



# Facilitating Exploitation:

## A review of Labour Laws for Migrant Domestic Workers in Gulf Cooperation Council Countries

2017 Update



ITUC CSI IGB International Trade Union Confederation



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# 1 Foreword<sup>1</sup>

Despite some recent reforms, an estimated 2.1 million migrant domestic workers continue to risk severe labour exploitation in Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE) – the members of the Gulf Cooperation Council (hereinafter “GCC”)<sup>2</sup>. However this estimated number is most probably far higher<sup>2</sup>. Mostly women from Asia and Africa, migrant domestic workers face harsh conditions while employed in the Gulf. Often confined to the home, they are isolated and at risk of exploitation. Commonly, they are not paid, not paid in full or not on time. The hours of work are often extreme, and some GCC countries do not set maximum hours of work in law. In those countries that regulate daily rest, workers can still be required to work up to 16 hours a day legally. Some workers are exposed to physical abuse such as beatings and sexual violence, including rape. This abuse can last for months or even years. The vast majority of migrant domestic workers are obliged to live in their employer’s home, which makes them extremely vulnerable. As a result, some African countries temporarily refused to allow their citizens to work in some or all GCC countries.<sup>3</sup> In Asia, Indonesia imposed a GCC-wide ban in 2016.<sup>4</sup>

Human Rights Watch’s 2016 report on migrant domestic workers in Oman told the story of a young Bangladeshi woman who was returned by the police to her employer after they cleared her of a false theft allegation.<sup>5</sup> Her employer abused her for two days upon return. She explained, “He cut my hair and burned my feet with hot water.” In Qatar, ITUC staff interviewed an Indonesian woman in 2014 a detention centre who had fled her employer’s abuse. Her back was permanently scarred from sustained and severe beatings. The Indonesian Embassy in Doha posted a note on the door explaining that 5-10 domestic workers sought refuge there every day.<sup>6</sup>

Migrant domestic workers who attempt to flee abuse by their employers very often face further victimization. Some employers file “absconding” reports or submit false claims of theft or other crimes. As a result, workers can face administrative and criminal fines, imprisonment, deportation and bans on re-entering the country. Workers also have limited access to justice mechanisms due to language barriers, lack of material resources, lack of legal assistance and the prospect of very lengthy court proceedings. Migrant domestic workers are usually not allowed to work while seeking redress and many simply give up and leave the country without obtaining justice of any kind.

As this legal and policy brief explains, this exploitation is facilitated by the legal frameworks in most GCC countries which: 1) exclude migrant domestic workers from the scope of the general labour law; and, 2) use a sponsorship system (kafala) which grants employers and the government extraordinary control over migrant workers. Despite recent reforms, these laws continue to violate international law. Most governments tout standard employment contracts as a solution to overcome weak legislation. While these contracts do contain some beneficial provisions, their use pushes regulation from the public to the private sphere and are difficult to enforce in court. In 2015, representatives from GCC labour ministries attempted to negotiate a GCC-wide standard contract but eventually abandoned the project.<sup>7</sup>

<sup>1</sup> An earlier version of this brief was issued in 2014. The ITUC reissued this report in light of recent legal developments internationally and in the GCC countries.

<sup>2</sup> The total number of domestic workers in the GCC countries could be over 5 million: The Special Rapporteur on extreme poverty and human rights, Professor Philip Alston, refers to a total of 3 million migrant domestic workers in Saudi Arabia alone – Mission report to Saudi Arabia for the 35th session of the Human Rights Council, June 2017 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/102/74/PDF/G1710274.pdf?OpenElement>

<sup>3</sup> Hiiraan Online, *Despite abuses, Saudi Arabia aims to recruit 15000 Somali maids*, 30 Jan 2016, available online at: [http://www.hiiraan.com/news/4/2016/Jan/103860/despite\\_abuses\\_saudi\\_arabia\\_aims\\_to\\_recruit\\_15000\\_somali\\_maids.aspx](http://www.hiiraan.com/news/4/2016/Jan/103860/despite_abuses_saudi_arabia_aims_to_recruit_15000_somali_maids.aspx)

<sup>4</sup> Gulf News, *Six Gulf Countries Informed of Indonesia Domestic Workers Ban*, 27 Jan 2016, available online at <http://gulfnnews.com/news/asia/six-gulf-countries-informed-of-indonesia-domestic-workers-ban-11661460>

<sup>5</sup> Human Rights Watch, *I Was Sold: Abuse and Exploitation of Migrant Domestic Workers in Oman*, July 2016, available online at: [https://www.hrw.org/sites/default/files/report\\_pdf/oman0716web.pdf](https://www.hrw.org/sites/default/files/report_pdf/oman0716web.pdf)

<sup>6</sup> ITUC, *The Case against Qatar*, March 2014, available online at [http://www.ituc-csi.org/IMG/pdf/the\\_case\\_against\\_qatar\\_en\\_web170314.pdf](http://www.ituc-csi.org/IMG/pdf/the_case_against_qatar_en_web170314.pdf).

<sup>7</sup> Doha News, *Gulf countries abandon idea of unified contract for domestic workers* ( 5 January 2015), available online at <http://dohanews.co/gulf-countries-abandon-idea-unified-contract-domestic-workers/>

## What is Kafala?

In order to manage this large influx of migrant workers, countries in the region rely on the kafala (sponsorship) system, which is based on historical principles of hospitality governing the treatment and protection of foreign guests. Over time this has become formalized in the various national legal frameworks that determine the terms of residence and employment for migrant workers, and today the kafala system governs the lives of most migrant workers in the Mashreq and GCC countries. Under the kafala system employers are kafeels (sponsors), who determine their demand for labour and meet it either by direct recruitment or through intermediaries, such as private employment agencies (PEAs). A migrant worker's immigration status (their entry, residence, and exit) is tied to an individual sponsor for their contract period. Such workers are thereby rendered vulnerable to abuse and exploitation by the high degree of control their employers have over their legal status in the country.<sup>8</sup>

GCC member states have the financial means to end the abuse of migrant domestic workers. So far, progress has been limited by the lack of will to ensure the rights of these workers are protected. Many countries have already improved the labour laws for domestic workers showing that it can in fact be done. In 2008, the neighbouring country of Jordan extended the coverage of its labour laws to domestic workers. In 2015, Kuwait, a GCC member, issued a new law which extended some (but not equal) labour rights to domestic workers for the first time.

In 2011, the landmark Domestic Work Convention, ILO Convention 189, was adopted, including by all of the GCC countries; however, not one of them has since ratified the convention thus binding itself to this important international treaty. This brief details how much work still remains to be done to comply with this international standard. We hope it will be a valuable tool for trade unions, domestic workers' organizations, the ILO and of course the GCC Countries and countries of origin.

<sup>8</sup> ILO, *Tricked and Trapped, Human Trafficking in the Middle East*, 2013, p.26., available online at [http://www.ilo.org/beirut/publications/WCMS\\_211214/lang-en/index.htm](http://www.ilo.org/beirut/publications/WCMS_211214/lang-en/index.htm).

## 2 Introduction and Recommendations

According to the ILO, an estimated 2.1 million people, predominantly women, were employed as domestic workers in the GCC countries in 2010, an increase from 1.1 million in 1995.<sup>9</sup> This is due to growing demand as a result of rising wealth and living standards.<sup>10</sup> Saudi Arabia has the highest demand for migrant domestic workers in the GCC, with 828,425 (2012).<sup>11</sup> Kuwait is second with an estimated 620,539 (2014).<sup>12</sup> The other countries also have sizable populations of migrant domestic workers: the UAE - 236,545 (2008),<sup>13</sup> Oman (160,998) (2014),<sup>14</sup> Qatar 154,000 (2014)<sup>15</sup> and Bahrain - 105,203 (2014).<sup>16</sup> Based on recent trends, we anticipate the demand for domestic workers in the GCC countries to increase in the years to come.

Domestic workers have been recognized as “over-worked, underpaid and under-protected”<sup>17</sup> and, indeed, on the whole, have not benefited from “the gradual expansion of mainstream social and labour policies that have characterized socio-economic development since the Industrial Revolution”.<sup>18</sup> The ILO Domestic Workers Convention No. 189 (“Convention”)<sup>19</sup> and the supplementary Recommendation No. 201 (“Recommendation”)<sup>20</sup> seek to address this long-standing inequity by

establishing a comprehensive, international legal framework which acknowledges the right of domestic workers to decent working and living conditions.

The adoption of the Convention and Recommendation indicates that “for various reasons, policy-makers have started to pay greater attention to the economic and social value of domestic work and to the need to establish appropriate frameworks for domestic workers’ labour and social protection”.<sup>21</sup> To date, 23 ILO members have ratified Convention 189<sup>22</sup> and nearly 50 countries have adopted new labour law reforms which have led to some improvements for this population.<sup>23</sup> It is estimated that over 10 million domestic workers have benefitted from these reforms. We expect additional ratifications of the convention and legal reforms in the coming years as the result of campaigns by trade unions and other civil society organizations representing domestic workers.<sup>24</sup>

Also significant, the International Labour Conference in 2014 adopted the Protocol to ILO Forced Labour Convention No. 29, which requires states to take additional measures to prevent and combat the trafficking of migrant workers for forced labour.<sup>25</sup> Despite the GCC’s promise to “support the ILO’s interest in this issue, which represents one of our four strategic pillars,”<sup>26</sup> every GCC government abstained from the vote adopting the Protocol and none have subsequently ratified it.

This brief examines the extent to which the laws of the GCC Countries comply with the requirements of ILO Convention 189 – the internationally recognized minimum standard for domestic workers. Part Three of this report

9 ILO, *Domestic workers across the world: Global and regional statistics and the extent of legal protection*, Geneva 2013, p. 31, available online at [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_173363.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf).

10 Id. at p. 32.

11 Gulf Labour Market and Migration, data on visas allocated by Saudi Arabia (2004-2012), available online at: <http://gulfmigration.eu/work-visas-alloted-by-type-sector-of-activity-temporary-private-companies-governmental-domestic-saudi-arabia-2004-2012>

12 Gulf Labour Market and Migration, data on residence permits granted by Kuwait in 2014, available online at: <http://gulfmigration.eu/kuwait-article-20-domestic-services-residence-permits-granted-by-nationality-group-and-sex-of-holder-2014/>

13 Human Rights Watch, *I already bought you, Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates*, 2014, p.12 (noting that the number is certainly higher), available online at: <https://www.hrw.org/report/2014/10/22/i-already-bought-you/abuse-and-exploitation-female-migrant-domestic-workers-united>, Another source estimates 750,000 domestic workers in UAE, see: IAI, *Domestic Work Legislation in the Gulf Cooperation Council (GCC): A Comparative Policy Review*, 2014, available online at <http://www.igogcc.org/wp-content/uploads/2014/07/Policy-Report-Final-English-1.pdf>

14 Sultanate of Oman, National Centre for Statistics and Information, *Statistical Yearbook*, 2015, available online at: [https://www.ncsi.gov.om/Elibrary/LibraryContentDoc/ben\\_Statistical\\_Year\\_Book\\_2015\\_740d0da1-01d2-4f42-a159-6102a49ecf59.pdf](https://www.ncsi.gov.om/Elibrary/LibraryContentDoc/ben_Statistical_Year_Book_2015_740d0da1-01d2-4f42-a159-6102a49ecf59.pdf)

15 Government of Qatar, Ministry of Development Planning and Statistics, *Labour Force Sample Survey*, 2014, available online at: <http://www.mdps.gov.qa/en/knowledge/Publications/Social-English%20Layout.pdf>

16 Gulf Labour Market and Migration, *Estimated employed population in Bahrain by nationality*, available online at: <http://gulfmigration.eu/bahrain-estimated-total-employed-population-by-nationality-bahraininon-bahraini-and-sector-public-private-domestic-quarterly-q1-2003-q1-2014/>

17 ILO, *The employment and conditions of domestic workers in private households* (1970), Document D. 11, 1970, p. 63.

18 OELZ, M. (2014), *The ILO’s Domestic Workers Convention and Recommendation: A window of opportunity for social justice*. *International Labour Review*, 153: 143, 144.

19 ILO Convention 189, *Domestic Workers Convention*, 2011, available online at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::p11300\\_instrument\\_id:2551460](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::p11300_instrument_id:2551460)

20 ILO Recommendation 201, *Domestic Workers Recommendation*, 2011, available online at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_)

ID:2551502:NO

21 OELZ, M., supra n. 17 at 143, 144.

22 List of countries that ratified *Domestic Workers Convention* (as of October 2016) available online at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:2551460](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:2551460)

23 For more information on the up-to-now reforms see: ITUC, IDWF, ILO-GAP (2016) *A guide for building collective power to achieve rights and protections for domestic workers*. *Domestic Workers Unite* available online at: <http://www.ituc-csi.org/unite>

24 ITUC’s 12+12 campaign – in partnership with the International Domestic Workers Federation, Human Rights Watch, Amnesty International, Anti-Slavery International, Migrant Forum Asia and many other – initiated actions in more than 90 countries, available online at: <http://www.ituc-csi.org/domestic-workers-12-by-12>.

25 ILO Protocol to Convention 29, *Forced Labour Convention*, 1930, adopted in 2014, available online at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:P029](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029)

26 *The National*, *UAE speaks out against forced labour*, 7 June 2014, available online at: <http://www.thenational.ae/uae/ministry-of-labour/uae-speaks-out-against-forced-labour>

examines the key provisions and requirements of Convention 189. Part Four provides a broad survey of the legal situation in the GCC countries while Part Five examines the national legal frameworks in detail and examines the extent to which, in our assessment, those national laws comply with the requirements of the Convention – or better, the extent to which they fail to do so. For information on bilateral labour agreements between Asian and Gulf countries to regulate the recruitment and employment of migrant domestic workers and our analysis of the draft GCC model employment contract, see our 2014 report.

## Recommendations for GCC Countries

It is evident that GCC countries will need to undertake sweeping reforms in order to create an environment where migrant domestic workers are no longer subject to exploitation. The ITUC recommends that GCC member countries:

1. **Ratify ILO Convention No. 189 to secure minimum protections of migrant domestic workers' rights, including the right to freedom of association and collective bargaining. Further, the GCC countries should ratify the new Protocol to ILO Convention No. 29 on Forced Labour.**
2. **Abolish the kafala system and ensure that migrant domestic workers are free to change jobs or return to their country without the consent of the employer. Until the kafala system is abolished in GCC Countries, legislation, bilateral agreements or mandatory standard contracts will have limited effect.**
3. **Extend the coverage of national labour laws (including the right to freedom of association and to bargain collectively) to migrant domestic workers. The total or partial exclusion of domestic workers from national labour laws perpetuates abusive and exploitative employment practices. Further, many labour laws in GCC Countries are inconsistent with international law and should be amended to ensure international minimum rights, including ILO fundamental rights, are fully guaranteed.**
4. **Recognize the importance of labour inspection in enforcing labour rights. It is essential that respective inspectorates be strengthened consistent with ILO Convention 81. In order to facilitate the proactive undertaking of random inspections to identify matters such as passport confiscation, conditions of work and timely wage payment, inspectorates must be better trained in the detection of forced labour and inspectors must be able to speak the languages spoken by migrant domestic workers.**
5. **Ensure that migrant domestic workers have access to effective complaints mechanisms, and remove any effective obstacles to their use.**
6. **Impose dissuasive penalties for violations of the labour law.**
7. **Pass laws prohibiting passport confiscation including adequate penalties, and ensure employers and recruitment agencies face such sanctions.**
8. **Cooperate regionally on matters such as recruitment by private employment agencies, wages and working conditions, based on UN and ILO Conventions. This would help to avoid a "race to the bottom" among the countries which are the source of migrant labour.**

## 3 ILO Convention 189

The Convention and accompanying Recommendation were adopted at the 100<sup>th</sup> Session of the International Labour Conference on 16 June 2011, an historic day for domestic workers. It subsequently came into force in September 2013 after two countries submitted their instruments of ratification. The new instruments are “a strong recognition of the economic and social value of domestic work” and a “call to action to address the existing exclusion of domestic workers from labour and social protection”.<sup>27</sup> They represent, as Tomei and Belser highlight, a landmark extension of ILO standards “into a largely unregulated and unprotected sector of the economy, in which female workers prevail”.<sup>28</sup>

The Preamble of the Convention recognizes that domestic work continues to be undervalued, invisible and is often carried out by women and girls, many of whom are migrants or members of disadvantaged communities. These factors, in combination, mean that domestic workers are particularly vulnerable to discrimination and other abuses of human rights. This is particularly problematic since domestic workers represent a growing proportion of the labour force in developing as well industrialized countries and “constitute a significant proportion of the national workforce and remain among the most marginalized”.<sup>29</sup> It is for this reason that the Convention was drafted with the aim of ensuring that domestic workers enjoy rights and standards no less favourable than those enjoyed by other workers, and that those rights are effectively implemented in law and protected in practice.

### 3.1 Scope and definitions

The Convention defines domestic work as “work performed in or for a household or households”.<sup>30</sup> A domestic worker is defined as “any person engaged in domestic work within an employment relationship”.<sup>31</sup> This includes workers engaged on a part time basis, those working for more than one employer, nationals and non-nationals. It does not, however, include self-employed persons or in-

dependent contractors. The Convention also stipulates that “a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker”.<sup>32</sup> A worker who performs domestic work occasionally or sporadically but on an occupational basis is covered by the Convention.<sup>33</sup>

It is also important to note that the Convention permits certain categories of domestic workers to be excluded wholly or partly from its scope after consultation with employers’ and workers’ organizations.<sup>34</sup> These include workers otherwise provided with higher or equivalent protection and categories of workers for whom application of the Convention may cause significant problems. The ILO Committee of Experts has already stressed the importance of consultations with organizations of employers and workers and, where they exist, with representative organizations of domestic workers, with regard to any exclusions of categories of workers from the scope of the Convention.<sup>35</sup>

### 3.2 Key Provisions

#### 3.2.1 Fundamental rights

The Convention echoes the obligations of ILO member states under the 1998 Declaration on Fundamental Principles and Rights at Work and affirms that domestic workers, like other workers, are entitled to respect and protection of fundamental rights at work including:

- (a) Freedom of association and the effective recognition of the right to collective bargaining;
- (b) The elimination of all forms of forced or compulsory labour;
- (c) The effective abolition of child labour; and
- (d) The elimination of discrimination in respect of employment and occupation.<sup>36</sup>

27 ILO, Convention 189 and Recommendation 201 at a Glance (Geneva, 2011), p. 2.

28 Tomei, M. and Belser, P. (2011), New ILO standards on decent work for domestic workers: A summary of the issues and discussions. *International Labour Review*, 150: 431, 432.

29 ILO Convention No.189, Preamble.

30 Ibid Art 1(a).

31 Ibid Art 1(b).

32 Ibid Art 1(c).

33 Direct Request (CEACR) - adopted 2015, published 105th ILC session (2016) Domestic Workers Convention, 2011 (No. 189) - Ecuador (Ratification: 2013)

34 ILO Convention No.189, Art 2(2).

35 E.g. Direct Request (CEACR) - adopted 2015, published 105th ILC session (2016) Domestic Workers Convention, 2011 (No. 189) - Philippines (Ratification: 2012)

36 ILO Convention No.189, Art 3.



### 3.2.2 The right to information on terms and conditions of employment

Pursuant to Art 7, Member States are required to take measures to ensure that domestic workers are informed of their terms and conditions of employment in “an appropriate, verifiable and easily understandable manner” and preferably, where possible, through written contracts or collective agreements. More particularly, domestic workers must be informed as to the name and address of the employer;<sup>37</sup> the address of the usual workplace or workplaces;<sup>38</sup> the starting date and, where the contract is for a specified period of time, its duration;<sup>39</sup> the type of work to be performed;<sup>40</sup> the remuneration, its method of calculation and periodicity of payments;<sup>41</sup> the normal hours of work;<sup>42</sup> paid annual leave; daily and weekly rest periods;<sup>43</sup> the provision of food and accommodation where relevant;<sup>44</sup> any relevant probationary periods;<sup>45</sup> the terms of repatriation if applicable;<sup>46</sup> and terms and conditions relating to employment, including applicable notice periods.<sup>47</sup>

Art 8 further specifies that national law and regulations must require that migrant domestic workers receive a written job offer or written contract addressing the above terms and conditions of employment prior to crossing national borders for the purpose of taking up any such domestic work.<sup>48</sup> Member States must also specify by law, regulations or other means, the conditions under which migrant domestic workers are entitled to repatriation upon the expiry or termination of an employment contract.<sup>49</sup>

Articles 7 and 8 are important as, all too frequently workers are pressured upon arrival to a GCC country to sign a (new) contract written in Arabic, which they do not understand.

### 3.2.3 Working conditions

The Convention stipulates that each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence<sup>50</sup> as well as fair terms of employment and decent working and (where relevant) living conditions respectful of privacy.<sup>51</sup> The vast majority of domestic workers in the GCC are ‘live-in’ domestic workers, raising specific risks with regard to rest time, excessive working hours and physical and sexual abuse. Article 9 of the agreement provides additional protections for live-in workers, including the freedom to reach an agreement with their employers or potential employers on whether to reside in the household<sup>52</sup>, freedom to leave the household during periods of daily and weekly rest or leave<sup>53</sup> and to keep identity and travel documents in their possession.<sup>54</sup>

Working time is dealt with in Art 10, which stipulates that each Member must take measures towards ensuring equal treatment between domestic and other workers with respect to normal working hours, compensation for overtime, daily and weekly rest periods and paid annual leave.<sup>55</sup> Weekly rest shall be at least 24 consecutive hours<sup>56</sup> and periods during which domestic workers are not free to dispose of their time as they please, and remain at the disposal of the household, must be regarded as hours of work in accordance with national laws, regulations, collective agreements or practice.

Every domestic worker has the right to a safe and healthy working environment pursuant to Art 13 and every Member must take measures to ensure the occupational health and safety of domestic workers, having due regard for the specific characteristics of domestic work.<sup>57</sup> It is important to note that these measures may be applied progressively in consultation with workers and employers representatives and, where possible, representatives for domestic workers specifically.

37 Ibid Art 7(a).

38 Ibid Art 7(b).

39 Ibid Art 7(c).

40 Ibid Art 7(d).

41 Ibid Art 7(e).

42 Ibid Art 7(f).

43 Ibid Art 7(g).

44 Ibid Art 7(h).

45 Ibid Art 7(i).

46 Ibid Art 7(j).

47 Ibid Art 7(k).

48 Ibid Art 8(1).

49 Ibid Art 8(4).

50 Ibid Art 5.

51 Ibid Art 6.

52 Ibid Art 9(a).

53 Ibid Art 9(b).

54 Ibid Art 9(c).

55 Ibid Art 10(1).

56 Ibid Art 10(2).

57 Ibid Art 13(1).

### 3.2.4 Remuneration and social security

Members must ensure that domestic workers enjoy minimum wage coverage, where it exists, and that remuneration is established without discrimination on the grounds of sex.<sup>58</sup> Domestic workers must be paid directly in cash at regular intervals and, in any case, at least once per month.<sup>59</sup> National laws, regulations, collective agreements or awards may provide for a limited proportion of payments in kind that are not less favourable to those applicable to other workers.<sup>60</sup> However, such payments in kind must be agreed to by the worker, must be for the personal use and benefit of the worker and must be fair with respect to the monetary value attributed to them.<sup>61</sup>

Members must also ensure that domestic workers enjoy conditions that are no less favourable with respect to social security, including maternity.<sup>62</sup> These measures may be applied progressively in consultation with workers and employers representatives and, where possible, with representatives of domestic workers specifically.<sup>63</sup>

### 3.2.5 Private employment agencies

Art 15 deals with the role of private employment agencies in domestic work and aims to secure effective protection of domestic workers who are recruited or placed by such agencies against abusive practices. It requires each Member to determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers<sup>64</sup> and to ensure that adequate machinery and procedures exist for investigating complaints, alleged abuses and fraudulent practices with respect to the activities of private employment agencies.<sup>65</sup> Members must adopt all necessary and appropriate measures to provide adequate protection for and prevention of abuse of domestic workers recruited or placed within its territory by private employment agencies.<sup>66</sup> Members are required to consider concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment<sup>67</sup> and must take measures to ensure that fees charged by private employment agencies are not de-

ducted from domestic workers' remuneration.<sup>68</sup> In giving effect to these obligations, Members must again consult with workers and employers representatives.

### 3.2.6 Implementation, compliance and enforcement

Member states are required to implement the provisions of the Convention through laws and regulations, in consultation with employers and workers' organizations. The provisions of the Convention may also be implemented through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for domestic workers.<sup>69</sup> Importantly, the Convention envisages an important role for social dialogue between workers' and employers' representatives in implementation.<sup>70</sup>

Members are required to take measures to ensure that all domestic workers have effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to other workers.<sup>71</sup> Members are also required to establish effective and accessible complaint mechanisms;<sup>72</sup> develop and implement measures for labour inspection, enforcement and penalties in accordance with national laws and practice (with due regard for the special characteristics of domestic work);<sup>73</sup> and, insofar as possible, such measures are required to specify the conditions under which access to household premises may be granted.<sup>74</sup>

58 Ibid Art 10.

59 Ibid Art 11(1).

60 Ibid Art 11(2).

61 Ibid Art 11(2).

62 Ibid Art 14(1).

63 Ibid Art 14(2).

64 Ibid Art 15(1)(a).

65 Ibid Art 15(1)(b).

66 Ibid Art 15(1)(c).

67 Ibid Art 15(1)(d).

68 Ibid Art 15(1)(e).

69 Ibid Art 18.

70 See, e.g., Arts 2(2); 13(2); 14(2); and 15(2).

71 Ibid Art 16.

72 Ibid Art 17(1).

73 Ibid Art 17(2).

74 Ibid Art 17(3).

## 4 GCC Countries at a Glance

The national legal systems of the GCC Countries have a number of common features with respect to the rights of migrant domestic workers. For example, all GCC countries exclude (in whole or in part) migrant domestic workers from the scope of their labour laws and use, to varying degrees, a restrictive *kafala* sponsorship system. There have been some recent efforts in most GCC countries to introduce legislation regulating domestic work, though the scope and extent to which such legislation is effective varies. Bahrain is currently the only GCC country to have extended the scope of its labour laws to include domestic workers; however, these workers still continue to be excluded from the bulk of labour law protections including those related to work time and days of rest.

Model contracts are also commonly used to regulate the basic conditions of work in the GCC. For example, Bahrain implemented a model contract for the recruitment of foreign domestic workers by Ministerial Decree. Oman's 2011 standard domestic workers' contract included a weekly rest day and annual leave though enforcement remains quite lax. Kuwait implemented a compulsory standard-form employment contract for migrant domestic workers and established a department dedicated to domestic workers within the Ministry of Interior. The UAE revised its standard domestic workers contract in 2014 to include one day off a week.

GCC countries also passed and implemented new laws and decrees affecting migrant workers in the last two years. In the UAE, decrees were enacted in 2016 to include a requirement to use a standard-form contract, a prohibition against contract substitution, and allowing workers to end a contractual relationship upon payment of an indemnity to the employer of up to 3 months.<sup>75</sup> However, these decrees do not apply to migrant domestic workers.<sup>76</sup> Qatar also passed legislation in 2015 to 'reform' the *kafala* system and to enhance protections against contract substitution. Here to, these laws also do not apply to migrant domestic workers.<sup>77</sup> Kuwait did pass new legislation in 2015 regulating the employment relationship between the employer, recruiter and domestic workers.

The basic features of the GCC countries' national legal systems as to migrant domestic workers are highlighted in Table 1 below.

<sup>75</sup> Human Rights Watch, UAE: A Move to Protect Migrant Workers, 1 November 2015, available online at: <https://www.hrw.org/news/2015/11/01/uae-move-protect-migrant-workers>

<sup>76</sup> Ministerial Decree No. 764 of 2015 on Ministry of Labour-Approved Standards Employment Contracts; Ministerial Decree No. 765 of 2015 on rules and Conditions for the Termination of Employment Relations; and Ministerial Decree No. 766 of 2015 on Rules and Conditions for granting a permit to a worker for employment by a new employer. The new rules came into force on 1 January 2016

<sup>77</sup> Law No. 21 of 2015

<b>Table 1: Common Features of GCC Country National Legal Systems</b>					
<b>Country</b>	<b>Exclusion from Labour Law</b>	<b>Restrictive <i>kafala</i> immigration regime</b>	<b>Laws or regulations relating specifically to domestic workers</b>	<b>Compulsory standard form contracts</b>	<b>Compliance with ILO Convention No.189</b>
<b>Saudi Arabia</b>	Total exclusion pursuant to Art 7(2) of the Labour Law 2006 (Royal Decree No. M/51)	Yes, including the enforcement of an exit permit system.	Resolution No.310 of 2013 on the Household Regulation on Services Workers and Similar Categories	No uniform standard contract but has several agreements with sending countries	No
<b>Qatar</b>	Total exclusion pursuant to Art 3(4) of the Labour Law No.14 of 2004	Law No. 21 issued in 2015 to “replace” the kafala system but in reality still gives the government and employer substantial control over the ability to change jobs or leave the country. Further, it does not apply to domestic workers.	Draft legislation is still under consideration. The government has not shared the text of the draft law with anyone outside of the government.	No	No
<b>Kuwait</b>	Total exclusion pursuant to Art 5 of the Private Sector Labour Law No.6 of 2010	Yes	Law No. 68 of 2015 regarding domestic workers.	Yes Housemaid/Servant Recruitment and Employment Contract 2004 (amended 2010)	No
<b>Bahrain</b>	Included under art 2 but excluded from most of the provisions of the Labour Law for the Private Sector No.36 of 2012	Yes	Ministry of Labour Decree No.8 of 2005 with Respect to a Model Form of Contract for Domestic Help and Similar Persons	Yes	No
<b>UAE</b>	Total exclusion pursuant to Art 3(c) of the Labour Law No.8 of 1980 (amended in 2007)	Yes. Federal Law No. 6 of 1973 on the Entry and Residence of Foreigners and its Executive Regulations.  Ministerial Resolution No. 1186 in 2010;  Ministerial Decree Nos. 764, 765 and 766, issued in 2015, improve the immigration system (but do not apply to domestic workers)	Draft regulations reported to be passed by the Federal National Council in 2012, still under consideration	Yes – standard contract introduced in 2007, revised in 2014	No
<b>Oman</b>	Total exclusion pursuant to Art 2(3) of the Labour Law 2003 (Royal Decree No.35).	Yes. Foreign Law on Foreign Residency of 1995, its implementing regulations. Kafala also administered by the Labour Law, and 2004 domestic worker regulations.	Ministerial Decision No. 189/2004 on labour rules and conditions for domestic employees, June 16, 2004.	Yes - Employment Contract for Domestic Workers and Similar Jobs, introduced in 2011.	No

Ultimately, significant measures are still required in order for national legal systems to protect the rights of domestic workers in accordance with Convention 189 – the Domestic Workers Convention. Most importantly, until the *kafala* system is abolished in GCC Countries, labour legislation or mandatory standard employment contracts (whilst encouraged) will have limited effect. The *kafala* sponsorship system fuels the exploitation and abuse of migrant domestic workers and means that many such workers are unable to exercise any rights which they may have at law or in contract.

Additionally, all GCC Countries have weak inspection and dispute resolution mechanisms which, in reality, render the basic entitlements of migrant domestic workers illusory.<sup>78</sup> In some countries, additional inspectors have been hired, and new complaints systems have been put in place, but the impact of such improvements remains limited. Existing and newer laws criminalizing trafficking for forced labour are also rarely enforced, with only a handful of cases prosecuted each year. Those in government likely to have colluded with traffickers are never investigated, let alone punished.

Finally, the prohibition on the exercise of the right to freedom of association and to bargain collectively serves as a major obstacle to preventing situations of forced labour and to improving wages and working conditions. Migrant domestic workers will continue to have difficulty in asserting their rights and promoting their interests without trade unions to defend them.

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<sup>78</sup> See, e.g., Report of the committee set up to examine the representation alleging non-observance by Qatar of the Forced Labour Convention, 1930 (No. 29), made under article 24 of the ILO Constitution by the International Trade Union Confederation and the Building and Woodworkers International, para 55-8, available online at [http://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0:NO:50012:P50012\\_COMPLAINT\\_PROCEDURE\\_ID,P50012\\_LANG\\_CODE:3113101,en:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0:NO:50012:P50012_COMPLAINT_PROCEDURE_ID,P50012_LANG_CODE:3113101,en:NO)

# 5 GCC Country Profiles

## 5.1 Kingdom of Saudi Arabia

It is estimated that there are 828,425 (2012) domestic workers in Saudi Arabia<sup>79</sup> and that 99.6% of them are migrants. Trade unions, migrant rights groups<sup>80</sup> and the media<sup>81</sup> have frequently reported horrific situations of exploitation, abuse, torture and murder of migrant domestic workers. Many are victims of forced labour, with wages unpaid, passports withheld, long hours of work without rest and near total confinement to the workplace. Some even face deprivation of food and water, verbal threats and physical and sexual abuse. Domestic workers in Saudi Arabia work an average of 63.7 hours per week, the second highest estimate worldwide.<sup>82</sup> Embassies of the countries of origin indicate that non-payment of wages is the most widespread complaint from migrant workers in Saudi Arabia. Some domestic workers also reported kidnapping and forced prostitution after running away from abusive employers.<sup>83</sup>

Unfortunately, the Saudi Arabian legal system does not provide domestic workers with the protections afforded to other workers and as a result, they are vulnerable to abuse with limited or no prospects for seeking redress.

### 5.1.1 Relevant legal frameworks

#### 5.1.1.1 Labour law

The Saudi Arabian Labour Law (“SALL”)<sup>84</sup> is the central law governing labour relations, regulating among other things, wages, working time, occupational health and safety, social security and dispute resolution mechanisms through the labour courts. Pursuant to Article 7 of the SALL, “domestic helpers and the like” are excluded from its provisions. However, Article 7 also provides that

the Ministry “shall draft regulations for domestic helpers and the like to govern their relations with their employers and specify the rights and duties of each party”. In July 2013, a regulation was adopted which guarantees migrant domestic workers nine hours of daily rest and one day off per week, suitable accommodation, paid sick leave, one month of paid annual leave after two years of work and service compensation equal to one month’s salary after four years of work.<sup>85</sup> Employers must also pay workers a monthly salary without delay.

The new regulations do not extend protections to domestic workers which are equal to those enjoyed by other workers in Saudi Arabia. For example, daily working time is an exhausting 15 hours under the regulations (accounting for nine hours of daily rest), whereas working time for other workers is limited to eight hours per day. Further, the regulations stipulate that a domestic worker must respect the teachings of Islam, maintain the employer’s family secrets and follow the employer’s orders. The Labour Minister has further confirmed that a domestic worker does not under Saudi Arabian law “have the right to reject work or leave a job, without a valid reason”.<sup>86</sup>

In March 2015, Saudi Arabia adopted a package of 38 amendments to the SALL, which went into effect on 18 October 2015.<sup>87</sup> These include prohibitions on confiscating migrant workers’ passports, failing to pay salaries on time and failing to provide copies of contracts to employees. Subsequently, the Labour Ministry issued directives introducing or raising fines for employers who violate labour law regulations.<sup>88</sup> The new or increased penalties include fines of SR\$2,000 (US\$533) for withholding employees’ passports; SR\$3,000 (US\$800) for not paying salaries on time, and SR\$5,000 (US\$1,333) for withholding an employee’s salary without a judicial order. The Labour Ministry can also impose fines of SR\$5,000 (US\$1,333) if employers don’t provide workers

79 Gulf Labour Markets and Migration, work visas issued by Saudi Arabia between 2004-2012, available online at: <http://gulfmigration.eu/work-visas-alloted-by-type-sector-of-activity-temporary-private-companies-governmental-domestic-saudi-arabia-2004-2012/>

80 Chris Burns, *Iscah’s Escape From Saudi Arabia: Abused Kenyan Domestic Worker Tells Her Story*, Equal Times, 18 December 2015, available online at: <https://www.equaltimes.org/iscah-s-escape-from-saudi-arabia?lang=en#WCR0X8e7paQ>; Rothna Begum, *Gulf States Fail to Protect Domestic Workers From Serious Violence*, Newsweek, 16 October 2015, available online at <http://europe.newsweek.com/gulf-states-fail-to-protect-domestic-workers-from-serious-violence-334857>

81 Annie Kelly and Hazel Thompson, *The vanished: the Filipino domestic workers who disappear behind closed doors*, The Guardian, 24 October 2015, available online at <https://www.theguardian.com/global-development/2015/oct/24/the-vanished-filipino-domestic-workers-working-abroad>

82 Mirant Rights, *Migrant Rights Statistics, Domestic Workers in the Gulf*, available online at: <https://www.migrant-rights.org/statistic/domesticworkers/>

83 US State Department, *Trafficking in Persons Report, Country Narrative: Saudi Arabia, 2016*, available online at: <https://www.state.gov/j/tip/rls/tiprpt/countries/2016/258850.htm>

84 Royal Decree No. M/51, 23 Sha’ban 1426/ 27 September 2005.

85 Resolution No. 310 of 2013 on the Household Regulation on Service Workers and Similar Categories.

86 Inquirer.net, *New Saudi rules set rights for domestic workers*, 18 July 2013, available online at: <https://globalnation.inquirer.net/80957/new-saudi-rules-set-rights-for-domestic-workers>.

87 Royal Decree No. M/46 of 05/06/1436 published in the official gazette No. 4563 dated 24 April 2015, available online (in Arabic) at: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/101848/122930/F-172524835/UM-ALQURA.4563.pdf>

88 Human Rights Watch, *Saudi Arabia: Steps Toward Migrant Workers’ Rights 15*, November 2015, available online at: <https://www.hrw.org/news/2015/11/15/saudi-arabia-steps-toward-migrant-workers-rights>

with a copy of their contract and SR\$15,000 (US\$4000) if they force their workers to do jobs not specified in their contracts. The new regulations increase the penalty for employers who violate health and safety standards to SR\$25,000 (US\$6,666) from up to SR\$10,000 (US\$2,667) under the 2007 Labour Law, and impose a fine of SR\$20,000 (US\$5,333) on those who employ children under 15.<sup>89</sup> However, these reforms do not apply to migrant domestic workers.

The 2015 reforms to the SALL do not address several of the *kafala* system's abusive aspects. Saudi Arabia continues to impose an exit visa requirement that prevents migrant workers from leaving the country without their employer's permission. And, migrant workers who change jobs without their employer's approval remain at risk of becoming undocumented.

### 5.1.1.2 Kafala system

As Human Rights Watch has highlighted, migrant domestic workers are at risk not only due to their exclusion from labour laws but also "as a result of the highly restrictive immigration policies that rely on sponsor-based visas".<sup>90</sup> Under the *kafala* system, a worker's visa and legal status is tied to the employer and the employer is responsible for the worker's recruitment fees, completion of medical exams and possession of an identity card and the worker must obtain permission from the employer or sponsor to transfer employment or leave the country. This creates "a profound power imbalance" and gives the employer "an inordinate amount of power over the worker's ability to change jobs or return to her country of origin".<sup>91</sup>

The 2015 amendments to the SALL addressed some of the negative aspects of the *kafala* system (for instance, an obligation for employers to provide a fully paid day a week to employees to seek other employment if they terminated a worker's contract),<sup>92</sup> the reform does not change the core of the power imbalance between the employer and a migrant worker. As Human Rights Watch observed, the reforms, if properly enforced, might help to protect migrant workers, but domestic workers, who are often the ones who need the most protection from abuse "are left out in the cold."<sup>93</sup>

<sup>89</sup> *Id.*

<sup>90</sup> Human Rights Watch, *As if I am not Human, Abuses against Asian Domestic Workers in Saudi Arabia*, 2008, p.26, available online at: [https://www.hrw.org/sites/default/files/reports/saudiara-bia0708\\_1.pdf](https://www.hrw.org/sites/default/files/reports/saudiara-bia0708_1.pdf)

<sup>91</sup> *Ibid.*

<sup>92</sup> Human Rights Watch, *Steps Toward Migrant Workers' Rights* supra n. 87.

<sup>93</sup> *Id.*

### 5.1.1.3 International obligations

Saudi Arabia has obligations under several important international instruments to which it has acceded, including the Convention on the Elimination of All Forms of Discrimination Against Women and its Protocols ("CEDAW"), the International Convention of the Elimination of All Forms of Racial Discrimination ("ICERD"), ILO Convention No. 100 on Equal Remuneration; ILO Convention 105 on the Abolition of Forced Labour; ILO Convention No. 29 Concerning Forced or Compulsory Labour; and ILO Convention No. 111 on Non-Discrimination in Employment and Occupation.

However, Saudi Arabia has tended to enter broad reservations upon accession to international treaties. With respect to the CEDAW, it stated that "in the case of contradiction between any term of the Convention and the forms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention". It should be emphasized that reservations which are incompatible with the object and purpose of a treaty are impermissible because they would render a basic international obligation meaningless.<sup>94</sup>

## 5.1.2 Compliance with the Domestic Workers' Convention

### 5.1.2.1 Fundamental rights

Saudi Arabian law fails to respect, promote and realize the fundamental principles and rights at work for migrant domestic workers, as set out in Art 3 of the Convention.

No measures have been taken under Saudi Arabian law to respect, promote and realize the rights of migrant domestic workers to freedom of association and collective bargaining pursuant to Art 3(2)(a) of the Convention. Similarly, measures have not been taken to promote and realize the elimination of compulsory or forced labour for migrant domestic workers pursuant to Art 3(2)(b). Though Saudi Arabia abolished slavery by Royal Decree in 1962, domestic workers remain highly vulnerable to forced labour. Human Rights Watch has found that the multiple abuses domestic workers experience in Saudi Arabia can intersect to create conditions of forced labour and slavery-like conditions.

<sup>94</sup> See, 1969 Vienna Convention on the Law of Treaties, Art. 19. See also, Committee on the Elimination of Discrimination against Women 14th session, 2008, Concluding comments of the Committee on Saudi Arabia, in which the Committee states: The Committee is concerned about the general reservation made upon ratification of the Convention by the State party, which is drawn so widely that it is contrary to the object and purpose of the Convention. "(para 9). See also, Human Rights Watch, *As If I am not Human*, p. 30.

The 2015 Directives included a fine of SR 20,000 (USD 5,333) for employing children under the age of 15. The new regulations, however, do not apply to domestic workers.

Finally, the exclusion of domestic workers from the SALL perpetuates discrimination in respect of employment and occupation in violation of Art 3(2)(c). Nearly all migrant domestic workers are female. Their exclusion from numerous basic labour protections, available to Saudi nationals and the occupations dominated by male migrant workers, violates Convention 111.

### 5.1.2.2 Right to information

Saudi Arabian law does not, at present, make provision for migrant domestic workers' rights to information in accordance with Art 7 of the Convention. Resolution No. 310 of 2013 on the Household Regulation on Service Workers and Similar Categories provides that there should be a contract between an employer and the domestic worker, but the authorities have not issued a standard contract. Instead have agreed on various bilateral contracts with some of the countries of origin such as Indonesia,<sup>95</sup> India<sup>96</sup> or Philippines.<sup>97</sup> An analysis of these contracts is available in the original 2014 version of this report.

Furthermore, the law does not require that migrant domestic workers receive written job offers or employment contracts before crossing national borders in the manner required by Art 8. Indeed, research indicates that deception about working conditions is common, including misinformation about matters such as ending two-year contracts early, wages and working time.<sup>98</sup>

### 5.1.2.3 Working conditions

Saudi Arabian law currently falls far short of the standards required by the Convention insofar as working conditions are concerned. The law does not take steps to protect domestic migrant workers from abuse, violence and harassment in accordance with Art 5. Indeed, the "vast majority" of domestic workers interviewed by Human Rights watch reported some form of psychological or verbal abuse which was often combined with

physical abuse.<sup>99</sup> The law also does not take sufficient steps to guarantee fair terms of employment or decent living conditions that are respectful of privacy in accordance with Art 6 and research indicates that many migrant domestic workers in Saudi Arabia are forced to live in cramped and squalid conditions.

Resolution 310 does go some way to providing domestic workers protection with respect to working time in providing migrant domestic workers with daily and weekly rest, and paid sick and annual leave. However, they still fall short of what is required by Art 10 of the Convention – they do not ensure equal treatment between domestic and other workers with respect to normal working hours (permitting, as they do, employers to require domestic workers to work 15 hours per day as opposed to the normal 8) and do not provide for overtime compensation. It is also unclear whether, during rest periods, workers must be able to dispose of their time as they please.

Because domestic workers are excluded from the SALL, Saudi Arabian law does not guarantee every domestic worker a safe and healthy working environment in accordance with Art 13.

### 5.1.2.4 Remuneration and social security

Saudi Arabian law does not provide for a minimum wage for migrant domestic workers, nor does it ensure that remuneration is established without discrimination on the grounds of sex as required by Art 11. Resolution 310 does, however, provide consistent with Art 11(1) that migrant domestic workers must be paid at least once per month. The extent to which this right can be effectively enjoyed by domestic workers is again questionable. As domestic workers are excluded from the SALL, Saudi Arabian law does not extend any protections with respect to social security payments as required by Art 14(1).

### 5.1.2.5 Private employment agencies

The extent to which Saudi Arabian law addresses the role of private employment agencies in recruiting and placing migrant domestic workers leaves much to be desired and plainly fails to comply with the requirements of the Convention. There is nothing to indicate that Saudi Arabia has sought to determine the conditions that govern the operation of private employment agencies, taken steps to ensure that adequate machinery and proce-

<sup>95</sup> Arab News, Saudi Arabia, Indonesia reach deal to hire domestic workers, 22 May 2016, available online at: <http://www.arabnews.com/node/927996/saudi-arabia>

<sup>96</sup> See, Migrant-Rights.org: New Agreement for Indian Domestic Workers in Saudi Arabia, 17 December 2014, available at: <https://www.migrant-rights.org/2014/12/new-agreement-for-indian-domestic-workers-in-saudi-arabia/>

<sup>97</sup> For a copy of the agreement on domestic recruitment between Philippines and Saudi Arabia, see <http://www.poea.gov.ph/laborinfo/agreement/2.pdf>

<sup>98</sup> Human Rights Watch, *As if I am not Human*, supra n. 89 at p. 46.

<sup>99</sup> Ibid p. 62.



dures are in place to investigate complaints or adopted measures adequate to guard against abuse of domestic workers and deduction of fees from workers' remuneration in accordance with Art 15(1)(a)-(c) and (e).

Saudi Arabia has entered into several bilateral treaties that are relevant to its compliance with Art 15(1)(d). These are discussed in the 2014 version of this report.

### 5.1.2.6 Implementation, compliance and enforcement

Whilst some efforts have been made to implement the provisions of the Convention through laws and Resolution 310, they are for the reasons discussed above inadequate in a number of fundamental respects.

Saudi Arabia has also not taken sufficient measures to ensure that all domestic workers have effective access to courts, tribunals or other forms of dispute resolution or effective access to complaint mechanisms in accordance with Arts 16 and 17 of the Convention. Exclusion from the SALL denies domestic workers access to recourse through labour law mechanisms and reports indicate that complaints of criminal abuses or labour exploitation receive responses which are, at best, ad hoc and, at worst, actually compound abusive situations.<sup>100</sup> Whilst sometimes workers have been assisted in order to claim their wages and return home, in other cases workers have been forcibly returned to abusive situations or subjected to specious counter-complaints made by employers.<sup>101</sup> In the worst cases, workers are beaten, imprisoned or issued a death sentence.

Whilst the centre for domestic workers in Riyadh, run by the Ministry of Social Affairs, has assisted some migrant domestic workers in obtaining exit visas, passports and airfares, there are also reports that domestic workers are often left with no option but to agree to unfavourable settlements or live for long periods in temporary informal shelters with hundreds of other displaced workers.<sup>102</sup>

## 5.2 Qatar

In 2014 the ITUC put a spotlight on the plight of migrant workers in Qatar.<sup>103</sup> Migrant domestic workers are excluded from legal frameworks and are extremely vulnerable to exploitation.<sup>104</sup> It is reported that migrant domestic workers in Qatar earn less than 30% of the average worker's wage in Qatar.<sup>105</sup>

Multiple investigations have revealed that migrant domestic workers are subjected to forced labour conditions. The numbers of domestic workers seeking assistance in connection with poor working conditions are significant. The representative of one labour sending country's embassy in Qatar told Amnesty International that around 90 per cent of the approximately 50 labour complaints the embassy receives every week are from women working as domestic workers. The abuses reported include "maltreatment, no rest, unpaid salaries, sexual harassment and rape".<sup>106</sup> As revealed in ITUC's report, *The Case Against Qatar*, a notice posted at the entry of the Embassy of Indonesia in Doha reports that 5-10 domestic workers from Indonesia seek refuge there every day.<sup>107</sup>

### 5.2.1 Relevant legal frameworks

#### 5.2.1.1 Labour law

The Qatari Labour Law (QLL) is the framework for labour relations in Qatar and regulates, among other things, wages, working time, occupational health and safety and social security. Under Art 3(4), however, the QLL does not apply to "persons employed in domestic employment such as drivers, nurses, cooks, gardeners and similar workers".<sup>108</sup> This denies domestic workers the protections provided to all other workers under the QLL. Further, domestic workers are unable to lodge claims at the Labour Court or complain to the Ministry of Labour.

In April 2014 the Qatari government stated to Amnesty International that the exclusion of domestic workers from the QLL "does not mean a lack of legal protection for their rights or that there is no law to protect these rights".<sup>109</sup> The Government further indicated that a draft

103 ITUC, *The Case against Qatar*, March 2014, available online at [http://www.ituc-csi.org/IMG/pdf/the\\_case\\_against\\_qatar\\_en\\_web170314.pdf](http://www.ituc-csi.org/IMG/pdf/the_case_against_qatar_en_web170314.pdf).

104 Qatar, Ministry of Development Planning, supra n. 14.

105 Migrant Rights Research Centre Statistics, available at [http://www.migrant-rights.org/research-centre/?research\\_type=statistics&research\\_country=qatar](http://www.migrant-rights.org/research-centre/?research_type=statistics&research_country=qatar).

106 Amnesty International, *My Sleep is My Break: Exploitation of Domestic Workers in Qatar*, 2014, p. 2, available online at <https://www.amnesty.org/en/documents/MDE22/004/2014/en/>.

107 ITUC, "The Case against Qatar" supra n. 102 at p. 20.

108 Qatar Labour Law, Law No. 14 of 2004, Art 3.

109 Amnesty International, "My Sleep is My Break" at p. 26.

100 Ibid p. 6.

101 Ibid.

102 Ibid p. 11. As reported by Human Rights Watch, the capacity and support offered by the missions of Indonesia, Sri Lanka, the Philippines, Nepal, and other labour-sending countries vary widely.

law relating to household workers was under consideration but that no decision had yet been taken to implement it.<sup>110</sup> A reference to the draft law was made by several Qatari Government representatives during the ILO high-level tripartite visit to Qatar that took place from 1-5 March 2016. However, as of December 2016, no draft text has been made public. Further, no timeframe for adoption was mentioned. The tripartite delegation reaffirmed that the current legal framework places domestic workers in a situation of increased vulnerability.<sup>111</sup>

### 5.2.1.2 *Kafala sponsorship laws*

The ILO Committee on Application of Standards in June 2015 called on the government to “abolish the kafala system.”<sup>112</sup> At the end of 2015, Qatar adopted Law 21 governing the entry, exit and residency of foreigner workers. The reform was announced by officials as the end of kafala and the move to a contract based system.<sup>113</sup> However, the legislation does not abolish the *kafala* system. As Amnesty International explained, “Changes to labour laws in Qatar barely scratch the surface and will continue to leave migrant workers, including those building stadiums and infrastructure for the World Cup, at the mercy of exploitative bosses and at risk of forced labour, said Amnesty International in a new briefing published today.”<sup>114</sup>

Under Law No. 21, migrants working in Qatar “shall not act in contradiction to what they have been licensed for, nor shall they be able to quit work for their recruiters or decide to work for other entities that have not been authorized to work for.” A violation of this law is punishable by a term of imprisonment of up to three years, a fine of up to 50,000 QR (12,550 €) or both.<sup>115</sup>

For the full duration of their employment contract (up to five years), migrant workers with definite term contracts simply *cannot* change employers without the permission of *both* their employer and the government (Ministry of Interior and Ministry of Labour). The same applies to workers with indefinite term contracts who can move to another employer only after working a minimum of

five years with the first employer. During these five years the employer would need to agree to a transfer by providing a migrant worker with the so-called “no objection” certificate. After the contract expires, or after five years if an indefinite contract, the worker will still need the government’s permission to transfer employers. During the life of the contract, a worker may be able to temporarily transfer to another employer if s/he has sued his or her recruiter, “if it has been established that the recruiter demonstrated arbitrary treatment” or “switching of jobs best serves the public interest.” However, even under these circumstances, a transfer is not a right. The Ministry of Interior and Ministry of Labour still have total discretion whether to allow the transfer. Migrant workers also face well-documented obstacles to access the justice system, making the filing of a lawsuit a barrier to transfer out of an abusive situation.

Employers on the other hand can loan out a worker to another employer without the worker’s consent for up to a year with the consent of the Ministry of Interior. There is little doubt this consent will be freely given. The law does not prescribe any limitations on the work the worker may be required to do while on loan nor the terms and conditions.

Under Law No. 21, a worker no longer asks the employer for the exit permit but rather the government (Ministry of Interior). However, the employer *still* has the right to object to the exit visa. If s/he does, the worker can appeal to a government-sanctioned grievance committee, but the law provides no guidance as to the reasons why an employer may be allowed to object or on the appeals process.<sup>116</sup> The ILO Committee on Application of Standards in June 2015 called on the government to “abolish [ ] the exit permit system in the shortest possible time and in the interim make exit permits available as a matter of right.” Law 21 does not come close to this recommendation.

Article 22 refers to workers “not subject to the provisions of the labour law,” which includes domestic workers and workers employed in agriculture. It states that for these workers “the minister or whoever he may so delegate may approve switching employers in the event it has been established that the recruiter demonstrated arbitrary treatment toward the worker or if such switching of jobs best serves the public interest.”

110 Al Jazeera, Qatar Criticized for Domestic Workers Abuse, 23 April 2014, <http://www.aljazeera.com/news/middleeast/2014/04/qatar-failing-protect-household-workers-201442302859927674.html>

111 ILO, Appendix II, Report of the high-level tripartite visit to Qatar, 17 March 2016, available online at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_459148.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_459148.pdf)

112 ILO, Report of the Committee on the Application of Standards, 104th ILC session (2015), Qatar, p.25, available online at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_375764.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_375764.pdf)

113 Doha News, Qatar Law No. 21 of 2015 governing foreigners (in English), 5 November 2015, available online at: <http://dohaneews.co/qatar-law-no-21-of-2015-governing-foreigners-in-english/>

114 Amnesty International, Qatar: Migrant workers still at risk of abuse despite reforms, 12 December 2016, available online at: <https://www.amnesty.org/en/latest/news/2016/12/qatar-migrant-workers-still-at-risk-of-abuse-despite-reforms/>

115 Law No. 21 of 2015, Art. 14.

116 Id., Art. 7

In fact, the 2016 Report of the ILO Committee of Experts was quite critical of Law 21:<sup>117</sup>

*The Committee notes with regret that, pursuant to Law No. 21 of 2015, employers will continue to play a significant role in regulating the departure of their employees, and that Law No. 21 does not seem to foresee termination by the expatriate worker before the expiry of the initial contract (that is, with a notice period) without the approval of the employer, nor does it set out reasons and conditions for termination generally, other than in a few very specific cases. The Committee also notes the absence of information in the Government's report on the frequency of transfers to a new employer under Law No. 4 of 2009, or the number of cases of passport confiscation. The Committee considers that a number of provisions of the new Law, which still places restrictions on the possibility for migrant workers to leave the country or to change employer, prevent workers who might be victims of abusive practices from freeing themselves from these situations. This also applies to the practice of withholding passports, which deprives workers of their freedom of movement.*

*The Committee requests the Government to take the necessary measures to ensure that Law No. 21 of 2015 is modified, as a matter of urgency, so as to provide migrant workers with the full enjoyment of their rights at work and to protect them from abusive practices and working conditions that may amount to forced labour, such as passport confiscation by employers, high recruitment fees, wage arrears and the problem of contract substitution. In this regard, the Committee expresses the firm hope that the legislation, once modified, will be applied effectively and will make it possible to:*

*– suppress the restrictions and obstacles that limit the freedom of movement of migrant workers and prevent them from terminating their employment relationship in the event of abuse;*

*– authorize workers to leave their employment at certain intervals or after having given reasonable notice (in this regard, the Government is requested to provide information on the number of employment transfers that take place in practice);*

*– review the procedure for issuing exit visas;*

*– effectively enforce the legal provisions on the prohibition of passport confiscation (in this regard, the Government is requested to provide information on the number of cases of passport confiscation detected in practice);*

*– ensure that recruitment fees are not charged to workers, or that they are reimbursed subsequently by the employer if this is the case;*

*– ensure that contracts signed in sending countries are not altered in Qatar.*

### 5.2.1.3 Assessment and grading of private employment agencies

The Qatari Labour Law provides that recruitment agencies are prohibited from deducting recruitment fees or any other costs from workers. Overseas recruitment should only be carried out by a licence holder.<sup>118</sup> These provisions do not apply to domestic workers. In 2013, the Ministry of Labour announced that it would “monitor recruitment agencies that hire domestic workers and carry out periodic and unannounced inspections to ensure that recruited workers do not fall victim to any form of exploitation and that their rights are upheld” and that such inspections had, to date, resulted in “the closure of a number of non-compliant agencies”.<sup>119</sup> Though the Ministry of Labour does not make public the specific criteria against which agencies are assessed, under Decree No. 8 of 2005 of the Ministry of Civil Service and Housing Affairs, agencies can lose their licenses if they present false information in applying for or renewing their agency license, accept fees from workers or continually breach agreements made with employers. Decree No. 8 of 2005 also requires that agencies provide workers with agreements prior to recruitment or placing (including details of salary, nature of work and length of contract); ensure that the agreement is signed by the worker; and pay for the worker to return home in the event that the conditions or terms of employment are not as promised.

However, as Amnesty International has observed, these criteria only form part of the process for assessing and grading private employment agencies and other factors – such as fees charged to prospective employers, cus-

<sup>117</sup> Observation (CEACR) - adopted 2015, published 105th ILC session (2016) Forced Labour Convention, 1930 (No. 29), available online at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100\\_COMMENT\\_ID:3255640](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:13100:0::NO::P13100_COMMENT_ID:3255640)

<sup>118</sup> Article 34, Qatari Labour Law, Law No. 14 of 2004.

<sup>119</sup> Statement of Government of Qatar to Committee on the Elimination of Discrimination Against Women: List of issues and questions in relation to the initial report of Qatar; Replies of Qatar, 3 December 2013, Question 23, p32.

tomers services provided to prospective employers, ensuring domestic workers' knowledge of Qatari law and customs, speedy recruitment of workers and adherence to sponsorship law – are also relevant. It is not clear then, as Amnesty International has highlighted, that the grading system “reflects any effort, or makes any contribution, to protecting the rights of domestic workers”.<sup>120</sup>

#### **5.2.1.4 Criminal law (including Anti-Trafficking)**

The Qatari Penal Code makes illegal any kind of forced work and the offense carries a penalty of up to six months in prison and a fine up to 3,000 riyals.<sup>121</sup> In 2011, the Qatar government also passed Law No. 15 on Human Trafficking which stipulates that the crime of trafficking in persons will occur where an individual transports, extradites, harbours or receives a natural person, both within the country or across its national borders, whether by use of force or violence or threat, or by abduction, fraud or deception, or abuse of power, or the exploitation of the vulnerable or needy and where these acts are committed with a view to, among other things, exploitation, forced labour or servitude, slavery or semi-slavery. The offence carries a prison sentence of up to 7 years' imprisonment (up to 15 years' imprisonment for committing the offence in aggravating circumstances) and a fine of up to 230,000 riyals. The number of prosecutions and convictions remains very low.

According to the 2016 US Trafficking in Persons Report, “[T]he government reported investigating 24 potential trafficking cases. While more than double the previous year, some of these cases may have involved other crimes often conflated with trafficking, including smuggling. The government prosecuted and convicted 11 suspected traffickers, including the staff of two private companies under the 2011 anti-trafficking law as compared to no convictions in the previous reporting period... The government has begun to prosecute exploitative employers under the 2011 anti-trafficking law, but other existing labor protections remain biased in favor of the employer. The government's primary solution for resolving labor violations was to transfer a worker's sponsorship to a new employer, ban the employer violating labor protections from new contracts or importing more laborers, and made minimal efforts to investigate whether the violations constituted forced labor. The government did

not report investigations, prosecutions, or convictions of government officials for complicity in human trafficking offenses.”

#### **5.2.1.5 International obligations**

Qatar has obligations under a several important international instruments to which it has acceded, including the CEDAW, ICERD, ILO Convention No.111 and ILO Convention No. 29.

### **5.2.2 Compliance with the Convention**

Whilst some steps have been taken, the national law of Qatar is non-compliant with the Convention in a number of fundamental respects.

#### **5.2.2.1 Fundamental rights**

Qatari law fails to respect, promote and realize the fundamental principles and rights at work for migrant domestic workers, as set out in Art 3 of the Convention. Migrant domestic workers are unable to exercise the right to freedom of association and collective bargaining pursuant to Art 3(2)(a) of the Convention. Restrictions posed by the Qatari law have been found to violate the principle of freedom of association by the ILO Committee of Freedom of Association. That Committee that called on the Government to amend the legislation in order to ensure that non-Qatari workers enjoy full freedom of association rights,<sup>122</sup> So far, there has been no progress.<sup>123</sup>

Forced or compulsory labour is, as noted above, prohibited under the Qatari Penal Code. However, we echo the concerns of Amnesty International that the relevant penalty (imprisonment of up to 6 months and a fine up to 3,000 riyals) is not adequate and therefore not compliant with the Convention. We note that a much higher penalty is available in cases where workers are trafficked for forced labour under Law No. 15 on Human Trafficking. Furthermore, express exclusion from the QLL and the *kafala* system, in combination, make migrant domestic workers in Qatar highly vulnerable.

Finally, the exclusion of domestic workers from the QLL perpetuates discrimination in respect of employment and occupation in violation of Art 3(2)(c). Nearly all mi-

<sup>120</sup> Amnesty International, Qatar: Migrant workers still at risk of abuse despite reforms, supra n. 113.  
<sup>121</sup> US Department of State, 2016 Trafficking in Persons Report, Qatar, available online at: <http://www.state.gov/documents/organization/258881.pdf>

<sup>122</sup> ILO, Committee on Freedom of Association, Qatar, Case No 2988, Report No 371, March 2014 available online at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_239692.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_239692.pdf)

<sup>123</sup> ILO, Committee on Freedom of Association, Qatar, Case No 2988, Report No 376, October 2015, available online at: [http://www.ilo.org/dyn/normlex/en/?p=1000:50002:0::NO:50002:P50002\\_COMPLAINT\\_TEXT\\_ID:3255134](http://www.ilo.org/dyn/normlex/en/?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3255134)

grant domestic workers are female. Their exclusion from basic labour protections, available to Qatari nationals and even the occupations dominated by male migrant workers, violates Convention 111.

### 5.2.2.2 Right to information

Decree No. 8 of 2005, discussed above, requires that private employment agencies provide workers with written agreements before they are recruited or placed in Qatar including details of salary, nature of work and length of contract. However, as these requirements only constitute criteria by which agencies are graded by the Ministry of Labour – and not offences or avenues of recourse in and of themselves – they do not comply with the requirements of Arts 7 & 8 of the Convention.

### 5.2.2.3 Working conditions

Qatari national law does little to protect domestic migrant workers from abuse, violence and harassment in accordance with Art 5. Despite recent statements from officials of the Ministry of Labour that the “contract signed between a maid and her employer” is sufficient to protect the rights of migrant domestic workers, this is plainly not the case. The *kafala* system, in combination with the exclusion of domestic workers from the QLL creates a situation in which workers are often confined and isolated in the workplace, restricted in their movements and dependent upon the sponsor employer. This leaves domestic migrant workers vulnerable to abuse and violence with little recourse.

Indeed, the UN Committee on the Elimination of Discrimination against Women has expressed “deep concern” that it had received “numerous allegations by migrant domestic workers of physical abuse, sexual violence, rape and attempted rape”.<sup>124</sup> Amnesty International has also reported that numerous women interviewed experienced “terrifying and shocking ordeals, yet have been unable to hold accountable their abusers.”<sup>125</sup> The law also does not take sufficient steps to guarantee fair terms of employment or decent living conditions that are respectful of privacy in accordance with Art 6 and research indicates that many migrant domestic workers in Qatar are forced to live in cramped and squalid conditions.

<sup>124</sup> UN Committee Against Torture: Concluding observations on the second periodic report of Qatar, adopted by the Committee at its forty-ninth session (29 October – 23 November 2012) CAT.C.QAT.CO.2, para 18, page 6.

<sup>125</sup> Amnesty International, Qatar, supra: Migrant workers still at risk of abuse despite reforms, supra n. 113.

Due to exclusion from the QLL, migrant domestic workers are unprotected by Qatari national law insofar as working time and occupational health and safety are concerned. Qatari law fails therefore to comply with Arts 10 and 13 respectively.

### 5.2.2.4 Remuneration and social security

Qatari national law does not provide for a minimum wage for migrant domestic workers, nor does it ensure that remuneration is established without discrimination on the grounds of sex as required by Art 11. The government has flagged that new laws regarding migrant workers would ensure regular and automated payment, which would accord with Art 11(1), but no deadline for implementation of such a requirement has been indicated. As domestic workers are excluded from the QLL, Qatari law does not extend any protections with respect to social security payments as required by Art 14(1).

### 5.2.2.5 Private employment agencies

Qatari law makes some effort, as detailed above, to address the role of private employment agencies in recruiting and placing migrant domestic workers. However, the assessment or grading system that is created by Decree No. 8 of 2005 does not, in and of itself, create legally binding obligations and enforcement mechanisms are weak. As we have previously noted, workers migrating to Qatar frequently borrow money to pay large recruitment fees to unscrupulous, sometimes unlicensed agencies whose promises of high wages and good working conditions are rarely realized. The resulting debt can create pressure for workers to remain in abusive employment situations.

### 5.2.2.6 Implementation, compliance and enforcement

Migrant domestic workers have very little available to them in the way of avenues of redress in the face of exploitative or abusive treatment. As noted above, because domestic workers are excluded from the QLL they cannot lodge a claim in the Labour Court. In addition, the *kafala* system creates additional practical hurdles to seeking recourse – where some workers are physically confined to the workplace, others may fear that seeking recourse for exploitative or abusive treatment may result in their detention or deportation, especially where employers have confiscated travel documents. This is

also the case where workers are the victims of sexual violence who can find themselves prosecuted when they report such crimes. Sexual violence is, as the UN Committee on the Elimination of Discrimination against Women has found, “underreported, as many... migrant domestic workers face risk of being accused of and charged with ‘illicit relations’ and are subject to imprisonment”.<sup>126</sup>

Qatari law cannot be said then, to ensure that all domestic workers have effective access to courts, tribunals and other dispute mechanisms under conditions that are no less favourable than those available to other workers in accordance with Art 16 of the Convention. There are also, under Qatari law, no measures for labour inspections of domestic workplaces and household premises in accordance with Art 17(2)-(3).

## 5.3 Kuwait

More than 620,539 (2014) domestic workers are employed in Kuwait. Kuwaiti law provides such workers with scant protection and they are, as a result, left vulnerable to exploitative and abusive treatment.<sup>127</sup> Domestic workers are excluded from the Kuwait Labour Law (“KLL”)<sup>128</sup> and until recently their only protection used to be derived from the terms of a standard-form contract which private employment agencies are obliged to execute with prospective workers and employers. A new law on domestic workers issued in 2015 and accompanied by implementing by-laws in July 2016 provides them with some labour protections in law for the first time, but continues to exclude domestic workers from a number of key protections.

### 5.3.1 Legal frameworks

#### 5.3.1.1 Labour law

The KLL was substantially revised in 2010. Whilst the new KLL resulted from sustained efforts of the ILO, local trade unions and other non-government organisations – and represented a real step forward – Art 5 of the Private Sector Labour Law No.6 of 2010 excludes domestic workers from its provisions. Domestic workers were therefore not afforded the protections provided to oth-

<sup>126</sup> UN Committee on the Elimination of Discrimination against Women: Concluding observations on the Initial report of Qatar, 28 February 2014, CEDAW/C/QAT/CO/1, para 23, page 5. See also, Amnesty International 2014 My Sleep is My Break, Exploitation of Migrant Domestic Workers in Qatar. <sup>127</sup> GLMM, data on residence permits granted by Kuwait in 2014, available online at: <http://gulfmigration.eu/kuwait-article-20-domestic-services-residence-permits-granted-by-nationality-group-and-sex-of-holder-2014/> <sup>128</sup> Law No.6 of 2010 Promulgating the Law of Labor in the Private Sector.

er workers such as working time, maternity and annual leave and dismissal procedure. Two additional decrees issued by the Ministry of Labour in 2007 and 2009 – which relate to the prohibition on the confiscation of workers’ passports and workers’ right to change jobs without an employer sponsor’s consent respectively – also do not apply to domestic workers.

Decree No. 313 of the Ministry of Interior, issued in 2004, required that all private employment agencies execute a standard-form contract with prospective workers and employers prior to recruitment from abroad.<sup>129</sup> The standard-form contract was subsequently updated in 2010. It provided domestic workers with several protective provisions, such as minimum salary, weekly rest periods and annual leave. However, as Human Rights Watch observed, whilst the standard-form contract represented “an improvement over having no minimum standards at all” it provided “significantly fewer and weaker protections than those in the labour law.”<sup>130</sup>

On 24 June 2015, the Parliament of Kuwait approved the ‘Law no.68 of 2015 regarding domestic workers’<sup>131</sup> and implementing regulations were passed in July 2016.<sup>132</sup> For the first time the law provides domestic workers with statutory labour rights, including daily work limit of 12-hours and an end-of-service benefit of one month a year at the end of the contract, among other rights. The law also introduced a prohibition on passport retention unless agreed to by the worker<sup>133</sup> and a requirement that such provision must be included in the recruitment contract prepared by the Domestic Labour Department.<sup>134</sup> However, it does not set out any penalties for non-compliance.

The 2015 law sets a limit of 12 hours<sup>135</sup> and sets an overtime premium of no less than double the wage agreed in the contract for any work required beyond the limit. Workers are also entitled to complain to the Domestic Labour Department (part of Ministry of Interior) in case the employer refuses to pay overtime.<sup>136</sup> The law re-

<sup>130</sup> Human Rights Watch, Walls at Every Turn, Abuse of Migrant Domestic Workers through Kuwait’s Sponsorship System, p. 38, available at: <https://www.hrw.org/report/2010/10/06/walls-every-turn/abuse-migrant-domestic-workers-through-kuwait-sponsorship-system>

<sup>131</sup> Law no. 68 of 2015 regarding domestic workers, adopted by the Parliament on 24.06.2015, and came into force after publication in the Official Gazette on 26.07.2015, published by Al Jazeera, June 2015, available available at: <http://kuwaitalyawm.media.gov.kw/content/%D8%B1%D9%82%D9%85-68-%D9%84%D8%B3%D9%86%D8%A9-2015>. See also: Human Rights Watch, Kuwait: New Law a Breakthrough for Domestic Workers, 30.06.2015, available online at: <https://www.hrw.org/news/2015/06/30/kuwait-new-law-breakthrough-domestic-workers>

<sup>132</sup> See. Kuwait Times, Ministry of Labour Mol sets KD 60 as monthly minimum wage for maids (13.07.2016) available online at: <http://news.kuwaittimes.net/website/moi-sets-kd-60-as-monthly-minimum-wage-for-maids/>

<sup>133</sup> Law of 2015, Art. 12

<sup>134</sup> Law of 2015, Art. 22(4).

<sup>135</sup> Law of 2015, Article 22(2).

<sup>136</sup> Law of 2015, Article 28.

quires that daily work time should be “intersected with break hours” but it does not specify the duration or sequencing of such breaks. The 2015 law does not stipulate a *weekly* work limit. Still, domestic workers suffer less favourable conditions of work compared to those covered by the KLL - which sets an 8-hour work day, a 48-hour work week and an hour of rest after every 5 hours of work.

The 2015 law provided that the wage “no less than the wage set par a decision of the Ministry of Interior”.<sup>137</sup> The minimum salary was set at KD 60 (around USD 208).<sup>138</sup> The law also stipulates “the right to paid annual leave”<sup>139</sup> but does not set the duration or provide that the employer is to cover airfare.

Unfortunately, the Law retains provisions on worker’s subordination by requiring that the worker must protect the employer’s wealth and property and not reveal the employer’s secrets. However, it does include a provision that the worker only has to comply with the instructions of the employer so long as they are “within the limits of the provisions of the contract”.<sup>140</sup> It is not specified how these provisions will be enforced.

### 5.3.1.2 Employment contracts

Employers are required to present the standard-form contract to the Immigration Authority when applying for a clearance certificate for the worker to enter Kuwait. Following its implementation, the provisions of the standard contract will need to be amended in order to comply with the new law.

The contract requires employers to provide “proper accommodation equipped with necessary life facilities for the [worker]” and provide “food and clothes” and, where necessary, “treatment at government hospitals”.<sup>141</sup> Employers are also required to pay for agency fees and these cannot be deducted from the worker’s remuneration.<sup>142</sup> The contract stipulates that the worker shall work for 48 hours per week and enjoy 1 day of rest per week, somewhat ambiguously, “with his family”.<sup>143</sup>

The *daily* work limit is not specified (though the 2015 law sets a limit of 12 hours).<sup>144</sup> According to the standard contract the worker is entitled to one month of paid annual leave and has the right “to spend a vacation for two months after the passage of two work years” with return airfares at the expense of the employer (unless the worker is to return home, in which case the employer must pay for a single-way airfare).<sup>145</sup> The standard contract stipulated a minimum salary of KD40 (around US \$139) which was to be paid monthly.<sup>146</sup> This will need to be revised in light of the KD60 set by the Ministry.

Both the standard contract as well as the 2015 law provide that the employer should compensate the worker for workplace injuries.<sup>147</sup>

The contract further specifies that any dispute emerging between the parties should be referred to the Domestic Labour Department.<sup>148</sup> The Department, which is part of the Kuwaiti Ministry of Interior – is able to provide mediation for civil domestic employment disputes (including breach of contract) but its determinations are not binding and mediation is voluntary.

The standard contract also contains a number of alarming obligations to be borne by the worker. For example, the worker must “maintain the secrets, funds and properties of the [employer]” and undertakes not to “damage [the] interests of [the employer]”.<sup>149</sup> The worker must also “fulfil works assigned to him and follow instructions” of the employer, and “execute them in the best way possible” considering the “laws, customs and traditions of the country”.<sup>150</sup> The contract forbids the worker from doing “any work with salary or without for any other party”.<sup>151</sup>

### 5.3.1.3 Kafala system

The Aliens’ Residence Law of 1959 and its accompanying implementation regulations lay down the Kuwaiti *kafala* sponsorship system, pursuant to which migrant workers must have a local immigration sponsor who must also be the employer. The sponsor employer is responsible for guaranteeing the validity of the worker’s residency permit and undertakes to notify the relevant government authority of termination of the worker’s services or if a worker leaves without permission (referred

<sup>137</sup> Law of 2015, Article 19.

<sup>138</sup> See. Kuwait Times, *Ministry of Labour MoL sets KD 60 as monthly minimum wage for maids*, 13 July 2016, available online at: <http://news.kuwaittimes.net/website/moi-sets-kd-60-as-monthly-minimum-wage-for-maids/>

<sup>139</sup> Law of 2015, Article 22(3).

<sup>140</sup> Law of 2015, Art. 14.

<sup>141</sup> Housemaid/Servant Recruitment and Employment Contract 2010, cl 5(1).

<sup>142</sup> *Ibid* cl 5(5).

<sup>143</sup> *Ibid* cl 6(1).

<sup>144</sup> Law of 2015, Article 22(2).

<sup>145</sup> Housemaid/Servant Recruitment and Employment Contract 2010, cl 6(4).

<sup>146</sup> *Ibid* cl 5(2), 6(3).

<sup>147</sup> Standard contract of 2010 cl 5(4) and (7) and Law of 2015 Article 22(1).

<sup>148</sup> Housemaid/Servant Recruitment and Employment Contract 2010, General Provisions, Section 1.

<sup>149</sup> *Ibid* cl 6(5).

<sup>150</sup> *Ibid*.

<sup>151</sup> *Ibid* cl 6(6).

to as “absconding”).<sup>152</sup> A conviction of absconding carries a maximum penalty of 6 months imprisonment but, in reality, workers are often deported due to crowding in prisons.<sup>153</sup> Although the *kafala* system does not require workers to obtain their employer’s permission to exit the country, the fact that employers are obliged to pay for a worker’s flight home “provides a strong financial incentive for them to prevent workers who wish to leave from doing so”.<sup>154</sup> Domestic workers cannot transfer employers without the permission of their employer-sponsor.

Thus, the rights, legal status and movement of migrant domestic workers are entirely at the discretion of the employer. Though the Constitution bans forced labour of any kind, the *kafala* system, in reality, creates an environment in which migrant domestic workers are vulnerable to exploitative and slavery-like working conditions. The standard contract and the law of 2015 failed to abolish the *kafala* system. The law of 2015 seems to further strengthen it by introducing a prohibition for recruitment agencies to “deal with absconding labourers” and a sanction of administrative action.<sup>155</sup>

### 5.3.1.4 Anti-Trafficking Laws

Anti-trafficking legislation enacted in 2013 prohibits all forms of trafficking and prescribes penalties ranging from 15 years to life imprisonment. Although these laws could in principle provide with prosecution of traffickers of domestic workers, the government remains reluctant to prosecute Kuwaiti citizens for trafficking offenses. According to the US Trafficking in Persons (TiP) Report the first and only investigation of a suspected forced labour case referred by the Ministry of Interior to the public prosecutor’s office took place in 2015 and concerned a Syrian national who detained, coerced, and sexually abused six Filipino domestic workers.<sup>156</sup>

Kuwaiti law enforcement treats cases of forced domestic labour as administrative infractions, and punishment has been so far limited to assessing fines, shutting down employment firms, issuing orders for employers to return withheld passports, or requiring employers to pay back-wages. Although the withholding of workers’ passports is prohibited under Kuwaiti anti-trafficking law, this

practice remains common among sponsors and employers of foreign workers. The government demonstrated no efforts to enforce this prohibition.<sup>157</sup>

### 5.3.1.5 International obligations

Kuwait has relevant obligations under a variety of international human rights treaties including the International Covenant on Civil and Political Rights (“ICCPR”), the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), CEDAW, ICERD, ILO Convention No. 87, ILO Convention No. 105 and ILO Convention No. 111. In addition, Kuwait is party to the Supplementary Convention on Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery; the Convention for the Suppression of the Traffic in Persons and of the Exploitation and the Prostitution of Others; and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Pursuant to Art 70 of the Constitution, international treaties have force of law after signing, ratification and tabling.

### 5.3.2 Compliance with the Convention

Though the standard-form contract and the 2015 domestic workers law has made some important inroads in providing migrant domestic workers with enhanced protection, it is not enough to bring Kuwaiti law into line with the Convention and further reform is still needed.

#### 5.3.2.1 Fundamental rights

Kuwaiti law as it currently stands fails to respect, promote and realize the fundamental principles and rights at work for migrant domestic workers, as set out in Art 3 of the Convention.

No measures have been taken under Kuwaiti law to respect, promote and realize the rights of migrant domestic workers to freedom of association and collective bargaining pursuant to Art 3(2)(a) of the Convention. Similarly, adequate measures are not taken to promote and realize the elimination of compulsory or forced labour for migrant domestic workers pursuant to Art 3(2)(b). Though forced labour is illegal under the Kuwait Constitution, express exclusion of domestic workers from the KLL and the *kafala* system, in combination, make domestic workers highly vulnerable in this respect as their freedom of movement and legal status is entire-

<sup>152</sup> Interior Ministry Resolution No.640 of 1987 promulgating the by-law of the Aliens’ Residence Law, Kuwait Al-Youm, November 14, 1987, Art 20.

<sup>153</sup> Human Rights Watch, Walls at Every Turn, Abuse of Migrant Domestic Workers through Kuwait’s Sponsorship System, p. 33, available at: <https://www.hrw.org/report/2010/10/06/walls-every-turn/abuse-migrant-domestic-workers-through-kuwait-sponsorship-system>

<sup>154</sup> Ibid p. 34.

<sup>155</sup> Law of 2015 Article 24.

<sup>156</sup> See, US Department of State, Trafficking in Persons Report, 2016, Kuwait, available online at: <http://www.state.gov/documents/organization/258880.pdf>

<sup>157</sup> Ibid.



ly dependent upon the employer. Consistently with this, Human Rights Watch has found that the multiple abuses domestic workers experience in Kuwait can intersect to create conditions of forced labour and slavery-like conditions, though it is difficult to estimate just how often this occurs.

The 2015 law includes a prohibition on recruiting or employing domestic workers under age of 21 under penalty of 6 months imprisonment and a fine up to KD50, which is welcome.<sup>158</sup>

### 5.3.2.2 Right to information

Decree No.313 of 2004 of the Ministry of Interior, in accordance with Art 8 of the Convention, requires that all private employment agencies execute the standard-form contract before prospective workers cross national borders.

The standard contract itself also contains some of the information which is required by Art 7 of the Convention to be provided to domestic workers such as remuneration and frequency of payment, weekly and annual leave, provision of food and accommodation and the terms of repatriation. As noted above, however, the standard-form contract does not stipulate a daily limit on working hours and does not include information such as a clear stipulation of the nature of the work involved and term of employment.

The Law of 2015 stipulated that the model contract must include the name of the worker, name of the employer, duration of work, date of starting work, wage and method of payment, description of place of work. The contract must be written both in Arabic and English and must include “type and nature of work assigned to the worker”.<sup>159</sup>

### 5.3.2.3 Working conditions

Though the requirement that private employment agencies execute the standard-form contract with employers and workers makes an important step towards providing workers with greater protection, Kuwaiti national law does little to protect domestic migrant workers from abuse, violence and harassment in accordance with Art 5.

The Law of 2015 attempted to address the gap by a prohibition to assign any dangerous work that could affect the workers’ health or humiliate to worker’s dignity with a possibility to complain, through the work agency, to the Domestic Labour Department.<sup>160</sup>

The *kafala* system, in combination with the exclusion of domestic workers from the KLL creates a situation in which workers are often confined and isolated in the workplace, restricted in their movements and dependent upon the sponsor employer. This leaves domestic migrant workers vulnerable to abuse and violence with little recourse.

The standard-form contract goes some way to providing workers protection with respect to working as it makes provision for weekly rest periods as well as annual leave. However, the standard-form contract falls short of what is required by Art 10 of the Convention. It does not ensure equal treatment between domestic and other workers with respect to normal working hours (for example, the standard contract, as noted above, does not put a cap on daily working hours) and does not provide for overtime compensation.

Law of 2015<sup>161</sup> regulates overtime as work beyond 12 hours per day. It also provides for a weekly rest day but with no stipulation of the minimum length. If the employer refused to compensate the domestic worker for overtime work, the domestic worker would have the right to submit a complaint against the employer to the Department of Domestic Labour. The DDL may obligate the employer to pay compensation of no less than double the wages agreed in the contract. Nevertheless, the law provides that it is a 12 hour working day with unspecified “hours of rest”. Since no minimum length or sequence is provided for daily rest time the law leaves room for excessively long working hours of up to 12 hours per day.<sup>162</sup>

The standard contract does provide workers with some protection with respect to safe and health working conditions in requiring, for example, that the employer must provide reasonable accommodation with basic amenities. The employer is also responsible for compensating the worker in the event of any workplace injury.

<sup>158</sup> Law of 2015, Art. 29.  
<sup>159</sup> Law of 2015, Art. 18.

<sup>160</sup> Law of 2015, Art. 10.

<sup>161</sup> The Law of 2015 provides that the domestic worker has the right to a paid weekly break and paid annual leave but no time periods are provided. Law of 2015, Art. 22.

<sup>162</sup> Law of 2015, Art. 28.

The Law of 2015 further provided that the employer is required to provide food, clothing and housing.<sup>163</sup> The provisions are not further specified.

#### **5.3.2.4 Remuneration and social security**

The standard-form contract, as noted above, makes provision for a minimum wage that is to be paid at monthly intervals. The limit provided – 40 KD (about 139 USD) – has been raised by the decision implementing the law of 2015 to 60 KD (about 204 USD).<sup>164</sup> The Law of 2015 further provides that wages should be paid monthly and that transfer receipts and cash receipts are types of proof that the domestic worker has received his/her wages.<sup>165</sup> It also prohibits salary deductions by employers and provides that where employers delay payment of salaries, employers are required to pay an additional 10KD for every month of delay or non-payment of wages.<sup>166</sup> The law provides for an end-of-service benefit after completing contract of one month's wage for every year of service.<sup>167</sup>

The standard contract does not provide for social security or maternity leave and therefore does not comply with Art 14. The Law of 2015 stated that the employer is required to provide medical treatment in case of injury on the job and compensation for job injuries. It does not however provide sick leave like the labour law, which has detailed provisions including 15 days of sick leave at full pay.<sup>168</sup> The employer is also obligated to transport the deceased body of the domestic worker to her/his country when s/he dies, and must pay the wages of the month in which the worker dies.

#### **5.3.2.5 Private employment agencies**

The Kuwaiti government has implemented some measures to regulate the role of private employment agencies in the manner contemplated by Art 15. In adopting the requirement that private employment agencies execute the standard form contract with prospective workers and employers, Kuwaiti law provides some protection against abuse of domestic workers placed within its territory. It includes, in accordance with Art 15(1)(e), for example, a term that prohibits deduction of recruitment fees from a worker's remuneration.

Whilst this represents an important step forward, the standard form contract is not sufficient to protect against exploitation of workers by private employment agencies. It perpetuates and condones the discriminatory treatment of migrant domestic workers in providing them with fewer and weaker protections than those afforded under the KLL to other workers and, additionally, may be difficult to enforce in practice.

The Law of 2015 attempted to better regulate PEAs. The Law does not permit the charging of any fees (direct or indirect) in return for employing the workers or arranging to stay under the penalty for the crimes of extortion and illicit gains.<sup>169</sup> It further prohibits deduction from wages by the employer.<sup>170</sup> The law also foresaw grounds for administrative action against the agency.<sup>171</sup> Charging recruitment fees from a worker or concluding contracts that are not in conformity with the format approved by the Domestic Labour Department might be the ground for revoking licence.<sup>172</sup>

The 2015 law importantly prohibits recruitment offices from advertising employment of domestic work on the basis of creed, sex, and colour, or any other degrading way.<sup>173</sup>

#### **5.3.2.6 Implementation, enforcement and compliance**

Sufficient measures are not taken under Kuwaiti law to ensure that all domestic workers have effective access to courts, tribunals and other dispute resolution mechanisms under conditions that are not less favourable than those available to other workers, as required by Art 16. Though the standard-form contract provides that disputes should be referred to the Domestic Labour Department, this may, in reality, be difficult or impossible for migrant domestic workers who find themselves in exploitative or abusive situations. Kuwaiti national law also fails to implement measures for labour inspection for domestic workers pursuant to Art 17(2).

Under Law of 2015, any dispute emerging between the parties can be referred to the DDL. If settlement of the dispute proves unsuccessful the dispute can be referred to the competent court.<sup>174</sup> In case of a dispute workers

<sup>163</sup> Law of 2015, Art. 9.

<sup>164</sup> See, Ministerial Decree No. 2302/2016.

<sup>165</sup> Law of 2015, Art. 7.

<sup>166</sup> Law of 2015, Art. 27.

<sup>167</sup> Law of 2015, Art. 23.

<sup>168</sup> Art.69 of the Labour Law.

<sup>169</sup> Law of 2015, Art. 4.

<sup>170</sup> Law of 2015, Art. 8.

<sup>171</sup> Law of 2015, Art. 24.

<sup>172</sup> Law of 2015, Art. 25.

<sup>173</sup> Law of 2015, Art. 6.

<sup>174</sup> Law of 2015, Art. 31.

should inform the recruitment agency. However, there is no penalty for the agency for not transferring the complaint to DDL. The law does not set out labour inspections and, other enforcement mechanisms. It is not known whether the implementing regulations of the law will include such elements.

Weak enforcement may in reality render the entitlements of migrant domestic workers illusory.

## 5.4 Bahrain

There are estimated to be more than 105,200 domestic workers in Bahrain.<sup>175</sup> Domestic workers make up 12.8 per cent of the Bahraini workforce and 42.2% of the female workforce.<sup>176</sup> These workers are predominantly from South and Southeast Asia including countries such as India, Sri Lanka, Bangladesh and the Philippines. Bahraini law provides domestic migrant workers with protections that are not extended by other GCC Countries but, unfortunately, still fails to address the rights of such workers in fundamental respects.

### 5.4.1 Legal frameworks

#### 5.4.1.1 Labour law

Migrant domestic workers are excluded from many, but not all, provisions of the Bahrain Labour Law (“BLL”)<sup>177</sup> and Art 2(b)(1) of the BLL provides that “except for the provisions specified in Article 6, 19, 20, 21, 37, 38, 40, 48, 58, 116, 183 and 185 and in Titles XII and XIII of this law, the provisions of this law shall not be applicable to ... [d]omestic servants and persons regarded as such, including agricultural workers, security house-guards, nannies, drivers and cooks performing their works for the employer or his family members”.

The provisions which, pursuant to Art 2(b)(1), are applicable to domestic workers, are as follows. Art 6 specifies that an exemption from legal costs shall be applicable to all labour cases initiated by workers or their beneficiaries. Art 19 provides that a contract of employment must be written in Arabic and that, in the absence of a written contract, a worker may establish their rights by all

methods of evidence. Art 20 further provides that such a written contract must contain the material details of the parties to the contract, especially personal particulars of the employer and worker, the nature and type of employment, the term of the contract and the wage agreed upon and frequency and method of payment. Violations of the requirements of Arts 19 and 20 by employers are punishable by a fine of 200-500 Bahrain Dinars. Art 21 limits the use of probationary periods.

Arts 37, 38, 40, 48 and 49 relate to wages. Wages are fixed according to individual contracts and, failing that, according to industry practice or by the competent court according to the requirements of equity.<sup>178</sup> Wages may be calculated by the hour, day, week or month and, additionally, by piece-rate or production where the contract so specifies.<sup>179</sup> Wages must be paid in legal tender at least once every week, unless there is an agreement to the contrary in which case wages must be paid at least once per month.<sup>180</sup> If an employment relationship is terminated at the employer’s initiative, the worker must be paid any outstanding wages immediately, or within 7 days if the worker leaves employment of their own volition.<sup>181</sup> Where payment of wages is delayed by the employer for a period less than 6 months the employer must compensate the worker at the rate of 6% per annum and up to a maximum of 12% for longer periods of delay.<sup>182</sup> Workers’ wages and amounts to which workers are entitled have a lien over all employers’ real and movable property and will be satisfied in priority over any other debt of the employer.<sup>183</sup>

Under Art 58, workers are entitled to a month of paid leave after one year’s service or, if the worker’s total period of service is less than one year, to leave proportionate to the length of service. Workers may receive cash consideration in lieu of leave in accordance with Art 59. Art 116 provides for the payment of social insurance upon termination of employment.

The Ministry of Labour Decree No. 8 of 2005 with Respect to a Model Form of Employment Contract for Domestic Help and Similar Persons regulates the conditions and procedures of licensing for private employment agencies and has attached to it a model contract for recruiting domestic workers from abroad. The Decree applies unless it is in conflict with the BLL and requires employer to provide medical examinations, “adequate” food and

<sup>175</sup> Gulf Migration, Bahrain: Estimated Employed Total Non-Bahraini Population by Sex and Sector (public, private, domestic)(Quarterly 2003-2014) available online at <http://gulfmigration.eu/bahrain-estimated-total-employed-non-bahraini-population-by-sex-and-sector-public-private-domestic-quarterly-2003-2014/>

<sup>176</sup> ILO, Domestic workers across the world: Global and regional statistics and the extent of legal protection, Geneva 2013, p. 31, available online at [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_173363.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf).

<sup>177</sup> Labor Law for the Private Sector, Law No.36 of 2012.

<sup>178</sup> Ibid Art 37.

<sup>179</sup> Ibid Art 38.

<sup>180</sup> Ibid Art 40(b).

<sup>181</sup> Ibid Art 40(b)(4).

<sup>182</sup> Ibid Art 40(c).

<sup>183</sup> Ibid Art 48.

housing and return airfares. Human Rights Watch has reported that (as at June 2012) the Labour Market Regulatory Authority (“LMRA”) is in the process of drafting a new standard-form contract for domestic workers in order to “guarantee decent work and living conditions for domestic workers” in accordance with international treaties.<sup>184</sup> Adoption of such standard contract has been reported during the ILO Inter-Regional Knowledge Sharing Forum focused on fair migration agenda for domestic workers in Africa, the Arab States and Asia that took place in May 2016. However, the contents of the contract have not been published so far.<sup>185</sup>

The creation of the LMRA itself, in 2006, also represents a positive change towards enhanced rights protection for migrant domestic workers. Under Law No. 19/2006 Regulating the Labour Market, the LMRA is empowered to issue work visas, regulate private employment agencies and educate workers and sponsors about their rights and legal obligations. The key policy objectives of the LMRA include, among other things, to prepare and implement a national strategy for the labour market (including Bahraini and foreign workers); to collect and analyse data with respect to the labour market and prepare reports which are accessible to all; to inform, direct and guide workers, employers and others with respect to rights, duties and professional and environmental safety in the workplace; and to simplify the work permit system for the employment of foreign workers.<sup>186</sup>

#### **5.4.1.2 Kafala system**

Under Bahrain’s *kafala* system, foreign workers must work under the sponsorship of a particular employer. This system means that the worker’s visa and legal status is tied to the sponsor employer. In 2009, the LMRA announced that the *kafala* system would be reformed in order to allow foreign workers to change employment without the permission of the sponsor employer after a notice period of three months. In June 2011, however, these reforms were partially revoked and a requirement was introduced that migrant workers must work for a full year before they are able to change jobs without consent. Most importantly for present purposes, however, neither the reforms of 2009 nor 2011 concerned domestic workers.

<sup>184</sup> Human Rights Watch, “For a Better Life: Migrant Worker Abuse in Bahrain and the Government Reform Agenda” (October 2012), p. 63, available online at: <https://www.hrw.org/report/2012/09/30/better-life/migrant-worker-abuse-bahrain-and-government-reform-agenda>

<sup>185</sup> See, Good practices and lessons learned on promoting international cooperation and partnerships to realize a fair migration agenda for migrant domestic workers in Africa, the Arab States and Asia, ILO Inter-Regional Knowledge Sharing Forum Report 5-7 May 2016, Antananarivo, Madagascar. Information about the meeting, available online at: [http://www.ilo.org/global/topics/labour-migration/events-training/WCMS\\_454724/lang-en/index.htm](http://www.ilo.org/global/topics/labour-migration/events-training/WCMS_454724/lang-en/index.htm)

<sup>186</sup> Law No. 19/2006 Regulating the Labor Market, art 4.

#### **5.4.1.3 Anti-Trafficking Law**

Bahrain’s anti-trafficking law, Law No.1 of 2008, prohibits all forms of trafficking in persons and prescribes penalties ranging from three to 15 years’ imprisonment. Although withholding a worker’s passport is illegal and carries a financial penalty under a ministerial order, a worker is required to file a complaint with the police or the Labour Market Regulatory Authority (LMRA), which can only refer a complaint to the court if the employer refuses to return the passport. In 2015 the government reported investigation of 8 cases of forced labour and prosecution of 2 cases. No data on convictions was reported.<sup>187</sup> Therefore, it cannot be stated that the anti-trafficking law has strengthened effective protection of the rights of domestic workers in Bahrain.

#### **5.4.1.4 International obligations**

Bahrain has a number of relevant obligations under a variety of international instruments including the CEDAW, ICERD and ILO Conventions 29, 105 and 111. Bahrain is also party to the Supplementary Convention on the Abolition of Slavery the Slave Trade and Institutions and Practices Similar to Slavery and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

#### **5.4.2 Compliance with the Convention**

Bahrain provides migrant domestic workers with legal protections not afforded to them in other GCC Countries. Nevertheless, there are still major gaps and significant further reform is needed in order to bring Bahraini law into line with the requirements of the Convention.

##### **5.4.2.1 Fundamental rights**

Bahraini law as it currently stands does not take sufficient steps to respect, promote and realise the fundamental principles and rights at work for migrant domestic workers, as set out in Art 3 of the Convention.

No measures are taken under Bahraini law to respect, promote and realise the rights of migrant domestic workers to freedom of association and collective bargaining pursuant to Art 3(2)(a) of the Convention. With respect to the elimination of forced or compulsory labour under Art 3(2)(b), whilst some of the protections afforded to do-

<sup>187</sup> US Department of Labour, Trafficking in Persons Report, 2016, Bahrain, available online at: <http://www.state.gov/documents/organization/258878.pdf>

mestic workers under the BLL – for example, the requirement that a written contract specifying certain things be executed – could conceivably provide some protection against forced labour, the *kafala* system, which remains in place, undermines such protection because the legal status and movement of the worker is dependent upon the sponsor employer.

Finally, whilst the BLL provides some protection to migrant domestic workers, such workers are still afforded fewer protections than other kinds of workers. Bahraini law, therefore, does not take sufficient measures to eliminate discrimination on the basis of employment in the manner contemplated by Art 3(2)(c).

#### 5.4.2.2 Right to information

Whilst Bahraini law requires that employment contracts which are executed contain some (though certainly not all) of the information required by Art 7 – such as personal details, the nature of work, duration of employment and wages – it is not in fact clear whether Arts 19 and 20 of the Labour Law require that a contract be executed in the first place. This does not ensure that all migrant domestic workers are informed of the terms and conditions of their employment before crossing national borders in accordance with Art 8.

#### 5.4.2.3 Working conditions

Though the protections provided to migrant domestic workers under the BLL represent an important step towards providing such workers with enhanced protection, it still excludes them from important protections such as weekly rest days and a limit on working hours.

Bahraini law also does not sufficiently protect migrant domestic workers against abuse, violence and harassment in accordance with Art 5. The fact that such workers are afforded fewer protections under BLL, in combination with the *kafala* system, means that migrant domestic workers are vulnerable to exploitation and abuse. Workers who find themselves in abusive situations may also be confined and isolated in the workplace and unable to access avenues of redress.

#### 5.4.2.4 Remuneration and social security

The provisions of the BLL that relate to wages apply to domestic workers. This ensures that domestic workers are paid at regular intervals in accordance with Art 11(1). However, there is no stipulated minimum wage under the BLL, which simply provides that wages will be fixed according to individual contracts or according to industry practice by a competent court. Bahrain has set minimum wages for Bahrainis in the public sector and in some private sector work but this does not apply to migrant workers.<sup>188</sup> There is also no provision which ensures that workers are paid without discrimination on the basis of sex. In these senses, then, Bahraini law does not comply with Art 11 of the Convention.

#### 5.4.2.5 Private employment agencies

The BLL provides that employment contracts must contain certain provisions which provide a certain level of protection to migrant domestic workers against the execution of unfavourable contracts at the behest of private employment agencies. In addition, Bahraini law prohibits the collecting of fees by private employment agencies from workers.<sup>189</sup> However, Human Rights Watch has reported that while this law is complied with some of the time, some agents “openly flout the prohibition” by requiring that workers reimburse them for fees.<sup>190</sup> Bahraini law also does not ensure that adequate machinery and procedures exist for investigating alleged abuses or fraudulent practices by agencies in accordance with Art 15(1)(b) of the Convention. All necessary measures to provide adequate protection for and prevention of abuse of domestic workers recruited or placed by private employment agencies have not been taken in accordance with Art 15(1)(c).

#### 5.4.2.6 Implementation, compliance and enforcement

Insofar as migrant domestic workers are protected under the BLL, they are formally able to enforce their rights in the courts and are, as outlined above, exempt from all legal costs associated with any such claim. However, the

<sup>188</sup> See, Albawaba Business, Bahrain Sets New Minimum Wage for Private Sector Workers (14.01.2014) available online at: <http://www.albawaba.com/business/bahrain-minimum-wage-545787>. See also: Arabian Business, Bahrain approves \$796 minimum salary for hospitality sector workers, (01.09.2014), available online at: <http://www.arabianbusiness.com/bahrain-approves-796-minimum-salary-for-hospitality-sector-workers-563148.html> and Trade Arabia, Bahrain set to revise minimum wages (06.07.2012), available online at: [http://www.tradearabia.com/news/edu\\_220047.html](http://www.tradearabia.com/news/edu_220047.html)

<sup>189</sup> Law No.19 for the year 2006 Regulating the Labor Market, section 2, art 29.

<sup>190</sup> Human Rights Watch, “For a Better Life: Migrant Worker Abuse in Bahrain and the Government Reform Agenda” (October 2012), p. 24, available online at: <https://www.hrw.org/report/2012/09/30/better-life/migrant-worker-abuse-bahrain-and-government-reform-agenda>

extent to which, in reality, such recourse may be initiated and pursued by domestic migrant workers is doubtful. The *kafala* system may result in workers who find themselves in abusive or exploitative situations being confined and isolated in the workplace. This may mean that they are unable to access complaint mechanisms in accordance with Art 17(1). Bahraini law also does not provide for labour inspection for domestic workers in accordance with Art 17(2)-(3).

## 5.5 UAE

There are estimated to be around 236,545 domestic workers in the UAE.<sup>191</sup> They comprise approximately 12.8 % of the total workforce and 42.4% of the female workforce.

### 5.5.1 Legal frameworks

#### 5.5.1.1 Labour law

The UAE Labour Law No. 8 of 1980 (“UAELL”), as amended by Labour Law No.8 of 2007, provides the central framework for labour relations and makes provision with respect to, among other things, remuneration, working time, leave, occupational health and safety and dispute resolution.

Pursuant to Art 3(c) of the UAELL, “domestic servants working in Private residences and the like” are excluded from its provisions. This denies domestic workers all protections guaranteed to other workers under the UAELL.

Draft regulations with respect to domestic workers were passed by the Federal National Council in 2012 but have not been made public. Separately, in June 2014, the UAE revised its 2007 standard contract for the employment of migrant domestic workers to include additional measures such as a weekly day of rest.

#### 5.5.1.2 Employment contracts

The standard-form contract, which was revised in June 2014, must detail the nature of work, remuneration and obligations of the employer. The contract must be for no longer than two years and a probationary period of three months. Payments must be made on a monthly basis. Workers under the revised contract are entitled to at

<sup>191</sup> Human Rights Watch, *I Already Bought You: Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates*, 2014, available online at <http://www.hrw.org/reports/2014/10/22/i-already-bought-you>

least eight continuous hours of rest (i.e., sleep) each day; one day of rest per week or compensation for it; and 30 days’ annual leave. ( In the event that a dispute arises, the contract provides that it must be settled by the Dispute Settlement Department at the Naturalization and Residency Directorate (in the Ministry of Interior) and if not settled within two weeks, it should be referred to a competent court.

However, it also allows the employer the right to deduct at source from the domestic worker’s salary any damage “or loss of any goods or property attributable to default or negligence” of the worker. The new standard contract contains no limit on working hours (other than the daily eight-hour rest period), no provisions for overtime pay, and no workers compensation.

Human Rights Watch found that many domestic workers in the UAE are duped into believing they have an enforceable contract with higher pay and better conditions than turns out to be the reality. The contracts they sign with agencies in their country of origin are substituted with the UAE standard contract offering less pay and few rights and protections.<sup>192</sup>

Human Rights Watch reported that many of the workers it interviewed said they signed contracts in their home country but then found when they arrived in the UAE and signed the UAE standard contract that they would be paid less than the original contract indicated. Many workers from the Philippines, for example, said that the initial contract indicated that they were to receive \$400 (Dh1,470) per month, whereas the UAE contracts were for pay ranging from Dh700-1200 (\$190-330). Workers and sending country officials told Human Rights Watch the immigration department takes account only of the UAE standard contract when it is considering disputes, not the original contract workers signed in their home countries.<sup>193</sup>

#### 5.5.1.3 Kafala system

As explained by Human Rights Watch, “Under the UAE’s visa sponsorship system (known as *kafala*), a foreign worker’s ability to enter, live, and work legally in the UAE depends on a single employer who also serves as the worker’s visa ‘sponsor.’ Not only does this system give employers inordinate control over the worker, but UAE laws have few safeguards for migrant workers to escape

<sup>192</sup> *Ibidem*, p. 24.

<sup>193</sup> *Ibidem*, , p. 20.

from this dependency in cases where the relationship becomes exploitative or abusive.”<sup>194</sup>

Migrant workers covered by the labour law might apply to the Labour Ministry for transfer to another employer after their contracts expire without requiring their former employer’s consent. When the employer fails to comply with his legal or contractual obligation, when the employee is not the cause of the termination, or when the migrant worker is from one of professional categories and is to earn a minimum monthly salary of at least Dh5,000 (US\$1,361), the Labour Ministry can issue a new work permit before the earlier contract has ended, and the consent of the former employer is not required.<sup>195</sup>

For domestic workers, the kafala system is especially restrictive. Unlike other migrant workers, migrant domestic workers cannot legally leave an employer before the end of their contractual period (generally two years) without their current employer’s permission. Abuse by the employer is not a ground for leaving. Those who wish to change employers have two options. One is a three-step process which requires workers to: complete their contract term and give their employer one month’s notice that they will not renew; get their sponsor to cancel their work permit and residence visa at the General Directorate for Residency and Foreign Affairs (also known as the immigration department); and then procure a new sponsor within 30 days.<sup>196</sup> The other requires them to secure their sponsor’s approval to transfer the sponsorship before the end of their contract by means of a “no-objection” certificate signed by the sponsor, and to pay a sponsorship transfer fee to the immigration department.<sup>197</sup>

A domestic worker who leaves her sponsor before the end of her contract without the approval of the employer is deemed by law to have “absconded.” “Absconding” is an administrative offense that can result in various sanctions and fines. In 2007, the UAE enacted Executive Regulations of Entry and Residence of Foreigners Law – legislation that set a sanction of a one-year entry ban where a domestic worker has their residence visa cancelled before the end of their contract outside of the transfer rules.<sup>198</sup> Workers who have escaped their sponsors are

subject to arrest, prohibited from leaving the country of their own accord,<sup>199</sup> and subject to expulsion.<sup>200</sup> “Absconding” also results in fines for residing without valid documents in the UAE, from Dh25 to 100 (US\$7 to 27) per day depending on the length of stay.<sup>201</sup>

The UAE standard contract (updated in 2014) specifically states that a domestic worker’s rights are “null and void” if the worker leaves work without informing the sponsor (i.e., “absconds”).<sup>202</sup>

On 27 September 2015, the UAE Ministry of Labour issued new regulations that grant migrant workers greater flexibility to change jobs – Ministerial Decrees Nos. 764, 765 and 766.<sup>203</sup> The new rules prohibit contract substitution and introduce a possibility for the worker to terminate unilaterally their employment contract (and be considered for a new work permit) if observing a notice and paying an indemnity to the employer of up to 3 months’ salary. However, the reform does not address other practices that can contribute to forced labour. Most important for this report, the new rules do not apply to domestic workers.

<sup>199</sup> Ibidem, Article 63.

<sup>200</sup> Ibidem, Article 79(d).

<sup>201</sup> Ibidem, Article 78.

<sup>202</sup> Article 7(4) of the 2014 UAE Employment Contract for Domestic workers and the Like.

<sup>203</sup> The rules are promulgated through Ministerial Decree No. 764 of 2015 on Ministry of Labour-Approved Standards Employment Contracts; Ministerial Decree No. 765 of 2015 on Rules and Conditions for the Termination of Employment Relations; and Ministerial Decree No. 766 of 2015 on Rules and Conditions for granting a permit to a worker for employment by a new employer. The new rules came into force on 1 January 2016. Decree 764 addresses the substitution of contracts by introducing several requirements: a) the employer must provide evidence that an offer letter was issued to the employee, which he/she has accepted (by signature) and the labour contract has the same terms as the offer letter; b) no alternation of the standard Labour Contract is allowed unless it is for the benefit of the employee and has been approved by the employee as well as the Ministry; and 3) no new clause(s) can be added to these Labour Contracts unless they are consistent and compliant with the Labour Law, do not conflict with other legal provisions and are approved by the Ministry. The other decrees introduce the possibility for the worker to terminate the employment contract unilaterally (and be considered for a new work permit). Such unilateral termination is now possible if observing a notice of up to 3 months, continuing to discharge contractual obligations until the end of the notice period and paying an indemnity to the employer of up to 3 months’ salary. If the procedure is followed, the worker will be considered qualified for a new work permit. The only possibility for the worker to end contract unilaterally with no financial penalty is in case if their employer violates “legal or consensual” obligation; if the employer has “not exercised activity for more than two months,” as verified by a report from the Labour Ministry’s inspections department; and if a court rules in favour of the employee in a case referred by the Labour Ministry; or if the employer terminates or neglects to renew the worker’s contract. In such cases a worker will be considered qualified for a new work permit.

<sup>194</sup> Ibidem, p. 18.

<sup>195</sup> Ministerial Resolution No. 1186 issued by Labour Ministry in 2010, following the Cabinet of Ministers Resolution No. 25 of 2010, concerning Internal Work Permits Applicable in the Ministry of Labour, available online at: <http://www.mol.gov.ae/newcontrolpanel2010/Attachments/09012014/work%20permits%20and%20employment%20cards%202.pdf>

<sup>196</sup> Article 68(d) of the Executive Regulations of Federal Law No. 6 of 1973 on the Entry and Residence of Foreigners.

<sup>197</sup> Ibid.

<sup>198</sup> Article 63 of the Executive Regulations of the Entry and Residence of Foreigners Law

Indeed, as observed in the report of the ILO ad-hoc committee reviewing the submission against the UAE for its failure to comply with the Forced Labour Convention:

While noting the allegations of abuse reported by migrant domestic workers in the UAE, including through criminal prosecutions and deportations, the Committee notes that with regard to the situation of migrant domestic workers, the Government does not provide any information, although the complainant organization raised this issue in its supplementary report. The Committee observes that, Decrees Nos 765, 766, 764 make reference to Labour Law No. 8 of 1990 on Labour Relations, section 3(c) of which excludes domestic workers from its scope. The Committee observes that domestic workers therefore do not seem to benefit from the protections contained in the new legislation of 2015. **The Committee considers it essential and urgent that appropriate legislation covering all aspects of the work of this category of workers be adopted. Consequently, the Committee urges the Government to provide information on concrete measures taken in this regard.**

#### 5.5.1.4 Anti-Trafficking laws

Article 347 of the UAE's penal code prohibits the illegal compulsion of work and can therefore be construed as prohibiting forced labour. It provides for a maximum custodial sentence of one year.<sup>204</sup> Federal law no. 51 of 2006 prohibits all form of trafficking, including for the purpose of forced labour or involuntary servitude, and provides for a minimum custodial sentence of five years.<sup>205</sup> However, the US State Department's 2016 Trafficking in Persons report concludes that the UAE government has rarely prosecuted potential forced labour cases under the law. In 2015 the UAE reported referral of 2 labour trafficking cases for prosecution involving 10 labourers, in comparison to none the previous year. No information has been provided as regards conviction.<sup>206</sup>

<sup>204</sup> Federal Law No. 3 of 1987, art. 347 states, "Whoever compels a person to work with or without pay in order to serve a special interest in other than legally permissible cases shall be punished by imprisonment for a period not exceeding one year, by a fine not exceeding ten thousand Dirhams, or by one of these two penalties."

<sup>205</sup> See, Federal Law No. 51 of 2006, Articles 1 and 2, available online at: [https://www.dubaiapolic.gov.ae/dp/portal/public/editor/UploadedFiles/507722\\_UAE%20Federal%20Law.pdf](https://www.dubaiapolic.gov.ae/dp/portal/public/editor/UploadedFiles/507722_UAE%20Federal%20Law.pdf)

<sup>206</sup> UD Department of Labour, Trafficking in Persons Report, 2016, UAE, available online at: <http://www.state.gov/documents/organization/258882.pdf>

#### 5.5.1.5 International obligations

The UAE has relevant obligations under several important international instruments including the CEDAW, IC-ERD and ILO Conventions No. 29, 100, 105 and 111.

#### 5.5.2 Compliance with the Convention

##### 5.5.2.1 Fundamental rights

No measures are taken under UAE law to respect, promote and realize the rights of migrant domestic workers to freedom of association and collective bargaining pursuant to Art 3(2)(a) of the Convention. The *kafala* system, which remains in place, leaves domestic workers vulnerable to abuse and exploitation as the legal status and movement of the worker remains dependent upon the sponsor employer.

Finally, the exclusion of domestic workers from the UAELL actively perpetuates discrimination in respect of employment and occupation. Whilst the standard form contract provides some protection of migrant domestic workers, they are fewer and weaker protection than those afforded to other workers under the UAELL. Thus, the UAE national law does not take sufficient measures to eliminate discrimination in the manner contemplated by Art 3(2)(c).

##### 5.5.2.2 Right to information

The standard form contract contains some of the information which is required pursuant to Art 7 of the Convention to be provided to domestic workers including with respect to remuneration, frequency of payment and annual leave. The standard contract, however, does not provide other required protections such as a daily limit on working hours.

HRW reported a wide-spread practice of contract substitution that might result in deceptive recruitment.<sup>207</sup> Prior to migration, recruitment agencies can sign with domestic workers contracts that give them better salary and working time conditions (e.g. 8 hour working day instead of 8 hour daily rest). Upon arrival in the UAE, domestic workers must still sign the standard UAE contract in order to secure a residence visa. This replaces the earlier contract, which is unenforceable in the UAE.

<sup>207</sup> HRW 2014, "I Already Bought You" Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates, pp. 22-24, available online at: <https://www.hrw.org/report/2014/10/22/i-already-bought-you/abuse-and-exploitation-female-migrant-domestic-workers-united>



### 5.5.2.3 Working conditions

Though the requirements of the standard form contract are an important step towards providing migrant domestic workers with greater protection, with the *kafala* system still in place the UAE legal system does not take sufficient steps to protect such workers against abuse, violence and harassment. Workers in abusive situations may find themselves confined and isolated in the workplace and unable to seek help or recourse.

The standard form contract goes some way to protecting workers with respect to working time in the sense that it stipulates weekly rest periods and annual leave. However, the standard-form contract falls short of what is required by Art 10 of the Convention. It does not ensure equal treatment between domestic and other workers with respect to normal working hours, providing only that domestic workers are entitled to eight hours of continuous rest and as such working hours could be as long as 16 hours per day. It also does not make clear that domestic workers are free to dispose of their time during rest periods as they wish. The contract also provides that employers should provide medical treatment and healthcare as per the applicable regulations in UAE. In the event of death of a domestic worker during the term of contract, the employer should repatriate remains and personal effects of the deceased party to their home country and incur all relevant costs. It is also unclear as to whether the standard-form contract makes any provision with respect to health and safety pursuant to Art 13.

The contract also provides that the employer should provide accommodation, food and drink but does not provide further detail.

### 5.5.2.4 Remuneration and social security

UAE law does not provide for a minimum wage for domestic workers, nor does it ensure that wages are established without discrimination on the grounds of sex as required by Art 11. Whilst the standard form contract requires that wages are agreed upon before the worker crosses national borders, it does not stipulate what the agreed wage should be. Human Rights Watch reported that many workers signed contracts with higher salaries but after arrival their employer-sponsor said they would receive a lower salary which is then stipulated in the UAE contract. As domestic workers cannot transfer to another employer without their employer's permission under

the *kafala* system, they have no choice but to accept the lower salary and worse conditions.

The standard-form contract does, however, provide consistently with Art 12(1) that workers must be paid once every month. However, it also allows the employer the right to deduct at source from the domestic worker's salary any damage "or loss of any goods or property attributable to default or negligence" of the worker.

No protection is extended to domestic workers with respect to social security payments as required by Art 14(1).

### 5.5.2.5 Private employment agencies

The Ministerial Resolution No. 1283 of 2010 on the licensing and regulation of UAE-based private recruitment agents prohibits recruitment agents from charging workers' "any sums, monies, rights or gains under the name of commission, fees, or anything else for any reason and through any means whatsoever," and empowers the Ministry of Labour to force recruitment agents to "refund to the worker any amounts paid to any entity or person inside or outside of the country". The resolution does not require employers to verify that they, and not their workers, have paid all recruiting fees. Human Rights Watch documented in 2012 and in 2015 that the practice is systematic, with workers paying fees to recruiting agents in their home countries who in turn work with recruiting agents or employers in the UAE<sup>208</sup>

The resolution does provide for the revocation or suspension of their license to operate if they commit any act of forced labour or trafficking of persons. The National Committee to Combat Human Trafficking (NCCHT) reported that Labour Ministry officials made "1,070 visits... to follow up on the activities of recruitment agencies" in 2012 but did not disclose whether the Ministry suspended or revoked any agencies' licenses as a result of these inspections.

It is not clear that UAE law ensures that adequate machinery and procedures exist for investigating complaints, alleged abuses and fraudulent activities with respect to the activities of private employment agencies in accordance with Art 15(1)(b). It does not appear, therefore, that the UAE has adopted all necessary and appropriate measures to provide adequate protection for and

<sup>208</sup> HRW, 2014, *I Already Bought You*. See also: HRW, 2015, *Migrant Workers' Rights on the Saadiyat Island in the UAE*, Progress Report, available online at: [https://www.hrw.org/sites/default/files/reports/uae0215\\_ForUploadR.pdf](https://www.hrw.org/sites/default/files/reports/uae0215_ForUploadR.pdf)

prevention of abuse of domestic workers recruited or placed within its territory by private employment agencies in the manner contemplated by Art 15(1)(c).

### **5.5.2.6 Implementation, enforcement and compliance**

The standard contract provides that a dispute between a worker and employer must be settled by the Dispute Settlement Department at the Naturalization and Residency Directorate (in the Ministry of Interior) and if not settled within two weeks, it should be referred to a competent court. However, the extent to which, in reality, such an avenue is accessible to migrant domestic workers is another matter. Workers who find themselves in abusive situations may, as noted above, find themselves confined and isolated in the workplace.

Commencing and pursuing legal proceedings against an employer as a practical matter is extremely difficult or impossible. Few workers have the financial resources to hire a lawyer or pay court fees, especially if their complaint arises from non-payment of their full wages. To produce evidence of abuse may be difficult as abuse often occurs within the employer's household, in private not in public. The adjudication process may be long, lasting several months or more, and while it is in progress a migrant domestic worker who has left their employer is prohibited by law from taking any new employment in the UAE. Domestic workers accused of minor offenses, such as theft, often do not have a lawyer to represent them unless their embassy appoints one. However, officials from labour-sending countries told Human Rights Watch that consular representatives are not allowed access to their workers until the investigation against them is concluded, leaving workers with no assistance during the investigation phase.<sup>209</sup>

It cannot be said, therefore, that UAE law complies with Art 16 and 17(1) of the Convention. UAE law also does not provide for the inspection of domestic workplaces in accordance with Art 17(2)-(3).

## **5.6 Oman**

In 2014, official Omani data reported that there are 160,998 migrants employed as domestic workers in Oman, of which 130,006 were female (over 80 per cent).<sup>210</sup> This is a substantial increase since 2010 when they reported 93,421 migrant domestic workers.<sup>211</sup> Migrant Rights UK has reported more recently that migrant workers more generally (a significant proportion of who are employed in a domestic capacity) lodged 2,279 complaints in the first quarter of 2013, with non or late payment of salaries and wages amongst the most common violations.<sup>212</sup> The national law of Oman provides migrant domestic workers with little protection and such workers are extremely vulnerable to exploitation and abuse.

### **5.6.1 Legal frameworks**

#### **5.6.1.1 Labour law**

The Omani Labour Law 2003 (Royal Decree No.35) ("OLL") provides the central framework for labour relations and makes provision with respect to, among other things, wages, working time, leave, industrial safety and dispute resolution. Pursuant to Art 2(3) of the OLL, however, "domestic servants working inside houses or outside houses such as a driver, maid and a cook and those with similar jobs" are excluded from its provisions. This denies domestic workers all protections guaranteed to other workers under the OLL.

In April 2016, the Times of Oman quoted Salem Al Saadi, an advisor to the Minister of Manpower, stating that Oman has "plans to legalise their rights and provide better protection to domestic workers," which will be "either in the new labour law or as a separate chapter."<sup>213</sup> However, no revisions have been announced yet.

The 2004 domestic workers' regulations provide domestic workers with some basic protections but is far weaker than the labour law protections for other workers. For instance, it requires that employers provide domestic workers with monthly wages and adequate room,

210 NCSI, *Statistical Year Book 2015*, p. 144. , available online at: [https://www.ncsi.gov.om/Elibrary/LibraryContentDoc/ben\\_Statistical\\_Year\\_Book\\_2015\\_740d0da1-01d2-4f42-a159-6102a49ecf59.pdf](https://www.ncsi.gov.om/Elibrary/LibraryContentDoc/ben_Statistical_Year_Book_2015_740d0da1-01d2-4f42-a159-6102a49ecf59.pdf)  
211 State of Oman, *Statistical Yearbook of 2012*, available online at: [https://www.ncsi.gov.om/Elibrary/LibraryContentDoc/ben\\_Statistical%20Yearly%20Book%20%20%202012\\_95ec5ffa-fd67-4c7d-b65f-67a35fe7ee91.pdf](https://www.ncsi.gov.om/Elibrary/LibraryContentDoc/ben_Statistical%20Yearly%20Book%20%20%202012_95ec5ffa-fd67-4c7d-b65f-67a35fe7ee91.pdf)

212 Migrant Rights Research Centre Statistics, available online at [http://www.migrant-rights.org/research-centre/?research\\_type=statistics&research\\_country=oman](http://www.migrant-rights.org/research-centre/?research_type=statistics&research_country=oman)

213 Times of Oman, *Domestic workers set for legal rights in Oman (27.04.2016)*, available online at: <http://timesofoman.com/article/82477/Oman/Government/Call-to-set-up-a-body-to-protect-domestic-workers-rights-in-Oman> . See also, Human Rights Watch, *I Was Sold, Abuse and Exploitation of Migrant Domestic Workers in Oman, 2016*, available online at: [https://www.hrw.org/sites/default/files/report\\_pdf/oman0716web.pdf](https://www.hrw.org/sites/default/files/report_pdf/oman0716web.pdf)

board, and medical care.<sup>214</sup> However, the regulations do not provide a daily and weekly working hours, rest days, or annual vacation. Domestic workers cannot form or join unions like other workers under the OLL.<sup>215</sup> The regulations say that where there is a dispute, it can be referred to a department in the Manpower Ministry for dispute resolution.<sup>216</sup>

### 5.6.1.2 Employment contract

Oman has a standard employment contract for domestic workers, issued in 2011.<sup>217</sup> It includes provisions from the 2004 domestic worker regulations.<sup>218</sup> In addition, the standard contract stipulates that the employer provide domestic workers with one weekly rest day, and 30-day leave every two years.<sup>219</sup> Although the employment contract and the 2004 regulations provides some protections for domestic workers, this is still not equal to protections under the OLL and lacks adequate enforcement.

### 5.6.1.3 Kafala system

Oman administers a visa-sponsorship system through the foreign residency law.<sup>220</sup> This system severely limits workers' ability to escape abusive working conditions, as a migrant worker's ability enter, live, and work legally in Oman depends entirely on his or her single employer.

Oman's 2004 domestic worker regulations also reinforce the restrictive aspects of the

kafala system. They stipulate that domestic workers are not allowed to work for another employer until their current employer—also their visa sponsor—has ended their sponsorship and all other required procedures are followed.<sup>221</sup> The Directorate General of Labour within the Ministry of Manpower must then approve the transfer.<sup>222</sup>

214 Art. 5(1), 5(2), and 6, Ministerial Decision no. 189/2004.

215 See part 9, "Labour Unions and the General Federation for the Workers of the Sultanate of Oman," arts. 108-110, Labour Law, no.35/2003. For related regulations and decisions on trade unions and collective bargaining, see website of the General Federation of Oman Trade Unions, "Regulations and Decisions," available online at: <https://www.gfotu.org/en/Pages.aspx?MID=2&PGID=34#&panel1-1> (accessed April 11, 2016).

216 Art. 10 of the Ministerial Decision no. 189/2004.

217 Ministry of Manpower Decision No. 1/2011 Organizing manpower of non-Omanis, "Employment Contract for Domestic Workers and Similar Jobs," p. 13, available online at: <http://www.omanlegal.org/law/omanlegal/2011-1-1-1.pdf>

218 Arts. 5(a), (b), and (e) of the "Employment contract for domestic workers and those in similar jobs," Ministry of Manpower's Ministerial Decision no.1 of 2011, Organizing manpower of non-Omanis.

219 Arts. 5(c), (d) and (e) of the "Employment contract for domestic workers and those in similar jobs," Ministry of Manpower's Ministerial Decision no.1 of 2011, Organizing manpower of non-Omanis.

220 Law on Foreign Residency, issued by Royal Decree no. 16/95, April 16, 1995, available online at: <http://www.rop.gov.om/pdfs/roplaws/arabic/ROPRULE-6.pdf>; Implementing Regulations of the Foreign Residency Law, issued by Decree no. 16 of 1995, on August 13, 1996, text in Arabic available online at <http://gulfmigration.eu/oman-decision-no-63-of-1996-issuing-the-implementing-regulations-of-the-foreign-residency-law-no-16-of-1995/>; and Royal Oman Police, "Employment Visa," undated, available online at: [http://www.rop.gov.om/english/dg\\_pr\\_visas\\_employment.asp](http://www.rop.gov.om/english/dg_pr_visas_employment.asp). See also, HRW, *I Was Sold*, pp. 36-40.

221 Art. 24, Implementing Regulations of the Foreign Residency Law.

222 See, Royal Oman Police, "Employment Visa," undated, available online at: [http://www.rop.gov.om/english/dg\\_pr\\_visas\\_employment.asp](http://www.rop.gov.om/english/dg_pr_visas_employment.asp). See also, HRW, *I Was Sold*, pp. 35-36.

The labour law, which applies to other types of migrant workers, is also rooted in the kafala system and provides additional penalties for employers and workers who violate its restrictions.

In November 2006, the Ministry of Manpower issued a legally enforceable administrative circular which prohibited employers from withholding workers' passports but the government did not attach penalties to the offence. Reports indicate that employers of domestic workers continue to withhold passports or documents which release domestic workers from employment contracts or, in some cases, demand exorbitant "release fees".<sup>223</sup>

Migrant workers who leave their employers without their permission can be reported by their employers for "absconding" for which they can face fines, deportation, and bans on re-entry to Oman.

### 5.6.1.4 International obligations

Oman has relevant obligations under the ICERD, CEDAW and ILO Convention No.29.

## 5.6.2 Compliance with the Convention

As is apparent from the above, there are few legal protections for migrant domestic workers in Oman and sweeping reform is required in order to bring Omani law into line with the Convention.

### 5.6.2.1 Fundamental rights

Omani law as it currently stands fails to respect, promote and realise the fundamental principles and rights at work for migrant domestic workers, as set out in Art 3 of the Convention.

No measures have been taken under Omani law to respect, promote and realise the rights of migrant domestic workers to freedom of association and collective bargaining pursuant to Art 3(2)(a) of the Convention. In fact, on the contrary, Omani law actively prohibits certain categories of workers, including domestic workers, from forming of joining unions.<sup>224</sup>

223 See, HRW, *I Was Sold*, pp. 18-25. ITUC Report to the World Trade Organisation General Council Review of Trade Policies of the Sultanate of Oman, "Internationally-Recognised Core Labour Standards in the Sultanate of Oman", available online at [http://www.ituc-csi.org/IMG/pdf/TPR\\_Oman.Final.pdf](http://www.ituc-csi.org/IMG/pdf/TPR_Oman.Final.pdf). 224 Art. 2 of the Labour Code excludes "domestic servants working inside houses or outside houses such as a driver, maid and a cook and those with similar jobs". See also, part 9, "Labour Unions and the General Federation for the Workers of the Sultanate of Oman," arts. 108-110, Labour Law, no.35/2003. For more information, see, ITUC, *Global Survey on Violations of Trade Union Rights, Oman*, available online at: <http://survey.ituc-csi.org/Oman.html#tabs-2>.

Adequate measures are also not taken to promote and realise the elimination of compulsory or forced labour for migrant workers pursuant to Art 3(2)(b). The labour law, amended in 2006, prohibits forced labour, but it does not apply to domestic workers. The 2004 domestic worker regulations say nothing about forced labour. Many of the domestic workers interviewed by Human Rights Watch in Oman described

abusive situations that could amount to forced labour, including physical violence, situations of debt bondage due to exorbitant recruitment fees, systematic confiscation of passports.<sup>225</sup> The exclusion of domestic workers from the OLL, the kafala system and the lack of any other regulation of domestic work whatsoever makes such workers extremely vulnerable to abuse and exploitation in Oman.

Finally, the exclusion of domestic workers from the OLL, and the lack of any other legal protections for domestic workers, actively perpetuates discrimination in respect of employment and occupation contrary to the requirements of Art 3(2)(c)

### **5.6.2.2 Right to information**

The 2004 domestic worker regulations provide that the employment contract should specify the employer's obligation to pay a monthly wage within 7 days of the end of each month and to provide adequate room and board and it points at the Ministry of Manpower (Dispute Settlement Department) as the body to amicably resolve disputes. In addition, the 2011 standard contract regulates weekly and yearly leave (see below) and stipulation of the nature of work. Neither the regulations, nor the standard contract contain provision as regards the level of salary, working time or clear stipulation of the nature of work, falling short of the requirements of Art 7 of the Convention. There is nothing which requires that workers be given any such information before they cross national borders as required by Art 8 of the Convention.

### **5.6.2.3 Working conditions**

The 2004 regulations fall short of the rights and protections provided for workers

in other sectors under Oman's labour law. For instance, the regulations do not establish standards for working

hours, weekly rest days, annual vacation, or overtime compensation. The standard contract, requires that the employer allow one paid weekly day of leave, as well as a 30-day leave (including return flights) every 2 years, or compensation in lieu of either form of leave. It does not set the rate of wages that must be paid to domestic workers.

The 2011 contract requires the worker to exert only "reasonable" efforts to carry out the work and follow the instructions of the employer, unless such instruction contravenes laws, public behaviour or the contractual conditions. (Para 6a). But no other provisions exist to clearly stipulate the nature of work.

Omani law therefore does not take measures to ensure that migrant domestic workers enjoy fair terms of employment and decent working and living conditions in accordance with Art 6.

As domestic workers are excluded from the OLL there are no measures which regulate working time in the manner required by Art 10. Similarly, there are no measures which ensure every domestic worker has the right to a safe and healthy working environment pursuant to Art 13 of the Convention.

### **5.6.2.4 Remuneration and social security**

Omani law does not ensure that domestic workers enjoy minimum wage coverage – or, for that matter, any wage coverage whatsoever – and no measures are taken to ensure that wages are established without discrimination on the grounds of sex in accordance with Art 10. To the contrary, the Omani guidelines for employers issued by the Ministry of Manpower imply that male domestic workers should be paid more than female domestic workers.<sup>226</sup>

The recruitment agencies, in turn, are not prohibited to set minimum pay rates on

the basis of a domestic worker's nationality rather than on experience and skills<sup>227</sup>

<sup>226</sup> See, Ministry of Manpower, "Services Directory," section on "Licenses for hiring service workers," pp16-19, available online at: [http://www.manpower.gov.om/Portal/Englishpdf/Service/dalil\\_new\\_En.pdf](http://www.manpower.gov.om/Portal/Englishpdf/Service/dalil_new_En.pdf). These guidelines require that an Omani employer who wants to hire a male domestic worker should earn a monthly salary of at least 1,000 OMR (\$2,600), but for a female domestic worker, the employer's income can be of 350 OMR (\$910). See also, HRW, *I Was Sold*, p. 42.

<sup>227</sup> Some recruitment agencies advertise online while many others advertise in newspapers. See, for example, Kind Hands Manpower Services website at: <http://khands.org/index.php?route=product/category&path=59>. This website advertises domestic workers grouped together under their nationalities along with their respective salaries: Sri Lankan domestic workers (120 OMR); Ugandan domestic workers (80 OMR); Philippines (160 OMR). See, HRW, *I Was Sold*, p.43.

Similarly, measures are not taken to ensure that migrant domestic workers in Oman enjoy conditions which are no less favourable with respect to social security matters.

### 5.6.2.5 Private employment agencies

In some circumstances, recruitment agencies are required under Oman's standard contract to pay return travel costs of domestic workers who leave employment within 180 days (around 6 months)<sup>228</sup> Apart from that provision, Omani law does not regulate the role of private employment agencies in recruiting and placing migrant domestic workers within its territory. It therefore cannot be said that any of the requirements of Art 15 of the Convention are complied with. check with Rothna

### 5.6.2.6 Criminal law

Oman's penal code criminalizes slavery and the slave trade, but not forced labour.<sup>229</sup> Forced labour is however prohibited by the labour law, amended in 2006, but which does not apply to domestic workers. The penalty for forced labour is only one-month imprisonment or a fine of 500 OMR (US\$1,300).<sup>230</sup>

Oman adopted a law on combatting human trafficking in 2008, which prohibits trafficking and prescribes penalties of 3 to 15 years of imprisonment and fines<sup>231</sup> According to the US Trafficking in Persons Report, there are few prosecutions and convictions for trafficking. The 2014 TIP report said that the government has not prosecuted or convicted any forced labour offenders since 2010, and the 2016 TIP report also noted that there were no prosecutions or convictions of forced labour in 2015. It also noted the Omani government and country-of-origin officials reported that cases of labour violations—which likely amounted to forced labour—were frequently classified as “administrative complaints,” and were “rarely investigated for trafficking or referred to criminal court.”<sup>232</sup>

228 2011 standard contract, art. 4. This article provides: “[I]f it can be proven that the occupation was different to that stated in the labour clearance; the domestic worker refused to work for the employer without a legally justifiable reason; the domestic workers has a disability of a type that will render him/her unable to commence the assigned work; or the domestic worker has an infectious or chronic disease, or a mental disorder.

229 Articles 260 and 261 of Omani Penal Code.

230 Royal Decree no. 74/2006 amending some provisions of the Labour Law, adds art. 3(bis) under chapter 2 of the Labour Law: “and art. 123.

231 Law on Combating Human Trafficking, issued by Royal Decree no. 126/2008, text available at the National Committee for Combatting Human Trafficking website, available online at: <http://www.ncchtoman.gov.om/english/rules.asp>.

232 US State Department, 2016 Trafficking in Persons Report,” 2016, Oman, available online at: <http://www.state.gov/documents/organization/258881.pdf>

### 5.6.2.7 Implementation, enforcement and compliance

The 2004 domestic worker regulations say that a competent department (in the Ministry of Manpower) has jurisdiction to hear disputes about domestic worker contracts, and should try to settle them within two weeks. In practice, this avenue of redress plays a limited role in bringing access to justice to workers.<sup>233</sup>

Civil or criminal court cases against employers can take months and during this time domestic workers are not permitted to work. In some cases, this makes it difficult or impossible for them to remain in Oman and claim justice. Neither the 2004 regulations nor the 2011 contract stipulate any penalties for employers' breaches of its provisions.

Without protection under the OLL, migrant domestic workers in Oman have extremely limited capacity to report abusive or exploitative working conditions and do not have effective access to courts, tribunals or other dispute resolution mechanisms in accordance with Art 16 and 17 of the Convention.

There is also no provision under Omani law for labour inspections pursuant to Art 17(2)–(3). Domestic workers do not benefit from the labour inspection system prescribed by the labour law and other regulations, nor from the “wage protection system” involving direct payment of wages into bank accounts, unlike migrant workers in other sectors.<sup>234</sup>

233 See, HRW, *I Was Sold*, pp.60-61.

234 See, art. 90 of the Labour Law, Royal Decree no. 35/2003. See also, Regulation of Occupational Safety and Health for Establishments Governed by the Labour Law, issued by Ministerial Decision no. 286/2008. On the wage system, see HRW *I Was Sold*, p. 40.

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