

# Hope for Reform Springs Eternal: How the Sponsorship System, Domestic Laws and Traditional Customs Fail to Protect Migrant Domestic Workers in GCC Countries

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*This is the end of the sponsorship system, which does not differ much from slavery.*

- Majeed Al Allawi, minister of labor of Bahrain, upon announcing labor reforms in May of 2009 that would allow migrant workers to change jobs without their employers' consent. The reforms did not apply to migrant domestic workers.<sup>1</sup>

## Introduction

On the same day<sup>2</sup> that most Arab delegates voted in favor of an international treaty on the rights of domestic workers, King Hamad bin Isa Al Khalifa of Bahrain decreed that migrant workers cannot change employers during their first year of employment.<sup>3</sup> Only two years prior to that decree, Human Rights Watch had praised Bahrain for allowing workers to do just that, christening the country "the first to make concrete reforms" to the *kafala* or sponsorship system that all GCC<sup>4</sup> countries employ in procuring foreign labor.<sup>5</sup>

Two days after that same international treaty was adopted, an Indonesian maid was beheaded with a sword in Saudi Arabia,<sup>6</sup> a country which recently announced that it had no plans to abolish the *kafala* system.<sup>7</sup> The domestic worker had been accused of killing her employer after being told she could not return to her home country and suffering repeated abuse.<sup>8</sup> In response to the beheading, the Indonesian government announced a moratorium on sending workers to Saudi Arabia until the two countries come to an agreement to protect workers' rights.<sup>9</sup>

This is not the first time that a labor-sending country has attempted to redress the situation of its migrant domestic worker population in the Arab Gulf by employing restrictions or bans. Pakistan, Bangladesh, India, the

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1. Habib Toumi, *Bahrain's Decision to Scrap Sponsorship Rule Elicits Mixed Response*, GULF NEWS (May 4, 2009), <http://gulfnews.com/news/gulf/bahrain/bahrain-s-decision-to-scrap-sponsorship-rule-elicits-mixed-response-1.1965>; HUMAN RIGHTS WATCH, *SLOW REFORM: PROTECTION OF MIGRANT DOMESTIC WORKERS IN ASIA AND THE MIDDLE EAST* 16 (2010).

2. June 16, 2011.

3. *See HM King Hamad Issues Law 15/2011*, BAHRAIN NEWS AGENCY (June 16, 2011), <http://bna.bh/portal/en/news/461096>.

4. The Gulf Cooperation Council is a regional cooperation system of the Arab states of the Persian Gulf that was established in 1981. Its constituent member states are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates.

5. *Bahrain: Labor Reforms a Major Advance*, HUMAN RIGHTS WATCH (May 13, 2009), <http://www.hrw.org/news/2009/05/13/bahrain-labor-reforms-major-advance>; *see also* Neha Vora, *Business Elites, Unofficial Citizenship, and Privatized Governance in Dubai*, in THE MIDDLE EAST INSTITUTE, *VIEWPOINTS: MIGRATION AND THE GULF* 46 (2010), available at <http://www.mei.edu/content/migration-and-gulf>.

6. Jason Burke, *Maid 'Held Hostage' for 14 Years in Saudi Arabia*, THE GUARDIAN, June 23, 2011, at 24.

7. Faiz Al-Mazrouie, *Fakieh Says No Move to Abolish Sponsorship Law*, ARAB NEWS (Jan. 19, 2011), <http://arabnews.com/saudi-arabia/article238343.ece?comments=all>.

8. Burke, *supra* note 6.

9. Kathy Quiano, *After Beheading, Indonesia Stops Sending Workers to Saudi Arabia*, CNN (June 22, 2011), [http://articles.cnn.com/2011-06-22/world/indonesia.migrant.workers\\_1\\_migrant-worker-saudi-arabia-indonesian-ministry?s=PM:WORLD](http://articles.cnn.com/2011-06-22/world/indonesia.migrant.workers_1_migrant-worker-saudi-arabia-indonesian-ministry?s=PM:WORLD).

Philippines and Nepal have done so previously but have seen only “limited, and in many cases contradictory effects.”<sup>10</sup> Would-be migrant workers who stayed in their home countries due to the bans missed out on generating remittances that could fuel their countries’ economies and feed their families. In 2010 alone, migrant workers sent home an estimated \$440 billion worldwide.<sup>11</sup>

International debt politics has encouraged this dependence on migrants’ remittances, while at the same time creating the incentive for many women to emigrate in the first place.<sup>12</sup> The International Monetary Fund asks the government of any country seeking financial assistance to slash its social services budget by keeping wages down, cutting health and education subsidies and reducing the number of government employees.<sup>13</sup> With low wages and few opportunities afforded to family members at home, women often emigrate just to keep their families afloat financially.<sup>14</sup>

Many people who felt they could not forgo those financial opportunities in the Gulf chose to circumvent migration bans by traveling first to an approved country en route to the Gulf. Once in the banned country, these illegal migrants could not easily go to their home countries’ embassies for assistance in case of trouble.<sup>15</sup>

Some labor-sending countries have been unwilling to employ similar restrictions or bans against countries they depend on for generating remittances. Sri Lanka, for example, has hesitated to exert diplomatic pressure to protect the rights of its citizens “for fear that employers in the Middle East will turn to labour from other countries.”<sup>16</sup>

In the dispute over the Indonesian maid’s beheading, Sri Lanka’s fear proved to be prescient. Saudi Arabia refused to accept Indonesia’s ban as punishment for its actions. On July 2, a month before the moratorium was set to go into effect, the Saudi government instead announced its own ban, which stopped the issuance of visas to domestic workers from Indonesia and the Philippines.<sup>17</sup> Regarding the ban, a spokesperson for the Saudi Ministry of Labor said, “The Ministry’s decision coincides with its great efforts to open new channels to bring domestic workers from other

10. Attiya Ahmad, *Migrant Domestic Workers in Kuwait: The Role of State Institutions*, in THE MIDDLE EAST INSTITUTE, *VIEWPOINTS: MIGRATION AND THE GULF* 28–29 (2010), available at <http://www.mei.edu/content/migration-and-gulf>.

11. WORLD BANK, *MIGRATION AND REMITTANCES FACTBOOK* 2011, at 18–20 (2d ed. 2011), available at <http://issuu.com/world.bank.publications/docs/9780821382189>.

12. Cynthia Enloe, ‘Just Like One of the Family’: *Domestic Servants in World Politics*, in GLOBAL DIMENSIONS OF CAREWORK AND GENDER 118, 118 (Mary K. Zimmerman et al. eds., 2006).

13. *Id.*

14. *Id.*

15. Ahmad, *supra* note 10, at 29.

16. Michele Ruth Gamburd, ‘Lentils There, Lentils Here!’ *Sri Lankan Domestic Labour in the Middle East*, in ASIAN WOMEN AS TRANSNATIONAL DOMESTIC WORKERS 92, 103 (Shirlena Huang et al. eds., 2005).

17. Press Release, Royal Embassy of Saudi Arabia, *Recruitment of Domestic Workers from Indonesia and the Philippines Stopped* (June 29, 2011), available at [http://www.saudiembassy.net/latest\\_news/news06291101.aspx](http://www.saudiembassy.net/latest_news/news06291101.aspx).

sources.”<sup>18</sup>

Those new sources of domestic workers are all countries “where the labour is comparatively cheaper,” including Morocco, Nepal, Kenya, Ethiopia, Eritrea and Vietnam.<sup>19</sup> Labor from these countries is cheaper precisely because the countries are less likely to impose tougher hiring conditions on Saudi Arabia’s recruitment efforts, such as signing a standard contract providing for a minimum wage, mandated time off and other protections.<sup>20</sup>

These domestic workers’ rights that the Saudi Arabian government eschewed by imposing a ban on Indonesian and Filipino domestic workers are the same ones that the GCC countries’ delegates voted in favor of June 16. Part I of this Note will discuss the background of the Domestic Workers Convention and GCC countries’ support of it. Part II describes the *kafala* system and why it must be reformed before ratification of the convention can take place. Part III discusses other obstacles to ratification. Part IV examines potential avenues for reforming the system.

## I. Background on the Domestic Workers Convention

The International Labor Organization’s Director-General Juan Somavia hailed the Domestic Workers Convention adopted on June 16, 2011 as “a breakthrough of great significance,” because it is the first time that the ILO has set standards for an occupation in the informal economy, where workers are often excluded from wage and hour legislation and other labor law protections.<sup>21</sup> The convention provides for the protection of fundamental principles and rights at work, including: freedom of association and the right to collective bargaining, the elimination of forced or compulsory labor and child labor, and the eradication of employment and occupational discrimination.<sup>22</sup> It requires that domestic workers be protected against all

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18. *Id.* News reports surfaced in January of 2012, indicating that an agreement had been reached between Saudi Arabia and the Philippines to lift the ban. See, e.g., Rodolfo Estimo Jr., *MOU to End Deployment Ban on Filipino Domestic Workers*, ARAB NEWS (Jan. 16, 2012), <http://arabnews.com/saudi-arabia/article563759.ece>. However, Saudi Arabia’s Ministry of Labor announced two months later that bans on the recruitment of domestic workers from the Philippines and Indonesia would remain in place until the two countries reconsidered their demands for higher wages and other rights for their workers. See e.g., *Ban on New Domestic Workers from Indonesia, Philippines Remains: Labor Ministry*, ARAB NEWS (Mar. 14, 2012), <http://arabnews.com/saudi-arabia/article587637.ece>.

19. Abdul Nabi Shaheen, *Demand for Domestic Help Grows in Saudi Arabia*, GULF NEWS (Aug. 5, 2011), <http://gulfnews.com/news/gulf/saudi-arabia/demand-for-domestic-help-grows-in-saudi-arabia-1.847416>.

20. See, e.g., *Nepalese Maids Coming*, ARAB NEWS (Jan. 23, 2011), <http://arabnews.com/saudi-arabia/article241028.ece>; Shaheen, *supra* note 19.

21. Press Release, Int’l Labor Org., 100th ILO Annual Conference Decides to Bring an Estimated 53 to 100 Million Domestic Workers Worldwide Under Realm of Labour Standards (June 16, 2011), available at [http://www.ilo.org/ilc/ILCSessions/100thSession/media-centre/press-releases/WCMS\\_157891/lang-en/index.htm](http://www.ilo.org/ilc/ILCSessions/100thSession/media-centre/press-releases/WCMS_157891/lang-en/index.htm).

22. International Labor Organization [ILO], Convention No. 189 Concerning Decent Work for Domestic Workers arts. 3-4, 11, June 16, 2011, available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C189> (last visited Feb. 25, 2012) [hereinafter Domestic Workers Convention].

forms of abuse, harassment and violence<sup>23</sup> and that they receive fair terms of employment and decent living conditions.<sup>24</sup>

The convention calls for ratifying countries to take measures aimed at ensuring equal treatment of domestic workers compared to workers generally with respect to hours of work, overtime compensation, periods of daily and weekly rest, and annual paid leave.<sup>25</sup> A weekly rest period of at least 24 consecutive hours must be provided.<sup>26</sup> A minimum wage must be set if a minimum wage exists for other workers.<sup>27</sup>

The issue of regulating domestic work was put on the agenda of the 2010 International Labor Conference leading to the ultimate adoption of the convention this June after global union federations and domestic workers' organizations voiced a need for a special international instrument on domestic work.<sup>28</sup> But the idea for the convention was not a new one. Domestic workers' issues had been raised on and off for the past several decades with little progress.<sup>29</sup> Domestic workers' issues were first discussed at an ILO meeting in 1936.<sup>30</sup> The ILO took its first affirmative step towards adopting a convention on domestic workers in 1965.<sup>31</sup> At that time, it passed a resolution calling attention to the urgent need "to provide for domestic workers in all member countries the basic elements of protection which would assure to them a minimum standard of living, compatible with the self-respect and human dignity which are essential to social justice."<sup>32</sup>

A United Arab Emirates delegate to the ILO said in June that all GCC countries support efforts to fully protect domestic workers, citing as examples new legislation in his home country that would allow for labor inspection in private households and a unified labor contract for domestic workers that Kuwait recently adopted.<sup>33</sup> He cautioned, however, that although countries around the world may amend their national legislation and ultimately ratify the Domestic Workers Convention, "the real challenge is how to make these principles a reality. In discussing and adopting this convention, we have accepted an international and national obligation. We

23. *Id.*, art. 5.

24. *Id.*, art. 6.

25. *Id.*, art. 10.

26. *Id.*

27. *Id.*, art. 11.

28. ASHA D'SOUZA, ILO, MOVING TOWARDS DECENT WORK FOR DOMESTIC WORKERS: AN OVERVIEW OF THE ILO'S WORK 45 (2010), available at [http://www.ilo.org/wcmsp5/groups/public/-/dgreports/-/gender/documents/publication/wcms\\_142905.pdf](http://www.ilo.org/wcmsp5/groups/public/-/dgreports/-/gender/documents/publication/wcms_142905.pdf).

29. CAROL LUBIN & ANNE WINSLOW, SOCIAL JUSTICE FOR WOMEN 108 (1990).

30. ILO, RECORD OF PROCEEDINGS, INT'L LABOUR CONFERENCE [ILC] 20TH SESSION, APPENDIX XVI: RESOLUTIONS ADOPTED BY THE CONFERENCE 740 (1936).

31. ILO, RECORD OF PROCEEDINGS, ILC, 49TH SESSION, APPENDIX XII: RESOLUTIONS ADOPTED BY THE CONFERENCE 693-94 (1965); see also CAROL LUBIN & ANNE WINSLOW, SOCIAL JUSTICE FOR WOMEN 108 (1990).

32. LUBIN & WINSLOW, *supra* note 31.

33. Press Release, ILO, Will Arab States Ratify Historic International Labour Standards on Domestic Work? (June 17, 2011), available at [http://www.ilo.org/public/english/region/arpro/beirut/downloads/info/stories/pr\\_170611.pdf](http://www.ilo.org/public/english/region/arpro/beirut/downloads/info/stories/pr_170611.pdf) [hereinafter ILO Press Release].

hope that our commitment to domestic workers will be both a legal and a moral one.”<sup>34</sup>

In describing the challenges facing domestic workers, a Bahraini trade union leader summed them up as follows: “Like everywhere else in the region, domestic work is considered a family matter.”<sup>35</sup> Personal status codes throughout the region designate the husband as the head of the household, relegating wives, children and adult female family members to a subservient position within the family.<sup>36</sup>

A Bahraini workers ILO delegate said that, even more fundamentally, “awareness-raising” is needed simply for citizens to recognize that domestic workers are real workers, not servants.”<sup>37</sup> This “real workers, not servants” refrain is a common one among domestic worker advocates around the world, even in labor-importing countries like the United States that have more progressive labor laws.<sup>38</sup> Indeed, it is unclear whether the United States will even consider ratifying the Domestic Workers Convention, despite the fact that American delegates voted in favor of it. A representative of the U.S. Council for International Business recently predicted that “there is zero chance that the U.S. will ever ratify this,” because it would require the United States to change many of its own labor laws to provide protections to domestic workers.<sup>39</sup>

But what makes Gulf states unique is that they were among the last countries to abolish slavery in the twentieth century.<sup>40</sup> For example, Saudi Arabia banned slavery in 1962 because the crown prince deemed it to be inconsistent with Islam’s requirement that kindness be shown to one’s slaves.<sup>41</sup> Slavery had been a clear marker of power and status among the wealthy, who kept as many slaves as possible for employment in domestic work and other services.<sup>42</sup>

34. *Id.*

35. *Spotlight Interview with Salman Jaffar Al Mahfoodh (Bahrain-GFBTU)*, INT’L TRADE UNION CONFEDERATION (Dec. 10, 2011), <http://www.ituc-csi.org/spotlight-interview-with-salman.html>.

36. WOMEN’S RIGHTS IN THE MIDDLE EAST AND NORTH AFRICA: PROGRESS AMID RESISTANCE 13 (Sanja Kelly & Julia Breslin eds., 2010) [hereinafter PROGRESS AMID RESISTANCE].

37. ILO Press Release, *supra* note 33.

38. *See, e.g.*, DOMESTIC WORKERS UNITED, HOME IS WHERE THE WORK IS: INSIDE NEW YORK’S DOMESTIC WORK INDUSTRY 2 (2006) (stating that the struggle of domestic work is to be recognized as “real work” due to its historical roots in the United States in slavery, its association with women’s unpaid household labor, its largely immigrant workforce, and its exclusion from legal protections).

39. Amy Bingham, *ILO Passes Domestic Workers’ Rights Bill, But It Will Have Little Effect in the U.S.*, ABC NEWS (June 17, 2011), <http://abcnews.go.com/Politics/international-labor-organization-passes-domestic-workers-rights-bill/story?id=13856422>.

40. ENCYCLOPEDIA OF ANTISLAVERY AND ABOLITION: GREENWOOD MILESTONES IN AFRICAN AMERICAN HISTORY 65 (Peter Hinks & John McKivigan eds., 2007).

41. *Id.*

42. *Id.* at 64-65.

## II. The *Kafala* System

Around the time that slavery was abolished in several of the GCC states, a new system for procuring foreign labor was created. The *kafala* system set up by the GCC countries in the 1950s<sup>43</sup> requires a migrant worker to be sponsored by a citizen or government agency; sponsorship is the only means for workers to obtain an entry visa and residence permit.<sup>44</sup> The sponsor assumes legal and financial responsibility for the migrant worker during a temporary contract period—typically two years—and signs a document from the Ministry of Labor to that effect.<sup>45</sup> Because the system requires that an employee work only for the sponsor, many sponsors take away their migrant workers' passports and identification cards, making it unlikely that the migrants will leave.<sup>46</sup> If workers do decide to leave their sponsors, another stiff monetary penalty immediately awaits them: The workers must leave the country immediately at their own expense instead of having their employers cover their return airfare at the end of their contract.<sup>47</sup>

The sponsorship system provides the GCC governments with a “means to regulate labor flows in and out of the country”<sup>48</sup> by allowing them to accept large numbers of temporary workers during an economic boom and to expel them during less prosperous periods.<sup>49</sup> While this characteristic of the system is no different from many other guest worker programs throughout the world, the uniqueness of the sponsorship system's near total control over workers plays a large role in setting the GCC countries apart from other large labor-importing countries.<sup>50</sup> Onn Winckler has identified five distinct ways in which the GCC migration system differs “quite radically” from other patterns of migration, which should be taken into account when considering possible reforms of the system: 1) no citizenship available for workers; 2) lack of employment stability; 3) permanent settlement not sought by workers; 4) migrant workers constitute majority of the workforce; 5) sweeping interest of GCC citizens in cheap foreign labor.<sup>51</sup>

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43. MARTIN BALDWIN-EDWARDS, *LABOUR IMMIGRATION AND LABOUR MARKETS IN THE GCC COUNTRIES: NATIONAL PATTERNS AND TRENDS* 36 (2011), available at <http://www2.lse.ac.uk/government/research/resgroups/kuwait/documents/Baldwin-Edwards,%20Martin.pdf>.

44. *Id.*, at 37.

45. *Id.*; Nora Ann Colton, *The International Political Economy of Gulf Migration*, in THE MIDDLE EAST INSTITUTE, *VIEWPOINTS: MIGRATION AND THE GULF* 35 (2010), available at <http://www.mei.edu/content/migration-and-gulf>; Michele Ruth Gamburd, *Sri Lankan Migration to the Gulf: Female Breadwinners—Domestic Workers*, in THE MIDDLE EAST INSTITUTE, *VIEWPOINTS: MIGRATION AND THE GULF* 13 (2010), available at <http://www.mei.edu/content/migration-and-gulf>.

46. Colton, *supra* note 45.

47. BALDWIN-EDWARDS, *supra* note 43, at 37.

48. Colton, *supra* note 45, at 35.

49. BALDWIN-EDWARDS, *supra* note 43, at 37.

50. POLITICAL LIBERALIZATION IN THE PERSIAN GULF 61–66 (Joshua Teitelbaum ed., 2009).

51. *Id.*

*No citizenship available*

In Western-style migration, migrant workers are often joined by their families after a few years and eventually become citizens of the host country.<sup>52</sup> In contrast, it is almost impossible for migrant workers in GCC countries to become citizens and strict limits on the entry of family members have been imposed since the 1980s.<sup>53</sup>

*Lack of employment stability*

Despite the fact that migrant workers have a defined contract period with their sponsors and a good working relationship with them, they can still be deported from GCC countries without prior notice. This became abundantly clear to outside observers after the 1990-91 Gulf crisis, during which nearly all of the Palestinian and Jordanian workers in Kuwait and Saudi Arabia and the Yemeni workers in Saudi Arabia were deported because of their countries' support of Iraq.<sup>54</sup> While local NGOs in Western labor-importing countries work to protect foreign workers from the authorities and employers, immigrant advocacy organizations largely do not exist in GCC countries.<sup>55</sup>

*Permanent settlement not sought*

While the aim of many migrant workers in Western countries such as the United States is to become citizens of the host country, the typical migrant worker heading to GCC countries goes only with the expectation to earn as much money as possible before returning to his or her home country.<sup>56</sup> GCC societies are still based on a kinship system, which prevents outsiders from easily integrating into a "long tribal tradition of buying loyalty and allegiance" through tribal leaders distributing favors and benefits to their networks.<sup>57</sup> Workers often live segregated and isolated lives either in labor camps outside major cities or in private households.<sup>58</sup>

*Migrant workers constitute majority of the workforce*

While migrant workers represent on average less than 10 percent of the total workforce in Western labor-importing countries, they have made up the vast majority of the workforce in the GCC countries since the mid-1970s.<sup>59</sup> In 2004, migrant workers outnumbered Qataris in every eco-

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52. *Id.* at 60.

53. *Id.* at 62.

54. *Id.*

55. *Id.* at 63.

56. *Id.*

57. *Id.* at 66.

58. *Id.* According to Qatar's 1997 census, 116,774 migrant workers were living in work camps.

59. *Id.* at 64.



conomic sector aside from public administration.<sup>60</sup> According to estimates from the ILO, Arab states host around 22 million migrant workers, a third of whom are domestic workers.<sup>61</sup> Around 1.5 million domestic workers are working in Saudi Arabia alone.<sup>62</sup> In Qatar, the United Arab Emirates, and Kuwait, foreigners also represent the vast majority of each country's total population.<sup>63</sup> Granting citizenship to GCC migrants on a large scale would turn the native populations into a minority and signal the end of the countries' Arab-Islamic identity.<sup>64</sup>

*Sweeping interest in cheap foreign labor*

In many countries, importing cheap foreign labor is only truly in the interest of the economic elite, while many low-wage citizen workers express concerns about competition for jobs.<sup>65</sup> In the GCC countries, however, the availability of cheap foreign labor enables the GCC middle class to employ foreign workers in private businesses and in their homes, while the employment of citizens for many years was almost guaranteed in the public sector.<sup>66</sup> Cheap migrant workers have helped to create a very high standard of living for GCC citizens; servant quarters are even commonplace in housing projects built for lower-income citizens.<sup>67</sup> In the United Arab Emirates, for example, it has been estimated that 96 percent of Emirati families employ domestic workers to take care of their children, and that these workers perform 80 percent of parental responsibilities.<sup>68</sup>

Many citizens have also directly benefited from the *kafala* system by serving as a sponsor to migrant workers without even employing them. In 1996, a newspaper reported that a United Arab Emirates citizen could earn as much as \$1,360 by supplying visas to migrant workers and sponsoring them.<sup>69</sup>

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60. GABRIELLA GONZALEZ ET. AL, FACING HUMAN CAPITAL CHALLENGES OF THE 21ST CENTURY: EDUCATION AND LABOR MARKET INITIATIVES IN LEBANON, OMAN, QATAR, AND THE UNITED ARAB EMIRATES 51 (2008).

61. ILO Press Release, *supra* note 33.

62. *Id.*

63. Qatar, the United Arab Emirates, and Kuwait are the three countries with the highest proportion of international migrants in 2010. Migrants made up 87 percent of Qatar's population, 70 percent of the United Arab Emirates', and 69 percent of Kuwait's. BARRY MIRKIN, UNITED NATIONS DEVELOPMENT PROGRAMME, ARAB HUMAN DEVELOPMENT REPORT RESEARCH PAPER SERIES, POPULATION LEVELS, TRENDS, AND POLICIES IN THE ARAB REGION: CHALLENGES AND OPPORTUNITIES 17 (2010).

64. POLITICAL LIBERALIZATION IN THE PERSIAN GULF, *supra* note 50, at 64.

65. *Id.* at 64-65.

66. *Id.* at 65.

67. Ingo Forstenlechner & Emilie Jane Rutledge, *The GCC's 'Demographic Imbalance': Perceptions, Realities and Policy Options*, 18 MIDDLE EAST POLICY 25, 30 (2011), available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1475-4967.2011.00508.x/abstract>.

68. *Id.*

69. POLITICAL LIBERALIZATION IN THE PERSIAN GULF, *supra* note 50, at 65.

### III. GCC's Other Obstacles to Ratification

#### A. Exclusion from Labor Law Coverage

In 2008, Jordan became the first Arab country to amend its labor law to extend protections to domestic workers.<sup>70</sup> Under regulations passed in 2009, domestic workers must be given eight hours of continuous rest per day, limited to 10 hours of work per day, and granted one day off per week.<sup>71</sup> Jordan's new domestic worker protections, however, still lag behind other countries' efforts in several aspects.<sup>72</sup> For example, Singapore passed new provisions in 2009 which stipulate that employers stand to lose a security bond worth \$5,000 (U.S. dollars) for every migrant worker under their employment that they fail to pay on time.<sup>73</sup> Singapore's government, in contrast to Jordan's, also has a proven track record of enforcing those provisions, prosecuting employers who fail to pay their workers on time or who provide sub-standard accommodations to them.<sup>74</sup> As of yet, no GCC countries have followed Jordan's lead.

Saudi Arabia's Shura Council, an appointed consultative body, passed a bill in 2009 that would provide some legal protection to domestic workers.<sup>75</sup> The bill must still be approved by the king and the cabinet before it becomes law.<sup>76</sup> It would require employers to give domestic workers suitable accommodations, at least nine hours of rest each day and breaks.<sup>77</sup> Domestic workers would have a legal duty under the law to obey their employers' orders and would be prohibited from leaving their employer without a "legitimate reason."<sup>78</sup>

In Kuwait, a new private sector labor law still excludes domestic workers from protection.<sup>79</sup> The Minister of Social Affairs and Labor announced in early 2010 that a draft bill on domestic workers was expected to be ratified that May,<sup>80</sup> but that expectation has not been fulfilled yet. Domestic workers were also excluded from a new decree establishing maximum allowable work hours per week.<sup>81</sup>

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70. HUMAN RIGHTS WATCH, DOMESTIC PLIGHT: HOW JORDANIAN LAW, OFFICIALS, EMPLOYERS, AND RECRUITERS FAIL ABUSED MIGRANT DOMESTIC WORKERS 27 (2011).

71. *Id.*

72. *Id.* at 28.

73. *Id.*

74. *Id.*

75. Press Release, Human Rights Watch, Saudi Arabia: Shura Council Passes Domestic Worker Protections (July 10, 2009), available at <http://www.hrw.org/news/2009/07/10/saudi-arabia-shura-council-passes-domestic-worker-protections>.

76. *Id.*

77. *Id.*

78. *Id.*

79. Act No. 6 of Feb. 10, 2010 (Kuwait) [hereinafter Labor Law of Kuwait]; see *Draft Bill on 'Domestic Labour' Expected to Be Ratified in May*, ARAB TIMES (Feb. 9, 2010), <http://www.arabtimesonline.com/NewsDetails/tabid/96/smld/414/ArticleID/149384/refTab/69/Default.aspx>.

80. *Draft Bill on 'Domestic Labour' Expected to be Ratified in May*, *supra* note 79.

81. U.S. DEP'T OF STATE, 2011 TRAFFICKING IN PERSONS REPORT—KUWAIT (2011), available at <http://www.unhcr.org/refworld/docid/4e12ee6b32.html>.

Qatar's National Human Rights Committee noted in a 2010 report that a draft domestic workers law had been "under consideration for a long time" and that it is still waiting for the law to be enacted.<sup>82</sup> The United Arab Emirates is "drawing up new laws and regulations covering the rights of housemaids," which is under the purview of the Ministry of Interior, but no further details have been released.<sup>83</sup>

## B. Freedom of Movement

Although women across the region have gained more freedom to travel independently over the past several years, their movement is still restricted by societal norms and traditional interpretations of Shari'a (Islamic law).<sup>84</sup> In one highly-publicized example from Qatar, a member of the ruling family was kidnapped in 2002 after marrying an Egyptian in Egypt without her family's permission. After being detained by police for several months, Hamda Fahad Jassem al-Thani was transferred to her family's home in 2003, where she remained under house arrest until being hospitalized in 2006 following an escape attempt. At that point, members of the National Human Rights Committee and other officials secured travel documents, so that al-Thani could return to her husband in Egypt.<sup>85</sup>

Qatari employers often restrict domestic workers' freedom of movement. Employers must give their "consent before exit permits are issued to foreign workers wishing to leave the country."<sup>86</sup> The National Human Rights Committee, an arm of the government, reported in 2006 that more than 250 non-Qatari women were detained in a detention center in "unhealthy conditions." While some of the women were detained to provide them shelter or as a step towards being deported, others were kept in detention at the request of their sponsors due to disputes between them.<sup>87</sup>

In Saudi Arabia, employers routinely take their employees' passports on arrival and lock domestic workers in at night, thereby preventing them "from traveling outside their town of residence or leaving the country of their own volition."<sup>88</sup> Prohibited from driving themselves, working women often must resort to walking on the streets, where they may be arrested by the country's religious police for allegedly soliciting sex.<sup>89</sup>

Although Article 29 of the Constitution of the United Arab Emirates guarantees all citizens freedom of movement and residence within the lim-

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82. NATIONAL HUMAN RIGHTS COMMITTEE, ANNUAL REPORT HUMAN RIGHTS STATUS IN QATAR 100 (2010), available at <http://www.nhrc-qa.org/resources/userfiles/FINAL%20NHRC%20ANNUAL%20REPORT%202010.pdf>.

83. Ramona Ruiz & Habiba Hamid, *UAE Votes for New Charter of Rights for Domestic Workers*, NATIONAL (June 22, 2011), <http://www.thenational.ae/news/uae-news/uae-votes-for-new-charter-of-rights-for-domestic-workers?pageCount=0>.

84. PROGRESS AMID RESISTANCE, *supra* note 36, at 14.

85. *Id.* at 407.

86. *Id.* at 406.

87. NATIONAL HUMAN RIGHTS COMMITTEE, THE SITUATION OF HUMAN RIGHTS IN QATAR 32 (2006), available at <http://www.nhrc-qa.org/resources/userfiles/NHRC-AnnualReport-2006.pdf>.

88. PROGRESS AMID RESISTANCE, *supra* note 36, at 432.

89. *Id.*

its of law,<sup>90</sup> some restrictions on freedom of movement for both Emirati and foreign women still exist. According to custom, a man may prevent his wife, adult unmarried daughters, and children from traveling without his permission by confiscating their passports. Domestic workers and other foreign women are also not protected by Article 29, “an oversight that employers often exploit by illegally confiscating their passports.”<sup>91</sup>

### C. Freedom of Association

An international union federation described Bahrain’s labor laws as “the most advantageous” in the Gulf after the Workers’ Trade Union Law of 2002 established the right to belong to a union there.<sup>92</sup> Domestic workers do not have that right, however.<sup>93</sup> Although most other migrant workers have been granted the right to organize, “they fear losing their jobs.”<sup>94</sup> Moreover, the language barrier makes it difficult to convince them to join a union.<sup>95</sup>

In Kuwait, a new labor code regulating work in the private sector was enacted in 2010.<sup>96</sup> Only one general union, the Kuwait Trade Union Federation, is permitted, and only Kuwaiti workers can be members.<sup>97</sup> In Oman, a 2006 law allowed for the formation of labor and trade unions and founded the General Labor Union.<sup>98</sup>

In 2004, Qatar passed a new labor code, which allows one trade union—the General Union of Workers of Qatar—to be formed.<sup>99</sup> Neither government employees nor non-Qatari workers are allowed to organize.<sup>100</sup> Human rights organizations such as the Migrant Workers Protection Society exist in Qatar, but their finances and activities are closely monitored.<sup>101</sup> All organizations are also “prohibited from participating in undefined ‘political issues.’”<sup>102</sup>

In the United Arab Emirates, Article 33 of the constitution guarantees freedom of assembly and association “within the limits of law.”<sup>103</sup> In practice, “unions are banned and all public gatherings require government per-

90. CONSTITUTION, art. 29 (U.A.E.).

91. PROGRESS AMID RESISTANCE, *supra* note 36, at 523.

92. Law No. 33 of 2002 (Bahr.); *Spotlight Interview with Salman Jaffar Al Mahfoodh (Bahrain-GFBTU)*, *supra* note 35.

93. *Spotlight Interview with Salman Jaffar Al Mahfoodh (Bahrain-GFBTU)*, *supra* note 35.

94. *Id.*

95. *Id.*

96. Labor Law of Kuwait, *supra* note 79.

97. INT’L TRADE UNION CONFEDERATION, ANNUAL SURVEY OF VIOLATIONS OF TRADE UNION RIGHTS—KUWAIT (2011), available at <http://survey.ituc-csi.org/Kuwait.html>.

98. Royal Decree No. 74 of 2006 (Oman), available at <http://www.mola.gov.om/legals/al3amal/amd1.pdf> (in Arabic).

99. Labour Law of Qatar, art. 116, available at [http://www.qatarembassy.net/Qatar\\_Labour\\_Law.asp](http://www.qatarembassy.net/Qatar_Labour_Law.asp).

100. INT’L TRADE UNION CONFEDERATION, ANNUAL SURVEY OF VIOLATIONS OF TRADE UNION RIGHTS—QATAR (2011), available at <http://survey.ituc-csi.org/Qatar.html>.

101. PROGRESS AMID RESISTANCE, *supra* note 36, at 403.

102. *Id.*

103. CONSTITUTION, art. 33 (U.A.E.).

mits.”<sup>104</sup> Since 2002, Saudi workers have had the right to set up workers’ committees, but there is no right to form a union. Foreign workers are not allowed to serve on workers’ committees.<sup>105</sup>

#### D. Sexual Harassment and Violence Against Women

None of the GCC countries offer specific protections against domestic violence.<sup>106</sup> General practices and customs in these six countries pose major obstacles to the protection of women inside the home.<sup>107</sup> Studies indicate that 30 percent of Bahraini women experience some sort of domestic abuse, but domestic violence “is usually covered up and kept within the family.”<sup>108</sup> Police are also often reluctant to get involved in family matters when women do file complaints.<sup>109</sup> A girl in Saudi Arabia, for example, sought protection from police after being sexually molested by her father and was told that her father had to file the complaint for her.<sup>110</sup>

Sexual harassment is punishable by imprisonment and fines under Article 294 of the penal code of Qatar, “which the public prosecutor has invoked against men who harass women with obscene gestures or phone calls.”<sup>111</sup> In 2006, however, there were only eight reported cases of sexual harassment, five of which resulted in convictions.<sup>112</sup> During a two-day seminar in 2008, a representative of Qatar’s Supreme Council for Family Affairs called on the country “to address violence against women openly and without shame.”<sup>113</sup>

#### E. Minimum Wage Protection

Estimates based on available data show that domestic work is one of the lowest paid occupations in any labor market.<sup>114</sup> In Qatar, domestic workers are paid less than 30 percent of the country’s average wage, while domestic workers in Bahrain earn closer to 20 percent what the average worker earns.<sup>115</sup> The Domestic Workers Convention requires countries to set a minimum wage for domestic workers if a minimum wage exists for other workers.<sup>116</sup> Twenty-five countries already provide minimum wage protection for domestic workers at the same rate as workers generally,

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104. PROGRESS AMID RESISTANCE, *supra* note 36, at 535.

105. INT’L TRADE UNION CONFEDERATION, ANNUAL SURVEY OF VIOLATIONS OF TRADE UNION RIGHTS—SAUDI ARABIA (2011), available at <http://survey.ituc-csi.org/Saudi-Arabia.html>.

106. PROGRESS AMID RESISTANCE, *supra* note 36, at 9.

107. *Id.*

108. *Id.* at 69.

109. *Id.*

110. *Id.*

111. Penal Code of Qatar, art. 294.

112. PROGRESS AMID RESISTANCE, *supra* note 36, at 413.

113. *Id.* at 409.

114. MARTIN OELZ, ILO, DOMESTIC WORK POLICY BRIEF NO. 1: REMUNERATION IN DOMESTIC WORK 1 (2011), available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_155654.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_155654.pdf).

115. *Id.*

116. Domestic Workers Convention, *supra* note 22, art. 11.

“which is desirable from an equality perspective.”<sup>117</sup> Another 18 countries have established a separate sector/occupational minimum wage rate for domestic workers.<sup>118</sup> None of the GCC countries appear on either list.<sup>119</sup>

Kuwait increased the minimum wage for workers in the private sector to \$210 per month in 2010. This new provision still excludes Kuwait’s domestic workers and does not establish mechanisms to monitor the implementation of the rule by businesses.<sup>120</sup>

Oman has a minimum wage applicable to its citizens, but it does not cover a number of occupations or businesses employing fewer than five persons.<sup>121</sup> No minimum wage has been set for foreign workers.<sup>122</sup>

Minimum wage laws in the United Arab Emirates apply only to employees with at least a secondary school education, which is already a requirement for many domestic workers.<sup>123</sup> The laws also only apply to workers whose employment is regulated by the Ministry of Labor.<sup>124</sup> Domestic workers, however, fall under the purview of the Ministry of Interior.<sup>125</sup>

According to media reports, Qatar is mulling plans to introduce a minimum wage in an effort to boost productivity.<sup>126</sup> A 2011 decree issued by the deputy emir already raised salary, pension and benefits for state employees by 60 percent; military officers received a 120 percent increase in basic salaries and benefits.<sup>127</sup> That salary increase has widened the fixed pay gap between Qatari nationals, who mostly work for the govern-

117. OELZ, *supra* note 114, at 3-4. The twenty-five countries that provide domestic workers with the same minimum wage protection they give to other workers are Bolivia, Brazil, Bulgaria, Burkina Faso, Chile, Colombia, Czech Republic, Ecuador, Estonia, France, Ireland, Kazakhstan, Latvia, Moldova, Netherlands, Paraguay, Portugal, Russia, Romania, Spain, Trinidad and Tobago, Turkey, United Kingdom, United States, and Venezuela.

118. *Id.* The eighteen countries providing a separate sector or occupational rate for domestic workers are Argentina, Austria, Barbados, Botswana, Costa Rica, Jordan, Kenya, Mali, Nicaragua, Niger, Philippines, Senegal, South Africa, Switzerland, United Republic of Tanzania, Uruguay, Zambia, and Zimbabwe.

119. *Id.* Saudi Arabia, however, just announced in April that it has decided to set a minimum wage of 600-800 riyals (\$160 to \$213 U.S. dollars) for foreign domestic workers. It also set recruitment fees paid by employers at 15,000 to 17,000 riyals. Recruitment fees will cover the cost of a visa, two years of medical insurance, a one-way ticket, residential permit fees, and a medical checkup for domestic workers. Claire Valdini, *Saudi Sets Min Wage for Domestic Workers*, ARABIAN BUS. (Apr. 1, 2012), <http://www.arabianbusiness.com/saudi-sets-min-wage-for-domestic-workers-452156.html>.

120. U.S. DEP’T OF STATE, 2011 TRAFFICKING IN PERSONS REPORT—KUWAIT (2011), *available at* <http://www.unhcr.org/refworld/docid/4e12ee6b32.html>.

121. U.S. DEP’T OF STATE, 2009 HUMAN RIGHTS REPORT: OMAN, *available at* <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136077.htm>.

122. *Id.*

123. Ruiz & Hamid, *supra* note 83.

124. *Id.*

125. *Id.*

126. Andy Sambidge, *Qatar Mulls Plan to Bring in Minimum Wage*, ARABIAN BUS. (Oct. 28, 2011), <http://www.arabianbusiness.com/qatar-mulls-plan-bring-in-minimum-wage-427543.html>.

127. *Id.*

ment, and foreign workers to 98 percent.<sup>128</sup>

#### F. Maternity Leave

Only three industrialized countries—Japan, Canada, and the United States—do not mandate maternity leave protection for their domestic workers.<sup>129</sup> A minimum 12-week compulsory leave period is provided in the overwhelming majority of ILO member states, while many industrialized countries are moving towards the 14-week minimum established in the Maternity Protection Convention.<sup>130</sup> Despite this trend towards extending maternity protection to domestic workers in recent years, over one-third of the world's domestic workers still have no legal entitlement to maternity leave.<sup>131</sup> Among them are 13.3 million domestic workers in Asia and 1.3 million in the Middle East.<sup>132</sup>

In the GCC countries, many domestic workers would not have the opportunity to take advantage of maternity leave protection even if the privilege were extended to them. Domestic workers arriving in Bahrain, for example, are subjected to mandatory sexual and reproductive health testing without consent or counseling.<sup>133</sup> A 2008 report authored by the Bahrain Centre for Human Rights states that there is no data yet on exactly how the issue of pregnancy is handled by employers,<sup>134</sup> but many countries use general health testing upon arrival to screen out migrant workers with unwanted diseases or pregnancies.<sup>135</sup> The Singapore Ministry of Manpower has stated that the purpose of its pregnancy test is to identify foreign domestic workers who might give birth while in the country, which “would contravene the work permit regulations.”<sup>136</sup>

Women generally in the GCC countries are entitled to significantly less paid maternity leave after giving birth than women in many Western countries.<sup>137</sup> On average, they are entitled to less than two months of paid leave after giving birth, while many Western countries provide six

128. *Id.*

129. ILO, REPORT IV(1): DECENT WORK FOR DOMESTIC WORKERS 64 (2010), available at [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meeting\\_document/wcms\\_104700.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meeting_document/wcms_104700.pdf) [hereinafter Report IV(1)] (fourth item on the agenda from the 99th Session of the International Labour Conference).

130. *Id.* at 65.

131. MALTE LUEBKER ET AL., ILO, DOMESTIC WORK POLICY BRIEF NO. 5: COVERAGE OF DOMESTIC WORKERS BY KEY WORKING CONDITIONS LAWS 5 (2011), available at [http://www.ilo.org/wcmsp5/groups/public/--ed\\_protect/--protrav/--travail/documents/publication/wcms\\_157509.pdf](http://www.ilo.org/wcmsp5/groups/public/--ed_protect/--protrav/--travail/documents/publication/wcms_157509.pdf).

132. *Id.*

133. BAHRAIN CENTRE FOR HUMAN RIGHTS, THE SITUATION OF WOMEN MIGRANT DOMESTIC WORKERS IN BAHRAIN: REPORT SUBMITTED TO THE 42ND SESSION OF THE CEDAW COMMITTEE 5 (2008), available at <http://www.fidh.org/IMG/pdf/bchrbahrain42.pdf>.

134. *Id.*

135. Report IV(1), *supra* note 129, at 52.

136. *Id.*

137. Elizabeth Broomhall, *Women Split on Gulf Maternity Leave Policies*, ARABIAN BUS. (Nov. 22, 2011), <http://www.arabianbusiness.com/women-split-on-gulf-maternity-leave-policies-431273.html>.

months.<sup>138</sup> Bahrain only recently increased its maternity leave policy from 35 to 60 working days back in 2005.<sup>139</sup>

#### G. Remuneration Established Without Discrimination Based on Sex

Women throughout the region earn less than men despite labor laws mandating equal pay for similar work.<sup>140</sup> Article 13 of the Bahraini constitution, for example, provides equal rights and opportunities to all workers.<sup>141</sup> A recent study, however, found that men, taken as a group, earn more than women. The average monthly salary for men employed in the public sector is 706 dinars (\$1872), while women earn 643 dinars (\$1,705).<sup>142</sup> The gender gap is even greater in the private sector, which employs most migrant workers: women earn an average monthly salary of 307 dinars (\$814), while men earn 454 dinars (\$1,204). Women also tend to experience harsher treatment than men in similar positions.<sup>143</sup> There is increased awareness in Bahrain in recent years about gender discrimination issues, however, and this awareness is exemplified by a government employee filing the first gender discrimination case in 2005 after she was denied a promotion because of her gender.<sup>144</sup> The case was still pending in 2010.<sup>145</sup>

Women and men performing the same type of work within the private sector must be paid equal wages under Article 26 of Kuwait's labor law.<sup>146</sup> However, the Ministry of Social Affairs and Labor "lacks qualified staff to handle and investigate discrimination cases, and it has been swamped by a deluge of complaints that has rendered its work almost ineffectual."<sup>147</sup> In 2007, MOSAL received 14,840 complaints about unpaid wages and benefits from expatriate workers.<sup>148</sup>

In Qatar, Article 93 of the labor law mandates equal pay for men and women if they perform the same work and an equal opportunity for training and promotion.<sup>149</sup> The National Human Rights Committee, however, has found that employers violate the principle of equal pay for equal work in providing benefits to employees, such as housing allowances.<sup>150</sup>

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138. *Id.*

139. PROGRESS AMID RESISTANCE, *supra* note 36, at 74.

140. *Id.* at 7.

141. CONSTITUTION, art. 13 (Bahr.).

142. PROGRESS AMID RESISTANCE, *supra* note 36, at 73.

143. *Id.*

144. *Id.* at 74.

145. *Id.*

146. Labor Law of Kuwait, *supra* note 79, art. 26.

147. PROGRESS AMID RESISTANCE, *supra* note 36, at 236.

148. *Id.*

149. Labour Law of Qatar, art. 93, available at [http://www.qatarembassy.net/Qatar\\_Labour\\_Law.asp](http://www.qatarembassy.net/Qatar_Labour_Law.asp).

150. NATIONAL HUMAN RIGHTS COMMITTEE, *supra* note 87, at 28.



## H. Equal Access to the Courts

Women's access to justice remains weak due to the longstanding tradition that women seek mediation through their family before turning to the courts, the patriarchal attitudes of many male judges, and the fact that in most countries a woman's testimony is still worth only half that of a man's in certain areas of law.<sup>151</sup> While the criminal procedure code of Kuwait does provide all residents with equal access to courts and entitles them to a court-assigned lawyer and an interpreter, mechanisms to ensure the enforcement of judicial decisions remain weak.<sup>152</sup> Most domestic workers in Kuwait are unaware of their legal rights.<sup>153</sup>

Although Saudi Arabia ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 2000, it made reservations stating that the kingdom is under no obligation to observe terms of the treaty that contradict Islamic law.<sup>154</sup> The CEDAW Committee's 2008 report reviewing Saudi Arabia's compliance with the convention called on the country to enact a gender equality law.<sup>155</sup> Dr. Musfir al-Qahtani, deputy chairman of the Saudi National Society for Human Rights, responded by saying that laws on marriage, inheritance, and women's testimony "are fixed by religious law, and are, by implication, non-negotiable."<sup>156</sup> A majority of Saudi citizens do not view inequalities between men and women as discrimination, but instead "as equivalence—a balance between the rights and duties of men and women as prescribed in Islam and necessary to uphold honor and family values."<sup>157</sup>

## I. ILO Core Labor Standards

The Domestic Workers Convention (DWC) requires ratifying countries to respect and protect fundamental principles and rights at work, including freedom of association and the right to collective bargaining, the elimination of all forms of forced or compulsory labor, the abolition of child labor, and the elimination of employment and occupational discrimination.<sup>158</sup> These fundamental principles enshrined in the DWC are taken directly from the ILO's landmark "Declaration on Fundamental Principles and Rights at Work" adopted in 1998.<sup>159</sup> All ILO members have an obligation arising from membership in the organization "to respect, to promote

151. *Id.* at 5.

152. *Id.* at 227.

153. *Id.*

154. Committee on the Elimination of Discrimination Against Women, Concluding Comments on Saudi Arabia, 40th Sess., Jan. 14–Feb. 1, 2008, U.N. Doc. CEDAW/C/SAU/CO/2 (Apr. 8, 2008), available at [http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.SAU.CO.2\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.SAU.CO.2_en.pdf).

155. *Id.* ¶ 12.

156. PROGRESS AMID RESISTANCE, *supra* note 36, at 430.

157. *Id.* at 425.

158. Domestic Workers Convention, *supra* note 22, at arts. 3–4, 11.

159. JAMES ATLESON ET AL., INTERNATIONAL LABOR LAW: CASES AND MATERIALS ON WORKERS' RIGHTS IN THE GLOBAL ECONOMY 59 (2008).

and to realize” the fundamental principles.<sup>160</sup> This obligation applies even if a country has not ratified all of the core conventions.<sup>161</sup> Although member countries are not required to ratify these eight conventions, every year they must complete an annual report on one of the standards.<sup>162</sup> None of the GCC countries has ratified all eight of these conventions.<sup>163</sup>

#### IV. Reforming GCC’s *Kafala* System to Provide Rights to Domestic Workers

Despite a growing consensus that the *kafala* system contributes to widespread abuse of domestic workers, “change in this area has moved at a glacial pace.”<sup>164</sup> For the past 10 years, Saudi Arabia had been considering a proposal to transfer sponsorship to three or four large recruitment agencies to better monitor the recruitment process.<sup>165</sup> In July, however, the Labor Ministry announced scaled back guidelines requiring new recruitment companies to be set up by merging a minimum of five existing agencies.<sup>166</sup>

Kuwait announced, but did not fulfill, a commitment to reform its sponsorship system by February 2011.<sup>167</sup> Only a day after the Kuwaiti labor minister first announced the government’s intention to cancel the system, another labor ministry official told media network Al Jazeera that the government would instead just amend the system to make it easier for workers to transfer sponsors.<sup>168</sup> The government had originally said it would cancel the system as a “gift” to expatriates to mark the anniversary of the country’s liberation from the 1991 Iraqi occupation.<sup>169</sup>

The Kuwaiti government is now considering a proposal to shift all sponsorship of migrant workers to one public-private recruitment agency that would be monitored by a set of shareholders.<sup>170</sup> If the country puts proper enforcement mechanisms in place, this would be a welcome change that could curb many of the documented abuses of workers that recruit-

160. *Id.* at 60.

161. *Id.*

162. *Id.* at 63.

163. Kuwait has ratified seven of the eight ILO core labor standards, making it the GCC country with the highest number of core labor standard ratifications. Bahrain and Oman are tied for the least number of ratifications at four each. Melani Cammett & Marsha Pripstein Posusney, *Labor Standards and Labor Market Flexibility in the Middle East: Free Trade and Freer Unions?*, 45 *STUDIES IN COMP. INT’L DEV.* 250, 260 (2010).

164. Nisha Varia, ‘Sweeping Changes?’ *A Review of Recent Reforms on Protections for Migrant Domestic Workers in Asia and the Middle East*, 23 *CAN. J. WOMEN & L.* 265, 268 (2011).

165. *Id.* at 279.

166. Galal Fakkar, *Recruitment Agencies Told to Merge Under New Rules*, *ARAB NEWS* (July 9, 2011), <http://arabnews.com/saudi-arabia/article468996.ece>.

167. *Kuwait: Government Pledges to End Sponsorship System*, *HUMAN RIGHTS WATCH* (Sept. 28, 2010), <http://www.hrw.org/news/2010/09/28/kuwait-government-pledges-end-sponsorship-system>; Varia, *supra* note 164, at 279.

168. Jamie Etheridge, *Kuwait Sparks Confusion with Labor U-turn*, *FIN. TIMES* (Oct. 18, 2010), <http://www.ft.com/cms/s/0/063fe278-dad5-11df-a5bb-00144feabdc0.html>.

169. *Id.*

170. Varia, *supra* note 164, at 279.

ment agencies perpetuate.<sup>171</sup> A public-private partnership, if structured effectively, would provide for improved statistical tracking of all non-nationals, serve as the actual employer for domestic workers, help ensure that only qualified child-care providers are recruited, and impose a minimum wage.<sup>172</sup> The public-private partnership could also place a limit on the number of domestic workers per household, and serve as an arbitrator in labor disputes.<sup>173</sup>

Instead of instituting comprehensive reforms to labor laws or the *kafala* system, some governments have provided labor protections through unified standard employment contracts or through bilateral agreements, such as those between Indonesia and Jordan, Sri Lanka and the United Arab Emirates, and the Philippines with several countries.<sup>174</sup> These standard employment contracts and agreements vary in their level of protections, but fall short of international labor standards.<sup>175</sup>

Both of these methods of reform typically contain provisions focusing primarily on recruiting logistics and specify terms of employment that are weaker than those provided in national labor laws.<sup>176</sup> Examples of weak contracts and agreements abound. Indonesia and Malaysia signed a bilateral agreement in 2006 that fails to protect domestic workers' right to hold on to their passports.<sup>177</sup> Singapore introduced a unified standard contract for domestic workers in 2006 that provides for a minimum of only one rest day for month, does not limit working hours, and fails to cap salary deductions for payment of recruitment fees.<sup>178</sup>

Although labor-sending countries rely on these bilateral agreements for the protections they embody, they are useless if government officials in receiving countries make no effort to enforce them. A Filipino diplomat recently told Human Rights Watch that Jordanian officials made no effort "at all" to force recruitment agencies to submit contracts to his embassy for validation as required under their bilateral agreement.<sup>179</sup>

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171. *Id.* at 271–76. In their home countries, recruitment brokers may give domestic workers misleading information about their employment abroad or charge them excessive recruitment fees that leave them indebted. Private recruitment agencies also often play a role in formulating or administering contracts with employers and in resolving labor disputes.

172. Ingo Forstenlechner & Emilie Jane Rutledge, *The GCC's 'Demographic Imbalance': Perceptions, Realities and Policy Options*, 18 MIDDLE EAST POL'Y 25, 34 (2011), available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1475-4967.2011.00508.x/abstract>.

173. *Id.*

174. Varia, *supra* note 164, at 275.

175. *Id.*

176. Nisha Varia, *Sanctioned Abuses: The Case of Migrant Domestic Workers*, 14 HUM. RTS. BRIEF 17, 18 (2007), available at <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1227&context=hrbrief>.

177. *Id.*

178. *Id.*

179. *Domestic Plight: How Jordanian Law, Officials, Employers, and Recruiters Fail Abused Migrant Domestic Workers*, HUM. RTS. WATCH (Sept. 2011), <http://www.hrw.org/sites/default/files/reports/jordan0911webwcover.pdf>.

Despite this shoddy record of enforcement, Jordan is still viewed as the leader of reforms in the region because it was the first Arab country to amend its labor law to extend protections to domestic workers in 2008.<sup>180</sup> A recent Human Rights Watch report highlights the obvious fact that merely extending labor law protections to domestic workers without putting in place mechanisms to enforce those protections will result in few substantive changes for those living in fear of constant abuse.<sup>181</sup> Human Rights Watch recommended that Jordan's Ministry of Labor institute a slew of additional reforms, including taking specific steps to ensure that both employers and domestic workers are well-informed about their rights and obligations under Jordanian law.<sup>182</sup> Providing mandatory orientations for both domestic workers and employers prior to commencing their contracts would ensure that laws on the book become common knowledge, while improving the capacity and training of labor inspectors to monitor both employers and recruitment agencies will help confirm that these laws are being followed.<sup>183</sup>

#### A. Extend Labor Law Coverage to Include Domestic Workers

GCC countries should move forward with efforts to follow Jordan's lead by extending labor law coverage to domestic workers, because these laws will put in place a framework for much needed oversight by labor ministries and allow for greater access to enforcement mechanisms such as labor courts.<sup>184</sup> GCC countries must also make a commitment to addressing other obstacles to ratification that are rooted in widespread discrimination against women. Domestic workers will continue to be subjected to a myriad of abuses as long as women in these countries are restricted in their freedom of movement, not protected against sexual harassment and domestic violence, not recognized as equals before courts, and paid less for work of equal value.

#### B. Encourage the Formation of Women's Rights-Oriented NGOs

Over the past several years, women have gained more political rights in all of the GCC countries. International human rights organizations and local NGOs that exist should encourage women elected to parliaments and advisory bodies or appointed to cabinet and diplomatic posts to advocate openly for women's rights. In Kuwait, four women were elected to parliament in 2009, a first for the country.<sup>185</sup> In Oman, Bahrain, Qatar and the United Arab Emirates, an increasing number of women have been appointed to unelected positions.<sup>186</sup> Saudi Arabia, the only country in which women are not permitted to vote or run for elected office, recently

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180. *Id.* at 27.

181. *Id.*

182. *Id.* at 12.

183. *Id.*

184. *Varia*, *supra* note 164, at 278.

185. *PROGRESS AMID RESISTANCE*, *supra* note 36, at 11.

186. *Id.*

announced that women will be able to vote and run in 2015 elections.<sup>187</sup>

The DWC itself only came to fruition because global union federations and domestic workers' organizations joined together to repeatedly voice a need for long overdue reforms.<sup>188</sup> Although domestic workers do not have the right to organize in any of the GCC countries, that is not an absolute impediment to efforts to organize for better rights at work. For example, federal labor laws in the United States also exclude domestic workers from the right to organize, but that did not stop domestic workers groups, immigrant rights associations and other social justice organizations from banding together in New York<sup>189</sup> to help pass the country's first domestic workers bill of rights.<sup>190</sup>

In post-Soviet Azerbaijan, an Azeri women's advocacy movement emerged recently to give a voice to women newly burdened with an increase in caregiving and breadwinning responsibilities.<sup>191</sup> Aside from the fall of the Soviet's totalitarian system, several other conditions that are also present in the GCC countries explained the rise of the advocacy movement.<sup>192</sup> These favorable conditions include having a substantial core of highly educated women, increasing exposure to and linkage with international women's associations, and establishing a government agency on women's issues.<sup>193</sup> All GCC countries have seen gains in women's access to education in the past several years, and Qatar and the United Arab Emirates now have the highest female-to-male university enrollment ratio worldwide.<sup>194</sup> In Bahrain, more than 4,000 women constitute over 60 percent of the membership in nongovernmental organizations.<sup>195</sup> Nineteen percent of those organizations concentrate on women's rights, but their funding from international organizations is still limited.<sup>196</sup> In Qatar, several government-backed organizations dealing with women's issues have been established, including the Supreme Council for Family Affairs and the Qatar Foundation for the Protection of Women and Children.<sup>197</sup>

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187. *Id.*; Larisa Epatko, *Saudi Arabia: Woman Can Vote, Starting in 2015*, PBS (Sept. 26, 2011), <http://www.pbs.org/newshour/rundown/2011/09/saudi-arabia-women-vote.html>.

188. See ASHA D'SOUZA, *supra* note 28.

189. In 1998, Ai-jen Poo, who was a recent Columbia University graduate, launched an effort to organize domestic workers into something resembling a union. Support for Poo's organization, Domestic Workers United, grew as word spread through networks of immigrant domestic workers and impromptu discussions at churches and playgrounds, eventually becoming "formidable enough to pressure the New York State legislature into passing the Domestic Workers Bill of Rights." Barbara Ehrenreich, *The Nannies' Norma Rae*, N.Y. TIMES STYLE MAG., May 1, 2011, at 49.

190. *Domestic Workers' Bill of Rights*, N.Y. STATE DEP'T OF LAB., <http://www.labor.ny.gov/legal/domestic-workers-bill-of-rights.shtm> (last visited Dec. 9, 2011).

191. Mehrangiz Najafzadeh, *Women's Empowering Carework in Post-Soviet Azerbaijan*, in GLOBAL DIMENSIONS OF CAREWORK & GENDER 351, 351 (Mary K. Zimmerman et al. eds., 2006).

192. *Id.* at 354-55.

193. *Id.*

194. PROGRESS AMID RESISTANCE, *supra* note 36, at 8.

195. *Id.* at 81.

196. *Id.* at 81-82.

197. NATIONAL HUMAN RIGHTS COMMITTEE, *supra* note 82, at 109.

### C. Model Protests on Coalition of Immokalee Workers' Campaigns

Domestic worker advocates may be able to persuade GCC governments to take much needed action by launching aggressive campaigns similar to those successfully employed by the Coalition of Immokalee Workers (CIW) in Florida, a community-based organization. The CIW launched the first-ever farmworker boycott of a major fast-food company back in 2001.<sup>198</sup> The four-year campaign grew to include boycott committees in all 50 states and “boot the bell” campaigns on college and high school campuses.<sup>199</sup> Amidst growing pressure, Taco Bell agreed in 2005 to improve wages and working conditions for Florida tomato pickers in its supply chain.<sup>200</sup>

McDonald's followed suit in 2007, committing to collaborate with CIW in developing an industry-wide third-party mechanism to monitor conditions in fields and to investigate potential abuses.<sup>201</sup> A McDonald's spokesperson said of the agreement, “The impact to the bottom line is less important than the positive impact it's going to have in the lives of the men and women who work in the fields every day.”<sup>202</sup> The spokesman failed to mention that by coming to an agreement McDonald's would also benefit by putting an end to the barrage of negative publicity the campaign had been creating for the company.<sup>203</sup>

Perhaps more so than in any of the other GCC countries, an orchestrated CIW-like campaign targeting the government directly could spark labor reforms in Bahrain in the wake of negative publicity from Arab Spring protests. In November, an independent commission released a 500-page report documenting 46 deaths, 559 allegations of torture and more than 4,000 cases of employees being fired for participating in protests that erupted in the country in January 2011.<sup>204</sup> The United States suspended a \$53 million arms sale pending the report's findings, which indicates that how the report's recommendations are implemented by the Bahraini government could affect its geopolitical future.<sup>205</sup> The recommendations include establishing an independent body to implement reforms, separating the judiciary from the interior ministry, and training security forces in

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198. *About CIW: Consciousness + Commitment = Change: How and Why We Are Organizing*, COALITION OF IMMOKALEE WORKERS, <http://ciw-online.org/about.html> (last visited Dec. 17, 2011).

199. *Id.*

200. *Id.*

201. Jerry W. Jackson, *What's the Big Deal About an Extra Penny?*, ORLANDO SENTINEL, Apr. 17, 2007, at C1.

202. *Id.*

203. See, e.g., *McDonald's Truth Tour 2006: The Real Rights Tour!*, COALITION OF IMMOKALEE WORKERS, <http://ciw-online.org/2006truthtour/day6.html> (last visited Dec. 17, 2011).

204. Elizabeth Dickinson, *Bahrain Commission Issues Brutal Critique of Arab Spring Crackdown*, CHRISTIAN SCI. MONITOR (Nov. 23, 2011), <http://www.csmonitor.com/World/Middle-East/2011/1123/Bahrain-commission-issues-brutal-critique-of-Arab-Spring-crackdown>.

205. *Id.*

upholding human rights standards.<sup>206</sup>

Domestic workers in GCC countries would be difficult to reach out to for organizing purposes due to their extreme isolation within the home, but the broader population of migrant workers in these countries is easier to locate. They mostly live in work camps outside major cities.<sup>207</sup> Since migrant workers make up such a large percentage of the populations of the GCC countries,<sup>208</sup> advocates could use that untapped power in numbers to their advantage by demonstrating en masse in a prominent location.

An Arab News columnist recently implicitly acknowledged migrant workers' potential power in numbers by cautioning that any reforms to the sponsorship system must not grant "unfettered rights to foreigners" and thereby endanger the country's national security or social cohesion.<sup>209</sup> He called for the current sponsorship system to be replaced by "a new system that incorporates a comprehensive and flexible legal framework to organize fair relations between employer and foreign workers, classifies such relations as employment relations and not sponsorships, and cancels the traditional practices of sponsors."<sup>210</sup>

With sponsorship privileges no longer doled out to private citizens able to profit from the process,<sup>211</sup> a major obstacle to engendering support from GCC citizens for migrant workers' rights would be removed. In these tumultuous times, citizen support could prove invaluable to the movement. While countries have been making some popular concessions in the wake of Arab Spring protests, "there's no incentive for them to address migrant rights when it's not an evident concern of their citizens."<sup>212</sup>

#### D. Cultivate a Culture of Care

Norwegian sociologist Helga Hernes has identified a key aspect of the Scandinavian welfare state's friendliness to women: the prospect for the development of a culture of care.<sup>213</sup> She defines a care culture as "the institutionalization of a shared value system," which would translate "the values of compassion and care into political principles of justice and equality which in turn can inform social policies and forms of social organization."<sup>214</sup> In a woman-friendly state, women will still have children, but there would be other opportunities for self-fulfillment available to them

206. *Id.*

207. POLITICAL LIBERALIZATION IN THE PERSIAN GULF, *supra* note 50, at 66.

208. See MIRKIN, *supra* note 63.

209. Khalid Alnowaiser, *Human Rights Issues in Saudi Arabia: Existing Sponsorship System No Longer Conforms to the Life in the 21st Century*, ARAB NEWS (May 16, 2011), <http://arabnews.com/opinion/columns/article408235.ece>.

210. *Id.*

211. See POLITICAL LIBERALIZATION IN THE PERSIAN GULF, *supra* note 50, at 65.

212. Michelle Chen, *Will the Arab Spring Leave Migrants Out in the Cold?*, IN THESE TIMES (Oct. 28, 2011), [http://www.inthesetimes.com/working/entry/12198/will\\_the\\_arab\\_spring\\_leave\\_migrants\\_out\\_in\\_the\\_cold/](http://www.inthesetimes.com/working/entry/12198/will_the_arab_spring_leave_migrants_out_in_the_cold/).

213. Helga Maria Hernes, *Welfare State and Woman Power: Essays in State Feminism*, in GLOBAL DIMENSIONS OF CAREWORK AND GENDER 311, 311-16 (Mary K. Zimmerman et al. eds., 2006).

214. *Id.* at 315.

outside of raising children.<sup>215</sup> Women would not have to choose futures that demand greater sacrifices of them than those that are accorded to men.<sup>216</sup>

Hernes acknowledges that creating a culture of care will be difficult for any society, because “gender is a basic principle of social organization” and most men would lose some of their present privileges under this new regime.<sup>217</sup> The Scandinavian welfare state encourages the cultivation of a caring culture by making the “needs of families its own: childbirth, physical and mental handicaps, illness, old age become the object of public concern.”<sup>218</sup> Greater state responsibility for the care of children, the sick and the elderly, she argues, would help to professionalize carework and remove its stigma as low-status or unpaid work lacking in value.<sup>219</sup>

Providing incentives for more GCC citizens—particularly young men—to work or even volunteer as caregivers would further diminish the stigma associated with carework and would also reduce the high unemployment rate among citizens. The 2008 unemployment rate for United Arab Emirates citizens, for example, was 13.8 percent, while the rate for foreign workers was only 2.6 percent.<sup>220</sup>

## Conclusion

By casting votes in favor of adopting the Domestic Workers Convention (DWC), GCC delegates to the ILO demonstrated that the Arab countries support providing basic labor protections to some of the most vulnerable members of their societies. Whether they follow through on this initial showing of support by ratifying the DWC will depend in part on their willingness to dismantle the sponsorship system, which does not differ much from slavery. Negotiating bilateral agreements and unified standard contracts for domestic workers is a step in the right direction, but both typically offer watered-down versions of the labor protections that international standards require.

In order to move forward with the ratification process, GCC countries will have to commit to extending labor law coverage to domestic workers and to creating proper oversight and enforcement mechanisms. They will also need to address deeply-entrenched societal factors that contribute to widespread discrimination against domestic workers and all women.

Women have gained more political rights in all of the GCC countries over the past several years, and that momentum must continue for the rights of domestic workers to be fully realized. The DWC only came to

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215. *Id.* at 311.

216. *Id.*

217. *Id.*

218. *Id.* at 315.

219. *Id.*

220. Ibrahim Awad, ILO, INTERNATIONAL LABOUR MIGRATION AND EMPLOYMENT IN THE ARAB REGION: ORIGINS, CONSEQUENCES AND THE WAY FORWARD 5 (2009), available at [http://www.ilo.org/public/english/region/arpro/beirut/downloads/aef/migration\\_eng.pdf](http://www.ilo.org/public/english/region/arpro/beirut/downloads/aef/migration_eng.pdf).



fruition because global union federations and domestic workers' organizations joined together to fight for reform. GCC citizens and migrant workers alike will have to similarly join together in solidarity for real change to occur. Orchestrated protests modeled on Coalition of Immokalee Workers campaigns may create just the right type of political pressure to sway countries that are wary in the wake of Arab Spring protests.

Beyond amending laws on the books and orchestrating advocacy efforts, a campaign that strikes closer to home may make the most difference to domestic workers. GCC governments should commit to developing a woman-friendly society steeped in a culture of care. The state could initiate this transformative process by taking greater responsibility for the care of children, the sick and the elderly, a move which would also help professionalize carework. Providing incentives for male citizens to engage in carework would further this goal and would also reduce the high unemployment rate among citizens. Creating true solidarity between migrant domestic workers and GCC businessmen, however, will require other forces of change. Equal participation in carework and more traditional work by men and women would be "the clearest expression of a new gender solidarity."<sup>221</sup>

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221. Hernes, *supra* note 213, at 316.

