handle the issue of domestic workers and if it will be able to provide the exact number of complaints and cases transferred to courts similar to the efforts of the Department of Domestic Workers. Because of these concerns, the specialization was transferred back to the department of Domestic Workers at the Ministry of Interior until March 31, 2019 in accordance to Ministerial Resolution 1036.⁵⁰⁴ In the Manpower Authority law, Article 1 p7 states: "that it is the duty of the manpower authority to recruit workers for the private and oil sectors." Thus, the legislative decision to shift specialization from the Department of Domestic Workers to the Manpower Authority is concerning and the question remains: can the Manpower Authority handle these situations similar to the Department of Domestic Workers?

E. Questionnaire

The following results are from a questionnaire developed and shared with both employers (sponsors) and migrant domestic workers in Kuwait. For more information on methodology see the introduction. The results indicate how implementation of the law is occurring, however, the

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⁵⁰⁴ The Rights of Domestic Workers Between Legislative and Enforcement, Kuwait Hum. Rts. Soc'y (Dec. 9, 2018), http://kuwaithr.org/news/society-news/item/817-2481000.html (Kuwait).

⁵⁰⁵ Qanoon Enshaa Hayat Al-Gowah Al-Amelah [Law Regarding the Establishment of the Manpower Authority] of 2013, Promulgated by Amiri Decree No. 109 of 2013, art. 1(7) (July 9, 2013) (Kuwait).

questionnaire was shared in 2017, a year after the law entered into effect. 309 employers participated while 261 domestic workers participated. The findings are as follows:

xi. Employers Questionnaire

- Number of Domestic Workers: 93% out of 309 employed migrant domestic workers;
 38% employed one domestic worker, 33% employed two domestic workers, 10% employed 3 domestic workers, 9.9% employed four domestic workers, and 7.8% employed more than 4 domestic workers.
- Knowledge of Law: Only 11% of those who replied were aware of Law No. 68 of 2015; 88% replied that they were unaware of the law or what it covers.
- Day Off: 42% provided female domestic workers with a regular day off, whereas 30% provided the female domestic worker with occasional days off and 26% refused to provide domestic workers with a day off. Some indicated that domestic workers were offered a day off but the workers often refused to leave.
- Male Domestic Worker: When it came to giving a male domestic worker a day off, 61% provided a male domestic worker with a regular day off while only 7% did not and 31% said the question was inapplicable since they did not employ male domestic workers.
- Leave on their day off: 59.7% affirmed that they allowed female domestic workers to leave the house during the day off while 40% said no; some mentioned that the domestic worker refused to leave the house on the day off.
- Mobile Phone: 95.7% allowed their domestic workers to have their own mobile phone while only 4% said no.
- Passports: When asked if they allowed migrant domestic workers to keep their own passports, 81% said no while only 18.9% said they allowed domestic workers to keep their passport. Many employers indicated a fear that the passport might be lost and they preferred to keep it in a safe along with their family's passports.
- Year of Service: 45% indicated that the migrant domestic workers often stayed more than four years, while 9% had domestic workers stay for four years, and 10% stayed for three years; 23% indicated their workers stayed for two years and 12% reported migrant domestic workers that stayed for one year.

- Recruitment: When questioned about how the domestic worker was recruited, 76% answered by recruitment agencies while 23% mentioned that it was through a network with other domestic workers.
- Early Departure: 82% said the migrant domestic worker did not leave before her contract ended while 17% said their migrant domestic worker left early.
- When asked if any disputes occurred between the sponsor and the domestic worker,
 79.8% answered that no such dispute occurred between them while 20% affirmed that disputes had occurred.
- Embassy Interaction: 81.7% did not interact with the embassy of the migrant domestic worker, while 18% interacted with the embassy.
- Satisfactory Level: When asked about the satisfactory level of work conducted by the domestic worker, 85.6% were satisfied with the work conducted by the domestic worker while 14% said they were unsatisfied by the domestic worker.
- Training: Only 32.7% affirmed that the domestic worker was trained prior to arriving in the house, while the majority, 67%, said the domestic workers were not trained beforehand.
- Opinion about the *Kafala* System: When asked if the sponsors had any criticism about the *Kafala* system the majority (64.9%) said no while 35% said yes. Among those, some considered it modern day slavery while most said that the system was unfair towards the sponsor and that the probation period should be increased to two years or as long as the contract; they stated this was to stop abuse by recruitment agencies. Also, some sponsors complained of the high recruitment fees.

xii. Domestic Workers Questionnaire

- Marital Status: 51% out of 261 said they were married, while 46% were single and
 2.71% said they were widowed.
- Age: 8.05% were 20-25, 33.7% were between 26 and 30 years old, while 25.2% were 31-35, 18.7% were 36-40, 11.49% were 41-45, and 2.68% were 46-50.
- Children: 38.13% stated that they had three or more children, while 25.29% stated that they had two children, 20.62% had one child, and 15.95% had no children.

- Education: 57.42% were high school educated, while 32.42% were college educated, 8.98% were elementary school educated, 0.78% have no education, and 0.39% were primary educated only.
- English Proficiency: 96.54% speak English, while 3.46% stated that they did not speak English.
- 96.41% obtained their job through a recruitment agency, while 3.59% obtained their job through a network.
- Recruitment Fees: When asked whether the domestic worker paid the recruitment agency, 80.16% said no, while 19.89% said yes.
- Employment History: 60.16% did not previously work as a domestic worker, while 39.89% did.
- Contract: When asked whether they signed a contract, 96.15% said they signed a contract, while 3.85% said they did not sign a contract.
- Knowledge of Employment: When asked if they knew upon arrival that they would be employed as a domestic worker, 97.99% said they were aware while 2.01% said they did not know.
- Years of Employment: When asked how long they worked for the current family, 46.85% said less than a year, 24.80% said one year, 18.50% said two years, 4.72% said more than four years, 3.15% said three years, while 1.97% said four years.
- 28% stated that eight or more lived in the household, 19.20% said six lived in the household, 16.80% stated that five lived in the household, 13.60% stated that four lived in the household, 10% stated that seven lived in the household, 7.60% stated that three lived in the household, while 4.80% stated that two lived in the household.
- Co-Workers: When asked whether another domestic worker lived in the house, 56.86% said yes, while 43.14% said no.
- Days off: When asked whether they received a regular day off, 95.35% said no, while
 4.65% said yes.
- Leave the House: 91.44% said they were not allowed to leave the house on their day off, while 8.56% said they were able to leave.
- Sick Leave: 85.33% said they did not stay in bed when sick, while 14.67% said they did stay in bed.

- Annual Leave: When asked whether they were paid an annual leave, 94.63% said no, while 5.37% said yes.
- Working Hours: When asked how many hours worked in a day, 80.69% answered more than twelve hours, 8.88% answered for ten hours, 7.72% for twelve hours, while 2.70% answered for eight hours.
- Accommodation: When asked where they sleep at night, 47.86% shared a room with another worker, 30.35% slept in a private room, 18.68% stayed in another space, while 3.11% answered in the kitchen.
- Verbal Abuse: When asked whether they experienced verbal insults by the sponsoring family, 57.85% said yes, 25.67% said sometimes, while 16.48% said never.
- Physical Abuse: When asked whether they were beat by the sponsoring family, 56.15% said never, 31.15% said yes, while 12.69% said sometimes.
- Sexual Harassment: When asked whether they experienced sexual harassment by the sponsoring family, 91.54% said never, 5.77% said yes, while 2.69% said sometimes.
- Sexual Abuse: When asked if they were raped by the sponsoring family, 98.85% said never, while 1.15% said yes.
- Salary Payment: When asked whether they were ever not paid their salary by the sponsoring family, 49.04% said never, 32.95% said yes, while 18.01% said sometimes.
- Food: When asked whether they were ever not given food by the sponsoring family, 45.59% said never, 35.25% said sometimes, while 19.16% said yes.
- Locked Up: When asked whether they were ever locked in a room by the sponsoring family, 85.06% said never, 8.43% said yes, while 6.51% said sometimes.
- Friends Visits: When asked whether they were allowed to visit friends, 95.62% said no, while 4.38% said yes.
- Accepting Friends: When asked whether they were allowed to receive visits, 95.97% said no, while 4.03% said yes.
- Phone Use: When asked whether they were allowed to use the telephone for personal calls, 62.00% said yes, while 38.00% said no.
- Religion: 73.59% said they were not allowed to practice their religion, while 26.41% were allowed.

- Television Access: 65.45% were not allowed to watch TV, while 34.55% were allowed.
- Gifts: When asked whether they received presents and gifts from the sponsoring family, 63.04% said no, while 36.96% said yes.
- Knowledge of Domestic Workers Law: When asked if they were aware of Law No. 68 of 2015 on domestic workers, 88.08% said no, while 11.92%. said yes.
- Mobile: When asked if they were allowed to have a mobile phone, 65.37% said yes, while 34.63% said no.
- Passport: When asked if they were allowed to keep their own passport, 98.08% said no, while 1.92% said yes.
- Orientation: When asked whether they attended a pre-departure orientation, 68.63% said yes, while 31.37% said no.

F. Conclusion

There is significant space for improvement in the law in Kuwait. The key issues the survey highlighted were that most employers and domestic workers are unaware of the domestic workers law and domestic workers rights, such as keeping their passports. The survey also shows that most domestic workers were not allowed to practice their religion but were allowed to keep their mobile phones. Furthermore, most domestic workers were educated. Another study, conducted by the Kuwait Human Rights Society, supports the fact that the majority are unaware of the law. It also supports that most employers still withhold domestic workers passports. The human rights society has a larger sample size that includes both male and female domestic workers and includes employers and Human Rights NGO's representatives. 506

There are a number of best practices that can be derived from Kuwait in order for those practices to spread to other GCC countries. Those practices are: the establishment of the domestic workers' shelter that has a capacity of 500, and setting a minimum wage for domestic workers. As noted before, Kuwait is the only country in the region that offer minimum wage for domestic workers and this idea is worth spreading to other GCC countries.

The practice of the law itself will bring more issues to the surface that need to be addressed and rectified. Since the law only went into effect in 2016, it will take time to see how

⁵⁰⁶ The Rights of Domestic Workers, supra note 504.

the law will be implemented. Case law will be the best indicator of the success of the law. For instance, when Law No. 6/2010 — the new labor law — was passed in 2010, the legislature waited until there was enough case law before starting to introduce changes to the law. Amendments came in 2013, 2014, 2016 and, most recently in 2017, often guided by case law. As with every law, the practice shows the gaps and ambiguities that need rectified and amended. Implementation of the domestic workers law needs followed to see what it will reveal.

CHAPTER 4: A CASE STUDY OF THE KINGDOM OF BAHRAIN

A. Introduction

Bahrain and its progressive move to include domestic workers in its labor law is an important component of the overall study of migrant domestic workers in the GCC region. This chapter begins by offering some background information on Bahrain before discussing the laws and regulations covering domestic workers in Bahrain. In addition, the discussion addresses the establishment of the Labor Market Regulatory Authority (LMRA) and its mandate, which includes domestic workers. Next, the chapter examines the recruitment process, how domestic workers end up in Bahrain, and the problems domestic workers face. The analysis then further examines Bahrain's international obligations in light of international conventions signed and ratified, before moving to the recent pilot program executed in Bahrain. Finally, this chapter addresses the role civil society plays in Bahrain as well as the results of questionnaires distributed to domestic workers and employers.

B. Background

Bahrain, an island country originally known as Delmon, has a rich history dating back 5,000 years.⁵⁰⁷ Bahrain, which means two seas in Arabic,⁵⁰⁸ is known as the "Pearl of the Gulf" due to its history selling pearls.⁵⁰⁹ It was the second-most prominent location in pearl trading after Bombay, India.⁵¹⁰ Bahrain was also the first country in the Gulf to discover oil in 1932.⁵¹¹ Bahrain obtained its independence from the British protectorate on December 16, 1971.⁵¹²

The 2016 population was 2.183 million⁵¹³ and the total number of foreign workers in Bahrain that year was 595,151,⁵¹⁴ which represented 45.2% of the population. Prior to the discovery of oil, domestic workers often came from India or Seychelles and from poorer families

⁵⁰⁷ History, MIN. FOR. AFF., http://www.mofa.gov.bh/Default.aspx?tabid=128 (last visited Sept. 20, 2018) (Bahrain).

⁵⁰⁸ BAHRAIN, http://www.bahrain.com/en/About-Bahrain/Pages/History.aspx#.WIIWvY9OLD4 (last visited Sept. 20, 2018).

⁵⁰⁹ AL-SHAMLAN, *supra* note 283, at 262.

⁵¹⁰ Id

⁵¹¹ BAHRAIN, *supra* note 508.

⁵¹² *History*, *supra* note 507.

⁵¹³ Bahrain Open Data Portal, INFO. & EGOVERNMENT AUTH., http://www.data.gov.bh/ar/ (last visited Sept. 20, 2018).

⁵¹⁴ Bahrain Labour Market Indicators, 34 LAB. MKT. REG. AUTH. NEWS., no. 2, 2016, http://lmra.bh/portal/files/cms/shared/file/Newsletter/NewsletterQ2_2016(En).pdf.

in Bahrain.⁵¹⁵ Following the discovery of oil a migratory shift towards Asian and south Asian countries occurred.⁵¹⁶ Over the past few years, migration patterns have shifted as the number of migrant domestic workers from African countries has increased.⁵¹⁷

While the total number of migrant domestic workers differs from year to year, estimates suggest a steady increase in migrant domestic workers in Bahrain. Over 25,600 work permits were issued for domestic work in 2000,⁵¹⁸ while a Human Rights Watch report estimated 54,600 domestic workers in 2012.⁵¹⁹ More recent figures suggest that the total number of migrant domestic workers in 2016 was 111,002.⁵²⁰

i. History of the Sponsorship System in Bahrain

Although some attribute the sponsorship system to Bedouin principles of hospitality,⁵²¹ others attribute the system to the British colonial practice of hiring foreign workers for pearl diving opportunities and regulating the diving expeditions.⁵²² The British saw sponsorship as an economical and security issue, similar to the modern sponsorship system.⁵²³

ii. Domestic Workers under Bahraini Laws and Regulations

Bahrain was the first country in the Gulf to include domestic workers in some of its provisions of the labor law under Law No. 36 of 2012.⁵²⁴ Labor market reforms have been ongoing in Bahrain, including a review of the sponsorship system governing foreign workers and their status.⁵²⁵ The labor market reforms were part of Bahrain's vision of 2030, which was launched in 2008.

⁵¹⁵ Sabika Al-Najjar, Women Migrant Domestic Workers in Bahrain (Int'l Lab. Off., Int'l Migration Papers No. 47, 2002), http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_201776.pdf.

⁵¹⁶ Id

⁵¹⁷ Trafficking in Persons Report: Bahrain, *supra* note 77.

⁵¹⁸ Al-Najjar, *supra* note 515.

⁵¹⁹ HUMAN RIGHTS WATCH, BAHRAIN ABUSE AGAINST MIGRANT WORKERS DESPITE REFORMS (2012),

https://www.hrw.org/report/2012/09/30/better-life/migrant-worker-abuse-bahrain-and-government-reform-agenda. 520 *Table A: Estimated Total Employment by Citizenship and Sector: 2005 – 2016*, LMRA EXPATRIATE

MANAGEMENT SYSTEM, http://blmi.lmra.bh/2016/06/data/lmr/Table_A.pdf (last visited Jan. 20, 2017).

⁵²¹ LONGVA, *supra* note 282, at 78.

⁵²² Interview with Omar Al-Shehabi, *supra* note 292.

⁵²³ *Id*.

⁵²⁴ Qanoon Al-Amal Fe Al-Gedaa Al-Ahali [Labor Law in the Private Sector], Law No. 36 of 2012, art. 2 (Aug. 10, 2012) (Bahr.).

⁵²⁵ Kingdom of Bahrain Decent Work Country Programme 2010–2013, INT'L LAB. ORG., http://www.ilo.org/beirut/countries/bahrain/WCMS_543745/lang--en/index.htm (last visited Sept. 20, 2018).

The previous labor law⁵²⁶ specifically excluded domestic workers, similar to other Gulf countries at the time such as Qatar,⁵²⁷ Kuwait,⁵²⁸ and the U.A.E.⁵²⁹ However, all countries have since adopted specific domestic workers legislation.

Bahrain's new labor law, enacted in 2012, expanded the protection and scope of the law to include domestic workers.⁵³⁰ The main complaints from domestic workers prior to the adoption of the new law were non-payment of wages, long working hours, no days off, physical and psychological abuse, and (in extreme cases) sexual abuse.⁵³¹ Following adoption of the new law, the main complaints from migrant domestic workers now are only non-payment of wages and retention of passports plus long working hours.⁵³²

The new law provided all workers — not just migrant domestic workers — with more protections and rights.⁵³³ Those rights included but were not limited to: extending available sick leave to fifty-five days from forty-five days (under the old law); extending annual leave from twenty-one days to one month; providing indemnities from those who are unfairly dismissed; and increasing the fines for violating the law.⁵³⁴ All rights mentioned above are for both migrant and national workers in the private sector.

Moreover, the new law addressed some of the prominent problems domestic workers faced. Law No. 36 of 2012 provided domestic workers with substantial new rights. The law:

- Exempts workers from paying legal fees during legal disputes,⁵³⁵ acknowledging that the worker is the weaker party in the contract;
- Provides each party of the contract with a copy of the contract⁵³⁶ in order for each party to know their rights and obligations;

⁵²⁶ Qanoon Al-Amal Fe Al-Gedaa Al-Ahali [Labor Law in the Private Sector], Labor Law No. 23 of 1976 (July 7, 1976) (Bahr.)

⁵²⁷ Taadeel Bath Ahkam Qanoon Al-Amal Al-Sader Bl-Ganon Ragam 14 Lesenat 2004 [Law No. 3 Amending some Labor Law Provisions of Law No. 14 of 2004], Labor Law No. 3 of 2014, art. 3 (Feb. 4, 2014) (Qatar).

⁵²⁸ Qanoon Al-Amal [Labor Law] of 2010, Promulgated by Amiri Decree No. 6 of 2010, art. 5 (Feb. 21, 2010) (Kuwait).

⁵²⁹ Qanoon Tantheem Alagat Al-Amal [Labor Law], Federal Law No. 8 of 1980, art. 3 (Apr. 20, 1980) (U.A.E.).

⁵³⁰ Qanoon Al-Amal Fe Al-Gedaa Al-Ahali [Labor Law in the Private Sector], Law No. 36 of 2012, art. 2 (Aug. 10, 2012) (Bahr.).

⁵³¹ Al-Najjar, *supra* note 515.

⁵³² Interview with Member of Migrant Workers Protection Society (Jan. 14, 2018).

⁵³³ BAHRAIN ABUSE AGAINST MIGRANT WORKERS, *supra* note 519.

⁵³⁴ Id.

⁵³⁵ Labor Law in the Private Sector, art. 6 (Aug. 10, 2012) (Bahr.).

⁵³⁶ *Id.* art. 19.

- Obligates the inclusion of certain information in the contract,⁵³⁷ such as: the employer's name, address, and trade register number; the worker's name and date of birth; the worker's qualification, job, and occupation; the worker's residential address; the worker's nationality; the duration of contract; the wage rate; and the time of payment;
- Requires a probation period of three months, allowing any party to terminate the contract:⁵³⁸
- Compels employers to render wages as agreed in the contract or based on the norms of the job carried by the worker;⁵³⁹
- Necessitates payment of wages in the Bahraini currency,⁵⁴⁰ made either monthly, preproduction, or weekly as agreed. Delayed payment increases compensation to 6% of this rate, subject to a 1% increase for each month of delay without exceeding 12% of the wages per year;⁵⁴¹
- Grants primacy to wages for the domestic workers or migrant workers before payment of any debt incurred by the employer;⁵⁴²
- Clarifies termination and renewal of the contract.⁵⁴³ If the contract has a specific duration, it expires on the agreed date.⁵⁴⁴ Furthermore, the contract expires if any party decides to terminate, on the condition that the party notifies the other party of intent to terminate thirty days prior to termination.⁵⁴⁵ The law also notes when a contract is considered indefinite;⁵⁴⁶
- Calculates end of service payment to include half a month's wages for the first three years of service and a month of wages for each following year;⁵⁴⁷

⁵³⁷ *Id.* art. 20.

⁵³⁸ *Id.* art. 21.

⁵³⁹ *Id.* arts. 37-38.

⁵⁴⁰ *Id.* art. 40.

⁵⁴¹ *Id*.

⁵⁴² *Id.* art. 48.

⁵⁴³ *Id.* § XII.

⁵⁴⁴ *Id.* art. 96.

⁵⁴⁵ *Id*. art. 99.

⁵⁴⁶ *Id.* art. 98.547 *Id.* art. 116.

- Sanctions legal violations, specifically violation of the law requiring two copies rendered of the contract or violation of the required information the contract should contain;⁵⁴⁸
- Provides a labor dispute mechanism⁵⁴⁹ where an amicable approach is taken prior to filing a complaint with the court;⁵⁵⁰
- Grants thirty days of annual leave each year of service⁵⁵¹ and prohibits the worker from forfeiting the right to annual leave. 552 If the worker spent less than a year, the worked is still entitled to annual leave as calculated by law;⁵⁵³

Although the law offers many new protections, it does not cover all of the important protections for domestic workers as only some provisions of the law apply to domestic workers. For instance, the law does not limit working hours or include a day off, overtime, or sick leave for migrant domestic workers, unlike migrant workers who receive set days off each week, annual leave of up to thirty days per year, and sick leave of up to fifty-five days.⁵⁵⁴ The law also does not include a minimum wage for the worker or domestic worker, leaving that determination to the discretion of the parties to the contract. Notably, Bahrain also does not have a general minimum wage in place for a Bahraini or an expatriate worker, as it prioritizes the free market and leaves that determination to supply and demand of the market.⁵⁵⁵

Bahrain also provides a standardized contract for both domestic workers and labor workers. A new standardized contract for three parties — the employer, the domestic worker and the recruitment agency — was adopted by the LMRA in consultation with recruitment agencies.⁵⁵⁶ In the past, the contract was only written in Arabic, which left domestic workers who could not read Arabic unaware of their rights. In accordance with the new standardized contract on the LMRA website, however, migrant worker contracts are in English and the

⁵⁴⁸ *Id.* art. 185.

⁵⁴⁹ *Id.* § XIII.

⁵⁵⁰ *Id.* art. 119.

⁵⁵¹ *Id.* art. 58.

⁵⁵² *Id*.

⁵⁵³ *Id*.

⁵⁵⁴ *Id.* art. 65.

⁵⁵⁵ Interview with Mohammed Al-Ansari, Undersecretary of Labor in Bahrain (Jan. 10, 2018).

⁵⁵⁶ Interview with Mohammed Dito, Labor Market Regulatory Authority in Bahrain (Jan. 11, 2018).

worker's native language. Furthermore, three copies of the contract are produced: one for the recruitment agency, one for the employer, and one for the migrant domestic worker.⁵⁵⁷

The new contract provides workers with thirty days of annual leave for every year of service and an end of service entitlement in the amount of half a month for the first three years and a month for every month following the first three years.⁵⁵⁸ In addition, the new contract has something worth transplanting to other GCC countries; it requires the employer to submit a paper stating how many children he has, how big is the house, how many rooms there are, and if there is an elderly person in the household.⁵⁵⁹

The LMRA in Bahrain was established on May 31, 2006⁵⁶⁰ under Law No. 19 of 2006.⁵⁶¹ The LMRA is responsible for issuing work permits for expatriates and domestic workers, 562 regulating recruitment agencies and issuing licenses, as well as regulating employment offices and transferring workers.⁵⁶³ The LMRA was also supposed to serve as designated sponsor for foreign employers in Bahrain, shifting sponsorship responsibility away from the individual.⁵⁶⁴ While some envisioned that the LMRA would serve as a sponsor, 565 the law regarding the establishment of the LMRA actually never mentioned this duty.

The LMRA provides services both online and through telephone interface for workers and sponsors to follow up on applications and visa status.⁵⁶⁶ The website provides an electronic portal for workers to promote the rights and obligations of the employee. There is also a twelvelanguage pamphlet, which provides workers with the information needed to obtain work permits, renew permits, acquire entry visa and residency permits, or transfer to a new employer. 567 The

⁵⁵⁷ Tripartite Domestic Contract, LAB. MKT. REG. AUTH.,

[.]pdf (last visited Feb. 1, 2019). العقد 20% الثلاثي 20% الثلاثي 20% المنزلية / 18/18/ العقد 20% الثلاثي 20% الثلاثي 20% المنزلية / 18/20% العقد 20% الثلاثي 20% ا ⁵⁵⁸ Id

⁵⁵⁹ *Id*.

⁵⁶⁰ Our Mandate, LAB. MKT. REG. AUTH., http://lmra.bh/portal/en/page/show/56 (last visited Sept. 20, 2018).

⁵⁶¹ Qanoon Tanthem Souq Al-Amal w Taadelath [Regulation of the Labor Market and its Amendments], Law No. 19 of 2006 (May 29, 2006) (Bahr.).

⁵⁶² Order No. 4 of 2014, Regulation of Work Permits for Domestic Servants and Equivalent,

http://lmra.bh/portal/en/legal/show/44 (Bahr.); Regulation of the Labor Market and its Amendments, art. 2 (Bahr.). ⁵⁶³ Our Mandate, supra note 560; Regulation of the Labor Market and its Amendments (Bahr.).

⁵⁶⁴ Paula Renkiewicz, Sweat Makes the Green Grass Grow: The Precarious Future of Oatar's Migrant Workers in

The Run Up to the 2022 FIFA World Cup Under The Kafala System and Recommendations For Effective Reform, 65 AM. U. L. REV. 721, 758 (2016); Regulation of the Labor Market and its Amendments, art. 4 (Bahr.).

⁵⁶⁵ Renkiweicz, supra note 564.

⁵⁶⁶ BAHRAIN ABUSE AGAINST MIGRANT WORKERS *supra* note 519.

⁵⁶⁷ Expatriate Employee Services Guide, LAB. MKT. REG. AUTH., http://lmra.bh/portal/en/page/show/214 (last visited Sept. 20, 2018).

pamphlet is provided at all ports of entry to Bahrain to educate workers on their rights upon arrival.⁵⁶⁸

The LMRA started issuing permits for migrant domestic workers on September 1, 2014,⁵⁶⁹ however, certain conditions must be met for the LMRA to issue a work permit.⁵⁷⁰ Those conditions include: obligating employers to reside in Bahrain; requiring an income threshold; verifying the absence of criminal cases against the employer; proving a true need for the domestic worker; and paying the authority all necessary fees.⁵⁷¹

Simplifying the transfer process between employers is one of the LMRA mandates. The objective is to protect both parties to the contract by setting specific rules and regulations each party must follow. In 2016, 5,896 migrant domestic workers were transferred to new employers. Transfers after the end of an existing contract represented 7.7% of all transfers, while transfers to other employers prior to the end of contract (with current employer consent) represented 91.8%; those who transferred without the employer's consent represented only 0.4%. 573

iii. Problems That Domestic Workers Face

Due to the nature of domestic work conducted inside the privacy of households, it is hard to know what really happens and hard for domestic workers to file complaints and seek redress if they are mistreated.

To address the challenges domestic workers face when filing complaints, the LMRA offers the twelve-language pamphlets describing rights and processes at airports in Bahrain and in the embassies of countries with high migrant worker rates. The LMRA also began providing cell phones and SIM cards to workers arriving in Bahrain.⁵⁷⁴ A hotline was even introduced for abused migrant domestic workers, with call operators working in the languages most frequently spoken by many domestic workers.⁵⁷⁵

Research indicates that domestic workers face the following problems in Bahrain:

⁵⁶⁸ BAHRAIN ABUSE AGAINST MIGRANT WORKERS *supra* note 519.

⁵⁶⁹ Regulation of Work Permits for Domestic Servants and Equivalent (Bahrain).

⁵⁷⁰ *Id.* art. 3.

⁵⁷¹ *Id*.

⁵⁷² Bahrain Labour Market Indicators, supra note 514.

⁵⁷³ Id.

 $^{^{574}}$ Trafficking in Persons Report: Bahrain, $\it supra$ note 77.

⁵⁷⁵ *Id*.

- Withholding of wages. In 2015, the Ministry of Labor and Social Development (MOLSD) received 746 complaints of non-payment of wages covering 945 migrant workers, successfully settling 255 of those cases.⁵⁷⁶
- 2. Long work hours. The majority of workers work more than eleven hours each day.
- 3. No days off. The extent of this problem depends on the employer; some workers are taken to weekly family gatherings where they meet other domestic workers⁵⁷⁷ while other families offer the workers a day off. Still, some families prohibit the worker from taking a day off. The law does not grant domestic workers a specific day off each week.
- 4. Maltreatment. Verbal abuse, such as calling the worker names or insulting the worker occurs, as does physical abuse in some situations and, in extreme cases, sexual abuse. All forms of maltreatment are illegal but many still occur.⁵⁷⁸

To address the abuses that migrant domestic workers face, the government held a campaign to raise awareness on migrant domestic worker abuse. The second annual Bahrain Awareness Awards took place in November 2015,⁵⁷⁹ focusing on the fair treatment of domestic workers and migrant workers. The awareness-raising competition targeted Bahraini youth, calling for submissions via social media of photos, drawings, short films,⁵⁸⁰ or posters to encourage respect for the rights of domestic workers.⁵⁸¹ The submissions included many powerful short movies emphasizing the importance of treating domestic and migrant workers with respect. One movie showed a domestic worker tenderly taking care of a child, only to end up being forced into the trunk of the car.⁵⁸² Another short movie showed a migrant worker trying to obtain the attention of a national while walking into the market. The national starts to shout at the migrant worker to stop begging for money only to discover that the migrant worker was trying to return the man's wallet.⁵⁸³ The campaign raised awareness on the issue of migrant

⁵⁷⁶ *Id.* The report did not mention what happened to the other complaints.

⁵⁷⁷ Al-Najjar, *supra* note 515.

⁵⁷⁸ BAHRAIN ABUSE AGAINST MIGRANT WORKERS *supra* note 519; Al-Najjar, *supra* note 515.

⁵⁷⁹ Frequently Asked Questions, BAHRAIN AWARENESS AWARDS, https://bahrainawards.com/portal/en/page/faq (last visited Sept. 20, 2018).

⁵⁸⁰ 2015-2016 Candidates Works, BAHRAIN AWARENESS AWARDS, https://bahrainawards.com/portal/en/candidate (last visited Sept. 20, 2018).

⁵⁸¹ Trafficking in Persons Report: Bahrain, *supra* note 77.

⁵⁸² Submission ID 24, BAHRAIN AWARENESS AWARDS, https://bahrainawards.com/portal/en/candidate/submission/24 (last visited Sept. 20, 2018).
⁵⁸³ Id.

domestic workers and migrant workers in Bahrain and opened a dialogue on the treatment of migrant workers and migrant domestic workers. There is an idea to expand the campaign to all GCC countries.⁵⁸⁴

Some domestic workers attempt to run away when faced with abuse. Running away, however, is illegal and a police search occurs to find the missing domestic worker. In addition, within five days the working permit is cancelled.⁵⁸⁵ A person hiring or hiding a runaway domestic worker violates the law. If the worker is found, she is deported and the sponsor has to pay for her plane ticket.⁵⁸⁶ However, workers who do not receive their wages have the right to be transferred to another sponsor.⁵⁸⁷ If a runaway worker is caught by the police and there is a pending case, the worker is not deported but is instead taken to a shelter.

There are a number of shelters in Bahrain, all with different capacities. Dar Al-Aman was established in 2007 with an original capacity of forty. With capacity for 120 today, Dar Al-Aman only accepts women who suffered domestic violence; it also accepts domestic workers abused by their sponsors. Since operations began, the shelter has accepted over 1,750 cases. In November 2015, the LMRA established a new shelter,⁵⁸⁸ in addition to the existing Dar Al-Aman shelter,⁵⁸⁹ for absconded domestic workers. Run by the National Committee to Combat Trafficking in Persons and funded by the government, the shelter houses up to 120 people with separate quarters for men and women.⁵⁹⁰ Finally, Dar Al-Hekmah was established on November 29, 2007, with sixty-four beds and seven apartments. The shelter was established under the Ministry of Social Affairs and accepts domestic workers kicked out of the house by sponsors. Since its establishment, Dar Al-Hekmah has amicably settled 270 cases.

iv. Recruitment Process

There are two ways to recruit a migrant domestic worker in Bahrain — either by network (through family or friends) or by a recruitment agency.⁵⁹¹ The recruitment agency in the country of origin, which is connected by bilateral agreements to the recruitment agency in Bahrain,

⁵⁸⁴ Interview with Mohammed Dito, *supra* note 556.

⁵⁸⁵ Qrar Tntheem Tasareeh Amal Khadem Al Manazel w Min Fee Hekmhum [Regulation of Work Permits for Domestic Servants and Equivalent], Order No. 4 of 2014, art. 9 (Apr. 16, 2014) (Bahr.).

⁵⁸⁶ Al-Najjar, *supra* note 515.

⁵⁸⁷ Interview with Mohammed Al-Ansari, *supra* note 555.

⁵⁸⁸ TRAFFICKING IN PERSONS REPORT: BAHRAIN, *supra* note 77.

⁵⁸⁹ BAHRAIN ABUSE AGAINST MIGRANT WORKERS, *supra* note 519.

⁵⁹⁰ Trafficking in Persons Report: Bahrain, *supra* note 77.

⁵⁹¹ Al-Najjar, *supra* note 515.

processes the application. The domestic worker pays the recruitment agency in the country of origin to be placed in Bahrain. Some recruitment agencies in the country of origin also require the worker to pay for the plane ticket, even if the employer already paid plane ticket fees for the worker.⁵⁹²

Following adoption of the new law covering domestic workers under the LMRA mandate, new conditions for acquiring a domestic worker were implemented. A Bahraini sponsor needs to meet certain conditions before obtaining a domestic worker. Under the old law these conditions included: earning a certain amount of income (at least 350 BD (\$928,50 USD)), having at least two children, and proving that the family does not already have a domestic worker.

Under the new LMRA mandate, the conditions to acquire a domestic worker include: the employers residing in Bahrain, a certain income threshold is met, there are no criminal cases against the employer, there is a true need for the domestic worker, and the employer has paid the authority all the necessary fees.⁵⁹⁴

Due to the *Kafala* system, which leaves the employer legally and financially responsible for the domestic worker,⁵⁹⁵ the Bahraini employer bears all costs related to the recruitment of the domestic worker. Those costs include the work permit, a health inspection for the worker, the no objection letter, and the worker's residency permit.⁵⁹⁶ After the employer obtains a work permit from the LMRA, the employer selects a domestic worker from a file in the recruitment agency, then pays recruitment fees and the plane ticket for the migrant domestic worker. Following the issuance of the work permit and the selection of the domestic worker, an entry visa is granted.⁵⁹⁷ The domestic worker then travels to Bahrain and is met by a recruitment agent in the airport. Before starting work, the domestic worker undergoes a mandatory health inspection to check for any infectious diseases.⁵⁹⁸ If the domestic worker fails the health inspection the worker is deported; if the worker passes the health inspection a residency permit is issued, and the domestic worker starts working for the sponsor.

⁵⁹³ *Id*.

⁵⁹² *Id*.

⁵⁹⁵ *Id*.

⁵⁹⁶ Al-Najjar, *supra* note 515.

⁵⁹⁷ Id

⁵⁹⁸ *Id*.

C. International Law

Bahrain has been a member party to the International Covenant of Civil and Political Rights (ICCPR) since 2006,⁵⁹⁹ the International Covenant on Economic, Social and Cultural Rights (ICESCR) since 2007,⁶⁰⁰ the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) since 1990,⁶⁰¹ and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) since 2002. Bahrain is also a member party to the ILO where Bahrain signed and ratified four of the six core treaties; however, Bahrain did not join the ILO Convention concerning Decent Work for Migrant Domestic Workers (C189).⁶⁰² Bahrain (along with Kuwait) is also not a member state to the additional protocols of the ICCPR or the ICESCR, thus, individuals cannot bring complaints to the UN Human Rights Committee.⁶⁰³ Bahrain became a member of the Arab Human Rights Charter in 2004.

The ICCPR includes articles on the freedom of movement⁶⁰⁴ and the right to leave the country.⁶⁰⁵ Specifically, Article 8 of the ICCPR prohibits forced labor, slavery, and servitude. Those articles clearly indicate Bahrain's obligation towards migrant workers and migrant domestic workers in the country — particularly to ensure the right of these individuals to change employers. While Bahrain took steps in this direction by originally changing the law to allow workers to transfer, misuse in the system resulted in the law changing again so that an employee can no longer change sponsors without sponsor consent unless the employee spends a year with the employer.⁶⁰⁶

Bahrain has an international obligation to regulate the working hours of domestic workers and provide them with a day off. Article 7 of the ICESCR states that everyone should enjoy "just and favorable conditions of work." Furthermore, Section 4 of Article 7 requires workers have "rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well

⁵⁹⁹ Status of Ratification: Interactive Dashboard, OFF. HIGH COMMISSIONER HUM. RTS., http://indicators.ohchr.org/(last visited Sept. 20, 2018).

⁶⁰⁰ *Id*.

⁶⁰¹ *Id*.

⁶⁰² Ratifications for Bahrain, INT'L LAB. ORG.,

http://ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103396 (last visited Sept. 20, 2018).

 $^{^{603}}$ *Id*.

 ⁶⁰⁴ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].
 605 Id. art. 12.

 $^{^{606}}$ Bahrain Abuse Against Migrant Workers, supra note 519. 607 Id.

as remuneration for public holidays,"⁶⁰⁸ entitling workers to rest periods and days off. The new labor law provides many categories of workers with these rights yet does not extend those rights to domestic workers. Although Bahrain has made progress with its new labor law, it is not fully in compliance with its convention obligations.

Furthermore, The Universal Declaration of Human Rights is part of customary international law; however, Bahrain violates some of its provisions, especially Article 13 and Article 24. Article 13 stipulates:

- Everyone has the right to freedom of movement and residence within the borders of each state.
- Everyone has the right to leave any country, including his own, and to return to his country.⁶⁰⁹

Due to the sponsorship system, however, the domestic worker is tied to an employer and can leave that employer only if certain conditions are met. Also, some employers deny the worker from leaving the house, which is a clear violation of the Universal Declaration of Human Rights. Article 24 stipulates that everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.⁶¹⁰

D. Recent Reforms

In November 2015, the national committee launched a hotline to report abuse of migrant workers. Operating in English, Hindi, and six other Indian languages, the hotline is a resource to educate workers on their rights and the services available.⁶¹¹

Moreover, on December 21, 2016, Bahrain announced plans to issue flexible work permits, allowing workers to obtain permits without a sponsor.⁶¹² Under the proposed plan the legal and financial liability will shift from the sponsor to the worker. The program leaves the

⁶⁰⁸ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 34. [hereinafter ICESCR].

⁶⁰⁹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 13 (Dec. 10, 1948), www.un.org/en/universal-declaration-human-rights/ [hereinafter UDHR].

⁶¹¹ TRAFFICKING IN PERSONS REPORT: BAHRAIN, *supra* note 77.

⁶¹² Al-Absi: Sanasder Tasareeh Amal Bdoon Khafeel le 48 Alf Aamel [AlAbsi: We Will Issue Work Permits for 48 Workers Without Sponsors], LAB. MKT. REG. AUTHORITY BLOG (Dec. 21, 2016), http://blog.lmra.bh/ar/2016/12/21 سنصدر العبسي/148-أ/.

employee responsible for obtaining health insurance, the work permit, and a residency visa, as well as the ticket fee for returning to his/her original country.⁶¹³

The pilot program started with 48,000 migrant workers. The plan started in April 2017 and targeted current illegal workers in Bahrain to amend their status in the country; the program will be reviewed every six months to see if it is beneficial and working. Specifically, it is an effort to address the free visa trading problem — where a national obtains a visa for a migrant worker after paying a certain amount of money and when the worker arrives in Bahrain there is no job so the worker illegally finds another employer, leaving the worker vulnerable to exploitation.⁶¹⁴

Under the proposed plan, the legal and financial liability will be shifted from the sponsor to the worker. The program leaves the employee responsible for obtaining the health insurance, the working permit and residence while the ticket fee will be placed with the LMRA.⁶¹⁵

The CEO of the LMRA clarified that this program does not mean that Bahrain is abolishing the sponsorship system.⁶¹⁶ If the program is implemented as planned, however, it might be Bahrain's first step toward abolishing the sponsorship system since financial and legal liability will be transferred from the sponsor to the worker. There is, however, some criticism as the flexible permit is perceived by some as a form of visa trading where the money goes to the government instead of the sponsor.

Bahrain, unlike other GCC countries, allows foreigners to join unions. One of the most prominent civil society organizations working on the issue of domestic worker and migrant worker is the Migrant Workers Protection Society, established in 2005. There are currently seventy members of the Migrant Workers Protection Society — both Bahraini and foreigners — working on a number of issues. The organization provides migrant domestic workers with shelter (up to fifteen persons) as well as services for both migrant workers and migrant domestic workers including legal advice and case work. The Society tries to resolve the problems amicably before providing workers with further guidance and options in each situation. The Society also conducts talks and lectures to high school students and medical students on the role

⁶¹⁴ *Id*.

⁶¹³ *Id*.

⁶¹⁵ *Id*.

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⁶¹⁷ Interview with Mohammed Al-Ansari, supra note 555.

⁶¹⁸ MIGRANT WORKERS PROTECTION SITE, www.mwpsbahrain.com/ (last visited Sept. 20, 2018).

⁶¹⁹ Interview with Mohammed Al-Ansari, *supra* note 555.

they play in helping abused domestic workers. Furthermore, the Society advocates for migrant rights and consults for government agencies. In 2016, the Society handled 146 cases and provided migrant workers with accommodations, food, medical services, legal support, and financial help.⁶²⁰ The Society also organized recreational activities for the women in all the shelters throughout Bahrain, including the one it operates.⁶²¹ The dominant nationalities at the Society's shelter in 2016 were Indian, Ethiopian, Sri Lankan, Kenyan, Ghanaian, and Filipino.⁶²² The Society often receives requests to accommodate migrant domestic workers from embassies, governmental agencies, churches, hospitals, and community volunteers.⁶²³

In one case of that the Society handled, Eskedar was an Ethiopian domestic worker who embarked on her journey to Bahrain at the age of nineteen; she worked for two years without pay. 624 She was physically abused by the wife of her employer. 625 She was beaten, kicked, and slapped every day and suffered permanent sight loss due to an injury inflicted by the employer's teenage son. 626 The police were able to rescue Eskedar after the Society intervened. 627 Following her rescue the Society noticed other injuries, such as an iron-shaped scar on her forearm, a disfigured spine from being kicked in the back, and white fingers from the bleach she used while cleaning. After recovering with the help of the Society, she received her unpaid salary and went home on a flight paid for by the Society. 628 She is now continuing her college education. 629

In another case, the Society aided Akana Satyavathi, an Indian domestic worker who arrived in Bahrain at the age of forty-two in 1991, and was not allowed to return home for over twenty-one years.⁶³⁰ Her employer failed to renew her residency permit or let her renew her passport.⁶³¹ She helped raise her employer's eleven children instead of her five children back home who grew up and married without their mother present.⁶³² The Migrant Worker Protection

⁶²⁰ Shelter Annual Report of 2016 (on file with the author).

⁶²¹ *Id*.

⁶²² *Id*.

⁶²³ Id

⁶²⁴ Interview with Migrant Workers Protection Society Member (Jan. 12, 2018).

⁶²⁵ *Id*.

⁶²⁶ *Id*.

⁶²⁷ *Id*.

⁶²⁸ *Id*.

⁶²⁹ *Id*.

⁶³⁰ *Id*.

⁶³¹ *Id*.

⁶³² *Id*.

Society helped Akana with the case against her employers and is helping repatriate her back to India.633

Ε. **Questionnaire**

A questionnaire was presented to both domestic workers and employer sponsors. Twentytwo Bahraini employers participated in the questionnaire while only five domestic workers from Bahrain participated in this questionnaire.

i. **Employers Questionnaire**

- Number of Domestic Workers: 95.45% employ domestic workers; 100% of those employers only employ one domestic worker.
- Knowledge of the Law: Only 9.09% (two employers) were aware of Law No. 36 of 2012 and knew that the labor law included domestic workers, while 90.91% were unaware of Law No. 36.
- Days Off: 28.57% provide domestic workers with a day off while 33.33% did not and 38.10% occasionally provide domestic workers with a day off.
- Day Off: When discussing male domestic workers, 15.79% did not provide male domestic workers with a day off while 84.21% did not employ male domestic workers.
- Leaving the House: When asked about whether the domestic worker was allowed out of the house on the day off, 23.81% said yes while 76.19% said no.
- Mobile: As for the question of whether the domestic worker was allowed to have her own cell phone, 95.24% allowed the domestic worker to own a cell phone (twentyone employers) while 4.76% did not (one employer).
- Passport: When asked whether the domestic worker was allowed to retain her passport, 76.19% said no while 23.81% said yes.
- Duration of Work: Migrant domestic workers were with the employer for different amounts of time; 33.33% said one year; 38.10% said two years; 9.52% said three years, and 19.05% said over four years.

⁶³³ *Id*.

- Recruitment: When asked how the migrant domestic worker was recruited, 76.19% said through recruitment agencies while 23.81% used a network.
- Leaving: 90.48% did not have a migrant domestic worker leave before the contract ended while 9.52% did have a domestic worker leave prior to the end of the contract.
- Dispute: When asked if a dispute occurred between the sponsor and the domestic worker, 80.95% answered that no dispute occurred while 19.05% admitted a dispute occurred.
- Embassy: The sponsor did not interact with the embassy of the domestic worker in 90.48% of cases, while 9.52% did interact with the domestic worker's embassy.
- Satisfaction: When asked about the work conducted by domestic worker, 80.95% were satisfied while 19.05% said they were unsatisfied.
- Training: 33.33% said the domestic worker was trained before arrival, while 66.67% said the domestic worker was not trained before arriving in the household.
- Opinion of the *Kafala* System: When asked whether there was any criticism of the *Kafala* system, 75% said no, while 25% said yes. Some that criticized the *Kafala* system mentioned that the law does not protect the employer when the worker runs away after the probation period, while others said that the system exploits domestic workers. It was also mentioned that recruitment agencies occasionally create a mafia for domestic workers and encouraged them to run, which was unfair to the employer.

ii. Domestic Workers Questionnaire

- Marital Status: Five out of six were married; one said she was a widow.
- Age: Two were 26-30 years old, while one was in the 31-35 age range, two were 41-45 years old, and one was in the 46-50 age range.
- Children: Four stated that they have three or more children back in their home countries, while one indicated that they have two children at home, and one has one child back home.
- Education: Four were high school educated, while two were college educated.
- English Proficiency: All six spoke English and knew English.
- Recruitment: All six obtained their job through a recruitment agency.

- Recruitment Fees: None of the domestic workers interviewed had paid the recruitment agency.
- Working Skills: Three previously worked as a domestic worker while three had no experience as a domestic worker.
- Contract: When asked whether they signed a contract, three signed an agreement, while three did not.
- Knowledge of Work: Asked if they knew that they were going to work as a domestic worker when they arrived in Bahrain, all six agreed that they knew.
- Work Donation: When asked how long they worked for the family, three said less than a year, one said two years, one said three years, while one said over four years.
- Number of Occupants: One stated that eight or more people lived in the household, one said six lived in the household, two stated that five lived in the household, one stated that seven lived in the household, and one stated that three live in the household.
- Number of Domestic Workers: When asked if there was another domestic worker in the house, two said yes, while four said no.
- Days Off: None of the six received a regular day off.
- Leave the House: When asked if they were allowed to go out on a day off, four said no, while two said yes.
- Sick Leave: Five admitted that when they are sick they do not stay in bed while one stays in bed when sick.
- Annual Leave: None of the workers were paid an annual leave.
- Working Hours: When asked how many hours they worked in a day, all six answered more than twelve hours.
- Accommodation: One shared a room with another worker, four had a private room,
 and one responded that they had an alternate sleeping arrangement.
- Abuse: Migrant domestic workers were then asked whether they experienced one or more of the following treatments by the family they worked for:
 - o Verbal Insults: Four said yes and one said sometimes.
 - Beating: Two said never and three said yes.
 - o Sexual harassment: Five said never.

- o Rape: Five said never.
- o Unpaid Salary: One said never, four said yes.
- o Food Withheld: Two said never, three said sometimes.
- o Punished by locking in the room: Two said never, three said yes.
- Visits: None of the six were allowed to visit friends or receive any visits.
- Three were allowed to use the telephone for personal calls, while three were not allowed.
- Religion: None of the six were allowed to practice their religion.
- Television: Five were not allowed to watch TV, while one was allowed.
- Gifts: When asked whether they received presents or gifts from the family they worked for, all six said no.
- Knowledge of Law: None of the six had any knowledge of Law No. 36 of 2012 regarding domestic workers.
- Mobile Phone: When asked whether they were allowed to have a mobile phone, five said yes, while one said no.
- Passport: Five were not allowed to keep their passport, while one was allowed.
- Orientation: When asked whether they attended a pre-departure orientation, three said yes, while three said no.

F. Conclusion

Bahrain sets an example for other GCC countries when it comes to including domestic work its labor law provisions; however, some protections are still lacking for domestic workers in Bahrain, including established work hours as well as mandatory days off, overtime pay, and minimum wages. Yet, Bahrain's example provides some beneficial provisions that could be incorporated in a regional agreement governing domestic workers. Specifically, provisions other GCC countries should follow include offering information pamphlets in different languages to inform migrants when they enter the country about how to apply for visa, how to transfer a visa, and what rights they hold, which is an idea worth spreading to other GCC countries that will be discussed more in the Chapter 9.

The LMRA model can be adopted in other countries that already have similar authorities, such as the Manpower Authority in Kuwait. The LMRA is an independent public corporation,

fully authorized to regulate the labor market in Bahrain and offering protections to both employees and employers while facilitating the transfer of employees.⁶³⁴ GCC countries can also include similar awareness campaigns, such as the Bahrain Awareness Awards (under the supervision of the LMRA),⁶³⁵ which specifically targeted treatment of domestic workers and migrant workers in 2015-2016.⁶³⁶ This idea is also adopted in the proposal chapter of this dissertation in the form of best practices from Bahrain.

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⁶³⁴ Decent Work Country Programme, supra note 525.

⁶³⁵ Frequently Asked Questions, supra note 579 ("An Annual Competition aims to involve the youth in GCC in bringing a positive influence and social movement to serve the objectives of the competition").

^{636 2015-2016} Candidates Works, supra note 580.

CHAPTER 5: A CASE STUDY OF THE KINGDOM OF SAUDI ARABIA

A. Introduction

Saudi Arabia was the first country in the Gulf region to adopt a regulation regarding migrant domestic workers tied to its labor law. Article 7 of the Saudi labor law required the cabinet to enact the regulation. In 2013, the regulation was adopted to address problems that domestic workers face in Saudi and the bad press the Saudi Arabia received due to the ill treatment of its domestic workers. This chapter first examines the basic history of the Kingdom of Saudi Arabia before examining the laws and regulations that govern migrant domestic workers in Saudi Arabia. Furthermore, this chapter looks into the operation of the Musaned (an internet portal that helps recruit migrant domestic workers) in Saudi Arabia and its recruitment process. The chapter concludes with Saudi Arabia's international obligations on the treatment of domestic workers.

B. Background

Saudi Arabia lies in Western Asia and constitutes 80% of the Arabia peninsula.⁶³⁷ There are seven states that border the Kingdom of Saudi Arabia, to its north and west to it is bordered by Jordan, Iraq, and Kuwait. To its south and east are Yemen, Oman, the United Arab Emirates and Qatar with the island of Bahrain on the coast north of Qatar.⁶³⁸ The Red Sea and the Gulf of Agaba are to the west of the Kingdom of Saudi Arabia and the Arabian Gulf is to the east.⁶³⁹

The modern Kingdom of Saudi Arabia began in 1932 under the rule of King Abdulaziz Bin Al-Saud.⁶⁴⁰ In 1871, the Al-Ehsaa area was ruled by the Othman empire.⁶⁴¹ In 1891, the Al-Saud family was ousted from the area and moved to Kuwait.⁶⁴² They returned to Riyadh in 1902⁶⁴³ until 1930 when Al-Saud started gaining power in other areas, including Al-Ehsaa, from the Othman empire. Moreover, Al-Saud regained power over Mecca and Medina and united the

⁶³⁷ JAMES WYNBRANDT, A BRIEF HISTORY OF SAUDI ARABIA 2 (2010).

⁶³⁸ *Id*.

⁶³⁹ SAUDI ARABIA UNDP, www.sa.undp.org/content/saudi_arabia/en/home/countryinfo.html (last visited Sept. 20, 2018).

⁶⁴⁰ C. HENDERSON, WHAT COMES AFTER KING FAHAD: SUCCESSION IN THE KINGDOM OF SAUDI ARABIA 9 (2000).

⁶⁴¹ Saudi Arabia Historical Sequence of Most Important Events, BBC (Nov. 22, 2010), http://www.bbc.com/arabic/middleeast/2010/11/101121 saudi timeline.shtml.

⁶⁴² *Id*.

⁶⁴³ *Id*.

different tribes in the area to create the Kingdom of Saudi Arabia.⁶⁴⁴ Saudi Arabia is an Islamic monarchy,⁶⁴⁵ and its legal system is based on *Sharia* Law⁶⁴⁶ — the words of the Holy Quran along with the sunnah (teaching and practices of Prophet Mohammed).

Oil was discovered in the Kingdom of Saudi Arabia in 1936, however, Saudi Arabia did not begin commercial production until 1938.⁶⁴⁷ Increase in oil revenues in the 1970s led to significant economic and infrastructure development. The development projects created a need for both skilled and unskilled workers.⁶⁴⁸

Saudi Arabia is ranked first in oil production when compared to other oil producing countries and fifth in natural gas reserves.⁶⁴⁹ The total population of Saudi Arabia is 27,173 million,⁶⁵⁰ with 6.4 million documented migrants in 2005⁶⁵¹ and 1.5-2 million migrant domestic workers.⁶⁵² Although Saudi Arabia, along with Oman, has the lowest percentages of foreign workers,⁶⁵³ migrant workers are 30% of the population in Saudi Arabia and 49% of its work force.⁶⁵⁴ Saudi Arabia is one of the top ten countries receiving migrant labor workers in the Gulf.⁶⁵⁵ Most migrant domestic workers come from central and southeast Asia and, more recently, from African countries.⁶⁵⁶

C. Laws and Regulations

The legal system in Saudi Arabia is based on *Sharia* Law, which is the basis of the constitution of the Kingdom of Saudi Arabia.⁶⁵⁷ In 2005, Saudi Arabia announced judicial reforms, which established specialized courts for the first time in labor, commercial, domestic

⁶⁴⁴ *Id*.

⁶⁴⁵ *Id*.

⁶⁴⁶ *Id*.

⁶⁴⁷ SAUDI ARABIA UNDP, *supra* note 639.

⁶⁴⁸ Katherine Scully, *Blocking Exit, Stopping Voice: How Exclusion from Labor Law Protection Puts Domestic Workers at Risk in Saudi Arabia and Around the World*, 41 COLUM. HUM. RTS. L. REV. 825, 833 (2010).

⁶⁴⁹ MIN. FOR. AFF., http://www.mofa.gov.sa/ServicesAndInformation/aboutKingDom/Pages/default.aspx (last visited Sept. 20, 2018).

⁶⁵⁰ *Id*.

⁶⁵¹ Scully, *supra* note 648, at 827.

⁶⁵² Id

⁶⁵³ Majid Alzharani, *The System of Kafalah and the Right of Migrant Workers in GCC Countries with a Specific Reference to Saudi Arabia*, 16 Eur. J.L. REFORM 377, 382 (2014). ⁶⁵⁴ *Id.* at 377.

⁶⁵⁵ Romina Halabi, *Contract Enslavement of Female Migrant Domestic Workers in Saudi Arabia and the United Arab Emirates*, Hum. Rts. Hum. Welfare (2008), https://www.du.edu/korbel/hrhw/researchdigest/slavery/fmd.pdf. ⁶⁵⁶ As If I Am Not Human, *supra* note 7.

⁶⁵⁷ Abdullah Ansary, *A Brief Overview of the Saudi Arabian Legal System*, GLOBALEX (July 2008), www.nyulawglobal.org/globalex/Saudi_Arabia.html.

and criminal cases.⁶⁵⁸ In Saudi Arabia, the Cabinet of Ministers, along with Majlis Al Shuraa, is the legislative body releasing regulations (not laws);⁶⁵⁹ however, another source of legislation is a Royal decree, issued by the King of Saudi Arabia. Saudi Arabia transplanted a number of laws from the Egyptians and the French, such as criminal procedural law, labor law, and commercial law. In 2005, judicial reforms established specialized courts for labor, commercial, domestic, and criminal cases in Saudi Arabia.⁶⁶⁰

Saudi Arabia amended thirty-eight articles in its labor law in 2015, with agreement of the cabinet.⁶⁶¹ The changes introduced new protections and rights for employers in the private sector, which is mostly dominated by foreigners, such as working contracts, women employment, training, work inspection, nationalization.⁶⁶²

Saudi Arabia excludes domestic workers from the protections offered in the Saudi labor law. In 2013, in accordance with Resolution No. 310 (also known as the Household Regulation on Service Workers and Similar Categories), 663 Saudi Arabia adopted legislation for domestic workers, which is tied to its labor law. 664

This legislation limits working hours to fifteen hours a day with no less than nine hours of rest at night.⁶⁶⁵ The legislation also provides weekly days off,⁶⁶⁶ sick leave,⁶⁶⁷ and annual leave of one month after working for two years.⁶⁶⁸ Furthermore, the new law provides domestic workers with an opportunity to end services after four years with the same employer.⁶⁶⁹ The law also provides a probation period of three months⁶⁷⁰ and requires payment of domestic worker

⁶⁵⁹ An Overview of the Basic Law of Governance in the Kingdom of Saudi Arabia, Kingdom of Saudi Arabia Studies, (July 25, 2017) https://ksastudies.net/news/ قراءة في -النظام-الأساسي الحكم في -النظام-الأساسي الحكم في الممل.

⁶⁶¹ Amendments to the Saudi Arabian Labor and Workmen's Law – Summary of Key Changes, DENTONS (Oct. 7, 2015), https://www.dentons.com/en/insights/alerts/2015/october/7/saudi-arabia-labor-law-amendments?utm source=Mondaq&utm medium=syndication&utm campaign=View-Original.

⁶⁶² Netham Al-Amal [Labor Regulation], Labor Law No. M/51 of 2015 (Sept. 27, 2005) (Saudi Arabia).

⁶⁶³ New Saudi Rules Ensure Rights, Safety of Foreign Household Workers, GMA NEWS (Oct. 31, 2013, 4:11 PM), http://www.gmanetwork.com/news/story/333439/news/pinoyabroad/new-saudi-rules-ensure-rights-safety-of-foreign-household-workers.

⁶⁶⁴ Al-Amal Tasdr laehat Al-Amalah Al-Manzelyah Al-Jazeezah, [Labor Issues the New Regulations for Domestic Workers], AJAEL (May 29, 2014), http://www.ajel.sa/local/1279396 (Saudi Arabia).

⁶⁶⁵ New Law to Protect Domestic Workers, ARAB NEWS (July 23, 2013), http://www.arabnews.com/news/458281.

⁶⁶⁶ Laehat Al-Amalah Al-Mazeleyah [Household Regulation on Service Workers and Similar Categories], Resolution No. 310, art. 8 (July 7, 2013) (Saudi Arabia).

⁶⁶⁷ *Id.* art. 11.

⁶⁶⁸ *Id*.

⁶⁶⁹ *Id*.

⁶⁷⁰ New Law to Protect Domestic Workers, supra note 665.

salary by cash, check, or bank transfer.⁶⁷¹ Saudi Arabia became the first country in the Gulf to extend its wage protection system to migrant domestic workers.⁶⁷²

If an employer violates any of these rights, he can face a ban on migrant worker recruitment for a year, a fine of 2000 Saudi Real (S.R.) (\$530 USD), or both penalties.⁶⁷³ The penalty increases if repeat violations occur,⁶⁷⁴ with fines from 2000 S.R. (\$530 USD) to 5000 S.R. (\$1,333 USD), a ban on recruiting a domestic worker for three years, or both penalties.⁶⁷⁵ A third violation results in a permanent ban on recruiting domestic workers in the future.⁶⁷⁶ Violations are registered with the Labor Committees established by the Ministry of Labor to receive complaints by the worker or the employer.⁶⁷⁷ Penalties are imposed by the labor committees and collected fines help fund shelters for domestic workers.⁶⁷⁸

Saudi Arabia recently introduced an electronic platform called Musaned (an Arabic word that translates to "support") under the Ministry of Labor and Social Development.⁶⁷⁹ Established in 2014, Musaned is a user-friendly internet portal that simplifies the rights and obligations of each party to the recruitment process⁶⁸⁰ by providing a user-friendly way for migrant domestic worker recruitment.⁶⁸¹ Musaned raises awareness for employers about the rights and duties of domestic workers and vice versa. Musaned beneficiaries are citizens and expats, Saudi recruitment agencies, and non-Saudi recruitment agencies.⁶⁸²

Musaned provides three major services: 1) electronic visa issuance via the mobile application or the online portal; 2) electronic contracting with Saudi domestic worker labor recruitment provider; and 3) international contracting between local recruitment offices and labor

⁶⁷¹ Household Regulation on Service Workers and Similar Categories, art. 7 (Saudi Arabia).

⁶⁷² Wage Protection System: Approval of the Prepaid Domestic Labor Card from the Ministry of Labor and Development, THAGFNI (Feb. 4, 2018), https://www.thaqfny.com/314243/2018-محملية-الأجور -العمالة-المنزلية/

⁶⁷³ U.S. STATE DEP'T, SAUDI ARABIA 2015 HUMAN RIGHTS REPORT (2015),

https://www.state.gov/documents/organization/253157.pdf.

⁶⁷⁴ *Id*.

⁶⁷⁵ Household Regulation on Service Workers and Similar Categories, art. 17 (Saudi Arabia); *New Regulations for Domestic Workers, supra* note 664.

⁶⁷⁶ Household Regulation on Service Workers and Similar Categories, art. 17 (Saudi Arabia); *New Regulations for Domestic Workers, supra* note 664.

⁶⁷⁷ Household Regulation on Service Workers and Similar Categories, art. 20 (Saudi Arabia).

⁶⁷⁸ Id art 19

⁶⁷⁹ MUSANED, https://visa.musaned.com.sa/#/portal/rights (last visited Sept. 20, 2018).

⁶⁸⁰ Saudi Arabia: Steps Toward Migrant Workers' Rights but Reforms Exclude Domestic Workers, Discriminate Against Women, Hum. Rts. Watch (Nov. 15 2015), https://www.hrw.org/news/2015/11/15/saudi-arabia-stepstoward-migrant-workers-rights.

⁶⁸¹ MUSANED, *supra* note 679.

⁶⁸² *Id*.

recruitment agencies, monitored by specialized authorities in both receiving country and country of origin.⁶⁸³ Complaints may be filed through the website, via telephone, or by e-mail — enabling the appropriate authorities to take action.⁶⁸⁴

D. Analysis

The regulation is a step forward in granting domestic workers more rights and protections; however, a number of comments and concerns about the regulation are worth noting.

Opening a bank account for the domestic worker is a great way to keep track of regular salary payments but the regulation only extends to labor workers. To further track salary payments, the Wage Protection System (introduced in 2013)⁶⁸⁵ should be extended from labor workers to domestic workers, a step that Saudi Arabia is starting to implement.⁶⁸⁶ Obligating the employer to open a bank account for the domestic worker is a step forward to protect the rights of migrant domestic workers — especially since the number one complaint of domestic workers is non-payment of wages or receiving less than the agreed salary. Having this process in place will also address contract substitution — where a domestic worker signs a contract in the country of origin only to have the contract substituted in the country of destination with a contract that provides less rights and less salary.

The law provides the domestic worker with annual leave of up to thirty days after two years in service if the worker remains with the same employer. That is considered a great step in providing the worker with fundamental rights. Domestic workers are also entitled to nine consecutive hours of rest, 687 which means that a domestic worker may work for fifteen hours; however, that is still considered a long work day and the preferred working hours are less than fifteen. Moreover, the domestic worker is entitled to a weekly day off provided mutual consent is reached between worker and employer. Due to the power imbalance between the worker and

⁶⁸³ *Id*.

⁶⁸⁴ Complaint and Disputes, MUSANED, https://visa.musaned.com.sa/#/portal/complaints (last visited May 20, 2017) (Saudi Arabia); Wezarat Tasder Edat Grarat Lethseen Adaa Souq Al-Amalah Al-Mnzelayah [Ministry of Labor Issues Several Decisions to Improve the Importance of the Domestic Labor Market], AL-RIYADH (May 19, 2015, 6:51PM), http://www.alriyadh.com/1049515.

⁶⁸⁵ RAY JUREIDINI, WAGE PROTECTION SYSTEMS AND PROGRAMMES IN THE GCC (2017), http://gulfmigration.eu/media/pubs/rp/GLMM_EN_2017_RR01.pdf.

⁶⁸⁶ Protection of Wages for Domestic Workers Aimed at Documenting Contracts Electronically, SABQ ONLINE NEWS. (Mar. 25, 2018), https://sabq.org/9XRGf5.

 ⁶⁸⁷ Laehat Al-Amalah Al-Mazeleyah [Household Regulation on Service Workers and Similar Categories],
 Resolution No. 310, art. 7 (July 7, 2013) (Saudi Arabia).
 ⁶⁸⁸ *Id.* art. 8.

employer, however, it would be preferable if the worker was automatically given a day off; if the worker decides not to take it, the worker should be provided with another day off or monetary compensation.

Unlike laws in other GCC countries, the Saudi law does not exclude domestic workers from paying legal fees — an important component that should be included but failed to appear in the Saudi regulation. However, the Saudi judicial system does not require judicial fees and litigation is free of charge, which is perhaps why the Saudi legislature did not mention that in the domestic workers regulations.

The Saudi law failed to set a minimum wage for domestic workers, an important provision that would help domestic workers. The law also failed to mention the statute of limitation for pressing charges against the employer; however, an ideal statute of limitations would be one year.

Saudi Arabia also incorporated new domestic worker reforms in its 2015 labor law. 689. The changes include adjusting recruitment fees, duration of employment requirements, and the role of companies and recruitment agencies. 690 The Ministry of Labor, signing bilateral agreements with Niger and Bangladesh, issued regulations to set maximum recruitment fees for domestic workers from Niger and Bangladesh at 7,000 S.R. (\$1,867 USD); wages set for domestic workers from Niger are up to 750 S.R. (\$200 USD) and wages of Bangladeshi domestic workers are up to 800 S.R. (\$213 USD). 691 Recruitment fees and wages will be set for other countries once bilateral agreements are signed with other sending countries such as India, the Philippines, Sri Lanka, and Vietnam. 692

The Ministry of Labor and Social Affairs limits recruitment time to sixty days. Furthermore, the Ministry now forbids recruitment agencies from receiving full recruitment fees until the domestic worker arrives.⁶⁹³ The Ministry even started to fine recruitment agencies if the domestic worker arrives after sixty days; the fine is 100 S.R. (\$27 USD) for every day a domestic worker is late to arrive with the fine limited at 3000 S.R. (\$800 USD).⁶⁹⁴ If the worker

⁶⁸⁹ Saudi Arabia Steps Toward Migrant Workers Rights, supra note 680.

⁶⁹⁰ Ministry of Labor Issues Several Decisions, supra note 684.

⁶⁹¹ *Id*.

⁶⁹² *Id*.

⁶⁹³ Id

⁶⁹⁴ *Id.*; *Labor Redraws the Map of Recruiting Domestic Workers with New Controls and Procedures*, ALWEEAM (May 19, 2015), http://www.alweeam.com.sa/338387.

arrives in the country of destination more than thirty days late, the recruitment contract is void and the recruitment agency must return the client's (employer) payment. ⁶⁹⁵

In facing the high demand for female migrant domestic workers, Saudi Arabia also opened licensing for recruitment agencies to specialize in domestic workers and set a number of obligations on the agencies, requiring at least half of the recruitment to be female domestic workers.⁶⁹⁶

i. Saudi Arabia Standardized Contract

Saudi Arabia has a number of standardized contracts, written by the Ministry of Labor and Social Development, depending on the country of origin for migrant domestic workers. There is one for Indian domestic workers,⁶⁹⁷ as well as a standardized contract for domestic workers from Djibouti and Nigeria.⁶⁹⁸ All standardized contracts are in two languages — Arabic and English; the copies provided in the website are in English and Arabic only.⁶⁹⁹

The standardized contracts carry a number of important provisions. The contract between a Saudi employer and Nigerian domestic worker includes: limiting the duration of the contract to two years;⁷⁰⁰ calculating the monthly salary;⁷⁰¹ requiring the employer to open a bank account in Saudi Arabia and deposit the worker's salary every month into that bank account;⁷⁰² entitling the worker to nine consecutive resting hours;⁷⁰³ entitling the domestic worker to a weekly day off;⁷⁰⁴ obligating the employer to pay for the domestic worker's transportation from country of origin to Saudi Arabia and the return transportation at the end of the contract;⁷⁰⁵ requiring the employer to provide the domestic worker with adequate accommodation, food, and clothing.⁷⁰⁶ The

⁶⁹⁵ Ministry of Labor Issues Several Decisions, supra note 684; Labor Redraws the Map, supra note 694.

⁶⁹⁶ Ministry of Labor Issues Several Decisions, supra note 684; Labor Redraws the Map, supra note 694.

⁶⁹⁷ *eForms Portal*, MUSANED, https://visa.musaned.com.sa/#/portal/eForms (last visited Sept. 20, 2018) (Saudi Arabia).

⁶⁹⁸ *Id*.

⁶⁹⁹ Domestic Workers Standardized Contract, art. 21, Musaned,

https://visa.musaned.com.sa/attachments/.

pdf. عقد20%عمل20%موحد20%للعمالة20%المنز لية%20النيجرية%20المتوجهة%20للعمل20%في%20المملكة%20العربية%20السعودية .pdf (last visited Sept. 20, 2018).

⁷⁰⁰ *Id.* art. 2.

⁷⁰¹ *Id.* art. 3.

⁷⁰² *Id.* art. 4.

⁷⁰³ *Id.* art. 5.

⁷⁰⁴ *Id.* art. 6.

⁷⁰⁵ *Id.* art. 7.

⁷⁰⁶ *Id.* art. 8.

standardized contract also provides for sick leave and health care,⁷⁰⁷ annual leave up to thirty days for every two years of service,⁷⁰⁸ employer responsibility for repatriation of domestic worker corpse in the event of death,⁷⁰⁹ alternative dispute mechanisms through the Ministry of Labor⁷¹⁰ (where both parties to the contract are brought together in order to settle the matter amicably), and the conditions for contract termination.⁷¹¹ In cases of force majeure, the employer shall repatriate the worker to the country of origin and pay the salary.⁷¹² The contract shall be renewed if the both parties agree.⁷¹³ The standardized contract requires the agreement be in English, French, and Arabic but where there is a difference in interpretation, the English language contract prevails.⁷¹⁴

ii. How Musaned Works: The Process of Recruitment

Musaned has simplified the process of recruiting domestic workers. The process begins with the employer creating a profile in Musaned portal through the e-tawtheeq, which facilitates agreement between Saudi recruitment agencies and non-Saudi recruitment agencies by introducing partnership contract feature to enable fast and easy contracting between both parties.⁷¹⁵

Additionally, each recruitment agency can have multiple sub-users with different authority levels assigned for each employee working in the system. Saudi recruitment agencies can use the system to enter their accreditation information in foreign countries so they can be recognized by Saudi embassy staff processing the request. E-tawtheeq has a candidate listing feature where non-Saudi agencies can post CVs of all domestic labor ready for employment, allowing Saudi agencies to choose a CV that matches the job requirements before obtaining approval of the necessary authorities to finishing the recruitment process.

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⁷⁰⁷ *Id*. art. 9.

⁷⁰⁸ *Id.* art. 10.

⁷⁰⁹ *Id.* art. 11.

⁷¹⁰ *Id.* art. 12 (bringing both parties to the contract together to settle the matter amicably).

⁷¹¹ *Id.* art. 14.

⁷¹² *Id.* art. 17.

⁷¹³ *Id.* art. 19.

⁷¹⁴ *Id.* art. 21.

⁷¹⁵ Musaned, An Electronic Verification System, YOUTUBE (Nov. 30, 2016),

https://www.youtube.com/watch?v=0mB4znU_ls8&spfreload=1.

⁷¹⁶*Id*.

⁷¹⁷ *Id*.

⁷¹⁸ *Id*.

A sponsor can apply for a domestic worker's visa via the Musaned platform — either through the mobile app or through the website.⁷¹⁹ Moreover, Musaned provides copies of contract forms so the sponsor can sign a contract with the recruitment agency and follow-up on the status of the contract via the Musaned portal.⁷²⁰ The general form for contracting with a domestic worker is in Arabic only,⁷²¹ while the Indian, Niger, and Djibouti contracts are in both English and Arabic.⁷²²

iii. Abuses Domestic Workers Face in Saudi Arabia

Most migrant domestic workers in Saudi Arabia come from Asian and south Asian countries such as the Philippines, Sri Lanka, Indonesia, Nepal, and India.⁷²³ Those workers escape poor conditions and high unemployment rates in their countries, which serve as push factors for those workers.⁷²⁴ The pull factors for these individuals are incentives to work in Saudi Arabia due to tax free salaries and higher wages as well as high demand for domestic workers in Saudi Arabia.

Due to the nature of domestic work, which is conducted in the privacy of the household, domestic workers are vulnerable to abuse.⁷²⁵ It is hard to know the extent of abuse that occurs because of the nature of the work.⁷²⁶ The abuses that domestic workers face in Saudi Arabia are similar to abuses that domestic workers face in other GCC countries. Those abuses include withholding of passport and personal documents, non-payment of wages, no days off and no annual leave, restriction of movement, and long working hours.⁷²⁷ The complaints also include physical, physiological, and (in extreme cases) sexual abuses.⁷²⁸

According to a 2008 Human Rights Watch report, the main complaints from domestic workers in Saudi Arabia were withholding of wages and long working hours.⁷²⁹ Both complaints

⁷¹⁹ MUSANED, *supra* note 679.

⁷²⁰ *Id*.

⁷²¹ *Id*.

⁷²² *Id*.

⁷²³ Saudi Arabia: Domestic Workers Face Harsh Abuses, HUM. RTS. WATCH (July 8, 2008), https://www.hrw.org/news/2008/07/08/saudi-arabia-domestic-workers-face-harsh-abuses.

⁷²⁴ Scully, *supra* note 648, at 825.

⁷²⁵ Alzharani, *supra* note 653, at 383.

⁷²⁶ As If I Am Not Human, *supra* note 7.

⁷²⁷ Scully, *supra* note 648, at 825.

 $^{^{728}}$ As If I Am Not Human, supra note 7.

⁷²⁹ *Domestic Workers Face Harsh Abuses, supra* note 723.

were addressed by the new law adopted by the Saudi government in 2013,⁷³⁰ although abuses still occur.⁷³¹ There is no concrete number of the abuses that take place, however, Saudi officials indicate the abuses that occur are isolated incidents.⁷³² Furthermore, government officials state that many Saudi treat their domestic worker well and consider the domestic worker part of the family.⁷³³

Human Rights Watch attributed the abuses that domestic workers face to the *Kafala* system since the worker cannot enter the country without a sponsor, which ties the domestic worker to a specific employer for the duration of the contract.⁷³⁴ Moreover, in Saudi Arabia the worker cannot leave the country without an exit permit from the sponsor.

Abused domestic workers tend to escape; absconding domestic workers can find refuge in a center run by the Ministry of Social Affairs⁷³⁵ in Riyadh. The center houses migrant domestic workers waiting for personal papers and passport, those with unpaid salaries, or those awaiting their exit visa (a paper signed by the sponsor allowing the domestic worker to leave the country). The center is funded by the Ministry of Social Affairs⁷³⁷ as well as the fines collected from employers who violate the domestic worker regulations.

Some absconded domestic workers prefer to work through the black market where they earn more money, however, those workers are more susceptible to abuse because of their illegal status and they can be arrested and deported if found by the police. By running away, they become irregular workers.⁷³⁹ A migrant worker may also be irregular in Saudi Arabia by using the Umrah or pilgrimage visa to enter Saudi Arabia and then overstaying the visa trying to find work.⁷⁴⁰

⁷³⁰ Laehat Al-Amalah Al-Mazeleyah [Household Regulation on Service Workers and Similar Categories], Resolution No. 310 (July 7, 2013) (Saudi Arabia).

⁷³¹ Kenyan Domestic Workers Abused in Saudi Arabia, BBC (Sept. 1, 2015), http://www.bbc.com/news/world-africa-34121412.

⁷³² *Id*.

⁷³³ Abeer Ebrahim, *Al-Taamel Al-Ensani Yahmeek Min Shar Al-Khadam*, [*Treating Domestic Workers Humanly Prevents You from the "Evil" of the Domestic Worker*], AL-REYADH NEWS. (Aug. 28, 2012), http://www.alriyadh.com/763440 (Saudi Arabia).

⁷³⁴ As IF I AM NOT HUMAN, *supra* note 7.

⁷³⁵ *Id*.

⁷³⁶ Id

⁷³⁷ MUSANED, supra note 679; New Regulations for Domestic Workers, supra note 664 (focusing on Art. 19).

⁷³⁸ MUSANED, supra note 679; New Regulations for Domestic Workers, supra note 664 (focusing on Art. 19).

⁷³⁹ Fahad Alsharif, Calculated Risks, Agonies and Hopes: A Comparative Case Study of the Undocumented Yemeni and Filipino Migrant Communities in Jeddah, in SKILFUL SURVIVALS: IRREGULAR MIGRATION TO THE GULF 168 (Philippe Fargues & Nasra M. Shah eds., 2017).

⁷⁴⁰ *Id.* at 167.

There is also an issue with free visa or visa trading, where the worker pays a sponsor to enter the country with no job offer and then finds work, paying the sponsor whenever papers need renewed. Free visa or visa trading is seen more with laborers but some workers enter with a domestic worker visa. The process is illegal but is found throughout the GCC region.

E. International Law

Saudi Arabia has been a member party of ICERD since 1997,⁷⁴¹ CEDAW since 2000,⁷⁴² and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since 1997.⁷⁴³ Saudi Arabia is also a member of the ILO and party to six of the eight fundamental ILO conventions,⁷⁴⁴ as well as the ILO Convention of Forced Labor. Saudi Arabia is not a state party to the ILO convention on Decent Work for Domestic Workers (C189)⁷⁴⁵ and would need to make significant amendments to its current laws before adopting C189. Saudi Arabia has not ratified a number of important human rights treaties, such as the ICCPR and the ICESR,⁷⁴⁶ so Saudi Arabia is not accountable to the provisions of those conventions.

Although the Kingdom of Saudi Arabia is a member of the CEDAW convention, Saudi Arabia submitted a reservation, renouncing obligation to follow the convention when it contradicts Islamic law.⁷⁴⁷ Accordingly, Antoinette Vlieger (a Dutch scholar who earned her PhD in 2011 on the topic of domestic workers in Saudi Arabia and the Emirates), noted that female migrant workers suffer discrimination under Saudi labor law because they are excluded from its labor protections.⁷⁴⁸ While Vlieger originally stated that there was no domestic workers law that protected domestic workers and that has changed. Vlieger observed that domestic workers face obstacles when pressing charges against their employers because, under Saudi law, women require a male guardian to file a court case on their behalf. However, Saudi Arabia underwent substantial changes in the past few years, now allowing female lawyers to enter the courthouse and file cases. Furthermore, Vlieger stated that there were no shelters for domestic

⁷⁴¹ *Interactive Dashboard*, *supra* note 599.

⁷⁴² *Id*.

 $^{^{743}}$ Id

⁷⁴⁴ Ratifications for Saudi Arabia, INT'L LAB. ORG.,

http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103208 (last visited Sept. 20, 2018).

⁷⁴⁵ *Id*.

⁷⁴⁶ Interactive Dashboard, supra note 599.

⁷⁴⁷ As If I Am Not Human, *supra* note 7.

⁷⁴⁸ Antoinette Vlieger, Domestic Workers in Saudi Arabia and the Emirates: A Socio-Legal Study on Conflicts (Dec. 2, 2011) (unpublished dissertation, Amsterdam Law School), https://ssrn.com/abstract=1967425.

worker but, in accordance with the trafficking in persons report in 2018, there are ten shelters for domestic workers across the Kingdom.

The confiscation of personal documents and long working hours that domestic workers are forced to undertake violates Saudi Arabia obligation It is worth noting however that Saudi Arabia prohibits passport confiscation.⁷⁴⁹ Furthermore, as mentioned before, the UDHR prohibits the restriction of movement.⁷⁵⁰ Denying a domestic worker from leaving the household can amount to a violation of Article 13 of the UDHR.

While harboring runaway domestic worker is criminalized under Saudi law, shelters still operate to help those that leave their employers.⁷⁵¹ There is a shelter run by the Ministry of Social Affairs in Riyadh as well as shelters in Jeddah and in Damam.⁷⁵² Overall, ten shelters for domestic workers operate across the kingdom of Saudi Arabia some of whom accept trafficking victims.⁷⁵³ In addition, some embassies also run their own shelters for domestic workers.⁷⁵⁴ While embassy shelters are legal under Article 3 of the Vienna Convention on Diplomatic Relations 1961⁷⁵⁵ and Article 3 of the Vienna Convention on Consular Relations 1963,⁷⁵⁶ other shelters are considered illegal and may take advantage of domestic workers, some by leading them into working in prostitution.⁷⁵⁷

All shelters help domestic workers obtain an exit visa when the consent of the employer is not obtained.⁷⁵⁸ The shelter in Jeddah was originally established to help repatriate those who overstayed their Umrah or Haji visa or those who lost their documents during Umrah or Haji.⁷⁵⁹

F. Recent Reforms and Changes

Saudi Arabia recently announced its intent to establish seven labor attachés in countries that tend to send migrant workers. ⁷⁶⁰ The countries where labor attachés will be established are

⁷⁴⁹ Int'l Lab. Org. [ILO], Employer-Migrant Worker Relationships in the Middle East: Exploring Scope for Internal Labor Market Mobility and Fair Migrations 13 (2017),

http://www.ilo.org/beirut/publications/WCMS_552697/lang--en/index.htm.

⁷⁵⁰ UDHR, art. 13.

⁷⁵¹ Vlieger, *supra* note 748.

⁷⁵² Id.

⁷⁵³ U.S. Dep't of State, Trafficking in Persons Report: Saudi Arabia (2017),

https://www.state.gov/documents/organization/271344.pdf.

⁷⁵⁴ Vlieger, *supra* note 748.

⁷⁵⁵ VCDR, 596 U.N.T.S. 261.

⁷⁵⁶ VCCR, 500 U.N.T.S. 95.

⁷⁵⁷ Vlieger, *supra* note 748.

⁷⁵⁸ *Id*.

⁷⁵⁹ *Id*.

India, Egypt, Pakistan, The Philippines, Bangladesh, Indonesia, and Sri Lanka. This will hopefully enhance relations and coordination between sending countries and Saudi Arabia. Furthermore, this initiative aims to raise awareness and educate migrant workers on the labor law and regulations in Saudi Arabia. Moreover, this step will enhance the recruitment of migrant workers. This decision backs the oversight process of training centers in sending countries where migrant workers are educated on the country where they will work. Also, in 2018, Saudi Arabia announced that it would be extending its wage protection system to domestic workers. The wage protection system is an electronic salary transfer system that allows employers to transfer their domestic workers' salaries through bank transfers.

G. Questionnaire

The following results were gathered from a questionnaire presented to employers of domestic workers. While the sample is not representative of all Saudi employers, it offers some suggestions for issues that may be relevant from the perspective of employers.

- Employment of Domestic Workers: In a pool of eighteen people, sixteen employed domestic workers while two did not employ a domestic worker.
- Number of Domestic Workers: Seven people employed only one domestic worker, while seven others employed two domestic workers and three employed three domestic workers.
- Knowledge of Law: When asked about their knowledge of Regulation No. 310 regarding domestic workers, one was aware of the regulation while seventeen did not know about the regulation.
- Day Off: When asked about whether the domestic worker received a day off, eight answered yes, six answered no, and four said sometimes.
- Male Domestic Worker: Five provided their male domestic worker with a day off, six did not, and four did not hire a male domestic worker.

⁷⁶⁰ Shojaa Al-Bagmi, *Al-Saudia Toass Molhagat Omaleyah fe Sabea Min Safaratha [Saudi Establishes Seven Labor Attaches' in its Embassies*], AL-SHARQ AL-AWSAD NEWS. (Nov. 8, 2016),

^{.(}Saudi Arabia) السعو دية تؤسس ملحقيات عمالية في - 7-من سيفار اتها / 61/17971 https://aawsat.com/home/article

⁷⁶¹ *Id*.

⁷⁶² *Id*.

⁷⁶³ *Id*.

⁷⁶⁴ *Id*.

⁷⁶⁵ Wage Protection System, supra note 672.

- Going out on their day off: When asked whether the domestic worker was allowed to go out on her day off, five said yes while twelve said no.
- Mobile Phone: All surveyed employers allowed the domestic worker to have a cell phone.
- Passport: When asked whether the domestic worker was allowed to keep her passport, five said yes, while thirteen said no.
- Duration of Work: With regards to how long the domestic worker worked with the employer, eight said more than four years, one said for four years, five said for three years, one said for two years, and two said for one year.
- Recruitment Agency Use: Thirteen found their domestic worker through recruitment agencies, while four used a network of friends and families of the domestic workers working for the employer.
- Completion of Contract: When asked whether a domestic worker left before completing the contract, two said yes while sixteen said no.
- Dispute: When asked whether there was a dispute with the domestic worker, one said yes while seventeen said no.
- Embassy: Only one of the employers had contact with domestic worker's embassy.
- Satisfaction level: Sixteen were satisfied with the domestic worker's work while two
 were not.
- Trained Domestic Workers: Asked if the domestic worker was trained prior to starting her job, four said yes, while fourteen said no.
- Sponsorship System: When asked whether the employers had any criticism against
 the sponsorship system three said yes and fifteen said no. Some stated that the rights
 of the employers are not protected and some said the domestic worker was provided
 with a day off and she is free to visit family and friend and that they are allowed to
 visit her.

H. Conclusion

Saudi Arabia set a solid example for other GCC countries with its user-friendly and online platform, Musaned. This allows easy navigation of the system to apply for an e-visa and for the employers to select any of the accredited recruitment agencies and connect with a

domestic worker. The platform also presents the rights and obligations of each party to the contract — the employer and the employee. The platform allows for contracts to be conducted online which prevent contract substitution. Moreover, the platform establishes an easy way to file a complaint, either by email, through the website directly, or by calling. The Musaned is a commendable example that other GCC countries could adopt and implement easily in their legal regimes.

Saudi Arabia also set another positive example for other GCC countries to follow, with payment of domestic worker salaries via a transfer to the domestic worker's bank account, which the employer establishes for the domestic worker. This addresses the significant problem of non-payment of wages some domestic workers suffer from because the Ministry can keep track of the payment and fine the employer if payment is not rendered. Another positive practice in Saudi Arabia is that all fines collected from employer violations of the domestic workers law are transferred to shelters for domestic workers. While Saudi Arabia's practices regarding migrant domestic workers should continue to improve, it offers positive examples of regulation and initiatives for other countries to adopt. These two ideas are worth adopting by the GCC and they are part of the proposal in Chapter 9.

CHAPTER 6: A CASE STUDY OF QATAR

A. Introduction

Qatar gained the world's attention when it won the bid to host the 2022 FIFA World Cup. Not all the attention was welcomed, however, as many started to examine the situation of migrant workers in Qatar — especially those working in the construction sector building the stadiums for the World Cup.

The 2012 Human Rights Watch report,⁷⁶⁶ the 2013 Amnesty International report,⁷⁶⁷ and several reports from The Guardian all highlighted the poor situation that migrant workers endured. As a result of the attention the country received on the situation of its migrant workers, the Qatari government requested a report on recommendations and required reforms to improve the situation for migrant workers by examining the working and living conditions of low-income workers.⁷⁶⁸ The report was conducted by DLA Piper and, in 139 pages, issued 62 recommendations grouped into nine key areas.⁷⁶⁹

One of the main requests of the DLA Piper report was to reform and amend the *Kafala* system.⁷⁷⁰ There were also a number of suggested reforms on: wages, accommodations, health and safety measures, inspections, recruitment fees, and clear complaint systems.⁷⁷¹ As a result of the DLA Piper report, a number of changes took place and the situation for migrant workers in the construction sector is improving in Qatar.

In 2014, Amnesty International published another report specifically on the issue of domestic workers in Qatar.⁷⁷² The report called on the government to adopt a draft law, pending

Publication?ad_group=xxc1xx&campaign=VigLink&medium=affiliate&source=hp_affiliate (last visited Feb. 3, 2019).

⁷⁶⁶ HUMAN RIGHTS WATCH, BUILDING A BETTER WORLD CUP: PROTECTING MIGRANT WORKERS IN QATAR AHEAD OF FIFA 2022 (June 12, 2012), https://www.hrw.org/report/2012/06/12/building-better-world-cup/protecting-migrant-workers-qatar-ahead-fifa-2022.

⁷⁶⁷ AMNESTY INTERNATIONAL, QATAR: "TREAT US LIKE WE ARE HUMAN": MIGRANT WORKERS IN QATAR (2013), https://www.amnesty.org/en/documents/mde22/011/2013/en/.

⁷⁶⁸ DLA Piper, Changes to Kafala Expected as Early as End of May, DOHA NEWS (May 24, 2014), https://dohanews.co/dla-piper-report/ (Qatar); DLA PIPER, MIGRANT LABOR IN THE CONSTRUCTION SECTOR (2014), https://www.scribd.com/document/225897899/Qatar-Dla-Final-Report-May-2014-For-

⁷⁶⁹ *Qatar: How Have Conditions for Migrant Workers Changed in Nine Key Areas*, THE GUARDIAN (May 14, 2015), https://www.theguardian.com/world/2015/may/14/qatar-how-have-conditions-for-migrant-workers-changed-in-nine-key-areas.

⁷⁷⁰ DLA PIPER, *supra* note 768.

⁷⁷¹ *Id*.

⁷⁷² MY SLEEP IS MY BREAK, *supra* note 7.

since 2012. It took Qatar five years to adopt the domestic workers law, which was finally published in the official gazette on September 12, 2017.

This chapter begins by providing some background information on Qatar. It then analyzes the laws and regulations in Qatar, including the new Law No. 21 of 2015, regarding the entry and exist and some analysis of the new domestic workers law. Furthermore, it looks into the problems that domestic workers face in Qatar and concludes with the international law obligations to which Qatar should adhere.

B. Background

The state of Qatar was started by a number of immigrants in the eighteenth century and its economy mainly relied on trading and pearl diving.⁷⁷³ The population was composed of seminomadic and nomadic Bedouins, fishermen, merchants, and a couple thousand people of Persian origin.⁷⁷⁴

In 1916, Qatar signed a protectorate agreement allowing the British to handle foreign policy for the state of Qatar.⁷⁷⁵ When oil exploration began in Qatar there were only 16,000 inhabitants.⁷⁷⁶ In 1939, Qatar discovered oil in its territory but exploration was delayed due to World War II. Oil soon replaced trading and pearl diving as the main source of income to the country.⁷⁷⁷ Now, the country has the third largest natural gas reserves worldwide as well as oil reserves.⁷⁷⁸ Furthermore, when oil was discovered the need for skilled and unskilled workers to work in the oil fields increased; in addition to Arab workers, the British turned to the Indian subcontinent to fill the gaps.

Qatar obtained its independence from the British on September 3, 1971⁷⁷⁹ and adopted its first constitution in 2005.⁷⁸⁰ Its first official censuses, in 1970, was prior to the country's independence and the total of the population was just 111,113 (Qataris comprising 45,039 and

⁷⁷³ Facts about the State of Qatar, BBC, http://www.bbc.com/arabic/middleeast-39114086 (last visited Feb. 26, 2018).

⁷⁷⁴ Francoise de Bel-Air, Demography, Migration, and Labour Market in Qatar (2017), http://gulfmigration.eu/media/pubs/exno/GLMM_EN_2017_03.pdf.

⁷⁷⁵ Facts about the State of Oatar, supra note 773.

⁷⁷⁶ BEL-AIR, *supra* note 774.

⁷⁷⁷ Facts about the State of Qatar, supra note 773.

⁷⁷⁸ *Id*.

⁷⁷⁹ *Id*.

⁷⁸⁰ *Id*.

foreigners comprising 66,094);⁷⁸¹ As of January 2019, the total population is 2.76 million⁷⁸² with foreigners representing an estimated 91% of the population;⁷⁸³ the number of Qatari nationals is estimated to be 9.6% of the population.⁷⁸⁴ These estimates suggest Qatar retains the highest number of foreigners in the GCC and in the world.⁷⁸⁵

Indians constitute the biggest group of foreign nationals in the country with 650,000 residents representing 25% of the population. Indians, Bangladeshis, Filipinos, and Nepalese constitute three quarters of foreigners in Qatar. Egyptians are considered the largest Arab nationals in Qatar with 200,000 residents — approximately 8.6% of the population. Domestic workers from African countries — predominantly Ethiopia, Uganda, and Tanzania have also started to migrate to Qatar and the GCC in large numbers.

Domestic work existed in Qatar prior to the discovery of oil, when upper-class families hired domestic workers and slaves brought from Oman and Saudi Arabia as well as Zanzibar in western Africa and Ethiopia.⁷⁹¹ Today, domestic workers are considered a necessity and nearly every household has at least one.⁷⁹²

According to Amnesty International, the number of domestic workers in Qatar is 132,401 with 84,164 female domestic worker and 48,237 male domestic workers.⁷⁹³ While exact numbers of migrant domestic workers are not provided by the Qatari government, those estimates can be found by contacting the sending countries. The Philippines embassy announced in 2014, that there were approximately 30,000 Filipino domestic workers in Qatar⁷⁹⁴ while in 2013, the Indonesian ambassador announced that there were 20,000 Indonesian domestic workers in

⁷⁸¹ BEL-AIR, *supra* note 774; SUKAN, PERMANENT POPULATION COMMITTEE (Mar. 20, 2017), https://www.mdps.gov.ga/en/statistics/Statistical%20Releases/Population/Population/2017/Sukkan 35 Ar Mar 20

https://www.mdps.gov.qa/en/statistics/Statistical%20Releases/Population/Population/2017/Sukkan_35_Ar_Mar_2017.pdf.

⁷⁸² Total Population of the State of Qatar, MIN. DEV. PLANNING & STATISTICS,

https://www.mdps.gov.qa/ar/statistics1/StatisticsSite/Pages/Population.aspx. (Last visited Sept. 20, 2018).

⁷⁸⁴ Ray Jureidini, *Irregular Migration in Qatar: The Role of Legislation, Polices, and Practices, in* Skilful Survivals: Irregular Migration to the Gulf (Philippe Fargues & Nasra M. Shah eds., 2017).

⁷⁸⁶ BEL-AIR, *supra* note 774.

⁷⁸⁷ *Id*.

⁷⁸⁸ *Id*.

⁷⁸⁹ *Id*.

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 $^{^{791}}$ Norah Al-Kawari, The Phenomena of Migrant Domestic Workers in Qatar: A Study in the Geography of the Population 21 (2006).

⁷⁹² Id.

 $^{^{793}}$ My Sleep is My Break, supra note 7.

⁷⁹⁴ *Id*.

Qatar.⁷⁹⁵ Sri Lanka, publicly announced that 7,047 individuals left Sri Lanka to work as domestic workers in Qatar.⁷⁹⁶

C. Laws and Regulations in Qatar

The history of the sponsorship system in Qatar dates back to when the economy in Qatar relied on pearl diving and trading. The system was first established in Bahrain and later spread to other GCC countries under the British protectorate.

The sponsorship system in Qatar is found in its exit and entry laws, which were amended in 2015 and entered into force in 2016. Previously, Law No. 4 of 2009 regulated the *Kafala* system.⁷⁹⁷ De Bel-Air, a researcher and consultant based in Paris, stated that Qatar has the most restricted *Kafala* systems in the Gulf.⁷⁹⁸ Qatar tried to amend the system with Law No. 21 of 2015, declaring its intent to abolish the sponsorship system.⁷⁹⁹ However, the sponsorship system still exists; Qatar basically removed the word "sponsor" from the law, instead using the word "employer" as the person who licenses a worker to enter the country.⁸⁰⁰

The government also announced that the new law would cancel the exit permit, no longer requiring workers to obtain one from an employer before leaving the country. 801 However, that has not come to fruition either, as a worker still needs to obtain either employer permission or the specified ministry approval prior to leaving the country. The only real modification is that the worker can appeal the decision if approval is not initially granted. 802 An appeals committee was established for this specific purpose by a ministerial decree in February 2016. 803

The working contract regulates the relationship between the employer and employee.⁸⁰⁴ The new law raised the fines for employers withholding passports from 10,000 QR (\$2,747)

⁷⁹⁵ *Id*.

⁷⁹⁶ Id

⁷⁹⁷ Int'l Lab. Org. [ILO], Complaint Concerning Non-Observance by Qatar of the Forced Labor Convention, 1930 (No. 29) and the Labor Inspection Convention, 1947 (No. 81), GB.326/INS/8(Rev.) (Mar. 17, 2016),

http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_459148.pdf. ⁷⁹⁸ BEL-AIR, *supra* note 774.

⁷⁹⁹ Walid Slaiby, *Qatar to Abolish Kafala System*, QATAR TRIB. (May 15, 2014), http://archive.qatar-tribune.com/viewnews.aspx?cat=fpg&d=20140515.

⁸⁰⁰ Peter Kovessy, *New Qatar Sponsorship Law Met with Frustration, Praise*, DOHA NEWS (Oct. 28, 2015), https://dohanews.co/rights-advocate-extremely-disappointed-with-qatars-kafala-reforms/ (Qatar).

⁸⁰² Qanoon Btantheem Dkhol w Khrooj Al-Wafdeen W Egamathum [Exit and Entry Law], Law No. 21 of 2015, art. 7 (Oct. 27, 2015) (Oatar).

⁸⁰³ Complaint Concerning Non-Observance by Qatar of the Forced Labor Convention, supra note 797.

⁸⁰⁴ Exit and Entry Law, art. 4 (Qatar).

USD) to 25,000 QR (\$6,868 USD). ⁸⁰⁵ Furthermore, the new law allowed a worker to change jobs without needing to leave the country for two years first, provided certain conditions are met and the worker obtains the approval of the Ministry of Interior and the Ministry of Labor and Social Affairs. ⁸⁰⁶ In cases where there is a violation of the contract — such as withholding a passport or non-payment of wages — the specialized authority shall approve the transfer of the worker to another employer pending the settlement of the lawsuit. ⁸⁰⁷ Another advantage of Law No. 21 of 2015 is that certain people do not need a sponsor to enter the country including those who will be investing in the country, those who have property in Qatar, or those designated by a cabinet decision. ⁸⁰⁸

In Qatar, as in most GCC countries, domestic workers are excluded from the protections offered under the labor law. Domestic workers were, historically, governed by civil law and criminal law. Article 3 of the Qatari Labor Law states: "Except as provided for in a special provision, the provisions of this Law shall not apply to the following categories: . . . Domestic workers such as driver, nanny, cook, gardener and the like." 809

However, Qatar recently adopted stand-alone legislation concerning migrant domestic workers, which was published in the official gazette on September 12, 2017.⁸¹⁰ The domestic workers law came into light because of international calls to regulate and provide more protections to migrant domestic workers.

Analysis of the domestic workers law suggests that the law was vertically transplanted from the ILO C189 convention regarding decent work for migrant domestic workers, yet it still falls short of meeting some of the standards mentioned in the convention. The new legislation is composed of twenty-four articles and begins by defining certain different words used throughout the law before addressing other provisions.⁸¹¹

Stating that a contract shall regulate the relationship between the employer and the domestic worker and requiring three copies of the contract, the law also allows the contract to be

⁸⁰⁵ Id. art. 39.

⁸⁰⁶ *Id.* art. 21.

⁸⁰⁷ Complaint Concerning Non-Observance by Qatar of the Forced Labor Convention, supra note 797.

⁸⁰⁸ Exit and Entry Law, art. 30 (Qatar).

⁸⁰⁹ Taadeel Bath Ahkam Qanoon Al-Amal Al-Sader Bl-Ganon Ragam 14 Lesenat 2004 [Law No. 3 Amending some Labor Law Provisions of Law No. 14 of 2004], Labor Law No. 3 of 2014, art. 3 (Feb. 4, 2014) (Qatar).

⁸¹⁰ Qanoon Al-Mstakhdmeen Fee el Manazel [Migrant Domestic Workers Law], Law No. 15 of 2017 (Aug. 22, 2017) (Qatar).

⁸¹¹ *Id.* art. 1.

written in more than one language (although Arabic prevails in case of discrepancy) and states what should be included in the contract.⁸¹²

- Obligating recruitment to be conducted through a recruitment agency, although in exceptional cases the employer can hire a domestic worker through a network.⁸¹³
- Limiting the age for recruiting domestic workers to no less than eighteen years old and no more than sixty years old.⁸¹⁴
- Requiring the domestic worker undergo a probation period determined by the Minister. 815 The probation period is currently set for three months. 816
- Obligating the employer to provide proper accommodation, food, health care, medicine and medical care⁸¹⁷ while requiring the employer treat the worker with respect⁸¹⁸ and not endanger the worker's life or health nor physically or physiologically hurt the worker in any way.⁸¹⁹ The employer shall not let the worker work during sick leave⁸²⁰ or on the weekly day off or during rest periods unless there is a mutual agreement between the parties.⁸²¹
- Obligating the employer to pay the worker's salary at the end of each month through
 a bank transfer to the worker or through a signed receipt by the worker
 acknowledging payment of salary. The employer is also prohibited from deducting
 their own recruitment-based fees from the worker's salary.
- Prohibiting employers from letting the worker work in a country other than Qatar without the worker's consent. If the worker does not consent, the worker has the right to terminate the contract and maintain all rights including the end of service payment and repatriation to the country of origin by the employer.⁸²³

⁸¹² *Id.* art. 3.

⁸¹³ *Id.* art. 4.

⁸¹⁴ *Id.* art. 5.

⁸¹⁵ *Id.* art. 6.

⁸¹⁶ Hosam Waheb Allah, *Shakawi Min Makateb Al-Estekhdam* [Complaints from Recruitment Offices], AL-WATAN NEWS. (July 13, 2018), http://www.al-watan.com/news-details/id/145996 (Qatar).

⁸¹⁷ Migrant Domestic Workers Law, art. 7(1) (Qatar).

⁸¹⁸ *Id.* art. 7(2).

⁸¹⁹ *Id.* art. 7(3).

⁸²⁰ *Id.* art. 7(4).

⁸²¹ *Id.* art. 7(5).

⁸²² *Id.* art. 8.

⁸²³ *Id.* art. 9.

- Requiring the employer to repatriate the remains of a worker who dies during service
 to the country of origin and paying the worker's heirs the end of service payment and
 all of the workers entitlements.⁸²⁴
- Obligating the worker to respect the laws, culture, social traditions, and religion of Qatar. ⁸²⁵ The worker also must work with accuracy and honesty ⁸²⁶ and undertake to maintain employer's confidence in all secrets, money and possessions. ⁸²⁷ The worker must follow the orders of the employer, ⁸²⁸ maintain the possessions the employer provided to the worker, ⁸²⁹ and not work for another employer whether for pay or without pay. ⁸³⁰ Finally, the worker must treat the employer and his family well and not harm them especially children and the elderly. ⁸³¹
- Setting working hours to not exceed ten hours daily, unless agreed otherwise by the parties.⁸³²
- Entitling the worker to a paid day off each week. 833
- Permitting the worker to take annual leave of up to three weeks for every year of service. The worker is also entitled to a round trip ticket back home after two years of service.⁸³⁴
- Granting the worker an end of service payment provided that it is not less than three weeks' worth of payment for every year of service.⁸³⁵
- Allowing the employer to terminate the contract without notice and without providing an end of service entitlement for the year if the worker failed to fulfill obligations required by law or provided in the contract.⁸³⁶
- Entitling the worker to terminate the contract prior to its expiration and retain the end of service entitlement if the employer fails to fulfill any obligations under the law or

⁸²⁴ *Id.* art. 10.

⁸²⁵ *Id.* art. 11(1).

⁸²⁶ *Id.* art. 11(2).

⁸²⁷ *Id.* art. 11(3).

⁸²⁸ *Id.* art. 11(4).

⁸²⁹ *Id.* art. 11(5).

⁸³⁰ *Id.* art. 11(6).

⁸³¹ Id. art. 11(7).

⁸³² *Id.* art. 12.

⁸³³ *Id.* art. 13.

⁸³⁴ *Id.* art. 14.

⁸³⁵ *Id.* art. 15.

⁸³⁶ *Id.* art. 16.

the recruitment $contract^{837}$ or if the employer or any family members assault the worker. 838

- Requiring any dispute arising from the domestic workers law to be regulated in accordance with Article 11 of the labor law.⁸³⁹
- Compensating work injuries in accordance with the labor law provisions. 840
- Setting a one-year statute of limitations for filing a law suit against the employer.⁸⁴¹
- Fining anyone who fails to adhere to Article 3 up to 5000 dirhams.⁸⁴² A fine that does not exceed 10,000 dirhams shall be imposed on anyone who violates Articles 4 & 8 of the domestic workers law.⁸⁴³

D. Analysis

The new law is definitely a step forward for Qatar to protect the rights of migrant domestic workers. A number of important protections are offered to domestic workers through this law including regulated working hours for domestic workers, a weekly day off, and, most importantly, an end of service entitlement. Moreover, the law uses the same mechanism for both migrant workers and migrant domestic worker, which is a plus for the law. The law sets seven obligation on the employers and seven obligations on the domestic worker.

What the law failed to include was regulation for the recruitment agencies and a regulated probation period, which left these determinations to the relevant minister to regulate. Under the law the domestic worker is entitled to sick leave; however, there is no mention of how many days of sick leave are available. Also, the law mentions a weekly day off that should be agreed upon between the two parties but it does not mention monetary compensation if the worker works on the weekly day off. The law also fails to include overtime regulations or a minimum wage for domestic workers. Although Qatar announced a temporary minimum wage it is unclear if it applies to domestic workers.

838 *Id.* art. 17(3).

⁸³⁷ *Id.* art. 17.

⁸³⁹ *Id.* art. 18.

⁸⁴⁰ *Id.* art. 19.

⁸⁴¹ *Id.* art. 20.

⁸⁴² *Id.* art. 21(1).

⁸⁴³ *Id.* art. 21(2).

⁸⁴⁴ HUMAN RIGHTS WATCH, DOMESTIC WORKERS RIGHTS IN QATAR: HUMAN RIGHTS WATCH COMMENTARY ON QATAR'S LAWS AND REGULATION ON DOMESTIC WORKERS 13 (June 2018),

https://www.hrw.org/sites/default/files/supporting_resources/qatar0218_memo_pdf.pdf.

With regards to dispute resolution mechanism, the law refers to the labor law — specifically Chapter 11. This means the law uses the same mechanism for both migrant workers and migrant domestic worker, which a plus for the law. Disputes are heard by the Ministry of Administrative Development Labor and Social Affairs. If the dispute is not settled within seven days, the dispute is referred the dispute resolution committee.⁸⁴⁵

Although the law states the salary shall either be paid through a bank transfer or through a signed receipt it would have been preferable if Qatar included domestic workers in the wage protection system Qatar introduced in 2015,⁸⁴⁶ or created a wage protection system just for domestic workers to punish employers for any delay in paying wages. Although the law specifies that wages should be paid through deposit in the domestic workers bank account or given to the worker in cash along with a receipt that proofs, setting a wage protection system is a good idea.

Also, the law failed to include inspections in its provisions. While the household has its own privacy and no one can inspect a household without specific reason under the law, some circumstances require inspection — such as checking the accommodations provided to the domestic worker are proper. Since inspections should be done in accordance with the law, an inspection provision should be included in cases stipulated by law and where there is cause, such as when the domestic worker claims that the accommodation provided was insufficient or there is knowledge that the worker is maltreated. The provision on inspections should be as detailed as possible and used only when necessary. The U.A.E. sets an example with its inspection provision in its domestic workers law, which is discussed in Chapter 7.

Furthermore, the law did not mention illegalizing or criminalizing the withholding of passports and personal documents. Arguably, the legislature criminalized withholding of passport in the exit and entry law, which applies to domestic worker, thus removing the need to add it in the domestic workers law. Yet, the legislature should have added the prohibition to the domestic workers law as well.

Moreover, the law failed to mention that all domestic workers should be excluded from paying legal fees and that their complaints in court should be free of charge.

The main problems domestic worker face in Qatar are similar to other GCC countries: long working hours, no weekly days off, nonpayment of wages or paying less than the agree

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⁸⁴⁵ *Id.* at 10.

⁸⁴⁶ JUREIDINI, supra note 685.

amount of salary.⁸⁴⁷ Furthermore, some domestic workers complained of passport confiscation, restriction on movement, inadequate accommodations, and physical and sexual abuses.⁸⁴⁸

The most recent Amnesty International report was written in 2014, prior to the adoption of Law No. 15 of 2017. Many of the problems and abuses that domestic workers used to face are now addressed and codified in the new law. Since the law is newly adopted, it will come down to the implementation of the law as well as the awareness of domestic workers and employers of their respective right and obligations.

- Long working hours: Since most domestic workers are live-in domestic workers, it is hard to distinguish and regulate the working hours since the domestic worker can be on call 24/7. Many domestic workers stated that they work more than sixty hours per week.⁸⁴⁹ The new law regulates the working hours to ten hours per day.
- No weekly day off: Typically, female domestic workers are not given a day off, often out of fear that if the domestic worker is given a day off she may meet someone or become pregnant or that she will go out with her boyfriend. However, male domestic workers are usually given a day off. Under the new law, all domestic workers whether male or female are entitled to one day off per week.
- Non-payment of wages or paying less than the agreed amount: This is linked directly
 to the issue of contract substitution where a domestic worker signed a contract in
 the country of origin with a specific salary only to have it reduced upon reaching the
 country of destination. To address this issue, the government of Qatar announced that
 it would create an online contract that cannot be changed once the worker is in the
 country.
- Passport confiscation: Domestic workers often face passport confiscation once they reach the country of destination. Although the practice is illegal many employers still retain the documents out of fear that the domestic worker might abscond after stealing from the employer. It is imperative to raise employer awareness of passport confiscation by stating that a passport is the rightful possession of the worker. While the employer needs the worker's passport to process the residency permit, once that is done (within three months) the passport should be returned to the worker.

⁸⁴⁷ MY SLEEP IS MY BREAK, *supra* note 7.

⁸⁴⁸ *Id*.

⁸⁴⁹ *Id*.

Furthermore, Article 8 of Law No. 21 of 2015 prohibits passports confiscation and fines the employer 25,000 QR for retaining this document.⁸⁵⁰

- Restriction on movement and accommodation: As previously mentioned, the domestic worker is often prevented from leaving the house, even on the designated day off. This is especially true for female domestic workers while male domestic workers do not have the same problem. Hopefully, with the new law in place, the practice stops and employers start providing all domestic workers with freedom of movement on their day off. Furthermore, some domestic workers are not provided with appropriate accommodations. Some sleep on mattresses while others are not provided with rooms that lock to respect their privacy.⁸⁵¹ In accordance with the new law, however, employers are required to provide domestic workers with proper accommodations.⁸⁵²
- Physical and sexual abuse: Many abuses against domestic workers may go unreported due to the fact that domestic workers are restricted from leaving the house and their communication is also restricted. Both the UN Committee on Torture and the UN Committee Regarding the Elimination of Discrimination against Women declared deep concern for the situation of migrant domestic workers and the abuses they endure in Qatar.⁸⁵³

E. International Law

Qatar recently joined the core human right treaties — the ICCPR and the ICESCR. 854 Although Qatar announced a number of reservations on these conventions it is now obligated to adhere to most provisions, especially the freedom of movement and other provisions related to domestic workers and migrant workers alike. It is also party to the Convention against Torture

⁸⁵⁰ Qanoon Btantheem Dkhol w Khrooj Al-Wafdeen W Egamathum [Exit and Entry Law], Law No. 21 of 2015, arts. 8, 39 (Oct. 27, 2015) (Qatar).

⁸⁵¹ MY SLEEP IS MY BREAK, *supra* note 7.

⁸⁵² Qanoon Al-Mstakhdmeen Fee el Manazel [Migrant Domestic Workers Law], Law No. 15 of 2017, art. 7(1) (Aug. 22, 2017) (Qatar).

⁸⁵³ My Sleep is My Break, *supra* note 7.

⁸⁵⁴ *Qatar Joins Core Human Rights Treaties*, HUM. RTS. WATCH (May 25, 2018), https://www.hrw.org/news/2018/05/25/qatar-joins-core-human-rights-treaties.

and Other Cruel, Inhuman or Degrading Treatment or Punishment CAT (since 2000),⁸⁵⁵ the ICERD (since 1976),⁸⁵⁶ and CEDAW (since 2009).

Qatar is also a member of the ILO and has ratified five of the eight fundamental convention of the ILO.⁸⁵⁷ The conventions that are relevant here are the Forced Labor Convention No. 29, which Qatar ratified in 1998;⁸⁵⁸ the Abolition of Forced Labor Convention No. 105, which Qatar ratified in 2007;⁸⁵⁹ and the Labor Inspection Convention No. 81, which Qatar ratified in 1976.⁸⁶⁰

Here it is imperative to mention that Qatar faced a complaint, issued by twelve delegates from the ILO, for non-compliance with the Forced Labor Convention No. 29 and the Labor Inspection Convention No. 81. The complaint stated that Qatar had the most restrictive sponsorship system among GCC countries, often leaving workers in a forced labor situation through contract substitution, withholding of personal documents, paying large recruitment fees, restricting movement, prohibiting workers from leaving the country or the job, and withholding wages.⁸⁶¹

The complaint also examined the labor inspection and justice system, declaring it unfit to implement the few rights given to migrant workers under the law. The complaint stated that there were not enough labor inspectors and they were inadequately equipped to handle the complaints due to lack of understanding of the workers' languages. The report also indicated that the number of inspectors was so small in comparison to the number of migrant workers — around 200 inspectors for 1.5 million migrant workers. Furthermore, the report stated that it was difficult for migrant workers to access complaint mechanisms due to lack of information, legal aid, and interpreters. 864

⁸⁵⁵ Interactive Dashboard, supra note 599.

⁸⁵⁶ Id

⁸⁵⁷ Ratifications for Qatar, INT'L LAB. ORG.,

www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103429 (last visited Sept. 20, 2018).

⁸⁵⁸ *Id*.

⁸⁵⁹ *Id*.

⁸⁶⁰ Id

⁸⁶¹ Complaint Concerning Non-Observance by Qatar of the Forced Labor Convention, supra note 797.

⁸⁶² *Id*.

⁸⁶³ *Id*.

⁸⁶⁴ *Id*.

The Qatari government responded by inviting the International Labor Standards Department to undertake a high-level mission to the country. The visit resulted in observations and reformations regarding migrant workers in Qatar. First, to address the non-payment of wages, the government introduced the Wage Protection System (WPS) in 2015 in accordance with Law No. 1 of 2015. The new law requires direct payment to the workers' bank accounts through the Qatari Central Bank and establishes penalties for non-compliant employers. The standards of the country of the standards of the standards of the country.

To address the poor accommodation facilities for migrant workers, the government built up-to-date standard accommodations for migrant workers. Furthermore, to address the lack of labor inspectors, more labor inspectors numbers were added in 2016 — now there are 375 inspectors, including fifty female inspectors. Raising the number of inspectors is indeed a great step, however, the number still falls short in accordance with the 1.5 million workers overall. Inspectors conduct their work by site visits to private entities and companies to see if the companies adhere to the labor law.

It is hard for migrant workers to file cases against employers due to the fact that they might not be able to reach Doha to file a complaint. Qatar addressed this issue in an innovative way by introducing kiosk machines where workers can file complaints electronically in different languages. The kiosk works similar to an ATM and is located in a number of places outside Doha. The worker can file the complaint in eleven different languages — those most commonly spoken by migrant workers. This is a great idea worth spreading to other GCC countries. Furthermore, the Ministry of Labor introduced a hotline for complaints and dedicated an e-mail to file complaints against employers and respond to questions and inquires. Moreover, the ministry created social media accounts to address inquiries.

Under Law No. 21 of 2015, regulating exit and entry, Qatar announced its intent to abolish the sponsorship system.⁸⁷⁴ However, the sponsorship system still exists and that the

⁸⁶⁵ *Id*.

⁸⁶⁶ Qanoon Ragam Wahid le Senat 2015 btadeel baath ahkamt Qanoon Al- Amal Al Sader blqanoon ragam 14 le senat 2004 [Law No. 1 of 2015 amending some provision of law number 14 of the year 2004] (Qatar).).

⁸⁶⁷ Complaint Concerning Non-Observance by Oatar of the Forced Labor Convention, supra note 797.

⁸⁶⁸ *Id*.

⁸⁶⁹ *Id*.

⁸⁷⁰ *Id*.

⁸⁷¹ *Id*.

⁸⁷² *Id*.

⁸⁷³ *Id*.

⁸⁷⁴ *Id*.

government of Qatar basically just removed the word sponsor from the law. In other words, a worker still needs an employer to enter the country and start working. Furthermore, the worker still needs the employer's permission to leave the country; when the contract is terminated, the worker must leave the country. Eliminating the sponsorship system means that a worker would be free to enter the country without an employer and would be free to look for another employer without permission of the original employer.

F. Conclusion

Although Qatar faced significant criticism regarding its migrant workers and domestic workers after it won the bid to host the 2022 World Cup, that criticism led to a number of important changes and reforms in Qatar's laws and regulations.

Qatar still has a long way to go to improve the situation for migrant workers and migrant domestic workers. Now that the laws and regulations are in place, there is a need to raise awareness of the new laws adopted so that both the employer and the employee are aware of the changes — particularly the new penalties employers will face if they fail to adhere to the new laws and regulations.

Qatar's introduction of the multi-lingual kiosk machines for workers to file their complaints remains a great way to simplify the complaint mechanism for migrant workers. While it may be harder for domestic workers to file a complaint through the same process as migrant workers because domestic workers live inside the household and their movement may be restricted, nevertheless it is a step in the right direction and the process can be modified by introducing a mobile app that can serve the same purpose. This idea will be discussed more in Chapter 9.

Changing the laws in Qatar is not enough to change the practices people are familiar with. Implementing new laws is indeed a good first step to address the issue, yet, without adherence, new laws are meaningless. For example, consider abortion laws in South Africa – the law in place allows abortions but people still use illegal abortion methods. Positive laws may not be applied in practice.

Qatar needs to raise awareness of the new laws it passed and enforce those laws — especially the new domestic workers law.

⁸⁷⁵ Rachel Rebouche, *The Limits of Reproductive Rights in Improving Women's Health*, 63 ALA. L. REV. 1, 42 (2011).

CHAPTER 7: A CASE STUDY OF THE UNITED ARAB EMIRATES

A. Introduction

The United Arab Emirates (U.A.E.) is taking steps to improve the situation of migrant domestic workers, recently adopting a law that is somewhat compliant with the International Labor Organization Convention on Domestic Workers C189. Additional steps need to be taken but overall the U.A.E. is improving the conditions for migrant domestic workers. This chapter begins by providing background information about the history of the U.A.E. before moving to discuss the laws and regulations — especially analyzing the recent law of migrant domestic workers. Then it identifies the problems domestic workers face in the U.A.E. (which are similar to the problems reported in other GCC countries). Next, it addresses the recruitment process in the U.A.E. as well as the U.A.E.'s international obligations based on ratified conventions. Notably, the U.A.E. has not ratified many important human right conventions, thus, it is not obligated to follow those conventions. This chapter then moves to discuss the situation of human trafficking in the U.A.E. and how the U.A.E. is handling cases of trafficking. It concludes by mentioning the U.A.E.'s efforts to combat trafficking by providing help to victims of trafficking and abuse, which can include domestic workers.

One of the positive practices the U.A.E. adopted, and that other GCC countries can follow, is the establishment of the National Committee of Combating Human Trafficking. Another good practice in the U.A.E. is obligating recruitment agencies to provide training for migrant domestic workers on the culture and traditions of the U.A.E. Furthermore, the inspection provision in the U.A.E. domestic workers law is worth spreading to other GCC countries.

B. Background

The U.A.E. is located in western Asia bordering Oman to the east and the Kingdom of Saudi Arabia to the south; the Arabian Gulf is to the north.⁸⁷⁶ The U.A.E. has a well-established history of interaction with foreign powers that dates back to 6000 B.C.⁸⁷⁷ In 1515, the Portuguese arrived in the Gulf Peninsula, in what is modern Oman and the U.A.E.,⁸⁷⁸ but the subsequent fall

⁸⁷⁶ Facts and Figures, U.A.E. GOV., https://government.ae/ar-AE/about-the-uae/fact-sheet (last visited Sept. 20, 2018).

⁸⁷⁷ *History*, U.A.E. Gov., https://government.ae/ar-AE/about-the-uae/history (last visited Sept. 20, 2018). 878 *Id.*

of the Portuguese marked the rise of both Dutch and British powers in the region. 879 The British later defeated the Dutch and then entered into agreements with most of the Gulf states for the British to provide protection from outside powers as long as the Gulf states did not enter into agreement with other states without first consulting the British. 880 British rule attracted different migration flows: merchants, traders, and seasonal workers.⁸⁸¹

In 1966, Sheikh Zayed Bin Sultan Al-Nehyan ruled Abu Dhabi and started to unite the different emirates; his efforts were successful in July 1971 when six emirates (Abu Dhabi, Dubai, Sharjah, Fujairah, Um Al-Quewin, Ajman) joined together to create what is now known as the United Arab Emirates, declaring the new state official in December 1971.882 Subsequently, on February 10, 1972, Ras Al-Khaimah joined the Union, formally creating the U.A.E. out of seven separate states or emirates.⁸⁸³

Prior to the discovery of oil in the region, the U.A.E. economy relied on trade, pearl diving, and fishing.⁸⁸⁴ Following the discovery of oil in the 1960s, the country changed dramatically requiring major infrastructure projects, which demanded increased labor force in construction and other fields. 885 In 1962, Abu Dhabi was the first state to export oil, the same year that foreigners were estimated as half of its population. 886 Following the oil boom, the flow of foreigners continued to increase in the 1970s.⁸⁸⁷ The U.A.E., however, made a number of investments to diversify its economy and avoid sole reliance on oil revenues; oil revenues now only represent 30% of the country's GDP. 888

In 2010, the number of nationals (947,997) represented only 11.5% ⁸⁸⁹ of the population; whereas, the total number of foreigners was 7,316,073, which represented 88.5% of the population in the U.A.E.⁸⁹⁰ Dubai ranks first in the number of foreigners — approximately 90% of the population in Dubai⁸⁹¹ — followed by Abu Dhabi, where foreigners represent 75% of the

⁸⁷⁹ *Id*.

⁸⁸⁰ *Id*.

⁸⁸¹ BEL-AIR, supra note 774.

⁸⁸² History, U.A.E. GOV., supra note 877; DISTOR AL EMIRATE [CONSTITUTION] art. 1 (U.A.E.).

⁸⁸³ History, U.A.E. Gov., supra note 877.

⁸⁸⁴ Vlieger, *supra* note 748.

⁸⁸⁵ *Id*.

⁸⁸⁶ BEL-AIR, supra note 774.

⁸⁸⁸ I ALREADY BOUGHT YOU, *supra* note 7.

⁸⁸⁹ Facts and Figures, U.A.E. GOV., supra note 876.

⁸⁹⁰ Id.; Vlieger, supra note 748.

⁸⁹¹ Vlieger, supra note 748.

population.⁸⁹² Unlike other GCC counties, one-fourth of foreign workers are engaged in managerial posts across different sectors in the U.A.E.⁸⁹³ Furthermore, the number of unskilled workers present is expected to continue rising in the U.A.E. due to the fact that Dubai will host Expo 2020.⁸⁹⁴

Over 200 nationalities live and work in the U.A.E. ⁸⁹⁵ There is no specific information on the different nationalities, but estimates suggest the top three nationalities in the U.A.E. are Indian (2.6 million people), Pakistani (1.2 million), and Bangladeshi (700,000). ⁸⁹⁶ A Human Rights Watch report estimates that the overall number of migrant domestic workers is 146,000. ⁸⁹⁷ Another source estimates a far larger number of domestic workers in the U.A.E. – between 200,000 and 500,000 domestic workers. ⁸⁹⁸

C. Laws and Regulations

Sharia Law plays a major role in U.A.E. law, especially in family law and criminal law. 899 The seven emirates were given the choice to join a federal judicial system or create their own judicial system; while both Dubai and Ras Al-Khaima chose to have their own judicial systems, the other five states joined the federal system. 900 Abu Dhabi recently created its own system in addition to the federal system, thus, using a dual system. 901

The federal judicial system in the U.A.E. is divided into three stages — the court of first instance, the appellate court, and the cessation court ⁹⁰² — and two areas: civil courts and criminal courts. ⁹⁰³ Ras Al-Khaimah divided its judicial system into two stages while Dubai, which initially used two stages as well, changed to a three-stage system. ⁹⁰⁴ The Abu Dhabi system has a special chamber for domestic workers. ⁹⁰⁵

⁸⁹³ *Id*.

⁸⁹² *Id*.

⁸⁹⁴ Id

⁸⁹⁵ Facts and Figures, U.A.E. GOV., supra note 876.

⁸⁹⁶ BEL-AIR, supra note 774.

⁸⁹⁷ I ALREADY BOUGHT YOU, *supra* note 7.

⁸⁹⁸ Vlieger, *supra* note 748, at 49.

⁸⁹⁹ *Id.* at 35.

⁹⁰⁰ *Id.* at 36.

⁹⁰¹ U.A.E. JUDICIAL DEPARTMENT, https://www.adjd.gov.ae/AR/Pages/Courts.aspx (last visited Jan. 27, 2019).

⁹⁰² Id

⁹⁰³ Vlieger, *supra* note 748, at 36.

⁹⁰⁴ Id

⁹⁰⁵ U.A.E. JUDICIAL DEPARTMENT, *supra* note 901.

The U.A.E. made a lot of changes to its labor law to protect the rights of migrant workers, especially after criticism from human rights organizations and demonstrations held by Asian workers to improve the working conditions. 906 Among the changes the U.A.E. passed are the establishment of a new department in the Dubai police, which looks into trafficking cases and workers complaints. 907 The U.A.E. was also the first country in the GCC to introduce a wage protection system (in 2009), which is an electronic system that mandates payment through bank transfers. 908 Furthermore, the U.A.E. changed its sponsorship system and eliminated the "no objection" certificate, which prevented a worker from changing jobs without employer consent. 909 Now, there is a discussion on allowing certain categories of foreign professionals to sponsor themselves without the need for a national sponsor.⁹¹⁰

Moreover, the U.A.E. announced drastic labor law reform in a number of decisions from the Ministry of Labor, issued to improve the situation of migrant workers⁹¹¹ — Ministerial Decisions Nos. 764, 765 & 766. 912 The first decision requires a standardized contract in different languages that a worker signs in his/her country of origin, which is effective only when registered with the Ministry of Labor. The second ministerial decision concerns the right of both parties to terminate a contract, which means either the worker or the employer can end the agreement. 913 The third ministerial decision gives the worker the right to find another job in the U.A.E., even if the worker was the party who terminated the contract, and allows the worker to obtain a new work permit through the Ministry of Labor. 914

In the U.A.E., as in most other Gulf countries, domestic workers are excluded from the general protections offered under the labor law. 915 However, through its federal National Council, the U.A.E. adopted standalone legislation on domestic workers in June 2017. 916 The

⁹⁰⁶ BEL-AIR, supra note 774.

⁹⁰⁸ JUREIDINI, *supra* note 685.

⁹⁰⁹ BEL-AIR, *supra* note 774.

⁹¹⁰ *Id*.

⁹¹¹ New U.A.E. Labour Law for Terminating Employees to be Enforced in 2016, Aims to Regulate Relations between Employers and Workers, EMIRATES 24/7 NEWS (Sept. 29, 2015), https://www.emirates247.com/news/emirates/newuae-labour-law-for-terminating-employees-2015-09-29-1.604972 (U.A.E.).

⁹¹³ U.A.E. Employment Law Update, DENTONS, Jan. 3, 2016,

https://www.dentons.com/en/insights/alerts/2016/january/3/uae-employment-law-update.

⁹¹⁵ Qanoon Tantheem Alagat Al-Amal [Labor Law], Federal Law No. 8 of 1980, art. 3(c) (Apr. 20, 1980) (U.A.E.).

⁹¹⁶ Qanoon Amalah Al-Khedmah Al-Mosaeda [Domestic Workers Law], Federal Law No. 10 of 2017 (June 11, 2017) (U.A.E.).

draft law on domestic workers was proposed in the cabinet by the Federal National Council in the U.A.E. in 2012⁹¹⁷ in response to international calls to regulate the domestic workers industry. Furthermore, the U.A.E. vertically transplanted some of the provisions of the Convention of Decent Work for Domestic Workers C189 into its domestic law. The new legislation is composed of forty-one articles covering different areas.⁹¹⁸ The provisions of this law include:

- Regulating recruitment agencies. 919 The law also establishes obligations for recruitment agencies, such as informing the worker of the nature of the job and the salary as well as providing proof the worker is physically and psychologically fit to work, 920 and requiring medical tests completed thirty days prior to the worker entering the country. 921 The recruitment agency is also prohibited from accepting payments from the worker. 922 The recruitment agency bears the cost of returning the worker to his/her country and finding a replacement if certain conditions occur during the probation period. 923 The recruitment agency is also obligated to introduce the worker to the culture and traditions of the country. 924 The recruitment agency must teach the worker about the different avenues of redress available to the worker in case of a dispute between the worker and the employer. 925 Moreover, the recruitment agency is responsible for providing the worker with adequate accommodations until employment begins 926 and must provide the employer with a salary receipt book. 927
- Setting the contract between the worker and the employer. Those provisions include
 the conditions the employer sets for the domestic worker as well as the basic roles
 and obligations the employer must adhere to especially the kind of work
 performed and the salary expectations.⁹²⁸

⁹¹⁷ MAYSA ZAHRA, UNITED ARAB EMIRATES' LEGAL FRAMEWORK OF MIGRATION (2017), http://gulfmigration.eu/media/pubs/exno/GLMM_EN_2017_02.pdf.

⁹¹⁸ Domestic Workers Law (U.A.E.).

⁹¹⁹ *Id.* art. 3.

⁹²⁰ *Id.* art. 4.

⁹²¹ *Id*.

⁹²² *Id*. ⁹²³ *Id*.

⁹²⁴ *Id.* art. 4(5).

⁹²⁵ *Id.* art. 4(8).

⁹²⁶ *Id.* art. 4(6).

⁹²⁷ *Id.* art. 4(9).

⁹²⁸ *Id.* art. 5.

- Requiring the contract to follow the standardized format set by the Ministry and executing four copies one for the domestic worker, one for the employer and one for the recruitment agency and one for the ministry. 929
- Setting a six-month statute of limitations for the law. 930
- Establishing a six-month probation period. 931
- Requiring salary be paid within ten days of its due date.⁹³²
- Ensuring the domestic worker has a day off and requiring monetary compensation if the employee ends up working on the day off. 933
- Providing twelve hours of rest each day with at least eight consecutive hours of rest.934
- Providing thirty days of annual leave with the wages paid upfront to the domestic worker.⁹³⁵ The employer also must pay for a plane ticket for the worker every two years.936
- Entitling the domestic worker to thirty days of sick leave fifteen days paid leave and fifteen days non-paid leave. 937
- Obligating the employer to provide the worker with adequate accommodations, ⁹³⁸ the tools necessary for work, 939 food, clothes, 940 and adequate healthcare. 941 The employer must treat the worker with dignity, 942 only employ the domestic worker in the designated job unless the worker agrees to a shift in duties, 943 and provide the heirs of a domestic worker who died while employed with that month's salary and any pending payment. 944 Furthermore, the employer shall provide the domestic

⁹²⁹ *Id.* art. 6.

⁹³⁰ *Id.* art. 8.

⁹³¹ *Id.* art. 9.

⁹³² *Id.* art. 10.

⁹³³ *Id.* art. 12(1).

⁹³⁴ *Id.* art. 12(2).

⁹³⁵ *Id.* art. 13.

⁹³⁶ Id. art. 13(4).

⁹³⁷ *Id.* art. 14.

⁹³⁸ *Id.* art. 15(2). ⁹³⁹ *Id.* art. 15(1).

⁹⁴⁰ *Id.* art. 15(3).

⁹⁴¹ *Id.* art. 15(4).

⁹⁴² *Id.* art. 15(5).

⁹⁴³ *Id.* art. 15(8). ⁹⁴⁴ *Id.* art. 15(10).

worker with adequate compensation for work injuries in accordance with the compensation table. ⁹⁴⁵ The domestic worker shall not work for anyone other than the employer (unless stated in the contract) ⁹⁴⁶ and the domestic worker has the right to retain any personal documents. ⁹⁴⁷

- Obligating domestic workers to follow the rules set by the employer and complete the work assigned, 948 to follow the rules and traditions of the country, 949 to follow the employers' orders, 950 to maintain the employers' property, 951 to maintain the privacy of the employer and not divulge employer secrets, 952 to not to use works tools outside of the work place unless the employer allows, 953 provide help in time of catastrophe, 954 and to not work without a work permit. 955
- Requiring the employer to inform authorities within five days of the disappearance of a domestic worker.⁹⁵⁶
- Granting sight inspections both for recruitment agencies and, in certain conditions, the households where domestic workers work with an order from the prosecution's office when there is a complaint from the worker or the employer or there is clear evidence that there is a breach of the domestic workers law.⁹⁵⁷
- Providing a dispute mechanism. In case of a dispute between the domestic worker and the employer, the Ministry will first try to resolve the dispute amicably within two weeks; if unsuccessful, the dispute will be sent to court.⁹⁵⁸
- Terminating the contract in certain circumstances: the death of the domestic worker;⁹⁵⁹ the non-renewal of the contract by both parties;⁹⁶⁰ the termination of the

⁹⁴⁵ *Id.* art. 15(7).

⁹⁴⁶ *Id.* art. 15(6).

⁹⁴⁷ *Id.* art. 15(9).

⁹⁴⁸ *Id.* art. 16(1).

⁹⁴⁹ *Id.* art. 16(1).

⁹⁵⁰ *Id.* art. 16(2).

⁹⁵¹ *Id.* art. 16(4).

⁹⁵² *Id.* art. 16(5).

⁹⁵³ *Id.* art. 16(6).

⁹⁵⁴ *Id.* art. 16(7).

⁹⁵⁵ Id. art. 16(8).

⁹⁵⁶ *Id.* art. 17.

⁹⁵⁷ *Id.* arts. 19, 20.

⁹⁵⁸ *Id.* art. 21.

⁹⁵⁹ *Id.* art. 22(c).

⁹⁶⁰ *Id.* art. 22(a).

contract by both parties; ⁹⁶¹ the death of the employer; ⁹⁶² the domestic worker is convicted of a felony or sentenced to prison; ⁹⁶³ the worker reaches the age of sixty; ⁹⁶⁴ the worker is no longer fit to complete work and has exhausted all sick leave; ⁹⁶⁵ the worker does not work for ten consecutive day or fifteen separate days; ⁹⁶⁶ or either party to the contract does not fulfill their obligation to the contract. ⁹⁶⁷ The employer shall pay the worker all dues within ten days of the end of the contract. ⁹⁶⁸ Each party to the contract shall have the right to terminate the contract. ⁹⁶⁹ If the termination occurred on behalf of the employer, the employer is obligated to pay for the return plane ticket along with a month's salary. ⁹⁷⁰ If the termination occurred on behalf of the employee, the worker bears the cost of the plane ticket and must pay the employer a month's salary. ⁹⁷¹ In all circumstances of contract termination, the Ministry maintains the right to provide the worker with a new work permit. ⁹⁷² The employer shall not bear the cost to return the domestic worker if he/she started working for someone else. ⁹⁷³

- Enabling end of service payment in the amount of fourteen days for every year of service worked under the contract. 974 The worker shall be deprived of the end of service payment, however, if the contract is terminated due to absence from work or if the worker terminated the contract without legitimate cause. 975
- Sanctioning a person for up to six months imprisonment or a fine of at least 10,000 dirhams (not to exceed 100,000 dirhams) if a person harbors a run-away domestic worker or encouraged a domestic worker to run away from the employer.⁹⁷⁶ A

⁹⁶¹ *Id.* art. 22(e).

⁹⁶² *Id.* art. 22(c).

⁹⁶³ *Id.* art. 22(d).

⁹⁶⁴ *Id.* art. 22(f).

⁹⁶⁵ *Id.* art. 22(g).

⁹⁶⁶ *Id.* art. 22(h).

⁹⁶⁷ *Id.* art. 22(i).

⁹⁶⁸ *Id.* art. 22(2).

⁹⁶⁹ *Id.* art. 23(1).

⁹⁷⁰ *Id.* art. 23(2).

⁹⁷¹ *Id.* art. 23(3).

⁹⁷² *Id.* art. 23(4).

⁹⁷³ *Id.* art. 25.

⁹⁷⁴ *Id.* art. 26.

⁹⁷⁵ *Id*. art. 27.

⁹⁷⁶ *Id.* art. 29(3).

recruitment agency that does not adhere to the rules and laws shall be fined no less than 50,000 dirhams, not to exceed 100,000 dirhams.

- Requiring the working contract to be in Arabic and recognizing that, if accompanied by another language, the Arabic version prevails.⁹⁷⁷
- Recognizing that, in case of a legal dispute between the worker and the employer, the worker is exempt from paying any legal fees. 978

D. Analysis

The law is a step forward into providing domestic workers with much needed protections, setting a number of obligations on both domestic workers and employers. In forty-one articles the law provides domestic workers with weekly days off, annual leave, sick leave, and end of service entitlements. It also provides for a conciliation process and exempts domestic workers from paying any legal fees necessary to pursue their case.

The law sets 12 obligations on the employer and sets 9 obligations on the domestic worker. 985

The law also allows for house inspections in certain circumstances, 986 which is a significant provision. Under the U.A.E. Constitution, households are sacred unless the permission of the occupants is granted or the law allows for entry. Article 36 of the Constitution states that "houses are inviolable and may not be entered without the permission of its occupants except in accordance with the provisions of the law and in the conditions specified therein." 987

The law set the statute of limitations to six months before expiry of claims. This limitation is rather short for the domestic workers to file a complaint. Instead, the legislature should have set a one-year statute of limitations instead of six months.

978 *Id.* art. 34.

⁹⁷⁷ *Id.* art. 33.

⁹⁷⁹ *Id.* art. 12(1).

⁹⁸⁰ *Id.* art. 13.

⁹⁸¹ *Id.* art. 14.

⁹⁸² *Id.* art. 26.

⁹⁸³ *Id.* art. 21.

⁹⁸⁴ *Id.* art. 34.

⁹⁸⁵ *Id.* arts. 15, 16.

⁹⁸⁶ *Id.* arts. 19, 20.

⁹⁸⁷ DISTOR AL EMIRATE [CONSTITUTION] art. 36 (U.A.E.).

The law also caps the daily working hours at twelve. Unfortunately, it is hard to calculate the working hours since the domestic worker lives in the household and can be on call 24/7. The law does not mention overtime pay when the worker is asked to work over the set working hours.

The law dictates that the standardized contract is in Arabic and that the Arabic language version shall prevail. However, the contract should be conducted in the Arabic language alongside the language of the domestic worker, which would make it easier for the domestic worker to understand his/her rights and obligations.

Notably, the law obligates recruitment agencies to provide workers with proper training including the culture and traditions of the country. While other countries put the training obligation on the country of origin, the U.A.E. puts the obligation for training on recruitment agencies. The obligation is an improvement since, although some countries of origin started providing domestic workers with training, not all countries adhere to these requirements and some sort of training is essential prior to joining the migrant domestic work force.

Furthermore, an important obligation set on recruitment agencies was the requirement to inform and teach domestic workers about different avenues of redress in cases of abuse. 991 As many domestic workers are sometimes confined to the household it is essential these workers know where and how to seek help when needed.

The law also sets and obligates recruitment agencies to provide the employer with a receipt book to make sure that the domestic worker is paid on time. 992 Again this might be hard to monitor, however, it is a much-needed protection for domestic workers. Although the U.A.E. became the first country in the Gulf to introduce a wage protection system, 993 it still excludes domestic worker from that system. Since its inception in 2009, more than 2.9 million workers benefited from the system and over 205,000 business enrolled in the system. 994 Including domestic workers in this system would help reduce the wage abuses that occur. Even introducing

⁹⁹⁰ *Id.* art. 4(5).

⁹⁸⁸ Qanoon Amalah Al-Khedmah Al-Mosaeda [Domestic Workers Law], Federal Law No. 10 of 2017 (June 11, 2017) (U.A.E.).

⁹⁸⁹ *Id.* art. 33.

⁹⁹¹ *Id.* art. 4(8).

⁹⁹² *Id.* art. 4(9).

⁹⁹³ JUREIDINI, *supra* note 685.

⁹⁹⁴ Froilan T. Malit Jr. & Ali Al Youha, *Labor Migration in the United Arab Emirates: Challenges and Responses*, MIGRATION POL'Y (Sept. 18, 2013), https://www.migrationpolicy.org/article/labor-migration-united-arab-emirates-challenges-and-responses/.

a new wage protection system for domestic workers would help reduce complaints for nonpayment of wages.

Unfortunately, the law fails to set minimum wage for domestic workers. Moreover, even though the law set a conciliation process for domestic workers it failed to provide domestic workers with a specialized chamber once the case proceeds to court. A specialized chamber to look at domestic worker-related matters, however, would help speed up the litigation process and render judgments more quickly. Abu Dhabi is the one state that provides such a specialized chamber in its court system. Other states should look to include this feature in their systems. 995

Alongside adopting a law for migrant domestic workers, the U.A.E. took a step forward by transferring issues related to domestic workers from the Ministry of Interior to the Ministry of Labor.⁹⁹⁶

i. Problems Domestic Workers Face in the U.A.E.

Reportedly, the number one complaint from migrant domestic workers in the U.A.E. is non-payment of salaries and wages. 997 Other complaints include long working hours, physical and (in extreme cases) sexual abuse, passport confiscation, restriction on freedom of movement, as well as lack of adequate food, healthcare, and proper accommodations. 998

First, non-payment of wages or payment of wages less than expected or less than mentioned in the contract is a significant concern. Furthermore, research indicated that a third of Filipina domestic workers and a fifth of Indonesian domestic workers did not know the amount of their salaries. ⁹⁹⁹ The numbers show that most domestic workers are unaware of their rights under their contracts.

Second, historically, domestic worker contracts did not include weekly days off or set working hours, which left domestic workers at the mercy of the employer. Thus, many domestic workers were working for more than eleven hours a day with no weekly day off. ¹⁰⁰⁰

⁹⁹⁵ U.A.E. JUDICIAL DEPARTMENT, *supra* note 901.

⁹⁹⁶ *Human Resources and Resettlement Supervises Domestic Workers*, AL-EMIRATE AL-YOUM (Dec. 18, 2016), http://www.emaratalyoum.com/local-section/other/2016-12-18-1.954173 (U.A.E.).

⁹⁹⁷ *Id.* at 105.

⁹⁹⁸ I ALREADY BOUGHT YOU, *supra* note 7.

⁹⁹⁹ Vlieger, *supra* note 748, at 131.

¹⁰⁰⁰ I ALREADY BOUGHT YOU, *supra* note 7.

Third, the employer often retains the domestic worker's passport from the minute the domestic workers arrive at the airport. Employers need the passport to provide the worker with a residency permit, however, keeping the passport after that is illegal.

Fourth, some employers do not allow the domestic worker to leave the household, confining her to the house or restricting her movement to only allow her out of the house when throwing out the trash. Although some domestic workers may experience this issue, other research found that was not the case for domestic workers in Dubai and other U.A.E. states where domestic workers were often seen walking around freely on their days off. 1003

Fifth, it is reported that some domestic workers face forced labor and trafficking conditions in the U.A.E., including not being paid by the employer, retaining a domestic workers passport, not allowing a domestic worker out the house, and physically threating the domestic worker. Also, due to the *Kafala* system (the sponsorship system), domestic workers are inherently vulnerable to forced labor. 1005

One of the main issues that occurs in the U.A.E., as well as other Gulf states, is contract substitution — where the worker signs a contract in their country of origin but it is replaced by another contract in the country of destination. The contract might offer a monthly salary of \$400 USD in the country of origin but upon arrival the worker is given just 400 U.A.E. dirhams, equivalent to less than \$109 USD. 1006

ii. Recruitment Process

The recruitment process starts from the country of origin by either a middleman, a designated recruiter, or a network of family or friends who migrated to the Gulf region. Middlemen usually require a fee for finding the worker a job in the Gulf states and, even though it is illegal in the U.A.E., this happens in the country of origin where the U.A.E. has no jurisdiction. Some agencies still require a fee for finding an employer in the Gulf states. Research conducted in countries of origin indicated that domestic workers are not always

1002 Id

¹⁰⁰¹ *Id*.

¹⁰⁰² Id.

¹⁰⁰³ Vlieger, *supra* note 748, at 134.

¹⁰⁰⁴ I ALREADY BOUGHT YOU, *supra* note 7.

¹⁰⁰⁵ Id.

¹⁰⁰⁶ Vlieger, *supra* note 748, at 122.

¹⁰⁰⁷ I ALREADY BOUGHT YOU, *supra* note 7.

¹⁰⁰⁸ Vlieger, *supra* note 748, at 119.

¹⁰⁰⁹ Malit Jr. & Al Youha, *supra* note 994.

informed of the contract provisions regarding their rights and obligations and are not told of some of the risks. ¹⁰¹⁰ Other reports indicated that recruitment agencies did not always offer help for distressed domestic workers. ¹⁰¹¹ Upon examination of contracts some contained a salary of \$200 USD while others included a salary of \$400 USD — it depended on the recruitment agency in the country of origin. ¹⁰¹² Some recruitment agencies provide little help to domestic workers and at times placed new domestic workers with known abusive employers. Other recruitment agencies, however, block abusive employers. ¹⁰¹³

Only 77% of domestic workers stated that they have a signed contract. Furthermore, while 70% stated that they signed a contract they can read, only 58% said they had a copy of the contract. ¹⁰¹⁴

Many countries of destination now require domestic workers to attend a pre-departure orientation during which information is provided to domestic workers on language training, cultural training, and work training. Research found that those training courses are typically insufficient and provide false information to domestic workers, such as indicating that they have no rights, that having a mobile phone is against the law, etc. However, at times those courses provide domestic workers with much needed instructions, such as not signing or placing a finger print on a blank paper, not interacting with strange men, or how to reach out to the embassy. 1017

These instances demonstrate that both countries of origin and countries of destination must work together to create the teaching material provided to domestic workers on their legal rights and obligations. With many GCC countries now passing laws for domestic workers it is imperative that domestic workers know their rights and obligations prior to coming to the GCC, especially the avenues of redress provided.

In the country of destination, an employer seeks a domestic worker by going to a recruitment agency and perusing a booklet of potential domestic workers. When a worker is picked, the recruitment agency in the country of destination contacts its counterpart recruitment agency in the country of origin. The employer pays a fee to the recruitment agency, which

¹⁰¹⁰ Vlieger, *supra* note 748, at 121.

¹⁰¹¹ I ALREADY BOUGHT YOU, *supra* note 7.

¹⁰¹² Vlieger, *supra* note 748, at 121.

¹⁰¹³ I ALREADY BOUGHT YOU, *supra* note 7.

¹⁰¹⁴, Vlieger, *supra* note 748, at 121.

¹⁰¹⁵ *Id.* at 125; Malit Jr. & Al Youha, *supra* note 994.

¹⁰¹⁶ Vlieger, *supra* note 748, at 125.

¹⁰¹⁷ *Id*.

sometimes includes the plane ticket. Otherwise, the employer is required to pay for the plane ticket, the visa, and the health inspection independently.

E. International Law

The U.A.E. has ratified a number of international conventions. Along with international conventions there is also customary international law. Some believe that customary international law is binding on states, even if the state did not accede to it, while others believe customary international law is non-binding but influential. Of primary importance here are the different conventions to which the U.A.E. is a party.

The U.A.E. has been a member party to CEDAW since 2004¹⁰¹⁹ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since 2014.¹⁰²⁰

The U.A.E. is not a member state to a number of important conventions, which makes it unaccountable under international law to the provisions of those conventions. However, the U.A.E. is a member state of the ILO where the U.A.E. has ratified six of the eight fundamental conventions, including the Forced Labor Convention in 1982¹⁰²³ and Discrimination Convention No. 111 in 2001. 1024

The Universal Declaration of Human Rights is part of customary international law and the U.A.E. violates some of its provisions, especially Article 13 and Article 24. Article 13 stipulates:

- Everyone has the right to freedom of movement and residence within the borders of each state.
- Everyone has the right to leave any country, including his own, and to return to his country. 1025

¹⁰¹⁸ *Id.* at 144.

¹⁰¹⁹ Interactive Dashboard, supra note 599.

¹⁰²⁰ *Id*.

¹⁰²¹ The U.A.E. is not a state party to the ICCPR or the ICESCR.

¹⁰²² Ratifications for U.A.E, INT'L LAB. ORG.,

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103495 (last visited Sept. 20, 2018).

¹⁰²³ *Id*.

¹⁰²⁴ *Id*.

¹⁰²⁵ UDHR, art. 13.

Due to the sponsorship system, the domestic worker is tied to an employer and can leave that employer only if certain conditions are met. Also, some employers deny the worker from leaving the house, which is a clear violation of the Universal Declaration of Human Rights.

Article 24 stipulates that everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. 1026 Historically, working hours were not regulated by law, leaving domestic workers on call at all hours of the day and night; however, that changed with new legislation where working hours were regulated and the worker was also provided with a weekly day off.

As a member party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the U.A.E. is bound by the articles that apply to domestic workers — specifically, Article 13 and Article 14 of the Convention.

Article 13 states that:

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given. 1027

Article 14 provides that:

Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation. 1028

Again, the U.A.E. has set up a complaint mechanism for migrant domestic workers in cases of torture, which is a criminal offence in the U.A.E.

¹⁰²⁶ *Id.* art. 24.

¹⁰²⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 13, Dec. 10, 1984, 1465 U.N.T.S. 85 [hereinafter CAT Convention]. ¹⁰²⁸ *Id.* art. 14.

i. Human Trafficking

The U.A.E. was the first Gulf state to establish a National Committee for Combating Human Trafficking in 2007 to ensure implementation of Federal Law No. 51 of 2006, regarding anti-human trafficking, amended in Law No. 1 of 2015. The amendments were put forth to improve the protections offered to victims, establish harsher penalties for trafficking crimes, and detail the investigation and trial process in human trafficking cases. 1030

The Committee covers all seven states of the U.A.E. and is tasked with both revising legislation related to human trafficking and conducting studies on human trafficking in the U.A.E. 1031 Furthermore, the Committee offers training and provides awareness to the community with regards to the crime of human trafficking. The Committee has representatives from the Ministry of Interior, the Ministry of Labor, the Ministry of Health and Social Affairs, the Ministry of Foreign Affairs, the State Security Authority, and the Red Crescent. 1032 In accordance with its 2015 annual report, there were seventeen cases of trafficking and fifty-four people arrested for human trafficking that year. 1033 The Committee's strategy is based on five pillars: prevention, prohibition, prosecution, punishment, and protection of victims, as well as strengthening international cooperation. 1034

The Ministry of Interior also plays a role in combating human trafficking by raising awareness of trafficking, cooperating with Interpol by exchanging information on human trafficking, tightening security at border entry points, and monitoring suspects involved in those crimes. The 2016 report saw an increase in the number of cases handled by the Committee; twenty-five cases were registered, with 106 defendants and 34 victims. 1036

¹⁰²⁹ Combatting Human Trafficking, U.A.E. Gov., https://government.ae/information-and-services/justice-safety-and-the-law/combatting-human-trafficking (last visited Sept. 20, 2018).

¹⁰³⁰ ZAHRA, *supra* note 917.

¹⁰³¹ Combatting Human Trafficking, supra note 1029.

¹⁰³³ The Release of the Annual Report of the National Committee for Combating Human Trafficking in the U.A.E., AL-EMIRATE AL-YOUM (May 22, 2016), www.emaratalyoum.com/local-section/other/2016-05-22-1.899004 (U.A.E.).

¹⁰³⁴ Ahmed Abed, 34 Thahyat Etjar Blbashar w 106 Mtahmeen fe 25 Gathyah Al-am AlMathi [34 Human Trafficking Victims and 106 Defendants in 25 Cases Last Year], AL-EMIRATE AL-YOUM (May 16, 2017), www.emaratalyoum.com/local-section/accidents/2017-05-16-1.996021 (U.A.E.); Annual Report of the National Committee for Combating Human Trafficking in the U.A.E., supra note 1033.

¹⁰³⁵ Combatting Human Trafficking, supra note 1029.

¹⁰³⁶ Abed, *supra* note 1034.

Moreover, 300,000 dirhams (\$81,688 USD) were allocated to the Human Trafficking Victim Fund in a collaboration between the private sector and the public sector. Furthermore, the Committee launch its own website where a person can complain or provide suggestions through the internet portal. 1038

ii. Shelters

There are a number of shelters for victims of trafficking in the U.A.E. — some are run by the government while others are run by NGOs. ¹⁰³⁹ The governmental shelter is called the Ewa'a Shelters, which is for women and child victims of human trafficking and sexual exploitation. ¹⁰⁴⁰ The shelter was established in 2008 in Abu Dhabi ¹⁰⁴¹ and mainly serves female victims, however, another shelter was opened in 2013 for male victims. ¹⁰⁴² More shelters are expected to open in the future.

Furthermore, there is another shelter in Dubai called the Dubai Foundation for Women and Children. This shelter provides services to women and children who were abused, trafficked or suffered domestic violence. Domestic workers can turn to this shelter in cases of abuse, and are provided with a accommodations, case management, medical care, psychological support, and counseling, as well as legal consular and immigration assistance. Domestic workers can turn to this shelter in cases of abuse, and are provided with a accommodations, case management, medical care, psychological support, and counseling, as well as legal consular and immigration assistance.

F. Recent Reforms

In April 2017, the U.A.E. declared its intent to establish centers to act as recruitment agencies for domestic workers; called *tadbeer* (an Arabic word for management), these centers are a collaboration between the private and public sectors and nine separate tasks were delegated to the *tadbeer* centers. First, the centers will receive, print, and electronically send

¹⁰³⁷ Annual Report of the National Committee for Combating Human Trafficking in the U.A.E., supra note 1033.

 $^{^{1038}}$ Id.

¹⁰³⁹ I ALREADY BOUGHT YOU, *supra* note 7.

¹⁰⁴⁰ Combatting Human Trafficking, supra note 1029.

¹⁰⁴¹ SHELTERS FOR VICTIMS OF HUMAN TRAFFICKING, www.shwc.ae/portal/vision.mission.aspx (last visited Sept. 20, 2018).

¹⁰⁴² Id

¹⁰⁴³ I ALREADY BOUGHT YOU, *supra* note 7.

¹⁰⁴⁴ Combatting Human Trafficking, supra note 1029.

¹⁰⁴⁵ *Id*.

¹⁰⁴⁶ Ashraf Jamal, *9 Tasks to be Carried Out by "Tadbeer" for the Recruitment and Operation of Domestic Workers*, AL-EMIRATE AL-YOUM (Apr. 2, 2017), www.emaratalyoum.com/local-section/other/2017-04-02-1.983469 (U.A.E.).

recruitment requests to the Ministry of Human Resources and Naturalization. 1047 Second, the centers will provide live-in or temporary domestic workers to the employers. 1048 Third, the centers will designate a relations manager to handle case files for employers and domestic workers. 1049 Fourth, the centers will provide additional services such as health checks, residency permits, civil IDs, and health insurance. Fifth, the centers will assign someone to meet the domestic worker at the airport and deliver the worker to the job site. 1050 Sixth, the centers will guide and advise employers on the nationalities and different occupations available. 1051 Seventh, the centers will conduct interviews prior to the start of the job, plus train and prepare the worker prior to starting the job. Eighth, the centers will provide a specialized support center to ensure the balance of the relationship between the parties. 1052 The final task of the center will be to provide accommodations to domestic workers, 1053 essentially acting as shelters to domestic workers if things do not work out with the employers. However, Tadbeer centers laws mentions 22 obligation and tasks of the tadbeer centers. 1054

Furthermore, Ministerial Decree No. 762 of 2017, which was published in October 2017, further explains the functions of tadbeer centers where employers can apply for a live-in domestic worker or a temporary domestic worker. 1055 The centers will be under the supervision of the Ministry of Human Resources and Emiratization. Also, tadbeer centers are required by law to deposit 500 dirhams in case it fails to fulfill any of its mentioned obligations. 1056

The establishment of tadbeer centers across the U.A.E. is worth noting and following to see how the centers will operate and the services they will provide to both migrant domestic workers and employers. Furthermore, the centers will help provide part-time domestic workers to employers, which is a great idea. Also, since the centers will be obligated to provide accommodations for domestic workers it may solve the problem of absconding domestic workers.

¹⁰⁴⁷ *Id*.

¹⁰⁴⁸ *Id*.

¹⁰⁴⁹ *Id*.

¹⁰⁵⁰ *Id*.

¹⁰⁵¹ *Id*.

¹⁰⁵² Id.

¹⁰⁵⁴ Qarar Wezari Bshaen Enshaa w Tarkhes Marakez Tagdeem Khadamat Al-Amalah Al-Mosaedah (Marakez Al-Khedmah Tadbeer) [Ministerial Decree Regarding the Establishment of Tadbeer Centers] Law No. 762 of 2017, art. 9 (Oct. 9, 2017) (U.A.E.).

¹⁰⁵⁵ *Id.* art. 10.

¹⁰⁵⁶ *Id.* art. 5.

G. Conclusion

Migrant domestic workers in the U.A.E., like other GCC countries, face a number of problems in their new jobs. The new domestic workers law in the U.A.E. intends to address those complaints. Since the law was recently adopted, it will take time to see its effectiveness. Now that the law is in place, however, an important step is to raise awareness of the provisions of the new law.

While the U.A.E. opened a number of shelters, although not solely for domestic workers, the mission statements reveal the intent to admit domestic workers. Establishment of the National Committee to Combat Human Trafficking is another step that other GCC countries can and should follow.

Furthermore, the establishment of *tadbeer* centers may help improve the situation for migrant domestic workers, especially since the centers are obligated to provide domestic workers with shelters, training, and the opportunity to interview with new potential employers.

Another good practice in the U.A.E. is obligating recruitment agencies to provide training for migrant domestic workers on the culture and traditions of the U.A.E. Furthermore, the inspection provision in the U.A.E. domestic workers law is worth spreading to other GCC countries. The idea is adopted in the proposal Chapter 9 and in the unified GCC law in order to help in assessing the situation of domestic workers in certain cases.

Table 2: Comparing Domestic Workers Protection Laws

	Kuwait	Bahrain	Saudi Arabia	Qatar	United Arab Emirates
Law	A separate law for domestic workers: Law No. 68 of 2015	Domestic workers are included in some provisions of the Labor Law No. 36 of 2012	A separate law for domestic workers: Resolution No. 310	A separate law for domestic workers: Law No. 15 of 2017	A separate law for domestic workers: 2017
End of Service Payment	A month's wages for every year of service Article 23	Half a month's wages for the first 3 years and a month for every year after Article 116	A month's wages after spending 4 years of service Article 16	3 weeks' wages for every year of service Article 15	14 days' wages for every year Article 26
Days Off	1 day per week Article 22	N/A	1 day if parties agree Article 8	1 day per week Article 13	1 day per week Article 12(1)
Sick Leave	N/A	N/A	Sick leave that does not exceed 30 day a year Article 11	The domestic worker should rest if sick Article 7	15 days paid sick leave; 15 days non- paid sick leave Article 14
Annual Leave	Annual leave Article 22	30 days per year Article 58	30 days per two years Article 10	3 weeks for every year of service Article 14	30 days paid per year Article 13
Working Hours/Rest Hours	8 hours of rest, 12 hours total work, and no work for more than 5 consecutive hours Article 22	N/A	9 hours of rest Article 7(6)	10 working hours Article 12	No less than 12 hours of rest, including 8 consecutive hours Article 12(2)
Legal Fees	Domestic worker is exempt from legal fees Article 36	Domestic worker is exempt from legal fees Article 6	N/A	N/A	N/A
Probation	6 months	3 months	3 months	3 months	6 months
Period	Article 17	Article 21	Article 5	In Arabic	Article 9
Standardized Contract	In Arabic and English	In Arabic	In Arabic and English	In Arabic	In Arabic and English
Minimum Wage	No less than 60 KD	N/A	Some nationalities have a max wage	N/A	N/A
Recruitment Authority	Manpower Authority	Labor Market Regulatory Authority	Ministry of Labor and Social Development	Ministry of Labor and Social Affairs	Human Resources and Emiratization Ministry
Best Practices	Domestic Workers Shelter; Minimum Wage	LMRA; Awareness Campaign; Informational Pamphlets in different languages	Musand; Wage Protection system	Complaint Kiosk	Tadbeer Centers; Inspection Clause; Nat'l Committee of Combating Human Trafficking

CHAPTER 8: RECENT EVENTS REGARDING MIGRANT DOMESTIC WORKERS IN KUWAIT

The current president of the Philippines, Rodrigo Duterte, recently announced a ban on Filipino citizens working in Kuwait especially domestic workers. ¹⁰⁵⁷ The Minister of Labor enacted the ban pending an investigation into the death of some domestic workers in Kuwait. ¹⁰⁵⁸ The ban went into effect on January 19, 2018. ¹⁰⁵⁹ Initially, the ban was for all nationals working in Kuwait and those who were in the Philippines on vacations were not allowed to return to Kuwait. ¹⁰⁶⁰ Recruitment agencies in the Philippines, however, urged the Labor Minister to reconsider and lift the ban on skilled workers, which was later achieved. ¹⁰⁶¹

President Duterte promised domestic workers who wished to return from Kuwait, monetary compensation, jobs in the Philippines, and free flight tickets. 1062 Kuwait tried to negotiate and sent a delegation to the Philippines; news sources indicated that a new agreement was in the works between the Philippines and Kuwait. 1063 Kuwait even announced an agreement with the Philippines in which domestic workers would receive \$400 USD, would get to keep their passports, and their sponsor would not be changed without the consent of the worker, among other concessions. 1064 Things turned to worse, however, when a Filipino domestic worker's body was found in a freezer in Kuwait; there were signs of abuse and torture. The domestic worker was working for a Lebanese couple who were living in Kuwait and left the apartment. 1065 The body was found after the couple left the country. 1066 President Duterte then

¹⁰⁵⁷ Philippines Officially Bans its Citizens from Working in Kuwait, AL-QABAS NEWS. (Jan. 19, 2018), alqabas.com/490324/ (Kuwait).

¹⁰⁵⁸ *Id*.

¹⁰⁵⁹ *Id*.

¹⁰⁶⁰ Recruitment Agencies Urged to Allow Deployment of Skilled Vacationing Workers in Kuwait, AL-QABAS NEWS. (Jan. 22, 2018), alqabas.com/491531/ (Kuwait).

¹⁰⁶² Philippines President bans Filipino Domestic Workers to Kuwait and Calls its Citizens Residing in Kuwait to Come Back for Free, AL-ANBAA NEWS. (Feb. 11, 2018), http://www.alanba.com.kw/ar/kuwait-news/811083/10-02-2018- بالفيديو -الرئيس-الفلبيني يوقف-العمالة -إلى-الكويت-ويدعو -مواطنيه-المقيمين-للعودة-مجانا- (Kuwait).

¹⁰⁶³ Kuwait Reaches an Agreement with the Philippines, REUTERS (Mar. 17, 2018), https://ara.reuters.com/article/ME_TOPNEWS_MORE/idARAKCN1GT0ND. ¹⁰⁶⁴ Id.

¹⁰⁶⁵ Mohammed Ebrahim, *Al-athor Ala Jethat Filipinia fe Al-Frezar* [*Body of a Filipino Domestic Worker Found in a Fridge*], AL-QABAS NEWS. (Feb. 7, 2018), https://alqabas.com/498766/ (Kuwait). ¹⁰⁶⁶ *Id*.

considered extending the ban to include other GCC countries, specifically Saudi Arabia and Oatar. 1067

The problem escalated between the two parties when a video was released showing a special task force from the Philippines' embassy helping domestic workers run away from employers' homes. 1068 The Philippines stated that the task force was helping workers flee abusive employers using diplomatic cars. The task force was composed of seven workers. The Kuwaiti government, however, stated that it infringed Kuwait sovereignty and the Kuwaiti public demanded action from the government. Kuwait's Ministry of Foreign Affairs requested that the ambassador of the Philippines meet with officials and submitted two protest memoranda stating that the Philippines infringed the sovereignty of Kuwait and violated the Vienna Convention on Diplomatic Relations. 1069 Later, the government of Kuwait gave the Philippines ambassador three days to deliver the persons of the task force to the Kuwaiti Authority; if the Philippines ambassador failed to do so he would be asked to leave. 1070 The Kuwaiti authorities arrested three of the seven members of the task force and charged them with helping domestic workers abscond. 1071 Thereafter, the Philippines' ambassador was asked to leave the country and was considered a persona non grata. 1072 President Duterte then demanded that all Filipinos leave Kuwait, that the ban on Filipino workers to Kuwait stand, and that all workers should return even if their employers wanted them to stay. 1073

President Duterte came under fire in the Philippines for his call that all workers return. ¹⁰⁷⁴ Later, the Philippines' Ministry of Foreign Affairs announced that 96% of the Filipino workers

¹⁰⁶⁷ Baad Al Kuwait Al-Philippin Twajeh Entigadatha ela Al-Suadia w Qatar [After Kuwait the Philippines Criticizes Qatar and Saudi Arabia], AL-QABAS NEWS. (Feb. 7, 2018), https://alqabas.com/498465/ (Kuwait).

¹⁰⁶⁸ Ameer Zaki, A New Video Smuggling of a Filipino Domestic Worker from an Employer's Home, AL-ANBAA NEWS (Apr. 22, 2018), http://www.alanba.com.kw/ar/kuwait-news/827602/22-4-2018 (Kuwait).

¹⁰⁶⁹ Hamad Al-Salamah & Ghanam Al-Ghanam, The Ministry of Foreign Affairs to the Philippines Ambassador: Hand Over the Perpetrators or Leave, AL-QABAS NEWS. (Apr. 21, 2018), https://alqabas.com/526971/ (Kuwait).

¹⁰⁷¹ Mohammed Al-Jalahmah, Alanbaa Takshef Tafaseel al-Kamelah Lel Egaa bl Motawrdeen Btahreeb Al-Felipiniyat min Mnazel Kflaehum [Alanaba Reveals Full Details of Ministry of Interior Plan to Capture the Accused Involved in Helping Filipino Domestic Workers Abscond from their Sponsors], AL-ANBAA NEWS. (Apr. 23, 2018), http://www.alanba.com.kw/ar/kuwait-news/incidents-issues/827752/23-04-2018-الذاب المناب المناب

¹⁰⁷² Kuwait Expels the Filipino Ambassador, SKY NEWS ARABIA (Apr. 25, 2018), https://www.skynewsarabia.com/middle-east/1042249.

¹⁰⁷³ Crisis with the Philippines Gets Complicated, AL-QABAS NEWS. (Apr. 29, 2018), https://alqabas.com/530086/(Kuwait).

¹⁰⁷⁴ Mohammed Ameen, *Alazmah Maa Al-Filipin Tatafagam* [*Refusal to Leave: The Decision is Reckless and Shortsighted*], AL-QABAS NEWS. (Apr. 29, 2018), https://alqabas.com/530086/ (Kuwait).

in Kuwait did not have problems with their employers and that the focus of the Filipino government was on those that were mistreated. 1075 Furthermore, the Ministry indicated that it was important the two parties enter into a bilateral agreement to protect the Filipino workers and that the ban would not be lifted unless the parties reach an agreement. 1076 Thereafter, the Minister of Labor visited Kuwait; Kuwait agreed to release the drivers it arrested and things started to improve between the Philippines and Kuwait. 1077 The parties discussed a bilateral agreement; which was reached and signed on May 11, 2018. 1078 The agreement states that Filipino domestic workers are entitled to retain their personal documents including their passports, 1079 allows Filipino domestic workers to retain their cell phones, and obligates the employer to provide proper accommodation, 1080 food and health services to the domestic worker. Any dispute arising between the domestic worker and the employer shall be referred to the Domestic Workers Department for conciliation within fourteen days. If the dispute is not settled in that period the dispute shall be referred to the designated court within thirty days and the domestic worker shall be exempt from paying any legal fees. 1081

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¹⁰⁷⁵ Mohammed Marah, *The Filipino Minister of Foreign Affairs: The Kuwaiti People Consider the Filipino Workers as Members of their Families*, AL-QABAS NEWS. (May 2, 2018), https://alqabas.com/531106/ (Kuwait). ¹⁰⁷⁶ Ld

¹⁰⁷⁷ Mohammed Marah, *Kuwait Agrees to Release Four Drivers*, AL-QABAS NEWS. (May 9, 2018), https://alqabas.com/533890/ (Kuwait).

¹⁰⁷⁸ Mohammed Marah, *Kuwait and Philippines Sign the Domestic Workers Agreement*, AL-QABAS NEWS. (May 11, 2018), https://alqabas.com/534605/ (Kuwait).

Deyab Osama, *The Two Parties Sign the Domestic Workers Agreement and a New Ambassador Shall be Named Soon*, AL-ANBAA NEWS. (May 11, 2018), http://www.alanba.com.kw/ar/kuwait-news/832205/12-05-2018-(Kuwait).

¹⁰⁸⁰ *Id*.

¹⁰⁸¹ *Id*.

CHAPTER 9: PROPOSED IMPROVEMENTS

A. The Proposal for a Regional Body

Based on the comparative analysis of the legislation of the Gulf countries regarding domestic workers, I propose the establishment of a regional body to handle the recruitment of migrant domestic workers for all GCC countries. This will transfer many of the features of the sponsorship system to the body and also allow coordination among GCC countries for migrant workers in the region. The idea is to transfer the sponsorship system from individuals to the body that will handle the recruitment of domestic workers and, at the same time, preserve the values of the *Kafala* system of protection and hospitality.

First, the regional body will be an administrative agency established in much the same way as other administrative agencies run by the GCC. The body will be called the "GCC Migrant Workers Body" (or "Body" for short). As the name implies, this body will potentially have the capacity to deal with all migrant workers, not only migrant domestic workers. However, regulation of all migrant workers is a topic for future consideration; what is considered here is how such a body would regulate migrant domestic workers, the topic of this dissertation. Second, the Body can be set up under the applicable provisions of the instruments that establish the GCC and be established under the functions of the GCC Ministerial Council. Article 12 of the Charter of the GCC Council states that the Ministerial Council shall have the right to "[p]ropose policies, prepare recommendations, studies and projects aimed at developing cooperation and coordination between member states in various fields and adopt the resolutions or recommendations required in this regard." The Body, in facilitating coordination between member states in immigration of migrant workers, fulfills this criterion for the GCC Ministerial Council.

Third, Article 4 of the GCC Charter states that its objective is "[t]o effect coordination, integration and inter-connection between Member States in all fields in order to achieve unity between them." Article 4 also states that the GCC's objective is "[t]o formulate similar regulations in various fields including . . . [e]conomic and financial affairs." The Body — in

¹⁰⁸² GCC Charter, *supra* note 183, art. 12.

¹⁰⁸³ *Id.* art. 4.

facilitating similar regulations in immigration, which is integral to economic affairs — satisfies these Article 4 criteria.

Fourth, Currently, the GCC is discussing a move from a cooperation to union; this Body is a step toward the GCC achieving a regional union that further promotes cooperation and uniform regulation across GCC states. Furthermore, as the Charter of the GCC Council notes, the objective of the Council is to achieve unity between the GCC states, lending this proposed Body enhanced legitimacy as an opportunity to promote unity. The Body will also allow effective and efficient regulation and sharing of administrative resources. Finally, it will dismantle barriers to a fully integrated market by eliminating variations in immigration law and allowing greater ease in the passage of workers both into the GCC region and between GCC countries.

There are multiple reasons behind this proposal — most involve addressing and ameliorating the continuing problems this dissertation identified in domestic workers' situations in the GCC countries. For example, the restriction of the Kafala system, where the worker cannot easily change employers, is further challenged by recruitment agencies, which do a poor job handling domestic worker relationships with employers. My proposal tries to address that in eight points. This Body will eliminate the middleman in the immigration process and remove recruitment agencies by conducting a government-to-government scheme between sending countries and receiving countries to help regulate recruitment, similar to the arrangement between the Philippines and South Korea. Some GCC countries already have bilateral agreements in place with sending countries. What the proposal calls for, however, is a united front where all GCC countries offer the same threshold of rights to migrant domestic workers heading to any of the GCC countries. Of course, removing the middleman is challenging since they often facilitate the arrangements in both sending countries and receiving countries. As Jennifer Gordon indicated, recruitment can be composed of three tiers or more. 1084 Removing the middleman is challenging, but an effort that will help reduce the abuses that some migrant workers endure during the recruitment process.

Another problem observed in the GCC region involves eliminating the process of debt bondage that migrant domestic workers, and migrant workers generally, face in their home countries. Many migrants borrow money from family members or loan sharks to come to host countries, which leaves the workers in extensive debt for a long time and forces them to stay in

¹⁰⁸⁴ Jennifer Gordon, Regulating the Human Supply Chain, 102 IOWA L. REV. 445 (2017).

abusive employment situations to pay back loans they undertook prior to departing from their home countries. By simplifying the recruitment process with receiving countries and making debt bondage illegal in the sending countries, the proposal aims to reduce the number of workers who end up in such situations. Furthermore, sending countries should provide help to migrant workers and migrant domestic workers wishing to work abroad. Here, NGOs in sending countries can provide information to prospective workers on their rights and obligations and prepare them for the journey ahead. In this regard, the GCC Body and NGOs could develop positive cooperative relationships.

Yet another highly important objective for further development of GCC policies on migrant domestic workers requires creating freedom of movement for migrant domestic workers both within and between the six GCC countries. Under this proposed scheme, migrant workers will have the right to relocate to any of the six GCC countries provided the workers have not violated the laws of their current country of residence. The visas issued to workers will give them the right to relocate following approval of the GCC Body. This means that workers will be free to locate to any of the GCC countries in accordance with the freedom of movement enshrined in the Universal Declaration of Human Rights. However, because laws regarding control of persons entering a country is an issue of national sovereignty, the six GCC countries need to agree on the process for such applications prior to this idea entering into force.

Yet another important objective of my proposal is to lower the cost of recruitment for both migrant domestic workers and employers in the GCC states. This will not be easy as it requires both sending and receiving countries to work together to keep the cost of recruitment low. The first step will be to simplify the recruitment process by creating an internet portal that will connect employers with domestic workers. If a match occurs, both parties will sign a unified, standardized contract and the *employer* will pay a subsidized fee — not the employee, as often occurs now. These fees will be regulated by the GCC Body and, thus, can be kept lower than the current prices recruitment offices charge. The fees charged can go towards maintaining and developing the internet portal.

The internet portal will display prospective workers divided by occupation, age, nationality, and gender. The employer will be able to view potential workers and contact those selected. The site will be a flagship in recruitment practices for the region and will also create a

database of workers, which will provide both authorities and researchers with rich information on the number and characteristics of migrant workers in the GCC states.

Another objective of my proposal is to lower the risk of trafficking that migrant workers and migrant domestic workers face when deciding to work in GCC states. As already explained, the use of unregulated recruitment agencies, which increase trafficking risks, will decrease as a result of a simplified, centralized, online recruitment portal. Furthermore, if migrant workers find themselves in abusive working conditions or in forced labor, they can turn to the GCC Body for redress, which will decrease situations of trafficking. To further support this initiative, each GCC country should establish a national committee to combat trafficking, similar to the model provided by the U.A.E.

A final objective involves general improvement of the process by which workers and employers are matched. As already explained, the GCC body will develop an internet portal through which migrant domestic workers wishing to work in the GCC countries can apply and link with potential employers. This should help simplify the recruitment process and provide a record of applications and employer responses as well as identifying information that will make it much easier for the regional body to know who is applying and what occurs through use of the portal. Important questions will have to be addressed about the information required by the portal, which is important to determining its effectiveness.

The portal should ask the applicants to include a short biography and the prospective domestic worker should provide information on age, preferred occupation, past experience, nationality, and gender. The employer will provide information about the household, how many children the employer has, how many rooms are in the house, and the expected salary. When an employer chooses a domestic worker, the employer will be able to contact the worker directly through the portal. If consent is reached between the two parties, they will sign the standardized contract proposed in Chapter 10, Section B.

Another issue to be addressed is what the proposed process will look like from the perspective of both workers and employers. Envisioning the process from the perspective of both workers and employers highlights its efficacy. After the parties enter into an employment contract, the employer will fill out the relevant paperwork to apply to the Body for a visa and residency permit for the domestic worker, and the Body will facilitate processing of those documents. The employee will provide the information necessary to apply for the visa. The

employer will then be responsible for purchasing a plane ticket that will allow the employee to travel to the employer's location and commence work in the designated GCC country. The Body will issue a transferable GCC visa, which will allow the worker to transfer residency to any of the GCC countries, provided he or she first provides notice to, and obtains the approval of, the Body. The visa will be tied to the body instead of the sponsor, which provides the domestic worker with more mobility and allows the domestic worker to move from one employer to the other if certain conditions are met. This is one of the key reasons for transferring the sponsorship system from individuals to the Body. The Body will sponsor the worker during his or her stay in the GCC, thus allowing both increased knowledge of the worker's situation and more freedom to the worker to move between employers without losing the ability to work in the GCC. Under the current system, domestic workers are not allowed to change sponsors unless certain conditions are met and only with the approval of the sponsor signing the no objection certificate. The proposal allows domestic workers to change employers if certain conditions are met such as nonpayment of wages or if it is proven that the domestic worker has been abused or overworked. This proposal complies with international standards of freedom of movement.

Essentially, my proposal does not abolish the sponsorship system but transfers it to the state, which is sensible as it is the responsibility of the state to regulate immigration control. While acknowledging the many calls from NGOs to abolish the sponsorship system (as summarized in Chapter 2.7), complete abolishment of this system is both infeasible and unwise. First, tradition pushes against such a radical change; abolishing a system in operation since the 1950s would be extremely challenging. Second, proposing that the sponsorship system be abolished without offering a workable replacement does not offer a solution for the future, just the end of what exists now. Thus, my proposal instead shifts immigration control from individuals to the GCC Body for migrant domestic workers.

i. The Problem of Irregular Domestic Migrant Workers

Of course, the issue of so-called "irregular" domestic migrant workers, including many migrant domestic workers who ran away from their sponsors, remains. As Philippe Fargues stated, there are three kinds of irregular migrants who gain unauthorized entry into a country: "(1) persons who enter without a visa, including those who bypass border checkpoints and those who are smuggled or trafficked persons; (2) persons who overstay their visa, including those

who enter on a temporary entry visa (seasonal or short-term worker, student, visitor of a family member, tourist, pilgrim, etc.); and (3) persons who are unauthorized to work, including workers with a non-work visa or with an occupation that is not allowed by their visa."¹⁰⁸⁵ Fargues also acknowledged that, due to the sponsorship system in the Gulf, migrant workers at times find themselves in an irregular situation due to the immobility of the sponsorship system.

Nasra Shah, on the other hand, identified five categories of irregular migrant workers in the GCC: those "(i) entering unlawfully into a country; (ii) overstaying a valid residency permit; (iii) being employed by someone who is not the sponsor; (iv) running away from an employer, or absconding; and (v) being born in the Gulf to parents with an irregular status." Shah attributed the irregularity of some migrant workers to the sponsorship system and acknowledged that domestic workers who abscond from their sponsor usually become irregular migrant workers.

A system along the lines proposed here, which allows worker mobility, will help solve the problem Fargues and Shah identified. If workers can lawfully leave their current employer at will, there will be fewer workers who enter into irregular status by doing so.

For instance, some migrant workers might find themselves in an irregular situation due to a visa trading situation. Here a worker pays the employer to obtain residency and work permit but the worker does not work for that employer. Instead the worker tries to find a job and pays that employer to renew residency. Some migrant workers find themselves in an irregular situation due to absconding from their sponsor.

First, as the sponsor will be the Body, transferring from one employer to the other will be simplified, provided that certain conditions are met to address the situation of visa trading, which will no longer be possible.

Second, absconding workers will have a place to go to — either a governmental shelter in the respective GCC country or their own nation's embassy — and there will be an easy way to file for redress and protect their rights under the GCC unified law for domestic workers. As described in the preceding chapters, systems of shelters appear to be operating quite successfully in some GCC countries but it would be better to standardize these protections, both to better protect migrant domestic workers and to avoid problems with workers absconding to

 $^{^{1085}}$ Philippe Fargues & Nasra M. Shah ed., Skilful Survivals: Irregular Migration to the Gulf (2017). 1086 Id. at 4.

jurisdictions with shelter protections. Finally, if the systems are enacted, there should be less need for workers to rely on shelter stays to deal with problems of irregular status in a country of residence.

Third, to specifically address the issue of irregular workers I propose the introduction of the Flexi permit, which Bahrain started using this past year.

Another problem that was identified as the number one complaint of domestic workers related to wages — the non-payment of wages, the deduction of wages, or the payment of wages other than the agreed amount. This problem can be addressed in two steps: first, the wages of domestic workers will be stated in the web portal and in the standardized contract that both parties sign and can be referred to at any time during the contract duration. The second step requires that each GCC country extend its wage protection system to domestic workers or introduce one specifically tailored to domestic workers similar to Saudi Arabia. Saudi Arabia's wage protection system electronically transfers money from bank accounts and records whether the employer is fulfilling obligations to pay wages to the domestic worker.

Being constrained to the household is problematic, especially if the domestic worker is abused; thus, it is important to simplify the complaint process by introducing a hotline for domestic workers in each GCC state and developing a user-friendly app to file complaints. Both the app and the hotline should be in languages understood by the domestic workers. Furthermore, domestic workers should be excluded from paying any legal fees when they file a case against their employers and a special chamber should be established in each of the GCC countries to handle the cases of domestic workers.

Moreover, domestic workers should undergo some basic training prior to assuming their new position in the GCC. Countries of origin, with the help of NGOs, should provide basic training for domestic workers prior to their departure. The Filipino model for domestic workers should be followed — with pre-employment orientation, pre-departure orientation and post arrival orientation — where the domestic worker is taught about the culture and some basic language of the destination country. Here, countries of destination should help countries of origin develop such materials. In addition, domestic workers should be required to undergo a psychiatric test prior to departure. Furthermore, employers should also undergo a training workshop, similar to what is implemented in Singapore, where they are taught about the appropriate treatment of domestic workers as well as the rights and obligations of both parties. In

addition, mandatory testing for employers on the domestic worker laws in each of the GCC counties should be conducted when employers register with the web portal.

An awareness campaign should be conducted in all GCC countries to inform the public of the rights and obligations of both the employer and the domestic worker. The aim should be to raise awareness about the proper treatment of migrant domestic workers in the form of short movies and posters. Along with the awareness campaign, booklets should be printed that tell domestic workers their rights and obligations in each of the GCC countries based on the laws and regulations of each country. Derived from the Bahraini model, the booklets should be provided in the languages widely spoken by migrant domestic workers and should be available at ports of entry and embassies of domestic workers.

ii. Anticipated Challenges

To be sure, the presented proposal will not be without challenges. First, getting all GCC countries to consent to the threshold of rights in this proposal will require finding a balance between migrant workers' rights and employers' legitimate interests, which must be addressed if any reform proposal is to be politically feasible. For example, creating an open border policy for migrant visa holders in the whole GCC region is a significant request and obtaining the consent of all GCC countries may be hard as each country has the right to regulate its borders under the concept of national sovereignty.

Another challenge is unifying the domestic workers laws in the region as a whole as each, GCC country has its own domestic workers laws. Here, the GCC should agree on a legal terminology for the unified domestic workers law.

Furthermore, the cost of creating such an administrative body may be high but since it will be under the umbrella of the GCC, the GCC will bear the cost. There is also the chance that it can be self-funded by requesting employers to pay a fee and domestic workers pay a (smaller) fee; that way, the body can be self-funded.

Implementing the proposed idea poses a specific challenge. On paper the idea sounds effective, yet it needs to be implemented correctly and efficiently to work. These are matters that must be worked out during implementation and pose issues for all established regional bodies.

Finally, it is likely that domestic migrant workers may still be exploited by special agencies when completing the application. The GCC body will have little power to control what

happens within sending states or who inserts themselves in the process that leads a domestic worker to apply through the portal. Simplifying the application process as much as possible may help reduce this risk. Moreover, the idea can also be promoted as a government-to-government recruitment process. The GCC, acting as a powerful and united actor, can influence sending countries to investigate and eliminate abuses that occur within their borders. The problem here is whether the sending countries will have the capability to clean up the recruitment process on their end. On the GCC's end, the details regarding the legal framework for the Body will be key.

iii. Legal Framework

A treaty may be the best way to establish the Body as this is the manner in which other regional bodies have been established — such as the European Union. The advantage of using a treaty to establish the Body is its binding status on member states of the treaty. Furthermore, the rights and obligations of each member state will be clearly indicated in the treaty.

The Body shall follow the main bylaws it will be established under; however, a new set of bylaws needs to be established to regulate member state obligations and commitments, determine how regulations will be passed, etc.

A standardized contract is a way to regulate the working conditions of workers across the GCC. Many Gulf States already have a standardized contract of some sort and many states reformed their standardized contracts in the past few years by signing MOU agreements with sending countries in an effort to regulate and stop abuses that workers face in the recruitment process. In 2014, GCC countries discussed implementing a unified standardized contract, however, the project was later abandoned. This proposal encourages the GCC countries to regain the political will to make this step.

The methodology underlying this proposal has examined and drawn on the national laws and regulations of the Gulf states to synthesize a set of best practices that embodies the positive

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¹⁰⁸⁷ Gulf Ministers Approve the Unified Employment Contract in November, Mubasher (May 19, 2014, 10:59 PM), https://www.mubasher.info/news/2547357 (Saudi Arabia); Gulf Agrees on a Unified Law for Domestic Workers Beginning 2014, AL-ARABIA (Oct. 3, 2013), https://www.alarabiya.net/ar/aswaq/economy/2013/10/03/الفلية مطالع -html (Saudi Arabia); Lesley Walker, GCC Labor Ministers Agree on Unified Contract Defining Rights of Maids, DOHA NEWS (Nov. 6, 2014), https://dohanews.co/gcc-labor-ministers-agree-unified-contract-defining-rights-maids/ (Qatar).

¹⁰⁸⁸ Peter Kovessy, *Gulf Countries Abandon Idea of Unified Contract for Domestic Workers*, DOHA NEWS (Jan. 5, 2015), https://dohanews.co/gulf-countries-abandon-idea-unified-contract-domestic-workers/; *In 2014, GCC Promise for Domestic Work Reform Falls Short Once Again*, MIGRANT RTS. (Jan. 1, 2015), https://www.migrant-rights.org/2015/01/in-2014-gcc-promise-for-domestic-work-reform-falls-short-once-again/.

developments from each of the GCC states. As previously described in detail, each of the Gulf States has its own unique version of a sponsorship system. So far all GCC country has passed domestic workers legislation. All six states have made changes to their laws and regulations with regards to migrant workers and migrant domestic workers as a result of efforts to update laws and bring them in line with current international thinking about best practices. Many amendments were adopted in the hope of addressing the issues facing workers and sponsors alike. As the number of workers continued to rise, however, the laws and regulations governing migrant workers must progress.

iv. Checklist for Implementation

Derived from the framework of this proposal are questions of its organizational structure and basic logistics. Again, some details will need to be worked out in the implementation process, but some suggestions are included in the following checklist on the concrete workings of the proposed Body and process.

Maintaining an information database on all migrant workers in the Gulf States. A biometric system should be set up to keep track of all of the migrants entering the GCC; the specific GCC country a migrant enters will be responsible for taking the biometrics of the migrant. Each country will have its own biometric system, which will be compiled into one system accessible by the Body. The database will specify the number of migrants in each GCC country and the nationality of the migrants in each of the GCC countries as well as in the GCC overall.

Creating a program and application process for all workers heading to the Gulf countries. As already discussed, a user-friendly application process is imperative to reduce the abuses that some migrant workers face during the recruitment process. Migrant domestic workers will be able to apply online through the Body website, which will be established to recruit domestic workers. The portal will also enable interviews between the employer and employee. To ensure that third parties do not take advantage of individuals by charging fees to fill out the applications for domestic workers or abusing the process, the Body will urge sending countries to set up special government-run recruitment offices to help those who wish to apply for domestic work in the Gulf. Implementers should explore whether it would be feasible for the Body to offer funding to sending countries to offset the costs of such offices.

Handling the recruitment process and issuing all related administrative work for the recruitment process. The Body will be responsible for setting up and creating the online portal, maintaining its operation, and updating it as necessary. The Body will look into any difficulties that may occur in the sending or receiving countries and will review the established process to identify opportunities to improve the recruitment process, including potentially opening its own offices in sending countries to help with the application process.

Issuing a unified working visa for all GCC states. Currently, the process requires a worker who wants to work in another GCC country to travel back to the home country to apply for a new visa and then relocate to the other GCC country. The unified visa will provide freedom of movement to domestic workers if certain conditions are met. Once the laws on migrant domestic workers are unified, the visa offered to domestic workers by the Body will allow workers to move between GCC countries after a contract is completed and approval is obtained from the Body.

Recruiting officers to handle administrative tasks in accordance to the GCC structure. Since the Body will have offices in every GCC country, manpower is needed to establish and handle the recruitment process alongside the administrative work of the Body. This will include investigators, computer engineers, IT technicians, and administrative workers.

Producing statistics on the migrant workers for research purposes. By creating a biometric system, it will be easy to produce statistics on the number of migrant domestic worker in each of the six GCC countries and the total number of migrant domestic workers in all GCC countries, which will provide accurate and credible data.

v. Monitoring Body

The monitoring body will work similarly to other human rights monitoring bodies. The GCC state governments will be obligated to submit annual reports on the situation of migrants and migrant domestic workers in their countries along with the number of complaints, court cases, and migrant workers who entered and left the country as well as the reason for their departure. NGOs, civil society, and human rights bodies shall submit similar reports about the situation of migrant workers and migrant domestic workers.

A panel of independent experts shall examine the submitted reports and investigate certain cases that need additional attention. The panel shall be composed of six members, one representing each GCC country. While the Arab Charter for Human rights includes seven on the panel, this structure is similar to the European Union where the number of the panel reflects the number of participating countries. Furthermore, the panel shall be appointed for four years, renewable only once. The panel member shall be immune during the whole period of his/her membership. The panel will offer general recommendations to enhance the status and situation of migrant workers and migrant domestic workers. The panel will have the right to provide the Body with recommendations to amend the laws and regulations governing migrant workers and migrant domestic workers.

One concern is whether NGOs are strong and effective enough to produce the necessary reports. Should NGOs specifically address or handle the issues of migrant workers and try to elevate the situation and living conditions for those workers? All domestic NGOs working on human rights issues in that country would be allowed to submit a report on the situation of migrant workers. International human rights organizations would not be allowed to submit such reports nor would institutions from other countries to reduce bias for or against a country in any way.

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¹⁰⁸⁹ Rezar Qader, *The Watchful Eye on the Implementation of the Arab Charter for Human Rights: A Critical Comparative Study*, KUWAIT UNIV. L.J. 405 (2011).

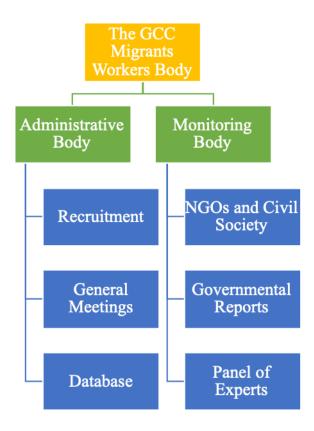


Figure 1: Proposed Structure for the GCC Body

CHAPTER 10: A GCC UNIFIED LAW FOR DOMESTIC WORKERS

A. Proposal for a GCC Unified Law for Domestic Workers

This chapter proposes a model unified law for domestic workers in the GCC. The proposed law aims to standardize the different domestic worker laws passed by GCC countries discussed in earlier chapters, specifically, the laws passed in Bahrain, Saudi Arabia, Kuwait, Qatar, and the U.A.E. The intent of a unified law is to support the growing number of domestic workers in GCC countries. The unified law is designed to be fair to both parties in the employment relationship, i.e., the employer and the domestic worker. As further explained in this chapter, however, the interests of one side of the relationship may have been favored over the other under certain provisions, based on the needs identified through research and questionnaire results.

The proposed GCC Unified Law for Domestic workers was drafted based on comparative analysis offered in prior chapters concerning the domestic laws in Kuwait, Bahrain, Saudi Arabia and the newly established laws of Qatar, as well as the U.A.E. law for domestic workers. Some of the approaches in those laws are incorporated in the proposal below; Kuwaiti law was relied upon heavily in some parts while other parts relied on laws from other countries.

The proposed law is composed of thirty-six articles, divided into eight chapters. Chapter 1 begins by explaining and defining a number of expressions used throughout the law such as "domestic worker," "employer," and "wage payment system." The definitions were created to avoid misunderstandings about the words used in the proposed law. Chapter 2 sets out the obligations of the parties to a domestic worker employment contract. It states the obligations of the employer, which are payment of wages by the beginning of each month, as well as the use of the wage payment system, which addresses the problem of nonpayment of wages that the domestic workers often face, as documented in the domestic workers questionnaire. It also tracks employer compliance with obligations by tracking timely employer payments to the domestic worker through the transfer of funds to the domestic workers account.

Chapter 2 of the law prohibits the deduction of any portion of the domestic worker's wages, which stops the employer from trying to pass the cost of recruitment fees on to the domestic worker. The proposed law obligates the employer to provide proper food, clothing, and

medical treatment. It also obligates the employer to provide proper accommodations to the domestic worker. Again, the obligation is imposed to ensure the employer does not deduct from the domestic worker's wages.

To address the problem of employers withholding passports and identification documents, the proposed law prohibits these practices unless the consent of the worker is granted; the consent of the worker should be in writing, according to Chapter 2. The prohibition was taken from the Kuwaiti law, although all laws examined prohibit the practice in one way or another, especially in regulations related to overall labor law. The proposed uniform article, however, was modified to require written consent.

Furthermore, the proposed law obligates the employer to provide the domestic worker with health insurance. This article is included to cover any sickness that the domestic worker may endure during the contract period. This provision is derived from Kuwaiti labor law. ¹⁰⁹⁰

The proposed law also establishes some obligations of the domestic worker: to perform the work assigned, to protect the wealth and property of the employer, and to keep the employer's secrets. This provision is derived from the Kuwaiti domestic worker law and Saudi law. It recognizes mutual obligations between the domestic worker and the employer, as in any employment relationship.

Chapter 3 of the law covers the employment contract, renewal and termination of the contract, what the unified GCC contract should include, and the probation period for the domestic worker. In a separate chapter, a model employment contract is offered along with commentary explaining the suggested provisions.

With regards to the renewal of the contract, the proposed law states that the contract will be renewed automatically if neither party states otherwise at least two months before the end of the contract. This provision was borrowed from the Saudi law, and is offered to give both parties the right to terminate or renew the contract while also providing sufficient notice to the other party.

The proposed law allows either party to terminate the contract provided the party provides a sixty-day notice to the other party; failure to provide notice requires the terminating party to provide the other party with two months of salary. This provision is derived from Saudi

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¹⁰⁹⁰ Qanoon Al-Amal [Labor Law] of 2010, Promulgated by Amiri Decree No. 6 of 2010, art. 88 (Feb. 21, 2010) (Kuwait) ("Subject to the provisions of the social security law, the employer shall provide insurance coverage for his workers from insurance companies against work injuries and occupational diseases.").

law, although there is a similar provision in the Kuwaiti labor law. It provides both parties the right to terminate the contract, provided they either give sufficient notice to the other party or compensate the other party for lack of sufficient notice. Since it is likely the domestic worker will not be able to provide the employer with two months of salary, the provision, in effect, requires domestic workers to give two months of notice before terminating the contract. Some domestic workers may be able to provide the funds; in this situation, they will be able to leave their contracts more quickly.

Chapter 3 also covers some of the necessary elements the unified contract should include. For instance, it requires the contract to be in both English and Arabic. In reviewing other laws, notably the old Bahraini standardized contract, some agreements were written in Arabic along with the workers native language, while both the Saudi and Kuwaiti standardized contracts were written in both English and Arabic. Because many domestic workers will be unable to read Arabic, it was essential to include this provision that the contract shall be in the workers native language along with the Arabic Language to help ensure that domestic workers would understand the terms of the contract to which they were being asked to agree.

The probation period was an important piece; the Bahraini, Qatari and Saudi laws set a three-month probation period. The unified law offered here proposes a six-month probation period, however, following the Emirati and Kuwaiti models. This proposal is due to the fact that some recruitment agencies took advantage of the shorter probation periods by obtaining higher fees from an employer for a *returned* domestic worker, who is willing to start work right away, rather than wait for a new domestic worker to arrive. To stop that specific practice, I propose that the probation period be set at six months.

Notably, Kuwait is the only country to include a minimum wage in its domestic workers law. Providing a fair minimum wage for domestic workers who lack bargaining power to obtain such fair wages through their own efforts was a critical part of ensuring minimum basic working standards in the domestic worker arena; this provision was included in the proposed law. The minimum wage in Kuwait was set at \$199 USD per month which is the equivalent of 60 KD. The minimum wage set for labor workers is the same set for migrant domestic workers in Kuwait. This rate is based on the fact that domestic workers work inside of the household so there is no cost of living and their health care is provided free of charge. Furthermore, since the

economic position of each GCC country is different, each GCC country should be able to set its own minimum wage.

As Article 4 of the Domestic Workers Convention requires states to set a minimum age for domestic workers, and consistent with providing basic minimum employment standards, a minimum age for a domestic worker is set in the proposed law. Both Kuwaiti law and Qatari law on domestic workers set such an age limit. The Qatari law sets the age at no less than eighteen and no older than sixty while the Kuwaiti law sets it at no less than twenty-one and no older than sixty. The latter was chosen for the proposed law. In accordance with Article 96 of Kuwaiti Civil Law No. 21, twenty-one is the legal competency age in Kuwait for entering into legal obligations that is why it was chosen as the age limit. As for the maximum age of sixty was included due to the physical demands domestic work requires.

Chapter 4 covers working hours and leave. Saudi law sets a limit of fifteen working hours per day with nine hours of rest, while Kuwaiti law limits working hours to twelve per day, which includes a resting period of no more than five consecutive hours of work and eight hours of rest at night. While the newly adopted law in Qatar sets the maximum at ten hours of work, the U.A.E. law sets it at no more than twelve hours (and no more than eight consecutive hours). Bahraini law does not set working hours for domestic workers. In the proposed law, the Qatari law was picked as a model because it provided the least amount of working hours compared to all other laws and was most reasonable in terms of standard maximum working hours for labor laws generally, although it still fails to meet the international standards of eight hours.

All GCC countries required one mandatory day off per week for the domestic workers; thus, this provision was included in the proposed law to adhere to minimum basic working standards.

Kuwaiti law includes an annual leave provision but does not state a duration, while Bahraini law sets required annual leave at thirty days per year, consistent with U.A.E. law. Saudi law sets required annual leave at thirty days per two years, and Qatari law sets it at three weeks per year. In the proposed law, thirty days per two years was picked in consideration of the fact that the contract term for the unified standard contract is two years. Furthermore, the annual leave does not include the weekly days off that the domestic workers are entitled too.

With regard to sick leave, both the labor laws and domestic worker laws of various GCC states were examined. Neither the Kuwaiti or Bahraini domestic worker laws include sick leave.

While the Saudi law specifies that sick leave need not exceed thirty days, the Qatari law grants sick leave but does not specify a duration. The U.A.E., meanwhile, requires fifteen days paid sick leave and fifteen days non-paid sick leave. In the proposed law, the U.A.E. model of fifteen days paid sick leave and fifteen days non-paid sick leave was used.

The proposed law also covers the process if a domestic worker dies under the service of an employer. The employer is obligated to transport the deceased's body to the country of origin and pay the next of kin that month's salary. This provision is adopted from the Kuwaiti law. It is of importance to include in order to maintain the rights of the domestic worker after death.

Chapter 5 covers the end of service payment. Kuwaiti law sets the end of service to one month's salary for every year of service, while Bahraini law sets the end of service payment at half a month's salary for the first three years and a month's salary for every following year. Saudi law sets the end of service payment at one month's salary for every four years of service, while the Qatari law sets it at three weeks of pay for every year of service. In the proposed law, the Saudi law served as the primary model considering that the proposed contract lasts for at least two years. Furthermore, this provision was compared with the end of service payment under the different labor laws and set to not exceed the entitlement of the worker covered by labor law.

Chapter 6 covers inspection and when is it permissible to conduct an inspection of the household where the domestic worker resides. This provision is derived from the U.A.E. law on domestic workers and is the only law in the GCC that permits inspection to the household, acknowledging the conditions where an inspection is needed.

In order to enforce the law, some penalties are proposed for non-abiding employers; thus, Chapter 7 covers penalties against the employer for noncompliance with the law. One of the main complaints of domestic workers was nonpayment of wages so a proposed fine for delayed payment of wages was important. This fine would be \$82.60 USD per month for the delay — the equivalent of 25 KD.

Another of the common complaints from domestic workers was maltreatment. Thus, the law proposes that maltreatment proven by investigation before the competent authority in the GCC state will result in a ban on the employer recruiting any additional domestic workers. This will be accomplished by refusing to issue the employer an entry visa for new domestic workers.

Another complaint is the withholding of passports and personal documents. Any noncompliant employer will be either fined or imprisoned for six months or both. Furthermore, a non-compliant employer will be fined for employing someone under the age of twenty-one or someone older than sixty.

Chapter 9 covers disputes and sets up an alternative dispute mechanism, similar to the one used in Kuwait although Bahraini law also sets an alternative dispute mechanism. This approach was proven to work in some labor law disputes. The Bahraini, Saudi, U.A.E., and Qatari laws also set an alternative dispute mechanism. Thus, it was proposed that such a mechanism be established in the proposed unified law. For a domestic worker to follow through on a complaint in the case of a dispute or an allegation of maltreatment, the recommended law proposes that the domestic worker temporarily extend the residency permit until a final decision on the matter is reached. Thus, the domestic worker will reside legally in the country while awaiting the final judgment. The domestic worker will stay in the government-run shelter or in the embassy shelter. Furthermore, the proposed law advocates the establishment of a specific court to handle the cases of domestic workers if the alternative dispute resolution fails to reach an amicable settlement between the parties. This will also be the court that will hear claims of maltreatment.

In any labor dispute where the domestic worker is a party, the worker shall be exempt from paying legal fees. This will help the domestic worker, as the weaker party to the contract, in pursuing a case against the employer. This exemption is found in both Kuwaiti law and Bahraini law.

Chapter 9 covers general provisions and addresses the issue where some employers seek workers for countries other than the country where the domestic worker agreed to work without the worker's consent. The article included in the law to address that issue makes it illegal for the employer to require the worker to work in another country without the worker's written consent.

Furthermore, the law creates a temporary housing facility for workers if employers do not pick them up from the airport. The employer will be required to pay for the temporary housing. This provision was taken from Kuwaiti law, which shows that this problem occasionally occurs and needs to be addressed to protect the domestic worker but without increasing state expenses.

Perhaps the most important provision in the law is the absconding provision, which obligates the employer to report within seven days when a worker absconds. If the worker is found after an employer filed an absconding report, the worker is deported and the employer is responsible for paying for the worker's ticket unless the worker was sheltered after leaving the

employer's care; if the worker was sheltered, the person providing shelter is responsible for purchasing the plane ticket. However, if the domestic worker absconded due to maltreatment, the domestic worker will be given an extended stay at a government shelter until the case is proven in court or through the alternative dispute mechanism. The provision is based on Kuwaiti law but was modified to better fit the problem of absconding domestic workers as many domestic workers abscond due to maltreatment.

B. The GCC Sample Unified Law on Domestic Workers

Chapter One

Preliminary Provisions

Article (1)

In this law, the following words and expressions will have the meanings provided:

- 1. Domestic worker: Any male or female assigned to manual labor within private homes to the benefit of individuals and in accordance with a written contract.
- 2. Employer: A person who engages the domestic worker to work for him/her in accordance with a contract prepared by the GCC Body.
- 3. Standard Employment Contract: The GCC unified standardized contract for domestic workers
- 4. The wage payment system: The wage system set by the GCC Body.
- 5. Designated Country: Any of the six GCC countries Saudi Arabia, Oman, Qatar, Kuwait, Bahrain, and the U.A.E.

Chapter Two

Obligations of the Parties to the Contract

Part One

Obligations of the Employer

Article (2)

The employer is obligated to pay the agreed wages to the domestic worker at the beginning of each month through the wage payment system set by the GCC Body of Domestic Workers.

Article (3)

The payment of monthly wages to the domestic worker starts from the date the worker begins working for the employer. It is not permissible under any circumstances to deduct any portion of the wages.

Article (4)

The employer is required to provide the domestic worker with food, clothing, medicine, medical treatment, and proper accommodations.

Article (5)

The employer must provide suitable accommodations for the domestic worker.

Article (6)

The employer is prohibited from retaining any of the domestic worker's personal identity documents, such as passports or civil IDs without consent of the domestic worker.

Article (7)

The employer is obligated to provide the domestic worker with health insurance.

Part Two

Obligations of the Domestic Worker

Article (8)

The domestic worker must perform the work assigned in accordance with the provisions of the contract.

Article (9)

The domestic worker must protect the employer's wealth and property and not reveal the employer's secrets.

Chapter Three

Work and Employment Contract

Part One

Article (10)

Upon termination of the contract between the domestic worker and the employer, the employer must pay the domestic worker all of the entitlement set forth in the contracted stipulated in this law. The contract may be renewed automatically if neither party (employer or domestic worker) expresses interest to not renew the contract at least two months before the end of the contract.

Article (11)

Termination of Contract:

- (A) The employer may terminate the contract by providing a sixty-day notice to the domestic worker. If the termination is immediate then the employer will be responsible for paying the domestic worker two months of salary.
- (B) The domestic worker may terminate the contract by providing a sixty notice to the employer. If the termination is immediate, the domestic worker will be responsible for paying the employer two months of salary.

Article (12)

It is not permissible for the employer to hire a domestic worker without a recruitment contract issued by the GCC Body. The contract must be written in Arabic and English and must include the following details:

- Name of the domestic worker with complete personal information
- Name of employer with complete personal information
- Duration of the contract
- Date of commencement of work
- Agreed wages and method of payment
- Type and nature of work assigned to the worker

Article (13)

The GCC Body shall guarantee the continuous employment of the domestic worker for a period of six months. The GCC Body is required to return the domestic worker to the country of origin and reimburse any amounts charged of the employer if any of the following circumstances occur:

- 1. If there exists an obstacle that prevents the domestic worker from performing her/his tasks, which the employer has no hand in.;
- 2. If the domestic worker becomes ill with a communicable disease or any physical, medical, or psychological disability that prevents her/him from continuing to work;
- 3. If the domestic worker refuses to work or leaves to work in an unknown location;
- 4. If there was a legal restriction that prevents the employer from obtaining a residence status for the domestic worker;
- 5. If the domestic workers provide false information on the contract.

Part Two

On Wages

Article (14)

The term "wage" refers to the basic salary paid to the domestic worker as set out in the employment contract between the two parties. The wage may not be less than \$199 USD

Article (15)

The employer is obligated to pay the wages at the beginning of each month as agreed in the contract.

Part Three

Article (16)

It is not permitted to recruit or employ a domestic worker, whether female or male, whose age is less than twenty-one years or more than sixty years.

Chapter Four

On Working Hours and Leaves

Article (17)

The length of working hours must be set at no more than ten hours in a one-day period. The domestic worker shall not work for five consecutive hours without rest.

Article (18)

The domestic work has a right to a paid weekly day off. If the domestic worker works on his/her day off he/she shall be given another day off. If not the workers should be paid for working on her/his day off.

Article (19)

The domestic worker is entitled to annual leave of thirty days after spending two years in service.

Article (20)

The domestic worker is entitled to sick leave as follows:

- 15 days full pay
- 15 days non-paid

Article (21)

The employer is obligated to transport the deceased body of the domestic worker to the country of origin when he/she dies and must pay the deceased worker's kin the wages for the month in which the worker died.

Chapter Five

End of Service Remuneration

Article (22)

End of service remuneration for the domestic worker is allocated for payment after completion of the contract duration. The amount is set at one month's wage for every four years of service.

Chapter Six

Inspection

Article (23)

Inspectors shall not enter the workplace or the workers residence without the permission of the employer or the permission of the public prosecution in the following cases:

- 1. There is a complaint from the worker or the employer
- 2. The existence of reasonable evidence of violations of the provisions of this law and the regulations and decisions issued in the implementation thereof.

Chapter Seven

Penalties Against the Employer

Article (24)

If the employer is late in paying the wages at the agreed time, the domestic worker is entitled to the amount of 82.60 USD for every month that the wages are not paid on time.

Article (25)

If an employer withholds the domestic workers passport or personal documents without written consent from the domestic worker the employer will be either fined in the amount of no more than \$2000 USD or imprisoned for six months or both.

Article (26)

Anyone who recruits a domestic worker younger than the age of twenty-one years will be fined of no more than 100 USD.

Article (27)

In the event a complaint is proven against the employer before the competent authority, no further entry visa will be issued for the employer for a period defined by the GCC Body.

Chapter Eight

Disputes

Article (28)

With regard to disputes that arise between the parties to the contract, the GCC Body shall have jurisdiction to settle such disputes in accordance to the procedures set by the GCC Body. If a settlement is not reached, the dispute is to be referred to the competent court.

Article (29)

If a settlement is reached in a dispute between the employer and the domestic worker it must be recorded in a written paper and a copy kept in the domestic worker's file with the GCC Body.

Article (30)

The GCC Body has the right to issue an order to temporarily extend the residence permit of a domestic worker until a final decision is made on a complaint and until the worker is paid all due entitlements.

Article (31)

With regards to all disputes in which settlement is not reached, it is permissible for the parties to the contract to direct their cases to the civil court to expeditiously consider the case before the domestic workers circuit a special chamber that is established to handle domestic worker cases

Article (32)

All cases wherein the claimant is a domestic worker are to be free of judicial charges at all levels of the judicial proceedings.

Article (33)

Any matter not mentioned in this law with regards to amicable sessions between the domestic worker and the employer shall be referred to in the GCC Body procedures.

Chapter Nine

General Provisions

Article (34)

It is not permissible for the employer to assign a domestic worker to work outside of the designated country specified in the contract. If this occurs without the agreement of the worker, the worker will be returned to the country of origin at the expense of the employer.

Article (35)

A recently-arrived domestic worker who is not received by the employer within twentyfour hours of arrival will be temporarily housed for a daily cash charge set by the GCC Body. This housing must comply with the conditions stipulated by the GCC Body.

Article (36)

If a domestic worker absconds from his/her employer, the competent authorities in the designated country shall be notified by the employer within seven days. When the domestic worker is located, he/she shall be deported after collecting the cost of travel and departure ticket and the amount that the employer paid from the party that sheltered the absconded worker. If the sheltered party cannot be located, the GCC Body will bear the cost of the returned ticket to the domestic worker's country of origin.

If the domestic worker claims that she/he was maltreated, the domestic worker will be given an extended stay until she/he is able to file a complaint through the designated channels.

CHAPTER 11: A GCC STANDARDIZED CONTRACT FOR DOMESTIC WORKERS

A. Proposal for a GCC Standardized Contract for Domestic Workers

This section explains the proposal for a GCC Standardized Contract for domestic workers. This contract was written based on comparative analysis of the Bahraini standardized contract, the Saudi standardized contract, and the Kuwaiti standardized contract. While the GCC has been talking about unifying its standardized contract 1091 this proposed standardized version includes the best provisions of the three existing standardized contracts for domestic workers. The standardized contract is composed of twenty-six provisions:

- 1) The contract states the parties to the contract, which are the employer and domestic worker, as well as the date the contract commences. Since the same contract will serve all GCC countries it is imperative to mention where the contract will be executed.
- 2) As with any contract, the term of the contract should be stipulated; thus, the duration of the contract is provided and set to two years by default.
- 3) The third provision of the contract sets the salary of the domestic worker and sets the minimum wage for the domestic worker. Kuwait is currently the only country in the GCC that has set a minimum wage for domestic workers. Since it is important to include a minimum wage, a provision was drafted with a minimum wage stated right in the contract so this legal provision will be obvious to all parties and others.
- 4) Furthermore, a provision notes that payment should be conducted through the wage payment system, which will be set by the Body, to address the issue of nonpayment of wages.
- 5) To make sure that the recruitment fee is not passed to the domestic worker, a provision was added for the employer to bear the expenses of recruitment rather than the domestic worker. This tracks the legal requirements in the proposed uniform law.
- 6) The contract also prohibits working hours from exceeding ten hours, which was derived from the Qatari law on domestic workers. The contract modified Qatari law, however, by also requiring that the domestic worker not work for more than five consecutive hours, which

¹⁰⁹¹ Gulf Agrees on a Unified Law for Domestic Workers Beginning 2014, AL-ARABIA (Oct. 3, 2013), https://www.alarabiya.net/ar/aswaq/economy/2013/10/03/2014 الخليج - يتفق عقد موحد العمالة المنز لية مطلع - 10/03/2014 html (Saudi Arabia).

was taken from Kuwaiti law. Moreover, it entitles the domestic worker to a night break of eight consecutive hours.

- 7) The contract requires a weekly day off, which was mentioned in the Saudi, Qatari, and Kuwaiti laws. This provision was modified to note that if the domestic worker works on his/her day off, the worker is entitled to another day of rest or monetary compensation.
- 8) Article 8 of the contract stipulates that the worker is entitled to a plane ticket when relocating to the destination country and when the contract is completed.
- 9) Article 9 of the contract stipulates that the employer provide clothing, food, and proper shelter to the domestic worker. This provision is derived from Saudi and Kuwaiti laws and also included in the proposed unified law.
- 10) Article 10 provides sick leave for the domestic worker and references the unified law. Here the Saudi, Qatari, and U.A.E. laws were incorporated.
- 11) Article 11 of the contract sets the annual leave at thirty days of leave for every two years worked, derived from the Saudi law.
- 12) Article 12 covers responsibility following the death of the domestic worker, which can be found in both the Kuwaiti and Saudi standardized contracts.
- 13) Article 13 states that any dispute arising from the contract shall be handled by the Body, using its alternative dispute mechanism. If the dispute is not amicably settled it will be referred to the designated court.
 - 14) Article 14 sets the probation period at six months, based on Kuwaiti law.
- 15) Article 15 covers the end of service provision, which grants compensation equal to one month's wages per four years of service, derived from Saudi law. This provision recognizes that many domestic workers serve for a long time.
- 16) One of the main issues raised in the research was the withholding of passports and identification documents thus, Article 16 prohibits withholding passports and identification documents unless written consent was provided.
- 17) Article 17 covers termination of the contract. Every contract must contain a term and termination clause. The provision is intended to ensure that both parties have the right to terminate the contract on the condition that sixty-day notice was provided to the other party. If no notice is provided, the party ending the contract must pay two months' salary to the other party. This provision is derived from the Saudi standardized contract.

- 18) Article 18 prohibits the domestic worker from working for a party other than the designated party in the contract unless written consent was acquired from the domestic worker indicating willingness to work for a third party.
- 19) Article 19 obligates the domestic worker to maintain the secrets, money, and property of the employer. It is imperative to not only include the obligations of the employer but also include the obligation on the domestic worker thus, this clause was included.
- 20) Article 20 also addresses obligations of the domestic worker. The domestic worker is entrusted to follow the instructions and respect the rules and traditions of the country. Although this article sounds vague, it imperative to set this obligation on the domestic worker as this reciprocity of duties and rights also guarantees the contract is fair between the parties.
- 21) Article 21 ensures that the domestic worker is able to contact his/her family members and the respective embassy, if and when needed. This is in response to reports that some domestic workers were prohibited from contacting their family members.
- 22) Article 22 is the force majeure clause where if any "act of God" occurs such as a national disaster, war, or any act that prevents any party to the contract from completing obligations the employer is obligated to provide the worker with her wages and return plane ticket.
- 23) Article 23 of the contract covers the renewal of the contract for another two years if the parties agree, which was mentioned in the Saudi contract. This provision was adopted because it is important to allow the parties to extend the contract as easily as possible if both parties desire. Moreover, having the contract extend for another term of two years provides both parties security and the ability to plan for the future.
- 24) In order to make sure that contract substitutions with fewer rights do not occur after the contract has been signed by both the worker and employer, Article 24 prohibits the substitution of contracts and states that the contract in place is the only valid contract. This article is derived from the Saudi contract.
- 25) If essential elements were not mentioned in the contract or if the law is amended in the future without amending the proposed unified contract, the proposed unified contracts refers to and incorporates the GCC unified law on domestic workers. This is in Article 25 of the contract, and similar provisions were included in the Kuwait, Saudi, and Bahraini model

contracts; however, this provision was modified to refer to GCC unified law rather than domestic law.

26) Article 26 states that while the contract is written in both Arabic and English and the language of country of origin of the domestic workers, the Arabic version shall prevail and be referred to when necessary. This article is derived from the Kuwaiti practices when it comes to contracts written in both English and Arabic.

The contract is to be concluded with the signatures and names of both parties: the employer and the domestic worker.

B. Standard Employment Contract for GCC Domestic Workers

Standard Employment Contract	العقد الموحد للعمالة المنزاية
For GCC Domestic Workers	بدول الخليج العربي
On this day,/20	انه في يوم، الموافق
This agreement is made and	20//
entered into by and between:	تم الاتفاق على ابر ام عقد بين كل من:
	ون لدوال
A. Employer (hereinafter referred as the First Party)	أ.صاحب العمل (يسمى الطرف الاول):
Name:	۱٬۰۰۰ (۱۳۵۰).
	וلاسم:
Notice 1 ID Novel on	
National ID Number:	
Address:	رقم الهوية الوطنية:
Contact Number(s):	العنوان:
B. The Domestic Worker (hereinafter referred to as the Second Party)	ارقام الاتصال:
Name:	
	ب. العامل المنزلي (يسمى الطرف
Occupation:	الثاني):
Nationality:	الاسم:
·	'' السم.
Gender:	المهنة:
	الجنسية:
	الجنس:

Address:

Marital Status:

Contact No.:

Passport No.:

Place of Passport Issue:

Date of Passport Issue:

Date of Birth:

The parties herein agree to the following terms and conditions:

1. Country of Employment:

2. Duration of the Contract:

The contract shall be valid for a period of two years commencing from the date of arrival by the Second Party in the country of destination. The monthly wage shall be calculated from the said established date.

- 4. The First Party agrees to pay the Second Party through the wage payment system set by the GCC Body.
- 5. The First Party agrees to bear the expenses of recruiting the Second Party. The Second Party shall not pay any recruitment expenses.
- 6. The Second Party shall not work for more than ten hours a day. Furthermore, the Second Party shall not work for five consecutive hours without rest.

العنوان:

الحالة الاحتماعية:

رقم الهاتف:

رقم الجواز :

مكان الاصدار:

تاريخ الاصدار:

تاريخ الميلاد:

اتفق الطرفان على الشروط والقواعد الموضحة أدناه:

1 الدولة التي سيعمل بها العامل المنزلي

.....

2.مدة العقد:

يسري العقد لمدة سنتين تبدا من تاريخ وصول العامل إلى الدولة المستقبلة ويبدأ حساب الراتب الشهري من ذلك الشهر.

3. اتفق الطرف الثاني على العمل بمرتب

شهرى مقداره على أن لا يقل عن

مدفوعة من الطرف الاول إلى الطرف الثاني في بداية كل

4. يوافق الطرف الاول على دفع المرتب

الشهرى للطرف الثاني و ذلك من خلال ألية دفع الرواتب

التي أقرتها هيئة العمالة لدول الخليج العربي.

5 يقر الطرف الأول بأنه سوف يتكفل يتحمل

مصاريف استقدام الطرف الثاني و لا يجوز له الرجوع

بها عليه.

6. لا يجوز تشغيل الطرف الثاني لأكثر من

عشر ساعات، كما لا يجوز تشغيل الطرف الثاني لأكثر

من خمس ساعات متواصلة دون راحة.

The Second Party is entitled to a night break of at least eight hours.

- 7. The Second Party is entitled to a paid weekly day off. If the Second Party agrees to work on her/his day off, he/she is entitled to another day of rest
- 8. The First Party bears the cost of an economy ticket to fly the Second Party from his/her country of origin to the country of destination. The First Party shall also bear the cost of a return ticket following the expiration of this contract.
- 9. The First Party is responsible for providing food, clothing, and suitable accommodation to the Second Party. The First Party is also responsible for hospital treatment.
- 10. The Second Party is entitled to paid sick leave in accordance with the law.
- 11. The Second Party is entitled to thirty days paid annual leave after two years in service.
- 12. In case of death of the Second Party, the First Party is liable for the repatriation of the remains and personal belongings of the Second Party to the country of origin as soon as legally possible and without delay. The First Party shall pay the next of kin the equivalent of one month's salary.
- 13. Any dispute arising from this contract shall be governed by the GCC Body. If the dispute cannot be amicably settled it shall be referred to the courts in the specified GCC country.
- 14. The Second Party is banned from transferring residency during the first six months after entering the country.
- 15. The Second Party is entitled to an end of service payment equal to one month's salary for every four years of service.
- 16. The First Party is prohibited from retaining any identification documents of the Second Party without the Second Party's consent.

الطرف الثاني يستحق استراحة ليلية لا تقل عن ثمانية ساعات.

 7. للطرف الثاني الحق في الحصول على راحة اسبوعية مدفوعة الاجر, و في حالة عمله/ ها في يوم عطلته/ها يتم اعطاها يوم راحة أخر.

 8. يلتزم الطرف الاول بدفع تذكرة سياحية للطرف الثاني وذلك لنقل العامل/العاملة إلى الدولة المستقبلة، كما يلتزم الطرف الاول بدفع تذكرة العودة بعد اتمام العقد.

 9. يلتزم الطرف الاول بتوفير الاكل،الملبس، و الملجأ الملائم، كما يلتزم بعلاجه و تمريضه.

 يستحق الطرف الثاني اجازات مرضية مدفوعة الاجر،كما هو مذكور بالقانون.

11. يستحق الطرف الثاني اجازة مدفوعة الاجر مدتها ثلاثين يوم بعد خدمة سنتان لدى الطرف الاول.

12. في حالة وفاة الطرف الثاني ، يتحمل الطرف الاول تكاليف اعادة جثمان الطرف الثاني إلى بلده، باسرع وقت قانونيا بدون تاخير، مع صرف أجرة الشهر الذي توفي فيه للمستحقين عنه.

13. أي نزاع ينشأ بخصوص أي بند من بنود هذا العقد، ينعقد الاختصاص فيه إلى القضاء المختص في دولة الخليج.

14. يمنع تحويل اقامة الطرف الثاني خلال ستة اشهر من تاريخ دخوله البلاد.

 يستحق الطرف الثاني مكافأة نهاية خدمة تعادل أجرة شهر عن كل أربعة سنوات عند انتهاء مدة العقد.

> 16. يحظر على الطرف الاول الاحتفاظ بجواز سفر أو أية مستندات أو وثائق اثبات للطرف الثاني إلا بناء على موافقة الطرف الثاني.

17. Termination of Contract:

- (1) The First Party may terminate the contract by providing thirty days' notice to the Second Party. If the termination is immediate, the First Party is responsible for paying two months of salary to the Second Party.
- (2) The Second Party may also terminate the contract by providing thirty days' notice to the First Party. If the termination is immediate, then the Second Party is responsible for paying two months of salary to the First Party.
- 18. The Second Party is not allowed to work outside of the designated country or for others without consent of the Second Party.
- 19. The Second Party must keep the secrets and protect the money and property of the First Party and the family members of the First Party.
- 20. The Second Party is obligated to carry out the work assigned, to follow the instruction of the First Party, and to respect the rules, traditions and practices of the country.
- 21. The Second Party shall be allowed to freely communicate with his/her family and embassy at his/her personal expense.
- 22. The Second Party shall be repatriated at the First Party's expense in the event of force majeure, or in case the Second Party suffers from serious illness or working injury medically proven to render him/her incapable of completing the contract. The Second Party shall be paid the wages due until the date of departure.
- 23. This contract may be renewed for a period of another two years with the mutual consent of the parties.

17. انهاء العقد:

 (1) للطرف الاول انهاء العقد و ذلك بتقديم اشعار خطي للطرف الثاني، و في حالة الانهاء الفوري للعقد يتعين على الطرف الاول دفع اجرة شهرين للطرف الثاني.

(2) للطرف الثاني ايضا انهاء العقد، وذلك بتقديم اشعار خطي للطرف الاول، وفي حالة الانهاء الفوري للعقد يتعين على الطرف الثاني دفع أجرة شهرين للطرف الاول.

18 يتعهد الطرف الاول بعدم تكليف الطرف الثاني بالعمل خارج الدولة دون موافقته أو تشغيله لدى الغير، واذا تبين خلاف ذلك يلتزم باعادته إلى بلده على نفقته.

19. على الطرف الثاني المحافظة على أسرار وأموال وممتلكات الطرف الاول وأفراد أسرته.

20. يلتزم الطرف الثاني باتباع تعليمات الطرف الاول وتنفيذها على أكمل وجه و احترام قوانين وعادات وتقاليد البلاد، شريطة ألا يتعرض تنفيذ هذه التعليمات سلامة الطرف الثاني إلى الخطر أو يسىء إلى كرامته.

21. يجب السماح للطرف الثاني بحرية الاتصال بأفراد أسرته و الاتصال بسفارتهم على نفقتهم الشخصية.

22. في حالة وقوع قوة قاهرة أو تعرض الطرف الثاني لمرض خطير أو اصابة أثناء العمل، و الذي يثبت طبيا عدم القدرة معها على اكمال العقد يقوم الطرف الاول بترحيل الطرف الثاني على حسابه، على أن بدفع للطرف الثاني رواتبه المستحقة حتى تاريخ المغادرة.

23. يجوز تجديد هذا العقد لفترة أخرى مدتها سنتان بموافقة طرفي العقد.

CHAPTER 12: CONCLUSION

The issue of domestic work in the GCC is complex. There is often a relationship imbalance between the domestic worker and the employer in all parts of the world. 1092 In the GCC, this imbalance of power occurs through the *Kafala* system (the sponsorship system). Many employers treat their domestic workers well and consider them a member of their family. Unfortunately, there are domestic workers who are abused by their employers. One case of abuse is one too many and the issue needs to be addressed. We are witnessing an era of reform and international efforts to improve the issue of domestic worker in the GCC region. GCC countries are taking many steps to improve the situation for domestic workers with nearly all GCC countries implementing domestic worker legislation that creates a solid base for domestic workers' rights. While gaps exist in those different pieces of legislation that need reformed or rectified, nevertheless, these legal reforms are a step to offering effective protections to domestic workers.

The methodology of this dissertation looked extensively at the emerging law and practices of GCC countries to identify best practices that can be incorporated into a region-wide regulatory system. This dissertation also identified continuing problems and challenges that exist, despite these emerging laws, in order to pinpoint what next steps can be taken to further improve the regulation of domestic work in GCC countries. Moreover, this dissertation sought to use the opportunity presented by the GCC's move toward increased unification and standardization across the region to lower barriers to free movement and labor contracting by domestic workers. This study, and many others, have identified those barriers as key reasons for the continuous problems faced by domestic workers. If domestic workers can move freely and contract with fair employers, they will have more bargaining power and more ability to protect themselves from abusive situations.

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¹⁰⁹² Peewara Sapsuwan, *Abuse of Domestic Workers in Hong Kong*, BORGEN NEWS (Apr. 14, 2014), http://www.borgenmagazine.com/abuse-domestic-workers-hong-kong/; Florence Massena, *Abused Ethiopian Domestic Worker is "The Poster Girl for Kafala" in Lebanon*, EQUAL TIMES (May 22, 2018), https://www.equaltimes.org/abused-ethiopian-domestic-worker?lang=en#.W6IG__ZuLD4; *Domestic Workers Continue to be Abused Until Tougher Laws Can Protect Them*, STAR 2 (Apr. 2, 2018), https://www.star2.com/family/2018/04/06/domestic-workers-will-continue-to-be-abused-until-there-are-tougher-laws-to-protect-them/#Wk5z1Gd4duVxd5Gj.99.

Of course, free movement of domestic workers is not all that is required since it should be coupled with robust labor protection such as minimum wage regulation of working hours and so forth. Accordingly, this dissertation proposed a region-wide body to monitor compliance along with protective legislation to be implemented across the region. This body will investigate and handle complaints as well as set up procedures utilizing emerging technologies to make it easier for domestic workers and employers to find each other and enter employment relationships without the use of expensive and problematic middlemen.

This dissertation does not contend that all problems can be eliminated by these proposals; however, this thesis offers a feasible starting place for continued reforms and progress. Many international NGOs have proposed solutions that are insensitive to the legal context and ignore the work that has already been done to reform labor regulations in the GCC, which this dissertation builds upon. Of course, outside pressure can be helpful in generating the impetus for change, but it is best for change to come from within — by experts who deeply understand the legal traditions and history of the region. Building on these traditions creates a better path forward than simply condemning and dismantling what exists without a feasible vision of what can replace these preexisting systems. This dissertation offers a feasible vision, while recognizing that much more work and compromise is required to adopt a workable and effective region-wide system using the preexisting structures of the GCC.

Through a detailed examination of current practices regarding domestic worker regulation in various GCC countries, this dissertation shows that nearly each of the GCC countries came up with a practice that is worth noting and spreading. Kuwait, for example, set minimum wages for domestic workers and established a government-owned company to handle recruitment of domestic workers. Also, Kuwait's establishment of a governmental shelter for domestic workers is a notable example to follow. Another helpful institution is its civil society movement that helps raise awareness on the issues and rights of migrant domestic workers in Kuwait.

The Kingdom of Saudi Arabia established an internet portal, Musaned, to verify domestic workers' contracts and implement a wage protection system for domestic workers. This use of technology allows Saudi Arabians to make sure that domestic workers are paid their exact salaries as specified in their contract via bank transfer. Bahrain established the Labor Market Regulatory Authority (LMRA), an independent public cooperation fully authorized to regulate

the labor market in Bahrain. Moreover, Bahrain is more progressive than other GCC countries as it allows foreigners to participate in unions. Furthermore, civil society in Bahrain, as in Kuwait, offers help and protection to abused domestic workers. Another example from Bahrain is the awareness campaign conducted by the LMRA on the rights of migrant workers, which specifically targeted treatment of migrant domestic workers. Along with the information pamphlets offered in different languages to inform migrants of the rights they hold, research shows that the number of domestic workers in shelters in Bahrain is low when compared to other GCC countries. This may show that Bahrain is doing something right to improve the situation of domestic workers, though this can also be attributed to the fact that the number of domestic workers in Bahrain is not as high as in other GCC countries.

Qatar, which came under scrutiny following its winning bid to host the 2022 FIFA World Cup, recently adopted a domestic workers law. Although the law is not without some gaps, it is better than having no law in place. Also, in an effort to provide migrant workers with easier opportunities for redress, Qatar introduced kiosk machines to help migrant workers file complaints against their employers in cases of abuse. Those might not always be helpful for domestic workers, especially workers restricted to their employers' residences, but taking this idea and introducing it as an app for domestic workers could be helpful. The concept that domestic workers should be able to file a complaint against an employer from their own device within minutes is definitely an idea that is worth spreading to other GCC countries. Qatar can also do more to limit the exit visa requirements for all migrant workers and should consider abolishing that practice, as other GCC countries have.

Another country that recently adopted a domestic workers law, in 2017, is the United Arab Emirates. The law covers a gap in the legislation since the U.A.E. excludes domestic workers from the protections offered in its labor law. A good practice by the U.A.E. is the introduction of inspection provisions in the domestic workers law, where the law gives the authority to inspect an employer's house under two conditions: if the consent of the employer is granted or if there is a complaint from the domestic worker or employer and there is belief by the investigators that the law was violated. That provision is definitely worth adopting by other GCC countries. Another practice is the establishment of *Tadbeer* centers across the U.A.E., which are centers for recruiting domestic workers that operate in collaboration with the private and public sector.

Changes should not only occur in destination countries but also in countries of origin. Both countries of destination and countries of origin should work together to improve the situation of migrant domestic workers in their transnational migration. To that end, the Abu Dhabi dialogue, established in 2008, enables both countries of origin and countries of destination to discuss new ideas and solutions on the issue of migrant domestic workers. The improvements in the GCC region can be, in part, attributed to those meetings along with the political will of the GCC countries to improve the situation of migrant domestic workers. Countries of origin can also work to improve the situation for domestic workers including, but not limited to, conducting pre-employment decision-making guidance to help the domestic worker decide whether to migrate or not, pre-departure orientation on the country of destination, and basic language training, along with basic training on house work and what to do if abuse occurs from the employer. Equally important is post-arrival orientation, which is provided to domestic workers once they arrive in the country of destination to teach migrant domestic workers about their basic rights and what to do if they need help from their embassies.

Human rights organizations' reports on a number of common complaints from domestic workers in the GCC region provided additional insight in this research. The key problems that emerged included nonpayment of wages, paying less than the agreed amount, withholding of personal documents, as well as physical, psychological, and in extreme cases sexual, abuse. Also, workers frequently reported long working hours with no days off, restrictions on movement, and inadequate accommodations.

Out of those complaints, a number of recommendations emerged, including the expansion of the wage protection system to include migrant domestic workers similar to Saudi Arabia's system. GCC countries have already adopted a wage protection system for migrant workers and, since the number one complaint from domestic workers was nonpayment of wages, migrant domestic workers should be included in the wage protection system. An important proposal is the introduction of an internet portal to handle the recruitment of migrant domestic workers heading to the GCC that links employers to domestic workers based on certain criteria. The portal can test employers who register on the laws and regulations for domestic workers. It will also authenticate the standardized contract and retain a copy online for future reference and to address the issue of contract substitution.

Finally, as part of the proposal, the sponsorship system should shift from individuals (employers) to a GCC body established to handle the recruitment of migrant domestic workers. This will build on existing traditions in the GCC region rather than try to dismantle those traditions altogether. The Kafala system in the GCC expects that workers with little bargaining power will be protected from abuse by sponsors who owe duties of care and fair dealing to their workers. This proposal switches the duties traditionally owed to domestic workers under the Kafala system from individual employers to the state. Individual employers should, of course, continue to exercise their duties as defined under the Kafala system, but the government will also play a role — ensuring employers meet those duties and stepping in to protect workers in situations where employers fail in their duties. Having the government assume sponsorship duties also allows migrant domestic workers far more mobility within the employment system as they can move from one employer to another without losing sponsorship in the GCC region. Ensuring more freedom and mobility of labor thus can provide one solution to migrant domestic workers' potential vulnerability to mistreatment. Abolishing the Kafala system altogether would not help but hurt, as abolishing its concept of duty and protection leaves domestic workers even more exposed to potential harm. Instead, as proposed in this dissertation, a well-functioning system should recognize a balance of duties and obligations of fair and humane treatment from both workers and employers.

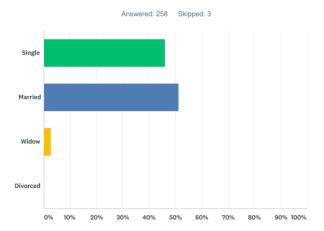
Finally, drawing on the detailed investigation of current best practices within the region, the proposal to adopt a standardized GCC contract for domestic work is rooted in provisions drawn from around the region. The proposal may not solve the problems that domestic workers face entirely or immediately, but it may help address the abuses and problems that domestic workers face in the GCC region in the long run and will create effective regulations that will not just remain in the books but will have teeth in practice.

APPENDICES

A. Domestic Workers Survey Results: Kuwait

Domestic Workers Survey

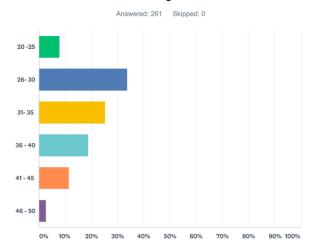
Q1 Marital Status



ANSWER CHOICES	RESPONSES	
Single	46.12%	119
Married	51.16%	132
Widow	2.71%	7
Divorced	0.00%	0
TOTAL		258

Domestic Workers Survey

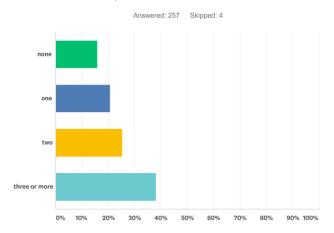
Q2 Age



ANSWER CHOICES	RESPONSES	
20 -25	8.05%	21
26- 30	33.72%	88
31- 35	25.29%	66
36 - 40	18.77%	49
41 - 45	11.49%	30
46 - 50	2.68%	7
TOTAL		261

Domestic Workers Survey

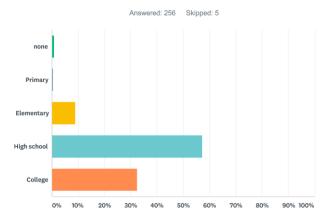
Q3 Number of Children



ANSWER CHOICES	RESPONSES	
none	15.95%	41
one	20.62%	53
two	25.29%	65
three or more	38.13%	98
TOTAL		257

Domestic Workers Survey

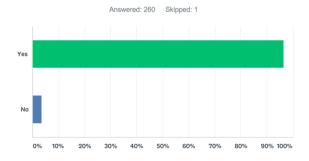
Q4 Level of Education



ANSWER CHOICES	RESPONSES	
none	0.78%	2
Primary	0.39%	1
Elementary	8.98%	23
High school	57.42%	147
College	32.42%	83
TOTAL		256

Domestic Workers Survey

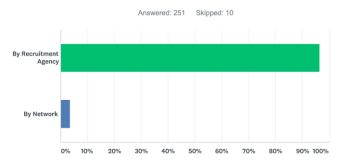
Q5 Do you speak English?



ANSWER CHOICES	RESPONSES	
Yes	96.54%	251
No	3.46%	9
TOTAL		260

Domestic Workers Survey

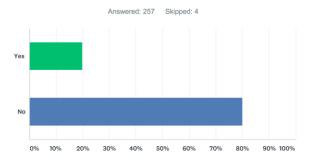
Q6 How did you get the job?



ANSWER CHOICES	RESPONSES	
By Recruitment Agency	96.41%	242
By Network	3.59%	9
TOTAL		251

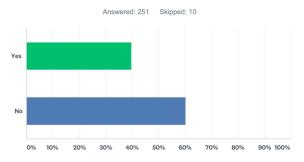
Domestic Workers Survey

Q7 Did you pay the recruitment agent?



ANSWER CHOICES	RESPONSES	
Yes	19.84%	51
No	80.16%	206
TOTAL		257

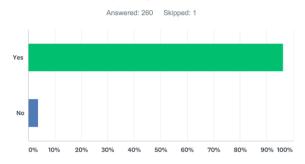
Q8 Did you previously work as a domestic worker?



ANSWER CHOICES	RESPONSES	
Yes	39.84%	100
No	60.16%	151
TOTAL		251

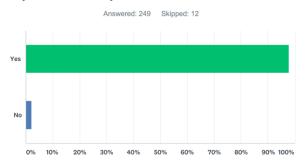
Domestic Workers Survey

Q9 Did you sign a contract?



ANSWER CHOICES	RESPONSES	
Yes	96.15%	250
No	3.85%	10
TOTAL		260

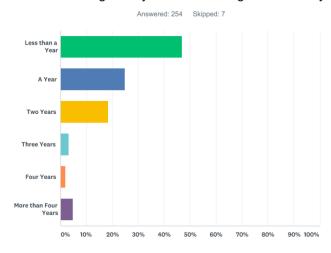
Q10 Did you know that you will work as a domestic worker?



ANSWER CHOICES	RESPONSES	
Yes	97.99%	244
No	2.01%	5
TOTAL		249

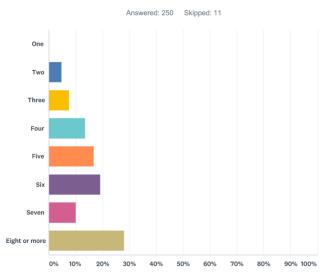
Domestic Workers Survey

Q11 How long have you been working for this family?



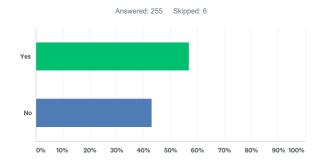
ANSWER CHOICES	RESPONSES	
Less than a Year	46.85%	119
A Year	24.80%	63
Two Years	18.50%	47
Three Years	3.15%	8
Four Years	1.97%	5
More than Four Years	4.72%	12
TOTAL		254

Q12 How many persons live in the household?



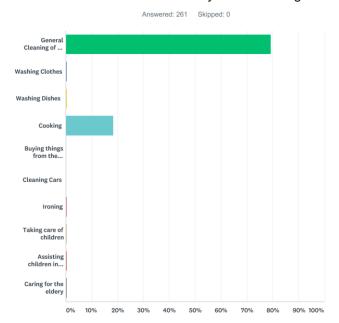
ANSWER CHOICES	RESPONSES	
One	0.00%	0
Two	4.80%	12
Three	7.60%	19
Four	13.60%	34
Five	16.80%	42
Six	19.20%	48
Seven	10.00%	25
Eight or more	28.00%	70
TOTAL		250
	···· ·· ········· ·· ··· ·· ·· · · · ·	

Q13 Is there another domestic worker in the house?



ANSWER CHOICES	RESPONSES	
Yes	56.86%	145
No	43.14%	110
TOTAL		255

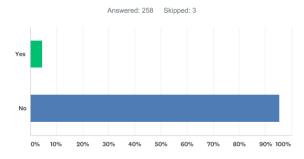
Q14 Please Check the tasks you are in charge of:



ANSWER CHOICES	RESPONSES	
General Cleaning of the House	79.31%	207
Washing Clothes	0.38%	1
Washing Dishes	0.38%	1
Cooking	18.39%	48
Buying things from the supermarket	0.00%	0
Cleaning Cars	0.00%	0
Ironing	0.38%	1

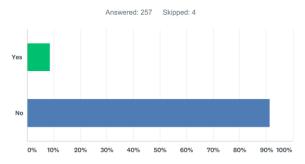
Domestic Workers Survey

Q15 Do you get a weekly day off?



ANSWER CHOICES	RESPONSES	
Yes	4.65%	12
No	95.35%	246
TOTAL		258

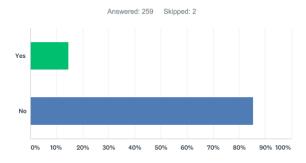
Q16 Are you allowed to go out on your day off?



ANSWER CHOICES	RESPONSES	
Yes	8.56%	22
No	91.44%	235
TOTAL		257

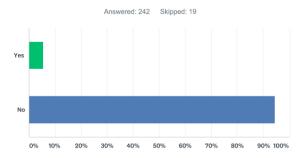
Domestic Workers Survey

Q17 If you are sick do you stay in bed?



ANSWER CHOICES	RESPONSES	
Yes	14.67%	38
No	85.33%	221
TOTAL		259

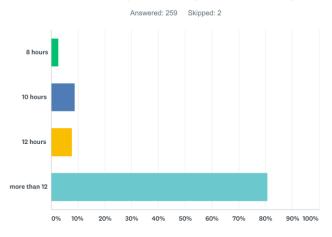
Q18 Are you paid for an annual leave?



ANSWER CHOICES	RESPONSES	
Yes	5.37%	13
No	94.63%	229
TOTAL		242

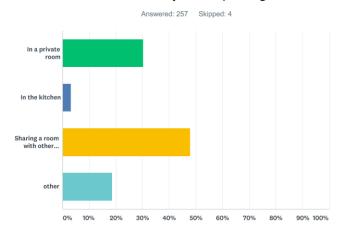
Domestic Workers Survey

Q19 How many hours do you work per day?



ANSWER CHOICES	RESPONSES	
8 hours	2.70%	7
10 hours	8.88%	23
12 hours	7.72%	20
more than 12	80.69%	209
TOTAL		259

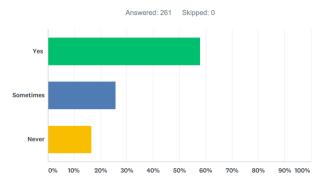
Q20 Where do you sleep at night?



ANSWER CHOICES	RESPONSES	
In a private room	30.35%	78
In the kitchen	3.11%	8
Sharing a room with other workers	47.86%	123
other	18.68%	48
TOTAL		257

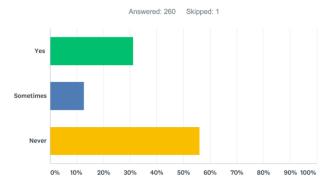
Domestic Workers Survey

Q21 Did you experience one or more of the following treatments by the family you are working for? (Verbal Insults)



ANSWER CHOICES	RESPONSES	
Yes	57.85%	151
Sometimes	25.67%	67
Never	16.48%	43
TOTAL		261

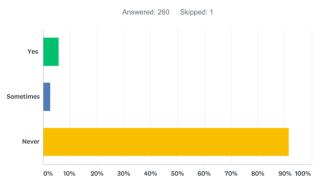
Q22 Did you experience one or more of the following treatments by the family you are working for? (Beating)



ANSWER CHOICES	RESPONSES	
Yes	31.15%	81
Sometimes	12.69%	33
Never	56.15%	146
TOTAL		260

Domestic Workers Survey

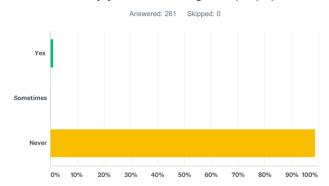
Q23 Did you experience one or more of the following treatments by the family you are working for? (Sexual harassment)



ANSWER CHOICES	RESPONSES	
Yes	5.77%	15
Sometimes	2.69%	7
Never	91.54%	238
TOTAL		260

Domestic Workers Survey

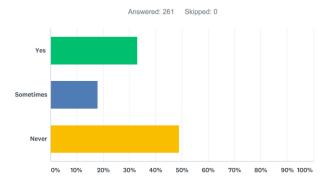
Q24 Did you experience one or more of the following treatments by the family you are working for? (Rape)



ANSWER CHOICES	RESPONSES	
Yes	1.15%	3
Sometimes	0.00%	0
Never	98.85%	258
TOTAL		261

Domestic Workers Survey

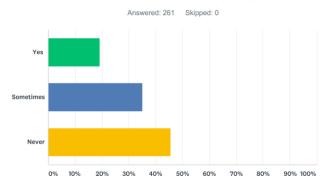
Q25 Did you experience one or more of the following treatments by the family you are working for? (Not paying the salary)



ANSWER CHOICES	RESPONSES	
Yes	32.95%	86
Sometimes	18.01%	47
Never	49.04%	128
TOTAL		261

Domestic Workers Survey

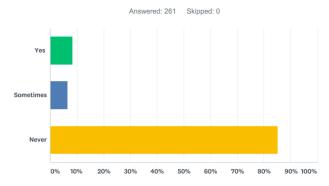
Q26 Did you experience one or more of the following treatments by the family you are working for? (Not giving you food)



ANSWER CHOICES	RESPONSES	
Yes	19.16%	50
Sometimes	35.25%	92
Never	45.59%	119
TOTAL		261

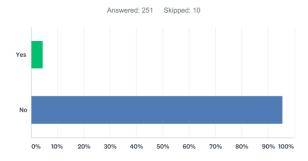
Domestic Workers Survey

Q27 Did you experience one or more of the following treatments by the family you are working for? (Punishing you by locking you in the room)



ANSWER CHOICES	RESPONSES	
Yes	8.43%	22
Sometimes	6.51%	17
Never	85.06%	222
TOTAL		261

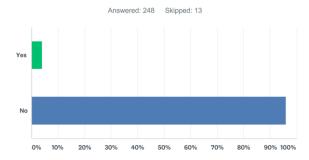
Q28 Are you allowed to visit friends?



ANSWER CHOICES	RESPONSES	
Yes	4.38%	11
No	95.62%	240
TOTAL		251

Domestic Workers Survey

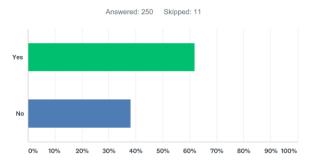
Q29 Are you allowed to receive visits?



ANSWER CHOICES	RESPONSES	
Yes	4.03%	10
No	95.97%	238
TOTAL		248

Domestic Workers Survey

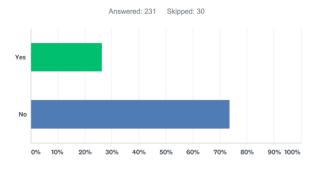
Q30 Are you allowed to use the telephone for personal calls?



ANSWER CHOICES	RESPONSES	
Yes	62.00%	155
No	38.00%	95
TOTAL		250

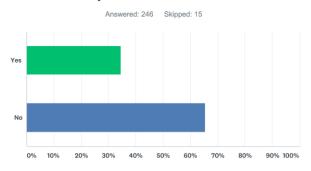
Domestic Workers Survey

Q31 Are you allowed to practice your religion?



ANSWER CHOICES	RESPONSES	
Yes	26.41%	61
No	73.59%	170
TOTAL		231

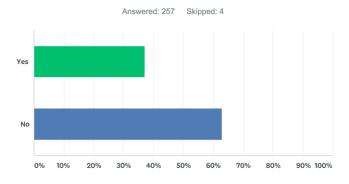
Q32 Are you allowed to watch T.V?



ANSWER CHOICES	RESPONSES	
Yes	34.55%	85
No	65.45%	161
TOTAL		246

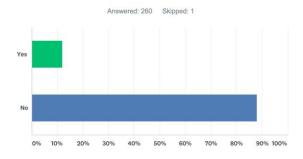
Domestic Workers Survey

Q33 Do you get presents and gifts from the family you are working for?



ANSWER CHOICES	RESPONSES	
Yes	36.96%	95
No	63.04%	162
TOTAL		257

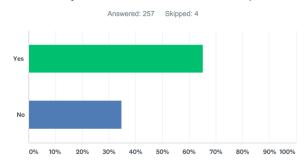
Q34 Do you have knowledge of law number 68 of 2015 regarding domestic workers?



ANSWER CHOICES	RESPONSES	
Yes	11.92%	31
No	88.08%	229
TOTAL		260

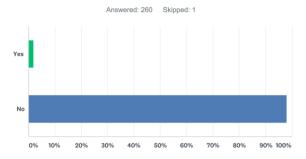
Domestic Workers Survey

Q35 Were you allowed to have a mobile phone?



ANSWER CHOICES	RESPONSES	
Yes	65.37%	168
No	34.63%	89
TOTAL		257

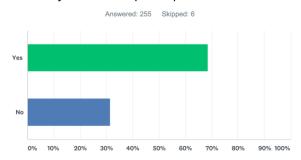
Q36 Are you allowed to keep your passport?



ANSWER CHOICES	RESPONSES	
Yes	1.92%	5
No	98.08%	255
TOTAL		260

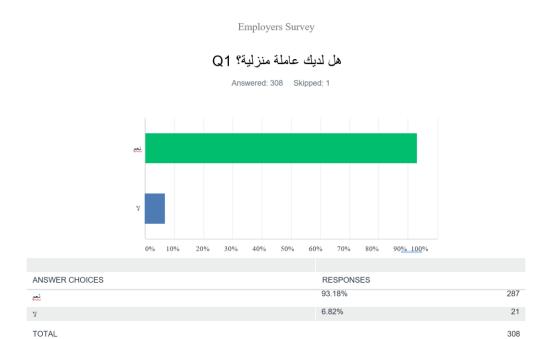
Domestic Workers Survey

Q37 Did you attend a pre-departure orientation?



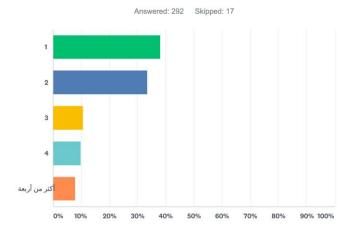
ANSWER CHOICES	RESPONSES	
Yes	68.63%	175
No	31.37%	80
TOTAL	2	255

B. Employers Survey Results: Kuwait



Employers Survey

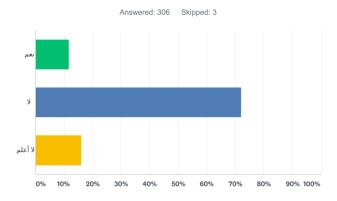
كم عاملة و عامل منزلية لديك؟ Q2



ANSWER CHOICES	RESPONSES	
1	38.01%	111
2	33.56%	98
3	10.62%	31
4	9.93%	29
أكثر من أربعة	7.88%	23
TOTAL		292

Employers Survey

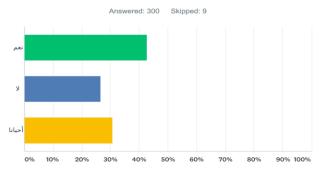
هل لديك معرفة بقانون رقم 68 لسنة 2015 المتعلق بالعمالة المنزلية؟ Q3



ANSWER CHOICES	RESPONSES	
نعم	11.76%	36
У	72.22%	221
لا أعلم	16.01%	49
TOTAL		306

Employers Survey

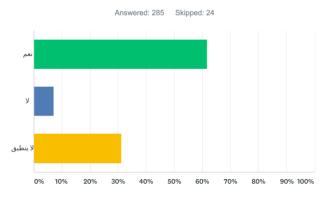
(هل تعطي العاملة المنزلية يوم راحة؟ (المرأة Q4



ANSWER CHOICES	RESPONSES	
نعم	42.67%	128
У	26.67%	80
أحيانا	30.67%	92
TOTAL		300

Employers Survey

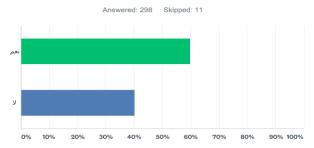
(هل تعطي العامل المنزلي يوم راحة؟ (الرجل Q5



ANSWER CHOICES	RESPONSES	
نعم	61.75%	176
У	7.02%	20
لا ينطبق	31.23%	89
TOTAL		285

Employers Survey

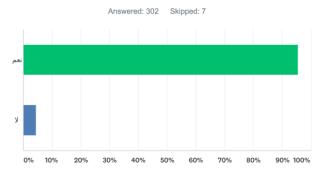
هل تسمح للعاملة المنزلية بالخروج في يوم راحتها؟ Q6



ANSWER CHOICES	RESPONSES	
نعم	59.73%	178
У	40.27%	120
TOTAL		298

Employers Survey

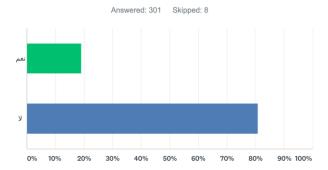
هل تسمح للعاملة المنزلية باقتناء هاتف محمول؟ Q7



ANSWER CHOICES	RESPONSES	
نعم	95.70%	289
У	4.30%	13
TOTAL		302

Employers Survey

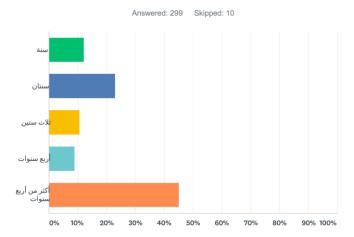
هل تسمح للعاملة المنزلية الاحتفاظ بجواز سفرها؟ Q8



ANSWER CHOICES	RESPONSES	
نعم	18.94%	57
У	81.06%	244
TOTAL		301

Employers Survey

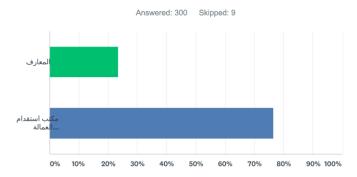
الفترة التي كانت معك العاملة المنزلية؟ Q9



ANSWER CHOICES	RESPONSES	
سنة	12.04%	36
سنتان	23.08%	69
ثلاث سنين	10.70%	32
أربع سنوات	9.03%	27
أربع سنوات أكثر من أربع سنوات	45.15%	135
TOTAL		299

Employers Survey

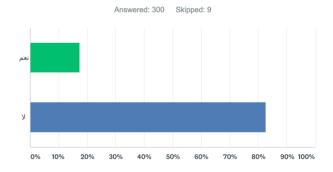
كيفية استقدام العاملة المنزلية ؟ Q10



ANSWER CHOICES	RESPONSES	
المعارف	23.33%	70
مكتب استقدام العمالة المنزلية	76.67%	230
TOTAL		300

Employers Survey

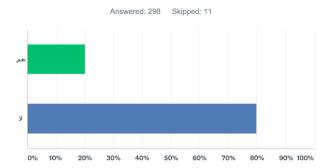
هل غادرت العاملة المنزلية قبل اتمام عقدها؟ Q11



ANSWER CHOICES	RESPONSES	
نعم	17.33%	52
У	82.67%	248
TOTAL		300

Employers Survey

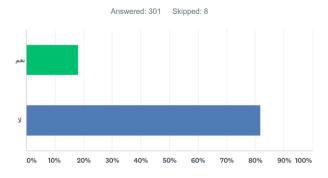
هل حصل خلاف بينك وبين العاملة المنزلية؟ Q12



ANSWER CHOICES	RESPONSES	
نعم	20.13%	60
У	79.87%	238
TOTAL		298

Employers Survey

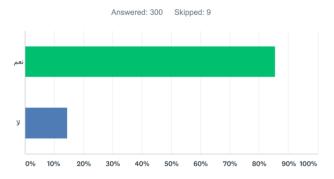
هل حصل تعامل بينك وبين سفارة العاملة المنزلية؟ Q13



ANSWER CHOICES	RESPONSES	
نعم	18.27%	55
У	81.73%	246
TOTAL		301

Employers Survey

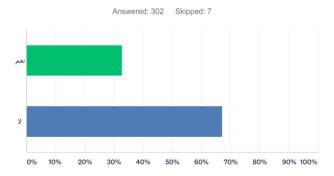
هل أنت راض عن عمل العاملة المنزلية؟ Q14



ANSWER CHOICES	RESPONSES	
نعم	85.67%	257
У	14.33%	43
TOTAL		300

Employers Survey

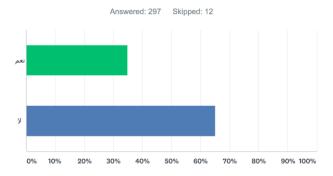
هل كانت العاملة المنزلية مدربة قبل قدومها؟ Q15



ANSWER CHOICES	RESPONSES	
نعم	32.78%	99
У	67.22%	203
TOTAL		302

Employers Survey

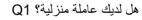
هل لدبك أي انتقاد ضد نظام الكفالة؟ Q16

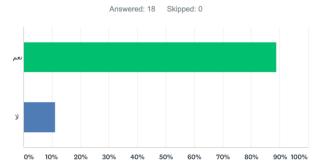


ANSWER CHOICES	RESPONSES	
نعم	35.02%	104
У	64.98%	193
TOTAL		297

C. Employers Survey Results: Saudi Arabia

Employers Survey - Saudi Arabia

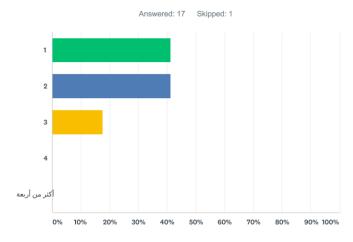




ANSWER CHOICES	RESPONSES	
نعم	88.89%	16
У	11.11%	2
TOTAL		18

Employers Survey - Saudi Arabia

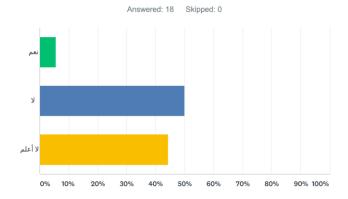
كم عاملة و عامل منزلية لديك؟ Q2



ANSWER CHOICES	RESPONSES	
1	41.18%	7
2	41.18%	7
3	17.65%	3
4	0.00%	0
اکثر من اربعة	0.00%	0
TOTAL		17

Employers Survey - Saudi Arabia

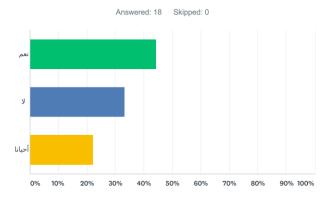
هل لديك معرفة بنظام رقم 310 المتعلق بالعمالة المنزلية؟ Q3



ANSWER CHOICES	RESPONSES	
نعم	5.56%	1
У	50.00%	9
γ أعلم	44.44%	8
TOTAL		18

Employers Survey - Saudi Arabia

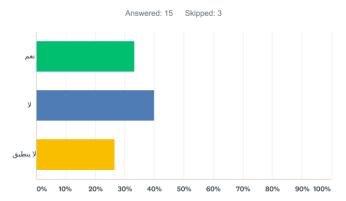
(هل تعطي العاملة المنزلية يوم راحة؟ (المرأة Q4



ANSWER CHOICES	RESPONSES	
نعم	44.44%	8
У	33.33%	6
أحيانا	22.22%	4
TOTAL		18

Employers Survey - Saudi Arabia

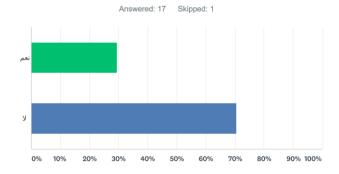
(هل تعطي العامل المنزلي يوم راحة؟ (الرجل Q5



ANSWER CHOICES	RESPONSES	
نعم	33.33%	5
У	40.00%	6
لا ينطبق	26.67%	4
TOTAL		15

Employers Survey - Saudi Arabia

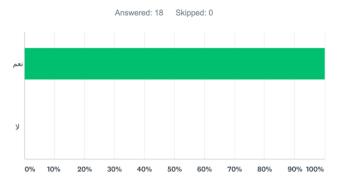
هل تسمح للعاملة المنزلية بالخروج في يوم راحتها؟ Q6



ANSWER CHOICES	RESPONSES	
نعم	29.41%	5
У	70.59%	12
TOTAL		17

Employers Survey - Saudi Arabia

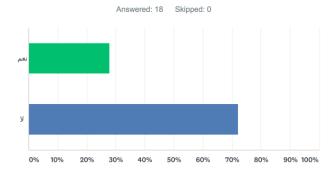
هل تسمح للعاملة المنزلية باقتناء هاتف محمول؟ Q7



ANSWER CHOICES	RESPONSES	
نعم	100.00%	18
У	0.00%	0
TOTAL		18

Employers Survey - Saudi Arabia

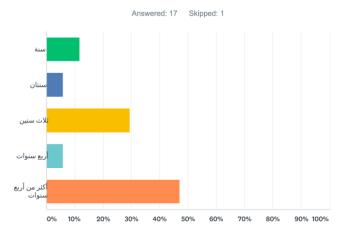
هل تسمح للعاملة المنزلية الاحتفاظ بجواز سفرها؟ Q8



ANSWER CHOICES	RESPONSES	
نعم	27.78%	5
У	72.22%	13
TOTAL		18

Employers Survey - Saudi Arabia

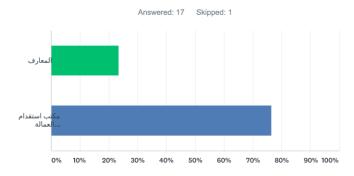
الفترة التي كانت معك العاملة المنزلية؟ Q9



ANSWER CHOICES	RESPONSES	
سنة	11.76%	2
سنتان	5.88%	1
ثلاث سنين	29.41%	5
أربع سنوات	5.88%	1
أربع سنوات انكثر من أربع سنوات	47.06%	8
TOTAL		17

Employers Survey - Saudi Arabia

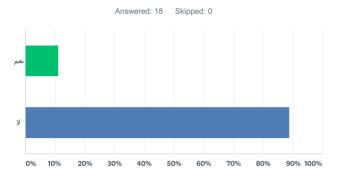
كيفية استقدام العاملة المنزلية ؟ Q10



ANSWER CHOICES	RESPONSES	
المعارف	23.53%	4
مكتب استقدام العمالة المنزلية	76.47%	13
TOTAL		17

Employers Survey - Saudi Arabia

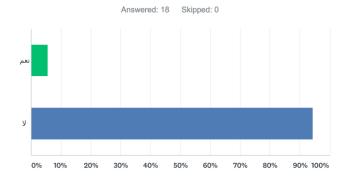
هل غادرت العاملة المنزلية قبل اتمام عقدها؟ Q11



ANSWER CHOICES	RESPONSES	
نعم	11.11%	2
У	88.89%	16
TOTAL		18

Employers Survey - Saudi Arabia

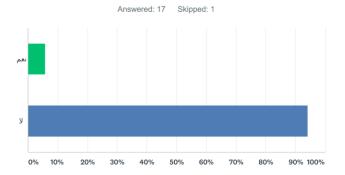
هل حصل خلاف بينك وبين العاملة المنزلية؟ Q12



ANSWER CHOICES	RESPONSES	
نعم	5.56%	1
У	94.44%	17
TOTAL		18

Employers Survey - Saudi Arabia

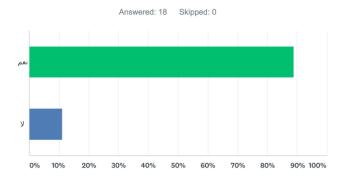
هل حصل تعامل بينك وبين سفارة العاملة المنزلية؟ Q13



ANSWER CHOICES	RESPONSES	
نعم	5.88%	1
У	94.12%	16
TOTAL		17

Employers Survey - Saudi Arabia

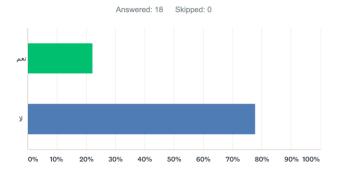
هل أنت راض عن عمل العاملة المنزلية؟ Q14



ANSWER CHOICES	RESPONSES	
نعم	88.89%	16
У	11.11%	2
TOTAL		18

Employers Survey - Saudi Arabia

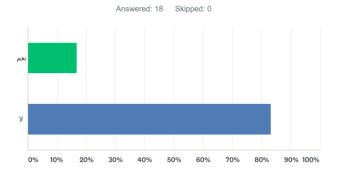
هل كانت العاملة المنزلية مدربة قبل قدومها؟ Q15



ANSWER CHOICES	RESPONSES	
نعم	22.22%	4
У	77.78%	14
TOTAL		18

Employers Survey - Saudi Arabia

هل لدبك أي انتقاد ضد نظام الكفالة؟ Q16

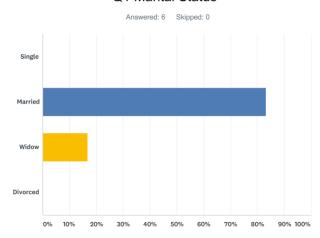


ANSWER CHOICES	RESPONSES	
نعم	16.67%	3
У	83.33%	15
TOTAL		18

D. Domestic Workers Survey Results: Bahrain

Domestic Workers Survey- Bahrain

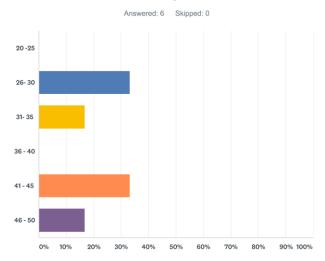
Q1 Marital Status



ANSWER CHOICES	RESPONSES	
Single	0.00%	0
Married	83.33%	5
Widow	16.67%	1
Divorced	0.00%	0
TOTAL		6

Domestic Workers Survey- Bahrain

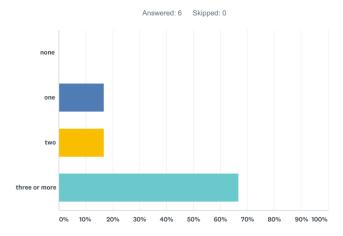




ANSWER CHOICES	RESPONSES	
20 -25	0.00%	0
26- 30	33.33%	2
31- 35	16.67%	1
36 - 40	0.00%	0
41 - 45	33.33%	2
46 - 50	16.67%	1
TOTAL		6

Domestic Workers Survey- Bahrain

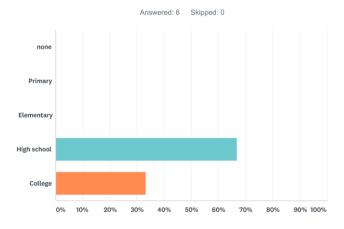
Q3 Number of Children



ANSWER CHOICES	RESPONSES	
none	0.00%	0
one	16.67%	1
two	16.67%	1
three or more	66.67%	4
TOTAL		6

Domestic Workers Survey- Bahrain

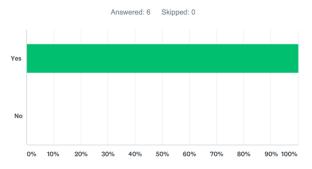
Q4 Level of Education



ANSWER CHOICES	RESPONSES	
none	0.00%	0
Primary	0.00%	0
Elementary	0.00%	0
High school	66.67%	4
College	33.33%	2
TOTAL		6

Domestic Workers Survey- Bahrain

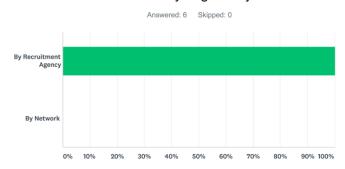
Q5 Do you speak English?



ANSWER CHOICES	RESPONSES	
Yes	100.00%	6
No	0.00%	0
TOTAL		6

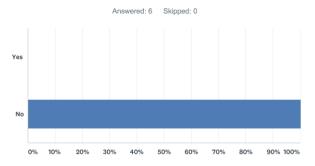
Domestic Workers Survey- Bahrain

Q6 How did you get the job?



ANSWER CHOICES	RESPONSES	
By Recruitment Agency	100.00%	6
By Network	0.00%	0
TOTAL		6

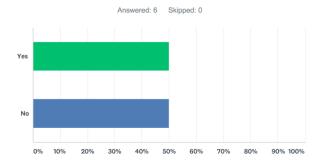
Q7 Did you pay the recruitment agent?



ANSWER CHOICES	RESPONSES	
Yes	0.00%	0
No	100.00%	6
TOTAL		6

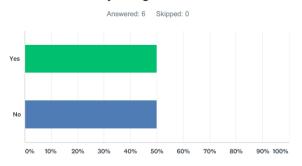
Domestic Workers Survey- Bahrain

Q8 Did you previously work as a domestic worker?



ANSWER CHOICES	RESPONSES	
Yes	50.00%	3
No	50.00%	3
TOTAL		6

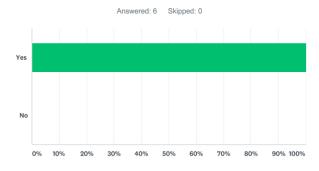
Q9 Did you sign a contract?



ANSWER CHOICES	RESPONSES	
Yes	50.00%	3
No	50.00%	3
TOTAL		6

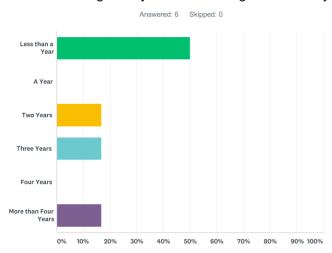
Domestic Workers Survey- Bahrain

Q10 Did you know that you will work as a domestic worker?



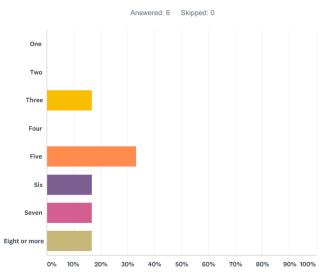
ANSWER CHOICES	RESPONSES	
Yes	100.00%	6
No	0.00%	0
TOTAL		6

Q11 How long have you been working for this family?



ANSWER CHOICES	RESPONSES	
Less than a Year	50.00%	3
A Year	0.00%	0
Two Years	16.67%	1
Three Years	16.67%	1
Four Years	0.00%	0
More than Four Years	16.67%	1
TOTAL		6

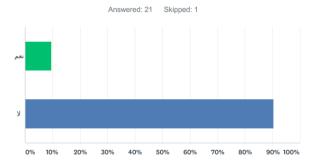
Q12 How many persons live in the household?



ANSWER CHOICES	RESPONSES	
One	0.00%	0
Two	0.00%	0
Three	16.67%	1
Four	0.00%	0
Five	33.33%	2
Six	16.67%	1
Seven	16.67%	1
Eight or more	16.67%	1
TOTAL		6

Employers Survey - Bahrain

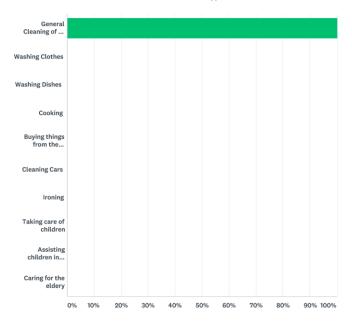
هل حصل تعامل بينك وبين سفارة العاملة المنزلية؟ Q13



ANSWER CHOICES	RESPONSES	
نعم	9.52%	2
У	90.48%	19
TOTAL		21

Q14 Please Check the tasks you are in charge of:

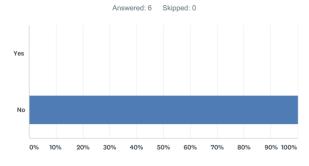
Answered: 6 Skipped: 0



ANSWER CHOICES	RESPONSES	
General Cleaning of the House	100.00%	6
Washing Clothes	0.00%	0
Washing Dishes	0.00%	0
Cooking	0.00%	0
Buying things from the supermarket	0.00%	0

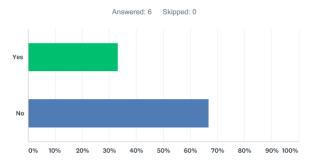
Domestic Workers Survey- Bahrain

Q15 Do you get a weekly day off?



ANSWER CHOICES	RESPONSES	
Yes	0.00%	0
No	100.00%	6
TOTAL		6

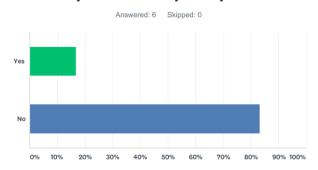
Q16 Are you allowed to go out on your day off?



ANSWER CHOICES	RESPONSES	
Yes	33.33%	2
No	66.67%	4
TOTAL		6

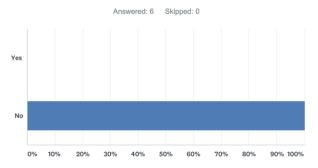
Domestic Workers Survey- Bahrain

Q17 If you are sick do you stay in bed?



ANSWER CHOICES	RESPONSES	
Yes	16.67%	1
No	83.33%	5
TOTAL		6

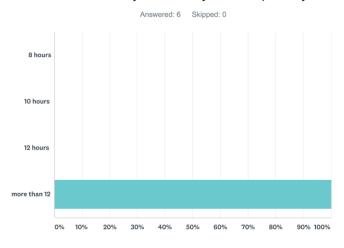
Q18 Are you paid for an annual leave?



ANSWER CHOICES	RESPONSES	
Yes	0.00%	0
No	100.00%	6
TOTAL		6

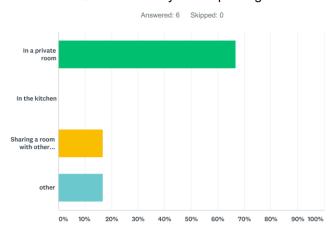
Domestic Workers Survey- Bahrain

Q19 How many hours do you work per day?



ANSWER CHOICES	RESPONSES	
8 hours	0.00%	0
10 hours	0.00%	0
12 hours	0.00%	0
more than 12	100.00%	6
TOTAL		6

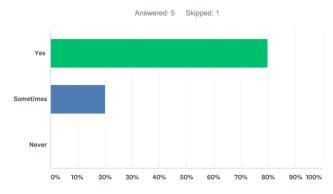
Q20 Where do you sleep at night?



ANSWER CHOICES	RESPONSES	
In a private room	66.67%	4
In the kitchen	0.00%	0
Sharing a room with other workers	16.67%	1
other	16.67%	1
TOTAL		6

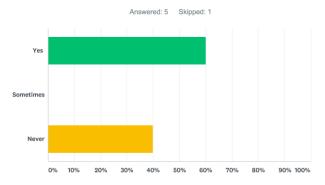
Domestic Workers Survey- Bahrain

Q21 Did you experience one or more of the following treatments by the family you are working for? (Verbal Insults)



ANSWER CHOICES	RESPONSES	
Yes	80.00%	4
Sometimes	20.00%	1
Never	0.00%	0
TOTAL		5

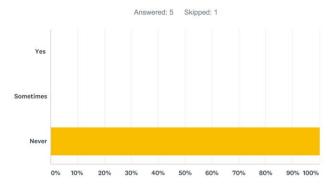
Q22 Did you experience one or more of the following treatments by the family you are working for? (Beating)



ANSWER CHOICES	RESPONSES	
Yes	60.00%	3
Sometimes	0.00%	0
Never	40.00%	2
TOTAL		5

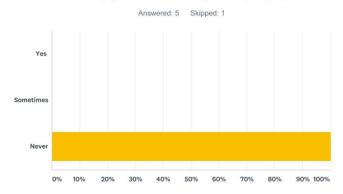
Domestic Workers Survey- Bahrain

Q23 Did you experience one or more of the following treatments by the family you are working for? (Sexual harassment)



ANSWER CHOICES	RESPONSES	
Yes	0.00%	0
Sometimes	0.00%	0
Never	100.00%	5
TOTAL		5

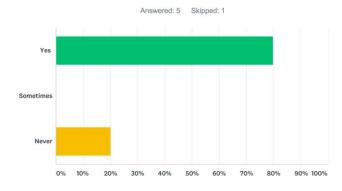
Q24 Did you experience one or more of the following treatments by the family you are working for? (Rape)



ANSWER CHOICES	RESPONSES	
Yes	0.00%	0
Sometimes	0.00%	0
Never	100.00%	5
TOTAL		5

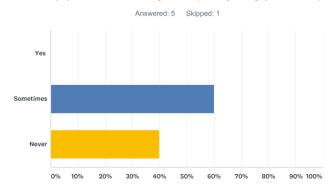
Domestic Workers Survey- Bahrain

Q25 Did you experience one or more of the following treatments by the family you are working for? (Not paying the salary)



ANSWER CHOICES	RESPONSES	
Yes	80.00%	4
Sometimes	0.00%	0
Never	20.00%	1
TOTAL		5

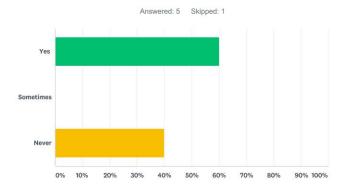
Q26 Did you experience one or more of the following treatments by the family you are working for? (Not giving you food)



ANSWER CHOICES	RESPONSES	
Yes	0.00%	0
Sometimes	60.00%	3
Never	40.00%	2
TOTAL		5

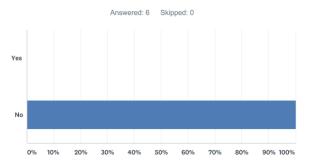
Domestic Workers Survey- Bahrain

Q27 Did you experience one or more of the following treatments by the family you are working for? (Punishing you by locking you in the room)



ANSWER CHOICES	RESPONSES	
Yes	60.00%	3
Sometimes	0.00%	0
Never	40.00%	2
TOTAL		5

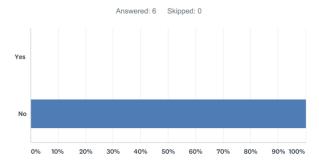
Q28 Are you allowed to visit friends?



ANSWER CHOICES	RESPONSES	
Yes	0.00%	0
No	100.00%	6
TOTAL		6

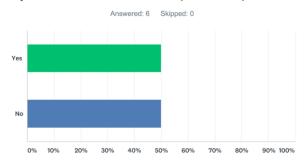
Domestic Workers Survey- Bahrain

Q29 Are you allowed to receive visits?



ANSWER CHOICES	RESPONSES	
Yes	0.00%	0
No	100.00%	6
TOTAL		6

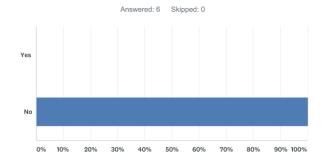
Q30 Are you allowed to use the telephone for personal calls?



ANSWER CHOICES	RESPONSES	
Yes	50.00%	3
No	50.00%	3
TOTAL		6

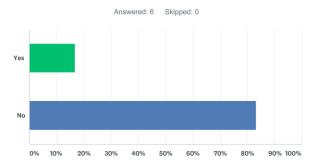
Domestic Workers Survey- Bahrain

Q31 Are you allowed to practice your religion?



ANSWER CHOICES	RESPONSES	
Yes	0.00%	0
No	100.00%	6
TOTAL		6

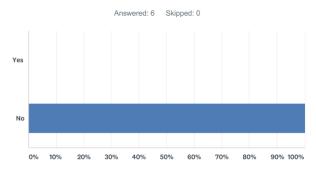
Q32 Are you allowed to watch T.V?



ANSWER CHOICES	RESPONSES	
Yes	16.67%	1
No	83.33%	5
TOTAL		6

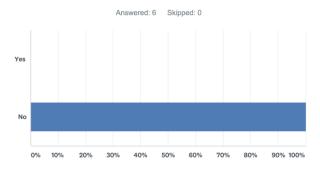
Domestic Workers Survey- Bahrain

Q33 Do you get presents and gifts from the family you are working for?



ANSWER CHOICES	RESPONSES	
Yes	0.00%	0
No	100.00%	6
TOTAL		6

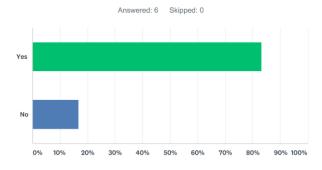
Q34 Do you have knowledge of law number 36 of 2012 regarding domestic workers?



ANSWER CHOICES	RESPONSES	
Yes	0.00%	0
No	100.00%	6
TOTAL		6

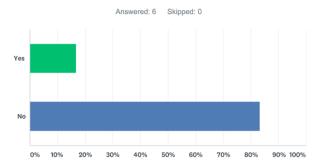
Domestic Workers Survey- Bahrain

Q35 Were you allowed to have a mobile phone?



ANSWER CHOICES	RESPONSES	
Yes	83.33%	5
No	16.67%	1
TOTAL		6

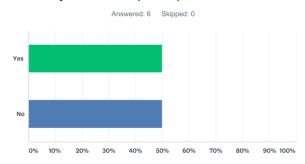
Q36 Are you allowed to keep your passport?



ANSWER CHOICES	RESPONSES	
Yes	16.67%	1
No	83.33%	5
TOTAL		6

Domestic Workers Survey- Bahrain

Q37 Did you attend a pre-departure orientation?

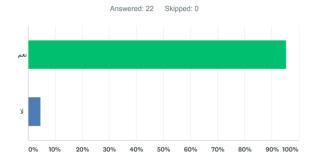


ANSWER CHOICES	RESPONSES	
Yes	50.00%	3
No	50.00%	3
TOTAL		6

E. Employers Survey Results: Bahrain

Employers Survey - Bahrain

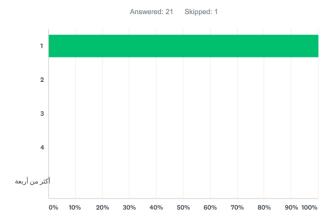
هل لديك عاملة منزلية؟ Q1



ANSWER CHOICES	RESPONSES	
نعم	95.45%	21
У	4.55%	1
TOTAL		22

Employers Survey - Bahrain

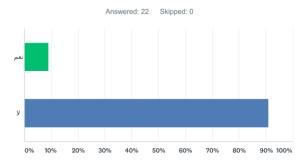
كم عاملة و عامل منزلية لديك؟ Q2



ANSWER CHOICES	RESPONSES	
1	100.00%	21
2	0.00%	0
3	0.00%	0
4	0.00%	0
اکثر من أربعة	0.00%	0
TOTAL		21

Employers Survey - Bahrain

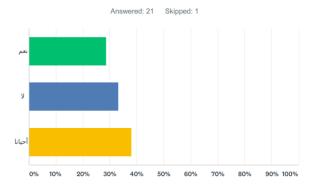
هل لديك معرفة بقانون رقم 36 لسنة 2012 المتعلق بالعمالة المنزلية؟ Q3



ANSWER CHOICES	RESPONSES	
نعم	9.09%	2
У	90.91%	20
TOTAL		22

Employers Survey - Bahrain

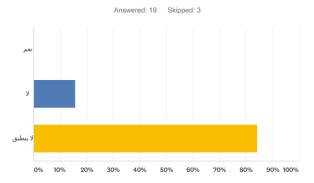
(هل تعطي العاملة المنزلية يوم راحة؟ (المرأة Q4



ANSWER CHOICES	RESPONSES	
نعم	28.57%	6
У	33.33%	7
أحياتا	38.10%	8
TOTAL		21

Employers Survey - Bahrain

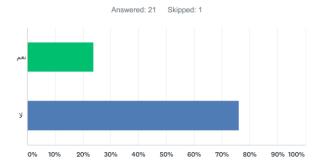
(هل تعطي العامل المنزلي يوم راحة؟ (الرجل Q5



ANSWER CHOICES	RESPONSES	
نعم	0.00%	0
У	15.79%	3
لا ينطبق	84.21%	16
TOTAL		19

Employers Survey - Bahrain

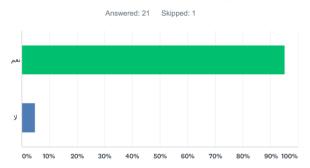
هل تسمح للعاملة المنزلية بالخروج في يوم راحتها؟ Q6



ANSWER CHOICES	RESPONSES	
نعم	23.81%	5
У	76.19%	16
TOTAL		21

Employers Survey - Bahrain

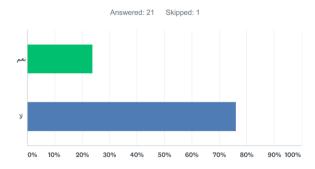
هل تسمح للعاملة المنزلية باقتناء هاتف محمول؟ Q7



ANSWER CHOICES	RESPONSES	
نعم	95.24%	20
У	4.76%	1
TOTAL		21

Employers Survey - Bahrain

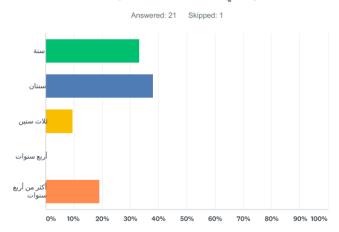
هل تسمح للعاملة المنزلية الاحتفاظ بجواز سفرها؟ Q8



ANSWER CHOICES	RESPONSES	
نعم	23.81%	5
У	76.19%	16
TOTAL		21

Employers Survey - Bahrain

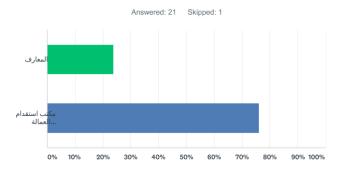
الفترة التي كانت معك العاملة المنزلية؟ Q9



ANSWER CHOICES	RESPONSES	
مشة	33.33%	7
سنتان	38.10%	8
ثلاث سنين	9.52%	2
أربع سنوات	0.00%	0
اکثر من اربع سنوات	19.05%	4
TOTAL		21

Employers Survey - Bahrain

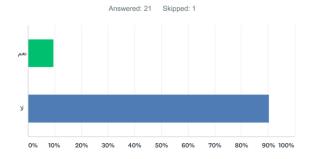
كيفية استقدام العاملة المنزلية ؟ Q10



ANSWER CHOICES	RESPONSES	
المعارف	23.81%	5
مكتب استقدام العمالة المنزلية	76.19%	16
TOTAL		21

Employers Survey - Bahrain

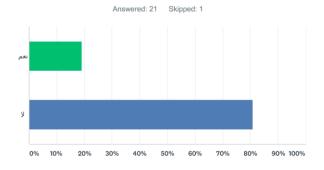
هل غادرت العاملة المنزلية قبل اتمام عقدها؟ Q11



ANSWER CHOICES	RESPONSES	
نعم	9.52%	2
У	90.48%	19
TOTAL		21

Employers Survey - Bahrain

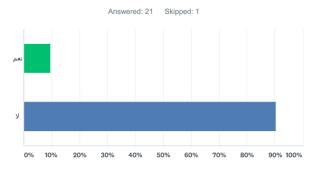
هل حصل خلاف بينك وبين العاملة المنزلية؟ Q12



ANSWER CHOICES	RESPONSES	
نعم	19.05%	4
У	80.95%	17
TOTAL		21

Employers Survey - Bahrain

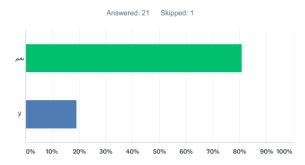
هل حصل تعامل بينك وبين سفارة العاملة المنزلية؟ Q13



ANSWER CHOICES	RESPONSES	
نعم	9.52%	2
У	90.48%	19
TOTAL		21

Employers Survey - Bahrain

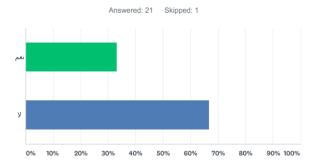
هل أنت راض عن عمل العاملة المنزلية؟ Q14



نم الا الا الا الا الا الا الا الا الا ال	ANSWER CHOICES	RESPONSES	
	نعم	80.95%	17
TOTAL 21	У	19.05%	4
	TOTAL		21

Employers Survey - Bahrain

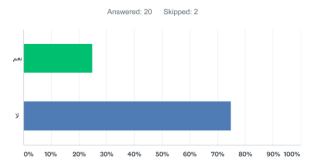
هل كانت العاملة المنزلية مدربة قبل قدومها؟ Q15



ANSWER CHOICES	RESPONSES	
نعم	33.33%	7
У	66.67%	14
TOTAL		21

Employers Survey - Bahrain

هل لديك أي انتقاد ضد نظام الكفالة؟ Q16



ANSWER CHOICES	RESPONSES	
نعم	25.00%	5
У	75.00%	15
TOTAL		20

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- Qanoon Tanthem Souq Al-Amal w Taadelath [Regulation of the Labor Market and its Amendments], Law No. 19 of 2006 (May 29, 2006) (Bahr.).
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Kuwait

- DISTOR AL KUWAIT [CONSTITUTION] (Kuwait).
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- Qanoon Al-Amalah Al-Manzleyah [Domestic Workers Law] of 2015, Promulgated by Amiri Decree No. 68 of 2015 (July 27, 2015) (Kuwait).
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- Qanoon Egamat Al-Ajaneb [Foreign Residency Law] of 1959, Promulgated by Amiri Decree No. 17 of 1959 (Dec. 5, 1959) (Kuwait).
- Qanoon Enshaa Hayat Al-Gowah Al-Amelah [Law Regarding the Establishment of the Manpower Authority] of 2013, Promulgated by Amiri Decree No. 109 of 2013 (July 9, 2013) (Kuwait).
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