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Facilitating Exploitation:

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

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1 Foreword

An estimated 2.4 million migrant domestic workers are enslaved in Saudi Arabia, Qatar, Kuwait, Bahrain, United Arab Emirates (UAE) and Oman – which together make up the Gulf Cooperation Council “GCC Countries”

Millions of more workers, mainly women, will be trapped in servitude with the numbers of domestic workers rapidly increasing in the oil and gas rich region. Saudi Arabia has increased its number of domestic workers by 40 percent since the beginning of the decade and Kuwait saw a 66 percent increase since 1995. According to one estimate each household in the UAE employs on average, three domestic workers.

Global events like the UAE Expo 2020 and the Qatar World Cup 2022 will serve to increase demand for domestic workers even further, putting increased urgency on the need for legal and political reforms to protect the rights of migrant domestic workers.

Migrant domestic workers, mostly women from Asia and Africa, face particularly harsh conditions while employed in the Gulf. Often confined to a home, these workers are isolated and at risk. Commonly, migrant domestic workers are not paid, or paid fully or on time. The hours of work are extreme, and in the case of Saudi Arabia may legally be made to work up to 15 hours a day. Some are exposed to physical abuse, such as beatings with sticks or cables, and sexual abuse, including rape. This abuse can last for months or even years.

A recent Human Rights Watch report on domestic workers in the UAE told the story of a young Indonesian woman who suffered daily beatings and had her arm broken when her employer twisted it. Her employer refused to take her for medical care. The same employer later threw a shoe at her causing her to bleed. In Qatar, ITUC interviewed an Indonesian woman in a detention centre who had fled her employer’s abuse. Her back was permanently scarred reflecting sustained and severe beatings. The Indonesian Embassy in Qatar warned that 5-10 domestic workers sought refuge there *every day*.

Those who flee from their employers due to this exploitation are often further victimized by being arrested and jailed, as employers in such circumstances file false claims of theft or other crimes. In other cases, the migrant domestic worker is simply deported. Migrant workers have little access to justice, for reasons of language, material resources, or simply being able to visit the Labour Ministry or the police.

As this legal and policy brief explains, this exploitation is facilitated by legal frameworks in GCC countries that both exclude migrant domestic workers from the scope of domestic labour laws and the *kafala* sponsorship system which grants employers extraordinary control over the migrant worker. However, rather than fix these laws, most governments have instead promoted standard employment contracts, suggesting that they would provide workers their basic rights. Efforts at negotiating a GCC-wide standard contract have yet to produce a final consensus document, though previous drafts obtained by ITUC have revealed serious defects. Further, contracts are frequently not respected, and workers do not have the means to seek to enforce the contracts in courts, calling into question the efficacy of a model contract as the answer. Bilateral agreements between destination

countries and countries of origin are becoming more common, though these too have yet to demonstrate real results in the promotion and protection of the rights of migrant domestic workers.

In 2011, the landmark Domestic Work Convention, ILO Convention 189, was adopted, including by all of the GCC countries; however, not one has since ratified the convention thereby binding itself legally to this important international treaty.

The GCC countries have the means to end the abuse of migrant domestic workers almost immediately. Up to now, they are simply lacking the will. Already, countries around the world have been improving labour laws for domestic workers, showing that it can in fact be done. Indeed, six years ago, the neighbouring country of Jordan extended the coverage of its labour laws to domestic workers. Today, 16 countries have ratified the Convention and many more adopted labour law reforms. As such, over 10 million domestic workers have benefitted, as their rights and protections have improved in labour law and practice. This is also building political and moral pressure on GCC countries to do likewise.

We expect GCC countries to ratify Convention 189 immediately and bring their laws into compliance with it. This briefing details just how much work remains to be done to comply with this international standard, and why tools like model contracts and bilateral agreements are not answers. 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.

2 Introduction and Recommendations

Domestic workers have long been recognized as “overworked, underpaid and under-protected”¹ 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”.² The ILO Domestic Workers Convention No. 189 (“Convention”) and its supplementary Recommendation No. 201 (“Recommendation”) seeks 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 is indicative of the fact 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”.³ To date, fifteen ILO members have ratified the Convention and more than a dozen countries have adopted labour law reforms which have led to some significant improvements.⁴ We expect additional ratifications⁵ and legal reforms in the coming years as the result of campaigns by trade unions and other civil society organizations representing domestic workers.⁶

While progress is being made in many parts of the world to extend rights and protections to domestic workers, substantial gaps in the protection of migrant domestic workers persist. Indeed, there are frequent reports of the serious abuse of migrant domestic workers in the Gulf Cooperating Countries or “GCC Countries” (namely Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE)). Workers report abuses ranging from the non-payment of wages and lack of daily and weekly rest to physical confinement and isolation and physical and sexual abuse. The vast majority of migrant domestic workers are obliged to live in the employer’s home, which makes them extremely vulnerable to these various forms of abuse.

Today, an estimated 2.4 million people,⁷ predominantly women, are employed as domestic workers in the GCC countries, up from 1.1 million 20 years ago. This is due to growing

¹ ILO, *The employment and conditions of domestic workers in private households* (1970), Document D. 11, 1970, p 63.

² OELZ, M. (2014), *The ILO’s Domestic Workers Convention and Recommendation: A window of opportunity for social justice*. *International Labour Review*, 153: 143, 144.

³ *Ibid.*

⁴ ILO Convention 189, Domestic Workers Convention, 2011, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::p11300_instrument_id:2551460

⁵ As of this writing, Chile, Dominican Republic, Ireland and Switzerland are in a process to register their ratification at the ILO.

⁶ ITUC’s 12+12 campaign – in partnership with the International Domestic Workers Federation, Human Right Watch, Amnesty International, Anti-Slavery International and many other – initiated actions in more than 90 countries <http://www.ituc-csi.org/domestic-workers-12-by-12>.

⁷ ITUC Online, *Gulf Countries Should Revise Domestic Workers Contract*, 2 July 2013, available online <http://www.ituc-csi.org/gulf-countries-should-revise>

demand as a result of a substantial increase in wealth and living standards – in large part due to the oil boom in the region.⁸ Saudi Arabia is the largest employer in the GCC, with 1,2 million domestic workers (2014). Kuwait is second with an estimated 593,272 (2011). The others have still sizable populations of domestic workers: Oman (224,000), the UAE (236,545), Bahrain (105,203) and Qatar (84,000). Based on recent trends, we anticipate a significant increase in the demand for domestic workers in the GCC countries in the years to come.

This policy and legal brief examines the extent to which the labour laws of the GCC Countries comply with the requirements of Convention 189 – the now internationally recognized minimum standard for domestic workers. Such an examination is particularly pertinent since the GCC Countries are in a process of adopting a standard contract for migrant domestic workers, which they claim will address the concerns of advocates. The draft standard contract of 2013 would extend some protections to domestic workers with respect to weekly rest, paid annual and sick leave and the right of the worker to retain possession of passports and travel documents. However, it would not extend to domestic workers the same rights and protections afforded to other workers, and certainly less than what is mandated by Convention 189. Our detailed commentary on the terms of the draft standard contract of 2013 is Annex I of this report.⁹

A standard contract is *no substitute* for a proper legal framework. Further, most migrant domestic workers are highly unlikely to pursue legal remedies for breach of contract before the courts given the difficulty accessing the courts and lawyers, the time and expense associated with litigation and the likelihood of retaliation. Workers are also unable to count on effective inspection and enforcement mechanisms for those few rights that are currently afforded to them under law.

Part three of this report 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. Part six reviews the use of bilateral labour agreements between Asian and Gulf countries to regulate the recruitment and employment of migrant domestic workers.

Recommendations for GCC Countries

From this brief, 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:

⁸ ILO, Domestic workers across the world: Global and regional statistics and the extent of legal protection, Geneva 2013, p. 32, available online at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf.

⁹ A GCC standard contract has been proposed since 2008 but the GCC has repeatedly failed to adopt one. See Marieke Koning, New labour contract fails to protect domestic workers in the Gulf, Equal Times, 2 July 2013, available online at http://www.equaltimes.org/new-labour-contract-fails-to-protect-domestic-workers-in-the-gulf#.U_X5EmNabql.

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. 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 100th 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”.¹⁰ 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”.¹¹

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”.¹² 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”.¹³ A domestic worker is defined as “any person engaged in domestic work within an employment relationship”.¹⁴ 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 independent 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”.¹⁵

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. These include workers otherwise provided with higher or equivalent protection and categories of workers for whom application of the Convention may cause significant problems.

¹⁰ ILO, Convention 189 and Recommendation 201 at a Glance (Geneva, 2011), p. 2.

¹¹ 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.

¹² ILO Convention No.189, Preamble.

¹³ Ibid Art 1(a).

¹⁴ Ibid Art 1(b).

¹⁵ Ibid Art 1(c).

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.¹⁶

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;¹⁷ the address of the usual workplace or workplaces;¹⁸ the starting date and, where the contract is for a specified period of time, its duration;¹⁹ the type of work to be performed;²⁰ the remuneration, its method of calculation and periodicity of payments;²¹ the normal hours of work;²² paid annual leave; daily and weekly rest periods;²³ the provision of food and accommodation where relevant;²⁴ any relevant probationary periods;²⁵ the terms of repatriation if applicable;²⁶ and terms and conditions relating to employment, including applicable notice periods.²⁷

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.²⁸ Member States must also specify by law, regulations or other

¹⁶ Ibid Art 3.

¹⁷ Ibid Art 7(a).

¹⁸ Ibid Art 7(b).

¹⁹ Ibid Art 7(c).

²⁰ Ibid Art 7(d).

²¹ Ibid Art 7(e).

²² Ibid Art 7(f).

²³ Ibid Art 7(g).

²⁴ Ibid Art 7(h).

²⁵ Ibid Art 7(i).

²⁶ Ibid Art 7(j).

²⁷ Ibid Art 7(k).

²⁸ Ibid Art 8(1).

means, the conditions under which migrant domestic workers are entitled to repatriation upon the expiry or termination of an employment contract.²⁹

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 violence³⁰ as well as fair terms of employment and decent working and (where relevant) living conditions respectful of privacy.³¹ The vast majority of domestic workers in the GCC are 'live-in' domestic workers, raising specific risks with regard to rest time and 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 household³², freedom to leave the household during periods of daily and weekly rest or leave³³ and to keep identity and travel documents in their possession.³⁴

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.³⁵ Weekly rest shall be at least 24 consecutive hours³⁶ 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.³⁷ 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.

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.³⁸ Domestic workers must be paid directly in cash at regular intervals and, in any case, at least

²⁹ Ibid Art 8(4).

³⁰ Ibid Art 5.

³¹ Ibid Art 6.

³² Ibid Art 9(a).

³³ Ibid Art 9(b).

³⁴ Ibid Art 9(c).

³⁵ Ibid Art 10(1).

³⁶ Ibid Art 10(2).

³⁷ Ibid Art 13(1).

³⁸ Ibid Art 10.

once per month.³⁹ 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.⁴⁰ 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.⁴¹

Members must also ensure that domestic workers enjoy conditions that are no less favourable with respect to social security, including maternity.⁴² These measures may be applied progressively in consultation with workers and employers representatives and, where possible, with representatives of domestic workers specifically.⁴³

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 workers⁴⁴ 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.⁴⁵ 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.⁴⁶ Members are required to consider concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment⁴⁷ and must take measures to ensure that fees charged by private employment agencies are not deducted from domestic workers' remuneration.⁴⁸ 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.⁴⁹

³⁹ Ibid Art 11(1).

⁴⁰ Ibid Art 11(2).

⁴¹ Ibid Art 11(2).

⁴² Ibid Art 14(1).

⁴³ Ibid Art 14(2).

⁴⁴ Ibid Art 15(1)(a).

⁴⁵ Ibid Art 15(1)(b).

⁴⁶ Ibid Art 15(1)(c).

⁴⁷ Ibid Art 15(1)(d).

⁴⁸ Ibid Art 15(1)(e).

⁴⁹ Ibid Art 18.

Importantly, the Convention envisages an important role for social dialogue between workers and employers representatives in implementation.⁵⁰

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.⁵¹ Members are also required to establish effective and accessible complaint mechanisms;⁵² 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);⁵³ and, insofar as possible, such measures are required to specify the conditions under which access to household premises may be granted.⁵⁴

⁵⁰ See, e.g., Arts 2(2); 13(2); 14(2); and 15(2).

⁵¹ Ibid Art 16.

⁵² Ibid Art 17(1).

⁵³ Ibid Art 17(2).

⁵⁴ Ibid Art 17(3).

4 GCC Countries at a Glance

There exist important differences and similarities between, first, the legal systems of GCC Countries and, second, the extent to which such national systems comply with the Convention, some of which will be highlighted in this Part.

The national legal systems of the GCC Countries have a number of prominent common features that are especially relevant with respect to the rights of migrant domestic workers. All GCC Countries exclude (either wholly or partially) domestic workers from the scope of labour laws and subscribe to a restrictive *kafala* system of immigration (discussed in further detail below). There have been efforts, however, in most GCC Countries to introduce new legal frameworks to regulate domestic work, though the extent to which such regulation is effective varies. Bahrain, Saudi Arabia, Kuwait and the UAE have developed more comprehensive policy and legislative reforms directed to tackling issues faced by migrant domestic workers.

Bahrain is the only GCC Country to have (partially) extended its labour law to domestic workers and has also implemented a model contract for the recruitment of foreign domestic workers by Ministerial decree. Kuwait has implemented a compulsory standard-form employment contract for migrant domestic workers and has established a department dedicated to domestic workers within the Ministry of Interior. Saudi Arabia has enacted specific legislation to provide greater protection to migrant domestic workers. The UAE has implemented a compulsory standard-form contract very recently but regulations remain under discussion. Qatar has introduced legislation that seeks to regulate the role of private employment agencies and has indicated that draft legislation that relates specifically to domestic workers is under review. Oman has not introduced any legislation with respect to domestic workers or a compulsory standard contract.

These features of the GCC Countries' national legal systems, and the extent to which they are shared, are highlighted in Table 1.

| Table 1: Common Features of GCC Country National Legal Systems | | | | | |
|---|--|---|---|---|--|
| Country | Exclusion from Labour Law | Restrictive <i>kafala</i> immigration regime | Laws or regulations relating specifically to domestic workers | Compulsory standard form contracts | Compliance with ILO Convention No.189 |
| Saudi Arabia | Total exclusion pursuant to Art 7(2) of the Labour Law 2006 (Royal Decree No. M/51) | Yes | Resolution No.310 of 2013 on the Household Regulation on Services Workers and Similar Categories | No | No |
| Qatar | Total exclusion pursuant to Art 3(4) of the Labour Law No.14 of 2004 | Yes | Draft legislation under consideration. See also Decree No.8 of 2005. | No | No |
| Kuwait | Total exclusion pursuant to Art 5 of the New Private Sector Labour Law No.6 of 2010 | Yes | Draft legislation under consideration | Yes | No |
| Bahrain | Partial exclusion pursuant to Art 2 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 |
| UAE | Total exclusion pursuant to Art 3(c) of the Labour Law No.8 of 2007 | Yes | Draft regulations under consideration | Yes | No |
| Oman | Total exclusion pursuant to Art 2(3) of the Labour Law 2003 (Royal Decree No.35) | Yes | No | No | No |

Two further aspects of GCC Countries' national legal systems which tend to be shared, but which this policy and legal briefing will not deal with in detail, are worth noting. First, criminal laws may be an additional avenue of recourse where workers find themselves in abusive or exploitative employment situations. For example, 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 3000 riyals. Notably, however, it is most often workers, not employers, who are commonly accused of theft or fraud, and confronted with criminal prosecution, when they complain about their conditions of work.⁵⁵ This briefing does not, however, examine the criminal penal codes of each country and deals only with criminal laws where they are of particular relevance to migrant domestic workers, for example, laws against human trafficking. Indeed, such laws (which exist in Qatar and Bahrain and are discussed in Part five) are important due to the strong link between migrant domestic work and human trafficking. As the ILO has highlighted, domestic workers are "disproportionately experience severe forms of labour exploitation including ... trafficking".⁵⁶ Indeed, in domestic work trafficking practices are "institutionalized ... throughout the entire migration cycle".⁵⁷

Second, absent protection under labour laws, employment contracts often operate as the primary source of employers' and workers' rights and obligations and are, in theory, usually enforceable in the courts. This briefing, however, only deals with employment contracts to the extent that they are particularly relevant to migrant domestic workers, for example where certain countries have introduced mandatory standard form contracts.

Insofar as compliance with the requirements of the Convention is concerned, some GCC Countries have been slightly more responsive than others though compliance levels are very limited or non-existent, as shown in Table 2. Further details of compliance levels are provided in the GCC Country profiles in Part five of this briefing.

Ultimately, drastic measures are required in order for national legal systems to protect the rights of domestic workers in accordance with the Convention. In our view, there are two

⁵⁵ See, e.g., Caryle Murphy, Indonesia and Saudi at odds over abuse of maids, *The National*, Nov 20, 2010, available online at <http://www.thenational.ae/news/world/indonesia-and-saudi-at-odds-over-abuse-of-maids#ixzz3B2i1qzyy> ("Nisha Varia, a women's rights researcher at Human Rights Watch in New York who has documented the plight of migrant workers in the Gulf, said that foreign domestic workers have few protections against physical and financial abuse. And when they do complain, Ms Varia added, they often are accused of criminal activity by employers."); Human Rights Watch, *As if I am not Human, Abuses against Asian Domestic Workers in Saudi Arabia*, 2008, p. 83, available online at <http://www.hrw.org/reports/2008/07/07/if-i-am-not-human> ("Saudi Arabia's criminal justice system can also be a serious problem for migrant domestic workers. Some find themselves facing spurious charges of theft or witchcraft from their employers against whom they may have lodged complaints of mistreatment, or discriminatory and harsh morality laws that criminalize mingling with unrelated men and engaging in consensual sexual relationships. Domestic workers who have been victims of rape or sexual harassment may also be subject to prosecution for immoral conduct, adultery, or fornication. Punishments for this range of crimes include imprisonment, lashes, and, in some cases, death. Within the justice system, they are likely to experience uneven or severely delayed access to interpretation, legal aid, and access to their consulates. Migrant domestic workers confront these issues within the broader context of a criminal justice system wracked with problems. Saudi Arabia does not have a written penal code. Judges often do not follow procedural rules, and issue arbitrary sentences that vary widely. Many judges do not provide written verdicts, even in death penalty cases").

⁵⁶ ILO, "Combatting Forced Labour and Trafficking of Indonesian Migrant Workers", available online at http://www.ilo.org/jakarta/whatwedo/projects/WCMS_116048/lang-en/index.htm

⁵⁷ *Ibid.*

systemic shortcomings which are of particular concern and which have, and continue to, hamper improvement in this area.

First, the use of the *kafala* sponsorship system in each country – which ties each migrant worker to a particular employer who exercises complete control over the worker’s movement and legal status – fuels the exploitation and abuse of migrant domestic workers and may mean that such workers are unable to exercise any rights which they may have at law. Until the *kafala* system is abolished in GCC Countries, legislation or mandatory standard-form contracts (whilst encouraged) will have limited effect.

What is Kafala?⁵⁸

In order to manage this large influx of migrant workers, countries in the region rely on the kafala or 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 is thus specifically tied to an individual sponsor for their contract period. Such workers are thereby rendered more vulnerable by the lack of autonomy in relation to their employers.

Second, all GCC Countries have weak complaint and dispute resolution mechanisms which may, in reality, render the basic entitlements of migrant domestic workers illusory.⁵⁹ Again, whilst new regulation may assist in affording migrant domestic workers with basic protections at law, such developments are undermined by the fact that enforcement is difficult and often impossible. This stems, in part, from the third major problem which should be highlighted – the exclusion of domestic workers from national labour laws. Until domestic workers are brought wholly within central labour law frameworks within GCC Countries, regulatory and legislative developments will make limited improvements at best and, at worst, may perpetuate discrimination on the basis of employment.

⁵⁸ ILO, *Tricked and Trapped, Human Trafficking in the Middle East*, 2013, p. 26.

⁵⁹ 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 at http://www.ilo.org/dyn/normlex/en/f?p=1000:50012:0::NO:50012:P50012COMPLAINT_PROCEDURE_ID,P50012_LANG_CODE:3113101,en:NO

5 GCC Country Profiles

5.1 Kingdom of Saudi Arabia

It is estimated that there are around 1.2 million domestic workers in Saudi Arabia⁶⁰ and that 99.6% of all such workers are migrants. Amongst this large population of migrant workers, reports of abuse are incredibly widespread. According to Migrant Rights, 56,000 Indonesian domestic workers escaped their Saudi sponsors in 2009 and over a period of 22 months over 635 Nepali domestic workers were rescued from abusive employment situations in Saudi Arabia.⁶¹ Domestic workers in Saudi Arabia are reported to work an average of 63.7 hours per week, the second highest estimate worldwide.⁶² Unfortunately, the Saudi Arabian legal system falls far short of compliance with the Convention – it does not provide domestic workers with the protections afforded to other workers and they are, as a result, left 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”)⁶³ provides the central framework for labour relations and makes provisions with respect to, among other things, wages, working time, occupational health and safety, social security, special considerations for women in the workforce and dispute resolution mechanisms through the labour courts for resolving disagreements between employers and workers. Pursuant to Art 7 of the SALL, “domestic helpers and the like” are excluded from its provisions. This denies domestic workers all protections guaranteed to other workers under the SALL.

Art 7 also provides, however, 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 pursuant to Art 7 which guarantees foreign domestic workers nine hours of daily rest and one day off per week; provision of 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.⁶⁴ Employers must also pay workers a monthly salary without delay. The regulations stipulate, however, 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”.

⁶⁰ International Gulf Organisation, “Domestic Work Legislation in the Gulf Cooperation Council (GCC): A Comparative Policy Review” (June 2014), 2.

⁶¹ Migrant Rights Research Centre Statistics, available online at http://www.migrant-rights.org/research-centre/?research_type=statistics&research_country=saudi-arabia.

⁶² Ibid.

⁶³ Royal Decree No. M/51, 23 Sha’ban 1426/ 27 September 2005.

⁶⁴ Resolution No. 310 of 2013 on the Household Regulation on Service Workers and Similar Categories.

It is clear that 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.

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”.⁶⁵ 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”.⁶⁶

5.1.1.3 International obligations

Saudi Arabia has relevant 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 – for example, with respect to the Convention on the Elimination of All Forms of Discrimination Against Women, it was 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”.

5.1.2 Compliance with the Convention

Saudi Arabia’s justice system as a whole “falls well short of international standards”⁶⁷ and the law with respect to migrant domestic workers is no exception.

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.

⁶⁵ Human Rights Watch, *As if I am not Human*, supra fn 55, p. 26.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.* 24.

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 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 Saudi Arabia abolished slavery by royal decree in 1962, express exclusion from the SALL and the *kafala* system, in combination, make domestic workers highly vulnerable in this respect as their freedom of movement and legal status is entirely dependent upon the employer. Consistently with this, 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, though it is difficult to estimate just how often this occurs.

Finally, the exclusion of domestic workers from the SALL actively perpetuates discrimination in respect of employment and occupation. Though the new regulations go some way to providing migrant domestic workers with basic protections, they treat such workers less favourably than other workers and, thus, are not measures eliminating discrimination in the manner contemplated by Art 3(2)(c).

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. 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.⁶⁸

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. Embracing as it does the *kafala* system, 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.⁶⁹ 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.

The new regulations 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, the regulations 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

⁶⁸ Ibid 46.

⁶⁹ Ibid 62.

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. The new regulations do, however, provide consistently 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 procedures are in place to investigate complaints or adopted measures adequate to guard against abuse or 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 further detail in Part six of this briefing.

5.1.2.6 Implementation, compliance and enforcement

Whilst some efforts have been made to implement the provisions of the Convention through laws and regulations (namely, through Resolution No. 310 of 2013 on the Household Regulation on Service Workers and Similar Categories), those regulations 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.⁷⁰ Whilst sometimes workers have been assisted in order to claim their wages and

⁷⁰ Ibid 6.

return home, in other cases workers have been forcibly returned to abusive situations or subjected to specious counter-complaints made by employers.⁷¹ 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 shelters with hundreds of other displaced workers.⁷²

5.2 Qatar

We recently shone the spotlight on the plight of migrant workers in Qatar.⁷³ Migrant domestic workers, of whom there are estimated to be 84,000,⁷⁴ are excluded from legal frameworks and are extremely vulnerable to exploitation. It is reported that migrant domestic workers in Qatar earn less than 30% of the average worker's wage in Qatar.⁷⁵

Multiple investigations have revealed that migrant domestic workers are subjected to slavery-like conditions, with many having their passports confiscated and being denied wages, rest periods, annual and sick leave and freedom of movement.⁷⁶ 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.⁷⁷

5.2.1 Relevant legal frameworks

5.2.1.1 Labour law

The 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".⁷⁸ This denies domestic workers the protections provided to all other workers under the QLL and means that domestic workers cannot lodge claims at the Labour Court or complain to the Ministry of Labour in the event that they find themselves in an abusive or exploitative situation.

⁷¹ Ibid.

⁷² Ibid.

⁷³ ITUC, "The Case against Qatar" (March 2014), available online at http://www.ituc-csi.org/IMG/pdf/the_case_against_qatar_en_web170314.pdf.

⁷⁴ International Gulf Organization, *supra*, fn 60, p. 2.

⁷⁵ Migrant Rights Research Centre Statistics, available at http://www.migrant-rights.org/research-centre/?research_type=statistics&research_country=qatar.

⁷⁶ Amnesty International, "My Sleep is My Break: Exploitation of Domestic Workers in Qatar" (2014), p. 2, available online at <http://www.amnesty.org/en/library/asset/MDE22/004/2014/en/7b7121b8-37c1-4e49-b1a1-2d8a005450a3/mde220042014en.pdf>.

⁷⁷ The Case Against Qatar, 2014, *supra* fn 73 at p. 20.

⁷⁸ Qatar Labour Law, Law No. 14 of 2004, Art 3.

The Qatari government, as recently as April 2014, 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”.⁷⁹ The Government further indicated that a draft law relating to household workers was under consideration but that no decision had yet been taken to implement it.⁸⁰

5.2.1.2 *Kafala sponsorship laws*

Pursuant to the Qatar Sponsorship Law (“QSL”),⁸¹ foreign workers must work under the sponsorship of a particular employer in Qatar. An employee under sponsorship is not eligible to change employers without permission and will be considered to have “absconded” if they leave their sponsor without permission –a criminal offence leading to detention and deportation. An employee is also not allowed to leave the country without permission from the sponsor employer and employers must approve the renewal of residence permits. Thus, migrant domestic workers are bound to the employer who exercises almost total control over their rights, movement and legal status. Though employers are obliged to return passports to workers after a resident’s permit has been issued,⁸² passports are frequently confiscated and retained by employers in order to prevent workers leaving the country.

The Qatari government recently announced that it is proposing to replace the *kafala* system with an automated system through the Ministry of Interior. The proposed changes do not have any obvious impact on migrant domestic workers. No deadline has been set for implementation of the proposal which must first be evaluated by the Shura Council (the legislative branch of government) before being ratified.

5.2.1.3 *Assessment and grading of private employment agencies*

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 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”.⁸³ 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

⁷⁹ Amnesty International, supra fn 76, 26.

⁸⁰ Qatari Government response to Amnesty International, 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>

⁸¹ Law No. 4 of 2009 Regulating the Entry and Exit of Expatriates in Qatar and their Residence and Sponsorship.

⁸² Art 9

⁸³ 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.

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, customer 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”.⁸⁴

5.2.1.4 Criminal law

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 7-15 years.

5.2.1.5 International obligations

Qatar has relevant 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 important 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.

Forced or compulsory labour is, as noted above, illegal pursuant to the Qatar Penal Code and this is to be welcomed. However, we echo the concerns of Amnesty International that the relevant penalty is not adequate and therefore not compliant with the Convention. Furthermore, express exclusion from the QLL and the *kafala* system, in combination, make migrant domestic workers in Qatar highly vulnerable in this respect as their freedom of movement and legal status is entirely dependent upon the employer.

⁸⁴ Amnesty International, above fn 76, p. 20.

Finally, the exclusion of domestic workers from the QLL actively perpetuates, rather than works to eliminate, discrimination on the basis of employment and occupation. Though the government has suggested that new laws will be enacted to extend further protection to domestic workers in Qatar, it is unclear whether such protections would be no less favourable than those provided to other workers who are protected by the QLL.

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”⁸⁵ 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”.⁸⁶ Amnesty International has also reported that numerous women interviewed experienced “terrifying and shocking ordeals, yet have been unable to hold accountable their abusers”.⁸⁷ 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.

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.

⁸⁵ Many countries, including Qatar, use inappropriate terminology (e.g., maid, servant, helper) when referring to domestic workers. Such terms show disrespect for domestic workers and undermine the recognition of domestic work as work. Domestic workers themselves consider such terms as serious insults.

⁸⁶ 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.

⁸⁷ Amnesty International, above fn 76, p. 40.

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 – domestic and sexual violence are, 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”.⁸⁸

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).

⁸⁸ 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.

5.3 Kuwait

More than 593,272 women from Asia and Africa are estimated to be employed in Kuwait as domestic workers.⁸⁹ Kuwaiti law provides such workers with scant protection and they are, as a result, left vulnerable to exploitative and abusive treatment. Because domestic workers are excluded from the Kuwait Labour Law (“KLL”)⁹⁰ their only protection is derived from the terms of a standard-form contract which private employment agencies are obliged to execute with prospective workers and employers.

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 represents a real step forward – pursuant to Art 5 of the New Private Sector Labour Law No.6 of 2010, domestic workers are specifically excluded from its provisions as well from more recent labour law reforms. Domestic workers are therefore not afforded the protections provided to other 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.

In 2008, 2010, and again in 2012, drafts labour laws for domestic workers were proposed. As of May 2010, according to Human Rights Watch, the draft law included “provisions that establish eight-hour workdays, require employers to give workers leave on national public holidays as well as annual leave and impose penalties for late payment of salaries”.⁹¹ The proposed laws would, further, prohibit employers from recruiting except through state-licensed agencies, from confiscating and from requiring workers to perform tasks outside the scope of their contract. Under the draft law, salaries would be paid monthly into bank accounts established by workers in their home countries prior to migration, and bank transfer receipts would be required as proof of payment. The draft law also makes provision for the resolution of disputes by arbitration and, if arbitration is unsuccessful, by referral to the court system in which case workers would be exempt from court fees. In addition, workers would be permitted to change employer without permission. Though in May 2010 local sources reported to Human Rights Watch that Kuwaiti lawmakers would need around one year of discussion and revision before adopting the new legislation, this is still yet to occur.

⁸⁹ ILO, Domestic Workers across the world: Global statistics and the extent of legal protection.

⁹⁰ Law No.6 of 2010 Promulgating the Law of Labor in the Private Sector.

⁹¹ Human Rights Watch, Walls at Every Turn, Abuse of Migrant Domestic Workers through Kuwait’s Sponsorship System, 2010, p. 40, available online at http://www.hrw.org/sites/default/files/reports/kuwait1010_webwcover.pdf

Decree No. 313 of the Ministry of Interior, issued in 2004, requires that all private employment agencies execute a standard-form contract with prospective workers and employers prior to recruitment from abroad.⁹² The terms of the standard-form contract are outlined below.

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. As Human Rights Watch has observed, whilst the standard-form contract (drafted in 2004 and updated most recently in 2010) represents “an improvement over having no minimum standards at all” it provides “significantly fewer and weaker protections than those in the labour law”.⁹³

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”.⁹⁴ Employers are also required to pay for agency fees and these cannot be deducted from the worker’s remuneration.⁹⁵ 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”.⁹⁶ 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).⁹⁷ The contract guarantees workers compensation for workplace injuries or death.⁹⁸ It also stipulates a minimum salary of KD40 (US \$139) which is to be paid monthly.⁹⁹ It further specifies that any dispute emerging between the parties should be referred to the Domestic Labour Department.¹⁰⁰ 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.

Whilst these provisions represent a largely positive step, the standard contract also contains a number of alarming obligations which must be borne by the worker. The worker must, for example, “maintain the secrets, funds and properties of the [employer]” and undertakes not to “damage [the] interests of [the employer]”.¹⁰¹ The worker must also “fulfil works assigned to him and follow instructions” of the employer, and “execute them in the best

⁹² Interior Ministry Decree No.313 of 2004 amending provisions of Ministerial Decree No.617 of 1992 organising procedures for licensing private domestic labour recruitment agencies, Art 8.

⁹³ Human Rights Watch, *supra* n 91, p. 38.

⁹⁴ Housemaid/Servant Recruitment and Employment Contract 2010, cl 5(1).

⁹⁵ *Ibid* cl 5(5).

⁹⁶ *Ibid* cl 6(1).

⁹⁷ *Ibid* cl 6(4).

⁹⁸ *Ibid* cl 5(4) and (7).

⁹⁹ *Ibid* cl 5(2), 6(3)

¹⁰⁰ *Ibid* General Provisions, Section 1.

¹⁰¹ *Ibid* cl 6(5).

way possible” considering the “laws, customs and traditions of the country”.¹⁰² The contract forbids the worker from doing “any work with salary or without for any other party”.¹⁰³

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 to as “absconding”).¹⁰⁴ A conviction of absconding carries a maximum penalty of 6 months imprisonment but, in reality, workers are often deported due to crowding in prisons.¹⁰⁵ 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”.¹⁰⁶ 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.

5.3.1.4 *International obligations*

Kuwait has relevant obligations under a variety of important 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 introduced in 2004 has made some in-roads in providing migrant domestic workers with enhanced protection, it is not enough to bring Kuwaiti law into line with the Convention and significant further reform is needed.

¹⁰² Ibid.

¹⁰³ Ibid cl 6(6).

¹⁰⁴ Interior Ministry Resolution No.640 of 1987 promulgating the by-law of the Aliens’ Residence Law, Kuwait Al-Youm, November 14, 1987, Art 20.

¹⁰⁵ Human Rights Watch, supra fn 91, p. 33.

¹⁰⁶ Ibid p. 34.

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 entirely 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.

Finally, the exclusion of domestic workers from the KLL actively perpetuates discrimination in respect of employment and occupation. Though the standard-form contracts which private employment agencies are required to use goes some way to providing migrant domestic workers with basic protections, it provides such workers with significantly fewer and weaker protections than that provided to other workers under the KLL. For example, the minimum wage stipulated by the contract is a fraction of that which is required to be provided to workers protected by the KLL and there is no daily limit on working hours. Thus, Kuwait has failed to take measures eliminating discrimination in the manner contemplated by Art 3(2)(c).

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.

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 *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.

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.

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. However, the minimum wage stipulated, 40KD, discriminates against domestic workers as it is below that applicable to other workers under the KLL, from which domestic workers are excluded. The standard contract therefore fails to ensure that workers are remunerated without discrimination on the basis of sex in accordance with Art 10. The standard contract does not provide for social security or maternity leave and therefore does not comply with Art 14.

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)9e), 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. Enforcement issues are discussed in further detail below.

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 pursuant to Art 17(2).

5.4 Bahrain

There are estimated to be more than 105,200 domestic workers in Bahrain.¹⁰⁷ Domestic workers make up 12.8 per cent of the Bahraini workforce and 42.2% of the female workforce.¹⁰⁸ 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”)¹⁰⁹ 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

¹⁰⁷Gulf 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/>

¹⁰⁸ ILO, Domestic workers across the world, supra fn 8, p. 31.

¹⁰⁹ Labor Law for the Private Sector, Law No.36 of 2012.

requirements of equity.¹¹⁰ Wages may be calculated by the hour, day, week or month and, additionally, by piece-rate or production where the contract so specifies.¹¹¹ 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.¹¹² 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.¹¹³ 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.¹¹⁴ 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.¹¹⁵

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 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.¹¹⁶

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.¹¹⁷

¹¹⁰ Ibid Art 37.

¹¹¹ Ibid Art 38.

¹¹² Ibid Art 40(b).

¹¹³ Ibid Art 40(b)(4).

¹¹⁴ Ibid Art 40(c).

¹¹⁵ Ibid Art 48.

¹¹⁶ Human Rights Watch, "For a Better Life: Migrant Worker Abuse in Bahrain and the Government Reform Agenda" (October 2012), p. 63, available online at http://www.hrw.org/sites/default/files/reports/Bahrain_1012ForUpload.pdf.

¹¹⁷ Law No. 19/2006 Regulating the Labor Market, art 4.

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.

5.4.1.3 Criminal law

In 2008, Law No.1 with Respect to Trafficking in Persons was introduced. This enables the Public Prosecution Office to prosecute individuals and corporations who, through duress, deceit, threat or abuse of their authority, transport, recruit or use workers for the purposes of exploitation, including forced work and servitude. However, in late 2013, Human Rights Watch reported that there were no known labour-related prosecutions under the provision.¹¹⁸

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 domestic workers under

¹¹⁸ Human Rights Watch, above fn 116, p. 10.

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, Bahraini law 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 Bahraini law, which simply provides that wages will be fixed according to individual contracts or according to industry practice by a competent court. 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.¹¹⁹ 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.¹²⁰ 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 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 in accordance with Art 17(2)-(3).

5.5 UAE

There are estimated to be around 236,545 domestic workers in the UAE.¹²¹ They comprise approximately 12.8 % of the total workforce, 42.4% of the female workforce and each household in the United Arab Emirates employs, on average, three domestic workers.¹²² Unfortunately, protections provided to such workers under UAE national law are scant and ultimately fall far short of compliance with the Convention.

5.5.1 Legal frameworks

5.5.1.1 Labour law

The UAE Labour Law No.8 of 2007, amending Labour Law No. 8 of 1980 (“UAELL”) 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.

¹¹⁹ Law No.19 for the year 2006 Regulating the Labor Market, section 2, art 29.

¹²⁰ Human Rights Watch, above fn 116, p. 24.

¹²¹ 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>.

¹²² ILO, *Domestic Workers Across the World*, supra fn 8, p. 33.

Draft regulations with respect to domestic workers were passed by the Federal National Council in 2012 but have not been made public. Separately, however, as of June 2014, it is mandatory for private employment agencies, employers and workers execute a standard form contract for the employment of migrant domestic workers.

5.5.1.2 *Employment contracts*

It is reported¹²³ that the standard-form contract, which was revised as recently as June 2014, must be executed by the employer and agency, and 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 up to six months may be agreed upon. In the event that a contract is revoked by a worker, the agency is responsible for repaying agency fees to the employer. Wages must be agreed upon and communicated to the worker before they cross national borders to take up employment and payments must be made on a monthly basis. Workers are entitled to one day of rest per week, paid annual leave of 14 days per year and sick leave of up to 30 days per year. In the event that a dispute arises, the contract provides that it must be settled by the special tribunals at the Ministry of Interior or be referred to a competent court.

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 from this dependency in cases where the relationship becomes exploitative or abusive.”¹²⁴

When a worker arrives, his or her sponsor employer take the worker’s passport and employment visa to the Ministry of Interior’s immigration department, which then stamps the worker’s passports with a residency visa which includes a date of issuance, the worker’s picture, profession, and employer.¹²⁵ Thereafter, the worker is only legally eligible to work for the employer designated in their passport unless the GoUAE provides otherwise.¹²⁶ A worker’s presence in the country is entirely dependent upon his or her relationship to the employer. Furthermore, if a foreign worker who received a work permit to enter the UAE remains unemployed for more than 3 months, his or her work permit can be cancelled.¹²⁷

If a worker quits his or her job, his former employer can request the Ministry of Labour cancel his or her card, and if the worker does not leave the country within three months it can be revoked, and he or she can be fined.¹²⁸ An employer can also take the worker’s

¹²³ See Gulf News, Standard Contract for Maids in the UAE, 2 March 2014, available online at <http://gulfnews.com/news/gulf/uae/employment/standard-contract-for-maids-in-the-uae-1.1297972>.

¹²⁴ Human Rights Watch, *I Already Bought You*, supra fn 121, p. 18.

¹²⁵ Human Rights Watch, *Island of Happiness: Exploitation of Migrant Workers on Saadiyat Island*, Abu Dhabi, 2009, p. 28, available online at http://www.hrw.org/sites/default/files/reports/uae0509webwcover_4.pdf

¹²⁶ *Ibid.* at 30.

¹²⁷ UAE Labour Law No. (8), Art. 15(a) (1980).

¹²⁸ *Ibid.*

passport to the Ministry of Interior and show them the cancelled labour card; thereafter, the Ministry of Interior can cancel the foreign worker's visa, stamp the passport with a ban for six months and deport the worker.¹²⁹ This threat deters workers from terminating their employment or seeking redress for fear of deportation.¹³⁰

In addition, even if another employer consents, a non-national employee cannot legally find work elsewhere in the UAE if he/she flees the harsh conditions of this/her original employer before the legal notice period:

If the non-national employee has notified the employer of his desire to terminate the contract with unlimited period and has absented himself from work before the end of the legal notice period, he may not take up employment elsewhere before the lapse of one year from date of absence from work, even with consent of employer, and no other employer, who is aware of the case may recruit him or keep him in service before the end of such period.¹³¹

There is an exception to this rule, but the employee must have prior approval from the Minister of Labour and Social Affairs, as well as consent from the employer.¹³² Furthermore, a migrant worker whose labour card expires or is revoked before he or she leaves the country is vulnerable to exploitation "because employers kn[ow] the worker[] ha[s] no bargaining power to set their wages and no recourse if the company paid them late or withheld their wages."¹³³ According to UAE law, "[t]ermination by the employer of an employee's service is considered arbitrary if the cause for such termination has nothing to do with the work."¹³⁴ If an employer is guilty of terminating an employee in such a way, a judgment can be enforced against him for the full payment of compensation due to the employee.¹³⁵ Unfortunately, this law is not enforced against employers who fire foreign workers arbitrarily.

5.5.1.4 International obligations

The UAE has relevant obligations under several important international instruments including the CEDAW, ICERD 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. Additionally, though the regulations with respect to domestic workers

¹²⁹ Human Rights Watch, *Island of Happiness*, supra, p.29.

¹³⁰ *Ibid.* p. 30.

¹³¹ UAE Labour Law, Art. 129.

¹³² *Ibid.* Art. 130.

¹³³ Human Rights Watch, *Island of Happiness*, supra, p. 30.

¹³⁴ UAE Labour Law, Art. 122.

¹³⁵ *Ibid.* Art. 123.

and the standard-form contract are reported to provide increased protection for migrant domestic workers against compulsory or forced labour, the *kafala* system which remains in place may undermine any such protection because 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 regulations and standard form contract may go some way towards increasing protection of migrant domestic workers, it provides such workers with 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 contract is reported to require that the standard form written contract is executed before workers cross national borders to take up employment and is therefore compliant with Art 8 of the Convention. The standard form contract also 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.

5.5.2.3 Working conditions

Though the requirements of the standard form contract is 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 and does not make clear that domestic workers are free to dispose of their time during rest periods as they wish. It is also unclear as to whether the standard-form contract makes any provision with respect to health and safety pursuant to Art 13.

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. The standard-form contract does, however, provide consistently with Art 11(1) that workers must be paid once every month. As domestic workers are excluded from the UAE, no protection is extended with respect to social security payments as required by Art 14(1).

5.5.2.5 *Private employment agencies*

In adopting the requirement that private employment agencies execute the standard-form contract with prospective workers and employers, UAE law provides migrant domestic workers with some protection against abusive or exploitative practices by such agencies. However, 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 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*

In providing that where a dispute arises, it should be either settled by the special tribunals at the Ministry of Interior or be referred to a competent court, the standard-form contract provides a mechanism through which disputes may be resolved. 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. 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 2009 it was reported that Oman had 87,500 female migrant workers, 69,250 of whom were employed in private households.¹³⁶ In 2012 the Omani Ministry of Manpower reported that there were 224,000 domestic workers in Oman, suggesting that numbers are rapidly on the increase.¹³⁷ 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.¹³⁸ The national law of Oman provides migrant domestic workers with little protection and such workers are extremely vulnerable to exploitation and abuse.

¹³⁶ ILO Domestic Work Policy Brief, "Global and regional estimates on domestic workers", Conditions of Work and Employment Program – Advancing Decent Work for Domestic Workers" p 17.

¹³⁷ International Gulf Organization, *supra*, fn 60, p. 2.

¹³⁸ Migrant Rights Research Centre Statistics, available at http://www.migrant-rights.org/research-centre/?research_type=statistics&research_country=oman .

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.

There are currently no other regulations that relate to domestic workers under Omani law.

5.6.1.2 Kafala system

Under the Omani kafala system, foreign workers must work under the sponsorship of a particular employer. This means that the worker’s visa and legal status is tied to the sponsor employer. Whilst the Supreme Court of Oman ruled in 2006 that foreign workers can change employers without first receiving the permission of their original sponsor, reports indicate that employers of domestic workers continue to withhold passports or documents which release domestic workers from employment contracts.¹³⁹ Some employers demand exorbitant “release fees”. 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.

Within a two year minimum period, migrant workers are not allowed to change employers without the sponsor’s permission and will be considered an illegal resident in the event that such permission is not obtained. The transfer to a new employer must also be approved by the Directorate General of Labour.

5.6.1.3 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.

¹³⁹ 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 at http://www.ituc-csi.org/IMG/pdf/TPR_Oman.Final.pdf .

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 or joining unions.¹⁴⁰ 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 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

Migrant domestic workers are completely unprotected insofar as rights to information are concerned. There is nothing that ensures such workers are informed of the terms and conditions of their employment through written contracts or agreements at all, let alone a requirement that the information required by 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

Omani law does not take measures to ensure that migrant domestic workers enjoy effective protection against all forms of abuse, violence and harassment in accordance with Art 5 of the Convention, or 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

¹⁴⁰ US Department of State 2012 Country Reports on Human Rights Practices - Oman, 19 April 2013, available at: <http://www.refworld.org/docid/517e6df540.html>.

wages are established without discrimination on the grounds of sex in accordance with Art 10. 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

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.

5.6.2.6 Implementation, enforcement and compliance

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).

6 Bilateral Labour Agreements

In an effort to regulate the terms and conditions of the recruitment and employment of their nationals abroad, some governments, largely in the Asia-Pacific Region, have negotiated bilateral labour agreements with governments in the Middle East, and in the Gulf specifically. Recently, bilateral labour agreements specific to the recruitment and employment of migrant domestic workers have emerged. However, bilateral agreements commonly fail to include the full range of protections necessary to prevent the exploitation of migrant domestic workers once in the Gulf. They also fall well short of the provisions of the 1946 Model Agreement on Temporary and Permanent Migration, set forth in the Annex to ILO Recommendation 86 (Migration for Employment Recommendation),¹⁴¹ and the principles set forth in the 2006 ILO Multilateral Framework for Labour Migration.¹⁴² The agreements have also been criticized for reinforcing racial hierarchies/inequality in the labour market as wages and conditions of work are set country by country, reflecting biases and assumptions about the workers from those countries.

Importantly, the proliferation of bilateral labour agreements obscures, perhaps intentionally, the more pressing need to ensure that domestic workers are covered by effective domestic labour legislation. As this policy and legal briefing shows, domestic workers are excluded, in whole or in part, from the labour legislation in GCC member countries. Efforts to fill these important gaps in domestic legislation through bilateral agreements has failed, as in practice the vague and insufficient obligations are easily ignored by governments, and by extension the employers of migrant domestic workers. The agreements also lack any effective monitoring or enforcement mechanisms.

This is not to say that there is no room for such agreements; however, rather than trying to replace what should be properly regulated in national legislation, the agreements should focus more on, for example, effective and coordinated monitoring and oversight of recruitment agencies and providing assistance to exploited workers.

Current Bilateral Agreements on Migrant Domestic Workers

| GCC Country | Country & Date |
|---------------------|--|
| Saudi Arabia | The Philippines, May 2013; India, January 2014; Sri Lanka, January 2014; Indonesia, February 2014; Vietnam, October 2014 |
| Qatar | Indonesia, January 2008 |
| Kuwait | Indonesia, May 1996 |
| Bahrain | The Philippines, May 2007 |
| UAE | The Philippines, April 2007 (amended May 2013); Indonesia, December 2007 |
| Oman | None |

¹⁴¹ ILO Recommendation 86, Migration for Employment Recommendation (Revised), 1949, available online at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R086.

¹⁴² ILO, Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration (Geneva, 2006), available online at http://www.ilo.org/dyn/migpractice/docs/28/multilat_fwkw_en.pdf.

The Case of Saudi Arabia

Saudi Arabia has recently signed bilateral agreements with the governments of the Philippines, India, Sri Lanka, Indonesia and Vietnam specifically regarding the recruitment and employment of migrant domestic workers.¹⁴³ The ILO estimates that Saudi Arabia is one of the largest employers of migrant domestic workers in the world. However, migrant domestic workers are the most vulnerable to trafficking in Saudi Arabia due to their isolation and confinement inside private residences. A quick review of these bilateral agreements make plain why violations of migrant domestic workers' rights continue unabated.

Article 3 of the Saudi Arabia-Philippines agreement establishes several areas of mutual cooperation, including importantly on recruitment. The parties agree to ensure that neither recruiters or the employers charges workers recruitment fees¹⁴⁴ and that recruitment is done ethically through licenced recruiters.¹⁴⁵ The parties agree to take legal measures against recruiters who commit violation of the applicable laws.¹⁴⁶ However, law enforcement efforts against human trafficking in Saudi Arabia have actually declined recently.¹⁴⁷

Both governments also agree to adopt a standard employment contract, accepted by both parties, and which shall be binding on the contracting parties¹⁴⁸ and ensure that parties have a right of recourse to competent authorities in the case of contract disputes.¹⁴⁹ To our knowledge, no such standard contract exists. Further, the effective enforcement of contractual rights remains limited, as migrant domestic workers do not have easy access to complaint mechanisms when, for example, wage requirements are violated – they face language barriers, and often their employers fail to appear for hearings without consequence. Further, employers are known to retaliate against workers when complaints are lodged for violation of their rights. To date, we are unaware of any actions taken by the government to give effect to Article 3.6.

Article 4 sets forth the responsibilities of Saudi Arabia. Here, it undertakes to ensure that “recruitment, hiring, and placement of domestic workers” complies with the “relevant laws, rules and regulations.” The agreement does not define which laws are relevant, though presumably this refers to the domestic legislation of Saudi Arabia. Similarly, the KSA is to

¹⁴³ Human Rights Watch issued a critical statement on the KSA-Indonesia bilateral agreement. See, Human Rights Watch, [Dispatches: New Protection for Saudi Arabia's Domestic Workers](http://www.hrw.org/news/2014/02/19/dispatches-new-protection-saudi-arabia-s-domestic-workers), Feb. 19, 2014, available online at <http://www.hrw.org/news/2014/02/19/dispatches-new-protection-saudi-arabia-s-domestic-workers>. (“The labour regulations and new pact are slow moves in the right direction, but neither have clear enforcement mechanisms for a group of workers typically isolated in private homes, unaware of their rights, and unable to speak Arabic. These reforms do not address the long history of workers coming forward with complaints only to be slammed with counter-allegations of theft, witchcraft, or adultery by their far more influential, well-connected, and often wealthy employers.”)

¹⁴⁴ Article 3.5.

¹⁴⁵ Article 3.4.

¹⁴⁶ Article 3.7.

¹⁴⁷ U.S State Department, *Trafficking in Persons Report 2014*, p. 332, available online at <http://www.state.gov/documents/organization/226848.pdf>.

¹⁴⁸ Article 3.2.

¹⁴⁹ Article 3.6.

ensure that the “welfare and rights” of domestic workers are “promoted and protected” in accordance with “applicable laws, rules and regulations.” As is evident from Section 5.1 above, the applicable laws fail to protect the rights of domestic workers, so any commitment to comply with the flawed laws of Saudi Arabia does not extend protections to domestic workers consistent with Convention 189.

Article 4 also addresses employment contracts, providing that Saudi Arabia will ensure the authenticity of employment contracts and that it contains the rights, obligations and minimum terms and conditions of employment. The government also commits to ensure the implementation of the contracts. Again, the labour law does not protect the workers’ fundamental rights and allows an employer to legally schedule 15 hour workdays. Further, there appears to be no mechanism to ensure the enforcement of these flawed laws other than the existing labour inspection, which has in the past utterly failed to ensure that these contracts are enforced. As the U.S State Department noted in its 2014 Trafficking in Persons Report (“TIP Report”), “Although many migrant workers sign contracts delineating their rights, some report work conditions that are substantially different from those described in the contract. Other migrant workers never see a contract at all, leaving them especially vulnerable to forced labour, including debt bondage.”¹⁵⁰ It went on to observe that the new laws passed in 2013 “provided that domestic workers cannot refuse to work if it is in their contract; this may increase domestic workers’ vulnerability to forced labour.”

As for the obligations of the government of the Philippines, Article 5 generally only requires the government to provide workers who are medically fit, have no “derogatory” record and are trained in housework and Saudi customs. Further, they are to require such workers to observe Saudi laws, and the government is to verify all employment contracts submitted by the Saudi recruitment office.

Articles 6 and 7 on dispute settlement are framed in merely aspirational language, urging the government to “endeavour to” provide 24-hour assistance to domestic workers and to facilitate the expeditious settlement of contract violations (notably not labour law violations). It is also worth noting that Saudi Arabia already has an obligation under ILO Convention 81 to ensure that “[p]ersons who violate or neglect to observe legal provisions enforceable by labour inspectors shall be liable to prompt legal proceedings without previous warning.” It is not. As the 2014 TIP Report notes, “Many subsequently face involuntary servitude, experiencing non-payment of wages, withholding of passports, confinement to the workplace, long working hours without rest, deprivation of food, threats, physical and sexual abuse, and restrictions on movement. Sending-country embassies and consulates indicate that non-payment of wages is the most widespread complaint from foreign workers in Saudi Arabia.”¹⁵¹ It appears that the bilateral agreement is here observed in the breach.

Finally, in Article 8, the government agrees to facilitate the issuance of exit visas, but only for the repatriation of domestic workers “upon contract completion, emergency situations

¹⁵⁰ Of note, the 2014 TIP report identified Saudi Arabia as a Tier 3 country, which means that it does not fully comply with the minimum standards of the Trafficking Victims Protection Act and is not making significant efforts to do so.

¹⁵¹ Ibid, p. 332.

or as the need arises.” Again, the TIP Report found that “[t]he sponsorship system, *including the exit visa requirement*, continued to restrict the freedom of movement of migrant workers and to hamper the ability of victims of trafficking to pursue legal cases against their employers”¹⁵² (emphasis added). Indeed, it is unclear whether the “emergency situations” or “as needed” clauses above contemplate the facilitation of exit visas as a means to address exploitation related to trafficking, though it appears unlikely.

The agreement establishes an oversight mechanism called a joint committee led by senior officials of the respective governments, which is charged with undertaking a “periodic review, assessment and monitoring of the implementation of the agreement.” However, the agreement does not actually require regular meetings; they are scheduled only “as mutually agreed.” If disputes on the implementation or interpretation of the agreement do arise, the committee is required to make recommendations, which are to be settled “amicably through diplomatic channels.” There is no provision if the parties cannot agree. Nor is there any mechanism for domestic workers to participate in the work of the joint committee.

The agreement between Saudi Arabia and Sri Lanka is an exact replica of the agreement with the Philippines. Notably, the version we have includes a standard employment contract. However, the contract does little more than enshrine what is already in law. It also contains vague terminology which does not provide workers with a strong basis for recourse. For example, it requires payment of a monthly salary in accordance with the law (the wages to be filled in by employer), the opening of a bank account, 8 hours rest per day (meaning a 16 hour-workdays, though the law now provides for a maximum of 15 – still unacceptable), 1 day of rest per week, free transportation to Saudi Arabia and back home upon completion of the contract, “suitable and sanitary” living quarters and “adequate food” (nowhere defined) and 30 days of paid vacation after every 2 years of service. A “special provisions” section includes a “respect and dignity clause”, a prohibition against deductions from wages, a prohibition on the withholding of the passport, free communication with family and the embassy, respect for the provisions of the contract.

The bilateral agreement with Indonesia is in some respects stronger than those with the Philippines and Sri Lanka. For example, the provisions which relate to employment contracts are far more robust – Article 5 provides that employment contracts are valid only if it is formulated in an understandable language and is agreed to by both parties.¹⁵³ This is important, as workers are often presented with contracts in Arabic upon arrival and with no means to understand and therefore consent to the terms. Parties are also to take “any necessary measures” to ensure the full implementation of an employment contract. The parties agree to provide “effective legal remedies” in the event of a breach of contract¹⁵⁴ and exert their best endeavour to settle any dispute¹⁵⁵. Again, however, there is no evidence of implementation.

Article 3 includes clear language regarding the right of Indonesian domestic workers to hold onto their own travel documents and to communicate freely with their families. Again, the

¹⁵² Ibid, p. 333.

¹⁵³ Art 5.1.

¹⁵⁴ Art 5.2.

¹⁵⁵ Art 5.3.

TIP report found that “Employers continued to regularly withhold workers’ passports without punishment as a means of keeping workers in forced labour, despite this practice being prohibited by law.” Article 3 also calls for the issuance of a valid ID card on arrival,¹⁵⁶ and to “endeavour” to require employers to provide an insurance scheme.¹⁵⁷ The lack of a valid ID is often grounds for police to stop, harass and arrest migrant workers, so the commitment to an ID is important. The government also promises to facilitate consular protection by providing information about any Indonesian migrant domestic worker arrested or imprisoned.¹⁵⁸ If realized, this would also be important as, often, migrant workers are detained without any access to legal and political support.

The bilateral agreement between the KSA and India resembles, but is not identical to, the agreement with Indonesia.

Again, notwithstanding the aspirational tone of these agreements, there is no clear evidence that their terms are being faithfully respected in Saudi Arabia. Similarly, the extent to which the governments of Indonesia, India or the Philippines are pressing Saudi Arabia to comply is unclear. Notably, however, Indonesia appears to be standing firm on minimum wage levels for its domestic workers. Saudi Arabia has refused to agree to the terms and as a result no domestic workers from Indonesia are currently being recruited for work in Saudi Arabia.¹⁵⁹

It is encouraging, however, that the agreements outlined above are more robust than older agreements which regulate the recruitment and employment of migrant workers more generally. Those older agreements have tended to be simpler, more transactional, and contained fewer explicit rights for workers or obligations for employers.¹⁶⁰ Indeed, they have usually contained little more than the following elements:

- Recruitment shall be regulated in accordance with the relevant laws of the two countries
- Terms and conditions of employment shall be defined by a contract, which states the rights and obligations of the parties.
- In case of dispute, a complaint will be lodged with the competent authorities in order to reach an amicable settlement. If not settlement, then the issue will be referred to judicial authorities.
- The two parties will establish a joint committee to follow up on the implementation of the agreement.

¹⁵⁶ Art 3(c).

¹⁵⁷ Art 3(d).

¹⁵⁸ Art 3(g).

¹⁵⁹ Arab News, *Jakarta terms for recruitment of domestics rejected*, 29 September 2014, available at <http://www.arabnews.com/news/637211>.

¹⁶⁰ See, e.g. MOU Between Indonesia and Kuwait, 1996; MOU Between Nepal and UAE, 2007, Agreement Between Indonesia and Qatar, 2009.

Concluding Observations

While bilateral agreements may provide some basis for Asia-Pacific governments to press for better treatment of nationals working in the Gulf, these agreements do not appear to have materially improved the conditions for workers in practice anywhere in the region. In our view, so long as migrant domestic workers are excluded from labour laws and remain subject to restrictive *kafala* sponsorship laws that grant employers extraordinary control over them, no bilateral agreement will provide adequate protection against exploitation. Workers will continue to be vulnerable to exploitation, including forced labour and physical abuse. A fundamental overhaul of the region's labour laws and the abolishment of the *kafala* system is urgently needed.

In the absence of monitoring and enforcement mechanisms, bilateral agreements – which rely instead on the existing flawed labour inspection systems in the host state – will not deliver for domestic workers. In most GCC countries, the labour inspection and justice system have proven highly inadequate in enforcing the few rights that migrant workers do have at law. Indeed, most inspectorates are small and underfunded relative to the task at hand, and staff is often unable to speak the languages of most migrant workers. Inspectors have little power to enforce findings and fines, when imposed, are far from dissuasive. It remains unclear whether the joint committees established under the bilateral agreements to monitor implementation have met, and if so what issues they have been able to resolve.

Moreover, the bilateral agreements discussed above are weakened by the lack of any meaningful reference to international norms. The fundamental rights to freedom of association and non-discrimination, for example, are not mentioned despite the fact that the inability of migrant workers to form or join unions is a very serious problem – the prohibition of the right of migrant workers to associate freely in GCC countries prevents workers from speaking for themselves and defending their collective interests. This shortcoming is perhaps reflective of the fact that domestic workers and civil society organizations were at no point involved in the design or implementation of these agreements. It is therefore unsurprising then that these bilateral agreements fail to provide effective protection for migrant domestic workers.

Finally, there is an obvious need for more regional cooperation on recruitment, wages and working conditions to avoid a “race to the bottom” among the countries which are the source of migrant labour. Regional agreements may be more constructive than bilateral agreements to address these areas which are ripe for international coordination and cooperation.

7 Annex 1

Review of Draft Standard Contract

Below is a line-by-line critique of the GCC Model Contract, circulated in 2013. We also note the numerous critical omissions in the text of the model contract.

I. Initial Concerns

First, the contract makes no reference to the ILO fundamental rights (Article 3 of C 189), including freedom of association and collective bargaining. This omission is particularly critical, as only Bahrain has domestic labour legislation which extends the right of association to domestic workers. Further, guarantees against discrimination are critical, as domestic workers face discrimination on numerous bases (age, sex, race, nation original, etc.).

Second, the contract provides no provision that guarantees workers effective protection against abuse, harassment and violence (Articles 5, 15-17). It is obvious that the current legal systems are currently ill-equipped to address such violations. Article 7 of Recommendation 201 calls on governments to ensure that there are accessible complaint mechanisms, and that complaints are investigated and prosecuted. We know that this is not now the case anywhere in the GCC. In addition to including language prohibiting, abuse, harassment and violence, the contract should make clear the right of the worker to remove themselves from the workplace in such cases and that doing so not constitute a breach of the contract by the worker. Indeed, abuse, harassment and violence should be clearly stated as grounds for the worker to terminate the contract (and having the employer pay for repatriation if the worker decides to return home).

Third, the model contract does not contain all of the terms and conditions of employment spelled out at Article 7 of Convention 189. Further, the model contract does not appear written in an “appropriate, verifiable and understandable” manner. Missing from the contract is a description of the work to be performed (currently “the agreed upon work) and a description of normal hours of work (instead referring to the provisions of national law, which the worker may not have on hand).

Fourth, the contract is unclear whether the worker has a choice to live in the household (Article 9). Further, it provides no provision regarding the freedom of movement of those workers living in the household during periods of daily and weekly rest or annual leave.

Fifth, the contract contains no provisions guaranteeing equality of treatment among workers related to hours of work, overtime compensation and rest/leave (Article 10). The agreement also does not specify that idle time where the worker is nevertheless on call (cannot freely dispose of their time) should be considered work time. See also Recommendation 201, Article 9.

Sixth, the contract makes no reference to social security or maternity protection (Convention 189 Article 14 and Recommendation 201, Article 20).

A related point, this contract should be signed prior to departure. This is perhaps a practical matter rather than a criticism of the contract itself. But it is essential that workers know and agree to the terms and conditions prior to departure.

Further, in many cases the worker will be hired through an employment agency. Article 15 of Convention 189 provides additional protections in such circumstances. If the contract is to be used by employment agencies, it will be important that appropriate language as to employment agencies is included in the contract – e.g., that fees charged by a private employment agency shall not be deducted from wages.

II. Line by Line Critique

- I. The Second Party shall work for the First Party as a (name of occupation), and the Second Party shall perform the agreed upon work at the First Party's house and/or any of its premises.
- II. The First Party shall undertake to pay the Second Party a monthly wage of (.....) paid to her on monthly basis according to the Gregorian calendar.

ITUC Comments: See comment on minimum wages in Section III

- III. The term of this contract is (one year/two years), starting from the date of commencement of the work by the Second Party. The term shall be renewed automatically for a similar period, unless one of the Parties notifies the other Party of otherwise thirty (30) days before the expiry date of the contract period.
- IV. The Second Party shall be subject to a probation period of not less than three months and not more than six months, to verify her working efficiency and the soundness of her personal conduct.

The First Party may terminate the contract during the probation period, without prior notice to the Second Party, if he deems that she was not fit to work; in this case, the First Party shall repatriate the Second Party to her country or to the recruitment office as per a prior agreement signed to this effect.

ITUC Comment: The 6 month probation period is unreasonably long and should be no more than 3 months. If the contract is terminated during the probationary period, the contract is unclear whether the employer will cover the cost of repatriation. Article V, below, only refers to covering costs upon death or expiration of the contract.

- V. The First Party shall be committed to provide the Second Party with:
 - a. A decent accommodation equipped with the necessary means of life in a manner that respects her privacy.

ITUC Comment: C189 refers to “decent living conditions that respect their privacy”. It is unclear what is deemed “necessary” here. Likely, this will be left solely to the employer’s

discretion. ILO Recommendation 201 also provides that when a domestic worker is required to live in accommodation provided by the household, no deduction may be made from the remuneration with respect to that accommodation, unless otherwise agreed to by the worker. This section should make clear that these provisions are provided at the employer's expense.

- b. Food and clothing to ensure appropriate life for her.

ITUC Comment: Recommendation 201 provides that “When provided, accommodation and food should include, taking into account national conditions, the following: (a) a separate, private room that is suitably furnished, adequately ventilated and equipped with a lock, the key to which should be provided to the domestic worker; (b) access to suitable sanitary facilities, shared or private; ((c) adequate lighting and, as appropriate, heating and air conditioning in keeping with prevailing conditions within the household; and (d) meals of good quality and sufficient quantity, adapted to the extent reasonable to the cultural and religious requirements, if any, of the domestic worker concerned. These concepts should be incorporated into the model contract.

- c. The visa and all government fees and expenses for the issuance, renewal and cancellation of the work permit, exit and return visas.
- d. Regular monthly salary. The First Party shall only have clearance from the wage when the Second Party signs a receipt certifying that she has fully received her wage.

The Second Party may request the First Party to deposit her wage in a bank account. The First Party shall have clearance once he deposits the wage in the account specified by the Second Party.

In all cases, the burden of proof shall be the First Party's responsibility to prove that the wage was duly paid to the Second Party in accordance with the provisions of this contract.

ITUC Comment: The contract should include a provision which guarantees the worker an easily understandable written account of the total remuneration due to them and the specific amount and purpose of any deductions which may have been made at the time of each payment, Pursuant to recommendation 201, Article 15.

- e. Medical care in case of disease, work related injury, unless the injury/harm was deliberately self-inflicted by the worker.

ITUC Comment: As it is often the case that in these situations the employer will claim injuries are self-inflicted, the employer should have the burden of proof to establish that such injuries were in fact self-inflicted. Otherwise, the assumption should be that they are work related. Further, injuries which occur at the workplace but are not the result of a workplace hazard (a burn or cut during food preparation) should also be covered – i.e. a slip and fall in the home. Also, Article 13 of Convention 13 provides that domestic

workers are entitled to a safe and health working environment. The contract contains no language regarding occupational safety and health, not even referring to the protections available to other workers under domestic law. The worker has a right to know his/her rights as to workplace safety and the procedures that a worker can take if injured on the job.

- f. Compensation in case of death, total or partial invalidity caused by a work injury in accordance with the provisions set forth in the applicable national legislations in this regard.

ITUC Comment: As with the previous section, the burden should be on the employer to demonstrate that the injury was not work-related (unless, for example, the injury occurred during annual enjoyed away from the workplace).

- g. The expenses of repatriating the corpse of the Second Party to her respective country in the event of her death.
- h. The expenses of repatriating the Second Party to her respective country upon the expiration of the work contract.

ITUC Comment: This clause should also include where the contract was terminated (not just expired) for a breach committed by the employer.

- i. Enable the Second Party to regularly communicate with her family.

ITUC Comment: It is unclear at whose expense is the regular communication. We would recommend that the employer cover the expenses for reasonable levels of communications with the family and to ensure that the worker have privacy respected when making these communications.

- j. Upon the end of the employment contract, the Second Party shall be entitled to an end of service benefit that is calculated in accordance with the provisions set forth in the applicable national legislations in this regard.

VI. The Second Party shall be committed to undertake the following:

- a. Honestly and duly perform the work as agreed upon, showing the usual cautiousness of an ordinary person.

ITUC Comment: Again, the duties should be clearly set forth in the contract to avoid any confusion and to limit abuse by the employer by requiring the worker to perform work not expressly provided for in the contract.

- b. Adhere to the work instructions of the First Party and his family members, provided that such instructions do not endanger the safety of the Second Party or harm his human dignity.

ITUC Comment: This provision is unnecessary as the previous clause already established that the worker will honestly and duly perform the work. This clause could be interpreted to give family members wide latitude to instruct the worker to do anything, so long as it is not dangerous or demeaning. A definition of family members is also needed, and should be limited to the immediate family.

- c. Protecting the confidentiality of the secrets of the First Party and his family members, as well as the individuals at his house for any reason, that the Second Party becomes familiar with by virtue of his work, and he must not disclose them to third Parties.
- d. Maintain the property of the First Party and his family members, and the Second Party shall compensate for any the damages she may inflict on to such property, arising from her mistake, in accordance with the provisions set forth in the applicable national legislation in this regard.

ITUC Comment: There should be some degree of reasonableness, as household objects are likely to break from time to time. Also, the worker runs the risk of having the breaking of any object being ascribed to her. Thus, the burden of proof must be on the employer. Only if it is demonstrated that the worker broke an object through some degree of fault (i.e. recklessness) should the employer be allowed to request the replacement value.

- e. Refrain from performing work for others, with or without pay

ITUC Comment: While there is a ban on workers accepting work for others, there should also be a parallel prohibition on the employer from demanding the worker perform work for another.

- f. Comply with laws, regulations and customs prevailing in the First Party's country of residence.

ITUC Comment: Such laws, regulations and particularly customs must be clearly explained in an easy to understand manner in the language of the worker. Indeed, under recommendation 201, the government should be "providing for a public outreach service to inform domestic workers, in languages understood by them, of their rights, relevant laws and regulations, available complaint mechanisms and legal remedies, concerning both employment and immigration law, and legal protection against crimes such as violence, trafficking in persons and deprivation of liberty, and to provide any other pertinent information they may require." Such materials should be provided with any contract.

- g. Prove medical fitness for the job subject of the contract, and that she is free from any contagious diseases

ITUC Comment: This clause could easily lead to employment discrimination on the basis of HIV status. As provided for in Article 3 of Recommendation 201. "In taking measures for the elimination of discrimination in respect of employment and occupation, Members

should, consistent with international labour standards, among other things: (a) make sure that arrangements for work-related medical testing respect the principle of the confidentiality of personal data and the privacy of domestic workers, and are consistent with the ILO code of practice "Protection of workers' personal data" (1997), and other relevant international data protection standards; (b) prevent any discrimination related to such testing; and (c) ensure that no domestic worker is required to undertake HIV or pregnancy testing, or to disclose HIV or pregnancy status." Thus, the contract should make clear that workers shall not be required to submit to testing for pregnancy or HIV to demonstrate fitness for the job. Further, the contract should guarantee that the employer keeps all medical information in strict confidence.

- VII. Ordinary working hours and overtime shall be determined in accordance with the applicable national legislation in this regard. In all cases the Second Party shall be given a night break for at least eight continuous hours.
- VIII. The Second Party shall be entitled to a fully-paid weekly a rest-day (24 consecutive hours), as agreed by both Parties. If there was a need for her to work on her weekly rest-day, she shall be entitled to an alternative rest-day in the next week or to a payment.

ITUC Comment: The contract fails to mention that the worker should be entitled to overtime compensation if working on a day of rest, even if provided an alternative day of rest. There should be language in the contract that explains what is considered overtime and at which rate it should be paid (at least as much as provided under C1 or national law if higher). See Article 6 of Recommendation 201. Preliminary remarks 5 and 6 are also relevant here.

Further, Recommendation 201, Article 8 provides that the hours of work should be accurately recorded and that this information should be freely accessible to the worker. This contract should make clear how the hours are recorded, and a means for the workers to review the records for accuracy and to contest the records if incorrect.

- IX. The Second Party shall be entitled to an annual leave with full pay; the duration of such leave is determined in accordance with the provisions set forth in the applicable national legislation in this regard.

The Second Party has the right to combine his annual vacation for two consecutive years of work together, and is entitled to spend it in his country of origin, and the First Party shall bear the travel costs.

- X. The Second Party shall be entitled to a sick leave with full pay; the duration of such leave is determined in accordance with the provisions set forth in the applicable national legislation in this regard.
- XI. The Second Party's passport is a personal document, and she is entitled to keep it in the way she deems appropriate.

- XII. This contract shall be terminated:
- a. If it expired, without renewal in accordance with the provisions set forth therein, and taking into account the legal requirements necessary for this renewal.
 - b. If terminated by one of the Parties for a legitimate cause; any breach of the obligations of any Party by virtue of the law and this contract is considered a legitimate cause for the termination.
 - c. The death of the Second Party or his inability to perform the work agreed upon, as a result of illness or injury, proved by a report issued by a competent medical authority.
 - d. The death of the First Party, or his separation from his family, or his absence outside the country for more than six months for any reason, unless a family member requests the transfer of the license to hire the worker for his own interest.
In this case, this family member shall replace the First Party in this contract.

ITUC Comment: ILO Recommendation 201, Article 16 provides that “Members should take measures to ensure that domestic workers enjoy conditions not less favourable than those of workers generally in respect of the protection of workers’ claims in the event of the employer’s insolvency or death.” Thus, in the case of death, the contract should make clear that the worker is able to claim all outstanding wages and benefits due.

- e. The First Party is entitled to terminate the contract with the Second Party, if it was proved that the worker sustains contagious, chronic illness, or physical or mental disability; the First Party shall provide for the return of the Second Party to her country of origin.

ITUC Comment: This clause (e) must be substantially revised. There is no reason why the contract should be terminated if a worker contracts a contagious but treatable illness. Otherwise, the contract could be terminated if the worker simply contracted the common cold. Further, employers may not discriminate against workers based on HIV status – and indeed should not be testing for it. It is likely that most workers with certain physical or mental disabilities could perform domestic work satisfactorily. The clause should be reformulated to provide that the contract may be terminated if the worker is unable to perform the work in the contract due to illness or disability of a chronic/permanent nature and which cannot be overcome by reasonable accommodation.

- XIII. The provisions of the law regulating the work of domestic workers No., for the year (or any other law applicable to domestic workers), shall apply to any aspects not mentioned in this contract; and if there is not any relevant text, the Civil Code provisions shall apply.

XIV. All disputes arising from this contract shall be settled in accordance with the provisions of the law regulating the work of domestic workers No., for the year (or any other law applicable to domestic workers); and if there is not any relevant text, the Civil Code provisions shall apply.

XV. This contract is made in two copies, and each Party shall keep a copy.

The Second Party's copy is attached with a/an () translation of the contract. The Arabic version of the contract shall be accredited as evidence.

III. Additional Concerns

Article 11 of Convention 189 provides that "Each Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex." Domestic workers often receive extremely low levels of remuneration, and female workers usually receive a lower wage relative to men. The ITUC calls on all GCC countries to adopt an appropriate minimum wage in national legislation, which would serve the floor wage to be paid to any worker hired under the model contract.

Finally, Article 4 of Convention 189 provides that "Each member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and not lower than that established by national laws and regulations for workers generally." It also provides that "Each Member shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training." See also Recommendation 201, Article 5. We again urge all GCC countries to adopt minimum age laws and regulations in line with the Convention and take measures to ensure that no underage children are hired under this contract.



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