

**LAWS WITHOUT ENFORCEMENT: THE CASE OF UNSKILLED  
FOREIGN WORKERS IN KUWAIT**

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## **Abstract:**

**International labour migration has become an issue widely addressed in international relations, due to the many spheres that are related to this area, such as economics, human rights, labour rights as well as sociological issues. In recent years, the Middle East and especially the countries of the Gulf Cooperation Council (GCC) have become some of the most sought-after labour destinations in the world. As a newly oil-rich nation, Kuwait relied on foreign workers to fill the gaps in the labour market that existed due to a shortage of skills among the local population. Modern infrastructures, large-scale projects and basic services such as health care and education all needed human resources that were unavailable at the time. The reliance on foreign labour in Kuwait has increased rapidly in the last forty years and shows no signs of abating. What began as an effort to import labour for the purpose of building and developing modern infrastructures in a recently oil-rich nation, has developed into a reliance on foreign labour that generates a great deal of wealth for nationals, without offering proper protections for those laborers. Millions of Asian men and women migrate to the GCC seeking better opportunities for their families in their home countries, however in most cases this is less dependent on legal guarantees of labour protection and more on luck. In theory, unskilled foreign laborers, like other expatriate workers in Kuwait, are granted the same legal rights that are granted to nationals. Although there are some exceptions pertaining to nationals in the labour laws, in general, both groups are protected by the Kuwaiti Constitution, as well as international agreements that Kuwait has signed. In practice, however, the situation is very different. Due to the confines of the sponsorship system, and the immense control over workers' lives it grants nationals, unskilled foreign workers face wide-scale discrimination and violations of their rights every day, a situation that is best described as forced labour and slavery. In many cases, the failure of the government to act in respect to the abuse of migrants' rights reveals its inability to balance its international and national obligations. The purpose of this thesis is to show how the lack of enforcement of national and international labour and human rights laws concerning unskilled foreign workers in Kuwait constitutes modern slavery and forced labour. There are three main factors that will be addressed: the lack of enforcement of existing national laws, as well as international treaties and conventions; the ways in which the sponsorship system, as it exists today, is in breach of international laws and human rights standards; and the responsibilities of governments, recruitment agencies, and other organizations involved with migrant labour. Issues such as wages, housing and working conditions, dispute resolutions, and labour contracts will be discussed.**

## List of Abbreviations

GCC	Gulf Cooperation Council
MOU	Memorandum of Understanding
KD	Kuwaiti Dinar
TFWP	Temporary Foreign Worker Program
IOM	International Organization for Migration
ILO	International Labour Organization
ECHR	European Court of Human Rights
UAE	United Arab Emirates
KTS	Kuwait Transparency Society
NGO	Non-Governmental Organization
KTUF	Kuwait Trade Union Federation
CEACR	Committee of Experts on the Application of Conventions and Treaties
ICERD	International Convention on the Elimination of Racial Discrimination
HRW	Human Rights Watch
GDP	Gross Domestic Product
IMF	International Monetary Fund
IBRD	International Bank for Reconstruction and Development
PACI	Public Authority for Civil Information
KNOMAD	Global Knowledge Partnership on Migration and Development
MO	Ministerial Order
WPS	Wage Protection System
ICESCR	International Convention on Economic, Social and Cultural Rights
SLBFE	Sri Lankan Bureau of Foreign Employment
ICCPR	International Covenant on Civil and Political Rights
IRIS	International Recruitment Integrity System
ET	Employment Tribunal
POEA	Philippines Overseas Employment Administration
TESDA	Technical and Skills Development Authority
PDOS	Pre-Departure Orientation Services
PAOS	Post-Arrival Orientation Services
TIP	Trafficking in Persons
RST	Rentier State Theory
KSHR	Kuwait Society for Human Rights

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# Introduction

## Aims and Objectives:

My aim is to evaluate the current situation of unskilled foreign workers in Kuwait. This includes the nature of their work, the conditions under which they live and labour and the national and international laws that apply to them. This thesis aims to identify and analyze the reasons for Kuwait's establishment of the sponsorship system, and its effectiveness in offering protection for unskilled migrant workers and examine the ways in which the system is in breach of international laws, conventions and treaties. This thesis will also examine how the lack of enforcement of current laws, ratified treaties and conventions and other agreements creates a situation of forced labour and slavery.

## Methodology and Limitations:

The research methodology for this study is designed to focus on current laws in Kuwait, as well as international and regional treaties that Kuwait has ratified. The focus of the research has been on unskilled foreign laborers, including domestic workers, mainly from India, Bangladesh, Sri Lanka and the Philippines. This thesis does not contain original statistical data collection, but rather an examination and analysis of materials produced by international organizations and academics. The bulk of the fieldwork was conducted during visits to Kuwait between the years of 2007-2012, while the most recent visit in 2018 was meant to obtain information on court cases. The fieldwork consisted of interviews with academics, lawyers, staff from NGOs, embassies, recruitment agencies and domestic workers. I visited several recruitment agencies in Kuwait, and organizations involved in migrant labour. Although I had planned to conduct more interviews while I was in Kuwait, there were many obstacles. Mainly, it is very difficult to gain access to laborers for many reasons, and even more difficult to gain access to domestic workers. Most of the laborers do not speak English, and have only a limited understanding of Arabic, therefore, communication with them was challenging. Researchers and civilians are prohibited from entering labour camps to interview workers, so I have relied on reports from Human Rights Watch (HRW), Amnesty International, the International Labour Organization (ILO), the International Organization for Migration (IOM), the World Bank and Slavery International for current and reliable information regarding migrant laborers. These organizations have an ongoing relationship with embassies and they are better able to gain access to their camps through formal government permissions, which are not granted to research students. In some cases, even these organizations have reported problems in obtaining information on particular subjects. The World Bank,<sup>1</sup> Nasra Shah,<sup>2</sup> Bina Fernandez<sup>3</sup> as well as other organizations and authors have mentioned the difficulty in obtaining certain information in

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<sup>1</sup> Georges Corm (2006). Labour Migration in the Middle East and North Africa: A View from the Region. The World Bank, p.1, Washington, D.C. [Online] Available from:

[http://siteresources.worldbank.org/INTMENA/Resources/SF\\_background-3.pdf](http://siteresources.worldbank.org/INTMENA/Resources/SF_background-3.pdf)

<sup>2</sup> Nasra Shah (2004). *Arab Migration Patterns in the Gulf*. In: Arab Migration in a Globalized World, p.92. International Organization for Migration.

<sup>3</sup> Bina Fernandez (2011). *Household Help? Ethiopian Women Domestic Workers' Labour Migration to the Gulf Countries*. In Asian and Pacific Migration Journal, Vol.20, No.3-4, p.435.

Kuwait. Access to domestic workers was also difficult at times, due to a variety of reasons. Embassy staff would not grant me access to their shelters; only the Indian embassy allowed me to interview five domestic workers from the women's shelter, and the interview was conducted in the presence of an embassy employee who served as a translator. The Filipino domestic workers I interviewed were referred by domestic workers I know in Kuwait, and apart from being away from their families, were happy with their employers, in the sense that they were paid on time, were given weekly rest, and did not experience any maltreatment. Although these domestic workers represent a minority, I was hoping to contrast those interviews with narratives that were more consistent with reports from the various organizations mentioned above. I learned that access to workers currently employed in abusive households was rare due to the fact that in most cases, those workers are prevented from leaving their employer's home. After discussing it with my advisor at the time, Douwe Korff, we decided that the interviews would serve more as examples to supplement the research, than as statistical data. Other interviews I conducted were with embassy staff, academics, employers and senior employees of ministries, NGOs and other organizations. In addition, obtaining information on official legal cases involving migrants and nationals was very difficult, and I was told by employees at the Ministry of Justice that the information is confidential. Lack of access to legal materials was substituted with local and international news reports, information from embassies and NGOs in Kuwait, as well as information from interviews I conducted with lawyers and academics. The fieldwork provides insight into the operations of what may be perceived as modern slavery in Kuwait, highlighted by the difficulty in obtaining overt information.

The legal framework of the research will focus on current labour laws and their implementation, or lack thereof, and the reasons for the lack of enforcement. It analyses Kuwaiti legislation, and the various institutions that are involved with the issue, both governmental and non-governmental. It also includes an analysis of dispute resolution systems available to foreign workers. I highlight certain cases from the European Court of Human Rights to analyse the court's definitions or interpretations in relation to certain definitions and limits, especially in terms of forced labour, servitude and slavery.

### **Rationale:**

International labour migration in the GCC has been a widely discussed and debated subject. In Kuwait, the presence of migrant workers is ubiquitous and has compelled the government to take measures to control their inflow without disrupting the labour market. This thesis seeks to add to the current literature on labour relations in the Gulf. Using Kuwait as an example, I aim to show how oil-rich Gulf countries are coping with the influx of migrants in their countries by relying on the sponsorship system and the ways in which the system leads to exploitation. In recent years, as cases of abuse and maltreatment against migrants continue to rise, it has become impossible to ignore the issue. As academics, international courts and organizations continue to link the sponsorship system with modern-day slavery, the need for change becomes necessary. My aim is to present an investigation into unskilled foreign workers, their motivations and their journey, beginning with their recruitment and culminating in their employment in the country, in order to put into context their experiences within the wider labour migration subject. The specific ways their labour rights are violated are outlined to show the contradictions that exist within

Kuwait's labour policies, as well as the possible reasons for these contradictions. As a Kuwaiti national, I hope to raise awareness and contribute to the current discussion on the topic, in order to better understand the migrant experience, and the reasons for the government's slow response in replacing or amending this system despite increasing national and international pressure.

## **Chapter Summaries:**

### Chapter 1

The first chapter of the thesis will be an introduction into the topic, beginning with a brief history of labour in Kuwait in the years after the discovery of oil, in order to analyze how its current reliance on foreign labour began and contrast it to the situation as it exists today. At first, skilled migrants<sup>4</sup> made up the majority of foreign workers in the country, but as the Kuwaiti government began to expand its welfare benefits to citizens, a gap in the labour market began to appear. As the government continued to distribute its oil revenue income to the native population, the majority of nationals began to shy away from manual labour and as a result, reliance on foreign labour increased. This section includes the political, social and legal conditions surrounding foreign migrants in Kuwait. I investigate the deeply entrenched characteristics within Kuwait's society that makes reliance on foreign labour necessary.

The second section concerns the introduction of the sponsorship system into law and its impact on migrant workers in the country. It evaluates the sponsorship system and the New Labour Law, most recently updated in 2010, and their impact on unskilled foreign workers. This section investigates the ways in which the sponsorship system contributes to the infringement of rights of migrant workers in Kuwait, and examines the ways by which those rights are compromised, leading to a situation of forced labour and slavery. Articles and reports are used to identify the weaknesses within Kuwait's political and social cultures, which complicate the issue of foreign labour. This section relies on reports, publications and other information from organizations such as HRW, the ILO, IOM, Slavery International, Migrant-Rights.org and Amnesty International that call for reforms to the sponsorship system, and highlight abuses towards migrants. Although the government has enacted certain measures aimed at protecting the rights of unskilled foreign workers, such as standardized contracts, minimum wages and restricting working hours, enforcement has been ineffective. Consequently, many violations continue to be commonplace. Issues such as unions, wages and work conditions are also addressed in this section. In an attempt to improve protections offered to migrants, governments from India, Bangladesh, and the Philippines have drawn Memorandums of Understanding (MOU) with Kuwait in order to compensate for gaps in the sponsorship system. MOUs vary in degree of protections they offer migrant workers from country to country, though they are an improvement on measures currently in place for the protection of migrants. In this section,

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<sup>4</sup> Al-Moosa, A. & McLachlan, K. (2017) *Immigrant Labor in Kuwait*. Croom Helm Ltd, Kent, p.140.

the case of *Rantsev v. Cyprus and Russia*<sup>5</sup> will be used to supplement the argument that the parameters of the sponsorship system may contribute to the mistreatment of migrant workers in Kuwait. This case demonstrates that a sponsorship system that exercises control over migrants in the ways that it does in Cyprus and Kuwait, violates the rights of migrants against the threat of trafficking and exploitation. These factors are analysed in this chapter to support the theory that the system itself perpetuates forced labour. Other factors are also analysed, such as the rise of visa trading and visa trafficking, which are directly linked to the establishment of the sponsorship system. The topic of corruption is also addressed here, as it relates to the lack of enforcement of labour rights as they currently exist.

## Chapter 2

The second chapter concerns male laborers, mainly those working in construction and sanitation sectors, and includes an analysis of their motivations in seeking employment in Kuwait, the nature of their working lives and the ways in which they live, as well as the national and international laws and treaties that are specific to this group of workers. This chapter will examine the extent to which Kuwait complies with its international obligations in terms of labour and human rights towards unskilled male laborers. In many cases, migrant workers do not have an outlet for their frustrations and any incidents of protest have been dealt with by threat of deportation. Kuwait has ratified treaties, conventions and MOUs designed to ensure protection for these workers, which are included in this chapter in order to contrast Kuwait's international and national personalities. There is disparity between what is occurring in international forums, with the ratification of these treaties and the ways in which those treaties are applied. This section analyses the reasons for the discrepancies between the conventions, treaties and laws that apply to these workers and the reality of what is actually enforced. Conventions from the ILO are discussed in terms of their applicability to unskilled male laborers, such as the Migration for Employment Convention, the Freedom of Association and Protection of the Right to Organize Convention, the Right to Organize and Collective Bargaining Convention, and the Declaration on Fundamental Principles and Rights at Work. There are also several important UN conventions that Kuwait has ratified that will be discussed in this chapter, such as the International Convention on the Elimination of Racial Discrimination (ICERD), and specifically Article 3 of this convention which condemns racial segregation.

## Chapter 3

The third section focuses on domestic workers and the laws that pertain to this group of workers. I will examine their motivations in seeking employment in Kuwait, the ways in which they live and access to grievance mechanisms that are available to them. This chapter will discuss the difficulties domestic workers face and their vulnerability to maltreatment and abuse. The chapter will focus on the New Labour Law of 2010, the Domestic Workers Law (2016), as well as Ministerial Orders in order to study the discrepancies within these laws. Issues such as standardized labour contracts, wages, hours of work, annual leave, weekly rest and the confiscation of passports will be examined in

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<sup>5</sup> European Court of Human Rights. *Rantsev v. Cyprus and Russia*, 25965/04, 7 January 2010.

the context of existing labour protections in Kuwait. In this section, I rely on reports from international organizations to provide data on domestic workers. Reports such as *Walls at Every Turn Abuse of Migrant Domestic Workers through Kuwait's Sponsorship System*, by HRW (2010) are one of the few reports written exclusively about Kuwait. Abuses and violations will also be examined in regards to the lack of enforcement of existing laws and international treaties and conventions, and the development of customary law. Specific UN treaties and ILO conventions will be discussed such as the Domestic Workers Convention, the Migrant Workers Convention and the Convention on the Protection of Wages. This chapter will also examine social issues and attitudes of nationals towards domestic workers, and the effects of these views on their lives.

#### Chapter 4

The fourth chapter focuses on the recruitment involved in the unskilled foreign labour market, and examines the labour recruitment agencies that are connected with this group. Recruitment agencies, agents and subagents, have an important role to play in labour migration, and in many cases, their actions determine whether or not migrants have a favorable experience overseas. Reports from the ILO, the UN and other migration organizations regularly recount stories from migrants about unscrupulous agents, inflated fees, false contracts and other issues. Without proper monitoring of recruitment agencies, migrant workers will remain at risk in both their own countries, as well as the country of employment. Nicholas McGeehan takes this further to assert that deceptive recruitment by these agencies can be categorized as trafficking in persons.<sup>6</sup> The issue of trafficking is examined in this chapter in the context of recruitment agencies and contract substitution. In cases where the recruitment of migrant workers is tainted by false information, charges of trafficking are applicable, as shown in *Rantsev v. Cyprus*. This section evaluates the migration mechanisms that are available to them in their home countries, the consequences of debt accrual and the role of agents and subagents in the overall migrant experience. The second section of this chapter focuses on remittances and their importance in the discussion of migrant workers. Today, remittances account for a substantial portion of the economies of labour-exporting countries and have provided support for the families of migrant workers. This will be examined in terms of the benefits and effects of remittances.

#### Chapter 5

This leads to chapter 5, which analyzes rentierism and slavery as legal theories that are applicable to the situation of unskilled foreign workers in Kuwait. The first section of the chapter focuses on slavery and forced labour. Whereas in the past, forced labour has implied physical force, today, the term includes poverty, debt and other hardships as driving forces. It is not within the scope of this thesis to analyze the history of slavery in the region, the focus is on modern-day slavery and its factors. The ILO and NGOs such as Anti-Slavery International and HRW, as well as authors such as Kevin Bales, and Ethan Kapstein, are in agreement on the definition of slavery, and the circumstances that may

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<sup>6</sup> Nicholas McGeehan (2015). *Transnational Crime or State Exploitation? The Trafficking of Migrant Workers to the United Arab Emirates*. p. 53,



lead to forced labour. These definitions match the conditions of work currently experienced by unskilled foreign workers, who are often underpaid, or not paid at all, living in isolated spaces, work under risky conditions and are tied to their employers regardless of any disputes or violations. Unskilled migrant laborers have zero bargaining power over their contracts and in many cases, are unaware of the terms of the contract itself. The entire process is one that is tainted with deception, beginning with the recruitment and fees, leading to unfair or harsh working conditions and an employer-employee relationship that is vastly skewed in favor of the employer, and culminating in a system that does not offer proper protection in cases of exploitation or abuse. Under these criteria, slavery is an applicable term to use in describing the situation of unskilled foreign laborers in Kuwait.

The second section is an examination of the country's history as a rentier state, and the ways in which this history has had an effect on the legal system as it pertains to unskilled foreign workers. Beginning with Hossein Mahdavy's definition of rentier states,<sup>7</sup> in which rent refers to income the government receives from its natural resource-in the case of Kuwait-oil, and Matthew Gray's definition of rentier state theory (RST)<sup>8</sup> to examine the characteristics of this theory and the way in which it applies and does not apply to labour migration in Kuwait.

In addition, several cases from the European Court of Human Rights (ECHR) are used as examples in this section, including *Siliadin v. France*, which states that States have a positive obligation under Article 4 to establish a legal and administrative framework that would enable them to better prosecute acts of slavery, servitude, or forced labour. Another important case is *Chowdury and Others v. Greece*,<sup>9</sup> where the ECHR recognized that the recruitment process is included within the wider scope of trafficking and the fact that workers who freely accept jobs are not precluded from being victims of trafficking. This is applicable to Kuwait because it ties trafficking to recruitment and thus to forced labour. This is another case that underlines the importance of positive obligations for States to address trafficking. Yet another example of positive obligation is *C.N. v. the United Kingdom*,<sup>10</sup> where the ECHR held that the burden is on authorities to identify circumstances in which workers are being put at risk of servitude. This is applicable to Kuwait in the sense that it ought to be the State, and the proper authorities, not individuals, to take measures to ensure workers are not at risk of servitude. Certain mechanisms must be in place in order for authorities to be aware of, and identify workers who may be at risk. Another case that is analyzed in this section is *C.N. and V. v. France*,<sup>11</sup> which outlines the terms servitude, slavery, and forced or compulsory labour. This is applicable to migrant workers in Kuwait who are unable to leave their sponsors for fear that they will be forced to return to their home countries.

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<sup>7</sup> *The Patterns and problems of Economic Development in Rentier States: The Case of Iran*. In: *Studies in Economic history of the Middle East*, M.A. Cook (ed), Oxford University Press, London, p.428, 1970.

<sup>8</sup> *A Theory of "Late Rentierism" in the Arab States of the Gulf*. Occasional Paper No.7, Centre for International and Regional Studies, Georgetown University School of Foreign Service in Qatar, p.1, 2011.

<sup>9</sup> European Court of Human Rights. *Chowdury and Others v. Greece*, 21884/15, 9 June 2017.

<sup>10</sup> European Court of Human Rights. *C.N. v. the United Kingdom*, 4239/08, 13 November 2012.

<sup>11</sup> European Court of Human Rights. *C.N. and V. v. France*, 67724/09, 11 October 2012.

## Chapter 6

More is needed from the government in terms of fulfillment of the many international labour treaties and conventions that Kuwait has ratified and not ratified and recommendations are suggested in the final part. Firstly, the sponsorship system needs to be abolished or reformed. Replacing individual sponsors with a government authority would lessen the level of control given to sponsors through personal sponsorship and would have more authority in regards to inspections. Secondly, it is crucial that migrant workers are informed of their rights before they depart their home countries and upon arrival to the country of employment. HRW and other organizations recommend that governments should take initiatives to inform migrant workers of their rights in the country. Many workers are unaware of their rights under existing laws and face language barriers, which makes it difficult for them to report maltreatment. Thirdly, migrant workers should be able to change employers while remaining in the country, and without the need for their employer's permission, therefore the laws should be amended to facilitate the transfer of employment. Criminal penalties on absconding should be removed and a labour-complaints department should be created to provide migrants with information on dispute resolution. The ILO recommends the establishment of a court that can expedite the resolution of disputes allowing migrants who have been abused to return home in a timely manner. Also, strict penalties should be imposed on recruitment agencies, employers or other sponsors who exploit migrant workers or put their lives at risk. Furthermore, it is essential that the government of Kuwait establishes a database on all complaints by migrants, and publish annual statistics regarding that data. In collecting information regarding the number and nature of the complaints, the government may be able to address shortcomings within the labour law that allow abuses to occur, thus preventing future complaints. It is only by remaining open and opaque regarding violations against migrants that real progress will take place. These suggestions are based on findings by international organizations such as the ILO and HRW, as well as the authors and academics that are cited in this thesis. In recent years, the Kuwaiti government, under international pressure from human rights and labour organizations, has taken certain measures to attempt to alleviate problems associated with unskilled foreign laborers by implementing standardized contracts and getting more involved with non-governmental organizations. Although these are important steps, the sponsorship system remains intact despite the government's promises over the past years that it will be scrapped in favor of a better system.

# Chapter 1

## The Sponsorship System

### *1.1 Introduction*

An examination of Kuwait's history with foreign labour is important in understanding the overall issue of migrant labour laws in the country. The economy of Kuwait before the discovery of oil relied mainly on revenue from pearl diving and sea trading activities. The discovery of oil paved the way for rapid development, which included the establishment of infrastructures and projects that are necessary in the building of a modern nation-state. The small local population size was unable to meet the large demand for labour, and the government had to seek alternate sources of manpower. Foreign workers began flooding the country eager to earn higher wages than they were earning at home. Throughout the years, the importation of foreign labour has been used to fill a gap in the domestic labour market, with migrants taking on jobs that are shunned by the local work force. In recent years, the Kuwaiti government has attempted to deal with the influx of foreign workers in a variety of ways, one of which is the sponsorship, or *kafala* system. The sponsorship system is the legal framework which regulates the employment of migrant laborers in the country. Essentially, this system requires that all foreign workers must be sponsored by a national, or a licensed company owned by a national. It is a system that is enforced in all GCC countries (Kuwait, Bahrain, Saudi Arabia, the United Arab Emirates, Oman and Qatar), and other Arab countries such as Jordan and Lebanon, but one that has provoked discussions and debates concerning forced labour and slavery across the international community. This chapter provides an overview of the history of foreign labour in Kuwait, in order to put into context the country's reliance on migrant workers. The sponsorship system is examined in terms of its constrictions on migrant workers, and the ways in which those constrictions amount to forced labour and slavery. As well as forced labour, other issues that have emerged as a result of the sponsorship system include visa trafficking, and widespread corruption. This chapter also includes an analysis of the Memorandums of Understanding (MOU) and the international laws, conventions, and cases that apply to migrant workers. Finally, this chapter concludes with suggestions for an alternate system.

### *1.2 History of Labour in Kuwait from 950-Present*

Kuwait's pre-oil history revolved largely around trade, seafaring, pearl diving, and ship building, all activities that took advantage of its environment, mainly the Arabian Gulf. As keen fishermen and pearl divers, Kuwaitis constructed a new type of boat, which they named a *boom*. Using these sleek vessels, they travelled along the coast and traded with countries as far as India, and eastern Africa in what is known as the spice trade. Trading by sea allowed Kuwaitis to interact and form relationships with other cultures and societies. Through these trades, they formed ties with different nationalities, which helped shape their attitudes and beliefs. The sea served as a source of trade, income, and culture, all of which shaped Kuwait and its inhabitants. With the discovery of oil in 1938, Kuwait

entered a new economic age, and an era of massive development and progress began. At first, oil revenues were spent on healthcare and education, but gradually, transportation and communication networks were also developed. As these services expanded, a skilled foreign workforce was necessary to provide input, guidance, and expertise in order to execute various projects. During this time, a skilled workforce was distinctly lacking in Kuwait; since most of the population was employed in trade, agriculture, pearl diving, and fishing. Shehab notes that, according to the first population census in 1957, the total native labour force (those between the ages of 15 and 60) totaled 23,977, of which 4,000 were considered skilled or professional.<sup>1</sup> Illiteracy rates were high during this time, with 59.7 percent of Kuwaitis unable to read or write, and only 14 percent with an education higher than the elementary school level.<sup>2</sup> Due to the lack of an available skilled labour force that was needed to implement these large scale projects, foreign labour was required for almost every type of work, from manual laborers to highly skilled professionals. Thus, the lack of human resources was the initial drive behind the importation of migrant labour.

Oil companies were the first to import foreign professionals to perform the highly skilled tasks needed to operate oil refineries and plants. The government, on the other hand, gave preference to Arab migrants to fulfill the demand for teachers, doctors, and other non-oil sector fields of work. Arab migrants came to Kuwait with their families, or were followed closely by their families, who in turn, found jobs in Kuwait or attended schools. In addition, there was also a large number of Asian migrants, especially Indians and Pakistanis. Since entry conditions into Kuwait were relatively relaxed, foreign workers began to flood the country searching for better opportunities and careers. As Ruhs states, “arguably, the primary reason for adopting a *laissez-faire* approach and for not implementing serious labour market tests in these countries is that they were afflicted with either absolute shortages of labour..., or with citizens’ unavailability for certain jobs.”<sup>3</sup> During this time, many of the Asian workers that came to Kuwait were also accompanied by their families. The government’s policy at the time was not very strict, and appeared to encourage family settlement through major subsidies and services. Employers, whether they were government entities or other private companies, paid most of costs for these workers, such as visa fees, transportation, food, and housing, thus allowing them to save most of their earnings. Most found Kuwait to be a pleasant, calm, and safe environment in which to raise a family. Since the population was still relatively small and the country only beginning to develop, relations between locals and foreigners could be described as being amicable and without conflict. Gradually, however, these services were reduced as the government became concerned by the large influx of migrants that occurred during this time. As Table (1) shows, by 1965, the number of non-Kuwaitis made up 63.9 percent of the total population.<sup>4</sup> (See Table 1)

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<sup>1</sup> Fakhri Shehab (1964). *Kuwait: A Super Affluent Society*. Foreign Affairs An American Quarterly Review, 42, p.465.

<sup>2</sup> Abdurassool Al-Moosa and K. McLachlan (2017) *Immigrant Labor in Kuwait*. Croom Helm Ltd, Kent, p.86.

<sup>3</sup> Martin Ruhs (2013). *Temporary Foreign Worker Programs: Policies, Adverse Consequences, and the Need to Make Them Work*. International Labour Organization.

<sup>4</sup> Kuwait Annual Statistics Abstract: Population in Selected Census Years by Nationality, Gender, Population Density & Sex Ratio (1965). Central Statistical Bureau, State of Kuwait.

Table 1

Population by Nationality and Sex in Census Years		1985 - 1957						السكان حسب الجنسية والنوع في سنوات التعداد		
		نسبة النوع* Sex ratio*	عدد السكان لكل كم <sup>2</sup> Pop. per sq. Km.	النسبة المئوية Percentage			السكان Population			
				إجمالي Total	أنثى Female	ذكر Male	إجمالي Total	أنثى Female	ذكر Male	
Census Years									سنوات التعداد	
1957	Kuwaiti	108.6	7.1	55.0	26.3	28.7	113,622	54,468	59,154	كويتي
	Non-Kuwaiti	365.5	5.8	45.0	9.7	35.3	92,851	19,947	72,904	غير كويتي
	<b>Total</b>	<b>177.5</b>	<b>12.9</b>	<b>100.0</b>	<b>36.0</b>	<b>64.0</b>	<b>206,473</b>	<b>74,415</b>	<b>132,058</b>	الجملة
1961	Kuwaiti	109.1	10.1	50.3	24.0	26.3	161,909	77,448	84,461	كويتي
	Non-Kuwaiti	267.4	10.0	49.7	13.6	36.1	159,712	43,466	116,246	غير كويتي
	<b>Total</b>	<b>166.0</b>	<b>20.1</b>	<b>100.0</b>	<b>37.6</b>	<b>62.4</b>	<b>321,621</b>	<b>120,914</b>	<b>200,707</b>	الجملة
1965	Kuwaiti	104.7	13.7	47.1	23.0	24.1	220,059	107,490	112,569	كويتي
	Non-Kuwaiti	236.3	15.5	52.9	15.7	37.2	247,280	73,537	173,743	غير كويتي
	<b>Total</b>	<b>158.2</b>	<b>29.2</b>	<b>100.0</b>	<b>38.7</b>	<b>61.3</b>	<b>467,339</b>	<b>181,027</b>	<b>286,312</b>	الجملة
1970	Kuwaiti	102.1	20.5	47.0	23.3	23.7	347,396	171,883	175,513	كويتي
	Non-Kuwaiti	166.4	23.1	53.0	19.9	33.1	391,266	146,898	244,368	غير كويتي
	<b>Total</b>	<b>131.7</b>	<b>43.6</b>	<b>100.0</b>	<b>43.2</b>	<b>56.8</b>	<b>738,662</b>	<b>318,781</b>	<b>419,881</b>	الجملة
1975	Kuwaiti	100.5	26.5	47.5	23.7	23.8	472,088	235,488	236,600	كويتي
	Non-Kuwaiti	142.5	29.3	52.5	21.6	30.9	522,749	215,581	307,168	غير كويتي
	<b>Total</b>	<b>120.6</b>	<b>55.8</b>	<b>100.0</b>	<b>45.3</b>	<b>54.7</b>	<b>994,837</b>	<b>451,069</b>	<b>543,768</b>	الجملة
1980	Kuwaiti	98.5	33.4	41.7	21.0	20.7	565,613	284,964	280,649	كويتي
	Non-Kuwaiti	167.4	46.8	58.3	21.8	36.5	792,339	296,349	495,990	غير كويتي
	<b>Total</b>	<b>133.6</b>	<b>80.2</b>	<b>100.0</b>	<b>42.8</b>	<b>57.2</b>	<b>1,357,952</b>	<b>581,313</b>	<b>776,639</b>	الجملة
1985	Kuwaiti	98.9	40.2	40.1	20.2	20.0	681,288	342,492	338,796	كويتي
	Non-Kuwaiti	160.8	60.1	59.9	22.9	36.9	1,016,013	389,512	626,501	غير كويتي
	<b>Total</b>	<b>131.9</b>	<b>100.3</b>	<b>100.0</b>	<b>43.1</b>	<b>56.9</b>	<b>1,697,301</b>	<b>732,004</b>	<b>965,297</b>	الجملة

\* Males per 100 females

\* عدد الذكور لكل 100 من الإناث

## State of Kuwait Annual Statistics Abstract

Although incidents of conflicts between nationals and expatriates were low, many important social changes were beginning to take shape in Kuwait. The most important social change has been a tremendous increase and concentration of population in Kuwait. According to a study conducted by the International Bank for Reconstruction and Development (IBRD) in 1900, the town contained 10,000 to 12,000 residents; by 1910, the population grew to approximately 35,000 residents.<sup>5</sup> As more foreigners entered the country, the population continued to grow, and by 1957, a government census showed the country's population at 206,468,<sup>6</sup> four years later in 1961, the population was 321,621,<sup>7</sup> and by 1965, the population had increased to 467,339, of which Kuwaitis represented about 47 percent.<sup>8</sup> This increase in population, coupled with an influx of foreigners, began to change relations between Kuwaiti nationals and foreign expatriates. Over time, the government's relaxed attitude toward importing foreign laborers began to have its effects, and a system was needed to control the flow of migrants.

### 1.3 Origins of the sponsorship system

The origins of the sponsorship system are unclear, with some saying that it is a custom that originated from the Bedouins, who vouched for strangers and offered security and temporary admittance to the tribe.<sup>9</sup> "The noun *kafala* comes from the root *k-f-l*. Some

<sup>5</sup> International Bank for Reconstruction and Development (1965). *The Economic Development of Kuwait*, p.24. [Online] Available from:

<http://documents.worldbank.org/curated/en/794011468753336390/pdf/multi0page.pdf>

<sup>6</sup> Ibid

<sup>7</sup> Hassan A. Al-Ebraheem (1975). *Kuwait: A Political Study*. Kuwait University, Kuwait p.121.

<sup>8</sup> Ibid

<sup>9</sup> Gilbert Beauge (1986). *La Kafala: Un Systeme de gestion Transitoire de la Main d'Oeuvre et due Capital dans les Pays du Golfe*. Revue Européenne des Migrations Internationales, 2, p.110. [In French]

of its derivative verbal forms mean (1) to feed, (2) to vouch for, be responsible for; and (3) to be legal guardian of.”<sup>10</sup> Others suggest it was the British who instituted this custom in order to monitor the type of people wishing to visit Kuwait at the time. Peter Lienhardt writes that, during the time when the British Foreign Office was in charge of Kuwait’s external affairs, all visa applications were scrutinized “in order to exclude as many as possible of the opportunists and tricksters any oil state attracted, for whose misbehavior the British might have been blamed.”<sup>11</sup> According to Lienhardt, it was the idea of the Foreign Office, not the Kuwaitis, to introduce a sponsorship practice, not only to exclude opportunists, but also for practical reasons. He states, “the Foreign Office...made it a condition of granting a visa that any visitor to Kuwait should first find a host there, because the hotels were at that time very simple indeed, and the Political Agency did not want to be used as a general emergency rest-house.”<sup>12</sup> Whatever the initial reasons for establishing a sponsorship system, it filled a gap within the governmental institutions that governed Kuwait before, and after its independence.

By 1959, according to the Aliens’ Residence Law, all migrants wishing to work or visit Kuwait were required to obtain a visa, and a sponsor. The Aliens’ Residence Law exists within the general Labour Law, although it applies only to non-Kuwaitis. The law stated that all foreigners and migrants entering the country must be sponsored by a national, who effectively guarantees their status as a legitimate worker. Sponsors, in effect, Kuwaiti nationals, were now an integral component of the unskilled foreign labour force. Furthermore, laborers may only be retained on short-term contracts, most of which are no longer than five years, with the requirement that once the contracts expire, workers must leave the country for a specified period of time. It wasn’t until 1975, when the Residence Law was amended, that detailed references are made concerning the different categories of workers (public, private, or domestic sectors), and the different visa requirements for each.

Throughout the 1960s, as the country’s development grew, nationals began slowly adjusting to contemporary life. In order to make this adjustment smoother, the government began to distribute its new found oil wealth to nationals, and adopt the role of a modern welfare state. This translated to nationals being able to enjoy free healthcare and medical services, free comprehensive education and scholarships, “housing and home sites at below-market prices and on easy credit terms, highly subsidized basic services and essential items, generous retirement pensions at a relatively early age, and the right to government employment at last resort.”<sup>13</sup> This modern welfare system replaced the tribal systems of the past, and allowed nationals to enjoy a higher standard of living than ever before. This, however, gave way to a new set of problems, mainly the lack of structural infrastructure necessary to accommodate a welfare state. Not only did the country lack a skilled work force, but it also lacked adequate administrative and organizational structures that were needed to bridge the gap between the older tribal structure and a new system in order to make the adjustment toward a modern nation state. As Amuzegar points out when discussing GCC economies,

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<sup>10</sup> Anh Longva (1997). *Walls Built on Sand*. Westview Press, Boulder, p. 78.

<sup>11</sup> Peter Lienhardt (1993). *Disorientations: A Society in Flux: Kuwait in the 1950s*. Reading, Ithaca Press, p.30.

<sup>12</sup> Ibid

<sup>13</sup> Jahanjir Amuzegar (1982). *Oil Wealth: A Very Mixed Blessing*. Foreign Affairs, 60, p.818.

Under irresistible political pressures from a largely poor, frustrated, and impatient population demanding to receive its share of the oil revenues for a better life now, most government leaders simply could not afford to sit on the oil money and avoid spending it one way or another.<sup>14</sup>

At the same time, the government began encouraging its citizens to enroll in newly established schools and educational institutes. It did this by providing free education as well as scholarships to study abroad for students of university age. This surge in development was one of the first steps towards modern nation building that the government was eager to embrace. Amuzegar states, “material prosperity and progress, in turn, were hopefully believed to lead to more social cohesion, greater political stability, a meaningful industrial democracy, and an eventual advanced-country status.”<sup>15</sup> It was the objective of the government to transform the newly wealthy country into a modern state.

In the course of these developments, the government established permanent infrastructures to deal with a growing population as well as increased wealth. These included ministries and industries that needed workers to sustain their various operations. For Kuwaitis, a major part of the adjustment to modern life was adjusting to the concept of a “job”, away from the old agricultural, fishing, and pearl diving industries. Gradually however, Kuwaitis began moving toward these professions in government, and other public sector jobs. As a result, the government became the highest employer of nationals. As Shah states, “the historical high reliance on the government as the main employer of about 80 percent of Kuwaitis has resulted in the expectation that it is the Government’s duty to provide gainful occupations for nationals.”<sup>16</sup> In fact, the Kuwaiti constitution is clear on the issue of work for national citizens, as mentioned in Article 41 [Right and Duty to Work], which states, “every Kuwaiti has the right to work and to choose the type of work... The State shall endeavor to make it available to citizens and to make its terms equitable.”<sup>17</sup> With an almost guaranteed job in the public sector afforded to all Kuwaiti nationals, those who entered the workforce during this time gravitated towards those professions. Gradually though, more Kuwaitis began working in the private sector in banking, and other private businesses. These white-collar jobs proved much more attractive than jobs requiring manual labour. As a result, reliance on foreign workers in manual labour jobs began to increase. Even as early as the 1960s, the United Nations observed that the Kuwaiti population would need to increase rapidly in size in order to replace the foreign workforce at the time.<sup>18</sup> Although the government realized its need for foreign laborers, it did not yet have the proper mechanisms in place to deal with this reliance in the long run.

### ***1.3.1 Effects***

Problems began to emerge during the 1980s, as Kuwaitis, now more comfortable with life in a modern society, began enjoying the many benefits and large salaries the State

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<sup>14</sup> Amuzegar, *supra* note 13, p.830.

<sup>15</sup> Amuzegar, *supra* note 13, p.814

<sup>16</sup> Nasra Shah (2011). *Kuwait’s Revised Labour Laws: Implications for Nationals and Foreign Workers*. Asian and Pacific Migration Journal, 20, p.340.

<sup>17</sup> State of Kuwait Constitution. [Online] Available from: <http://www.pm.gov.kw/kuwait-constitution-en.aspx>

<sup>18</sup> Al-Moosa & McLachlan, *supra* note 2, p.75

was providing. Certain jobs, mainly those requiring manual labour were seen as “socially inferior” to nationals, who viewed their new found status as part of the country’s overall wealth. This led to a lack of ambition among many Kuwaiti workers, who are generally guaranteed a job by the government, regardless of their skill level or work ethic. It brought about low productivity rates among the national labour force.

The low productivity often found among the national labour force can, at least to some extent be explained by the perception that many nationals maintain, that payment received is a rightful share of the state’s wealth, and that this transfer of money is in no way tied to job performance just as promotion is not related to accomplishment. Thus, there is no incentive to work harder or even to gain further qualifications or skills.<sup>19</sup>

Lack of ambition and low productivity created a workplace atmosphere lacking competition, one in which workers didn’t feel the need to challenge themselves. This discourages the acquisition of new skills among workers, thus producing a sluggish labour market.

Together, low productivity rates as well as national wealth, created a national workforce that was concentrated only in certain areas that were deemed acceptable. In addition, Kuwaitis were offered a great deal of benefits for work in government sectors, some of which include generous pension and salary remunerations. This pattern of providing generous welfare benefits to nationals, while importing foreign labour in order to fill the gap in the labour market abandoned by locals, only works to reinforce the negative attitudes of nationals towards certain jobs. Because of this, certain areas of work have remained without a national labour force, such as sanitation, garbage collection, janitorial jobs and other forms of manual labour.

Various other structural problems also began to appear. As Kuwaitis shied away from manual labour, the country began to rely heavily on low, and unskilled foreign laborers to fill jobs that were needed in order for the State to operate at its optimal level. These jobs involved construction, cleaning and maintenance services, as well as other jobs requiring manual labour.

There are undoubtedly influences of cultural predilection by the Kuwaitis against certain forms of work, attitudes hardened by economic realities of comfortable, well-paid and socially acceptable employment with the government and its agencies. But the dominating variables would seem to be the twin problems of the nature of the Kuwaiti workforce as defined by quality of skills and its lack of incentive to participate in regular employment, together with the sheer inadequacy of the size of the Kuwaiti labour pool against the claims being made upon it.<sup>20</sup>

As the local population grew, and the country expanded its infrastructure, the Kuwaiti work force remained low. In 1980, the total number of Kuwaitis in the labour force was 103,474, compared to 380,570 non-Kuwaitis.<sup>21</sup> Nationals in the labour force almost

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<sup>19</sup> Andrzej Kapiszewski (1999). *Native Arab Population and Foreign Workers in the Gulf States*. Universitas, Karakow, p.102.

<sup>20</sup> Al-Moosa & McLachlan, *supra* note 2, p.89.

<sup>21</sup> Al-Moosa & McLachlan, *supra* note 2, p.148.



always seek professional or clerical occupations, while unskilled migrant laborers occupy a different labour market. For example, in 1985, 48 percent of non-Kuwaiti males worked in jobs involving production work and manual labour, while only 10 percent of Kuwaiti males worked in the same fields;<sup>22</sup> jobs involving professional and technical work, on the other hand, only involved 13.7 percent of non-Kuwaiti males<sup>23</sup> (See Table 2). Kapiszewski identified this phenomenon as “labour aristocracy”,<sup>24</sup> and this continued to develop as nationals began to regard certain manual labour jobs as disdainful. This pseudo aristocracy, however, was directly benefitting from the presence of foreign laborers, who were engaged in labour sectors rejected by nationals. In addition, as the educational levels of the nationals increased, they became “overqualified for occupations currently performed by illiterate foreign workers,”<sup>25</sup> thus gravitating to other occupations.

Table 2

Occupation	Kuwaiti			Non-Kuwaiti			% of non-national workers in each occupation
	M	F	M+F	M	F	M+F	
Professional & technical work	13.4	52.1	21.0	13.7	22.4	15.4	76.2
Administrative & managerial work	3.8	0.9	3.2	1.5	0.2	1.2	62.3
Clerical & related work	24.8	38.8	27.6	8.9	9.6	9.0	58.8
Sales	5.9	0.4	4.8	7.1	0.9	5.9	84.3
Services	39.2	7.1	32.9	18.0	66.6	27.6	78.5
Agricultural & husbandry	2.6	0.2	2.1	2.4	Neg.	1.9	79.6
Production work & other manual labour	10.3	0.5	8.4	48.4	0.3	39.0	95.3
Total	100.0	100.0	100.0	100.0	100.0	100.0	81.4

Source: Kuwait, *Research Studies on Population*, No.3, 1987.

In 1989, Ministerial Resolution No.87 outlined the sponsorship system in terms of registration, issuance, and transfer of work visas. Accordingly, every migrant worker’s residency in the country is fixed to their labour contract. Unlike a system where migrants enter the country and are able to compete in the labour market with nationals and other migrants, the sponsorship system ties each worker to a specific job, and workers are prohibited from changing that job without the issuance of a new visa. In effect, the laws created two types of sponsorship, the first is sponsorship by state institutions, and the second is sponsorship by private companies and individuals. Those employed by the state, and its various ministries and departments, are issued with visa “No.17”, while those employed in the private sector are issued with visa “No. 18”. Skilled migrants, such as professionals and businesspeople are issued with visa “No. 19”, and finally, domestic workers are issued with visa “No. 20”. It is not possible for an employee to change visa types, or transfer a visa from one sector to another, unless the employee departs the

<sup>22</sup> Public Authority for Civil Information, *Directory of Civil Information: Population & Labour Force* (2009).

<sup>23</sup> Longva, *supra* note 10, p.63.

<sup>24</sup> Kapiszewski *supra* note 19, p.101.

<sup>25</sup> Nasra Shah (1995). *Structural Changes in the Receiving Country and Future Labour Migration-The Case of Kuwait*. *The International Migration Review*, 29, p1016-1017.

country and applies for a new visa. The establishment of a separate Residence Law applicable only to foreigners created two categories of laws in the country—one that applies to nationals, and one that applies to migrants. In the years since the first Aliens' Residence Law was passed, there were numerous amendments to the law, none of which clearly explained the relationship between sponsor and employee. Hence, employers and sponsors were free to interpret the laws and develop their own relationship with their employees, eventually establishing customary laws such as passport confiscation, which was never mentioned in any law.

#### ***1.4 National Laws and Regulations***

During 1990-1991 Gulf War and Iraqi invasion of Kuwait, many migrants, including Arabs were either evacuated by their governments or departed the country voluntarily. Many Arab workers from Iraq, Egypt and Palestine who left Kuwait during the conflict did not return, creating a vacuum in the labour market that nationals were unable to fill. Crystal states that “the government thus faced a dilemma: It could not replace foreign workers, nor was it wholly comfortable with their large presence in the Kuwaitis' midst.”<sup>26</sup> Following the conflict, the government was committed to reducing reliance on foreign workers and policies regulating the entry, employment, and residence of all immigrants were put in place. The government had to implement measures that balanced rights for migrants and the rights of nationals under a welfare state. Jureidini describes this as “the human rights of migrants versus the rights of states to determine the character, privileges and size of their citizenry.”<sup>27</sup> As the number of foreign migrants swelled, the government aimed at curbing its reliance of foreign labour. This occurred in several ways, firstly, a system of “Kuwaitization” emerged, in which work in all civil service areas was given priority to Kuwaitis, often without taking into account their qualifications. By 1997, approximately 92 percent of employed nationals worked for the government.<sup>28</sup> Additionally, many of the higher posts and positions were given to nationals, who were often without the necessary experience or work ethic required for these jobs.

The government also devised strategies for private businesses and companies in employing Kuwaiti citizens, such as placing limits on the amount of foreign workers employed, establishing minimum quotas on the number of nationals in certain fields, providing subsidies to the private sector in order to encourage the employment of nationals, and prohibiting non-nationals from some professions such as the military, and oil sectors. These strategies came together in the National Labour Support Act of 2000, which as well as outlining measures for the employment of nationals, authorized an annual tax of 2.5 percent on the net profits of all Kuwaiti companies listed with the Kuwaiti Stock Exchange in order to cover the cost of training nationals in the private sector. As the

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<sup>26</sup> Jill Crystal (2016). *Kuwait: The Transformation of an Oil State*. Routledge, New York, p.87.

<sup>27</sup> Ray Jureidini (2004). *Human Rights and Foreign Contract Labour: Some Implications for Management and Regulation in Arab Countries*. In Arab Migration in a Globalized World, International Organization for Migration, pp.201-216, Geneva.

<sup>28</sup> Kapiszewski, *supra* note 19, p.101.

private sector began absorbing more nationals, it became the largest employer for migrant workers and remains so today.<sup>29</sup>

New laws and restrictions on visas issued to unskilled foreign laborers began to take effect during this time. Under the sponsorship laws, job changes are forbidden without the original employer or sponsor's permission. In some cases, the government utilizes "turnkey construction contracts,"<sup>30</sup> in which the general contractor supplies the workers and the company guarantees their departure once the contract expired. At times, unskilled foreign laborers from certain countries, including India and the Philippines were given visa preference by the government due to the availability and low cost of those migrants, thus creating a labour hierarchy. Although these preferences are not mentioned in the labour laws, government officials openly acknowledge that different policies apply to migrant workers from different countries. In 2006, the Emirati ambassador to the United Nations stated that "due to differences in the nature, cultures and nationalities of expatriate workers, systems and regulations applied in the GCC countries for the recruitment of these workers are not uniform."<sup>31</sup> Additionally, only the most skillful, and therefore high-paid, laborers are allowed to be accompanied by family members, so as to ease the cost of dependents on the state. All of these laws and measures are aimed at curbing the number of migrant workers in the country, despite the growing numbers.

Unskilled foreign laborers may only be retained on short-term contracts, most of which are valid for a maximum of five years, with the requirement that once the contracts expire, workers must leave the country for a specified amount of time. This is in fact, a type of Temporary Foreign Worker Program (TFWP), which is aimed at creating rules regarding the admission, residence, and employment of workers. In theory, a TFWP is meant to be economically beneficial for all groups involved in international migration: labour-importing countries benefit from increased supplies of skilled and unskilled workers, depending on their needs; labour-exporting countries benefit from remittances from nationals employed abroad; and migrant workers are granted the opportunity to earn better wages than are available in their home countries. In practice, however, as economically beneficial as TFWPs may be regarded by governments, their implementation does have its drawbacks. TFWPs may be used to limit the rights of migrant workers by not only placing limits on the amount of time an unskilled migrant worker may legally remain in the country, but by placing severe restrictions and conditions on workers' contracts. This way, the state is allowed to reap the benefits of the efforts of laborers, without guaranteeing them the rights they are entitled. Although in many ways, the sponsorship system resembles other TFWPs, in which governments rely on short-term contracts to regulate the flow of migrants into a country, the sponsorship system differs in several ways. Onn Winckler identifies five key features of the system that differentiate it from other TFWPs: the difficulty, or near impossibility of migrant workers obtaining citizenship in the country of employment; the lack of employment stability; the lack of evidence to support the theory that migrants seek permanent settlement in the country of employment; the fact that migrant workers comprise a majority of the labour sector; and finally, the

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<sup>29</sup> State of Kuwait Public Authority for Civil Information, *Employment by Occupation and Sector Statistics* (2018).

<sup>30</sup> Alan Richards and John Waterbury (1996). *A Political Economy of the Middle East*. Westview Press, Boulder, p.398.

<sup>31</sup> Hadi Ghaemi (2004). *Building Towers, Cheating Workers: Exploitation of Migrant Construction Workers in the United Arab Emirates*. Human Rights Watch, New York, p.70.

availability of cheap labour from Asian countries.<sup>32</sup> Additionally, and especially in the case of Kuwait, TFWPs have been accompanied by a division in the labour market, and the rise of “immigrant sectors”,<sup>33</sup> that are dominated by migrant workers, and that are shunned by nationals. This only reinforces dependence on foreign workers, as it fails to address the problem of segmentation. According to Ruhs, problems such as these are typical of TFWPs, especially in the case of unskilled migrants,<sup>34</sup> who are vulnerable to unfair treatment.

Furthermore, the laws exist in order to discourage migrants from permanent immigration. As Kamrava states, the presence of foreign workers is “tied to the provision of their labour within a particular sector for a defined duration of time. There is no policy in place that allows migrants to work toward a permanent citizenship status, nor are there any state-driven attempts to encourage social integration.”<sup>35</sup> Lack of social integration does not appear to be a concern for the Kuwaiti government, in fact, the less integrated into the local population migrant workers are, the easier it is to control and limit the time they spend working in Kuwait. Essentially, this makes migrants into contract workers with no hope of permanent settlement or naturalization, regardless of the amount of time spent living and working in the country. According to Shah, “the country has no program for the integration of migrants since it views them as temporary workers who are in the country on renewable contracts that are awarded generally for about 2 years at a time.”<sup>36</sup> The length of stay for unskilled foreign workers is always restricted, so as to limit their overall presence within Kuwaiti society, and this is a constant reminder that they are only welcome as long as they fulfill a certain role. Because their immigrant status is on a contractual basis, these workers are never given the chance to properly assimilate into the country. It is important to note here that permanent settlement in Kuwait is near impossible for unskilled foreign workers, due to the government’s strict restrictions regarding not only residency, but naturalization as well.<sup>37</sup>

Their temporary contracts characterize their stay in Kuwait as transient, therefore limiting any attachments they may develop there. As Fargues states, “decades of intense, but temporary, migration have resulted in citizens and non-nationals growing as two separate entities without a new, mixed, population emerging from their co-existence.”<sup>38</sup> A particular cautiousness underlies the relationship between unskilled foreign migrants and the Kuwaiti government, which is perhaps the reason for the many restrictions of the sponsorship system. Unskilled migrant workers fall under the jurisdiction of the Ministry of Interior, rather than the Ministry of Labour, a designation which “contributes to the

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<sup>32</sup> Joshua Teitelbaum (ed.) (2009). *Political Liberalization in the Persian Gulf*. Columbia University Press, New York, pp.61-66.

<sup>33</sup> Ruhs, *supra* note 3.

<sup>34</sup> Ruhs, *supra* note 3, p.14-15.

<sup>35</sup> Mehran Kamrava (2011). *Migrant Labour in the Persian Gulf*. Georgetown University School of Foreign Service, Qatar, p.10.

<sup>36</sup> Nasra Shah quoted in *In Service of Those Who Serve Us? The Impact of Immigration Policy on Discrimination Against Foreign Female Domestic Workers in Kuwait* by Amina Samy (2010), pg.5. [Online] Available from: <http://www.hiidunia.com/2011/05/in-service-of-those-who-serve-us-the-impact-of-immigration-policy-on-discrimination-against-foreign-female-domestic-workers-in-kuwait/>

<sup>37</sup> The Nationality Law of 1959 gives “original Kuwaitis” citizenship to those settled in Kuwait since 1920. The law applies *jus sanguinis* principle, and usually restricts the annual number of naturalization cases.

<sup>38</sup> Philippe Fargues (2011). *Immigration Without Inclusion: Non-Nationals in Nation-Building in the Gulf States*. Asian and Pacific Migration Journal, 20, p.280.

securitization of migration,”<sup>39</sup> and segregates migrants from the overall labour force. This segregation contributes to the temporary nature of relations between nationals and migrants, determined by the workers’ length of stay in the country. Kapiszewski refers to this as an “awareness of temporariness”,<sup>40</sup> which contributes to migrants’ “acceptance of exclusion”<sup>41</sup> within the social and legal structure of the sponsorship system. More on this subject will be examined in Chapter 3.

The sponsorship system’s fault lies not so much on what the law states, as what it does not state. The laws’ failure to clearly outline the restrictions employers may place on workers, and thus limiting the power employers may wield, has placed migrant workers at tremendous risk of forced labour. While the law is clear on the sponsor’s role toward the authorities, outlining duties such as being responsible for the employee, informing the authorities in case of termination of contract, and so on, it neglected to outline actions that the sponsor was restricted from doing, thus failing to protect the employee’s basic rights. By placing the responsibility of the care of migrant workers in the hands of its citizens, the government avoids having to create an organization or department that specializes in issues regarding foreign laborers. Manseau states,

In many ways, the *kafala* system removes responsibility for oversight from the government and places it squarely upon recruiters and individual employers, who are often motivated more by financial gain than concern about the working conditions and human rights of the people they import. Arguably these roles put private individuals in place as informal immigration officials, removing such burdens from the government.<sup>42</sup>

In short, the sponsorship system places the responsibility on nationals to guarantee the legitimate status of the migrant worker. As Lori states, “this sponsorship arrangement effectively privatizes some of the costs of migration enforcement by directly holding individual citizens financially and legally accountable for each and every non-citizen”.<sup>43</sup> Tasked with what Shah and Fargues refer to as the “surveillance of migration”,<sup>44</sup> national sponsors thus become an important part of the enforcement of migrants’ temporary stay in the country. Fernandez states that the sponsorship system is essentially “an effective decentered mechanism of social regulation by which the state externalizes and privatizes its surveillance function, passing on to citizens the responsibility of policing the vast force of immigrant labour within the country.”<sup>45</sup> Without restrictions on the powers of the sponsor, and without the necessary supervision to insure adherence to the law, the probability of maltreatment increases. Although there are currently laws that apply to

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<sup>39</sup> Migrant Forum in Asia. *Reform of the Kafala (Sponsorship) System*. [Online] Available from: <https://www.ilo.org/dyn/migpractice/docs/132/PB2.pdf>

<sup>40</sup> Kapiszewski, *supra* note 19, p.204.

<sup>41</sup> *Ibid.*

<sup>42</sup> Gwenann S. Manseau (2005). *Contractual Solutions for Migrant Laborers: The Case of Domestic Workers in the Middle East*, p.39.

<sup>43</sup> Noora Lori (2012). *Temporary Workers or Permanent Migrants? The Kafala System and the Contestations over Residency in the Arab Gulf States*. Centre for Migrations and Citizenship, Institut Francais des Relations Internationales (IFRI), p.16.

<sup>44</sup> Nasra Shah & Philippe Fargues (2011). *Introduction*. Asian and Pacific Migration Journal, 20, p.268.

<sup>45</sup> Bina Fernandez (2013). *Traffickers, Brokers, Employment Agents and Social Networks: The Regulation of Intermediaries in the Migration of Ethiopian Domestic Workers to the Middle East*. International Migration Review, 47, p.830.

unskilled foreign laborers in both the private and the public sector, those laws are not always observed or enforced. In addition, the temporary nature of a migrant's employment in Kuwait suggest that unskilled migrant workers are viewed as disposable labour, and that there exists an endless supply of migrants willing to accept the current labour conditions in the country.

#### ***1.4.1 Customary Law***

In the absence of formal rules regarding the employer-employee relationship, Kuwaitis have constructed their own systems and practices to supplement the sponsorship laws. Throughout the past thirty years or so, these practices have evolved into customary law. One of the practices that have become customary law in Kuwait is retaining employees' passports. Although this practice is illegal, it continues to exist. For individual sponsors, keeping an employee's passport was a way of insuring that the employer will not leave their job, or leave the country before the end of the contract. Since workers wishing to change sponsors in order to find better work (or working conditions), must have their passports, the practice of withholding passports prevents them from doing so. This practice is also viewed as a way to deter foreigners from criminal acts, since it is very difficult for a foreigner to break the law and leave the country without a passport.

The customary practice of retaining employees' passports has led to many incidents of absconding in Kuwait. Workers choose to leave their jobs, and sponsors, without their passports, and search for any type of illegal work, that is to say, work that is different from that which is specified in the contract. As Davidson notes, research on migrant workers suggests that "running away from legal sponsors to work illegally in the informal economy is a strategy by which some migrants manage to secure greater personal freedom, and to pay off their debts and remit money to dependents, albeit under constant threat of detection and deportation".<sup>46</sup> The only way for absconders to retrieve their passports is to turn themselves in to authorities, and launch an official complaint against their sponsor. In many cases, sometimes with embassy mediation, the sponsor returns the passport to the employee, who then must leave the country. The exact number of absconders in Kuwait is unknown, but the government is well aware of the fact that there are many illegal aliens. Every four or five years, the government declares a general amnesty wherein illegals may turn themselves in to their embassies, and leave the country legally, and each time, the response has been immense. Amnesties allow migrants whose residency applications were rejected, or whose residency permits have expired, to legalize their stay in Kuwait by paying any fines or penalties and obtaining a valid visa, otherwise, migrants may choose to depart the country, and apply for work at a later time. Migrants who ignore amnesty periods and remain in the country illegally risk deportation if caught, and once deported, migrants are forbidden from entering the country again. In 2011, a four-month amnesty period saw over 41,000 migrants coming forward, including 12,870 who legalized their status, and 28,662 who chose to leave the country.<sup>47</sup> The latest amnesty, in January 2018

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<sup>46</sup> Julia Davidson (2013). *Troubling Freedom: Migration, Debt, and Modern Slavery*. Migration Studies, 1, pp.1-20.

<sup>47</sup> *Kuwait Mulls Amnesty for Illegal Expatriates*. Arab Times, December 17, 2013. [Online] Available from: <http://news.kuwaittimes.net/kuwait-mulls-amnesty-illegal-expatriates/>

was extended to April 2018 due to the overwhelming response, and saw 78,096 illegal migrants come forward: 20,964 workers chose to obtain legal residency and remain in Kuwait, and 57,132 workers chose to return to their home countries.<sup>48</sup> Without these amnesties, many migrant workers would find it impossible to leave the country without a valid passport and an exit visa. General amnesties also make it possible for authorities to assess the amount of illegals living and working in the country at any time.

### ***1.4.2 Restriction of Movement***

In many ways, the sponsorship system prioritizes the rights of the employers over the rights of workers. By making it difficult and costly for workers to change employers, migrants are forced to endure conditions that violate their rights. Additionally, by denying migrants participation in a free labour market, workers are prevented from seeking other, perhaps more lucrative employment. Instead, migrant workers are in competition with each other in their native countries for the best jobs, contending with not only other workers, but recruitment agents, and subagents. As the most vulnerable members of the labour market, unskilled foreign workers should have the right to change employers, especially in cases of maltreatment. According to Davidson, “the immigration policies of countries that depend heavily on migrant labour are often designed to deprive migrant workers of independent access to, and free movement within, the labour market.”<sup>49</sup> It’s not that unskilled foreign laborers present a competition for national workers, as Kapiszewski’s “labour aristocracy” theory indicated, nationals and migrants occupy different spheres of employment, but it may be due to what Esim refers to as “the politics of exclusion that have allowed Kuwaitis to protect their rights and privileges as citizens.”<sup>50</sup> This exclusion refers to the hierarchy that exists in the labour law that extends certain privileges to nationals, followed by residents of the GCC countries, and Arab nationals, with unskilled foreign workers restricted to the bottom rungs of the ladder.

In theory, migrants have the right to quit their jobs, and with the signed permission of their sponsor, seek another job; however, this process is often prolonged and unpredictable. If quitting means returning to their country, and facing surmounting debts, the right to quit is meaningless and futile. Debts force migrants to remain with unscrupulous or abusive sponsors, which shapes a great deal of the migrant experience. The majority of migrants who are recruited legally, through agencies or other channels, tend to arrive at their destination country already heavily in debt to those agencies. In 2014, the International Organization for Migration (IOM) conducted a study which estimated that migrant workers pay an average cost of \$1,900 to migrate to Kuwait.<sup>51</sup> This means that migrants will tolerate abuses in employment instead of exercising their “right” to quit, which, in turn, makes them even more vulnerable to abuse and coercive treatment.

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<sup>48</sup> *57,132 Illegals ‘Leave’ Kuwait*. Arab Times, April 30, 2018. [Online] Available from: <http://www.arabtimesonline.com/news/57132-illegals-leave-kuwait/>

<sup>49</sup> Davidson, *supra* note 46.

<sup>50</sup> Simel Esim and Monica Smith (2004). *Gender and Migration in Arab States: The Case of Domestic Workers*. International Labour Organization, p.44.

<sup>51</sup> Philip Martin (2016). *What Do Migrants Pay for Foreign Jobs?* Conference Paper at ‘Improving Data on International Migration Towards Agenda 2030 and the Global Compact on Migration, Berlin, 2-3 December, 2016. IOM Global Migration Data Analysis Centre.

In the case of loss of employment for whatever reason, there are limited options for migrants: remain in the country illegally and try to find other employment; remain in the country and try to gain legal employment elsewhere; or return to the country of origin. Failure to meet expected wage income is one of the main reasons migrants choose to remain in Kuwait illegally, whether or not those expectations were changed due to voluntary or forced circumstances. In many cases, Asian male migrants resort to begging as a means of supplementing their income when they are not working, although this is illegal. Once a rarity in Kuwait, begging is now common among unskilled foreign laborers. More on the subject of debt will be examined in Chapters 2 and 3.

### **1.4.3 Deportation**

As stated earlier, the sponsorship system as a whole is under the purview of the Ministry of Interior. Labour permits are applied through the Ministry of Labour, but final approval comes from the Ministry of Interior, which is responsible for issuing security clearances for all migrants. “Since the Ministry of Interior also controls the domestic security forces, this means that the same institution that administers residency decisions also has the necessary resources at its disposal for enforcing those decisions.”<sup>52</sup> In cases where work permits are cancelled or revoked and the migrant worker’s residency is deemed illegal, it is the Ministry of Interior that is tasked with finding and deporting the worker.

Deportation seems to be a method used by the government to curtail the number of migrants in the country. Migrants may be deported for a variety of reasons, from traffic violations, and demonstrations to barbecues.<sup>53</sup> In 2013, for example, the government announced a crackdown on traffic violations, and within days deported 86 expatriates for offences including running a red light, driving without a valid license, and speeding.<sup>54</sup> In contrast, any national that commits the same offences will have their car impounded for three months. Migrants are strictly prohibited from taking part in any strikes, demonstrations, or protests, regardless of how peaceful they may be. The Ministry of Interior repeatedly justifies these deportations by stating that the right to protest is one reserved for citizens.

In 2014, Mr. Abdulrahman Al-Ghanim, head of the Kuwait Trade Union Federation, accused the Ministry of Social Affairs and Labor of mishandling labour disputes involving migrants, and colluding with employers to deprive workers of their rights. “They deport everyone who was reported ‘absconding’, without granting them the right to appeal or tell their side of the story,” he stated.<sup>55</sup> Even in the event that a worker’s complaints reach the court system, they are usually deported before the case is finalized, causing confusion about the status of the case. In March 2013, Thekra Al-Rashidi, then

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<sup>52</sup> Lori, *supra* note 43, p.14.

<sup>53</sup> Expatriates caught illegally barbecuing on public beaches or parks will be deported. Toumi, 2014.

<sup>54</sup> Courtney Trenwith (2013). *Kuwait Departs 86 Expats after Traffic Offences*. Arabian Business. [Online] Available from: <https://www.arabianbusiness.com/kuwait-deports-86-expats-for-traffic-offences-499742.html>

<sup>55</sup> MigrantRights.org (2014). *Kuwait’s Labour Ministry Departs Complaining Migrants*. [Online] Available from: <https://www.migrant-rights.org/2014/11/kuwaits-labor-ministry-deports-complaining-migrants-resigned-labor-unionist-says/>



Minister of Social Affairs and Labour, announced plans by the ministry to deport 100,000 illegal migrants every year as part of an overall plan to curb the expatriate population.<sup>56</sup>

### ***1.5 Skewed Relationship***

Within the confines of the sponsorship system, workers are often treated as possessions rather than employees with rights. The relationship between sponsor and employee depends almost exclusively on the sponsor's interpretation of the legal codes and laws. An ILO report states,

Central to the kafala system is the imbalance in power relations between the kafeel and the migrant worker. The kafeel has the power to alter the terms of the employment contract and coerce the migrant worker into submitting to unfair working conditions.<sup>57</sup>

The sponsorship system places tremendous power in the hands of nationals, power that is often abused. Under the sponsorship system, migrants are treated like commodities in an economy which relies on them without enforcing the necessary mechanisms needed to protect them. Sponsors have a great deal of authority over workers, including the right to terminate them from their job at their discretion, thus revoking their residency and work permit at the same time, and preventing them from finding work elsewhere. The skewed power dynamics, as well as the time and money that migrants have spent to obtain employment visas, combine to produce insecure and compliant workforces, who are at the mercy of their employers. This power relation is further complicated by the fact that unskilled foreign migrants are classified as "guest workers" or "expatriate manpower." The sponsorship system's reliance on a national's judgment in ensuring foreign workers are granted their rights under the law, leaving the door open to a great deal of corruption among those seeking to take advantage of this power. Sponsors often employ scare tactics in order to maintain the upper hand, some of which include threats to withhold wages, imprisonment, deportation, or termination of employment. Once the employment is terminated, the worker has no legal right to remain in the country. In case of any disputes regarding wages, working hours, conditions, or any other work-related issue, employers may dismiss the employee, rendering their status as an illegal. In addition, due to the fees the employer has paid for various administrative costs and agency charges, some sponsors feel some entitlement towards their workers. Malit Jr. adds that, "in fact, employers/sponsors' discretion to misuse or misinform workers about their contractual rights are shaped by their intent to reduce future labour costs or recoup the initial recruitment fees paid to the agencies."<sup>58</sup> At the same time, workers fear the retaliation of their employers should they attempt to discuss or report contract violations or abuses of any kind.

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<sup>56</sup> Arab Times, *supra* note 48.

<sup>57</sup> Ibid

<sup>58</sup> Froilan T. Malit Jr. and George Naufal (2016). *Asymmetric Information Under the Kafala Sponsorship System: Impacts on Foreign Domestic Workers' Income and Employment Status in the GCC Gulf Countries*. International Migration, 54.

The constraints and regulations within the sponsorship system result in a flawed arrangement that gives way to a host of abuses. The concept of sponsorship entails the loss of liberty of the worker to his or her sponsor, who is responsible for the well-being of the worker, and who is, in many respects, free from any regulation or enforcement by the authorities. The authority that sponsors have over employees, in addition to the customary practice of passport confiscation, and the strict limit on migrants' stay, are all part of a system that perpetuates forced labour. As McGeehan states, "the inordinate level of control which is exerted over migrant workers and facilitates their exploitation derives from the complementary effect of three powerful *de facto* control mechanisms: the customary confiscation of passports, the customary imposition of debt, and the systematic denial of access to domestic remedies."<sup>59</sup> This exploitation is due to the sponsorship system's constraints, and can be described as forced labour and slavery. The ILO defines forced labour as "all work or services, which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."<sup>60</sup> Whereas in the past, forced labor has implied physical force, today, the term includes poverty, debt, and other hardships as driving forced labour. According to author Kevin Bales, "the state of control exercised over the slave, a control based on the potential or actual use of violence; a lack of any remuneration beyond subsistence; and the appropriation of the labour or other qualities of the slave for economic gain,"<sup>61</sup> are all characteristics of both past and modern slavery. Under these criteria, slavery is an applicable term to describe the situation of unskilled foreign laborers in Kuwait. Moreover, Drew states, "a perusal of the U.N. instruments reveals that all the different forms of slavery (slavery, servitude, debt bondage, forced labour) which the U.N. instruments address have in common two elements: lack of true consent and lack of control over one's own labour or reward for it."<sup>62</sup> These definitions match the conditions of work currently experienced by unskilled foreign workers, who are often underpaid, or not paid at all, live in isolated spaces, work under risky conditions, and are tied to their employers regardless of any disputes or violations. It is not within the scope of this thesis to analyze the history of slavery in the region, the focus is on modern-day slavery, and its factors. Unskilled migrant laborers have zero bargaining power over their contracts, and in many cases, are unaware of the terms of the contract itself. The entire process is one that is tainted with deception, beginning with the recruitment and fees, leading to unfair or harsh working conditions and an employer-employee relationship that is vastly skewed in favor of the employer, and culminating in a system that does not offer proper protection in cases of exploitation or abuse.

The case of *Rantsev v. Cyprus and Russia*<sup>63</sup> demonstrates that any visa system that allows sponsors to exert undue power over workers is an indication of the lack of protection mechanisms for migrant workers in that country, and may lead to exploitation. This case involved the death of a young Russian woman recruited on an "artiste" type visa to Cyprus, a term meant as a reference to prostitutes. There are similarities between this

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<sup>59</sup> Nicholas McGeehan (2015). *Transnational Crime or State Exploitation? The Trafficking of Migrant Workers to the United Arab Emirates*. p.29.

<sup>60</sup> ILO Forced Labor Convention, 1930 (No.29)

<sup>61</sup> Kevin Bales (2006). *Testing a Theory of Modern Slavery*. Free the Slaves Organization. [Online] Available from:

[https://childhub.org/en/system/tdf/library/attachments/bales\\_test\\_theory\\_0607.pdf?file=1&type=node&id=17820](https://childhub.org/en/system/tdf/library/attachments/bales_test_theory_0607.pdf?file=1&type=node&id=17820)

<sup>62</sup> Ibid

<sup>63</sup> European Court of Human Rights (2010). *Rantsev v. Cyprus and Russia*, Case 25965/04, 7 January 2010.

type of visa in Cyprus, and the visas given to unskilled foreign workers in Kuwait. Firstly, the women who arrive in Cyprus under this type of visa are not always aware of their working or living conditions, and in many cases their accommodations lack sufficient facilities. Secondly, their passports and personal documents are almost always retained by their employers, who are responsible for their legal status and deportation. Thirdly, their movements are severely restricted and they are under constant surveillance by their employers. Moreover, threats, withholding or deduction of wages, and force are often used to coerce workers. And lastly, they arrive already heavily indebted to recruitment agents in their countries of origin, and may have their wages deducted by their employers to recoup fees paid to recruitment agencies. The European Court of Human Rights (ECHR) found that the Cyprus was in violation of its obligations under Article 4 of the European Convention due to the fact that these visas “had thus failed to afford to Ms. Rantseva practical and effective protection against trafficking and exploitation.”<sup>64</sup> The Court declared that states have a positive obligation to prevent and protect people from trafficking by investigating allegations of trafficking and implementing policies. Although Kuwait is not under the jurisdiction of the ECHR, it has ratified the UN Trafficking Protocol, and is bound under that protocol to protect migrant workers from exploitation. It is the duty of the Kuwaiti government to not only protect its nationals from exploitation, but all workers within its jurisdiction. Doing so would align Kuwait’s domestic law with its international obligations. In an article concerning migrant labour in the UAE, but that is perfectly applicable to Kuwait, McGeehan states that “in the United Arab Emirates and the surrounding region, migrant workers are not exploited despite labour laws and the protection afforded them by the justice system, rather they are exploited by the labour laws and the justice system.”<sup>65</sup> This refers directly to the sponsorship system and its confines. The *Rantsev* case demonstrates that a sponsorship system that exercises control over migrants in the ways that it does in Cyprus and Kuwait violates the rights of migrants against the threat of trafficking and exploitation.

### ***1.6 Visa Trading and Visa Trafficking***

The sponsorship system has also led to illegal visa trading, a practice that has become more widespread in Kuwait in recent years. As the privilege to sponsor a migrant is only afforded to nationals, non-nationals wishing to sponsor workers often do so by seeking out citizens willing to sponsor workers for them in return for a fee. An ILO report explains, “GCC nationals with business licenses are given permission for work visas for a given number of immigrants. They may sell these visas to others, leaving the migrant worker undocumented. This is known as ‘visa trading’”<sup>66</sup> This practice was cited in a 2005 Report on Human Rights Practices on Kuwait by the U.S. Department of State, which states,

In this system citizen sponsors agree to sponsor (in name only) foreign workers in exchange for a fee in the range of \$1,539 (450 dinars), to \$4,104 (1,200 dinars). Middlemen, generally non-citizens, would recruit workers from economically depressed source countries for a fee, take a commission,

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<sup>64</sup> Ibid

<sup>65</sup> McGeehan, *supra* note 59.

<sup>66</sup> Migrant Forum in Asia, *supra* note 39.

and remit the balance to the nominal sponsor. Once in the country, such agents transferred workers to employers in the informal sector or to parties otherwise unable to sponsor them.<sup>67</sup>

Dr. Ebtehal Al-Khateeb from Kuwait University referred to nationals who engage in trading visas, or *iqamas* in Arabic, as “merchants of *iqama*,”<sup>68</sup> for whom economics takes precedence over law and rights. Although visa trading is strictly prohibited by law, and could involve imprisonment and fines for both sponsor and migrant worker, it remains a common practice. The practice places foreign workers in an illegal immigration status since the sponsor may not be changed as employer, and illegal status places migrants at great risk from the authorities.

Although there are policies aimed at ending visa trading, as with all the country’s laws, the difficulty lies in implementation of those laws. Visa trafficking and trading are very profitable “businesses” that requires little or no effort on the part of nationals. “There are laws aimed at curbing visa trafficking with penalties for both employers and visa traders; however, the government seldom enforced these laws.”<sup>69</sup> As a result, questionable businesses that necessitate only a national’s signature prove too tempting for some to resist. Shah writes, “visa trading is a multi-million dollar industry; there are high fees for the initial sponsorship, followed by two-year renewal fees...despite the fact that this is unlawful, there is no known prosecution of GCC nationals for these activities.”<sup>70</sup> Lack of government intervention and large profits fuel the demand for these types of industries despite the abundant supply of labour. As Mr. Shahriar Siddiky, First Secretary of Labor and Welfare at the Bangladeshi embassy said, “slavery is good business.”<sup>71</sup> As long as benefits for both sides outweigh the costs, illegal practices will continue.

One reason for this lax stance towards visa trading is the high level of corruption that exists within the Kuwaiti government. In some cases, government officials themselves are involved in visa trafficking and trading, which makes enforcement even more complicated. As Kapiszewski states, “many parliamentarians represent the interests of private business which are not necessarily consistent with the overall national goals.”<sup>72</sup> In 2014, a visa trading scandal erupted involving the Ministry of Interior and the General Immigration Department. It was reported in local newspapers that the Director of the Office of the Minister of Interior, as well as more than six members of the ruling family, benefitted from illegal visa transactions while in office, some receiving more than KD 100,000 a month (\$330,000).<sup>73</sup> This year, it was reported that “government officials in Kuwait have sold work permits to illegal recruiters and migrant workers, facilitating the exploitation of this vulnerable group.”<sup>74</sup> Incidents of corruption such as this are not uncommon, indicating that a considerable amount of money is involved in visa trading, and the extent of involvement of government officials.

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<sup>67</sup> U.S. Department of State Report - Kuwait (2005). [Online] Available from: <https://www.state.gov/j/drl/rls/irf/2005/51603.htm>

<sup>68</sup> Personal interview with Dr. Ebtehal Al-Khateeb, May 2011.

<sup>69</sup> Ibid

<sup>70</sup> Nasra Shah (2009). *The Management of Irregular Migration and Its Consequences for Development: GCC*. Asian Regional Program on Governance of Labour Migration, Working Paper 19, pp.12-14. ILO, Bangkok.

<sup>71</sup> Interview, 2007.

<sup>72</sup> Kapiszewski, *supra* note 19, p.250.

<sup>73</sup> Arab Times. *Top Brass Pointed at as Visa Scam Gets Murkier*. January 15, 2014.

<sup>74</sup> Minderoo Foundation’s Walk Free Initiative (2019). *Measurement Action Freedom*. Australia, p.79.

### ***1.7 Lack of Enforcement and Corruption***

The confines of the sponsorship system give way to a variety of abuses, and it is the migrants that face the majority of punishments. Many unskilled foreign workers are afraid to take their employers to court, for fear of incurring their employer's wrath, and losing their jobs. Although it is difficult for workers to seek redress in local courts due to the maze of bureaucracy and paperwork, those that do most often win their case. However, implementation is rarely enforced. In 2005, a U.S. Department of State Country Report on Kuwait stated,

The courts rule in favor of employees in an estimated 90 percent of the labour disputes they hear; however, no legal mechanism exists to enforce judgments. There is no compulsion for employers to obey court rulings, and workers often do not receive court-ordered compensation. Employers also reportedly used illegal methods to pressure foreign employees to drop cases against them, such as withholding their passports, encouraging police intimidation and brutality, threatening deportation, and filing criminal charges against them for fabricated crimes, such as theft.<sup>75</sup>

This lack of enforcement of court rulings, and national laws discourages other workers from reporting on incidents of abuse or maltreatment, which makes it difficult to document such cases. Corruption may be one possible cause of lack of enforcement. In 2017, a Human Rights Practices report was conducted by the U.S. Department of State that stated, "the law mandates criminal penalties for corruption by government officials, but the government did not implement the law effectively. Government observers believed officials engaged in corrupt practices with impunity. There were numerous reports of government corruption during the year."<sup>76</sup> Combating corruption has been one of the most addressed issues in the National Assembly, but so far, little progress has been made in this field.

Although the government has enacted certain measures aimed at protecting the rights of unskilled foreign workers, such as standardized contracts, minimum wages, and working hours, enforcement has been very poor. This gives rise to what McGeehan refers to as a "culture of impunity among employers,"<sup>77</sup> which is the "inevitable result of the authorities' failure to enforce those laws which do exist to protect the rights of migrant workers."<sup>78</sup> Consequently, many violations continue to be commonplace. Due to the lack of proper enforcement of the laws within Kuwait's Labour Code as well as the terms of the sponsorship laws, employers are able to profit from the easy access to cheap labour, but remain unwilling to release control over their perceived "commodities". The failure of the Kuwaiti government to enforce those laws which currently exist to protect migrant workers demonstrates a lack of commitment to international human rights standards, thus culminating into a system that creates situations of forced labour and slavery.

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<sup>75</sup> U.S. Department of State Report, *supra* note 67.

<sup>76</sup> U.S. Department of State Report on Human Rights Practices- Kuwait (2017). [Online] Available from: <https://www.state.gov/j/drl/rls/hrrpt/2016/nea/265506.htm>

<sup>77</sup> Ibid

<sup>78</sup> Ibid

In 2015, the Ministry of Social Affairs and Labour issued a decree dissolving the board of the Kuwaiti Transparency Society (KTS), a local chapter of Transparency International, an anti-corruption organization. The KTS had been in operation since 2006, promoting transparency and reform within the country. That year, a few members of the National Assembly met with Mario Marcel, the World Bank's senior director of governance and global practice, during which he expressed concern about Kuwait's low ranking in Transparency International's Corruption Perceptions Index (the country was ranked 55 out of 168 countries that year).<sup>79</sup> Members of the National Assembly, led by Youssef Al-Zalzala, accused the KTS of filing false reports meant to harm Kuwait's ranking, and interfering in the country's politics.<sup>80</sup> As a result, the organization's property, finances, and documents were seized, and its board members were asked to step down. This prompted strong rebukes from Transparency International's chairman, who stated, "no country serious about tackling graft can afford to close down organizations such as Kuwait Transparency Society,"<sup>81</sup> adding that the country is sending out the wrong signals. Kuwait's laws concerning non-profit organizations are strict, in the sense that licenses are rarely granted to organizations, and the criteria for official recognition is lengthy. Many applications are rejected by the Ministry of Social Affairs and Labour for a variety of reasons. As of 2017 (most recent figures), there are 115 officially licensed non-profit organizations operating in the country.<sup>82</sup> Many unskilled foreign workers work in excess of 48 hours per week, with no overtime pay, no rest days, and no annual leave. Without the assistance and support of a union or a government monitoring agency, workers are forced to deal with such issues on their own. While some choose to remain silent and submissively accept these conditions, others decide to leave their jobs and find work elsewhere, well aware of the illegality and risks of doing so.

### **1.8 MOUs**

The world economy being as it is, Kuwait has relatively easy access to cheap labour from economically deprived countries eager to retain their skilled workforce, but willing to export their less skilled workers, due to the amount of remittances that are sent back to the labour-exporting countries each year. Simple access to cheap labour has deterred nationals from acquiring the necessary skills needed to fulfill certain technical jobs, or jobs that require manual labour. "With the passage of time, the State has become tied into the cheap labour syndrome and now operates and plans its forward activities on the basis of the availability of cheap imported labour."<sup>83</sup> The abundance of cheap labour, and its availability for nationals, is in direct contrast to the lack of political, social, economic, and legal initiatives directed at replacing the sponsorship system with a structure that is less biased towards unskilled foreign migrants. At the same time, labour

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<sup>79</sup> Transparency.org, (2015). Corruption Perceptions Index. [Online] Available from: <https://www.transparency.org/cpi2015>

<sup>80</sup> KTS was accused of violating Article 6 of the Law of Nonprofit Organizations (1962), which bans non-governmental groups of actions believed to interfere in political or religious disputes, or to provoke racism or sectarianism

<sup>81</sup> Transparency.org (2015). *Kuwait Chapter of Transparency International Under Threat*. [Online] Available from: [https://www.transparency.org/news/pressrelease/kuwait\\_chapter\\_of\\_transparency\\_international\\_under\\_threat](https://www.transparency.org/news/pressrelease/kuwait_chapter_of_transparency_international_under_threat)

<sup>82</sup> U.S. Department of State, *supra* note 76.

<sup>83</sup> Al-Moosa & McLachlan, *supra* note 2, p.113

exporting countries very often “lack necessary bargaining power given their economic dependence on migrant workers’ remittances,”<sup>84</sup> which complicates the task of formulating a viable substitute for the sponsorship system. In order to remedy this, countries such as the Philippines and India have signed non-binding Memorandum of Understanding (MOU) with Kuwait, outlining different protections for migrant workers.

Kuwait’s relationship with India can be traced back to its pre-oil history. The two countries have a long background, and Indians represent a large segment of both the skilled, and the unskilled labour sectors. Recent figures show that over 800,000 Indians now reside in Kuwait, making it the largest expatriate community in the GCC.<sup>85</sup> In 2007, a MOU was signed between Kuwait and India that included articles on the recruitment of manpower, labour contracts, and the protection of workers. Although not included in the MOU, the Indian government also provides broad guidelines for terms that should be included in model contracts. These include provisions regarding accommodation, housing, working hours, rest days and medical expenses. In 2013, an agreement was signed between the two countries regarding the transfer of sentenced individuals, with the intent of transferring their sentences, “or any other form of punishment,” in order for them to serve the remaining sentence in their home country.

The Philippines is another country with a large number of expatriate workers in Kuwait, a trend which began in the 1980s. As one of the world’s largest exporters of laborers, there are currently over 260,000 Philippine citizens currently residing in Kuwait.<sup>86</sup> The two countries maintained close labour ties over the years, but recently there have been serious developments that endanger those ties. For many years, reports of abuses against Filipino workers, especially domestic workers by their sponsors have been widely circulated within the Kuwaiti media, international and national NGOs, and other international organizations. Efforts to lower incidents of abuse by signing MOUs, and introducing standardized contracts that establish minimum wage, hours of rest, and other labour issues proved futile as the number of abuses continued to grow. The embassy shelter was constantly overcrowded and short-staffed; in 2017 alone, the shelter housed 500 migrants.<sup>87</sup> In February of 2018, the remains of 29-year-old Joanna Demafelis, a Filipino domestic worker, was found in the freezer of an abandoned apartment belonging to a Lebanese couple who had fled Kuwait. The couple was arrested some time later in Lebanon and Syria, but it remains to be seen whether or not they will be extradited back to Kuwait. The death of Demafelis sparked outrage in the Philippines, and prompted President Duterte to order a ban on the deployment of Filipino migrant workers to Kuwait. A few months later, videos surfaced online of staff from the Philippine Embassy seemingly rescuing domestic workers from their employers’ home. The videos showed staff hastily bundling a domestic worker into a waiting car and transporting her to the airport. Infuriated, the Kuwaiti government stated that these actions were a violation of diplomatic standards, and in breach of the laws and sovereignty of Kuwait. In May, after the

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<sup>84</sup> Migrant Forum in Asia, *supra* note 39.

<sup>85</sup> Gulf News. *800,000 Indians Now Living in Kuwait*. April 25, 2015. [Online] Available from: <https://gulfnews.com/world/gulf/kuwait/800000-indians-now-living-in-kuwait-1.1498483>

<sup>86</sup> BBC News. *Philippines and Kuwait Sign Agreement on Workers’ Rights*. May 11, 2018. [Online] Available from: <https://www.bbc.co.uk/news/world-asia-44088011>

<sup>87</sup> MigrantRights.org (2018). *Philippines Take Extreme Measures, Migrant Rights*. [Online] Available from: <https://www.migrant-rights.org/2018/02/philippines-takes-extreme-measures-as-kuwait-continues-to-mismanage-workers-rights/>

Philippines issued an apology, the two countries agreed on a MOU outlining new measures to protect migrant workers, such as the right to retain their passports and mobile devices, as well as articles guaranteeing adequate food, housing, and health insurance.

In the past, incidents of abuse or maltreatment have pushed countries with a large migrant population working in Kuwait to put a temporary halt on migration. It is not uncommon for the governments of countries such as India, Bangladesh, and the Philippines, to intermittently prevent their nationals from seeking work in Kuwait, and this is done mostly as a bargaining tool for further protections for their citizens. This may be effective in the short term, as countries draw up MOUs to seek better protections for their citizens, but as previous efforts have shown, these types of measures have little effect on enforcement, proving them futile. When it comes to setting terms concerning fair recruitment, for example, Wickramadekara and Baruah state that “Research has shown that bilateral agreements and MOUs often play only limited roles in fair recruitment due to the nonbinding nature of MOUs that carry no obligation on either the origin country or destination country to enforce their provisions.” As Malit Jr. and Naufal conclude, “thus, the labour-sending countries’ limited legal and administrative capacities to protect migrants, combined with the labour-receiving’s embedded autonomy to exclude domestic workers from the law, undermine their bilateral labour cooperation and constrain the possibility addressing asymmetric information.”<sup>88</sup> Labour exporting countries would perhaps be more successful in guaranteeing the rights of their citizens abroad if they acted collectively to engage the Kuwaiti government in reforming the sponsorship system, as opposed to separately lobbying for protections. MOUs vary in degree of protections they offer migrant workers from country to country, and although they are an improvement on measures currently in place for the protection of migrants, they still fall short of international labour standards. In most cases, however, these MOUs serve as a stepping stone to further legal and administrative advances in the protection of migrant workers.

### ***1.9 International Laws and Conventions***

The sponsorship system as it exists today in Kuwait is in violation of many international human and labour rights standards. Since Kuwait became a member of the United Nations in 1963, the government has signed and ratified various treaties concerning labour and human rights, one of the most crucial being the Trafficking Protocol. It has also ratified numerous conventions involving international organizations. The country’s relationship with the ILO, for example, dates back to 1961, when Kuwait ratified seven conventions: the Abolition of Forced Labour Convention; the Freedom of Association and Protection of the Right to Organize Convention; the Hours of Work (Industry) Convention; the Hours of Work (Commerce and Offices) Convention; the Holidays with Pay Convention; the Weekly Rest (Commerce and Offices) Convention (1957); and the Night Work (Women) Convention. In subsequent years, Kuwait continued to ratify other relevant treaties such as the Social Policy (Basic Aims and Standards) Convention, the Discrimination (Employment and Occupation) Convention, and Convention C29-the Abolition of Forced Labour Convention (1930). Kuwait’s labour laws, including terms in the sponsorship system, contain articles that conform to these conventions, but they do not

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<sup>88</sup> Malit Jr. & Naufal, *supra* note 58, p.80.



contain any measures for enforcement, which is the crux of the problem. In the past, GCC countries have appealed to the ILO to take into consideration their reliance on foreign labour, and not compel them to apply all provisions of the ratified conventions at once. Speaking on behalf of GCC countries, the Bahraini Minister of Labour and Social Affairs, Abdulnabi Al-Shoala stated, “the ILO must give our countries the chance to develop their legislation and institutions in a way which is harmonious with the traditions, culture and beliefs of the people of the region...which stems from local realities and its people rather than importation of standard models from elsewhere.”<sup>89</sup> As harsh as the “local realities” may be, eventually, GCC countries must begin adopting and applying international labour standards for all workers in their countries.

In some cases, Kuwaiti laws seem to negate some articles in international conventions, which lead to a confused policy. For example, the Social Policy (Basic Aims and Standards) Convention’s Article 11 states that “all practicable measures shall be taken (a) to inform the workers of their wage rights; (b) to prevent any unauthorized deductions from wages; and (c) to restrict the amounts deductible from wages.”<sup>90</sup> This Article is pertinent for foreign migrant workers, especially unskilled migrant workers, who are mostly illiterate, and are therefore, vulnerable to fraudulent contracts. A possible impediment to applying this Article is the fact that all contracts, in order to be considered valid, must be in Arabic, as stated in Article 29 of the New Private Sector Labour Law No.6 of 2010 which states, “all contracts shall be made in [the] Arabic language and the translation of which in any foreign language can be added to it, but the Arabic language shall have preference in case of discrepancies.”<sup>91</sup> The essence of this Convention is that workers are aware of their rights and entitlements under any contract, in which case, providing official translations, and including a provision in the Labour Law for that, would better fulfill the aims of the Convention. In other instances, the labour code includes stipulations on certain matters, which seem to contradict specific conventions. For example, the ILO’s Convention No.106 concerning weekly rest seems to echo Article 6 of the New Labour Code if not for the caveat that “if the need arises, a worker may be required to work on his rest day.”<sup>92</sup> Once again, the government has delegated sponsors to determine whether or not employees receive weekly rest. In 1966, Kuwait ratified the Discrimination (Employment and Occupation) Convention. One of the core principles of the Convention calls on member States to “declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect to employment and occupation, with a view to eliminating any discrimination in respect thereof”<sup>93</sup>. The sponsorship program currently in place presents many challenges in terms of fulfilling the intents of the Convention. Within both the private and public sectors, there exists a hierarchy of labour that favors certain nationalities over others.

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<sup>89</sup> Kapiszewski, *supra* note 19, p.235-236.

<sup>90</sup> ILO Labour Inspection Convention, 1947 (No.81).

<sup>91</sup> State of Kuwait New Private Sector Labour Law, 2010.

<sup>92</sup> *Ibid*

<sup>93</sup> ILO Discrimination (Employment and Occupation) Convention, 1958 (No.111).

Two of the most important conventions that Kuwait has ratified are the Convention C29-the Abolition of Forced Labour Convention (1930), and the Convention Concerning Forced or Compulsory Labour. The issue of forced labour inevitably arises in discussions regarding the sponsorship system, due to the fact that it discourages workers from leaving their jobs freely. In 2012, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) released a report on Kuwait noting, “the Committee hopes that, in the next report, the Government will provide information on the measures adopted to protect migrant workers, in particular from abuses that may arise from the visa “sponsorship system.”<sup>94</sup> There is a direct correlation between sources of abuse toward migrant workers, and the sponsorship system. More on forced labour and slavery will be discussed in Chapter 5.

Another law in the New Labour Code involving unions also seems to contradict the Freedom of Association and Protection of the Right to Organize Convention, which Kuwait ratified. Even though Kuwaiti law permits expatriate workers to join unions, the law is discriminatory toward unskilled foreign workers in a variety of ways. Expatriate workers are only allowed to join trade unions if they have been working in Kuwait for five or more years, hence ruling out unskilled foreign laborers, who are on temporary contracts. Very few unskilled workers remain in Kuwait for more than five years; therefore, many choose not to join trade unions. Migrant workers are also denied voting rights, and prohibited from holding leadership positions in unions, which means that their views and concerns are more often than not ignored. Moreover, Kuwaiti law stipulates that any union must have at least 100 members, fifteen of which must be nationals; in the case of the majority of unskilled foreign laborers who work as cleaners and street sweepers, there is no trade union available for them to join due to the lack of Kuwaitis working in these fields. Both the International Trade Union Confederation and the ILO have criticized this requirement as it discourages the formation of trade unions in sectors that do not employ many nationals, such as the construction and sanitation sectors.

### ***1.10 Alternative***

One alternative to the sponsorship system involves replacing individual sponsorship with state sponsorship. In 2005, the ILO formally suggested that the current sponsorship system be substituted for one in which the Ministry of Social Affairs and Labour becomes the sponsor for all migrant workers in the country, on the basis that the current system is not supported by international conventions.<sup>95</sup> In 2010, the Kuwaiti government announced that it was forming plans to abolish the sponsorship system by 2011 and “replace the employer-based system with a government-administered recruitment authority,”<sup>96</sup> only to backpedal a day later when a government official told Al-Jazeera News that the system would not be entirely cancelled, but would be amended in order to make it easier for migrant workers to transfer sponsors.<sup>97</sup> According to Martin, the reason

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<sup>94</sup> ILO (2012). Report of the Committee of Experts on the Application of Conventions and Recommendations. [Online] Available from: [https://www.ilo.org/global/standards/WCMS\\_175675/lang--en/index.htm](https://www.ilo.org/global/standards/WCMS_175675/lang--en/index.htm)

<sup>95</sup> Ali Taqi (2005). *Kuwait Studies Possible Overhaul of Workers' Sponsorship System*. Gulf News, June 19.

<sup>96</sup> International Trade Union Confederation (2012). *Annual Survey of Violations of Trade Union Rights*.

<sup>97</sup> J. Etheridge (2010). *Kuwait Sparks Confusion with Labour U-Turn*. Human Rights Watch, October 18.

the sponsorship system has endured is due to the “\$1 billion a year in payments made to natives for sponsorships, the desire of governments to “control” foreigners, and the inability of COO [Country of Origin] governments to persuade GCC governments to change their policies.”<sup>98</sup> Currently, progress on plans to replace or amend the system remain unclear and the Kuwaiti government’s intention to revoke the sponsorship system has failed to materialize as of yet.

Transferring responsibility from nationals to a government authority would, in theory, more adequately protect the rights of migrants. Foreign workers should be issued with an employment visa, which would specify the length of stay of the migrant, without binding them to an individual sponsor. Moreover, workers should be able to remain in the country if they seek to change employers. As the ILO states, “workers must be able to change or terminate employment at will without losing valid immigration status and without having to obtain the employers permission. The employer should no longer be responsible for filing a case when they leave.”<sup>99</sup> Employers should no longer be able to cancel a worker’s legal residency on the basis of employment termination. Instead, workers should be able to compete in the labour market for the best possible job in their field. Adequate enforcement of current laws is also necessary, whether through labour inspections or other mechanisms.

### ***1.11 Conclusion***

The Kuwaiti government and GCC governments in general, face a number of obstacles in attempting to reduce their dependence on foreign labour. The relatively easy and endless supply of manpower from mostly Asian countries, coupled with nationals’ attitudes towards manual work have created a labour market that simply would not function without unskilled foreign labour. The roles and statuses that unskilled foreign laborers occupy within the labour force in Kuwait are dependent on many factors, but one thing is certain, their presence is crucial to the country’s economic and structural development. Unskilled workers have filled a void in Kuwait’s labour force and by doing so, have enabled the country to develop large-scale projects, infrastructures, and services that are essential for a modern state.

Within the confines of the sponsorship system, however, unskilled foreign workers are at a constant risk of abuse. By tying them to their sponsors, preventing them from competing in the labour market, confiscating their passports, preventing migrants from permanent settlement, denying them effective means for resolving labour disputes, and failing to enforce the laws and conventions that apply to this group of workers, the sponsorship system creates a system of forced labour and slavery. As McGeehan states, “migrant workers are not exploited despite labour laws and the protection afforded them by the justice system, rather they are exploited by the labour laws and the justice system. That is to say that their exploitation is the direct result of a system whose purpose is to deny

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<sup>98</sup> Philip L. Martin and Froilan Malit (2017). *A New Era for Labour Migration in the GCC?* Migration Letters, 14, pp.113-126.

<sup>99</sup> Migrant Forum in Asia, *supra* note 39.

them rights.”<sup>100</sup> The entire system is skewed in favor of the national workforce, allowing the government to take advantage of a vulnerable group of workers. As Martin and Malit state, “international organizations and NGOs have pointed to the kafala system as the key to keeping migrants vulnerable.”<sup>101</sup> The sponsorship system needs to be amended, and proper enforcement of existing laws is necessary to ensure the rights of migrants in Kuwait. Despite the labour laws, the many treaties or conventions that have been ratified, and numerous MOUs, as long as the laws are not amended, abuse will continue. As flawed as the system is however, its purpose would function a great deal better if it was followed up with proper enforcement. Many of the laws are intended to conform to international standards, but enforcement mechanisms are severely lacking. Whether this is due to lack of motivation, or social attitudes or other factors is unclear.

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<sup>100</sup> McGeehan, *supra* note 59, p.36.

<sup>101</sup> Martin & Malit, *supra* note 98, p.122.

## Chapter 2

### Male Laborers

#### **2.1 Introduction**

The arrival of migrant workers in Kuwait provided the country with a labour force that enabled it to realize massive development and infrastructural projects, paving the way for a modern nation-state eager to translate its oil wealth into advancements for its local population. Like most migrant workers, unskilled foreign male laborers, especially from Asian nations, are among the most vulnerable groups in society. As a group, they are not afforded the same rights as nationals, and in cases where the law specifies that they are to be treated as equals, it is very rarely applied. Despite facing discrimination in the labour market, they accept any form of work, hoping for a better situation than that found in their home countries. This chapter focuses on unskilled foreign male laborers, mainly those working in construction and service sectors, including their motivations for migration to Kuwait, the types of labour that they are engaged in, how they live, as well as the national and international laws that apply to them.

#### **2.2. Background**

The presence of migrant workers in Kuwait cannot be overstated. Since the oil boom, large numbers of unskilled foreign laborers were required to fill gaps in the labour sector that the local population could not or would not fill. Therefore, their presence facilitated the government's goal of providing higher standards of living and generous welfare services for its nationals. Like other migrants, unskilled male laborers are governed by the rules and regulations of the sponsorship system discussed in the previous chapter, whereby all foreigners wishing to work in Kuwait must do so via a citizen sponsor, who effectively guarantees their stay in the country. This system has "created a pool of cheap labour, which could be easily exploited and controlled, and deported if no longer required."<sup>1</sup> The government's immigration policy towards foreigners and its dependence on the sponsorship system are in line with its view that Kuwait is not a country that is open to permanent settlement. As a welfare state that offers a great deal of services for its nationals, its economy would not cope with the extra burden of granting foreigners the same privileges. As Ruhs states, "immigration policy regimes are likely to be related to wider economic and social policies, including prevailing welfare policies, as well as to the overall political system and structure."<sup>2</sup> The type of sponsorship systems with these restrictions are often referred to as contract labour, or Temporary Foreign Worker Programs (TFWPs), and are used to set certain parameters on the admission, employment, and rights that are granted to migrant workers. Although the purpose of these programs is to fill a temporary gap in certain labour sectors, the result is often one in which these

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<sup>1</sup> Stephen Castles (2000). *Ethnicity and Globalization: From Migrant Worker to Transnational Citizen*. Sage Publications, London, p.511.

<sup>2</sup> Martin Ruhs (2010). *Migrant Rights, Immigration Policy and Human Development*. Paper, University of Oxford, p.14.

programs contribute to existing divisions, whereby certain sectors are exclusively the domain of foreign workers. As Ruhs explains,

TFWPs have often been accompanied by the segmentation of the host country's labour market and the emergence of 'immigrant sectors', understood as sectors that employ, primarily or exclusively, foreign workers. The causal relationship between segmented markets and the employment of foreign workers appears to be two-ways, in which one reinforces the other. On the one hand, a segmented labour market and the existence of what is often perceived as 'undesirable work' in 'undesirable sectors', which natives no longer wish to take up, have constituted major reasons for the inflow and concentrated employment of foreign workers in these sectors. On the other hand, restrictions of the employment of foreign workers to certain sectors and/or occupations of the host economy has led, or at least contributed, to the desertion of these sectors/occupations by native workers, thus giving rise to, or at least exacerbating, the (further) segmentation of the labour market and the emergence of immigrant sectors.<sup>3</sup>

By placing restrictions on the types of jobs that are available to unskilled foreign workers, competition between migrants and nationals becomes non-existent, thereby protecting the local labour force, and fulfilling the State's promise in its Constitution to guarantee each citizen the right to work.

Table 3

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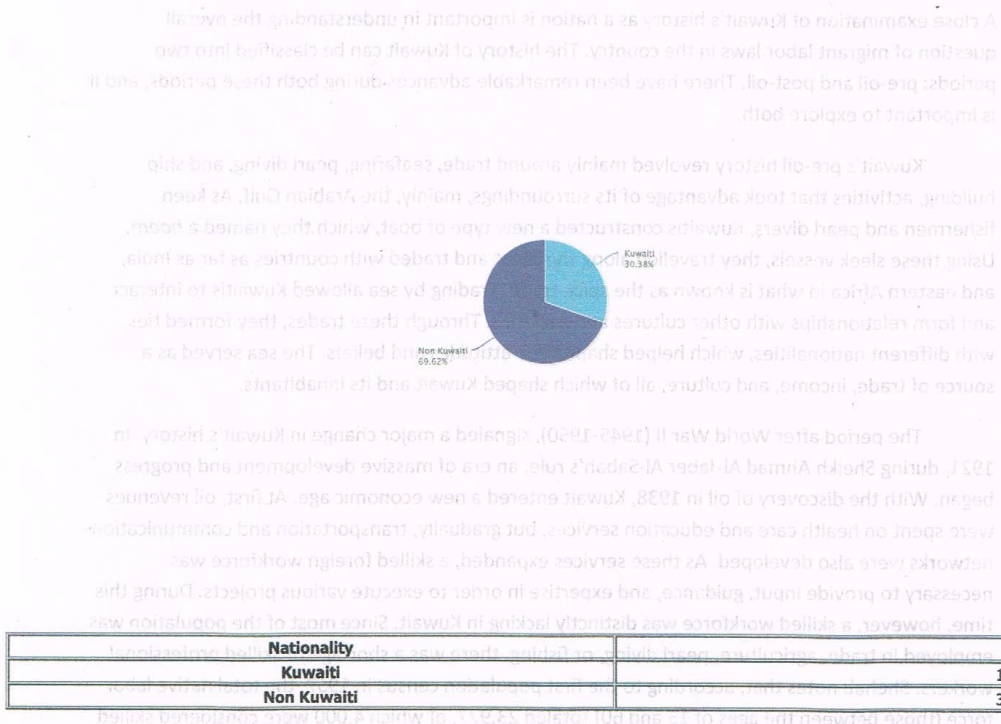
<sup>3</sup> Martin Ruhs (2013). *Temporary Foreign Worker Programs: Policies, Adverse Consequences, and the Need to Make Them Work*. International Labour Organization, p.10.

## Population by Nationality

The choice filters chart and reports: June - 2018

Age Group: Total

Gender: Total



Source: PACI

The number of migrants in Kuwait has risen steadily over the years,<sup>4</sup> and in spite of the many risks, migrants continue to flock to the country. As of 2017, non-Kuwaitis make up 69% of the total population,<sup>5</sup> of which more than one million are unskilled or low-skilled workers. (See Table 3) Despite this fact, it is important to firstly note that the terms “migrant”, “immigrant”, or “migration” are not used by the government when referring to foreign workers. Instead, terms such as “expatriate”, “guest worker”, “temporary foreign worker”, “contract labourer”, or simply “alien”, are employed. The use of these terms reinforces the temporary nature of the workers’ stay in Kuwait, regardless of their large numbers. Additionally, in spite of the fact that the government population census collects data on the nationality of all residents in the country, information from the Central Administration of Statistics and the Public Authority for Civil Information (PACI) only comprises statistics for two categories: Kuwaitis and non-Kuwaitis. It is not only the terminology, but the laws themselves that exist to guarantee that once these workers have completed their jobs, they will return to their countries. As per the confines of the sponsorship system discussed in the previous chapter, there is no chance of permanent settlement or eventual citizenship, regardless of the time spent in the country. This is done deliberately in order to “avoid the social expenditure needed to maintain the dependents of

<sup>4</sup> Kuwait: Population by Nationality (Kuwaiti/Non-Kuwaiti) 1990-2013 Statistics. Public Authority for Civil Information. [Online] Available from: <http://gulfmigration.org/kuwait-population-by-nationality-kuwaiti-non-kuwaiti-1990-2013/>

<sup>5</sup> State of Kuwait Public Authority for Civil Information-Statistical Reports. [Online] Available from: <http://stat.paci.gov.kw/englishreports/#DataTabPlace:PieChartNat>

migrants and to prevent the integration of foreigners with local population.”<sup>6</sup> As far back as 1964, Shehab noted that unskilled foreign workers have zero permanent links to the country. He noted that “their services will apparently continue to be in demand indefinitely; yet the individuals themselves are constantly changing and are regarded by their hosts as changeable.”<sup>7</sup> Migrant workers’ awareness of their temporary stay in the country, and the unequal relationship between employee and sponsor contributes to the overall instability inherent in their labour migration, and may explain the reasons for their willingness to accept fewer rights than they are granted in their native countries. As Fargues and Shah noted in their study,

On the receiving side in the Gulf, policies have been characterized for the last half century by a contrast between open labour markets and close societies: admitting the contract workers needed by ambitious development programs while limiting the rights of foreign nationals and avoiding their long-term settlement.<sup>8</sup>

These restrictions placed on the length of time migrants may spend in the country, as well as the rights they are granted, reflect the concerns of the government in maintaining the national identity of the citizen population, who were until recently, a minority in their own country (See Table 4).<sup>9</sup> Amid growing fears that their national identities are at risk of becoming overshadowed by the growing number of migrants in the country, the government has actively pursued policies aimed at restricting the permanent settlement of migrants, as well as the rights they are afforded. In 2004, during a meeting of GCC labour ministers, the Bahraini Minister of Labour and Social Affairs, Majeed Al-Alawi, stated that, “non-Arab foreign workers constitute a strategic threat to the region’s future.”<sup>10</sup> Similarly, in 2005, the GCC Secretary-General, Abdul Rahman Al Attiya, stated that “GCC countries need to look at the massive presence of expatriates basically as a national security issue, and not merely as an economic matter.”<sup>11</sup> In addition, the president of the Arab American Institute, James Zogby, warned that foreign migrants were a “time bomb waiting to explode.”<sup>12</sup>

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<sup>6</sup> K.C. Zachariah, B.A. Prakash, and S. Irudaya Rajan (2003). *The Impact of Immigration Policy on Indian Contract Migrants: The Case of the United Arab Emirates*. International Migration, 41, p.162.

<sup>7</sup> Fakhri Shehab (1964). *Kuwait: A Super Affluent Society*. Foreign Affairs An American Quarterly Review, p.467.

<sup>8</sup> Philippe Fargues & Nasra Shah (2018). *Migration to the Gulf: Policies in Sending and Receiving Countries*. Gulf Labour Markets and Migration (GLMM), Gulf Research Centre, Cambridge, p.2.

<sup>9</sup> Kuwait: Population by Nationality (Kuwaiti/Non-Kuwaiti), *supra* note 4.

<sup>10</sup> Andrzej Kapiszewski (2006). *Arab Versus Asian Migrant Workers in the GCC Countries*. United Nations Expert Group Meeting on International Migration and Development in the Arab Region, Population Division, Department of Economic and Social Affairs, United Nations Secretariat, pg.8.

<sup>11</sup> *Ibid*

<sup>12</sup> *Ibid*



Table 4

## Kuwait: Population by nationality (Kuwaiti/ non-Kuwaiti) (1990-2013)

Year	Kuwaitis	Non-Kuwaitis	Total
1990	578,511	1,573,169	2,151,680
1993	657,493	988,134	1,645,627
1995	708,115	1,250,679	1,958,794
1996	732,403	1,361,486	2,093,889
1998	786,010	1,484,855	2,270,865
1999	812,255	1,442,699	2,254,954
2000	841,790	1,375,468	2,217,258
2001	870,283	1,438,819	2,309,102
2002	898,285	1,521,643	2,419,928
2003	927,686	1,618,998	2,546,684
2004	956,234	1,797,422	2,753,656
2005	992,217	1,998,972	2,991,189
2006	1,023,316	2,159,644	3,182,960
2007	1,054,598	2,345,039	3,399,637
2008	1,087,552	2,354,261	3,441,813
2009	1,118,911	2,365,970	3,484,881
2010	1,148,363	2,433,691	3,582,054
2011	1,183,185	2,514,107	3,697,292
2012	1,212,436	2,611,292	3,823,728
2013	1,242,499	2,722,645	3,965,144

Source:

### 2.3 Description

The UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990) defines in Article 2 (1) a migrant worker as “a person who is to be engaged, is engaged or has been engaged in a remuneration activity in a State of which he or she is not a national.”<sup>13</sup> Low or unskilled Asian migrants are given preference over workers from other countries for several reasons. Whereas in the past, Arab migrants from Egypt, Lebanon, Jordan, Syria and Palestine represented the majority of migrants in Kuwait, this has changed due to the availability of cheap labour from Asian countries. Furthermore, after the 1990 Gulf War, many Arab workers were “perceived by the nationals as disloyal to their hosts, and even as potentially dangers political agents who spread hostile ideas or work as a ‘fifth column’ for the benefit of foreign powers.”<sup>14</sup> As mentioned earlier, Asian workers are considered more docile than Arabs and are less likely to demand state benefits. Not only are Asian migrants more willing to take up jobs that Arab migrants will not accept, but they are also less likely to contest unfavorable working conditions and terms. Weiner states that, “the disadvantage of Arab migrants is that they are inclined to demand equal rights with the local population in housing, education, and health facilities; they also bring to the Gulf the political ideologies

<sup>13</sup> United Nations Office of the High Commissioner. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990). [Online] Available from: <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>

<sup>14</sup> Andrzej Kapiszewski (2006). *Arab Versus Asian Migrant Workers in the GCC Countries*. United Nations Expert Group Meeting on International Migration and Development in the Arab Region, Population Division, Department of Economic and Social Affairs, United Nations Secretariat, pg.11.

and cleavages that characterize other countries in the region.”<sup>15</sup> In contrast, Asian migrants do not generally interact with the local population, are not politically involved, and do not expect to permanently settle in the country. For these reasons, Asian migrants are preferred over workers from other Arab countries.

### **2.3.1 Who Are They?**

The types of unskilled Asian workers that migrate to Kuwait are what Abella refers to as the “richer among the poor,”<sup>16</sup> because in order to migrate, access to resources, such as traveling money, are needed. Additionally, recruiting agencies charge various fees for their services, including fees that are to be paid to the Kuwaiti sponsor upon arrival. In many cases, migrants incur great debts in their efforts to gain employment to Kuwait. According to a 1991 study by the ILO, the debt incurred by an Indian worker in order to finance his or her out-migration to Kuwait averaged US \$1,700.<sup>17</sup> In 2016, Martin noted that the average amount of debt incurred by workers is \$1,900,<sup>18</sup> which indicates that costs have not increased significantly, although as Zachariah et al. have reported, wages remained stagnant for most of the past twenty-five years.<sup>19</sup> These fees are paid to recruitment agents in order to cover costs for travel and obtain the visa, as well as the agent’s percentage. Thus, it is crucial to note that first and foremost, migration to Kuwait is a costly undertaking, and is a voluntary choice.

The sponsorship system not only ties each migrant to a sponsor in order to guarantee a legal stay in the country, but also places certain restrictions on the types of unskilled male laborers that are granted entry and permission to work. Many laborers are recruited on the basis of their bachelor status, or their willingness to migrate unaccompanied by their families, so as to decrease the number of dependents the government must provide for. Age is another important factor in recruitment; most Asian male laborers are between the ages of 20-45, based on their ability to undertake physical work in Kuwait’s harsh weather conditions. Furthermore, the majority of workers employed in Kuwait are low or un-skilled migrants with little, if any, education, which further exacerbates their vulnerabilities. The IOM estimates that one half of migrants to GCC countries is either illiterate or has low reading and writing levels.<sup>20</sup> Low-skilled

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<sup>15</sup> Myron Weiner (1982). *International Migration and Development: Indians in the Persian Gulf*. Population and Development Review, 8, p.28.

<sup>16</sup> *Migrant Workers*. International Labour Organization, Labour Education 2002/4. No.129. [Online] Available from: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---actrav/documents/publication/wcms\\_111462.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_111462.pdf)

<sup>17</sup> Anh Longva (1997). *Walls Built on Sand*. Westview Press, Boulder, p.32.

<sup>18</sup> Philip Martin (2016). What Do Migrants Pay for Foreign Jobs? Conference Paper at ‘Improving Data on International Migration Towards Agenda 2030 and the Global Compact on Migration, Berlin, 2-3 December, 2016. IOM Global Migration Data Analysis Centre.

<sup>19</sup> Zachariah et al., *supra* note 6, p.169.

<sup>20</sup> Dovelyn Rannveig Agunias (2012). *Regulating Private Recruitment in the Asia-Middle East Labour Migration Corridor*. Issue No. 4, International Organization for Migration.

workers comprised 73 percent of Bangladeshi migrants employed in Kuwait in 2010 while half of all Pakistani migrants were unskilled.<sup>21</sup> According to statistics published by the Global Knowledge Partnership on Migration and Development (KNOMAD), as of 2018, Indian migrants make up the largest percentage of workers in Kuwait, numbering 1,157,072; the second largest group is from Bangladesh (381,669); the third largest from Pakistan (340,481); and finally the fourth largest is from the Philippines (197,751).<sup>22</sup> Both Shah<sup>23</sup> and Kanovsky<sup>24</sup> have noted that the initial preference for workers from Asian countries was their perceived docile nature, a perception which continues today, as seen by the large numbers of workers from the region. These “preference stems”<sup>25</sup> as Ruhs refers to them, enable the government to select workers based on their national origin first, followed by their skill level.

### 2.3.2 *Why Do They Come?*

The main reason as to why unskilled foreign workers choose to migrate is economic. Their main motivation for migration to Kuwait is to find better work opportunities than those available in their home countries. For many, Gulf countries represent better prospects, and better wages. Their aim is to save as much of their wages as possible in order to send maximum remittances back home. Provided they are paid, high savings are possible due to the fact that unskilled foreign laborers in Kuwait spend very little money; they are provided with housing and transportation to and from work, thus limiting expenses on food and other personal items.

For most migrants, work in Kuwait presents an opportunity to earn more money than they were receiving in their native countries. Lured by the promise of high wages, they arrive in the country with a clear goal to achieve what Longva refers to as a “life project,”<sup>26</sup> which consists of saving enough money either to support themselves or their families back home. As Abella notes, “unless constrained by state policies limiting admissions, migration will take place if the ‘expected wage’ at destination exceeds that in the origin.”<sup>27</sup> Although higher wages are the main reason for their migration, unskilled workers are also influenced by other factors. Depending on the political, economic or social situation in their home countries, some migrants seek to escape hardships. In the case of Indian migrants, Chanda and Gupta found that low wages, lack of job opportunities, and rising poverty are among the main reasons migrants wish to work in the

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<sup>21</sup> Nasra Shah (2013). *Labour Migration from Asian to GCC Countries: Trends, Patterns and Policies*. Middle East Law and Governance, 5, p.53.

<sup>22</sup> The World Bank Migration and Remittances Data. Bilateral Estimates of Migrant Stocks (2017), KNOMAD.

<sup>23</sup> Nasra Shah and Sulayman Al-Qudsi (1989). *The Changing Characteristics of Migrant Workers in Kuwait*. International Journal of Middle East Studies, 21, pp.31-55.

<sup>24</sup> Eliyahu Kanovsky (1986). *Migration from the Poor to the Rich Arab Countries*. Middle East Review, 18, pp.28-35.

<sup>25</sup> Ruhs, *supra* note 3, p.7.

<sup>26</sup> Longva, *supra* note 17, p.157.

<sup>27</sup> Manolo Abella (2018). *The High Cost of Migration for Work to the Gulf*. In *Migration to the Gulf: Policies in Sending and Receiving Countries*. Gulf Labour Markets and Migration (GLMM), Gulf Research Centre, Cambridge, p.224.

Gulf countries.<sup>28</sup> Seeking better job opportunities, a great deal of migrants are influenced by informal social networks (friends, relatives, acquaintances) from workers who have returned from jobs in the region, or are currently employed there. Shah and Menon have shown that “the role of social channels...from the home country is increasingly recognized as an important channel for encouraging additional migration.”<sup>29</sup> Although these factors play a role, the main motivation for migrants is economic.

Unlike other migration flows that are characterized by increasing skills or self-development, unskilled migrants are attracted to Kuwait based only on the promised wages. Studies by Al-Moosa and McLachlan;<sup>30</sup> and Birks and Sinclair<sup>31</sup> show that migrants in the region rarely acquire new skills which result in better job opportunities upon their return home. They realize that their time in Kuwait is limited and want to earn as much money as possible during their stay. In many cases, Asian male migrants resort to begging as a means of supplementing their income when they are not working. Once a rarity in Kuwait, begging is now common among unskilled foreign workers.

This outlook among migrants has created an “each man for himself” philosophy. Their temporary contracts characterize their stay in Kuwait as transient, therefore limiting any attachments they may develop in Kuwait. The risk of losing their jobs proves too great to take any actions that might improve their situation, especially since they are aware that their situation is temporary. This may explain why strikes and actions that require a group effort are few; but more importantly, there are even fewer legal cases involving unskilled foreign laborers and unscrupulous sponsors. Cases such as these tend to be lengthy, and require a great deal of organization among the many legal and political channels in Kuwait, and many unskilled laborers are not prepared to enter a protracted legal battle. Furthermore, even in cases where the court’s decision is in favor of the migrant, there is never any guarantee that he will receive any benefit from it due to both the court’s inability to enforce its decisions, and the migrant’s temporary contract in the country.

This awareness of their temporary situation instilled an attitude among unskilled foreign laborers of quiet subservience that allowed them to accept the situation they were in, for better or for worse. Longva elaborates more on this subservience by stating,

It provided a rationale for the expatriates’ acceptance of exclusion and the structure of dominance under which they lived. Likewise, it led them to hold on to the status quo even though it was often blatantly in their disfavor. Thus the expatriates’ acceptance of the power asymmetry between themselves and the Kuwaitis arose neither from false consciousness nor a

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<sup>28</sup> Rupa Chanda and Pralok Gupta (2018). *Indian Migration to the Gulf: Overview of Trends and Policy Initiatives in India*. In *Migration to the Gulf: Policies in Sending and Receiving Countries*. Gulf Labour Markets and Migration (GLMM), Gulf Research Centre, Cambridge, p.183.

<sup>29</sup> Nasra Shah and Indu Menon (1999). *Chain Migration Through the Social Network: Experience of Labour Migrants in Kuwait*. *International Migration*, 37, pp.361-382.

<sup>30</sup> Al-Moosa, A. & McLachlan, K. (2017) *Immigrant Labor in Kuwait*. Croom Helm Ltd, Kent.

<sup>31</sup> J.S. Birks and C.A. Sinclair (1980). *International Migration and Development in the Arab Region*. International Labour Office, Geneva.

fatalistic worldview but from the conviction that, given the temporary nature of their stay in Kuwait, submissiveness was the best strategy.<sup>32</sup>

This subservience is somewhat deliberate due to the temporary nature of their stay in Kuwait. The practice of self-subordination serves as a means to perform their jobs without attracting unnecessary attention to themselves by engaging in any acts that may be seen as aggressive towards their employer. These acts include speaking out or protesting against work conditions.

## **2.4. Life and Work**

There are four main areas of work for unskilled foreign laborers in Kuwait. The first is manual labour work for construction and manufacturing companies. The second is manual labour for cleaning, and waste management companies, such as garbage collectors, janitors, and watchmen. Others are employed in private households as drivers, chefs, or gardeners.<sup>33</sup> Farm laborers represent another area of work for unskilled male workers. “In all cases labour migration is a response to increased demand for specific kinds of labour.”<sup>34</sup> According to Abella, migrant workers “come to the host countries where they perform the jobs that natives no longer want to do, that is to say the so-called ‘three Ds’ jobs (dirty, degrading, and dangerous).”<sup>35</sup> Since nationals are averse to employment in these jobs, it is left to migrants to fill jobs in these sectors. It is important to note that the government restricts the issuance of work permits to certain sectors. Foreign workers are issued with an order from the Ministry of Social Affairs and Labour, listing the sectors and occupations for which work permits may be issued for migrant workers.<sup>36</sup>

### **2.4.1 What Do They Do?**

There are more than 300 privately owned cleaning companies currently operating in Kuwait, servicing schools, ministries, hospitals, private companies, buildings and others. Mr. Saoud Al-Arfaj, Managing Director of Al-Arfaj Cleaning Company, employs approximately eight thousand workers, 80% of which are unskilled. The company is awarded contracts for cleaning various hospitals, schools, offices, and other companies. Al-Arfaj Cleaning Company, like most other companies of its type in Kuwait, finds laborers through agents who have contracts with other agents in labour-sending countries

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<sup>32</sup> Longva, *supra* note 17, p.181.

<sup>33</sup> State of Kuwait. Labour Force (15 Years and Over) by Classification of Economic Activities, Nationality, and Gender Statistics. The Public Authority for Civil Information, 2017.

<sup>34</sup> Alan Richards and Philip L. Martin (1981). *The Laissez-Faire Approach to International Labour Migration: The Case of the Arab Middle East*. Economics Working Paper No.4, University of California, p.464.

<sup>35</sup> ILO (2002/4). *Migrant Workers*. Labour Education No.129. [Online] Available from: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---actrav/documents/publication/wcms\\_111462.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_111462.pdf)

<sup>36</sup> State of Kuwait Ministerial Order No. 107 of 1994.

such as India, Bangladesh and the Philippines. The employment of unskilled foreign laborers may be connected with saving money on expensive electronic cleaning equipment, which would require extensive training. Therefore, most cleaning companies, including Al-Arfaj, specialize in cleaning “by hand”. Mr. Al-Arfaj explained that the company works for both private and government companies, but most of the problems arise from those contracts awarded for government jobs. When the government issues a tender, it is not the company that is the most qualified for the required jobs that wins, but the company providing the lowest price, which means companies seek laborers who are willing to work for the cheapest, i.e., the minimum wage. Mr. Al-Arfaj also explained that government tenders also specify the amount of workers that are to be utilized for the job, and that this is done somewhat arbitrarily, resulting in some cases where more workers than necessary are being hired.<sup>37</sup> This may be due to the widespread corruption involved between agents and government officials. By insisting on the lowest price for the hiring of laborers, the country attracts laborers from the lowest tiers of society, such as opportunistic charlatans and petty thieves, who are willing to pay any cost to go to Kuwait.

Mr. Khaled Al-Rayes, Deputy General Manager at Al-Oul Kuwaiti Cleaning Company, elaborated more on the situation of unskilled foreign workers employed by his company, as well as others in Kuwait. Currently, Al-Oud employs 1,300 workers, mostly males from Bangladesh. Unlike many other cleaning companies, it does not charge workers for bringing them into the country, and their salaries are kept in full, except for fees established by the Ministry of Labour and Social Affairs. According to Mr. Al-Rayes, some companies charge an average of KD 500 (approximately \$1,646) for each worker applying for work in Kuwait, supposedly the cost of paying the various fees for licenses, contracts, and insurance arrangements required for the duration of their stay in the country. In reality, the fees that the government charges for licenses and documents are minimal. Mr. Al-Rayes explained Al-Oul’s breakdown of salary for each unskilled laborer, with the following costs taken out monthly (as specified by the Ministry of Labour and Social Affairs): KD 5 (approximately \$16) for social security; KD 25-30 (approximately \$82-98) for housing; KD 10 (approximately \$32) for transportation, since unskilled foreign laborers are not legally allowed to obtain a drivers’ licenses; and KD 5 (\$16) for ticket debt repayment, which amounts to a total of KD 45-50 (approximately \$148-164). Al-Oul’s monthly salary per worker is KD 90-100 (approximately \$296-329), since any less than that would mean that workers would not be left with much after all costs are taken out from their salaries.<sup>38</sup> However, many companies and agencies, both in Kuwait and in sending countries, charge exorbitant fees to earn a profit percentage from each laborer.

#### ***2.4.2 Where Do They Live? How Do They Live?***

Labour-importing countries such as Kuwait consider various costs and benefits when choosing potential migrant workers. Skilled workers, especially those accompanied by their families, are more expensive than unskilled workers in terms of living and employment costs, whereas unskilled workers are more likely to accept lesser conditions, and therefore represent less economic cost to the state. Birks and Sinclair state that, “a migrant workforce prepared to live under bachelor conditions might be a more economic

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<sup>37</sup> Interview with Mr. Saoud Al-Arfaj, July 2007.

<sup>38</sup> Interview with Mr. Khaled Al-Rayes, September 2007.

proposition than one seeking family reunification in the country of employment even if the productivity of the former were significantly lower.”<sup>39</sup> Ministerial Order, No. 113 of 1995, aims at setting basic standards for housing of unskilled foreign laborers. It “regulates matters related to workers’ quarters, including number of workers per room, minimum space per person, minimum furnishings, and maintenance of kitchens, toilets, and buildings.”<sup>40</sup> Employers are required by law to provide housing for all unskilled foreign laborers on government contracts, and although meals are not provided for, the housing facilities contain kitchens the workers may use. Despite this, many workers face poor living conditions, cramped quarters, and unsanitary toilets and cooking facilities. In 2006, a U.S. Country Report on Kuwait reported that,

Many foreign workers were forced to live in ‘housing camps,’ which generally were overcrowded and lacked adequate cooking and bathroom facilities. Laborers were housed 10 or more to a room in squalid conditions, a number without access to adequate running water. These workers were allowed off the camp compound only on company transport by permission of the employer.<sup>41</sup>

There is no indication of any changes being made to these conditions at the present time. Zachariah’s study on the housing conditions of Asian workers in Qatar found that the camps they were housed in, which share many similarities with camps found in Kuwait, had inadequate facilities for the amount of workers residing in them. Overcrowding was reported as a big problem with small rooms meant to accommodate two or three people being occupied by five to eight people.<sup>42</sup> As McGeehan states, “their living conditions reflect those of the developing, not the developed world.”<sup>43</sup>

Not only are unskilled male laborers excluded from certain protections under the Labour Law, such as free participation in the labour market, but they also face discrimination outside of the workplace, in the areas in which they live. Taran and Geronimi refer to this as “systematic discrimination,”<sup>44</sup> where migrants have access to accommodations only in ghettos or outer suburbs. This discrimination “affects, conditions, and even prevents outright access to work and to decent working conditions for target groups.”<sup>45</sup> Housed in locations away from locals and other expatriates, these laborers have little or no interaction with others, yet another indication of their temporary status. The government has allocated certain residential areas specifically for foreign laborers, such as Abbasiya, Jeleeb Al-Shuyouk, and Mahboula, areas relatively further from Kuwait City, the capital, than other residential areas. These areas are known for the abundance of

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<sup>39</sup> J.S. Birks and C.A. Sinclair (1979). *Migration and Development: The Changing Perspective of the Poor Arab Countries*. Journal of International Affairs, 33, p.303.

<sup>40</sup> State of Kuwait Ministerial Order No. 113 of 1995.

<sup>41</sup> U.S. Department of State, Country Report-Kuwait (2006). [Online] Available from: <https://www.state.gov/j/drl/rls/hrrpt/2006/78856.htm>

<sup>42</sup> Zachariah et al., *supra* note 6, p.168.

<sup>43</sup> Nicholas McGeehan (2015). *Transnational Crime or State Exploitation? The Trafficking of Migrant Workers to the United Arab Emirates*. 53,

<sup>44</sup> Patrick A. Taran and Eduardo Geronimi (2013). *Perspectives on Labour Migration (3E), Globalization, Labour and Migration: Protection is Paramount*. International Labour Organization, p. 9.

<sup>45</sup> Ibid

“bachelor apartments”, referring to the unskilled foreign laborers who occupy the apartments, and their inability to bring their families. This is a necessary clause in their short-term employment contracts and is meant to guarantee their temporary migrant status in Kuwait. As far back as 1982, Al-Moosa and McLachlan report that a study conducted by the Ministry of Planning described bachelor housing, or the housing that is offered to unskilled male laborers, as being “below the standards recommended by the United Nations Organization.”<sup>46</sup> Unfortunately, more than thirty years later, the situation has not improved much. The 2017 Human Rights Report from the U.S. Department of State noted that “social discrimination against noncitizens...was prevalent and occurred in most areas of daily life, including employment, education, housing, and health care.”<sup>47</sup> Kuwait has ratified the Discrimination (Employment and Occupation) Convention, with a core principle that calls on member States to “declare and pursue a national policy designed to promote...equality of opportunity and treatment in respect to employment and occupation.”<sup>48</sup> The sponsorship system presents challenges in terms of fulfilling the intents of the Convention, due to the labour hierarchy that favours certain nationalities over others. As mentioned in the previous chapter, domestic workers from the Philippines are considered better educated, cleaner, more efficient, and able to speak English, while workers from Sri Lanka and Bangladesh are considered to be less educated, and less experienced with household appliances due to their rural background. Thus, preference is shown to those nationalities that will require less training.

These segregation policies have created a situation in which unskilled male laborers are marginalized, only compounding their feelings of exclusion. Not only are they excluded from involvement with nationals but from the expatriate population also. Weiner states that “migrants are incorporated into the economic structure but are excluded from the social structure. Separation, not integration or assimilation, is the goal.”<sup>49</sup> Unskilled migrants have no permanent ties or allegiances to the country, simultaneously aware of the reliance on their labour and the temporary nature of their employment. As Birks and Sinclair state, “in this way, it is hoped the close and prolonged contact between indigenes and immigrants and the economic costs of supporting expatriates within the country of employment will both be minimized.”<sup>50</sup> Unlike the times of sea trading where Kuwaitis interacted with, and were exposed to, different nationalities, and diverse categories of workers through their exchanges, today, most Kuwaitis have little or no interaction with the growing migrant population. This has led to feeling of intolerance towards migrant workers and xenophobic sentiments have begun to reveal themselves through parliamentary debates concerning the rights of these workers in the country. Prevented from bringing their families and segregated from the local population, these government policies have discouraged the assimilation of migrant workers into the country.

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<sup>46</sup> Al-Moosa & McLachlan, *supra* note 30, p.43.

<sup>47</sup> U.S. Department of State Report on Human Rights Practices- Kuwait (2017). [Online] Available from: <https://www.state.gov/j/drl/rls/hrrpt/2016/nea/265506.htm>

<sup>48</sup> ILO. Discrimination (Employment and Occupation) Convention, No.111 (1958). [Online] Available from: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C111](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111)

<sup>49</sup> Myron Weiner (1982). *International Migration and Development: Indians in the Persian Gulf*. Population and Development Review, 8, p.27.

<sup>50</sup> Birks & Sinclair, *supra* note 31, p.305.



## **2.5 National Laws**

According to the labour law, all non-Kuwaiti workers are classified under the Alien Residence Law. Unskilled foreign workers who are employed by the government are issued with “No.17” visas, while those employed in the private sector are issued with “No.18” visas. Kuwaiti law specifies that laborers employed on government contracts depart the country once the job has been completed. For certain sectors such as industry and agriculture, work permits are transferrable only after one year of employment and with the approval of the original sponsor.<sup>51</sup> The law provides for a brief window of time, approximately two to three months, where laborers are allowed to transfer their contracts to another employer, but the long bureaucratic process involved in this transfer proves difficult for most unskilled and illiterate foreign laborers, especially since all contracts are in Arabic.

Labour laws aim to protect the basic rights of all workers by setting standards for the workplace. The United Nations and the ILO have both outlined basic standards for the workplace which include health and safety, hours of work and rest, annual leave, overtime pay, and living conditions amongst other standards. In Kuwait however, many of these laws are openly flouted without any consequences. In 2010, a New Private Sector Labour Code (No. 6) was established in Kuwait, which is the most recent amendment to labour laws in the country. In addition to the laws in the Labour Code, there are also Ministerial Orders (MO), which are periodically issued through the ministry in order to provide specific orders. Ministerial Order No. 43 addresses the conditions of work that are “to be observed on worksites and in workplaces to ensure the protection of workers...against occupational hazards and health risks,”<sup>52</sup> although mechanisms for enforcement are not mentioned. The 2017 U.S. State Department Report on Kuwait notes that

The Ministry of Social Affairs and Labour is responsible for enforcement of wages, hours, overtime, and occupational safety and health regulations of nondomestic workers. Enforcement by the ministry was generally good, but there were gaps in enforcement with respect to unskilled foreign laborers. Several ministry officials cited inadequate numbers of inspector as the main reason for their inability to enforce the laws to the best of their abilities.<sup>53</sup>

Lack of enforcement continues to be a major barrier for the effective implementation of existing laws.

### **2.5.1 Hours of Work and Weekly Day of Rest**

The first important Article from the New Labour Code is Article 64, which states, “the laborer shall not be made to work for more than 8 hours a day or 48 hours a week...working hours during the holy month of Ramadan shall be 36 hours a week.”<sup>54</sup>

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<sup>51</sup> State of Kuwait, Public Authority for the Labour Force. Administrative Decision No.842 (2015) on the Terms of Labour Transfer From One Employer to Another. [Online] Available from: [https://togetherkw.org/together-cms/data/files/law/administrative\\_decision\\_no\\_842\\_en.pdf](https://togetherkw.org/together-cms/data/files/law/administrative_decision_no_842_en.pdf)

<sup>52</sup> State of Kuwait, Ministerial Order No.43, Conditions of Work.

<sup>53</sup> U.S. Department of State, *supra* note 41.

<sup>54</sup> State of Kuwait New Private Sector Labour Law, 2010.

This is consistent with ILO Conventions concerning working hours. Additionally, Article 65 of the New Labour Code states, “the laborer shall not be made to work for more than five continuous hours per day without being followed a break period of not less than one hour. Break hours shall not be calculated within the working hours.”<sup>55</sup> Article 66 discusses overtime pay and states, “the additional working hours shall not be more than two hours per day and in a maximum number of one hundred eighty (180) hours per year,”<sup>56</sup> which the employer is responsible for recording in order for the workers to receive additional wages for that work.

In addition to the New Labour Code, laws concerning hours of work, weekly rest and paid leave are addressed in various Ministerial Orders and Decrees. One example is MO No. 212, which entered into force in June 2011. This Order was amending a previous MO No. 189 of 2010, concerning outdoor working hours for workers in the construction sector. The new Order states, “employers are prohibited from employing workers outdoors between the hours of 11am and 4pm. This section is only effective during the period from the first of June to the 31<sup>st</sup> of August.”<sup>57</sup> It is during these months when the temperature in Kuwait reaches highs of over 50 degrees Celsius, and outdoor work becomes difficult. Since most unskilled foreign laborers are employed in menial, manual labour jobs that take place outdoors, there are laws aimed at protecting them from harmful conditions. In 2006, a U.S. State Department report stated that media sources had claimed that the government was responsible for falsifying official temperature readings in order for work to continue during hot weather. In recent years, the Ministry of Social Affairs and Labour has been conducting more inspections, and although the number of violations is decreasing, some companies continue to flout the law.

Although the New Labour Law of 2010 specifies a weekly rest day, it includes the stipulation that if “the need arises,”<sup>58</sup> a worker may be asked to work on their day of rest, in which case another day of rest will be assigned, and will receive overtime pay. The conditions under which a “need” may arise are very vague, and have not been specified within the law, which leaves the final decision to the employer to decide what the “need” may be. Kuwait has also ratified several ILO conventions, such as the Weekly Rest (Commerce and Offices) Convention (No.89), which calls for “an uninterrupted weekly rest period comprising not less than 24 hours in the course of each period of seven days.”<sup>59</sup> In order to combat some of the discrepancies between the law and lack of enforcement, certain foreign embassies in Kuwait have utilized their labour attaché departments to provide model contracts for future migrants. For example, one model contract proposed by the Bangladeshi government includes provisions for hours of work, which states, “the Employee shall be engaged in his/her work for...8 (eight) hours per day and for 6 (six) consecutive days in a week which deems to be normal working hours.”<sup>60</sup> (See Appendix 1) These contract models aim to fill a gap in the labour law by offering protections for workers that may not be included in the labour law. The Indian government has also

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<sup>55</sup> Ibid

<sup>56</sup> Ibid

<sup>57</sup> State of Kuwait Ministerial Order No.212, Hours of Work, [Online] Available from: [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=&p\\_isn=89454&p\\_classification=13.01](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=89454&p_classification=13.01)

<sup>58</sup> State of Kuwait, *supra* note 54, p.29.

<sup>59</sup> ILO Weekly Rest (Commerce and Offices) No.106, 1957. [Online] Available from: [https://www.ilo.org/dyn/normlex/en/f?p=1000:12100::NO:12100:P12100\\_INSTRUMENT\\_ID:312251](https://www.ilo.org/dyn/normlex/en/f?p=1000:12100::NO:12100:P12100_INSTRUMENT_ID:312251)

<sup>60</sup> Embassy of Bangladesh, Kuwait. Employment Agreement for Manpower Recruitment from Bangladesh Between Employer and Employee.

proposed model contracts for their nationals that include provisions regarding labour disputes. (See Appendix 2)

### 2.5.2 Wages

Earning wages in order to support their families back home (through remittances), and pay back any loans taken, are the strongest motivators for labour migration. However, for many unskilled male laborers, their wages are often withheld, deducted, or not paid on time. As mentioned previously, many migrants are coerced into signing contracts upon arrival in Kuwait that differ to those agreed upon in their countries of origin. In many cases, these new contracts not only specify less favourable terms, but also lower wages than those initially promised. Agunias found that in the case of migrants from Pakistan for example, the wages indicated in the new contract was about 8 to 10 percent lower than those in the contract signed in Pakistan.<sup>61</sup>

The most common complaints from unskilled foreign laborers relate to unpaid wages. Employers seeking to take advantage of workers' lack of knowledge of Kuwaiti labour laws, as well as the language barrier that prevents them from understanding contracts, do so by withholding wages. In the past years, as complaints relating to unpaid wages increased, the government instituted new measures aimed at preventing employers from withholding wages. One such measure, MO No.110 of 1995, states that employers in the private sector must open Kuwaiti bank accounts for all of employees earning KD 100 or more (approximately \$330), and must obtain a notarized copy from the bank stating the employee's wages have been deposited in the accounts. This is in fact, a Wage Protection System (WPS) that requires employers to pay their employees using bank transfers. Systems such as these are implemented to counteract non-payment or late payment of wages by providing a record of payments that the relevant government authority may monitor. In turn, the government can take legal action against employers who are guilty of non-payment or late payment of wages for their workers. A WPS is also useful in wage disputes between employees and employers, as it provides a record of all payments. The Ministerial Order had mixed results, due to unscrupulous employers who found a way to circumvent the system and profit from it. One method of doing so is by confiscating employee bankcards and withdrawing from their accounts at will.<sup>62</sup> Jureidini also mentions this as a shortcoming in the WPS.<sup>63</sup> These factors make it much more difficult to assess the actual salary that an unskilled foreign worker receives. Although there are drawbacks, guarantees such as those promised by the WPS, are critical for migrant workers who have families depending on their salaries and remittances. For some, not earning the promised wages compels them to remain in the country for a longer period of time than their contracts or visas allow, in order to earn a return on their migration investment, thus putting them at risk of detention, arrest, or deportation.

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<sup>61</sup> Agunias, *supra* note 20, p.5.

<sup>62</sup> I witnessed this practice first-hand at a local automated bank machine.

<sup>63</sup> Ray Jureidini (2018). *Wage Protection Systems and Programs in the GCC*. In Migration to the Gulf: Policies in Sending and Receiving Countries, p.21. Gulf Labour Markets and Migration (GLMM), Gulf Research Centre, Cambridge.

It is difficult to obtain recent figures for the exact wages unskilled migrants receive due to the reasons mentioned above, although Zachariah's study found that "the wages for most of the unskilled, semi-skilled, and skilled categories remained stagnant during the second half of the 1990s."<sup>64</sup> At the same time, the costs of migration have increased, as the prices for accommodation, travel and work documents have risen, meaning that migrants are able to save less. In their study for KNOMAD, Abella and Martin found that on average, workers from India pay \$1248 in expenses for their migration to Kuwait, which they've estimated to be about two and a half months of their wages,<sup>65</sup> while workers from Bangladesh pay \$3136, or nine months of their wages,<sup>66</sup> and workers from Sri Lanka pay an average of \$352 or about one month of their wages.<sup>67</sup> Governments in labour exporting countries have little influence on the actual wages received by their nationals, despite conventions or MOUs. A recent example of this is when the government of the Philippines insisted on decent wages for their nationals in Qatar, the Qatari government imposed a recruitment ban on their workers.<sup>68</sup> One reason for this is due to the availability of cheap labour supply from other low-income, labour exporting countries, which allows Gulf States to view migrants as disposable or interchangeable. On the other hand, Ruhs points out that if migrants were granted their economic and social rights as laid out in UN and ILO conventions, such as the right to equal wages with nationals, it would come at a greater cost to the employer, and fewer migrants will be hired. Conversely, by limiting the rights granted to migrant workers, employers face lower costs, and are able to hire more migrants. He states, "if the State stipulates a relatively high set of employment rights for low-skilled migrants, employer demand- and thus the number of new migrants legally recruited for low-skilled jobs- can be expected to be lower than what it would be if migrants had fewer rights."<sup>69</sup> Despite the costs, unskilled laborers remain willing to migrate to Kuwait in the hopes of earning higher wages than in their home countries.

### 2.5.3 Unions

Even though Kuwaiti law permits expatriate workers to join unions, the law is discriminatory toward unskilled foreign workers in a variety of ways. Expatriate workers are only allowed to join trade unions if they have been working in Kuwait for five or more years, hence ruling out unskilled foreign laborers, who are on short-term contracts. Expatriate workers are also denied voting rights and prohibited from holding leadership positions in unions, which means that their views and concerns are more often than not ignored. Moreover, Kuwaiti law stipulates that any union must have at least 100 members, fifteen of which must be nationals; in the case of the majority of unskilled foreign laborers who work as cleaners and street sweepers, there isn't a trade union available for them to join due to the lack of Kuwaitis working in these fields. Organizations such as the ILO have criticized this requirement, and urged the Kuwait government to reduce this

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<sup>64</sup> Zachariah et al., *supra* note 6, p.169.

<sup>65</sup> Manolo Abella and Philip Martin (2014). *Key Findings from KNOMAD Pilot Surveys in Korea, Kuwait, and Spain*. Global Knowledge Partnership on Migration and Development.

<sup>66</sup> *Ibid*

<sup>67</sup> *Ibid*

<sup>68</sup> ITUF (2014). *The Case Against Qatar*. International Trade Union Confederation Special Report, p.25. [Online] Available from: [https://www.ituc-csi.org/IMG/pdf/the\\_case\\_against\\_qatar\\_en\\_web170314.pdf](https://www.ituc-csi.org/IMG/pdf/the_case_against_qatar_en_web170314.pdf)

<sup>69</sup> Ruhs, *supra* note 2, p.11.

requirement, and encourage more foreign laborers to join unions. Without any trade union support, unskilled migrants have limited means of redress when facing maltreatment or abuse. Furthermore, this requirement contradicts the ILO's Freedom of Association and Protection of the Right to Organize Convention, which Kuwait ratified in 1961. Article 2 of that Convention guarantees workers the right to join organizations "without distinction whatsoever."<sup>70</sup> The ILO Digest on Freedom of Association explains that this means "freedom of association...without discrimination of any kind based on occupation...[or] nationality...not only to workers in the private sector of the economy, but also to civil servants and public service employees in general."<sup>71</sup> Additionally, Kuwait has also ratified the Right to Organize and Collective Bargaining Convention, which protects migrant workers against any union discrimination.

Without the assistance and support of a union or a government monitoring agency, workers are forced to deal with such issues on their own. While some choose to remain silent and submissively accept these conditions, others decide to leave their jobs and find work elsewhere, well aware of the illegality and risks of doing so. These laws were designed to protect migrants and unskilled foreign workers and to ensure standard working and living conditions, although without sufficient enforcement, this becomes difficult.

## ***2.6 Debt***

Although there are costs involved for most jobs, whether they are at home or abroad, migrant workers face considerable costs to obtain jobs in Kuwait. These "transaction costs,"<sup>72</sup> or migration costs, may include visa fees, agency fees, airfare, medical tests, transport, or accommodation, which migrants must obtain before migrating abroad. Depending on factors such as recruitment agency fees, and country visa policies, the price migrants pay varies according to their home countries. In general however, most migrants report that visa and recruitment fees are the main costs they face for employment in the GCC. (See Table 5)

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<sup>70</sup> ILO Freedom of Association and Protection of the Right to Organize (No.87), 1948. [Online] Available from: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:31223](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:31223)

<sup>71</sup> *The Case Against Qatar*, *supra* note 65, p.30.

<sup>72</sup> Manolo Abella (2018). *The High Cost of Migration for Work to the Gulf*. In Migration to the Gulf: Policies in Sending and Receiving Countries. Gulf Labour Markets and Migration (GLMM), Gulf Research Centre, Cambridge, p.221.

Table 5

**Reported amounts paid to job brokers/recruitment agencies and for visas**

Migration Corridor		Average Fees paid to Agents		
		Mean	Median	SD
Qatar	India	464	477	113
	Nepal	759	824	276
	Philippines	495	450	280
Saudi Arabia	Pakistan	273	122	379
	India	49	47	24
UAE	Pakistan	293	254	243
Migration Corridor		Average Amounts Paid for Visas		
		Mean	Median	SD
Saudi Arabia	Pakistan	3121	2871	1515
UAE	Pakistan	1740	1485	865
Kuwait	Bangladesh	2324	1803	1074
	India	344	9	640
	Egypt	2486	2756	1502
	Sri Lanka	87	0	288

Source: KNOMAD/ILO Surveys in 2015.

In his report for KNOMAD in 2016, Martin states that Bangladeshis paid an average of \$2,300 for visas and \$500 for airfare, whilst Indians paid an average of \$1,250, and Sri Lankans paid an average of \$320,<sup>73</sup> compared to the 2014 KNOMAD survey, these costs remained consistent, except in the case of Bangladesh, where the cost has decreased in two years. Compared to a 1995 survey of Asian migrant workers in Kuwait, when workers from Bangladesh paid an average of \$1,727, Indian workers paid \$900, while Sri Lankans paid \$689,<sup>74</sup> these figures indicate that, except in the case of Sri Lanka, migration costs have not changed drastically in the last twenty or so years. Moreover, Shah and Fargues note that many migrants report having to pay additional fees upon arrival,<sup>75</sup> compounding the total cost of migration. According to Kuwaiti law, employers are required to pay all visa costs, and recruitment agencies are prohibited from deducting wages to recoup their placement fees,<sup>76</sup> although this practice is common. Jureidini states that “where employers pay the recruitment costs and fees, many agencies also charge workers, receiving payment from both.”<sup>77</sup> More on recruitment agencies will be discussed in Chapter 4.

For many migrants, the promise of high wages in oil rich nations outweighs the rising migration costs, so they borrow heavily to finance their migration, taking out loans with high interest rates, selling or mortgaging land, jewelery, or other assets in order to pay these costs.<sup>78</sup> These incurred debts weigh heavily on the lives of migrant workers, and in

<sup>73</sup> Martin, *supra* note 18, p.6.

<sup>74</sup> Shah, cited by Manolo Abella in *The Role of Recruiters in Labour Migration*. In *International Migration: Prospects and Policies in a Global Market*. Eds. Douglas Massey and J. Edward Taylor. Oxford University Press, Oxford, 2004.

<sup>75</sup> Nasra Shah & Philippe Fargues (2011). *Introduction*. *Asian and Pacific Migration Journal*, 20, p.270.

<sup>76</sup> State of Kuwait Act No.30 of 1995. [Online] Available from:

[https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=42988&p\\_country=KWT&p\\_count=290](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=42988&p_country=KWT&p_count=290)

<sup>77</sup> Ray Jureidini (2014). *Arab Gulf States: Recruitment of Asian Workers*. *Gulf Labour Markets and Migration*, p.6.

<sup>78</sup> Shah & Fargues, *supra* note 75, p.270.

many cases, forcing them to accept lower wages than they were initially promised, delaying the time for debt repayment, and thus incurring even more costs through interest rates. Whether migrant workers take out loans, use their own savings or borrow from friends and relatives, the burden of debt is constant. Jureidini states that “the debt established a momentum of vulnerability and dependence upon those who are employing him.”<sup>79</sup> Fearing that any complaints about their contracts or the nature of their work will cost them their jobs, they are willing to accept less than favorable conditions without protest. For many, there is tremendous shame in returning home empty-handed. “Induced indebtedness is a key instrument of coercion,”<sup>80</sup> that compels workers to sign contracts that contain provisions that are different than those previously agreed upon. According to Zachariah’s study on workers in the UAE, but that is applicable to Kuwait:

The information we collected also suggests that nearly one-fifth of the Indian migrants have not received the same job, wages, and non-wage benefits as stipulated in their work contracts. As the emigrants reached UAE after incurring considerable expenditure to meet the cost of migration, they have no option but to accept a new contract and work there.<sup>81</sup>

Contract substitution refers to the practice of altering the terms of the employment which the worker has agreed to, whether that agreement was verbal or in writing. For many migrants, the original contract that they signed in their countries differs from that which they are coerced into signing upon arrival at their destinations. These new contracts are often written in Arabic and contain terms that are less favorable than the original in terms of working hours, wages, and rights. Workers who wish to lodge complaints or protest against these new contracts are often left with little option but to begin the entire recruitment process once again, thereby incurring more debts. Otherwise, migrants may either accept the new terms and fulfill their obligations, or transfer employers, in which case, the fees that the sponsor paid must be returned. For some, becoming illegal migrants or working for an employer other than the one specified on the visa entry form is the only option to earn enough wages to support their families and pay back mounting debts.

In an attempt to regulate the employment of migrant workers, the government has called for standardized contracts, with provisions concerning the accommodation, medical care, transportation, and wage protections, although Castles notes that the lack of enforcement of these contracts has done little to protect migrants.<sup>82</sup> In short, without adequate enforcement of laws, migrant workers remain at risk of abuse, regardless of protections in the law.

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<sup>79</sup> Ray Jureidini (2014). *Migrant Labour Recruitment to Qatar*. Report for Qatar Foundation Migrant Worker Welfare Initiative. Bloomsbury Qatar Foundation Journals, p.30. [Online] Available from: [http://www.qscience.com/userimages/ContentEditor/1404811243939/Migrant\\_Labour\\_Recruitment\\_to\\_Qatar\\_Web\\_Final.pdf](http://www.qscience.com/userimages/ContentEditor/1404811243939/Migrant_Labour_Recruitment_to_Qatar_Web_Final.pdf)

<sup>80</sup> ILO (2005). *A Global Alliance Against Forced Labour*. Global Report Under the Follow Up to the ILO Declaration on Fundamental Principles and Rights at Work. International Labour Office, pg. 2, Geneva. [Online] Available from: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_081882.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081882.pdf)

<sup>81</sup> Zachariah et al., *supra* note 6, p.166.

<sup>82</sup> Castles, *supra* note 1, p.511.

## 2.7 Access to Grievance Resolution

Access to labour grievance mechanisms to address labour related disputes is a major problem facing unskilled migrants in Kuwait. The Ministry of Social Affairs and Labour has jurisdiction for all matters concerning migrant laborers, with the exclusion of domestic workers. Its Labour Disputes Department received over 10,821 complaints from workers in 2017,<sup>83</sup> mostly regarding non-payment of wages, visa transfers, or other contract related issues. Of these cases, most were resolved in arbitration, while 3,173 cases were referred to the courts.<sup>84</sup>

In cases of labour disputes, migrants have limited options for resolution. Lack of awareness of their rights, as well as language barriers, prevent many from reporting disputes. Under the sponsorship system, if a migrant wishes to change his employer for any reason, he must first obtain a release form from said employer, without which their visa will be cancelled. In many cases, employers refuse to consent to a change of sponsor, leaving migrants little choice but to abscond or tolerate the current conditions. Nevertheless, some migrants risk an illegal status in order to obtain better work. As Taran and Geronimi state, “in effect, in addition to the difficulties inherent in being a foreigner, such as language, knowledge of procedures and social codes, irregular status would be the most important barrier to access judicial institutions, due especially to fear of detention and expulsion.”<sup>85</sup> As far as the authorities are concerned, an irregular or illegal status effectively means that a migrant has forfeited their rights under the law, and is subject to deportation. Additionally, the sponsorship system’s lack of enforcement mechanisms makes it difficult to compel employers to comply with their obligations under the law.

## 2.8 International Treaties/Conventions

The UN and the ILO have both outlined basic standards for the workplace which include health and safety, hours of work and rest, annual leave, overtime pay, and living conditions, among other standards. Over the years, Kuwait has ratified several important conventions and treaties pertaining to unskilled foreign workers. The ILO Social Policy (Basic Aims and Standards) Convention was ratified by Kuwait in 1963, and includes Article 11 concerning wage rights. It states that “necessary measures shall be taken to ensure the proper payment of all wages earned.”<sup>86</sup> This article is pertinent for male laborers, many of whom are illiterate and unaware of their wage rights according to the contracts they signed. Furthermore, Article 29 of the New Private Sector Labour Law states that all contracts shall be in the Arabic language, with translations if available, but the Arabic language contract is considered official.<sup>87</sup> In essence, this Convention seeks to ensure that workers are aware of their wage rights, in which case, Article 29 should be amended to include official translations for migrants. In addition, the ILO’s Declaration on

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<sup>83</sup> U.S. Department of State (2017). Country Report on Human Rights Practices. [Online] Available from: <https://www.state.gov/documents/organization/277495.pdf>

<sup>84</sup> Ibid

<sup>85</sup> Taran & Geronimi, *supra* note 44, p.14.

<sup>86</sup> ILO Social Policy (Basic Aims and Standards) Convention, 1962, (No.117). [Online] Available from: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C117](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C117)

<sup>87</sup> State of Kuwait New Private Sector Labour Law, 2010, pg.15.



Fundamental Principles and Rights at Work (1998) “commits Member States to respect and promote principles and rights in four categories, whether or not they have ratified the relevant Conventions.”<sup>88</sup> These principles include three which are applicable to unskilled male laborers: “(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 elimination of discrimination in respect of employment and occupation.”<sup>89</sup> All ILO Conventions are meant to apply to all workers, irrespective of nationality, skill level, and in many cases, migration status.

Kuwait has not ratified the Migration for Employment Convention of 1949 (No.97), and amongst the major labour exporting countries mentioned in this thesis, only the Philippines has ratified it. This Convention, the Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143), and their accompanying Recommendations embody the principles of equality between nationals and migrant workers that the ILO strives for, and that Member States agree to by joining the ILO. These conventions set out details regulating the full migration process, including contract conditions, as well as other measures to facilitate the integration of migrants in their country of employment. As Taran and Geronimi note, these Conventions,

Provide a comprehensive ‘values-based’ definition and legal basis for national policy and practice regarding non-national migrant workers and their family members. They thus serve as tools to encourage States to establish or improve national legislation in harmony with international standards. They are not simply human rights instruments.<sup>90</sup>

In ratifying these conventions, Kuwait may begin to implement a comprehensive national policy that offers greater protections for migrant workers than the current one.

There are also several important UN conventions that Kuwait has ratified, such as the International Convention on the Elimination of Racial Discrimination (ICERD), and especially Article 3 of that Convention which condemns racial segregation. The International Convention on Economic, Social, and Cultural Rights (ICESCR) is also relevant, as it includes Article 8 which pertains to trade unions. In regards to the ICESCR, the Kuwaiti government stated that

Although the Government of Kuwait endorses the worthy principles embodied in Article 2, paragraph 2, and Article 3 as consistent with the provisions of the Kuwaiti Constitution in general and of its Article 29 in particular, it declares that the rights to which the articles refer must be exercised within the limits set by Kuwaiti law.<sup>91</sup>

The Kuwaiti government also declared reservations regarding the International Covenant on Civil and Political Rights which it ratified in 1996, stating,

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<sup>88</sup> ILO Declaration on Fundamental Principles and Rights at Work (1988). [Online] Available from: <https://www.ilo.org/declaration/lang--en/index.htm>

<sup>89</sup> Ibid

<sup>90</sup> Taran & Geronimi, *supra* note 44, p. 13.

<sup>91</sup> UN ICESCR Declarations and Reservations. [Online] Available from: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&clang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=en#EndDec)

Interpretive Declaration regarding Article 2, paragraph 1, and Article 3: Although the Government of Kuwait endorses the worthy principles embodied in these two articles as consistent with the provisions of the Kuwaiti Constitution in general and of its Article 29 in particular, the rights to which the articles refer must be exercised within the limits set by Kuwaiti law.<sup>92</sup>

By submitting these reservations, the government has continued to ratify treaties and conventions with the knowledge that they will not be enforced according to their intent.

## ***2.9 Conclusion***

The roles and statuses that unskilled male laborers occupy within the labour force in Kuwait are dependent on many factors, but one thing is certain: their presence is crucial to the country's economic and structural development. Unskilled workers fill a void in Kuwait's labour sector and by doing so, have enabled the country to develop large-scale projects, infrastructures, and services that are essential for a modern nation-state. However, they live isolated from the local population, with no hope of assimilation. Despite the positive aspects of labour migration such as increased wages and better opportunities, a significant number of unskilled male migrants continue to face unnecessary adversity and abuse in Kuwait. These include low wages and subsequent debt incurrence, poor working and living conditions, lack of adequate legal protections, discrimination, and denial of certain freedoms such as the right to organize and join unions. These conditions contrast sharply with those of the national population, creating a disparity between the treatment of citizens and non-citizens, which is unacceptable under international labour standards. As temporary workers, they have limited legal rights and face a great deal of disadvantages, which contribute to their discrimination and social marginalization. Their role in the labour sector is unacknowledged and they are viewed as a necessary evil, as opposed to an essential part of the labour force.

Even where laws exist to protect migrant workers, in many cases, they are unaware of those laws due to the fact that they are not properly enforced. For example, laws concerning working and living conditions are rarely enforced, with the result being that workers are living in inadequate conditions. Also, workers are denied the freedom to change employers, regardless of the circumstances, are denied access to unions, have limited access to grievance resolutions, and are hindered by a racially based system of wages.

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<sup>92</sup> Ibid

## Chapter 3

### Domestic Workers

#### 3.1 Introduction

Domestic workers represent a significant amount of the labour force amongst unskilled foreign workers in Kuwait. Tied to their employers/sponsors through the same sponsorship system that applies to unskilled male laborers, the domestic workers referred to in this thesis are live-in workers who reside in the residence of their employer/sponsor. Until recently, these workers were excluded from the national labour laws, essentially leaving sponsors to impose restrictions as they see fit. Domestic workers face wide spread discrimination and abuse during their recruitment, employment, and often, their return home. In addition, the isolated nature of their work often prevents them from seeking grievance resolutions in case of employment disputes of any kind. This chapter will focus on the lives of domestic workers in Kuwait under the current sponsorship system, and the ways in which that system has led to a situation of forced labour, contract slavery and debt bondage through poor enforcement of existing laws.

#### 3.2 Background

The ILO defines domestic work as “work performed in or for a household or households,”<sup>93</sup> and a domestic worker as “any person engaged in domestic work within an employment relationship.”<sup>94</sup> Domestic labour represents the largest category of employment for female migrants seeking work in Kuwait. Latest figures indicate that as of November 2017, there are 677,000 domestic workers currently employed in Kuwait;<sup>95</sup> with the majority coming from India, the Philippines and Sri Lanka. They are a fixture in most Kuwaiti households, as well in the households of many foreign residents. A report by Human Rights Watch compared the rise in the presence of domestic workers in past years and states that “in 1965...only one thousand migrant household workers worked in the country...By 1989, Kuwait hosted between 100,000 and 130,000 foreign domestic workers. By 2009, the number of domestic workers in Kuwait exceeded 660,000.”<sup>96</sup> Whereas in the late 1970s, only about thirteen percent of households employed a domestic worker,<sup>97</sup> today, it is estimated that 90 percent of all Kuwaiti households employ a

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<sup>93</sup> ILO Domestic Workers Convention No.189, 2011. [Online] Available from:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C189](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189)

<sup>94</sup> Ibid

<sup>95</sup> Arab Times (2018). *Kuwait Spends KD 1.02B on Domestic Workers Annually*. April 27. [Online] Available from: <http://www.arabtimesonline.com/news/kuwait-spends-kd-1-02b-on-domestic-workers-annually/>

<sup>96</sup> Human Rights Watch (2010). *Walls at Every Turn: Abuse of Migrant Domestic Workers Through Kuwait's Sponsorship System*. [Online] Available from: <https://www.hrw.org/report/2010/10/06/walls-every-turn/abuse-migrant-domestic-workers-through-kuwaits-sponsorship-system>

<sup>97</sup> Nasra M. Shah, Sulayman Al-Qudsi, and M.A. Shah (1991). *Asian Women Workers in Kuwait*. International Migration Review, 25, pp.464-486.

domestic worker.<sup>98</sup> As Moya states, “domestic service shifted from aristocratic privilege to bourgeois entitlement,”<sup>99</sup> allowing people who previously didn’t have access to domestic workers to employ one or more.

Their entry and presence into Kuwaiti households has allowed nationals, especially women, to increase their participation in the national workforce. This rise in the number of domestic workers has enabled Kuwaiti women to become more active in the workforce, earn higher degrees, and participate in other activities that take place outside the home such as entrepreneurial businesses. In 1965, there were 1,002 employed Kuwaiti women in the labour force;<sup>100</sup> by 1985, there were 24,422 employed women,<sup>101</sup> and today, there are 216,314 employed Kuwaiti women in the labour force.<sup>102</sup> The rise in the number of women in the labour force correlates with the increase in the number of domestic workers in the country, suggesting that as more women joined the labour force, they increasingly depended on domestic workers. Human Rights Watch states, “hiring foreign domestic workers to perform time-consuming chores such as cleaning and childcare has reduced the amount of household labour demanded from Kuwaiti women, who otherwise bear primary responsibility for these tasks.”<sup>103</sup> Free from the daily chores and household responsibilities that previously dictated their presence in the home, Kuwaiti women were able to pursue higher learning degrees, and earn wages independent of their husbands, thus granting them a sense of freedom that had until that time been absent. On the other hand, a 2002 study by Shah, Chowdhury, and Shah identified other factors that may affect the reasons for the employment of domestic workers, as well as factors that determine the number of domestic workers per household. They found that “domestic workers were not being hired simply to replace working women but also to assist women not in the labour force,”<sup>104</sup> as in the elderly or those requiring special care. Additionally, the study found that households that included children below the age of six, or persons aged sixty or older, increased the probability of employing more than one domestic worker,<sup>105</sup> presumably so that household chores, and child care can be divided among the workers. Whereas in the past, it was the women’s responsibility to tend to the children and elderly relatives, this responsibility is now designated to domestic workers as more women enter the labour force. In this way, domestic workers play an important role in Kuwaiti households, and in recent years, the native population has come to rely on them for a variety of tasks. A 2015 study found that participants in their focus group studies thought that it is “a norm in Kuwaiti society to employ a domestic worker,”<sup>106</sup> even describing it as a “requirement,”<sup>107</sup> and a

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<sup>98</sup> Migrant-Rights.org. Domestic Workers Statistics. [Online] Available from: <https://www.migrant-rights.org/statistic/domesticworkers/>

<sup>99</sup> Jose C. Moya (2007). *Domestic Service in a Global Perspective: Gender, Migration, and Ethnic Niches*. Journal of Ethnic and Migration Studies, 33, p.559.

<sup>100</sup> State of Kuwait Statistics Abstract in 25 Years. Ministry of Planning, 2012.

<sup>101</sup> Ibid

<sup>102</sup> State of Kuwait Employment by Occupation Statistics, Public Authority for Civil Information, 2018.

<sup>103</sup> *Walls At Every Turn*, supra note 3.

<sup>104</sup> Nasra Shah, Makhdoom A. Shah, Rafiqul Islam Chowdhury, and Indu Menon (2002). *Foreign Domestic Workers in Kuwait: Who Employs How Many*. Asian and Pacific Migration Journal, 11, p.258.

<sup>105</sup> Ibid

<sup>106</sup> ILO (2015). *Employers’ Perspectives Towards Domestic Workers in Kuwait: A Qualitative Study on Attitudes, Working Conditions, and the Employment Relationship*. [Online] Available from: [https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms\\_429591.pdf](https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_429591.pdf)

“necessity.”<sup>108</sup> The same study found that most respondents indicated that the size of the house, and the fact that both the husband and wife were employed played a role in determining the amount of domestic workers needed.<sup>109</sup>

Although neither study found that the cost of hiring a domestic worker was either a deterrent or an incentive, it is important to note that these costs have changed in recent years. In the years before standardized contracts, the Domestic Workers Law (2016), and MOUs with labour-exporting countries, most domestic workers were not entitled to a minimum wage, although a suggested wage was determined by recruitment agencies. Thus, domestic workers were affordable for the majority of Kuwaiti households.<sup>110</sup> In recent years, however, as more rights are granted to domestic workers through standardized contracts and minimum wages, the costs of hiring workers has increased.

### **3.3 Description**

According to statistics provided by the Public Authority for Civil Information, as of 2017 there are a total of 87,379 female workers employed in the private sector who are from Asian countries.<sup>111</sup> (See Table 6) As mentioned earlier, statistics from various ministries classify workers only as Kuwaiti, or non-Kuwaiti, which makes it difficult to determine the exact number of migrants from the three main labor-exporting Asian countries: India, Bangladesh and the Philippines. In a similar way to male laborers, the motives for domestic workers seeking employment in Kuwait are many, but center around earning a higher wage than they would earn in their home countries. Their need for a steady income, as well as a place to live, coupled with their employer’s need for relatively low-cost, live-in domestic help, creates a seemingly mutually beneficial arrangement. The reality, however, is quite different.

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<sup>107</sup> Ibid

<sup>108</sup> Ibid

<sup>109</sup> Ibid

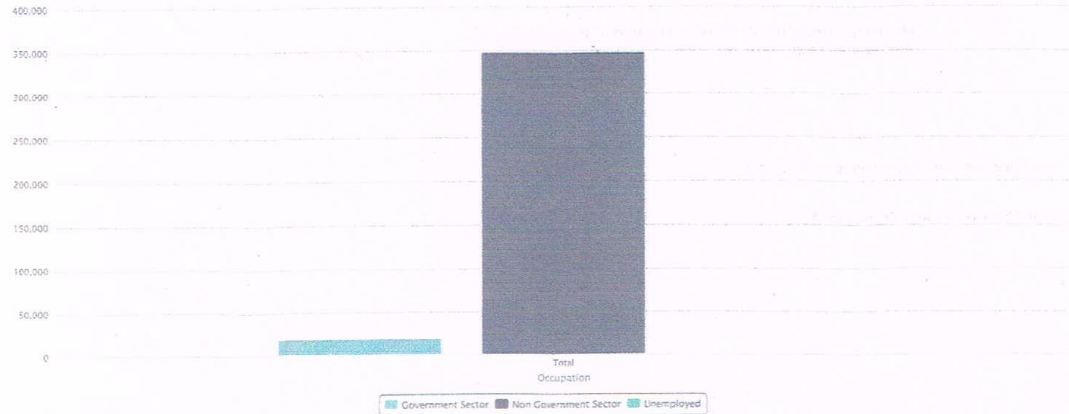
<sup>110</sup> Shah et al., *supra* note 12, p.264.

<sup>111</sup> State of Kuwait, The Public Authority for Civil Information (2017). *Approaching Workers by Sector and Nationality Group and Gender*. [Online] Available from: <file:///C:/Users/DINA/Downloads/ade3c0e3-c63b-41ac-9d5a-d010098fd6bf.pdf>

Table 6

## Employment By Occupation and Sector

The choice filters chart and reports: June - 2018  
 Nationality Group: Asian  
 Gender: Female



Occupation	Work Sector		
	Government Sector	Non Government Sector	Unemployed
<b>Total</b>	19,563	347,383	99

PACI

Domestic workers are matched with their employers in a variety of ways. Prospective employers in Kuwait visit the office of a recruitment agency and choose their employee by browsing various folders containing briefs or resumes about the worker. The folders are organized according to nationality and contain information including age, marital status, education, religion, work experience, language proficiency, and photo (see example in Appendix 3). While some employers prefer to hire young, single women on the basis that their naivety will translate to complacency, others prefer older, married women who won't be tempted to enter into sexual relationships during their time in the country.<sup>112</sup> A standardized labour contract (applicable to all nationalities) is signed, usually containing a provision that states that the employer may return the domestic worker to the agency within a set period of time (usually ninety days) if the employer is not satisfied with the worker. When I visited a recruitment agency in Kuwait inquiring about the process of hiring a domestic worker, one of the questions I asked was regarding the amount of time it would take for the worker to complete all the paperwork and arrive in Kuwait. I was told that the process takes a few months, but there are domestic workers available who have been returned by their previous employer for various reasons. These "returnees" are available for work without any delays, and were made to wait in the agency office awaiting employment.

<sup>112</sup> Ray Jureidini and Nayla Moukarbel (2004). *Female Sri Lankan Domestic Workers in Lebanon: A Case of 'Contract Slavery'?* Journal of Ethnic and Migration Studies, 30, p.594.

### 3.3.1 Who Are They?

The majority of unskilled foreign workers in Kuwait come from India, (291,000),<sup>113</sup> which is not surprising considering the close ties these two countries have shared in the past. The Philippines and Sri Lanka represent the other two major labour-exporting countries. The new Domestic Workers' Law stipulates that the minimum age for domestic workers is twenty-one years, and the maximum is sixty years. Previous to this law, each labour-exporting country set their own minimum ages; for example, in Bangladesh, they must be at least twenty-five years of age, while in India, women seeking domestic work must be at least thirty years old. The majority of workers from South Asia are either unskilled, or low-skilled,<sup>114</sup> while those from the Philippines are usually semi-skilled, with a high percentage reporting high school<sup>115</sup> qualifications.<sup>116</sup>

Currently, there are (163,000)<sup>117</sup> Filipino domestic workers in Kuwait. Migrant women from the Philippines are unique in their status as domestic workers for several reasons. Although the Philippines does not have a shared history with Kuwait in the way that India does, in the 1970s the Filipino government's aggressive push to provide temporary workers to countries in need proved very successful in the Middle East, and Kuwait was no exception. As Tyner states, "the growth of the Philippines' overseas employment program has been maintained, to a large degree, by its aggressive marketing strategy of its workers as a cheap and docile, but skilled labour force."<sup>118</sup> Domestic workers from the Philippines are in great demand among those living in Kuwait and seeking domestic help. Their English fluency, as well as the training they receive, equips them with certain skills that are valued by employers. According to the ex-Labour Attaché in the Philippine Embassy in Kuwait, Mr. Leopoldo de Jesus, prospective domestic servants receive training in basic house cleaning, laundry, babysitting, as well as an introduction to Arab culture and some basic Arabic phrases and vocabulary.<sup>119</sup> Courses are developed by the Philippines Overseas Employment Administration (POEA), in cooperation with the Technical and Skills Development Authority (TESDA), to develop skills and enhance knowledge, as some workers come from rural areas and are applying for

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<sup>113</sup> Arab Times (2018). *Kuwait Spends KD 1.02B on Domestic Workers Annually*. April 27. [Online] Available from: <http://www.arabtimesonline.com/news/kuwait-spends-kd-1-02b-on-domestic-workers-annually/>

<sup>114</sup> Rakkee Timothy and S.K. Sasikumar (2012). *Migration of Women Workers from South Asia to the Gulf*. V.V. Giri National Labour Institute and United Nations Entity for gender Equality and the Empowerment of Women, p.20. [Online] Available from: [https://www.ucis.pitt.edu/global/sites/default/files/migration\\_women\\_southasia\\_gulf.pdf](https://www.ucis.pitt.edu/global/sites/default/files/migration_women_southasia_gulf.pdf)

<sup>115</sup> This refers to American secondary schooling for students years 9-12 (aged between 14-18)

<sup>116</sup> Simel Essim and Monica Smith (2004). *Gender and Migration in Arab States: The Case of Domestic Workers*. International Labour Organization, p.20. [Online] Available from: [https://www.ilo.org/beirut/publications/WCMS\\_204013/lang--en/index.htm](https://www.ilo.org/beirut/publications/WCMS_204013/lang--en/index.htm)

<sup>117</sup> Arab Times, *supra* note 21.

<sup>118</sup> J.A. Tyner (2000). *Migrant Labour and the Politics of Scale: Gendering the Philippine State*. Asia Pacific Viewpoint, 41, p.138.

<sup>119</sup> Interview with Mr. Leopoldo de Jesus, September 2007.

work in more urban and technologically advanced countries. These courses offer pre-departure orientation services (PDOS), and post-arrival orientation services (PAOS). While many benefit from the PDOS, not many Filipinos take advantage of the PAOS. According to a study conducted by Naufal and Malit in 2016, “more than 70 percent of Filipina domestic workers did not participate in the PAOS”<sup>120</sup> and only visited their embassy in cases of labour disputes or to update passports or travel documents. Due to the great demand for domestic workers from the Philippines, the Filipino government has been successful in negotiating with the Kuwaiti government a higher minimum wage for domestic workers.

Sri Lanka is one of the main labour-exporting countries to the GCC countries, according to a 2007 report published by Human Rights Watch, “over 125,000 Sri Lankan women migrate to the Middle East as domestic workers each year.”<sup>121</sup> Many migrate in the hope of finding better options to support themselves and their families at home. It is estimated that the majority of Sri Lankan women who migrate for employment are mainly housewives who have not previously held employment and who hope to directly contribute to their family’s finances.<sup>122</sup> In a similar program as that conducted in the Philippines, Sri Lankans wishing to work in the Middle East are required to attend a training course which offers courses on language, culture and customs of the country, as well as counselling services aimed at teaching coping mechanisms for different situations. In addition, all Sri Lankans wishing to work abroad must obtain health insurance; this insurance covers illness, accidents or death both at home and overseas.<sup>123</sup> Since 1996, the Sri Lankan government has made it compulsory for nationals intending to work abroad to attend pre-departure orientation courses.<sup>124</sup> The Sri Lankan Bureau of Foreign Employment (SLBFE) organizes a 15-day training course in basic housekeeping and other services aimed at women seeking work in the domestic labour sector, especially those seeking work in GCC countries. Training courses such as these are crucial to prepare Sri Lankan domestic workers for the work they will be expected to perform in Kuwaiti households. It is important to note however, that only a few hours of the 15-day training course are devoted to the rights of domestic servants abroad, which is just as crucial to their experience as the acquisition of household skills. In general, however, migrants who attended these pre-departure orientation programs faced fewer difficulties upon employment in Kuwait, than those who did not attend. According to Timothy and Sasikumar, those who did not participate in these courses had “virtually no knowledge of the country to which they had migrated, no idea about the customs or manners of that society, and no specific skills or

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<sup>120</sup> Froilan T. Malit Jr. and George Naufal (2016). *Asymmetric Information Under the Kafala Sponsorship System: Impacts on Foreign Domestic Workers’ Income and Employment Status in the GCC Gulf Countries*. International Migration, 54, p.81.

<sup>121</sup> Human Rights Watch (2007). *Exported and Exposed: Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates*. Human Rights Watch, 2007. [Online] Available from: <https://www.hrw.org/sites/default/files/reports/srilanka1107webwcover.pdf>

<sup>122</sup> L.K. Ruhunage (2006). ‘Institutional Monitoring of Migrant Recruitment in Sri Lanka,’ In: *Merchants of Labour*, (ed.) Christiane Kuptsch, International Labour Organization. [Online] Available from: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_208712.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_208712.pdf)

<sup>123</sup> Yara Jarallah (2009). *Domestic Labour in the Gulf Countries*. Journal of Immigrant and Refugee Studies, 7, p.11.

<sup>124</sup> Timothy & Sasikumar, *supra* note 22, p.34.



training in performing jobs in affluent homes having modern household appliances.”<sup>125</sup> Training courses have the potential to prepare migrants for the work they are about to embark on, thus equipping them with the necessary tools to aid them in their jobs abroad. These training courses are valuable and not only prepare workers for domestic labour, but also make them more sought-after. Fernandez reports that orientation sessions for Ethiopian domestic workers emphasize “obedience and subservience to employers,”<sup>126</sup> and offer guidance on good practices. They encourage the domestic worker to “obey her employers, maintain personal hygiene, perform her duties diligently, respect the religious observances of her employers, and caution her against stealing, lying or exposing her body to the view of male members of her employer’s family.”<sup>127</sup> By instilling values such as these, orientation courses function to promote the concept of an exemplary worker who will serve as an example of the type of workers labour-sending countries are capable of providing. The skills that migrant workers acquire during orientation courses make them more sought after in the labour market of labour-receiving countries. Harzig states that, “employment agencies make use of this system of stereotypes to cater to the needs of the market and to target their clientele. Providing special profiles arguably makes better ‘matches’.”<sup>128</sup> A hierarchy of nationalities exists wherein wages are set according to citizenship. This hierarchy comes about from a variety of reasons, mainly due to each government’s ability to leverage a certain minimum wage concerning domestic workers. The Domestic Workers Law (2016) does not specify a minimum wage amount, so governments of labour-sending countries set those amounts in the standardized contracts each sponsor must sign. Presently, the minimum wage for domestic workers from the Philippines is set at KD 121 (\$400) per month,<sup>129</sup> for those from India, the minimum wage is set at KD 55 (approximately \$181)<sup>130</sup> and for workers from Bangladesh it is set a KD 50 (approximately \$164). Essim and Smith reported in 2004 that, in general, workers from Bangladesh earned less than other migrant workers in Kuwait.<sup>131</sup>

As in the case of male laborers, domestic workers spend a great deal on acquiring visas for work in Kuwait. In 2004, Essim and Smith estimated that, on average, domestic workers spent \$400 on expenses related to employment in Kuwait.<sup>132</sup> In 2016, KNOMAD data indicates that migrants pay an average of \$1,900 in costs, with workers from Bangladesh paying the highest costs, on average of \$3,100, Indians paying \$1,250, and Sri Lankans paying the lowest costs, an average of \$320.<sup>133</sup> These costs include travel expenses, recruitment agency (and in some cases sub-agents) fees, and visa or other

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<sup>125</sup> Timothy & Sasikumar, *supra* note 22, p.35.

<sup>126</sup> Bina Fernandez (2011). *Household Help? Ethiopian Women Domestic Workers’ Labour Migration to the Gulf Countries*. In *Asian and Pacific Migration Journal*, 20, p.445.

<sup>127</sup> Fernandez, *supra* note 34, p.445.

<sup>128</sup> Christiane Harzig (2006). *Immigration, Incorporation, Integration, and Transnationalism: Interdisciplinary and International Perspectives*. *Journal of American Ethnic History*, 25, p.66.

<sup>129</sup> Arab Times (2018). *Minimum Monthly Salary of KD 120 Agreed for Filipino Domestic Workers*, Arab Times, March 13. [Online] Available from: <http://www.arabtimesonline.com/news/minimum-monthly-salary-of-kd-120-agreed-for-filipino-domestic-workers/>

<sup>130</sup> Employment of Domestic Workers (Visa 20), Embassy of India, Kuwait. See Appendix 10.

<sup>131</sup> Essim & Smith, *supra* note 24, p.51.

<sup>132</sup> *Ibid*

<sup>133</sup> Philip Martin (2016). *What Do Migrants Pay for Foreign Jobs?* Conference Paper at ‘Improving Data on International Migration Towards Agenda 2030 and the Global Compact on Migration, Berlin, 2-3 December, 2016. IOM Global Migration Data Analysis Centre.

administrative services costs. Similarly to male laborers, domestic workers often resort to selling assets, borrowing money from friends, relatives, or moneylenders, taking out mortgages or other means in order to procure employment visas, which means that they too enter into employment already heavily in debt.

### 3.3.2 *Why Do They Come?*

Typically, women who migrate for domestic service do so in the hope of a better life. In this way, they are like male unskilled workers and their life-project that was discussed in Chapter 2. They are motivated by job opportunities and wages higher than those that are available in their home countries, so that they are able to provide a better living for their families, such as purchasing a home, providing care for elderly relatives, or higher education for their children. The decision to migrate is most often their own, optimistically hoping to learn new skills and earn enough to fulfill their life projects or goals. This may include higher learning for their children as mentioned above, buying or building a home for their family, caring for sick or elderly relatives, or simply supporting themselves independent of their families. As Harzig states, “women migrate into domestic service because they see the need and the opportunity to financially provide for the family. More often than not, they are in control over the decision to move and are supported by family members.”<sup>134</sup> The inability of these women to earn enough in their native countries in order to provide for their families is the primary reason for migration. In the case of Sri Lankan domestic workers for example, the wages promised to them for work abroad, especially in the Middle East, are far greater than any salary they could hope to obtain in Sri Lanka.<sup>135</sup> This income disparity plays an important role in the lives of migrants, and is a large part of the reason that however abusive or unbearable their work conditions may be, they will endure them for the sake of providing for themselves and their families. On the other hand, Jureidini and Moukarbel have noted that an unstable family or marital life plays an important part in the decision to migrate. They state that “25 percent of the women who travelled for work [outside Sri Lanka] were pushed by the poor lifestyle at home and the abuse of a drunken husband,”<sup>136</sup> an indication that migration is also seen as a way to escape maltreatment.

Most domestic workers migrating to Kuwait do so through recruitment agencies. As most of the large recruitment agencies are located in large towns and cities, sub-agents are relied upon to recruit workers who live in rural areas.<sup>137</sup> More often than not, they are given incorrect or misleading information regarding the nature of their employment, and are charged excessive fees from both receiving and sending recruitment agencies, as in the case of male laborers. Not only does this lead to debt incurrence, but also makes them vulnerable to employers who wish to recoup the fees they paid recruitment agencies by deducting them from the worker’s wages, a practice that is illegal, but not uncommon in Kuwait. More importantly, the contract substitution discussed in the earlier chapter gives

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<sup>134</sup> Harzig, *supra* note 36, p.49-50.

<sup>135</sup> *Exported and Exposed*, *supra* note 29.

<sup>136</sup> Jureidini & Moukarbel, *supra* note 20, p.587.

<sup>137</sup> *Walls at Every Turn*, *supra* note 3.

way to contract slavery, where contracts cease to be binding and employers feel free to set the terms themselves. Bales defines contract slavery by stating,

Contract Slavery shows how modern labour relations are used to hide the new slavery. Contracts are offered that guarantee employment...but when the workers are taken to their place of work they find themselves enslaved. The contract is used as an enticement to trick an individual into slavery, as well as a way of making the slavery look legitimate.<sup>138</sup>

These non-enforceable contracts provide a cover for unscrupulous agencies and employers to lure workers with promises of high wages and guaranteed rights, but in reality, their lack of enforcement renders them ineffective.

### **3.4. Life and Work**

As domestic workers are on short-term working contracts, they are barred from migrating with their families. Often, domestic workers leave behind young children who are left in the care of relatives. Before the Domestic Workers Law (2016) clearly stated that domestic workers are to be granted an annual leave for each year of their employment, many sponsors denied workers this right, with the consequence that some domestic workers did not visit their families for years. As Bennhold notes, “if the benefits of female migration are under documented, so are its hidden costs. In the Philippines, migration is known as the ‘Filipino divorce’.”<sup>139</sup> The personal cost to their families is great, with many children growing up without their mothers. For many though, this is the only choice they have in order to support themselves and their families.

#### **3.4.1 How Do They Live?**

For domestic workers, the employer’s residence is not only the workplace, but is also their home. There are no guidelines in place that set specific standards on the quality of a domestic worker’s room or living quarters, the law states only that accommodations must be “adequate”. Most of the women I interviewed were assigned either their own room or a room shared with another female domestic worker, and a separate bathroom, but some women were only given a bed or mattress in a small designated area.<sup>140</sup> Upon arriving at their employer’s home, it is up to the employer to decide whether to abide by the contract previously signed in regards to working hours, hours and days of rest, and other stipulations. A report from Anti-Slavery International states that:

Live-in domestic migrant workers are purely seen as coming to the family to serve them, and their servile position is non-negotiable. The employers often see the worker as an economic commodity on which they have spent a

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<sup>138</sup> Kevin Bales (2012). *Disposable People*. University of California Press, Los Angeles p.20.

<sup>139</sup> Katrin Bennhold (2011). From Afar, MoneyMaker and Mother. New York Times, March 7. [Online] Available from: <https://www.nytimes.com/2011/03/08/world/europe/08iht-ffhelp08.html>

<sup>140</sup> Interviews with currently employed domestic workers, 2010.

lot of money. Therefore, the employer ‘owns’ the domestic worker and her working conditions are set accordingly.<sup>141</sup>

Conditions differ according to households and throughout my research and interviews, I have found it difficult to find a pattern that determines how domestic workers are treated based on their employer’s age, sex, educational level, marital status, household size, geographical location within Kuwait, or average household income. The common factor is that in an employer’s home, domestic workers spend most of their hours isolated from not only their families, but any social connections they may have. As Shah states, “they work in an environment of relative isolation and lower level of social support networks resulting in psychological isolation.”<sup>142</sup> Restriction of movement is common, and most domestic workers are forbidden from leaving their employer’s home unless permission is granted. For those given a day off, they are permitted to leave the home for a few hours to attend church and socialize, but almost always, a curfew is set.<sup>143</sup> In some cases, employers not only forbid domestic workers from leaving the residence, but lock them in to prevent them from escaping. Domestic workers reported feeling trapped and worried in case of fire or other emergencies.<sup>144</sup> Conditions such as these further contribute to feelings of physical and psychological isolation.

Essim and Smith’s study shows that the majority of domestic workers included in their research worked in households with four or more inhabitants, working an average of 78-100 hours per week, with only one or two days of rest per month.<sup>145</sup> Although they are classified as unskilled laborers, domestic workers are expected to have a variety of skills ranging from childcare, caring for the elderly and administering medications, to cooking, cleaning and ironing. Despite this, there are no job descriptions for domestic workers specifying the tasks that the worker is expected to perform. Even in cases where the domestic worker thinks she has signed a contract for a specific job, she may learn that upon arrival she is expected to sign a new contract with different terms.

### **3.4.2 What Do They Do?**

Besides the physical isolation and lack of privacy, there are a host of other issues that negatively affect the mental and physical health of domestic workers. Their duties and chores differ from one household to another, but for the majority, the sheer amount of work required of them is excessive. A report by Human Rights Watch describes this work in greater detail:

A domestic worker’s daily workload often involves work without break or limit, including cleaning her employer’s house or houses inside and out,

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<sup>141</sup> Anti-Slavery International (2006). *Trafficking in Women Forced Labour and Domestic Work in the Context of the Middle East and Gulf Region*. [Online] Available from: [http://www.antislavery.org/wp-content/uploads/2017/01/traffic\\_women\\_forced\\_labour\\_domestic\\_2006.pdf](http://www.antislavery.org/wp-content/uploads/2017/01/traffic_women_forced_labour_domestic_2006.pdf)

<sup>142</sup> Nasra Shah (2004). *Gender and Labour Migration to the Gulf Countries*. *Feminist Review*, 77, p.184.

<sup>143</sup> Interviews with currently employed domestic workers, 2010.

<sup>144</sup> Faiz Omar Mohammad Jamie & Anwar Hassan Tsega (2016). *Ethiopian Female Labour Migration to the Gulf States: The Case of Kuwait*. *African and Black Diaspora: An International Journal*, 9, p.12.

<sup>145</sup> Essim & Smith, *supra* note 24, p.52.

including sweeping, vacuuming, mopping, dusting, cleaning multiple bathrooms, washing the exterior of the house, cleaning the yard, and washing windows; cooking three meals a day; preparing snacks for family members on demand; washing and ironing the entire household's laundry; caring for multiple children, including providing care for infants, escorting children to and from school, feeding them, bathing them, and putting them to sleep; caring for elderly, sick, or disabled family members; and washing family cars.<sup>146</sup>

Schedules such as this leave little room for rest, and although these tasks are not a requirement in every household, it sheds light on the range of duties domestic workers are expected to perform.

Whilst most domestic workers are expected to be on call twenty-four hours a day, some of the domestic workers I interviewed have a schedule in which they have at least two to three hours of rest in the afternoon, and a certain time during the night when they retire.<sup>147</sup> Others were forced to work from dawn until night without rest, while others were expected to spend nights looking after babies or elderly employers. Essim and Smith indicate that the majority of domestic workers work an average of 101 hours per week, suffer from sleep deprivation, and do not receive a day of rest.<sup>148</sup> These conditions fit the criteria of slavery, or forced labour, as domestic workers have little choice in determining their working hours or conditions. As Bales states, “the value of slaves lies not so much in the particular products they make as in their sweat, in the volume of work squeezed out of them.”<sup>149</sup> Once again, the lack of knowledge of their rights, or the terms of the contract they signed, places domestic workers in a very fragile position, completely at the mercy of their employers.

In some households, domestic workers endure a constant threat of violence in the shape of physical or verbal harassment. They are subjected to criticism, belittlement, yelling, and other aggressive behaviour. Without a passport or the means to escape, many domestic workers tolerate appalling situations in order to earn a salary. Unlike conventional workplaces, which are more easily monitored for legal violations, work that takes place in the home is difficult to oversee or inspect. As Tyner writes, “explanations for the predominance of female abuse and exploitation revolve around migrant work sites. Women, *ceteris paribus*, are employed predominantly in isolated sites, such as live-in domestic work.”<sup>150</sup> Many times in the case of domestic workers, a national's right to privacy, especially in the home, takes precedence over the rights of domestic workers, who are in many cases foreign. As Manuela Tomei, the Director of the ILO's Labour Protection Department, states, “verifying compliance with the law in private households is therefore more difficult than in a factory or another more conventional workplace. A great deal of

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<sup>146</sup> *Exported and Exposed*, *supra* note 29.

<sup>147</sup> Interviews with currently employed domestic workers, 2010.

<sup>148</sup> Essim & Smith, *supra* note 24, p.19.

<sup>149</sup> Bales, *supra* note 46, p.9.

<sup>150</sup> Tyner, *supra* note 26, p.141.

innovation and creativity is required.”<sup>151</sup> As of yet, Kuwait has no mechanisms in place to facilitate monitoring of any kind for domestic workers.

### **3.5 National Laws**

Legally, domestic workers in Kuwait and in the Gulf states in general, share several important characteristics. They are all governed by the sponsorship system, which means that they are unable to change employers for whatever reasons, and they are unable to enforce contracts as they are either unaware of the terms or coerced into contract substitution, as discussed in the previous chapter. Furthermore, they are unable to organize or join unions, are highly dependent on the attitudes of employers and authorities, and are subject to a variety of abuses. As Hamill states, “even in the best of cases, the ‘sponsorship system’ still cultivates a master/servant relationship between employers and workers since the personal relationship between two individuals and their capricious moods serves as the basis for a migrant domestic worker’s legal status in the country.”<sup>152</sup> Domestic workers are not seen as employees, in the sense that their work takes place in the sanctity of the home, instead of a traditional workplace or office, blurring the employer-employee relationship. For these reasons, it is very difficult to enforce laws or preform labour inspections as in the case of unskilled male laborers.

#### **3.5.1 New Domestic Workers Labour Law 2015**

Before the Domestic Workers Law of 2016, standardized contracts were the only legal rule that applied to domestic workers. As in the case of unskilled male laborers, embassies issued their own versions of standardized contracts. (See Appendix 8-11) The standardized contract was first implemented in 2005 by a decree from the Ministry of Interior, which required all licensed domestic labour agencies to present a standardized contract prior to recruitment. The contract contains provisions requiring anyone wishing to sponsor a domestic worker, to provide the following:

- Payment of all agency fees (Article 4)
- Payment of all medical costs (Article 9)
- Rest periods of one hour for every three hours of work (Article 22)
- One month of paid leave per year (Article 22)

The contract period is usually between two to five years, after which, workers must apply for an extension, or depart the country. The standardized contract must be signed by the domestic worker, the employer, and the recruitment agent in Kuwait. It prohibits employers from seeking reimbursement from the employee for any of the expenses the

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<sup>151</sup> ILO (2012). *Domestic Work is no Longer a “Domestic Issue”*. [Online] Available from: [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_189173/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_189173/lang--en/index.htm)

<sup>152</sup> Kathleen Hamill (2012). *Policy Paper on Reforming the “Sponsorship System” for Migrant Domestic Workers: Towards an Alternative Governance Scheme in Lebanon*. KAFA (enough) Violence and Exploitation, Beirut, p.15.

employer has paid to the recruitment agency, which includes the withholding or deduction of salaries. As per the regulations of the sponsorship system, the standardized contract is only valid with the sponsoring employer, and transfer of employment is forbidden. If a domestic worker wishes to transfer her sponsorship and seek a different employer, she will have to leave Kuwait and apply for another work visa. If the worker leaves or is fired by the employer, she will be deported. In some instances, recruitment agents allow an employer a one hundred days trial period with the domestic, with full money back if the employer is not satisfied. If the worker is not satisfied, their choices are either to return to the agency if the employer agrees to end their trial period early, otherwise, they can abscond to the embassy if the employer refuses to return her to the agency. Due to the fact that the majority of employers still retain the passports of domestic servants even though it is illegal to do so, workers have little or no option but to abscond. The contract also sets the minimum wage at KD 40 (US \$139), which is significantly lower than the KD 60 (US \$207) minimum wage that was instituted for private sector workers in the Labour Law of 2010. This discrepancy is yet another example of the discrimination that domestic workers face within the Kuwait legal system. Furthermore, the lack of enforcement of these contracts gave employers complete discretion involving salaries. Whether or not they choose to pay the minimum set forth in the contract is up to them, and whether or not the domestic worker chooses to accept the terms set by her employer, regardless if those terms match those in the signed contract, is also up to them; there were no provisions for the monitoring of contracts, or penalties for breach of contract. Without enforcement, these contracts offered little protection for domestic workers. Bales refers to these types of contracts as being “legal fictions”,<sup>153</sup> due to the fact that it is very difficult to ensure that employers are actually adhering to the terms in the contract. As Jureidini and Moukarbel state, “that contracts do exist is more or less irrelevant if they are not supportable in law or if the legal system and agents of law prevent real access to legal remedies for breach of contracts and violations of human rights.”<sup>154</sup> At the time though, these standardized contracts offered domestic workers protections that were non-existent in the labour law.

In 2016, the Domestic Workers Law entered into force, essentially transferring all the stipulations found in the standardized contracts into a separate law. Recruitment agencies are prohibited from charging domestic workers any fees, or housing any workers in their offices, which were often used as holding areas for workers who were returned by their employers within the allotted trial period. As well as providing suitable accommodation, food, and medical treatment when necessary, employers are prohibited from deducting any portion of a worker’s wages or retaining her passport. Passport retention has been a customary practice in Kuwait for a long time. In 1997, Longva reported that “the keeping of passports by the employer was a common practice, which, although not based on any written legal requirement, was explicitly recommended by the Ministry of Interior.”<sup>155</sup> A Human Rights Watch report states that, although a 2007 decree by the Ministry of Social Affairs and Labour prohibited the confiscation of passports, it did not apply to domestic workers.<sup>156</sup> As mentioned in the previous chapter, it became customary practice for employers in Kuwait to hold their employee’s passports, and in the case of domestic workers, many times this is done with the intention of keeping the

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<sup>153</sup> Bales, *supra* note 46, p.26.

<sup>154</sup> Jureidini & Moukarbel, *supra* note 20, p.604.

<sup>155</sup> Anh Longva (1997). *Walls Built on Sand*. Westview Press, Boulder, p.94.

<sup>156</sup> *Walls at Every Turn*, *supra* note 3.

passport safe. However, according to a 2015 study by the ILO, some employers have other motives for confiscating workers' passports. The study found that,

Withholding of the passports of domestic workers was perceived as the norm; there was consensus among respondents that this must be the practice. The reasons expressed for withholding passports varied from the belief that it was not their right to hold their own passport, to making sure that they did not commit a crime.<sup>157</sup>

Without their passports, domestic workers would presumably be deterred from committing crimes since they would not be able to depart the country.

The inclusion of domestic workers within the labour law is an improvement on the dependence of contracts to ensure the protection of this group of workers. With clear stipulations on penalties for contract infringements, both employers and domestic workers are aware of their responsibilities as spelled out in the law, not as they may see fit. For example, under the new law, domestic workers must not be made to work more than twelve hours a day, are entitled to one day of weekly rest and paid annual leave. All employment contracts must be in the worker's national language, as well as Arabic and English translations and must be signed by the employer and employee. Additionally, a provision is included for overtime work, stating that domestic workers have the right to submit a complaint against an employer who fails to compensate for any additional hours worked. Part two of the law includes penalties for employers who fail to pay wages in a timely way, with workers entitled to KD 10 (\$32) in addition to their wages for every month that they are not paid.<sup>158</sup> Most importantly, the law fails to mention any mechanisms that will monitor the enforcement of these regulations, such as labour inspections.

Perhaps one of the reasons that the law is silent on the subject of enforcement, is that any specific provisions would require monitoring and supervision from the government or designated inspectors, which directly conflicts with laws guaranteeing citizens the right to privacy within their homes. Allowing government inspectors to enter their homes would recognize private homes as workplaces, a provision that elicits a great deal of opposition from nationals, who value the sanctity and privacy in their homes. The law, and the sponsorship system as a whole, necessitates that employers be directly responsible for their staff (and their immigration status), and in the case of domestic workers, whose employers are civilians (as opposed to organizations or companies), and whose workplace is the employer's home, any type of monitoring becomes difficult. Anti-Slavery International's report states, "as domestic workers are not considered 'real' workers, and are working for private people who are not considered employers (and the household is not considered a workplace), the inspection is outside the scope of the competencies of labour inspectors."<sup>159</sup> Until the government can determine a way to monitor conditions inside the homes where domestic workers are employed, implementation of the terms set in the standardized labour contracts, and the law itself, will continue to be ignored. As Muhammad Al-Ajmi, head of the Domestic Labour Directorate stated, "Without regular inspection, how can the ministry be sure that employers are following the new

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<sup>157</sup> *Employers' Perspectives*, *supra* note 14.

<sup>158</sup> State of Kuwait, *The Domestic Workers Law (2016)*. [Online] Available from: [https://kuwaitr.org/files/dwl/the\\_domestic\\_worker\\_law\\_en.pdf](https://kuwaitr.org/files/dwl/the_domestic_worker_law_en.pdf)

<sup>159</sup> *Trafficking in Women*, *supra* note 49.



regulations?”<sup>160</sup> In general, the law does mark an improvement in the inclusion of domestic workers within the larger framework of the labour legal system, and the establishment of minimum standards for them, but its lack of enforcement mechanisms is a major shortcoming.

Enactment of the Domestic Workers Law (2016) is a significant improvement in the standardization of laws applicable to domestic workers in Kuwait, but it still falls short of many basic protections afforded to workers in both the private and public sector. As mentioned earlier, monitoring the actual application of the law is difficult and unscrupulous agents and employers continue to find ways to take advantage of the vulnerability of domestic workers. In fact, many workers don't fully understand the terms of their contracts and are unable to oblige employers to enforce the basic requirements. Even though the contract states that employers are not permitted to demand reimbursements from workers, many employers and agents continue to do so. Additionally, even though the law states that domestic workers are entitled to one day of rest per week, the contract is vague on how that day may be spent. It is almost impossible to monitor conditions such as these. The only possible course is to identify possible cases of abuse, and implement monitoring and inspection mechanisms. It is clear that the government needs to take more initiative regarding the monitoring of domestic workers in order to safeguard their rights.

### **3.6 Violations**

Employed in the privacy of households, without adequate monitoring from government agencies, abuse is rife in domestic service. As mentioned earlier, complaints range from withholding salaries, long working hours, lack of hours or days of rest, belittlement, shouting and aggressive speech or behaviour, to more serious maltreatment such as verbal abuse or rape. It is not within the scope of this thesis to list the many cases of abuse inflicted on domestic workers, only to examine the ways in which those abuses occur under the confines of the sponsorship system and despite the laws enacted to protect these workers.

For as long as Kuwait has imported domestic workers, there have been incidents of abuse. In the 1990s, Human Rights Watch reported that “nearly two thousand women domestic servants...have fled the homes of abusive Kuwaiti employers and sought refuge in their embassies.”<sup>161</sup> Within the privacy of their households, employers are shielded from scrutiny and are free to treat domestic workers as they please. Halabi states, “most workers have reported suffering from more than one type of violence during the course of their employment, and many are so traumatized by the experience that it even negatively affects their ability to reintegrate into society upon returning home.”<sup>162</sup> In 2009, for example, HRW

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<sup>160</sup> Migrant-Rights.org (2017). *Regulations Introduced to Strengthen Kuwait's Domestic Workers' Law Offer Scant Support*. [Online] Available from: <https://www.migrant-rights.org/2017/06/regulations-introduced-to-strengthen-kuwait-domestic-workers-law-offer-scant-support/>

<sup>161</sup> *Walls at Every Turn*, supra note 3.

<sup>162</sup> Romina Halabi (2008). *Contract Enslavement of Female Migrant Domestic Workers in Saudi Arabia and the United Arab Emirates*. Human Rights and Human Welfare, 2008. [Online] Available from: <https://www.du.edu/korbel/hrhw/researchdigest/slavery/fmd.pdf>

reported that “embassies of labour-sending countries in Kuwait City received more than 10,000 complaints from domestic workers about non-payment of wages, excessively long working hours without rest, and physical, sexual, and psychological abuse.”<sup>163</sup> During the month of November of that same year, Migrant-Rights reported that there were thirteen reported cases of suicide or suicide attempts by migrant workers.<sup>164</sup> In 2009, it was reported that an average of 2,000 women have absconded from their sponsors’ homes every year since 1991.<sup>165</sup> In addition, HRW reported that migrant workers have committed or attempted to commit suicide every week during the years 2009 and 2010.<sup>166</sup> The Nepali embassy in Kuwait reports that 2,247 domestic workers have required rescue since 2010.<sup>167</sup> Today, reports on abuse of domestic workers occur daily and can be found in any local newspaper. In fact, local newspapers prove to be a valuable resource for lawyers such as Salah Al-Hashem, who works with embassies and migrant workers. He states that through the press, they discover incidents involving workers and with the aid of the victims, they can act.<sup>168</sup> As Manseau writes, “reports of foreign workers...being mistreated, denied their wages or sexually abused have become so routine that they rarely attract attention. It is only some of the most gruesome and shocking cases that receive any attention from the media and authorities.”<sup>169</sup> Unfortunately, the incidents of abuse or death have become so common that newspaper readers are rarely shocked by them.

Many of the abuses reported involve suicide, rape and torture. Beasley states that, “there exists a significant and pervasive pattern of rape, physical assault and mistreatment of Asian maids that takes place largely with impunity.”<sup>170</sup> In 2004, Essim and Smith reported that “the most frequently cited concern by the majority of women migrant domestic workers interviewed (over 50%) in Kuwait was the presence of physical (including sexual), psychological and verbal abuse.”<sup>171</sup> Many workers report feeling vulnerable to these types of abuses by their male employers or their employer’s relatives. The isolation of their “workplace”, the excessive working hours and demands, and the financial pressures they feel all contribute to psychological problems. Human Rights Watch reported that many Sri Lankan domestic workers returning home required counselling upon their return.<sup>172</sup>

Domestic workers in Kuwait who try to escape abusive employers face risk of criminal charges for absconding. When a worker is reported as absconding, her residency visa is cancelled, she is classified as illegal and an order for her arrest is issued. Considered

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<sup>163</sup> *Walls at Every Turn*, *supra* note 3.

<sup>164</sup> Migrant-Rights.org (2010). *Every Two Days a Migrant Worker Attempts Suicide or Commits Suicide in Kuwait*. [Online] Available from: <https://www.migrant-rights.org/2010/03/every-two-days-a-migrant-worker-attempts-or-commits-suicide-in-kuwait/>

<sup>165</sup> Essim & Smith, *supra* note 24, p.54.

<sup>166</sup> *Walls at Every Turn*, *supra* note 3.

<sup>167</sup> Migrant-Rights.org (2018). Domestic Workers’ Statistics. [Online] Available from: <https://www.migrant-rights.org/statistic/domesticworkers/>

<sup>168</sup> Personal interview with Mr. Salah Al-Hashem, August 2007.

<sup>169</sup> Gwenann S. Manseau (2005). *Contractual Solutions for Migrant Laborers: The Case of Domestic Workers in the Middle East*.

<sup>170</sup> Michele E. Beasley (1992). *Punishing the Victim: Rape and Mistreatment of Asian Maids in Kuwait*. Middle East Watch, Women’s Rights Project.

<sup>171</sup> Essim & Smith, *supra* note 24, p.20.

<sup>172</sup> *Exported and Exposed*, *supra* note 29.

runaways, some employers publish “bounty ads” in local newspapers, similar to those found during the American slavery era.<sup>173</sup> This is done in order to publicize their illegal status and warn future employers, who may also face charges for hiring an illegal worker. This further emphasizes many employers’ view that workers are personal properties. In many cases, workers are deported even if they have been abused or unpaid, and seek redress. The employer must notify authorities when workers abscond in order to release themselves from any possible future liability. The new Domestic Workers Law (2016) contains a provision meant to remedy this situation, it states that “the Director of the Department of Domestic Labour is to issue an order to temporarily extend the residence permit of the domestic worker until a final decision is made on the complaint and until the worker is paid all due entitlements.”<sup>174</sup> As mentioned above, the number of complaints is staggering, especially considering how many abuses are unreported each year. This is understandable given the shame and stigma that follows abuse, but there is also a fear of the consequences of reporting abuses against employers in a foreign country. Loss of employment, isolation and possible deportation are obstacles domestic workers may face when subjected to abuse. Domestic workers often endure exploitation due to the exponential debts they need to repay and the financial pressures they face in their home countries. For these reasons, workers find it difficult to report abuses.

Some domestic workers who flee their employers due to abuse report to a local police station. While this is necessary in order to avoid absconding charges, in reality, police stations are ill-equipped to deal with issues regarding domestic workers. There is a lack of an organized set of criteria that police officers must follow in cases of disputes concerning domestic workers. Domestic workers report a range of responses and actions when they registered complaints at police stations. The responses differed depending on the police officer. While some officers are helpful, others simply usher the workers home and refuse to register the complaint, or detain workers and either contact the embassy or the employer. Consequently, domestic workers who seek assistance at police stations are uncertain whether they will be helped or punished. In January 2010, Kuwaiti newspapers reported two separate incidents in which policemen or immigration officers admitted to raping domestic workers in their custody.<sup>175</sup> These unfortunate incidents only highlight the need for stricter laws concerning the treatment and rights of domestic workers in police detention.

In cases where a domestic worker has been raped or physically abused, the relevant embassy personnel are contacted. The worker must remain in the country until the case is resolved, and is banned from seeking work. Some women remain in this limbo state for months at a time. In many cases, they face counter-charges by the employer, or may be found guilty of adultery in cases of rape. Furthermore, the outcome of any dispute depends on the employer’s choice as to how much they will participate or contribute toward any type of resolution or negotiation. This puts employers at an advantage and places the burden on the domestic worker to prove her innocence. Due to their tenuous immigration status, the cost of filing charges against employers in cases of abuse or maltreatment remains a last resort for domestic workers.

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<sup>173</sup> Joel Mowbray (2003). *Maids, Slaves, and Prisoners*. National Review, 55, p.38.

<sup>174</sup> The Domestic Workers Law (2016), *supra* note 66.

<sup>175</sup> *Walls At Every Turn*, *supra* note 3.

Although the Domestic Workers Law (2016) contains provisions for the protection of the rights of workers, it does not contain specific guidelines. For example, that law states that “the employer is required to provide the domestic worker with food, clothing, medicine and medical treatment, and housing,”<sup>176</sup> it does not address complaints from workers who claim that many employers place restrictions on food and cooking. Most domestic workers complain of not being able to cook their own food, and not being given separate food they are able to prepare for themselves. They are expected to eat leftovers from family meals or hand-outs, regardless of whether or not they enjoy the food. There have been incidents where employers have placed locks on refrigerators to prevent domestic workers from accessing food.<sup>177</sup> In addition, it has become customary to restrict the movement of domestic workers, even on their days off, mostly to discourage absconding or socializing with other migrants. While the law allows for one day of rest, it does not specify if that day must be spent in the employer’s home (or the domestic worker’s place of employment) or if it may be spent outside the home.

Several attitudinal characteristics in the way employers interact with domestic workers define the experience of these workers in Kuwait. As mentioned in the previous chapter, words such as “migrant” or “immigrant” are not used in the government’s lexicon. In fact, for many people, domestic workers are not considered workers at all, but servants. In 2012, Mr. Al-Sulaimi, a delegate representing Kuwait at a meeting of the Committee on the Elimination of Racial Discrimination stated that, “use of the term ‘migrant workers’ to describe foreign workers in Kuwait was in fact inappropriate; all foreign worker in Kuwait were temporary workers, employed for a specific task and duration. The term ‘contractual workers’ would therefore be more appropriate.”<sup>178</sup> This only reinforces the attitude that all migrant workers are temporary in the country, and justifies the discrepancy of rights that exist between them and nationals. The sponsorship system’s structure is one in which sponsors are legally responsible for their employees, a responsibility some sponsors take to extremes by exerting a sense of ownership over workers. Mr. Kumar, ex-labour attaché at the Indian embassy in Kuwait refers to an “Arab mentality,”<sup>179</sup> which causes employers to feel entitled treating workers as they please. Having paid all the fees required for her recruitment and employment, and provided her with accommodation, food and clothing, some sponsors view this as fulfilling their responsibilities as employers, when in actual fact, there is more to the employer-employee relationship than merely basic needs. The lack of respect afforded to domestic workers based on the type of work they do leads to discrimination and abuse. Many domestic workers work under an atmosphere of anxiety, fearing a wrong move could provoke the anger of the employer. “Attitudes can translate into practices that can discriminate and exploit a domestic worker. These practices can then become deeply embedded in society and remain unquestioned.”<sup>180</sup> Seen as maids, helpers, or servants, as opposed to workers who are afforded protections under the law, many workers continue to face maltreatment in Kuwait. As a result of the inequality of the relationship between sponsor and employee, many domestic workers fear speaking out or complaining, and will tolerate unacceptable conditions. As Hamill states, “domestic

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<sup>176</sup> The Domestic Workers Law (2016), *supra* note 66.

<sup>177</sup> *Exported and Exposed*, *supra* note 29, p.65.

<sup>178</sup> Summary record of the 2134<sup>th</sup> meeting of the Committee on the Elimination of Racial Discrimination, 17 Feb. 2012, United Nations, Geneva.

<sup>179</sup> Personal interview with Mr. Ashouk Kumar, ex-Labour Attache, Indian Embassy, Kuwait, May 2011.

<sup>180</sup> *Employers’ Perspectives*, *supra* note 14.

workers are at a serious disadvantage when it comes to engaging in dialogue with their employers, negotiating the terms of their working conditions, or terminating their employment contracts early- let alone demanding their rights.”<sup>181</sup> Although not all employers take advantage of their employees, the sponsorship system itself is inherently flawed. Furthermore, debts play an important role in their decision to tolerate maltreatment, as the alternative -being terminated from their jobs- will deprive them of the chance to repay their debts. “Given the large debts that workers incur...this means that workers who have been cheated are unable immediately to withdraw their labour: they are, in effect, trapped until they have earned enough money to pay off their debts.”<sup>182</sup> Without the freedom to change employment in cases of abuse or mistreatment, domestic workers will continue to be at risk of abuse.

Lacking protective mechanisms, domestic workers are exposed to a personal and work experience that becomes highly taxing. The lack of care regarding their emotional, physical, and mental well-being eventually takes its toll. Each of the women I interviewed, both currently employed and unemployed, shed tears recounting their stories. Even those domestic workers who were content with their jobs and employers, told of the hardships that come with migration, and the many adjustments that need to be made in order to cope with life in Kuwait.<sup>183</sup> In many ways, the fact that they are foreign works both in their favor and against. Due to the fact that there are zero nationals who are available for employment as domestic workers, foreign women are not only readily available for employment, but would still be cheaper to hire than a national. At the same time, it is precisely their foreignness which causes clashes of personality and culture among most domestic workers and their employers.

### ***3.7 Access to Grievance Mechanisms***

Embassies play an important role in aiding domestic workers with complaints and abuses. They provide a vital link between the worker and government officials. Unlike male migrant workers who operate under the Ministry of Social Affairs and Labour, domestic workers fall under the jurisdiction of the Ministry of Interior. In 1993, the Ministry established a Domestic Workers Department which is responsible for the monitoring and inspection of all labour agencies, as well as hearing complaints from embassies concerning individual cases. The aim of the Department is resolution through arbitration, despite the presence of the employer not being compulsory. Lacking the authority to compel the sponsor or employer to attend meetings with their worker, the Department’s influence is limited during dispute resolutions. As HRW concludes, “Kuwait’s Domestic Workers’ Department provides little more than a governmental nod to due diligence as required by international law.”<sup>184</sup> Although the Department’s creation is a positive step, it remains to be seen whether or not it will become more effective in aiding domestic workers.

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<sup>181</sup> Hamill, *supra* note 60, p.22.

<sup>182</sup> Essim & Smith, *supra* note 24, p.60.

<sup>183</sup> Interviews with currently employed domestic workers, 2010.

<sup>184</sup> *Walls At Every Turn*, *supra* note 3.

As mentioned earlier, in cases of abuse, if domestic workers manage to escape to Kuwaiti police authorities, they are detained as runaways and their employer is contacted. Afterwards, they face several obstacles including, first and foremost, the difficulty in substantiating their claims of abuse whether those include the withholding of wages, verbal or physical abuse. The lack of evidence or witness testimony makes it hard to establish a case that would convince a court to rule in favour of the domestic worker. Additionally, embassies that provide legal assistance to domestic workers are limited in the financial services and shelter space they are able to provide; therefore, lack of resources is another barrier. Moreover, the procedures that are necessary to file a charge against an employer are lengthy and protracted, during which time the domestic worker spends either in jail, the embassy shelter or the government shelter.

The official government shelter for domestic workers accommodates 500 people,<sup>185</sup> although the exact number housed at the shelter on any given day is unknown. A U.S. Department of State Report stated that in April 2018, the shelter housed 450 residents.<sup>186</sup> Due to the fact that it is government-operated, access to the shelter for research or news purposes is prohibited, and any detailed information about it is scarce. In 2010, a Human Rights Watch report on Kuwait stated that,

Instead of providing emergency refuge, shelter policy requires that women be referred by their local embassies, which can send a quota of twenty domestic workers to stay there for a maximum of two weeks before repatriation. The major labour-sending countries send groups of workers to the shelter on a rotating schedule, meaning once a particular embassy has sent a group of workers to the shelter, they cannot do so again for several weeks, after the rest have taken their turns.<sup>187</sup>

The shelter operates under a strict policy regarding which domestic workers are allowed to stay. Workers who have absconding charges against them, or any charges at all, are not permitted in the shelter. Also, runaway domestic workers must be referred by the embassy, and may not seek refuge in the shelter. Embassies also provide shelters for their citizens where food, healthcare and legal advice are offered, but they are operating over capacity and have far fewer resources than the local government. When discussing Indian domestic workers who seek shelter at the embassy, Mr. Ganapathi, ex-ambassador to Kuwait from India stated, “the main goal is to repatriate them because by the time they arrive, they are already traumatized.”<sup>188</sup> Many of these workers have no choice but to remain in the embassy shelter for as long as their cases are pending, sometimes weeks or months.<sup>189</sup> Traumatic experiences may prevent some domestic workers from seeking justice in court, as this process is unpredictable and may prolong their stay in the shelter even further. Thus, negotiation efforts by embassies and the Domestic Workers Department with employers usually result in a compensation payment for the victim. “Thus, the sponsor-employer usually escapes with the least damage and perhaps only makes a pecuniary

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<sup>185</sup> U.S. Department of State (2018). Country Report -Kuwait. [Online] Available from:

<https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/kuwait/>

<sup>186</sup> Ibid

<sup>187</sup> *Walls At Every Turn*, *supra* note 3.

<sup>188</sup> Personal interview with Mr. M. Ganapathi, September 2007.

<sup>189</sup> Interviews with domestic workers in the Indian Embassy shelter, 2010.

compensation payment.”<sup>190</sup> In fact, some employers demand a payment for the release of a withheld passport or compensation for absconding.

When domestic workers flee abusive employers, they have the choice of going to the police authorities or their embassies. In cases where they choose to flee to the embassy shelter and the employer reports them missing, they are classified as absconders. After being notified by the employer that a domestic worker has absconded, the police begin procedures to cancel their residency visas. A report is issued to the Ministry of Interior to cancel the domestic worker’s residency visa and if she is found, she will be arrested then deported. The various paperwork and bureaucratic maze of legal authorities make the process of legal recourse difficult. Absconding is treated as a serious violation of immigration laws and according to the Aliens’ Residency Law, police have a right to issue deportation papers for a broad range of reasons, including cases where the migrant has no “visible means of livelihood,”<sup>191</sup> in other words, no job. Once deported, migrants are prohibited from returning to Kuwait without obtaining special permission from the police department. For these reasons, many domestic workers fear leaving their employers, and as a result tolerate abusive or problematic work environments. Workers who are owed back wages and who are seeking to reimburse those wages stand almost no chance of recovering their money if they return to their countries; however, many workers still resort to this option when they feel defeated against the legal system in Kuwait.

At the same time, some employers take advantage of the gravity of an absconding charge, and make false accusations in order to invalidate their contracts with domestic workers. A disgruntled employer may dismiss a domestic worker before her contract is due to end, withholding any wages owed to her. Unable to seek other employment, she goes to the embassy and is eventually charged with absconding and faces deportation. HRW states that “absconding regulations, in combination with workers’ poor access to labour complaint mechanisms, allowed employers to send workers home and to terminate their sponsorship, even in cases where they owed a worker wages.”<sup>192</sup> In 2008, a company based in Kuwait stopped paying the salaries of hundreds of Bangladeshi laborers, who resorted to begging, stealing, and other illegal activities to support themselves. Eventually, they sought help from St. Paul’s Anglican Church. Reverend Andy Thompson, chaplain of the church at the time, wrote an appeal in the local English newspaper, the Arab Times which appeared on the front page of the paper. In the article, Reverend Thompson addresses the situation of unskilled foreign laborers in Kuwait and the use of deportation as a tool for unscrupulous employers to recuse themselves from paying wages. He states,

The reality is that the charge of absconding has become the standard ploy whenever an employer decides that they have had enough of their workers. The police are unable to make a distinction between a genuine grievance and an employer who simply marches into a station and hands his employees over for arrest.<sup>193</sup>

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<sup>190</sup> Radhika Kanchana (2016). *Are India’s Policies Increasing the Vulnerability of its Female Migrants in the Arab Gulf Countries?* In: India Migration Report 2016, Gulf Migration, S. Irudaya Rajan (ed.), Routledge, New York, p.99.

<sup>191</sup> State of Kuwait, Aliens’ Residency Law, 1959. [Translated from Arabic] [Online] Available from: <https://www.refworld.org/docid/3ae6b4ef1c.html>

<sup>192</sup> *Walls at Every Turn*, supra note 3.

<sup>193</sup> Ibid

The government relies on deportation as a means of dealing with any grievances between domestic workers and their employers, instead of finding other, more effective means of settling disputes. If a domestic worker violates the terms of her contract by leaving her employer before the two-year period stipulated in the contract, she will face deportation charges regardless of the reasons. Although many migrant workers are aware of the fact that certain visa infractions will result in deportation, in recent years, many workers have been deported for minor infractions, such as driving without a license, barbecuing in a public space,<sup>194</sup> and minor traffic violations. It has become a way for the government to manage migrant workers quickly, without having to deal with arbitration, or other legal measures. “Absconding regulations, in combination with workers’ poor access to labour complaint mechanisms, allowed employers to send workers home and to terminate their sponsorship, even in cases where they owed a worker wages.”<sup>195</sup> Absconding charges also prevent workers from finding work elsewhere, even in cases where their contract had not yet expired. The lack of administrative mechanisms to handle complaints against domestic workers or their employers leads to unnecessary deportations of many migrant workers every year in Kuwait. In 2016, for example, the Ministry of Interior reported that 29,000 migrants had been deported that year.<sup>196</sup> Many are deported without fully understanding the reasons or the charges, which violates their right to be informed of any charges against them. This also deprives them of their right to obtain legal counsel to challenge any accusations their employer has levelled against them. In most cases, domestic workers are prepared to remain in the country if they were able to change their employer. Remaining in Kuwait while searching for another employer is much more economical for them, rather than returning to their own countries and beginning the overseas employment process anew.

### ***3.8 International Treaties and Conventions***

The reliance on deportation to quickly solve the problem of unemployed domestic workers is in breach of international conventions and treaties. The Ministry of Interior’s power to issue deportation papers against any foreigner with no visible means of financial income (no job), in direct contradiction of the Universal Declaration of Human Rights, as well as the International Covenant on Civil and Political Rights (ICCPR) which Kuwait has ratified. Article 9 of the Universal Declaration of Human Rights states that “no one shall be subjected to arbitrary arrest, detention or exile.”<sup>197</sup> The right to a fair hearing is enshrined in international human rights, and Kuwait has a responsibility to uphold those rights for migrant workers. In 1968, Kuwait signed the Declaration on the Elimination of All Forms of Racial Discrimination, which calls on States party to the Convention not to discriminate on the basis of race or national origin and to provide non-nationals with the mechanisms to challenge deportation orders. Domestic workers have a right to challenge

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<sup>194</sup> Gulf News Kuwait (2014). *Kuwait to Deport Expats Over Illegal Barbecuing*. Dec. 28. [Online] Available from: <https://gulfnews.com/news/gulf/kuwait/kuwait-to-deport-expats-over-illegal-barbecuing-1.1432897>

<sup>195</sup> *Walls at Every Turn*, *supra* note 3.

<sup>196</sup> Albawaba News (2017). *Kuwait: 29 Thousand Expatriates Deported in 2016*. Jan.8. Translated from Arabic. [Online] Available from: <http://www.albawabhnews.com/2311108>

<sup>197</sup> UN Universal Declaration of Human Rights (1948). [Online] Available from: <http://www.un.org/en/universal-declaration-human-rights/>



criminal charges against them and defend themselves against these charges, which deportation deprives them of. In her 1992 report *Punishing the Victim: Rape and Mistreatment of Asian Maids in Kuwait*, Beasley found that the government “made no systematic effort to document abused women’s criminal complaints or civil claims,”<sup>198</sup> opting instead to deport the women rather than registering and resolving their complaints. She states, “deportation seems to have allowed the Kuwaiti government to wash its hands of the maids’ problems without addressing the underlying causes of their abuse.”<sup>199</sup> Deportation should not be used as a remedy against domestic workers with pending charges without first exploring other forms of resolution.

Kuwait ratified the ICCPR in 1996 and it declares that all States have a responsibility “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>200</sup> Whether or not those under a State’s jurisdiction are citizens or not, they require equal protection under the law. Therefore, domestic workers should be offered the same protections under the law as nationals. Kuwait has also signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1996, which is another international agreement that contains articles on labour rights. Article 7 of the Covenant declares, “State Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work.”<sup>201</sup> According to the ICESCR, “favourable conditions of work” include “fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.”<sup>202</sup> Although a similar provision in the Domestic Workers Law (2016) contains conditions regarding rest and holidays, the government continues to rely on citizens to uphold the law, without any means of enforcement.

While there are many conventions and treaties that have been ratified by Kuwait concerning unskilled foreign workers, there are a few that are especially pertinent to domestic workers that have not been ratified yet. The ILO and the United Nations are the two major sources for conventions concerning domestic labour. The ILO’s Domestic Workers Convention No.189 is one of the most important conventions undertaken to protect the rights of domestic workers, but has only been ratified by the Philippines. This convention recognizes domestic work as a legitimate labour, and calls for workers to be offered “protection against all forms of abuse, harassment, and violence.”<sup>203</sup> It also guarantees domestic workers freedom of association, a right they are deprived of due to the fact that they, like male laborers, are prohibited from joining unions. As mentioned in the previous chapter, the regulations governing unions in Kuwait are strict, and must include nationals, who are non-existent in the domestic labour sector. The Kuwait Trade Union

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<sup>198</sup> <sup>198</sup> Michele E. Beasley (1992). *Punishing the Victim: Rape and Mistreatment of Asian Maids in Kuwait*. Middle East Watch, Women’s Rights Project.

<sup>199</sup> Ibid

<sup>200</sup> UN Office of the High Commissioner. International Covenant on Civil and Political Rights, 1976. [Online] Available from: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>201</sup> Ibid

<sup>202</sup> Ibid

<sup>203</sup> ILO Domestic Workers Convention, *supra* note 198.

Federation (KTUF) is the only licensed federation in the country and has long advocated for the rights of unskilled foreign workers in the country. It is a member of the Arab Network on Migrant Workers' Rights, and in 1993 the KTUF established the Expatriate Employment Office, devoted to migrant workers' issues. The ILO reports that domestic workers are permitted to join KTUF committees,<sup>204</sup> though it remains to be seen whether this allows domestic workers to become more vocal regarding their rights and encourages more workers to participate. By ratifying this Convention, Kuwait would begin the process of implementing greater measures to ensure the protection of all domestic workers currently employed in the country. In addition, the ILO Convention on the Protection of Wages (No.95) is an important Convention ratified by both Sri Lanka, and the Philippines, but not Kuwait. Ratifying this Convention would legally prevent employers from deducting salaries based on any reimbursement or debt. Regardless of whether Kuwait has ratified all of the ILO conventions relevant to migrant workers, the government has a duty to uphold the principles enshrined in the ILO Declaration.

The ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143) and the Migrant Workers Recommendation, 1975 (No.151), embody important principles that apply to domestic workers. Although neither Kuwait nor any labour-exporting country except the Philippines have ratified this convention, it remains pertinent, as it specifically contains articles regarding loss of employment. Paragraph 31 of the Migrant Workers Recommendation states migrant workers who have lost their jobs should be granted "sufficient time to find alternative employment...the authorization of residence should be extended accordingly."<sup>205</sup> Furthermore, Article 8 of the Migrant Workers Convention states that "on condition that he has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of the authorization of residence or, as the case may be, work permit."<sup>206</sup> Essentially, this convention prohibits the deportation of migrant workers who are no longer employed with their original sponsors, a method that the Kuwaiti government uses in order to ensure that workers are tied to their sponsors.

Granting unskilled migrants further rights under the law requires that the government commit itself to ratifying these conventions and implementing measures to ensure their application. Although this may raise the costs of migrant labour, it will nevertheless provide higher standards and better conditions for those workers on whom the country depends. As many domestic workers arrive to the country already vulnerable to exploitative conditions it is crucial that such conventions are ratified.

### **3.9 Conclusion**

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<sup>204</sup> ILO (2015). *Cooperating Out of Isolation: The Case of Migrant Domestic Workers in Kuwait, Lebanon, and Jordan*. [Online] Available from: [https://www.ilo.org/beirut/publications/WCMS\\_325243/lang--en/index.htm](https://www.ilo.org/beirut/publications/WCMS_325243/lang-en/index.htm)

<sup>205</sup> ILO Migrant Workers Recommendation, 1975 (No. 151), accompanying Convention No. 143, paragraph 31. [Online] Available from: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312489:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312489:NO)

<sup>206</sup> ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143). [Online] Available from: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C143](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C143)

Domestic workers face a great deal of obstacles working in Kuwait, more so than any other migrant workers. The pervasive attitudes of discrimination; poor enforcement of contracts and the labour law; the lack of supervision over agents and employers; and the sponsorship system in general, all contribute to a work environment that does not meet international human rights and labour standards. The number and range of abuses involving domestic workers in Kuwait need to be addressed, and steps toward their resolution need to be made. Even in cases where domestic workers are not victims of physical or verbal abuse, the customary norms that dominate their treatment are unacceptable. In order to receive equal protection under the law, like other foreign workers, the entire sponsorship system governing them must be overhauled.

The Domestic Workers Law (2016) is an important advancement of the rights of domestic workers in Kuwait however, without effective enforcement mechanisms, the law becomes ineffective. There are obstacles to overcome in terms of guaranteeing the rights of this group of workers, in terms of societal discrimination and long-standing attitudes. There continues to be resistance from employers, labour agencies and government officials who fear rising costs, falling profits, and an increased migrant presence in the country. Often unpaid or underpaid; exposed to physical, sexual and verbal abuse; subject to long working hours, heavy workloads, and inadequate rest; prevented from proper grievance methods or membership in unions; and confined to their workplace without access to their passports, domestic workers in Kuwait face unacceptable living and working conditions.

Without concrete enforcement methods to protect domestic workers or sufficient support from the local government, domestic workers are left unprotected in a foreign country, with customs and traditions different to their own and their situation can be classified as slavery and forced labour. The lack of government mechanisms to enforce and monitor compliance with existing laws has led to a situation where sponsors operate with impunity, regardless of the law. Generally, domestic workers are not considered employees at all, but rather maids, servants or slaves. Years of exclusion from the national law has shaped national attitudes and reinforced the belief that as nationals, Kuwaitis have the power to determine the working and living conditions of their employees. Consequently, domestic workers remain vulnerable to abuse, forced labour and slavery despite laws, conventions, treaties and other agreements that Kuwait has ratified.

## Chapter 4

### Recruitment and Remittances

#### *4.1 Introduction*

Recruitment agencies play an important role in the migration of domestic workers. Their existence aims to aid employers in the selection of suitable workers, which entails filing the necessary paperwork and obtaining the relevant documents. Recruitment agencies in different countries operate in various ways, depending on the laws of that particular country. In Kuwait, recruitment agencies are overseen by the Ministry of Interior, and specifically, their Domestic Workers Department. As mentioned earlier, for domestic workers, the Standardized Labour Contracts and the Domestic Workers Law (2016) discussed in Chapter 3 are the legal codes by which recruitment agencies operate. In this chapter, the role of recruitment agencies is examined in terms of the services they offer migrant workers. Violations ranging from deception to forced labour and trafficking are also analyzed. The recurring theme of debt is also explored in this chapter, especially in terms of recruitment fees and costs. Finally, international laws and conventions that pertain to recruitment agencies are examined in the context of Kuwait.

#### *4.2 Background*

While both labour-exporting and labour-importing countries have made great strides in establishing legal, economic, and social mechanisms aimed at protecting migrant laborers, there are still steps that can be taken to ensure fair recruitment. Recruitment refers to the means by which employers enlist employees for various jobs. Annex I of the ILO Migration for Employment Convention No.97 defines recruitment as:

- (i) the engagement of a person in one territory on behalf of an employer in another territory, or (ii) the giving of an undertaking to a person in one territory to provide him with employment in another territory, together with the making of any arrangements in connection with the operations mentioned in (i) and (ii) including the seeking for and selection of emigrants and the preparation for departure of the emigrants.<sup>1</sup>

In general, there are four types of recruitment that migrant workers utilize. The first is recruitment directly from the employer; the second is recruitment through government employment agencies; the third recruitment is through individual brokers (who may be friends or relatives); and finally, there is recruitment through private recruitment agencies. Recruitment allows the government to monitor the number of migrant workers in the country, safeguarding the country's strict migration policies. Every unskilled migrant worker has a sponsor, whether that sponsor is a government entity or an individual employer and is therefore legally accounted for. Hence, recruitment is used as a method of

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<sup>1</sup> ILO Migration for Employment Convention (Revised), 1949 (No.97), Annex I. [Online] Available from: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:31224\\_2](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:31224_2)

controlling the types and amounts of foreign workers in the country. The ILO defines fair recruitment as “recruitment carried out within the law and with respect for human rights, without discrimination and protecting workers from abusive situations.”<sup>2</sup> The restrictions of the sponsorship system and the labour laws concerning unskilled foreign migrants in Kuwait, prohibit workers from seeking work upon arrival in the country. Instead, all migrants must be recruited for specific jobs and obtain a valid contract before entering the country.

For most migrant workers, the quality of their job experience in Kuwait depends in large part on their choice of recruitment agency. These are the agencies that serve as liaisons between employers and potential employees. Recruitment agencies in both labour exporting and labour importing countries work together to provide employers with an array of potential recruits. In Kuwait, the Ministry of Social Affairs and Labour acts as a type of public recruitment agency, in charge of providing labour to governmental institutions or projects. There are also private recruitment agencies owned, but not always operated, by citizens.<sup>3</sup> The ILO’s Private Employment Agencies Convention (No.181), defines private employment agencies as:

Any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services: (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom; (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person...which assigns their tasks and supervises the execution of these tasks; (c) other services relating to jobseeking, determined by the competent authority after consulting the most representative employers and workers organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.<sup>4</sup>

In 2010, a Human Rights Watch reported that there were over seven hundred licensed recruitment agencies in Kuwait,<sup>5</sup> and in 2013, Fernandez reported that there were the same number of private recruitment agencies operating in Kuwait, which mainly recruited unskilled migrants.<sup>6</sup> In both labour-exporting and labour-importing countries, these agencies vary in size from relatively small and only working with a few hundred workers, to larger offices that work with thousands of workers. According to Tyner, “an international labour migration ‘industry’ has evolved to facilitate the recruitment and

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<sup>2</sup> ILO Fairway Project, *10 Things Governments Can Do To Ensure Fair Recruitment* (2017). [Online] Available from: [https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms\\_552284.pdf](https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_552284.pdf)

<sup>3</sup> Bina Fernandez (2013). *Traffickers, Brokers, Employment Agents and Social Networks: The Regulation of Intermediaries in the Migration of Ethiopian Domestic Workers to the Middle East*. International Migration Review, 47, p.833.

<sup>4</sup> ILO Private Employment Agencies Convention, 1997 (No.181). [Online] Available from: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312326](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326)

<sup>5</sup> Human Rights Watch (2010). *Walls at Every Turn: Abuse of Migrant Domestic Workers Through Kuwait’s Sponsorship System*. [Online] Available from: <https://www.hrw.org/report/2010/10/06/walls-every-turn/abuse-migrant-domestic-workers-through-kuwaits-sponsorship-system>

<sup>6</sup> Fernandez, *supra* note 3, p.833.

deployment of workers from locations of labour surplus to locations of labour shortage.”<sup>7</sup> Whether public or private, these agencies are responsible for supplying the necessary information regarding available job placements for workers. This is especially true for those living in rural areas where job information is scarce, even in the major labour-exporting countries.<sup>8</sup> As mentioned in previous chapters, migration to Kuwait is a costly endeavor, and the entire process would be even more complicated for workers who attempt to migrate without the assistance of recruitment agencies. The sponsorship system and the labour laws governing migrant workers are designed to ensure the temporary migration of workers, and have very strict requirements regarding the entrance of foreign workers. Recruitment agents in labour-exporting countries work with subagents to scout potential workers according to different qualifications and availability. With the cooperation of governments, recruitment agencies aid migrants in obtaining all the necessary paperwork required for work visas, in order to simplify the migration process as much as possible. Fernandez states, “the need for intermediaries is...a response to the high barriers to immigration constructed in wealthy countries, which makes it exceedingly complex for prospective migrants to cross international borders independently.”<sup>9</sup> Recruitment agencies are an integral component of labour migration, and governments of labour-sending and labour-exporting countries rely on them to facilitate the migration process for workers. As Abella states, “the demand for a recruiter’s services is inseparable from the job the worker is being recruited to fill.”<sup>10</sup> Most labour exporting countries rely on government and private recruitment agencies to disseminate information regarding migration so that migrants are fully aware of their obligations.

In the case of unskilled male laborers in the sanitation or construction sectors, licenses for contracts are issued according to bids from various Kuwaiti companies regarding the amount of workers required for specific projects. Companies then issue “demand letters” for workers to a licensed government recruitment agency in Kuwait, which contain information regarding the nature of the work required, and the number of workers needed. Recruitment agencies must be licensed by the government in both Kuwait and in labour-sending countries, and often, workers are supplied through a partner agency in the labour-sending country. For domestic workers, recruitment agencies are prohibited from hiring workers without a recruitment contract issued by the Department of Domestic Labour at the Ministry of Interior.<sup>11</sup> All workers must fulfill certain requirements before a visa is issued. For example, the Ministry of Interior demands a Police Clearance Certificate (PCC), certified by the government of the labour-sending country, to verify that the worker has no previous convictions. This is in addition to the requirements mentioned in previous chapters regarding age and the medical tests migrants are required to undertake.

The recruitment agencies are legally responsible for migrant workers until they are placed with their new employers. In the past, agencies would offer a trial period (usually one hundred days) for domestic workers, where employers are allowed to return workers

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<sup>7</sup> J.A. Tyner (2000). *Migrant Labour and the Politics of Scale: Gendering the Philippine State*. Asia Pacific Viewpoint, 41, p.132.

<sup>8</sup> Manolo Abella (2004). *The Role of Recruiters in Labour Migration*. In *International Migration: Prospects and Policies in a Global Market*. Massey, D.M. and Taylor, J.E. (eds). Oxford University Press. p.202

<sup>9</sup> Fernandez *supra* note 3, p.815.

<sup>10</sup> Abella, *supra* note 8, p.203.

<sup>11</sup> State of Kuwait, Ministry of Interior, Department of Domestic Labour. The Domestic Workers Law (2016), Article 18 [Online] Available from: [https://kuwaithr.org/files/dwl/the\\_domestic\\_worker\\_law\\_en.pdf](https://kuwaithr.org/files/dwl/the_domestic_worker_law_en.pdf)

they are not satisfied with. Many workers did not receive a salary during this trial period with various provisional employers, with some reportedly spending a year working under these circumstances.<sup>12</sup> These workers were usually housed in temporary apartment accommodations until their employment commences, although interviews with domestic workers indicate that these accommodations are often inadequate.<sup>13</sup> The recent Domestic Workers Law (2016), however, extends the trial period to almost twice the current time, stating that agencies must “guarantee the continuous employment of the domestic worker for a period of six months.”<sup>14</sup> The law also states that workers may not be housed in recruitment offices, perhaps implying that this practice was not uncommon. In one instance, a domestic worker I interviewed reported spending three days in the recruitment agency office with only one piece of bread for sustenance.<sup>15</sup> Another reported living in the recruitment agency office for one month before finding employment.<sup>16</sup> Furthermore, two of the domestic workers I interviewed reported having their passports confiscated by recruitment agents.<sup>17</sup> Unaware of their rights according to the labor laws, domestic workers remain vulnerable to such practices by unscrupulous recruitment agencies.

#### ***4.3 Role of Recruitment Agencies, Agents and Sub-Agents***

Unskilled foreign laborers and domestic workers must deal with two recruitment agencies throughout their employment. Workers are recruited in their home countries by agents or subagents employed by recruitment agencies, depending on where they reside. Working in association with local agencies, recruiters in labour-sending countries match employees with potential employers in Kuwait. Kuwaiti agencies operate under the supervision of the Ministry of Interior, which is responsible for granting licenses. Ministerial Decision No.1182 of 2010 and the Domestic Workers Law (2016) includes conditions on the issuing and withdrawing of licenses for recruitment agencies. According to Ministerial Decision No.1182, recruitment agencies must deposit KD 20,000 (approximately \$66,000) with the Ministry of Interior as surety in case of any dispute involving either the owner or the employees of the agency.<sup>18</sup> Larger recruitment agencies manage contracts for both laborers and domestic workers. Laborers are recruited in groups for companies or state bodies to work as construction crew, street sweepers, janitors and other jobs, while domestic workers are recruited individually to work in private homes.

Residents seeking a domestic worker visit recruitment agencies where workers are classified by nationality, due to the labour hierarchy discussed previously. As mentioned earlier, files are available for employers to browse that contain information on workers such as age, marital status, religion, past experience, as well as a photo. After selecting a worker, the employer signs a contract with the agency and pays the necessary fees that include processing and medical costs, plus airfare for a return trip home. The money

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<sup>12</sup> Faiz Omar Mohammad Jamie & Anwar Hassan Tsega (2016). *Ethiopian Female Labour Migration to the Gulf States: The Case of Kuwait*. African and Black Diaspora: An International Journal, 9, pg.11.

<sup>13</sup> Fernandez *supra* note 3, p.834.

<sup>14</sup> The Domestic Workers Law (2016), *supra* note 11, Article 17.

<sup>15</sup> Personal interview with M.G., May 2012.

<sup>16</sup> Personal interview with L.M., 2012.

<sup>17</sup> Personal interview with A.S. and G.J., Indian embassy, May 2012.

<sup>18</sup> Summary Record of the 2134<sup>th</sup> meeting, (2012), UN Committee on the Elimination of Racial Discrimination, Geneva.

generated by these offices comes from the various fees they charge in exchange for providing work in Kuwait. Currently, the law prohibits agencies from charging workers for recruitment fees, placing the full cost of recruitment upon the employer. In the past however, recruitment agency costs represented a large portion of the total costs paid by workers for migration, which varied according to nationality. In 2004, Abella found that on average, workers from Bangladesh paid the most fees even though they were employed in the same unskilled jobs as other migrants, while those from Sri Lanka paid the least.<sup>19</sup> Unfortunately, in some cases, migrant workers are of the view that the more they pay in recruitment costs, the better their chances of securing job placement in Kuwait.<sup>20</sup> The cost of recruitment fees has continued to rise in recent years, which in turn, has led to a rise in the cost of hiring domestic workers. However, far from being a deterrent, the inflated fees have given sponsors a sense of ownership over workers, as stated in Chapter 3.

Recruitment agencies operate using a variety of resources, with heavy reliance on subagents to recruit workers living in rural areas of labour-sending countries. Subagents act as intermediaries between workers and recruitment agencies. Whereas governments require recruitment agencies to hold valid licenses, subagents are unlicensed and therefore, unmonitored by the government. Jureidini states that “sub-agents operate illegally and are often the original source of deception, false promises and financial exploitation.”<sup>21</sup> Due to this, many subagents charge workers inflated fees for connecting them with agencies who, in turn, charge inflated fees themselves. Throughout the process, subagents are paid by both workers and agencies. Subagents do not require any qualifications other than their knowledge of rural areas and their connection to a recruitment agency but many times, they are trusted religious or political leaders in rural towns and villages. In some cases, migrants from rural areas are more likely to trust local subagents rather than large urban recruitment agencies,<sup>22</sup> even though the latter may offer more protection. In the case of Sri Lanka, it was reported in 2007, that “there are over 580 registered agencies in Sri Lanka, and informed observers estimate there are 10,000-20,000 subagents operating throughout the island to link migrant workers with these agencies. One licensed labour agent estimated that “75 to 80 percent of maids are channeling through subagents.”<sup>23</sup> Today, the number of unlicensed subagents in other countries is unknown. As previously mentioned in Chapters 2 and 3, most workers must take out loans or sell their possessions in order to pay subagents and agents. The number of recruitment agencies in labour-importing and labour-exporting countries continues to grow to meet demand, and with that growth, the race to provide competitive prices increases.

Subagents are important to recruitment agencies, and are able to provide services that agencies are dependent on, such as the ability to reach groups who reside far from the

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<sup>19</sup> Abella, *supra* note 8, p.209.

<sup>20</sup> Migrant Forum Asia. *Recruitment “Fees” & Migrants’ Rights Violations*, p.5-6. [Online] Available from: <http://recruitmentreform.org/zero-fees-for-migrant-workers/>

<sup>21</sup> Ray Jureidini (2014). *Migrant Labour Recruitment to Qatar*. Report for Qatar Foundation Migrant Worker Welfare Initiative. Bloomsbury Qatar Foundation Journals, p.52. [Online] Available from: [http://www.qscience.com/userimages/ContentEditor/1404811243939/Migrant\\_Labour\\_Recruitment\\_to\\_Qatar\\_Web\\_Final.pdf](http://www.qscience.com/userimages/ContentEditor/1404811243939/Migrant_Labour_Recruitment_to_Qatar_Web_Final.pdf)

<sup>22</sup> Jureidini, *supra* note 21, p.61.

<sup>23</sup> Human Rights Watch (2007). *Exported and Exposed: Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates*. Human Rights Watch, 2007. [Online] Available from: <https://www.hrw.org/sites/default/files/reports/srilanka1107webwcover.pdf>



larger cities or towns where recruitment agencies are usually located. Working on behalf of agencies, subagents also act as guides, making sure workers have the relevant paperwork and, in many cases, accompanying workers to medical checks and government bureaus. “Subcontracting diffuses costs, risk and legal liability down the supply chain,”<sup>24</sup> which is partially why they are so useful to recruitment agencies, and while there are a limited number of licensed recruitment agencies, there is a large supply of subagents. Although they may diffuse costs for the agency, they impose higher costs to the workers. As Breeding states, “subagents create an additional principal between the recruitment agency and job candidates. This is where many candidates end up facing fees exceeding the maximum charge set by the...government.”<sup>25</sup> In addition to all the costs of the recruitment agency, the additional fee of the subagent places an additional burden for workers, many of whom incur significant debt as a result of high recruitment costs. Even though the current law in Kuwait prohibits agencies from extracting direct or indirect fees from workers, reports indicate that many workers continue to be charged.<sup>26</sup> Attempts to restrict the role of subagents have failed mostly due to the lack of law enforcement mechanisms that are needed to supervise the operations of recruitment agencies. Some countries, such as Sri Lanka, have attempted to persuade licensed recruitment agencies to open branches in rural areas in order to minimize the role of subagents, however it remains to be seen if this attempt is successful. According to one skeptical ILO official, “you can’t say that just by opening up [licensed recruitment agency] offices in districts will help, because they will probably just get the subagents to run their offices.”<sup>27</sup> Additionally, government regulators are hesitant to impose too many restrictions on subagents for fear of driving them underground, further endangering potential recruits. It is probable that recruitment agencies will continue to rely on subagents, especially in countries where the laws are vague and monitoring is weak.

#### ***4.4 Violations and Problems***

As the business of labour recruitment agencies has grown and become more competitive within the world-wide labour market, incidents of abuse have also increased. Many recruitment agencies operate as businesses, where the bottom line is profit, and the welfare of workers is secondary, if it is a priority at all. In general, they “prove poor guardians of domestic workers’ safety,”<sup>28</sup> and depend on the naivety of workers in order to make a profit. Recruitment agencies often operate under vague and ambiguous laws, which lead to abuses, misrepresentations, or deceptions between migrant workers and agencies. Many migrant workers claim that subagents and agents misled them about the terms of their contracts, such as the type of company or employer they will work for, the work hours, wages and their job responsibilities. More importantly, many agents fail to inform workers of their rights, or which actions to take in case of maltreatment or abuse. A HRW report on Sri Lankan domestic workers in Kuwait found that “labour recruiters often falsify

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<sup>24</sup> *10 Things Governments Can Do*, *supra* note 2.

<sup>25</sup> Mary Breeding (2012). *India-Persian Gulf Migration: Corruption and Capacity in Regulating Recruitment Agencies*. In *Migrant Labour in the Persian Gulf*, M. Kamrava and Zahra Babar (eds.). Columbia University Press, New York, p.151.

<sup>26</sup> *Recruitment “Fees” & Migrants’ Rights*, *supra* note 20, p.5.

<sup>27</sup> *Exported and Exposed*, *supra* note 23.

<sup>28</sup> *Walls at Every Turn*, *supra* note 5.

workers' passports in order to meet age requirements for jobs abroad and often alter passports to bear Muslim names and religious designations because of many employers' preference for Muslim domestic workers."<sup>29</sup> Oftentimes, workers are unaware of any changes that subagents have made to documents in order to cater to the tastes of Arab employers, which only increases their vulnerability. In cases of abuse or maltreatment, false documents may at best, prolong legal proceedings and at worst, serve as grounds for dismissal of a case. The Philippines is one of the few countries that holds recruitment agencies financially liable if any wage discrepancies are found between the amount that was promised to the worker and the amount that the worker actually received.<sup>30</sup>

Laborers and domestic workers need to be better informed about the terms of their contracts and especially the work environment where they will be employed. Residents wishing to hire a domestic worker are presented with resume-like documents about the worker, listing facts such as nationality, age, marital status, height, weight, level of education, language proficiency, and previous work experience. Comparatively, domestic workers are given very few facts about their employer, the duties expected of them, the number of household members, their ages (important because childcare or care for the elderly usually involves heavier workloads), the location or the preferred language of communication in the workplace. It is important for workers to have knowledge of this information so that they are better prepared and equipped to handle their jobs. It is also useful for recruitment agencies to make better matches between employers and workers, but unfortunately, most agencies place the needs of the employer higher than those of the worker and work on an availability basis.

The growing number of recruitment agencies in labour-exporting as well as labour-importing countries, along with the nebulous network of subagents, has made governmental supervision difficult. Subagents operate without licenses, and are often unknown to government authorities, which makes it difficult to monitor them. Many subagents work with registered recruitment agencies and recruit workers on their behalf, with Breeding reporting that registered agencies in India openly admitted to working with subagents.<sup>31</sup> Timothy and Sasikumar state that "less educated women are prone to using irregular channels of migration because of their limited access to information,"<sup>32</sup> which only adds to their vulnerability. Many subagents take advantage of this situation by seeking potential candidates in rural areas where workers tend to be illiterate and gullible, a process referred to as "fishing".<sup>33</sup> They paint a picture of Gulf countries as lands of opportunities, high wages and comfortable living. There are many reported incidents of deception between migrants and subagents, mainly consisting of false assurances of high salaries and promising jobs, as well as inflated costs for recruitment fees. HRW states that, "labour agents pay a commission to subagents for performing necessary tasks...Subagents'

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<sup>29</sup> *Exported and Exposed*, *supra* note 23.

<sup>30</sup> Jureidini, *supra* note 21, p.89.

<sup>31</sup> Mary E. Breeding (2016). *The Micropolitics of Indian Recruitment Agencies: India-Gulf Migration from a Local Indian Perspective*. In: India Migration Report 2016: Gulf Migration. S. Irudaya Rajan (ed.), Routledge, New York.

<sup>32</sup> Rakkee Timothy and S.K. Sasikumar (2012). *Migration of Women Workers from South Asia to the Gulf*. V.V. Giri National Labour Institute and United Nations Entity for gender Equality and the Empowerment of Women, p.32. [Online] Available from:

[https://www.ucis.pitt.edu/global/sites/default/files/migration\\_women\\_southasia\\_gulf.pdf](https://www.ucis.pitt.edu/global/sites/default/files/migration_women_southasia_gulf.pdf)

<sup>33</sup> Breeding, *supra* note 31.

practice of illegally overcharging prospective migrants for these services is well-known.”<sup>34</sup> Subagents may operate out of their own homes, travel agencies or coffee shops, further complicating governmental supervision. In India, Breeding reported that “one subagent I interviewed, doubling as a travel agent in Goa, noted that he prefers to call himself a consultant so that he does not encounter hassle by the ministry... Others were less worried because they perceive very little regulation on the part of the ministry.”<sup>35</sup> In addition to the subagents, recruitment agencies themselves are guilty of overcharging migrants. In 2016, Breeding reported that her research found only one recruitment agency in India that did not charge workers beyond the maximum limit the Indian government had set. She states, “with the one exception of the government recruitment agency I interviewed, job candidates applying to other agencies always end up paying between four and five times more than the maximum a recruitment agent can charge.”<sup>36</sup> Recruitment agencies must compete with each other in offering the best prices for labour, and it is this competition which fuels their business models. In order to offer cut-rate costs for supplying employers with workers, recruitment agencies compensate by overcharging both parties in order to earn a profit. In a HRW report on Sri Lankan domestic workers, a labour agent acknowledged the practice of charging too much for services by stating, “this is a business. We have to supply according to [the Middle Eastern employers’] expectations... In their country [employers] can do whatever they want.”<sup>37</sup> By pointing the finger at market forces in order to justify inflated fees, labour agents attempt to excuse their poor treatment of workers. Their profit comes at the cost of migrant workers who remain haunted by debt throughout their migration experience.

There are a number of complaints and grievances reported by migrant workers against recruitment agencies, some of which were mentioned in previous chapters. Besides the inflated fees they charge workers, many recruitment agents are guilty of coercing workers into remaining with their employers in order for the agencies to recoup the cost of the fees. In cases where workers have been abused or maltreated and demand to be returned to their home country, many agents persuade them to remain with the employer so that the agency does not have to reimburse the employer’s fee. According to Michele Gamburd, an anthropologist who has studied the Sri Lankan labour recruitment industry, “if several domestic workers were to return to Sri Lanka in a short period, the cost of reimbursing employers could bankrupt a small labour agency.”<sup>38</sup> This creates a conflict of interest between recruitment agencies profits, and the rights of labour migrants, which has led to many agencies treating workers as commodities to be purchased and sold. Reports indicate that some recruitment agencies overlook abuses reported by migrant workers, concentrating instead on recruiting the largest numbers of workers at the lowest cost.<sup>39</sup> Agencies that place profits at the expense of the welfare of their workers and are dismissive of claims of abuse or maltreatment, place workers in situations which are potentially dangerous. In recent years, governments have attempted to hold recruitment agencies accountable for the welfare of workers by requiring them to produce a security bond or bank guarantee that will be used in cases of disputes with workers. In Bangladesh

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<sup>34</sup> *Exported and Exposed*, *supra* note 23.

<sup>35</sup> Breeding, *supra* note 31.

<sup>36</sup> *Ibid*

<sup>37</sup> *Ibid*

<sup>38</sup> Quoted in *Exported and Exposed*, *supra* note 23.

<sup>39</sup> Recruitment “Fees”, *supra* note 20, p.5-6.

for example, recruitment agencies are required to submit a bond of approximately U.S. \$20,000 to the government that will be used to compensate workers for contract substitution or other fraudulent practices.<sup>40</sup> In India, the bond is set at approximately U.S. \$320,000 which will be seized by the government if recruitment agencies commit infractions against the law.<sup>41</sup>

Although many governments require recruitment agencies hold licenses, incidents of abuse, visa trading and trafficking are not uncommon. The ILO states that “widespread evidence exists that the migration recruitment industry is responsible for numerous abuses that erode the benefits of migration for workers.”<sup>42</sup> Additionally, the ILO committee of Experts in its 2016 general survey of migrant worker instruments stated, “in recent years, it has become increasingly clear that governance of recruitment practices has an essential role to play in preventing migrant workers from experiencing abusive and fraudulent conditions, including trafficking in persons and forced labour.”<sup>43</sup> Furthermore, the UN Special Rapporteur on the Human Rights of Migrants stated “the practices of unethical recruiters and their subagents sit on a complex spectrum of human rights violations. Such recruiters commonly exploit migrants, directly or indirectly, at every stage of the migratory process.”<sup>44</sup> In many cases, recruitment agencies are guilty of “asymmetry of information” whereby agents withhold certain pertinent information from workers, or deceive workers in any way regarding the nature of the employment contract. This may lead to other violations such as contract substitution and trafficking. Most unskilled migrant workers have a limited education or are illiterate, which limits their access to reliable information regarding their contracts or their rights in the country of employment. In the case of India, Breeding reports that,

Findings highlight three informal practices common in contract brokering for India-Gulf Migration. These informal practices potentially undermine formal institutions and allow for abuses of contract brokering. They include: recruitment agencies working with subagents; fishing for candidates in rural areas; and information asymmetries between recruiters and job candidates regarding wages.<sup>45</sup>

Unaware of any mechanisms for redress, they are reluctant to contest the terms of the contract or report instances of abuse or maltreatment. Even when they report instances of maltreatment to recruitment agents, some workers are forced by these agents to return to their employers and endure the maltreatment so that the agency does not incur the cost of re-employment or repatriation. HRW reported cases in Kuwait where recruitment agencies

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<sup>40</sup> Jureidini, *supra* note 21, p.52.

<sup>41</sup> Ibid

<sup>42</sup> ILO (2017). *Safeguarding the Rights of Asian Migrant Workers from Home to the Workplace* p.29. [Online] Available from: [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms\\_548390.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_548390.pdf)

<sup>43</sup> ILO (2016). *Promoting Fair Migration, Report on the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)* p.65. [Online] Available from: [https://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2016-105-1B\).pdf](https://www.ilo.org/public/libdoc/ilo/P/09661/09661(2016-105-1B).pdf)

<sup>44</sup> UN (2015). *Report of the Special Rapporteur on the Human Rights of Migrants, Mr. Francois Crepeau*. [Online] Available from: <https://www.ohchr.org/Documents/Issues/Migration/A-70-310.pdf>

<sup>45</sup> Breeding, *supra* note 25, p.138.

were responsible for coercive practices against domestic workers who reported abusive conditions at their place of employment.<sup>46</sup>

Recruitment has become a highly profitable business, and unscrupulous agencies often place profits above the welfare of workers. As Fernandez notes, “the information asymmetry inherent in the structure of migration control and border regimes has produced a highly profitable and diverse market for services facilitating the movement of people across international borders.”<sup>47</sup> Referred to by Martin<sup>48</sup> and Kuptsch<sup>49</sup> as “merchants of labour,” today, recruitment agencies are estimated as being a multibillion dollar industry,<sup>50</sup> assisting in the labour migration of millions of people. However, management of these agencies has proved difficult for both labour-exporting and labour-importing countries. In recent years, attempts have been made for greater cooperation between countries regarding migration, one of which is the Abu Dhabi Dialogue, which was established in 2008. All GCC countries are members, as well as major labour-exporting countries such as the Philippines, Bangladesh, Sri Lanka, Indonesia, and India. Although such partnerships are important, it remains to be seen whether or not any concrete reforms applicable to all Member States will take place.

#### ***4.5 Trafficking and Forced Labour***

Trafficking and forced labour are two of the extreme consequences that stem from the lack of monitoring of recruitment agencies in both labour-sending and labour-receiving countries. The UN Trafficking Protocol defines trafficking in persons as

The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.<sup>51</sup>

Deception by recruitment agencies takes place in a variety of ways, such as excessive fees, or the overcharging of fees; and misrepresentation of the working conditions or the nature of the job. “The trafficking cycle most often begins with the recruitment of a person by means of deception, coercion and/or persuasion.”<sup>52</sup> Contract substitution, illegal

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<sup>46</sup> *Exported and Exposed*, supra note 23, p.86.

<sup>47</sup> Fernandez, supra note 3, p.815.

<sup>48</sup> Philip Martin (2005). *Merchants of Labour: Agents of the Evolving Migration Structure*. Decent Work Research Program, Discussion Paper 158, International Labour Organization. [Online] Available from: [http://www.oit.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms\\_193617.pdf](http://www.oit.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_193617.pdf)

<sup>49</sup> Christiane Kuptsch (ed.) (2006). *Merchants of Labour*. International Labour Organization. [Online] Available from: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_208712.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_208712.pdf)

<sup>50</sup> Fernandez, supra note 3, p.815.

<sup>51</sup> UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000, Article 3. [Online] Available from:

<https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>

<sup>52</sup> ILO, *Human Trafficking and Forced Labour Exploitation – Guidance for Legislation and Law Enforcement*, 2005, p.31. [Online] Available from: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_081999.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081999.pdf)

recruitment fees, coercion, and misinformation or deception concerning the nature of work are all indicators of forced labour and trafficking. By using deception to mislead workers regarding the nature of jobs, workers are denied their choice of employment, a clear indication of trafficking. In many cases, workers are not versed in the local labour laws, and are unable or are too intimidated to report instances of deception for fear of deportation, with a possibility of never recovering the fees already paid to the agency. Although workers have voluntarily made themselves available for recruitment abroad and signed a contract accordingly, it does not make them immune to trafficking, as the deception and coercion associated with trafficking may reveal itself only later. The ILO states that, “legislatures have to take into account that the initial recruitment can be voluntary and that the coercive mechanisms to keep a person in an exploitative situation may come into play at a later stage.”<sup>53</sup> The initial voluntary offer of employment was not based on all the facts and therefore, the freedom of choice was removed. In this sense, trafficking does not always have to include the use of physical force, it may also refer to mental coercion or deception. Drew states, “any factor which deprives a person of a choice of alternatives and compels him to adopt a particular course may properly be regarded as ‘force’.”<sup>54</sup> Migrants must have access to all information regarding their future employment in order to make an informed, voluntary decision on whether or not they will accept the employment.

Trafficking also occurs in Kuwait through the transportation of workers to other countries, mainly Iraq. Many workers are recruited based on the understanding that they will be working in Kuwait when in actuality, employers transport them to Iraq, to situations which are often life threatening. Furthermore, most labour-exporting countries such as India and the Philippines prohibit their citizens from migrating to Iraq for employment. In 2005, John Owen was employed by the First Kuwaiti Trading and Contracting, a Lebanese-owned, Kuwait-based company, as lead builder in charge of the construction of the new American embassy in Baghdad. Six months later, he quit his job and reported the company to the U.S. State Department for trafficking. He claimed that workers hired from the Philippines and India had arrived to Kuwait for employment, but had been transported to Baghdad to work on the embassy under appalling conditions.<sup>55</sup> In 2007, the U.S. Department of State’s Trafficking in Persons (TIP) Report reported on this practice, stating that “Kuwait reportedly is also a transit country for South and East Asian workers recruited by Kuwaiti labour recruitment agencies for low-skilled work in Iraq; some of these workers are deceived as to the true location and nature of this work.”<sup>56</sup> Cases such as this are extreme examples of trafficking and although they may not be as common as other forms such as deception and coercion, they are indicative of the extent of trafficking in Kuwait.

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<sup>53</sup> *Human Trafficking and Forced Labour Exploitation*, supra note 52, p.10.

<sup>54</sup> Sandhaya Drew (2002). *Human Trafficking: A Modern Form of Slavery?* European Human Rights Law Review, No.4, pp.481-492.

<sup>55</sup> Inter Press Service News Agency (2006). *Iraq: Labour Laws Trampled at New U.S. Embassy, Ex-Foreman Says*. [Online] Available from: <http://www.ipsnews.net/2006/10/iraq-labour-laws-trampled-at-new-us-embassy-ex-foreman-says/>

<sup>56</sup> U.S. Department of State (2007). *Trafficking in Persons Report*. [Online] Available from: <https://www.state.gov/j/tip/rls/tiprpt/2007/>

In 2011, the U.S. State Department TIP Report stated that the Kuwaiti government is “reluctant to prosecute Kuwaiti citizens for trafficking offenses despite allegations that trafficking in Kuwait largely involved Kuwaiti employers.”<sup>57</sup> Fernandez echoes this by stating that labour violations involving trafficking are treated as civil rather than criminal offences, requiring employers who have been found guilty to pay fines as opposed to serving prison sentences.<sup>58</sup> This may be due to corruption involving government officials in both labour-receiving and labour-sending countries, as Jamie and Tsega have reported.<sup>59</sup> The government does not publish statistics on crimes involving trafficking, so it is difficult to know the extent of its prevalence in the country, but according to a 2018 U.S. State Department TIP Report, Kuwait is currently classified as Tier 2.<sup>60</sup> This classification indicates that Kuwait has not met the minimum standards of the U.S. government’s Trafficking of Victims Protection Act, but is making significant attempts to meet those requirements. The onus is on the government to demonstrate a positive obligation to protect migrant workers against trafficking. The case of *C.N. v. the United Kingdom* is an example of the ECHR ruling that states have a positive obligation to identify and protect potential victims of trafficking. In this case a Ugandan national arrived to the U.K., and began working for an elderly couple whom she had found with help from a cousin. She complained to the Metropolitan Police that she was working long hours without proper compensation, that her cousin had confiscated her passport and that she had been threatened with deportation. The Metropolitan Police Human Trafficking Team investigated and found that the circumstances of her case did not constitute trafficking for the purpose of exploitation. The ECHR found that a violation had been committed due to the fact that an offence of domestic servitude was not investigated and the focus of the investigation had been on charges of trafficking. This reinforces the court’s emphasis on the positive obligation of states, in this case, that the burden is on authorities to identify circumstances that may identify workers as being at risk of servitude. In the case of Kuwait, it is the responsibility of the proper authorities to take measures to ensure that workers are not at risk of servitude. Certain mechanism must be in place in order for authorities to be aware of and identify workers who may be at risk. Fernandez states that Kuwait’s low TIP rating is “explicitly linked to the exploitation of migrant domestic workers,”<sup>61</sup> although it is clear that all migrant workers need protection. Without effective monitoring mechanisms to ensure that recruitment agencies are not participating in the trafficking of workers, migrants will continue to be at risk. Likewise, the existence of subagents outside the legal framework governing recruitment agencies adds to the difficulty in the enforcement of laws protecting migrant workers.

#### **4.6 Debt**

The inflated fees that workers have to pay agents and subagents lead many to take out loans that haunt them throughout their migration experience. Unemployment in their

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<sup>57</sup> U.S. Department of State (2011). *Trafficking in Persons Report*. [Online] Available from: <https://www.state.gov/j/tip/rls/tiprpt/2011/>

<sup>58</sup> Fernandez, *supra* note 3, p.831-832.

<sup>59</sup> Jamie & Tsega, *supra* note 12, pg.12.

<sup>60</sup> U.S. Department of State (2018). *Trafficking in Persons Report*. [Online] Available from: <https://www.state.gov/j/tip/rls/tiprpt/2018/282584.htm>

<sup>61</sup> Fernandez, *supra* note 3, p.831.

home countries makes it difficult for many workers to obtain fair loans, which leads them to deal with unscrupulous loan sharks who charge outrageous interests. “Borrowing money from usurious money-lenders is commonplace, and there are often links between the sub-agents who recruit migrants at the village level and the moneylenders who also profit from labour migration.”<sup>62</sup> Abella and Martin’s 2014 study regarding migrant workers reveals that 74 percent of Indian workers have borrowed money to fund their migration costs, while for Bangladeshi workers, that figure is 65 percent, and for Sri Lankan workers it is 52 percent.<sup>63</sup> For the majority of migrants who borrow money, the debt they must repay compels them to tolerate maltreatment or to accept conditions different from those in the contracts. This further exacerbates their vulnerability and puts them at risk of forced labour. Jureidini states,

Those workers who take out loans to pay for recruitment charges...are vulnerable to debt bondage, forced labour, and trafficking. For example, many construction workers interviewed did not get the salary and/or food allowances they were promised prior to their departure. When they complained to the company after their arrival, they were told that if they did not accept the situation, they could return to their home country, at their own expense. The companies are well aware that the worker may be in debt, having paid for the recruitment costs, and that he will not have enough money to pay for the return airfare and will be reluctant to shamefully return home without providing the financial support for his family. Thus, the worker must accept what is offered and that it will take him longer to repay the loan.<sup>64</sup>

Migrant workers are also vulnerable to threats, coercion and even violence when loans are not paid in full and on time. Under these conditions, workers are trapped in contract slavery, and forced to work under restrictions they did not originally agree to before departure. Furthermore, even though this is illegal, many migrants are forced to repay employers for the various fees required to obtain an employment visa. Payments for airfares, work and residency permits, as well as recruitment agency fees are sometimes deducted from migrants’ wages in order to reimburse employers for these costs. In these cases, a migrant worker is viewed as “an investment or debt that requires protection,”<sup>65</sup> which may explain why some employers prevent workers from free movement. Along with the recruitment fees and debts they must pay, migrants are at risk of misrepresentation from recruitment agencies regarding the nature of the job and the working conditions, which may lead to their exploitation. The use of deception regarding working conditions and contracts, together with the transportation of workers to different countries where they may not be aware of their rights, puts workers at risk of trafficking and forced labour, and prevents them from seeking redress.

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<sup>62</sup> *Recruitment “Fees”*, *supra* note 20, p.2.

<sup>63</sup> Manolo Abella and Philip Martin (2014). *Migration Costs of Low-Skilled Labour Migrants: Key Findings from Pilot Surveys in Korea, Kuwait, and Spain*. Global Knowledge Partnership on Migration and Development (KNOMAD), p.11.

<sup>64</sup> Ray Jureidini (2014). *Arab Gulf States: Recruitment of Asian Workers*. Gulf Labour Markets and Migration, p.6.

<sup>65</sup> Ray Jureidini and Nayla Moukarbel (2004). *Female Sri Lankan Domestic Workers in Lebanon: A Case of ‘Contract Slavery’?* *Journal of Ethnic and Migration Studies*, 30, p.584.



Furthermore, many migrants are forced to prolong their stay in the country of employment in order to repay debts. Although their contracts stipulate the amount of time they are permitted to work in the country, many workers choose to remain in the country under an illegal status so as to earn enough money to repay their debts. Agunias states, “the high costs of migration also can result in non-return or overstay as the migrant must continue to work irrespective of legal status or conditions in order to meet financial obligations made all the more onerous by high recruitment fees.”<sup>66</sup> If found guilty of remaining in the country after the expiration of their contracts, or of working for a sponsor other than the one named on the visa, migrant workers are at risk of deportation and possible imprisonment. In order to achieve their life-project goals discussed in Chapter 2, many migrants report postponing their departure in order to earn a salary, despite being aware of the risks of doing so.<sup>67</sup> The burden of debt, along with deceptive recruitment agencies and vague contracts places workers in a weak position, especially if they find themselves in a job that mistreats them. In those situations, workers are better off approaching their respective embassies for aid, rather than the recruitment agency, which will most likely urge the worker to remain with the employer. A report by Anti-Slavery International states, “agencies usually do not represent the interests of the workers in negotiations with employers. It is rather the other way around. Many agents punish the worker if she causes any difficulties.”<sup>68</sup> Powerless to negotiate better terms for themselves in their contracts, workers often tolerate any type of employment for the sake of a salary.

As shown in Chapters 2 and 3, migrants from major labour-exporting countries pay different amounts in fees depending on which labour-importing country they choose. In 2014, Abella and Martin found that workers paid larger sums to work in Kuwait, relative to other GCC countries. They reported that on average, Bangladeshi workers paid costs of \$3,136, Indian workers paid \$1,285 in costs, while Sri Lankan workers paid the least, an average of \$352 in costs.<sup>69</sup> A 2017 ILO study found that workers from Bangladesh paid an additional \$1,229 more than other workers from labour-exporting countries for work in the Gulf States.<sup>70</sup> Conversely, high-skilled migrants pay less for higher paying jobs, and do not acquire debts, as their employers cover the full costs of migration.<sup>71</sup> It may take several years for unskilled foreign workers to repay the debts they accumulate throughout their labour migration, in spite of the high rates of remittances.<sup>72</sup> For unskilled workers, the fees

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<sup>66</sup> Dovelyn Rannveig Agunias (2012). *Regulating Private Recruitment in the Asia-Middle East Labour Migration Corridor*. Issue No. 4, p.3. International Organization for Migration.

<sup>67</sup> Nasra M. Shah and Lubna Al-Kazi (2017). *Irregular Migration to and Within Kuwait: Enabling and Sustaining Factors*, pg. 108. Chapter in *Skillful Survivals: Irregular Migration to the Gulf* by Philippe Fargues & Nasra M. Shah. Gulf Labour Markets and Migration Program, Gulf Research Center, Cambridge.

<sup>68</sup> Anti-Slavery International (2006). *Trafficking in Women Forced Labour and Domestic Work in the Context of the Middle East and Gulf Region*, p.32. [Online] Available from: [http://www.antislavery.org/wp-content/uploads/2017/01/traffic\\_women\\_forced\\_labour\\_domestic\\_2006.pdf](http://www.antislavery.org/wp-content/uploads/2017/01/traffic_women_forced_labour_domestic_2006.pdf)

<sup>69</sup> Abella & Martin, *supra* note 63, p.11.

<sup>70</sup> *10 Things Governments Can Do*, *supra* note 2.

<sup>71</sup> Philip Martin (2016). *What Do Migrants Pay for Foreign Jobs?* Conference Paper at ‘Improving Data on International Migration Towards Agenda 2030 and the Global Compact on Migration, Berlin, 2-3 December, 2016, p.2. IOM Global Migration Data Analysis Centre.

<sup>72</sup> Md Mizanur Rahman (2015). *Migrant Indebtedness: Bangladeshis in the GCC Countries*. International Migration, 53, p.207.

paid to recruitment agencies do not always translate to higher earnings.<sup>73</sup> These costs pay for various services that the agency provides, such as aiding workers in obtaining a passport and informing them of the necessary medical tests required for employment visas. In 2016, Martin reported that, on average, workers paid \$1,900 in migration costs to work in Kuwait; Bangladeshis paid \$3,100, Indians paid \$1,1250, and Sri Lankans paid \$320.<sup>74</sup> There has not been a significant change in these costs, regardless of the laws that have entered into force, such as the Domestic Workers Law (2016) which prohibits recruitment agencies from collecting fees from workers. Abella and Martin also found that recruitment agencies were grossly exaggerating their fees, as a breakdown of all the services did not match the fees set by agencies. For example, they found that, on average, the total cost of medical tests, passport, as well as transportation was \$61 for Indians, \$43 for Bangladeshis, and \$23 for Sri Lankans.<sup>75</sup> Additionally, Siddiqui reported that a number of recruitment agencies in Bangladesh work with corrupt diagnostic centers that conduct health checks that are necessary for migrants to obtain before departure overseas. He states these centers “cheat the potential migrants by conducting unnecessary health checkups. They also manipulate results and create situation for treatment and further tests.”<sup>76</sup> Many migrants paid one lump sum payment, and were not fully aware what the recruitment costs covered,<sup>77</sup> with some believing that the higher the costs, the better their chances will be of obtaining work. “There are usually many more low-skilled workers than available jobs in occupations such as domestic service and construction labour, and many are willing to pay recruiters to put them at the front of the queue.”<sup>78</sup> In fact, Abella refers to recruitment fees as “bribes”; he states, “what the recruiter gets is not a fee for recruitment services per se, but a bribe for the jobs that he or she offers.”<sup>79</sup> This “bribe” is dependent on supply and demand in both labour-importing as well as labour-exporting countries, which dictates the amount of workers recruitment agencies will work with.

The Domestic Workers Law (2016), enacted two years ago, prohibits recruitment agencies from charging workers fees, and all costs be covered by the sponsor, however this is not the case for unskilled male laborers. As most unskilled male laborers are hired in large numbers for certain construction or sanitation projects, the government relies on recruitment agencies for aid in the processing of applications and contracts. Unskilled male laborers have reported many abuses against unscrupulous recruitment agencies over the years, yet the law has not changed. Eliminating fees for these workers would help reduce the accumulated debts of migrants, as well as aid in the elimination of excessive fees and other corrupt practices. On the other hand, Abella notes that a limit on fees does not necessarily deter workers from paying for the services of recruitment agencies. He states that limits on fees “have been widely disregarded, often with the cooperation of the workers. Private recruiters are generally more effective in finding positions than

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<sup>73</sup> Martin, *supra* note 71, p.20.

<sup>74</sup> Martin, *supra* note 71, p.3.

<sup>75</sup> Abella & Martin, *supra* note 63, p.9.

<sup>76</sup> Tasneem Siddiqui (2006). ‘Protection of Bangladeshi Migrants Through Good Governance,’ In: Merchants of Labour, (ed.) Christiane Kuptsch, International Labour Organization. [Online] Available from:

[https://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS\\_PUBL\\_9290147806\\_EN/lang--en/index.htm](https://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_PUBL_9290147806_EN/lang--en/index.htm)

<sup>77</sup> Martin, *supra* note 71, p.6.

<sup>78</sup> Abella & Martin, *supra* note 63, p.10.

<sup>79</sup> Manolo Abella (2004). *The Role of Recruiters in Labour Migration*. In *International Migration: Prospects and Policies in a Global Market*. Massey, D.M. and Taylor, J.E. (eds). Oxford University Press, p.203.

government agencies, and migrants prefer them despite the greater costs and risks.”<sup>80</sup> Nevertheless, eliminating recruitment fees would lessen the debt most migrants are forced to incur in order to pay migration costs.

#### **4.7 International Laws, Treaties and Conventions**

Recruitment agencies are subject to international laws, government regulations in both labour-exporting and labour-importing countries, as well as other rules by international organizations, although today, there are many agencies that do not adhere to these rules and regulations, putting migrant workers at risk of maltreatment. In 2016, the ILO Committee of Experts general survey of migrant worker conventions and recommendations stated that “in recent years, it has become increasingly clear that governance of recruitment practices has an essential role to play in preventing migrant workers from experiencing abusive and fraudulent conditions, including trafficking in persons and forced labour.”<sup>81</sup> The UN Special Rapporteur on the Human Rights of Migrants added, “the practices of unethical recruiters and their subagents sit on a complex spectrum of human rights violations...such recruiters commonly exploit migrants, directly or indirectly, at every stage of the migratory process.”<sup>82</sup> Furthermore, an ILO reported that in 2017, “widespread evidence exists that the migration recruitment industry is responsible for numerous abuses that erode the benefits of migration for workers.”<sup>83</sup> For example, although international labour law is very clear in placing limits to the amount of fees recruitment agencies may charge, many agencies continue to impose them. There are two ILO Conventions that directly apply to recruitment agencies. The first, Protection of Wages Convention No.95, states in Article 9 that “any deduction from wages with a view to ensuring a direct or indirect payment for the purpose of obtaining or retaining employment, made by a worker to an employer or his representative or to any intermediary (such as a labor contractor or recruiter), shall be prohibited.”<sup>84</sup> This Convention is important as it prohibits the deduction of wages for the described purposes, which is a common practice among recruitment agencies in Kuwait. The Philippines and Sri Lanka have both ratified this convention, but Kuwait has not. The second ILO convention applicable to recruitment agencies is the Fee-Charging Employment Agencies Convention No.96, which states that fee-charging employment agencies “shall only charge fees and expenses on a scale submitted to and approved by the competent authority or fixed by the said authority.”<sup>85</sup> Both Sri Lanka and Bangladesh have ratified this Convention. However, Kuwait has not, which makes it difficult to enforce the provisions of the Convention. Although Kuwait has eliminated fees paid by domestic workers through the recent labour

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<sup>80</sup> Abella, *supra* note 8, p.211.

<sup>81</sup> ILO (2016). Report on the Committee of Experts on the Application of Conventions and Recommendations: Promoting Fair Migration, Report III (Part 1B). International Labour Conference, 105<sup>th</sup> Session, Geneva. [Online] Available from: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_453898.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_453898.pdf)

<sup>82</sup> Statement by Mr. Francois Crepeau, Special Rapporteur on the Human Rights of Migrants. 70<sup>th</sup> Session of the General Assembly, Third Committee, Item #69 (b). Oct. 23, 2015, New York. [Online] Available from: <https://papersmart.unmeetings.org/media2/7653628/francois-crepeau.pdf>

<sup>83</sup> *10 Things Governments Can Do*, *supra* note 2, p.29.

<sup>84</sup> *Exported and Exposed*, *supra* note 23.

<sup>85</sup> ILO, Fee-Charging Employment Agencies Convention (Revised), 1949 (No.96). [Online] Available from: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:31224\\_1](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:31224_1)

law, the same should be applied to unskilled male laborers. In addition, the IOM launched its International Recruitment Integrity System (IRIS) in 2014 to promote fair recruitment for workers, agencies, and employers. The ILO also launched a similar program, the Fair Recruitment Initiative in 2015, which aims to develop and adopt recruitment principles that protect the rights of migrant workers. Both of these programs work on developing an accreditation system for recruitment agencies that is approved by both labour-exporting and labour-importing countries to ensure that migrants are protected throughout their employment.

Kuwait has not ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Trafficking Protocol), an important legal instrument with the aim of providing guidelines for States to enact measures for the prevention and punishment of trafficking. In 2012, during a meeting between Kuwaiti government officials and members of the Committee on the Elimination of Racial Discrimination (Kuwait ratified the Convention in 1968), the subject of trafficking was discussed. In response to questions as to why the government has yet to ratify the Trafficking Protocol, the delegate for the Kuwaiti government noted that provisions against trafficking were found in the Criminal Code, and thus, eliminated the need for ratification of the Convention. He stated, “various mechanisms were provided for under the Criminal Code (Act No.16) of 1960 and its amendments to prevent trafficking in persons and protect victims of trafficking.”<sup>86</sup> The government denied the existence of trafficking in the country, with the official stating that, “in Kuwait there was no trafficking in slaves as such, according to the internationally recognized definition; however, there had been individual cases in which workers had been exploited for financial gain.”<sup>87</sup> Since Kuwait has yet to ratify the Trafficking Protocol, it is clear that the government’s views have not changed. In their view, the exploitation of migrant workers in Kuwait does not correlate to trafficking, thus removing the need to ratify the convention. In regards to forced labour, the official noted that an article criminalizing forced labour is included in the law, stating, “Article 49 of Act No.31 of 1970, amending the Criminal Code, criminalized all forms of forced labour and exploitation of persons.”<sup>88</sup> According to the government, the inclusion of this Article in the Criminal Code cancels the need to ratify the Abolition of Forced Labour Convention.

As far as bilateral agreements, Kuwait has signed MOUs with the governments of India and the Philippines in regards to unskilled migrant workers. These MOUs are useful where national laws are lacking, and together with international treaties and conventions, they are important steps in aligning national laws with international labour standards. As long as recruitment agencies play an integral role in labour migration, countries need to cooperate in order to safeguard those rights, whether through MOUs or international conventions. It is not the responsibility of any one government to ensure recruitment agencies are abiding by laws and standards, but for all governments that are involved.

An important case that relates to recruitment is found in the UK Employment Tribunal (ET), in the case of *Tirkey v. Chandok*.<sup>89</sup> In this case, Ms. Tirkey, an Indian

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<sup>86</sup> Summary Record of the 2134<sup>th</sup> meeting, (2012), UN Committee on the Elimination of Racial Discrimination, Geneva.

<sup>87</sup> Ibid

<sup>88</sup> Ibid

<sup>89</sup> UK Employment Tribunal. *Tirkey v. Chandok*, Case No. 3400174, 17 September 2013.

national, was recruited in India to work as a domestic worker for an Indian couple residing in the UK. The ET found that her employers were guilty of a number of violations including not paying the worker a minimum wage, retaining her passport, not allowing her adequate rest time or annual leave and failing to provide her with proper terms and conditions of her contract. Furthermore, the judge noted that the employers wanted to hire someone who would not fully understand their rights under UK law, which is why they chose to hire from India, and not within the UK. The ET ruled in favor of the worker, stating she was brought to the country under deception. Unlike the case of trafficking involving migrant workers being taken to Iraq, in this case, trafficking did not apply as the worker knew she was going to be working in the UK. However, this case highlights the fact that migrant workers from Asia are at risk of deception by recruitment agents, as well as employers. Similar to Mrs Tirkey's case, many unskilled foreign workers in Kuwait experience the same type of treatment. Most unskilled Asian workers in Kuwait have backgrounds that make them vulnerable. They are discriminated against due to their ethnicity in an environment where there is a clear labour hierarchy. They are recruited and hired based on their servile or docile nature, and are often harassed and taken advantage of in both labour-sending and labour-receiving countries. Their wages are often withheld, and their movements are restricted. In many ways, Mrs. Tirkey's plight represents the case of unskilled workers in Kuwait.

Another case that is applicable here is *Ranstsev v. Cyprus and Russia*, mentioned in Chapter 1. In this case, the ECHR found that Cyprus was in violation of its obligation under Article 4 of the European Convention of Human Rights to protect migrant workers from slavery, servitude and forced labour. Despite reports from NGOs and human rights organizations describing the presence of trafficking in the country, its immigration policies were effectively encouraging the trafficking of women. The Court declared that states have a positive obligation to protect all workers from trafficking. In this case, the Court ruled that the obligation to identify, investigate, and prevent trafficking lies with the state. Hence, the state is obliged to adopt laws and establish policies to combat trafficking. This applies to recruitment and labour laws to protect not only nationals, but all migrant workers. Migrants like Ms. Tirkey and Ms. Rantseva are often given false information regarding their employment abroad, are severely unprepared and are unaware of their rights under the employment contract. Being illiterate and unskilled, as many migrants are, puts them at a severe disadvantage when it comes to understanding their rights. It is the responsibility of the labour-sending governments, through licensed recruitment agencies to make sure that workers are aware of the nature and conditions of their employment, as well as their rights under local laws.

#### **4.8 Remittances**

Migrant workers play a large role in both of the economies of labour-exporting and labour-importing countries. Their contributions to the labour sector in Kuwait have allowed the country to implement and maintain large-scale projects and infrastructures, necessary for its development. They also support the economies of their native countries with remittances, or the money they send home to their families. The IOM defines migrant remittances as “personal monetary transfers that a migrant worker makes to his/her

relatives back in their country of origin.”<sup>90</sup> For many labour-exporting countries, remittances constitute a substantial part of their GDP and are relied upon to support families of migrants. As Rahman states, “there is no doubt that remittances are the most tangible benefit of labour migration.”<sup>91</sup> Labour-exporting countries “are faced with the dilemma between ‘promoting’ and ‘protecting’ labour migrants,”<sup>92</sup> as much as they would like to like to increase the amount of labour they export, they are increasingly faced with reports of abuses and violations against their nationals overseas.

For many migrants, there are many incentives to save and send a part of their salary to their families back home, either for general support, or toward specific goals such as purchasing a home, educating children, contributing to medical costs of family members or other entrepreneurial activities. This is especially true for unskilled migrants in the GCC, who send a majority of their earnings home, even though they earn less than skilled workers.<sup>93</sup> The motivation to save their salaries is increased further due to their temporary contracts. In addition, remittances serve as security against possible future unemployment or unforeseen circumstances. In this way, labour migration generates a source of income for migrants’ family members, thus improving their household conditions and protecting them against poverty or vulnerability. In cases where migrant workers are the sole providers for their families, remittances are the lifeline of many poor households that depend on the salaries of their migrant family members to sustain them while the breadwinner is abroad.

According to the World Bank, worldwide remittances were estimated to be more than \$613 billion in 2017,<sup>94</sup> of which “developing countries are estimated to receive about \$441 billion, nearly three times the amount of official development assistance.”<sup>95</sup> (See Table 7) In 2015, the ILO estimated that “about 30% of all remittances flowing to Asia originated from the GCC countries.”<sup>96</sup> The Philippines is one of the top five recipient countries of remittances in the world, receiving \$32,808 billion in 2017,<sup>97</sup> while Kuwait is one of the top six immigration destination countries, relative to population.<sup>98</sup> Today, remittances represent a high percentage of GDP for many labour exporting countries such as Bangladesh, India, the Philippines and Sri Lanka. As of 2017, the latest year for which statistics are available, Bangladesh received \$13,469 million in remittances, India received the largest number at \$68,968 million, the Philippines received \$32,808 million and Sri

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<sup>90</sup> IOM (2009). IOM and Remittances. [Online] Available from: [https://publications.iom.int/system/files/pdf/iom\\_and\\_remittances.pdf](https://publications.iom.int/system/files/pdf/iom_and_remittances.pdf)

<sup>91</sup> Rahman, *supra* note 72, p.207.

<sup>92</sup> Yara Jarallah (2009). *Domestic Labour in the Gulf Countries*. Journal of Immigrant and Refugee Studies, 7, p11.

<sup>93</sup> *Safeguarding the Rights*, *supra* note 42.

<sup>94</sup> World Bank Group (2016). Migration and Remittances Factbook 2016. [Online] Available from: <https://openknowledge.worldbank.org/bitstream/handle/10986/23743/9781464803192.pdf>

<sup>95</sup> *Ibid*

<sup>96</sup> ILO (2017). *Safeguarding the Rights of Asian Migrant Workers from Home to the Workplace* p.19. [Online] Available from: [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms\\_548390.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_548390.pdf) p.19.

<sup>97</sup> The World Bank (2018). Migrant Remittance Inflows (US \$ million). [Online] Available from: <http://www.worldbank.org/en/topic/migrationremittancesdiasporaisues/brief/migration-remittances-data>

<sup>98</sup> World Bank Group, *supra* note 94.

Lanka received \$7,190 million.<sup>99</sup> The total remittance outflow from migrants employed in Kuwait was \$15,288 million as of 2017,<sup>100</sup> with the main recipient countries of remittances include Bangladesh, India, Sri Lanka and the Philippines.<sup>101</sup> These remittances contribute a great deal to the local economy of labour-exporting countries, as well as the GDP. As one of the top remittance receiving countries in the world, India received over US \$68 billion in 2017,<sup>102</sup> comprising 2.6% of its total GDP.<sup>103</sup> The Philippines is also one of the world's top remittance receiving countries, with US \$32 billion<sup>104</sup> received in 2017, or 10.4% of its total GDP.<sup>105</sup> Remittances are also important to smaller countries, such as Sri Lanka and Bangladesh. In 2017, Sri Lanka received over US \$7 billion in 2017,<sup>106</sup> or 8.2% of its total GDP;<sup>107</sup> while Bangladesh received US \$13 billion,<sup>108</sup> or 5.4% of its total GDP.<sup>109</sup> These figures do not include the informal channels through which some migrants choose to transport their earnings, either through friends or relatives. Also, unskilled migrant workers are in direct competition with other workers from labour-exporting countries, which tends to keep wages low, which may also affect remittances in some cases.<sup>110</sup>

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<sup>99</sup> The World Bank, *supra* note 97.

<sup>100</sup> The World Bank (2018). Migrant Remittance Outflow (US \$ million). [Online] Available from: <http://www.worldbank.org/en/topic/migrationremittancesdiasporaissues/brief/migration-remittances-data>

<sup>101</sup> Debouchet, S. (2012). *Migration Profiles: Kuwait*. The American University in Cairo, School of Global Affairs and Public Policy, Centre for Migration and Refugee Studies.

<sup>102</sup> The World Bank (2017). India: Personal Remittances Received (Current US \$). [Online] Available from: <https://data.worldbank.org/indicator/BX.TRF.PWKR.CD.DT?locations=IN>

<sup>103</sup> The World Bank (2017). India: Personal Remittances Received (% of GDP). [Online] Available from: <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=IN>

<sup>104</sup> The World Bank (2017). Philippines: Personal Remittances Received (Current US \$). [Online] Available from: <https://data.worldbank.org/indicator/BX.TRF.PWKR.CD.DT?locations=PH>

<sup>105</sup> The World Bank (2017). Philippines: Personal Remittances Received (% of GDP). [Online] Available from: <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=PH>

<sup>106</sup> The World Bank (2017). Sri Lanka: Personal Remittances Received (Current US \$). [Online] Available from: <https://data.worldbank.org/indicator/BX.TRF.PWKR.CD.DT?locations=LK>

<sup>107</sup> The World Bank (2017). Sri Lanka: Personal Remittances Received (% of GDP). [Online] Available from: <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=LK>

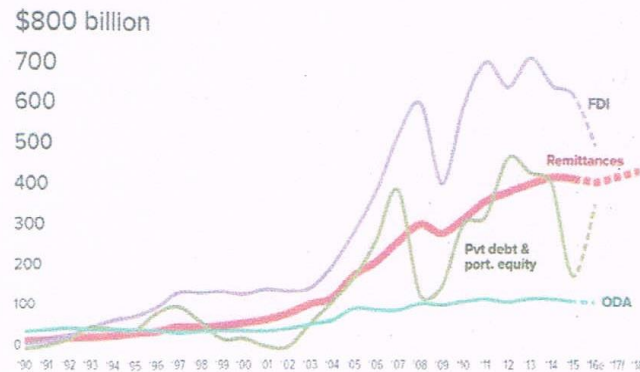
<sup>108</sup> The World Bank (2017). Bangladesh: Personal Remittances Received (Current US \$). [Online] Available from: <https://data.worldbank.org/indicator/BX.TRF.PWKR.CD.DT?locations=BD>

<sup>109</sup> The World Bank (2017). Bangladesh: Personal Remittances Received (% of GDP). [Online] Available from: <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=BD>

<sup>110</sup> Nasra Shah (2013). *Labour Migration from Asian to GCC Countries: Trends, Patterns and Policies*. Middle East Law and Governance, 5, p.61.

Table 7

Remittance flows to developing countries **decreased by 2.4 percent to \$429 billion** in 2016 but are **larger than Official Development Assistance (ODA)** and **more stable than private capital flows**



Source: The World Bank, 2017

Migration not only reduces unemployment in the labour-exporting countries, but through remittances, migration represents a significant portion of each country’s economy. By raising national earning figures and lessening the financial burden on poor countries that already receive international assistance, remittances represent a lifeline for migrants and their countries. In the case of Bangladesh for example, the World Bank estimated that remittances have helped to lower poverty by 6 percent,<sup>111</sup> a strong advantage for the promotion of migration. For Sri Lanka, it is estimated that approximately 70 percent of its US \$3.37 billion trade deficit are financed by remittances from workers; this amounts to “almost twice the amount Sri Lanka receives in foreign aid and more than two-and-a-half times the amount it receives in foreign direct investment.”<sup>112</sup> In this way, remittances serve as a vital component of labour-exporting countries’ economies.

Remittances may be sent either by formal or informal channels. Formal channels include money transfers by banks or other financial institutions (such as Western Union), and informal channels may include cash payments delivered personally by family members, friends, or colleagues. Calculating the amount of remittances transferred through informal channels is near impossible, although organizations such as the IOM estimate that if these types of remittances were included in worldwide figures, the total amount of remittances would be as much as fifty percent higher.<sup>113</sup> Typically, remittances are transferred either by cash, check, or money order delivered through an agent such as a bank or other financial organization to the beneficiary in the receiving country. Some financial agents charge a fee for these transactions, which international labour organizations have called an end to, as these fees further increase migration costs. (See Table 8)

Table 8

<sup>111</sup> Dilip Ratha (2017). *Remittances: Funds for the Folks Back Home*. IMF Finance & Development. [Online] Available from: <https://www.imf.org/external/pubs/ft/fandd/basics/remitt.htm>

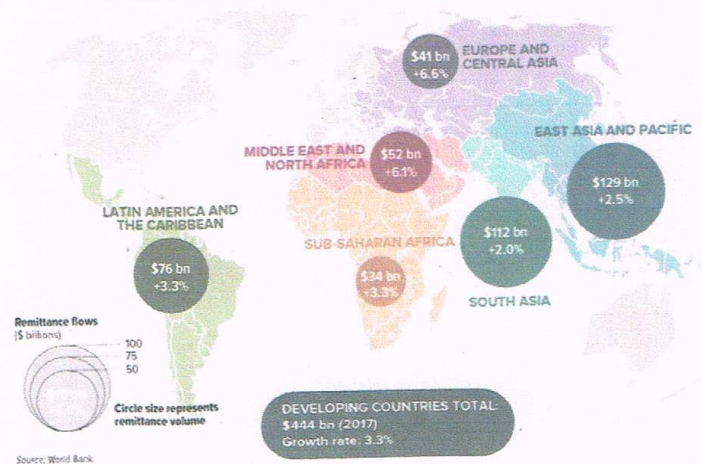
<sup>112</sup> *Exported and Exposed*, supra note 23, p.17.

<sup>113</sup> IOM (2009). *IOM and Remittances*. [Online] Available from: [https://publications.iom.int/system/files/pdf/iom\\_and\\_remittances.pdf](https://publications.iom.int/system/files/pdf/iom_and_remittances.pdf)



Remittances to developing countries are **expected to grow** at about 3.3 percent in 2017, to \$444 billion.

REMITTANCE FLOWS TO DEVELOPING COUNTRIES, PROJECTED-2017



Source: The World Bank, 2017

#### 4.9 Conclusion

The labour recruitment system, combined with the sponsorship system in Kuwait, and the lack of enforcement of current laws or ratified conventions and treaties, “form a labour marketplace in which employers have both financial incentives and the freedom to exploit domestic workers with little fear of accountability, while workers exercise little control over the circumstances of their employment.”<sup>114</sup> This demonstrates that in the case of migrant workers, often exploitation begins in their own countries, at the hands of corrupt recruitment agencies.

Migrants from different labour-exporting nations pay different recruitment costs according to laws, or lack thereof in their native countries, as well as the countries of employment. Lowering recruitment fees as well as standardizing costs so that all workers pay the same amount would encourage fair recruitment. By prohibiting recruitment agencies from charging domestic workers fees, the Kuwaiti government has made a significant step in aligning its laws with its international obligations. Zero-fee recruitment is important to guarantee that migrants are not burdened with debts throughout their employment which can, in turn, jeopardize their legal status in Kuwait. This should apply not only to recruitment agents, but sub-agents as well. One way to ensure this is to clearly define what is meant by “recruitment fees”, and what recruitment agencies are expected to provide workers. Fair Hiring Inc., a recruitment agency in the Philippines, proposed a definition that considered all pre-departure costs be paid by the worker, while post-arrival costs should be paid by the employer. This means that the cost for all training courses, medical exams and relevant documents are paid by migrants, while costs such as airfare, recruitment fees, food and accommodation are paid by the employer. It is imperative that migrants arrive debt-free to their country of employment, so as to not feel pressured to remain in situations of abuse or maltreatment. Additionally, governments have an

<sup>114</sup> Walls at Every Turn, *supra* note 5.

obligation to make sure that recruitment agencies are licensed and properly monitored, so as to reduce the risk of corrupt practices. Bilateral cooperation, in the form of MOUs, should include licensed agencies that are approved and accredited by both countries, with guarantees that only those agencies will be permitted to provide workers.

Essentially, recruitment agencies exist to provide a service that matches workers to jobs. In order for this service to be mutually beneficial to both employers and employees, certain provisions must be made to ensure fair recruitment. Ideally, workers would be fully aware of the nature and conditions of their employment, arrive debt free to their country of destination, earn the expected wage, and return home with a positive migration experience. In reality, recruitment agencies are not always transparent in the costs or conditions of the work that is offered, resulting in the exploitation of workers, which many have to tolerate due to debt incurrence. Additional monitoring and enforcement mechanisms need to be put in place in both sending and receiving countries. Without strict rules regarding fair recruitment, migrants are at risk of forced labour, slavery and trafficking.

## Chapter 5

### Present Context

#### *5.1 Introduction*

Throughout the world, slavery has been identified as the worst violation of a person's freedom, however it continues to exist in various forms in many countries to this day. The situation of unskilled foreign laborers in Kuwait can be accurately described as slavery according to definitions by academics and international organizations. The sponsorship system does not offer acceptable protections for this group of workers, yet it is still enforced, despite recommendations by international human rights and labour organizations to reform the system, and despite government promises to establish another plan. The number of reported abuses, complaints and deaths that involve unskilled foreign workers in Kuwait continue to multiply, and many remain legally unresolved. Despite the laws that are in place to guard against maltreatment, enforcement of those laws is poor due to corruption and inadequate implementation measures. Taking into account the recruitment process, the lack of legal protections, the absence of effective enforcement mechanisms for existing laws and the overall environment in which unskilled foreign migrants work, their circumstances correspond with many of the characteristics of forced labour and slavery. In this chapter, the definitions of slavery will be examined as they apply to Kuwait. The effects of the sponsorship system in relation to different methods of deception and restrictions are examined in the context of the definitions of slavery. This chapter will also analyze the concept of rentierism, and rentierist state theory as they apply to Kuwait and how they may be used to explain the presence of slavery in the country. In addition, this chapter will also investigate how citizenship plays a role in the ways in which migrant workers are managed and treated in the country. Finally, this chapter will discuss Kuwait's compliance or non-compliance with treaties, conventions and other agreements, and the ways in which the country's monetary contributions have shaped the ratification of these treaties.

#### *5.2 Slavery*

GCC countries have benefitted greatly from the labour of unskilled foreign migrants in their development from desert towns to major cities, although this has come at a cost. Reports of maltreatment, abuse and trafficking of foreign workers have become common in recent years, signaling a need for change. The sponsorship system that is implemented in GCC countries restricts the freedoms of migrant workers and has come to represent a system akin to slavery. Migrant workers make many sacrifices by leaving their home countries and seeking better wages for themselves and their families. For many, it is the first time they travel outside of their villages and towns and the prospect of employment in oil-rich GCC countries such as Kuwait represents opportunities for a better future. Although there are many migrants whose lives have been enriched by their employment to Kuwait and there are Kuwaiti sponsors who treat their employees fairly, these prove to be the exceptions rather than the rule. Modern day slavery is an issue which

needs to be addressed in terms of the treatment of unskilled foreign workers in Kuwait today.

### 5.2.1 Definitions

Throughout this thesis, several definitions of slavery and forced labour have been examined as they apply to the situation of unskilled migrant workers in Kuwait. The UN for example, defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”<sup>1</sup> Bales identifies violence as the defining characteristic of slavery, the threat of which is central to its meaning. According to his definition, “slavery is a social and economic relationship in which a person is controlled through violence or its threat, paid nothing, and economically exploited.”<sup>2</sup> Therefore, the power of ownership, as well as the threat or the infliction of violence are the defining traits of slavery. The ECHR relies on the definition of slavery as it appears in the UN Slavery Convention (1926), which links ownership to coercion, while servitude refers to a situation in which the victim is unable to change employment and perceives the situation to be permanent. It defines servitude as “an obligation to provide services under duress and that it must be in connection with the notion of slavery.”<sup>3</sup>

In the case of most workers discussed here, migration is a voluntary choice, but it is violence or the threat of violence that keeps them in that situation. In addition, Degorge states that modern day slavery “refers to the situation of people who out of economic necessity enter into work relationships that either limit their freedom of choice or their mobility.”<sup>4</sup> Regarding forced labour, according to the ILO’s Forced Labour Convention, it is defined as “all work or services, which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”<sup>5</sup> As discussed earlier, “menace of any penalty” may include threats of violence, which becomes a common theme when discussing slavery and forced labour. In addition to threats, there are other factors that indicate forced labour, such as restriction of movement, passport confiscation, withholding or deducting of wages and debt bondage.<sup>6</sup> All of these factors describe the experience of many unskilled foreign laborers in Kuwait. Whether it is slavery, servitude, forced labour or debt bondage, the common factors are the absence of consent and control. Even in situations where migrants fulfill all their pre-departure obligations and sign a contract, they may be faced with an employment situation different to that which they had originally consented, leaving them vulnerable to abuse. As Bales

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<sup>1</sup> UN Slavery Convention (1926). [Online] Available from:

<https://www.ohchr.org/en/professionalinterest/pages/slaveryconvention.aspx>

<sup>2</sup> Kevin Bales (2005). *New Slavery: A Reference Handbook*, Second Edition, Edited by Mildred Vasani. ABC-CLIO, Oxford, p. 4.

<sup>3</sup> *Seguin v. France* (2002). European Court of Human Rights, Case 42400/98.

<sup>4</sup> Barbara Degorge (2006). *Modern Day Slavery in the United Arab Emirates*. The European Legacy, 11, p.664.

<sup>5</sup> ILO, Forced Labour Convention 1930 (No.29). [Online] Available from:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312174](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312174)

<sup>6</sup> Anti-Slavery International (2006). *Trafficking in Women Forced Labour and Domestic Work in the Context of the Middle East and Gulf Region*. [Online] Available from: [http://www.antislavery.org/wp-content/uploads/2017/01/traffic\\_women\\_forced\\_labour\\_domestic\\_2006.pdf](http://www.antislavery.org/wp-content/uploads/2017/01/traffic_women_forced_labour_domestic_2006.pdf)

states, “‘willing’ participation, token ‘payments’, the apparent acquiescence in a ‘contract’, and any number of other layers of meaning, rationalization, or explanation can be used as part of the societal or community discourse explaining and rationalizing the slave/slaveholder relationship.”<sup>7</sup> Contract substitution, visa trading, and wage deductions are all methods used by unscrupulous employers as ways to circumvent the existing laws. The incidents of abuse that are reported by embassies, NGOs, and international organizations, as well as from migrants themselves, are indications that the situation of unskilled workers in Kuwait amounts to forced labour and slavery.

In addition, two ECHR cases present definitions of slavery, servitude and forced labour that are applicable here. The first is the case of *C.N. and V. v. France*, concerning two French sisters who were born in Burundi and moved to France to live with their aunt, who had been appointed their official guardian. While living with their aunt they carried out domestic chores for the entire household-the aunt, her husband and their seven children. One of the sisters was subjected to more work than the other but feared reporting her situation to the local authorities in the belief that her immigration status was illegal and that she would face deportation. The court found that she had been subjected to forced or compulsory labour and servitude due to the fact that she did not offer herself voluntarily for such duties and that she was performing the work under duress. In this case, forced labour was distinguished from servitude based on the victim’s belief that she was trapped and that her situation was permanent. The court also defined the parameters of the word ‘penalty’ within the context of Article 4 and stated that the notion of penalty may be psychological, in the form of threats or intimidation, such as those used by the victim’s aunt to threaten her with deportation. In the case of *Siliadin v. France*, a Tongolese national was brought to France by a relative who upon arrival confiscated her passport and made her work as a domestic worker without pay. She did not have her own accommodations and was working in excess of fifteen hours per day doing housework and looking after four young children. The court found that her relative was in violation of Article 4 and that the victim was subjected to forced labour and servitude but not slavery in the sense that her relative did not exercise a right of ownership over her. Once again, this case is an example of the court distinguishing between servitude, slavery and forced labour. In this case, servitude was applicable due to the victim’s belief that her situation is unlikely to change.

The enforced temporariness of migrant workers in Kuwait further exacerbates the risk of slavery and forced labour. Whereas in the past, slavery spanned a worker’s lifetime, today, it may take place over the span of a few months or years. Unskilled workers are considered disposable, with an unlimited pool of labour available from major labour-exporting countries. A recent ILO study estimated that there were “a total of 520 thousand victims of modern slavery in the Arab States on any given day in 2016,”<sup>8</sup> probably a conservative estimate considering the amount of undocumented cases. The report also states that “the largest share of those in modern slavery were victims of forced labour.

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<sup>7</sup> Kevin Bales (2006). *Testing a Theory of Modern Slavery*. Free the Slaves Organization. [Online] Available from: [https://childhub.org/en/system/tdf/library/attachments/bales\\_test\\_theory\\_0607.pdf?file=1&type=node&id=17820](https://childhub.org/en/system/tdf/library/attachments/bales_test_theory_0607.pdf?file=1&type=node&id=17820)

<sup>8</sup> ILO (2017). *Regional Brief for the Arab States*. Global Estimates of Modern Slavery and Child Labour. [Online] Available from: [https://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@ipecc/documents/publication/wcms\\_597872.pdf](https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@ipecc/documents/publication/wcms_597872.pdf)

About two-thirds (67 percent) of the total were victims of forced labour.”<sup>9</sup> One form of forced labour includes debt bondage, where workers are trapped into employment due to the debt they have incurred in the migration process, whether by employers, recruitment agencies, or moneylenders in their own countries. The same ILO reports that 51 percent of the workers studied were victims of debt bondage, with women being especially susceptible, reporting that 89 percent were victims, the highest percentage in the world.<sup>10</sup>

Today, slavery is a lucrative business, and recruitment agencies as well as the sponsorship system itself, present advantageous benefits for employers and companies. The many controls inherent in the sponsorship system limit their rights. As Kapstein states, “what all slaves have in common is that they are forced to work.”<sup>11</sup> Whether the force is imposed through contracts, threats of violence or debt bondage, their productive capacity is exploited for the profit or benefit of the employer. Many recruitment agencies prioritize profits over the rights and welfare of migrant workers, and profit a great deal in doing so. They view themselves as business people taking advantage of a system with lax monitoring and poor enforcement of existing laws. The ECHR has directly associated the recruitment process of some countries with trafficking as in the case of *Chowdury and Others v. Greece*. This case involved forty-two Bangladeshi nationals who were working in Greece as seasonal agricultural workers. Their living accommodations were substandard and they worked long hours under the supervision of armed guards. After several months of unpaid wages, the Bangladeshi workers held strikes and guards opened fire, injuring some of the workers. The workers complained that they were trafficked but the Greek court dismissed the trafficking charge on the grounds that the workers had voluntarily entered into the employment. The ECHR found that the Greek government to be in violation and awarded a compensation sum to the workers. The court stated that “the victim’s prior consent was insufficient to preclude employment being classified as ‘forced labour’. Where an employer abused his or her power or took advantage of workers’ situation of vulnerability in order to exploit them the latter were not offering their labour voluntarily.”<sup>12</sup> The court recognized that the recruitment process is included in trafficking and the fact that workers freely accept employment positions does not preclude them from becoming victims of trafficking. *Chowdury and Others v. Greece* directly ties trafficking to recruitment and thus, forced labour. As in Greece, many migrants in Kuwait are recruited by agents or subagents who lure them with false promises and contracts, in this way, migrants are subjected to trafficking and forced labour. Unfortunately, as long as wage wedges exist between labour-exporting and labour-importing countries, migrant workers will continue to seek work abroad, despite the debts, and deception they face.

### ***5.2.2 The Sponsorship System and Standardized Contracts***

The labour laws and sponsorship system that apply to unskilled foreign migrants in Kuwait are inherently flawed systems that are conducive to forced labour. To begin with, the sponsorship system places tremendous power in the hands of the nationals, power that

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<sup>9</sup> *Regional Brief for the Arab States*, supra note 8, p.6.

<sup>10</sup> *Regional Brief for the Arab States*, supra note 8, p.7.

<sup>11</sup> Ethan Kapstein (2006). *The New Global Slave Trade*. In: Foreign Affairs, 85, p.106.

<sup>12</sup> European Court of Human Rights. *Chowdury and Others v. Greece*, Case 21884/15, 9 June 2017.

is often abused. By entrusting individual sponsors to uphold the terms of the contracts they signed with migrant workers as the sponsorship system does, the government has essentially removed itself from the responsibility of protecting the rights of these workers. The ILO notes that, “the power that the *kafala* system delegates to the sponsor over the migrant worker, has been likened to a contemporary form of slavery.”<sup>13</sup> The power given to the employer in the sponsorship system is especially detrimental for domestic workers, as their work revolves around the home, a confined and private domain, out of the reach of government supervision. In cases where the household is abusive, domestic workers have little room for recourse.

The labour law in Kuwait is based on a hierarchy that clearly distinguishes between nationals, Arabs, non-Arabs, and Asians. This is especially true in the case of unskilled migrants, whose productive capacity, or the “value” of their labour, is measured according to nationality, age, and gender. In turn, these patterns are also evident in the societal structure of Kuwait, where unskilled Asian migrants are seen as one-dimensional workers, and little, if any socialization between migrants and nationals exists. Discrepancies within the labour laws as they apply to nationals and Asian migrants are justified by the government in order to ensure the temporary settlement of migrant workers.

The sponsorship system, including standardized contracts, do not offer sufficient protections to migrant workers. In the case of unskilled Asian laborers, the biggest problem lies in their lack of knowledge regarding their rights as per the contract they signed. Upon recruitment in their native countries, these laborers sign a contract with a local agency, usually written in English, outlining terms and conditions of the job in Kuwait. Once they arrive in Kuwait however, workers are often asked to sign another contract, this time in Arabic, and told that it is this Arabic contract that would be acknowledged by the Ministry of Social Affairs and Labour. Although local embassies try their hardest to be available to provide translators for workers, they are often understaffed, and are unable to accommodate all laborers. This gives rise to incidents in which employers coerce workers to sign new contracts with different provisions than those originally agreed upon. Especially in the private sector, many employers take advantage of this situation and institute new provisions that include longer working hours, minimal overtime pay and fewer holidays. The Domestic Workers Law (2016) prohibits many of these practices, but many male laborers continue to be at risk of contract substitution. Other times, employers deducted amounts from workers’ salaries under the guise of various fees and costs that the employer paid on behalf of the worker upon signing the employment contract. For unskilled laborers, there is little choice but to sign the new contract, otherwise, the money paid to obtain the working permit would be lost, and the worker would have to return to their country to obtain a new visa. Relying on employment agencies and subagents to provide them with honest work, migrant workers not only place tremendous faith in the contracts they sign, but in the knowledge that their employers will adhere to the terms of the contracts. Otherwise, abuse or non-compliance with the contracts may lead to incidents of contract slavery, where workers are economically exploited, their physical movements restricted, and they work under threats of violence.

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<sup>13</sup> Migrant Forum in Asia. *Reform of the Kafala (Sponsorship) System*. [Online] Available from: <https://www.ilo.org/dyn/migpractice/docs/132/PB2.pdf>

Both domestic workers and male laborers are restricted in their movements while employed in Kuwait. While domestic workers are confined to their employer's home, male laborers reside in camps, distanced from the city and residential areas. They are prohibited from leaving their residences or camps without express permission from their employers and even when they're not, the choice of places they are allowed to visit is limited. As previously mentioned, some employers go to great lengths to ensure that their domestic workers do not run away, either by withholding their passport, or by locking them inside the home. This confinement meets the ILO's definition of labour provided under conditions of threat or violence. It states that, "a common means by which labour is extracted by duress from workers is through their confinement."<sup>14</sup> Additionally, most migrant workers' passports are confiscated by their employers, a practice that is illegal, although still common in Kuwait. Without their passports, they risk deportation or false charges against them if they attempt to flee their employer.

The withholding of wages or the reduction of wages to pay back the fees the employer has paid are common occurrences for migrant workers in Kuwait. Laborers regularly have ambiguous "fees" deducted from their wages each month, in spite of the Ministry's best efforts to regulate the salaries of laborers by implementing WPS systems, which instruct companies to provide bank statements indicating that each worker's account has been deposited with a salary each month. As discussed previously, domestic workers regularly complain that employers withhold wages in order for workers to repay the various recruitment fees, which is considered debt bondage. Although illegal, this has become a common practice in Kuwait, with employers withholding salaries in order to reimburse the fees that were paid to recruitment agencies. Due to this practice, and taking into consideration the fees that were paid to recruitment agents in their home countries, migrants are plagued with debts and loans that dominate their work experience. As a result, many workers tolerate horrendous working conditions and abuse due to the amount of debt they have to repay.

Debt bondage has been classified by the ILO as a "slavery-like" practice, and is prohibited by the ILO's Convention on the Abolition of Forced Labour. In 2007, a report on Sri Lankan domestic workers in Kuwait, HRW reported twenty-three cases "in which the range of abuses alleged-forced confinement, restricted communication, confiscation of passports, withholding of salary, abuse, high debts, and work under threat of detention or deportation- amounted to forced labour."<sup>15</sup> According to the ILO, the "menace of penalty" included in the definition of forced labour, includes, "physical violence against a worker...physical confinement, financial penalties, denunciation to the authorities (police, immigration) and deportation, dismissal from current employment, and exclusion from future employment, and denial of rights and privileges."<sup>16</sup> Once again, all these characteristics define the experience of unskilled foreign migrants in Kuwait. In cases of forced labour, a combination of factors come together to form "menace of penalty", such as the confiscation of passport, restriction of movement, withholding wages, threats of deportation or violence, and contract substitution. Employers and recruitment agencies

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<sup>14</sup> Human Rights Watch (2007). *Exported and Exposed: Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates*. Human Rights Watch, 2007, p.82. [Online] Available from: <https://www.hrw.org/sites/default/files/reports/srilanka1107webwcover.pdf>

<sup>15</sup> *Exported and Exposed*, supra note 14.

<sup>16</sup> Human Rights Watch (2006). *Swept Under the Rug: Abuses Against Domestic Workers Around the World*. [Online] Available from: <https://www.hrw.org/sites/default/files/reports/wrd0706webwcover.pdf>



deceive migrants into signing different contracts, threatening them with fines if they refuse, then withholding or deducting wages to recover recruitment fees, and threatening workers with deportation if they do not complete their contracts. Although not every migrant is subjected to actual violence, the threat of violence or prosecution remains a valid concern. As Bales states, “In contemporary slavery, the core attributes of slavery remain the same as they have always been...the state of control exercised over the slave, a control based on the potential or actual use of violence.”<sup>17</sup> As long as the threat of violence or legal repercussion dominates the employer-employee relationship, migrants will continue to be at risk of forced labour and slavery.

Together, these factors prevent workers from seeking better working conditions for themselves, hence forcing them either to tolerate their present employment, or abscond, jeopardizing their legal status in the country. Not being able to change employers denies workers an inalienable right according to the ILO, which states that, “a restriction on leaving a job, even when the worker freely agreed to enter it, can be considered forced labour.”<sup>18</sup> This type of deception endangers workers because it forces them to remain with employers in order to fulfill the terms of the contract and earn a salary. In cases where the contracts signed by migrant workers do not reflect the actuality of their employment or in cases where the recruitment agencies used deception to obtain a worker’s consent, migrants should have the right to withdraw their labour. As stated earlier, burdensome debts are the main reason workers remain with employers, further leading to situations of debt bondage. More supervision is needed from the government to make sure that contracts are respected for both laborers and domestic workers, and mechanisms need to be put in place to identify and punish employers who violate contract terms.

Modern slavery occurs in many guises. Debt bondage and contract slavery are only two examples used in Kuwait but they both need to be defined in the larger context of forced labour. Although the term slavery is not mentioned in the Constitution, Article 29 guarantees “personal liberty,”<sup>19</sup> presumably alluding to slavery. Nevertheless, forced labour is prohibited under Article 42 of Constitution, although the practice is legitimized through the use of unfair contracts that lack proper enforcement. This lack of enforcement in itself is a clear violation of migrant rights, as the government’s lax application of the laws gives way to corruption and exploitation. Migrants in Kuwait face constant threats of violence, and often live in fear of any retaliation by their employer due to the unbalanced relationship that exists between them. In 1999, Sheikh Sabah Al-Ahmad, Kuwait’s foreign minister at the time, and currently the country’s emir, delivered a speech before parliament regarding riots by Egyptian workers who protested living and working conditions in the country. He blamed the incident on “traders in residence permits who have grown rich over freighting in and exploiting foreign labour,”<sup>20</sup> and used the word slavery in describing the treatment to which some migrant workers are subjected to in Kuwait. Unfortunately, the term is still applicable and change has been slow.

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<sup>17</sup> Bales, *supra* note 2.

<sup>18</sup> *Exported and Exposed*, *supra* note 14.

<sup>19</sup> State of Kuwait, The Diwan of His Highness the Prime Minister of the State of Kuwait, Kuwait Constitution, Article 29. [Online] Available from: <http://pm.gov.kw/kuwait-constitution-ar.aspx>

<sup>20</sup> Inter Press Service. *Kuwait Riots Expose Plight of Migrant Workers*. December 8, 1999. [Online] Available from: <http://www.ipsnews.net/1999/12/rights-gulf-kuwait-riots-expose-plight-of-migrant-workers/>

The sponsorship system gives employers direct control over the immigration status of their employees, and thus, the power balance in the relationship rests with the sponsor. As Bales asserts, violence or the threat of violence, is inherent to slavery, but that violence would not take place without freedom to operate outside of the law. He states, “this ability to use violence to enforce the condition of enslavement requires that the slaveholder can avoid interference from the state or community.”<sup>21</sup> Most sponsors of domestic workers operate without interference from any type of governmental monitoring group when it comes to application of the standardized work contract. As a result, even though unskilled laborers are protected under the law, their working hours and living conditions are never inspected and the camps that they are housed in are often squalid and in disrepair. Labour-exporting countries have attempted to remedy these conditions by entering into bilateral agreements and MOUs with the Kuwaiti government to ensure protections for their citizens.

### ***5.3 Treaty Compliance***

Throughout history, sovereign States created contracts with each other as a way of expressing allegiance, purpose, or future goals, and intents. The Vienna Convention defines a treaty, as “an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments, and whatever its particular designation.”<sup>22</sup> Whether they are referred to as conventions, agreements, contracts, or treaties, these instruments all have one thing in common- they establish commitments and duties to which the signing parties agree to be held accountable. The importance of treaties in international law cannot be understated. Treaties involving States and international organizations have supplemented and enhanced current laws and regulations concerning diverse subjects such as economics, labour, human rights and migration. Throughout Kuwait’s history, treaties have served to solidify its place among the international community and in many cases, state its intent towards the application of international standards. The international community encourages States to participate in conventions and treaties, in order to align themselves to a codified international standard. According to Kelsen, “it is especially the creation of international law by treaties that clearly reveals the States as organs of the international community. International treaties are, in the opinion of many authors, the only method by which international law can be created.”<sup>23</sup> They have established international norms and standards that are necessary in protecting global and political unity.

Apart from serving as sources of international law, treaties can also have a more proactive effect in the sense that they set rules and standards for party States. As Dixon states, “treaties can also be seen to have a legislative role in that, like some General Assembly resolutions, treaties impose binding rules on States that create rights and

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<sup>21</sup> Bales, *supra* note 2.

<sup>22</sup> Vienna Convention (1969), Article 2 (1)(a). [Online] Available from: [http://treaties.un.org/Pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg\\_no=XXIII-1&chapter=23&Temp=mtdsg3&lang=en](http://treaties.un.org/Pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&lang=en)

<sup>23</sup> Hans Kelsen (2009). *General Theory of Law & State*, Transaction Publishers, New Jersey, p.351.

obligations.”<sup>24</sup> By imposing rules and obligations on States, treaties serve to establish norms in international law. The most basic criterion of treaties is *pacta sunt servanda*, which states that all treaties must be made in good faith. Additionally, Alston and Goodman state that, “for there to be any significant legal regulation of the international community, the principle of *pacta sunt servanda* is required.”<sup>25</sup> States may demonstrate good faith in numerous ways. The most important way is not to engage in any activities or agreements that violate a signed treaty. Another way is to institute the necessary mechanisms to enforce the terms of the treaty. By signing the treaty, a State is signaling its intent to hold itself accountable for upholding the agreement as well as enforcing it. This is also true for conventions signed with international organizations. Although the Vienna Convention’s definition of treaties excludes agreements made between States and international organizations, according to Malanczuk, this was done mainly to avoid complications. He states, “the only reason why they are not regarded as treaties-for the purposes of the Convention- is that the rules of international law governing them differ in a few respects from the rules governing written treaties between states.”<sup>26</sup> In 1986, the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations was submitted; Article 2 of that Convention defines an international organization as “an intergovernmental organization.”<sup>27</sup> International organizations possess a legal personality that has played a significant role in international law. These functions allow international organizations to be more involved in the creation of international law and norms.

For countries that entered into the arena of international law in the post WWII era, such as Kuwait, international standards were a novel concept. Certain rights and duties had already been defined, established, and relied upon in international law. Inevitably, the international community exerted pressure on these newly sovereign States to incorporate these established systems into their constitutions and agendas. For example, in 1961, the year of Kuwait’s official independence, the government ratified six ILO conventions, mostly involving conditions of work, which considering Kuwait’s diminutive labour force, is quite ambitious. Ratification of treaties may signal a country’s intent on implementing human rights standards, but that intent does not always translate to actual results. According to Hathaway, ratification of treaties does not always correlate to less human rights violations. Her study in 2002 led her to assert that “treaty ratification is not infrequently associated with worse, rather than better, human rights ratings than would otherwise be expected.”<sup>28</sup> Therefore, States with worse human rights ratings seem to ratify

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<sup>24</sup> Martin Dixon, Robert McCorquodale & Sarah Williams (2016). *Cases and Materials on International Law*, Oxford University Press, Oxford, p.56.

<sup>25</sup> Philip Alston and Ryan Goodman (2012). *International Human Rights in Context*, Oxford University Press, Oxford, p.68.

<sup>26</sup> Peter Malanczuk (1997). *Akehurst’s Modern Introduction to International Law*, Routledge, New York, p.130-31.

<sup>27</sup> UN (1986). Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. [Online] Available from: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXIII-3&chapter=23&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXIII-3&chapter=23&clang=en)

<sup>28</sup> Oona Hathaway (2002). *Do Human Rights Treaties Make a Difference?* Faculty Scholarship Series, Paper 839, p.1999. [Online] Available from:

treaties more frequently than those with better ratings. She states that, in general, the more democratic a country is, the more effect treaty ratification will have on that country's laws and behaviours. Neumayer's study confirms Hathaway's assertion that treaty ratification is more effective the more democratic a country is, supplementing democracy with an active civil society that is also necessary in effective implementation of treaties. In addition, Keith's study on the impact of ratification of the UN's International Covenant on Civil and Political Rights, finds that treaties with weak implementation measures such as this, ratification does not correlate with a change in behavior.<sup>29</sup> Hathaway suggests that some countries view the ratification or signing of treaties as an indication of their commitment to international standards of human rights, which she refers to as "position-taking."<sup>30</sup> Ratification does not cost a country anything, while the benefits of inclusion within the wider international community hold more advantages. Hathaway states, "governments may see a treaty as a relatively costless means of spreading their ideals and principles to other nations."<sup>31</sup> In her view, ratification of treaties also means less pressure on States from international organizations, including NGOs. In this way, "countries can and do take positions to which they do not subsequently conform and benefit from doing so."<sup>32</sup> This may be true, but, as Goodman and Jinks contend, Hathaway's focus on ratification as "the 'magic moment' of acceptance of human rights norms"<sup>33</sup> is problematic. They, like many others, argue that ratification is the first step to acceptance of international standards, and is a necessary procedure to long term and eventual incorporation. They state, "broad ratification of human rights treaties plays an important role in the process of building national human rights cultures (and a transnational human rights culture)."<sup>34</sup> When States ratify treaties, they are indicating their acceptance of international standards, which will eventually lead to the legitimacy of those standards within the international community. They may be ambitious at the time of signing, but they serve as indicators of future goals or standards. As Chayes and Chayes state, "it is a mistake to call these treaties merely 'aspirational' or 'hortatory.' To be sure, they embody 'ideals' of the international system, but like other regulatory treaties, they were designed to initiate a process that over time, perhaps a long time, would bring behavior into greater congruence with those ideals."<sup>35</sup> This process is achievable with the contribution of NGOs, and a strong civil society, both of which Neumayer finds are necessary for effective treaty ratification. He states, "for treaty ratifications to work, there must be conditions...for civil society to persuade, convince, and perhaps pressure governments into translating the formal premise of better human rights protection into actual reality."<sup>36</sup> In a sense, this is true for Kuwait, where ratification of ILO conventions and UN treaties have enabled it to construct a law that protects many aspects of their citizens' human and labour rights. Although unskilled

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<sup>29</sup> Linda Camp Keith (1999). *The United Nations International Covenant on Civil and Political Rights: Does It Make a Difference in Human Rights Behaviour?* Journal of Peace Research, Vol.36, No.1, pp.95-118.

<sup>30</sup> Hathaway, *supra* note 28, p. 2005.

<sup>31</sup> Hathaway, *supra* note 28, p.2010.

<sup>32</sup> Hathaway, *supra* note 28, p.2007.

<sup>33</sup> Ryan Goodman & Derek Jinks (2003). *Measuring the Effects of Human Rights Treaties*. European Journal of International Law, 14, p.173.

<sup>34</sup> Goodman & Jinks, *supra* note 33, p.182.

<sup>35</sup> Abram Chayes & Antonia Handler Chayes (1993). *On Compliance*. International Organization, 47, p.197.

<sup>36</sup> Eric Neumayer (2005). *Do International Human Rights Treaties Improve Respect for Human Rights?* Journal of Conflict Resolution, 49, p.950.

migrant workers were excluded from these laws, or not offered the same protections, the recent Domestic Workers Law (2016) is more consistent with international standards. When countries enter into treaties or agreements, they become a part of the international community, and are therefore, upheld to a certain standard. With the help of that community, those standards may eventually become part of their framework, that is, they will comply with those standards.

When the Kuwaiti government signs, or ratifies any international agreement or treaty, it is essentially agreeing to introduce the mechanisms and systems required to ensure effective application of the treaty. The importance of incorporating an international norm or treaty into national domestic law cannot be minimized. By ratifying or signing treaties and conventions, States accept certain obligations and are required by international law to fulfil these commitments by conforming their national laws to the standards that these conventions require. This demonstrates good faith. As Anzilotti notes, “international rules are only possible to the extent that they can rely on national rules.”<sup>37</sup> Without the necessary domestic law to enforce the terms or norms of the treaty, the agreement loses its efficacy and intent. International rules require the reinforcement of national laws in order to become established norms. Together, international and national laws converge into a wider, more universal standard. Failure to implement the necessary measures required to adhere to the principles enshrined in international treaties demonstrates a betrayal of those principles. Furthermore, the presence of corruption makes it impossible for governments to effectively implement treaties and laws, thus rendering them ineffective.

One of the ways in which a treaty violation occurs is when a State fails to implement the necessary processes that fulfilment of the treaty requires. In the past, the State of Kuwait has invoked the issue of new statehood as an explanation for its sluggish policies concerning international treaty implementation. It is true that Kuwait’s judicial system is relatively new, though this does not preclude it from implementing and enforcing its obligations under ratified international treaties. To be sure, there are certain provisions in the Constitution and labour laws that only offer protections for nationals, and the country’s Constitution always takes precedence over any international or regional agreement. In terms of the treaties that Kuwait has not ratified, there may be several reasons for this, including, firstly, that the provisions contained in the treaties do not conform to the country’s values. Secondly, a reason often cited by the Kuwaiti government for non-ratification is that certain standards are already included in the Constitution and therefore, redundant. However, one unstated reason may be that, for certain matters, States do not wish to expose themselves to international attention or scrutiny. Goodman and Jinks note that “for many governments, the decision to ratify suggests a willingness to increase access to information on, and dialogue about, domestic human rights practices.”<sup>38</sup> If this is true, then the ratification of treaties should be encouraged, even if application may not be immediately effective.

In an increasingly complex world, treaties, conventions, MOUs, and other agreements, whether multi-lateral, or bi-lateral, have become a way for States to engage with one another, as well as the international community. Wanting to be perceived and

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<sup>37</sup> Antonio Cassese (2004). *International Law*, Oxford University Press, Oxford.

<sup>38</sup> Goodman & Jinks, *supra* note 33, p.176.

treated as responsible member of the international community, Kuwait has become a member of many international organizations, and signed many international agreements and conventions. However, effective implementation is still lacking and a clear understanding of the conventions that have been signed and ratified has not been translated into law. In past years, the Kuwaiti government has created several departments and centres in an attempt to address and implement labour treaties and conventions it has signed. The Higher Advisory Committee for Labour Affairs, for example, was set up to advise the Ministry of Social Affairs and Labour. Councils such as this are usually comprised of specialists who are appointed by the Amir and who work closely with international organizations in the region.

#### **5.4 Why Slavery?**

In the past, several factors, mainly economic, were used to predict a country's potential for the existence of slavery within its borders. According to the Human Development Index, the more economically prosperous a country is, the less chance there is of the presence of slavery. The ability of a government to deliver such services such as education and health services, as well as a relatively democratic voting system, has been an indicator of a free labour system. In Kuwait, this is not always true. As the country has grown more prosperous, its reliance on foreign labour has increased, leading the government to implement policies to protect its nationals, while at the same time, denying migrants certain rights.

Kuwait proves to be an exception to the traditional model, due to its high GDP per capita, small population, and health and education services. In theory, slavery, or forced labour *should not* exist in Kuwait, but there are other factors that need to be addressed. Corruption and lack of government enforcement are two major reasons for the maltreatment of migrant laborers in Kuwait. In 2017, Kuwait was given a score of 39 out of 100 on the Transparency International Corruption Perceptions Index,<sup>39</sup> which ranks countries according to the degree which corruption is perceived in the public sector, and among public officials and politicians. By contrast, New Zealand<sup>40</sup> was given a score of 89 out of 100, ranking it as the country with the lowest corruption index. In most cases, existent Kuwaiti laws aim at protecting unskilled foreign workers from abuses and maltreatment however, widespread corruption restricts fair compensation and reparations. Although corruption is present in every country to some degree, it is especially prevalent in Kuwait. When corruption is widespread, even the best, most well-intentioned laws and treaties cease to have an impact. Without proper application of the law, these sets of rules become ineffective.

##### **5.4.1 Rentierism**

The concept of rentierism has been used to designate those nations that export their resources, mainly oil and gas, to foreign markets; it has been used to describe developing Gulf countries, and their relationship to the West. Central to the idea of rentierism and

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<sup>39</sup> TI Corruption Perceptions Index (2017). [Online] Available from:

[https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2017#table](https://www.transparency.org/news/feature/corruption_perceptions_index_2017#table)

<sup>40</sup> Ibid

rentier states is the concept of rent itself. According to economist Alfred Marshall, rent is any “income derived from the free gifts of nature,”<sup>41</sup> essentially, natural resources. In the case of Kuwait, rent refers to income obtained from natural oil and gas resources. Before the discovery of oil, rent in Kuwait referred to “locational rent”, which involved entering into protection or loyalty agreements with other countries, but mainly Great Britain. This rent was paid in return for the use of certain areas for landing of British aircrafts on their way to and from India.<sup>42</sup> Locational rent was beneficial for both countries, and paved the way for strong British-Gulf ties, which remain intact today. After the discovery of oil, petroleum resources were relied upon to provide Kuwait with rent. Most of the rent came courtesy of Great Britain, which had the closest ties with Kuwait and was given full reign over the country’s oil and gas concessions, often with exclusivity clauses attached.

In the years after the independence of Kuwait, the Al-Sabah ruling family came under a great deal of pressure from Kuwaiti citizens to nationalize the Kuwait Oil Company - a British backed company that had won the first concession to oil discoveries in 1938. In the 1970s, the British concession was terminated, and the Kuwaiti government gained full control of the Kuwait Oil Company. The rents accrued from oil, locational and strategic concessions allowed the Kuwaiti government to distribute wealth to its citizens through various welfare measures. Davidson states, “received directly by the ruling families and their governments, the rents were in turn used to distribute some wealth to their populations rather than having to rely on taxation from merchants.”<sup>43</sup> These rents have allowed Kuwait’s ruling family to not only forge close ties with Great Britain, but to install itself as a benevolent distributor of wealth for its citizens.

For Kuwait, the transition from a nation dependent on agriculture and pearl exports to an oil-rich nation occurred at a speed faster than the population could adjust. Mahdavy writes, “since the external rent is paid to the government, it is tempting for the government to reward its employees and supporters with regular salary increases, fringe benefits or lucrative contracts, etc. In the long-run, this distortion in the valuation of product may have the effect of shifting manpower, talent and organizational ability from agriculture and industry into services.”<sup>44</sup> In Kuwait, nationals’ aversion to certain types of jobs has created a dependence on temporary migrant workers imported to fill the void that exists in the labour market. The government’s tendency to reward its citizens with extensive welfare benefits has created a distorted sense of social and economic entitlement. Rent derived from natural resources creates a rentier state, or a state that receives considerable rents from foreign countries, organizations, or individuals. As previously mentioned, for Kuwait, rents refer to oil and gas exports, as well as strategic rents such as military bases and cooperation agreements. Mahdavy writes, “rentier states are defined...as those countries that receive on a regular basis substantial amounts of external rents. External rents are in turn defined as rentals paid by foreign individuals, concerns or governments to individuals, concerns or governments of a given country.”<sup>45</sup> According to him, the effects

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<sup>41</sup> Alfred Marshall (1920). *Principles of Economics*, Palgrave Macmillan, New York, p.368.

<sup>42</sup> Christopher M. Davidson (2012). *After the Sheikhs: The Coming Collapse of the Gulf Monarchies*. C. Hurst & Co., London, p.24.

<sup>43</sup> Davidson, *supra* note 42, p.25.

<sup>44</sup> Hossein Mahdavy (1970). *The Patterns and problems of Economic Development in Rentier States: The Case of Iran*. In: *Studies in Economic history of the Middle East*, M.A. Cook (ed), Oxford University Press, London, p.447.

<sup>45</sup> Mahdavy, *supra* note 44, p.428.

of petroleum development and the sizeable amounts of foreign currency (whether in the form of rents or investment) that follow, lead to the creation of a modern rentier class, composed of elite rulers or governments.

The concept of rentier states gave way to rentier state theory (RST), which explains a great deal about the nation-character of Gulf States, including Kuwait. Gray describes rentier state theory as “a political economy theory that seeks to explain state-society relations in states that generate a large proportion of their income from rents, or externally-derived, unproductively-earned payments.”<sup>46</sup> This theory is in line with what is often referred to as a “resource curse”, where high levels of natural resources are contrasted with low levels of development. Both of these concepts “suggest a difference between ‘earned’ income and effortless ‘accrued’ rent,”<sup>47</sup> with the latter often looked down upon by economists and social scientists.

Essentially, rentier state theory maintains that as the State receives rent from natural resources and distributes it to its nationals, the need for taxes is eliminated. Lack of taxation is an important characteristic of rentier states. The substantial wealth gained by the export of natural oil and gas resources diminishes the need for taxation, and thus allows the government to allocate the nation’s wealth to its citizens. In turn, this wealth distribution is viewed by citizens as their share of the nation’s prosperity. In the case of Kuwait, oil and gas resources have provided the government with vast wealth that in turn has created a welfare state, whose citizens have become dependent on the state to provide economic support. As Crystal states, “oil creates a rentier economy that weakens class structure by making access to the state rather than access to private property the prime determinant of wealth.”<sup>48</sup> She further goes on to say, “the fact that oil revenues go directly to the state is important because it means that money is centralized in the state. Individuals can become rich only through their relationship to the state or the state elite.”<sup>49</sup> This may have an adverse effect on the social structure of the state as it struggles to juggle the roles of employer as well as welfare services provider. Davidson states, “the majority of the region’s indigenous population was increasingly being distanced from the forces of production and thus sidelined into becoming a rentier class dependent on government subsidies, rather than a distinct proletariat or middle class.”<sup>50</sup> In this sense, Kuwait fits the rentier state model. Citizens have been accustomed to receiving a profit of their nation’s “free gift of nature,” through various subsidies and welfare benefits the government has put in place. The right to work, effectively the right to a job, is part of the Kuwaiti Constitution, and the public sector has been the biggest employer of Kuwaitis. (See Table 9) Amuzegar states,

In the Gulf countries, free medical services for all ages, free education at all levels, housing and home sites at below-market prices and on easy credit terms, highly subsidized basic services and essential items, generous retirement pensions at a relatively early age, and the right to government

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<sup>46</sup> Matthew Gray (2011). *A Theory of “Late Rentierism” in the Arab States of the Gulf*. Occasional Paper No.7, Centre for International and Regional Studies, Georgetown University School of Foreign Service in Qatar, p.1.

<sup>47</sup> Hazem Beblawi (1987). *The Rentier State in the Arab World*. Arab Studies Quarterly, 9, p. 49-50.

<sup>48</sup> Jill Crystal (2016). *Kuwait: The Transformation of an Oil State*. Routledge, New York, p.73.

<sup>49</sup> Crystal, *supra* note 48, p.102.

<sup>50</sup> Davidson, *supra* note 42, p.7.



employment at last resort became some the outstanding manifestations of instant economic well-being. In these and other oil-exporting countries, not only was the physical landscape...changed beyond recognition, but the standard of living for a large portion of the population reached unprecedentedly high levels.<sup>51</sup>

Moreover, to this day, Kuwaiti citizens do not pay any taxes to the government. Instead of relying on taxes for income, rentier economies distribute income from oil revenues to citizens. Crystal states that “pre-existing traditions-patterns of paternalism and group solidarity-already predisposed Kuwait to distribute revenues fairly widely...This function has become institutionalized, and revenues are now distributed by the state through direct transfers, social services, and state jobs.”<sup>52</sup> However, this generous welfare system may breed complacency, as the traditional concepts of labour competition and diversification are diminished. Gray argues that the payment of taxes holds the government accountable to its citizens. He states, “the state...need not concern itself with domestic bases of support of legitimacy either...the population in effect is ‘bought off’, with democratic input sacrificed by society in exchange for a share of the rental wealth accruing to the state from abroad.”<sup>53</sup> In the case of rentier states, economic prosperity does not mean increased productivity or performance, it merely indicates the government’s commitment to provide its nationals with a share of the oil wealth. In Mahdavy’s view, this leads to a “backwardness” prevalent in rentier states, and which exists independent of economic prosperity.<sup>54</sup> Furthermore, Beblawi discusses a rentier mentality, different from conventional economic models. He states, “the basic assumption about the rentier mentality and that which distinguished it from conventional economic behaviour is that it embodies a break in the work-reward causation. Reward – income or wealth – is not related to work and risk bearing, rather to a chance or situation.”<sup>55</sup> In the case of Kuwait, this has led to a bloated public sector dominated by nationals unencumbered by job competition. With the constitutional guarantee of a job, and a labour hierarchy in their favour, most workers are lulled into a sense of security not based on merit, but on citizenship.

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<sup>51</sup> Jahanjir Amuzegar (1982). *Oil Wealth: A Very Mixed Blessing*. Foreign Affairs, 60, p.818.

<sup>52</sup> Crystal, *supra* note 48, p.103.

<sup>53</sup> Gray, *supra* note 46, p.6.

<sup>54</sup> Mahdavy, *supra* note 44, p.438.

<sup>55</sup> Beblawi, *supra* note 47, p.52.

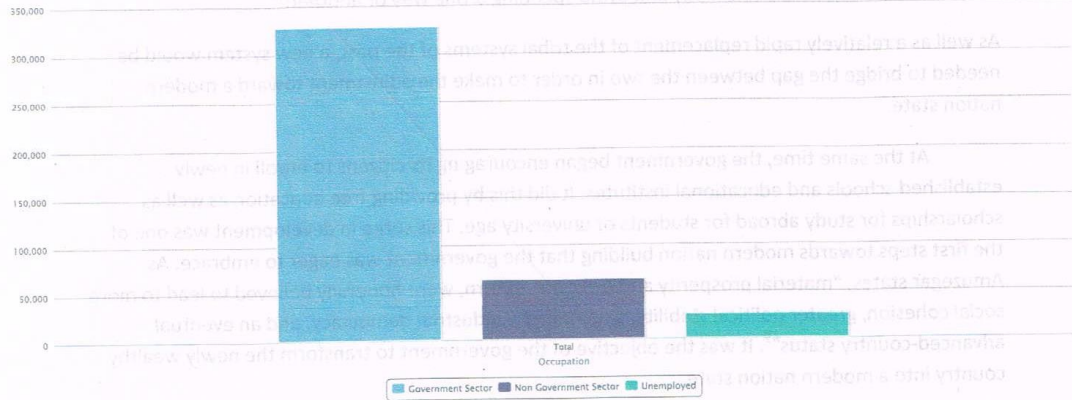
Table 9

## Employment By Occupation and Sector

The choice filters chart and reports: June - 2018

Nationality Group: Kuwaiti

Gender: Total



Occupation	Work Sector		
	Government Sector	Non Government Sector	Unemployed
Total	327,654	63,285	25,545

PACI

As the head of a welfare state, the Amir is seen as a sort of father figure guiding the country and distributing national wealth. Beblawi states that, “Kuwait was probably the one to introduce into the Gulf area the concept of distributing part of the oil wealth to the population which eventually evolved into that of the welfare state,”<sup>56</sup> thus designating the ruler, and through him, the government, as the primary distributor of the nation’s oil wealth among its citizens. Furthermore, according to Davidson, this is part of a larger social contract that exists between governments of rentier states and their citizens. He writes, “the...social contract is rebranded a ‘ruling bargain’ for the Arab world, where people choose to remain politically acquiescent in return for sufficient stability and services from their governments.”<sup>57</sup> This may explain why many countries in the Gulf, including Kuwait, survived the Arab Spring that led to unrest in other nations in the region. In Kuwait, the “ruling bargain” that Davidson describes has ensured that the Al-Sabah remain in place as the state’s ruling family, respecting the dynasty’s historical ties and services to Kuwait. Whereas in most nations, the government is seen as a collector of wealth, in form of taxes, in Kuwait, and other Gulf states, the resources of the country and its subsequent wealth is seen as a collective gift to its citizens, with the government being entrusted to be in charge of distribution. Davidson explains, “all of the Gulf monarchies have emphasized the state being first and foremost a distributor of wealth rather than an extractor,”<sup>58</sup> which provides rulers with “eudemonic legitimacy,”<sup>59</sup> or legitimacy that stems from economic and social welfare. This may also help explain why despite the fact that

<sup>56</sup> Beblawi, *supra* note 47, p.54.

<sup>57</sup> Davidson, *supra* note 42, p.10-11.

<sup>58</sup> Davidson, *supra* note 42, p.50.

<sup>59</sup> Davidson, *supra* note 42, p.50.

many ruling family members have been found guilty of fraud, corruption, and embezzlement, in general, Kuwaitis would not change their parliamentary sheikhdom for an alternate form of government.

Citizenship is a guarded privilege in Kuwait, in line with the rentier state theory. The guarantee of employment of citizens by the state has reinforced the national identity of Kuwaitis, and instilled the sense that being Kuwaiti is a privilege, one to which a special status is attached. In many ways, this has created a shared identity within citizens. The state reinforces this special citizenship status by severely restricting the amount of nationalizations. Davidson states “the centrality of citizenship and the promotion of national identity in the gulf monarchies’ ruling bargains, as many of the services and privileges associated with citizenship can only really be sustained if the national populations remain distinct, aloof, and in some cases compact.”<sup>60</sup> The establishment of a strong national identity, based on the privileges of being a Kuwaiti citizen is no doubt a ruling bargain. The scope of welfare benefits that are afforded to nationals is directly linked to the size of the population. As the population increases, welfare benefits will become more strained, which is the reason why citizenship is closely guarded in Kuwait. The Nationality Law of 1959 (most recently amended in the year 2000) establishes the rules regarding naturalizations, which state that Kuwaiti nationality must be granted by Amiri Decree,<sup>61</sup> approved first by a Committee, then by the Ministry of Interior. It is a complicated process (See Appendix 4), meant to protect the country from those wishing to take advantage of its generous welfare benefits, a topic much discussed in Parliament. This year, MP Safa Al-Hashem claimed there were as many as 300,000 cases of illegal citizenship obtained in recent years.<sup>62</sup> Although this figure has yet to be confirmed by the Ministry, there have been numerous cases of forged or illegal citizenships in recent years.<sup>63</sup> Regardless of the amount of years a non-Arab migrant spends working and living in Kuwait, naturalization is not an option. Figures on annual naturalizations are difficult to obtain and verify, however, it is safe to assume that the numbers are very low compared to the number of applications. Additionally, migrant workers are all granted temporary contracts in order to ensure that migration is temporary. The division of the population into Kuwaitis and non-Kuwaitis in legal, economic, and social terms creates a rentier elite class. As Davidson states, “as per the rentier state model, the distribution of wealth along with the creation of a national identity and the formation of an indigenous rentier elite class that sits above all expatriates have been paramount.”<sup>64</sup> All migrant workers in Kuwait are dependent on a national to sponsor their work visa, as per the sponsorship law, which places a great deal of power into the hands of citizens and further enforces the rentier elite class divide.

According to the rentier state theory, rents acquired by the state and distributed to the population without the need for taxation lead to little public demand for greater representation or involvement in governmental affairs, an acquiescence known as the

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<sup>60</sup> Davidson, *supra* note 42, p.11.

<sup>61</sup> A decree issued by the ruler, or Amir of Kuwait.

<sup>62</sup> Gulf News (2018) *300,000 Illegally Obtained Kuwaiti Citizenship-MP*. [Online] Available from: <https://gulfnews.com/world/gulf/kuwait/300000-illegally-obtained-kuwaiti-citizenshipmp-1.2154680>

<sup>63</sup> Gulf News (2016). *Naturalized Kuwaitis Arrested 51 Years After Acquiring Kuwaiti Citizenship 'Fraudulently'*. [Online] Available from: <https://gulfnews.com/world/gulf/kuwait/naturalised-kuwaitis-arrested-51-years-after-acquiring-kuwaiti-citizenship-fraudulently-1.1892461>

<sup>64</sup> Davidson, *supra* note 42, p.229.

rentier effect. The rentier effect makes it difficult for nations to become democratic, due to the fact that a rentier government may easily buy off its citizens, thus creating a social contract where loyalty and trust are exchanged for welfare benefits. In turn, nationals will be “less likely to demand accountability from – and representation in – their government.”<sup>65</sup> In theory, rentier states are not motivated to foster democratic reforms; it is in their benefit to maintain the status quo and discourage social groups. Rentier state theory holds that, “governments that fund themselves through oil revenues and have large budgets are more likely to be authoritarian; governments that fund themselves through taxes and are relatively small are more likely to become democratic.”<sup>66</sup> Governments become immune to democratic demands by distributing rent wealth and providing their citizens with vast welfare assistance. Specifically, the absence of taxation directly correlates to a less democratic form of government. In the case of rentier states, as long as the government continues to provide generous welfare benefits, especially in the form of employment in the public sector and avoids taxation, its nationals will remain content with little political participation. In this way, Kuwait does not fit the rentier state model, as its nationals have been politically active throughout the country’s history.

As previously mentioned, before the discovery of oil, Kuwaitis were mostly engaged in seafaring and trading, which, although prosperous activities, held disadvantages. These activities were restricted to the male population, most of who had to travel for approximately ten months out of the year. This not only left a great deal of families without a patriarch to protect them, but also left the town vulnerable to invasion or raids. Since the economy depended on the sea, the merchant families entered into an agreement with the Al-Sabah family of the Bani Khaled tribe, in which it was decided that the Al-Sabah family would take charge of the everyday matters of the town, while the merchants devoted themselves to their trades. This meant that the Al-Sabah family would relinquish what little trade they were involved in, and dedicate themselves solely to the concerns of the town. Longva explains, “until the late 1800s, real power and social ascendancy rested with the merchant families, whose work generated the income on which Kuwait critically depended for its existence.”<sup>67</sup> This compromise is known in Kuwait as “the pact” that allowed the Al-Sabah family to effectively preside over and represent the town of Kuwait. The fact that this took place at all was very unique, especially in the turbulent Arabian Gulf; but it also took place naturally and out of necessity. Longva writes,

Barred from sea-trading activities, the Al Sabah partly depended on the merchants for their incomes. Economic dependence made them accountable; hence the well-anchored tradition of political consultations between the shaikh and the merchants; hence also the latter’s view of political participation as a natural process to which they were entitled-a perception that deeply contrasted with the situation in the neighboring emirates.<sup>68</sup>

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<sup>65</sup> Michael L. Ross (2001). *Does Oil Hinder Democracy?* World Politics, 53, p.332.

<sup>66</sup> Ross, *supra* note 65, p.335.

<sup>67</sup> Anh Longva (1997). *Walls Built on Sand*. Westview Press, Boulder, p.22.

<sup>68</sup> Ibid

It was the start of a system in which neither ruler nor merchant could gain too much power, and one in which everyone benefitted. In 1756, Sabah Jaber Al Sabah (or Sabah I) was declared the first Amir of Kuwait. Since then, all of Kuwait's Amirs have been direct descendants of Sabah I (the First). Kuwait remained a protectorate and its autocratic power in place until the sudden death of Sheikh Salem in 1921. This event brought up the issue of succession, and heads of the leading merchant families organized to form *Al-Majlis Al-Ishkishari*, or the Consultative Council. The Council's main purpose was the peaceful settlement of the issue of succession so as to prevent any disputes within the Al-Sabah family. To this end, Ahmad Al-Jaber Al-Sabah was chosen to succeed Sheikh Salem, a choice that passed without opposition. He promised to work with the Council, and include them in the rulings of the country. Although the Council's purpose was fulfilled, it was clear that its establishment demonstrated a will by its members to launch a more participatory role in the affairs of the country. Even though the Council was short lived, it signalled the beginning of participatory government in Kuwait. This was the beginning of what was to be Kuwait's Constitution and National Assembly.

In 1938, Sheikh Jaber signed a law, effectively establishing a constitution and giving the Council extensive powers. The Council's main order of business during its tenure was focused on the economy of Kuwait, including taxes, levies, monopolies and public finances. As all members were representing merchant interests, free enterprise and competition were also stressed. By pushing forth their capitalist interests, the Council thus strived to limit Al-Sabah control over the economy and free market. In 1950, Sheikh Ahmad Al-Jaber was succeeded by his cousin, Sheikh Abdulla Al-Salem, widely viewed in Kuwait as the father of reform and social welfare. It was during his reign that Kuwait shifted from being a British protectorate, to a fully independent state. As Davidson explains,

Following independence, Abdullah was quick to draw up a new constitution for Kuwait and to establish a new parliament, the National Assembly...Kuwait's merchant population had long been involved in various consultative institutions, given their relative wealth and political influence, so democratic or rather consultative traditions were much more ingrained in Kuwait than in Saudi Arabia.<sup>69</sup>

This Constitution, with a few amendments and modifications, remains in place today. In this sense, Kuwait has proved to be the exception to the classical rentier state theory. Gray states, "there was no well-developed or convincing RST-centered explanation for Kuwait's very activist parliament on the one hand, and the near-absence of democratic institutions in Saudi Arabia or the...UAE on the other."<sup>70</sup> Kuwait's history with representative institutions distinguishes it from its neighbors, as Crystal states, "Kuwait's social structure is conducive to political representation: Kuwait has few of the communal divisions that elsewhere inhibit representation."<sup>71</sup> The classical rentier state theory does not take into account the strong political activism that has always existed in Kuwait. Tetreault expands on this by stating, "the twentieth-century conflict between Kuwaiti rulers and economic elites over the entitlement of the latter to significant political participation both rested on

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<sup>69</sup> Davidson, *supra* note 42, p.28-9.

<sup>70</sup> Gray, *supra* note 46, p. 11.

<sup>71</sup> Crystal, *supra* note 48, p.176.

an assumption of institutionalized power sharing and confirmed the legitimacy of Kuwait as a political community.”<sup>72</sup> Essentially, the Kuwaiti government’s control of rents has not given it complete autonomy from a politically involved and active native population that demanded a role in all aspects of political life.

In these ways, Kuwait both fits and does not fit the model of rentier state theory. While it is true that rentier states are traditionally less democratic, prone to slow socio-political growth and demonstrate employment complacency, not all of these factors are applicable to Kuwait. As Ross states, “barrel for barrel, oil harms democracy more in oil-poor countries than in oil-rich ones.”<sup>73</sup> The unique composition of Kuwait’s political society has allowed it to bypass some of the predictions concerning civil unrest of the rentier state theory.

Rentier states such as Kuwait are dependent on their foreign allies for their rents, and a great deal of rentier wealth has been spent cultivating relationships with the West that extend beyond economic relations. As Gray states, “rent capacity is not sufficient to purchase security, and states have come to realize that a more complex and proactive approach to foreign policy and external linkages is important to the longer-term viability and protection of the state and its rentier wealth.”<sup>74</sup> In this sense, security may refer to military security, as well as the overall security of international acceptance and engagement. Today, Kuwait still maintains locational rent for use of certain areas for military personnel, for both the American and the British governments.

Using its rentier wealth, Kuwait has spread aid to countries, especially other Arab and Muslim countries in the form of funds for various projects or donations to certain causes and organizations. As Tetreault states, “when oil revenues began to pour into Kuwait, it became the first developing country to institute an elaborate foreign aid program and, since the 1960s, Kuwait has used both portfolio and direct foreign investments to attract allies and supporters.”<sup>75</sup> This foreign aid program has become an important aspect of Kuwait’s foreign policy. Crystal states that, “by international standards Kuwait has historically been a very generous donor. In per capita terms Kuwait has been one of the most generous states in the world, always standing among the top ten international donors.”<sup>76</sup> In 1961, the Kuwait Fund for Arab Economic Development was established to provide loans and grants to Arab countries, and to date, the Fund has committed over \$21 million in loans.<sup>77</sup> Also, in 1967, the Arab Fund for Economic and Social Development was established to provide assistance to social and economic development projects also for Arab countries. To date, this Fund has loaned over \$2 billion for various projects or grants.<sup>78</sup> Crystal reports that, in the 1980s, as much as 3.8 percent of the country’s GNP went to foreign aid programs.<sup>79</sup> Kuwait has also spread its rentier wealth to the

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<sup>72</sup> Mary Ann Tetreault (1999). *Out-of-Body Experiences: Migrating Firms and Altered States*. Review of International Political Economy, 6, p.63.

<sup>73</sup> Ross, *supra* note 65, p.343.

<sup>74</sup> Gray, *supra* note 46, p.36.

<sup>75</sup> Tetreault, *supra* note 72, p.63.

<sup>76</sup> Crystal, *supra* note 48, p.132.

<sup>77</sup> Kuwait Fund for Arab Economic Development, Kuwait Fund in Figures. [Online] Available from: <https://www.kuwait-fund.org/en/web/kfund/home>

<sup>78</sup> Arab Fund for Economic and Social Development (2017), Basic Financial Data. [Online] Available from: <http://www.arabfund.org/Default.aspx?pageId=292&mid=124>

<sup>79</sup> Crystal, *supra* note 48, p.132.

international community. In 2016, Kuwait donated \$4 million to the IOM's efforts to support Iraqis displaced by the military operations in Mosul.<sup>80</sup> The government's donations also extend to non-Arab countries. More recently, at the Pledging Conference for the Rohingya Refugee Crisis in 2017, Kuwait pledged \$15 million in aid to the UN coalition.<sup>81</sup> These donations are not only a way for Kuwait to demonstrate its commitment to the international community, but they also allow the country to position itself as a responsible member of the community.

As mentioned earlier, many States ratify treaties in order to ease pressures for reforms from the international community. On the other hand, some opt not to ratify treaties for fear that their practices will be exposed and scrutinized. Both these analyses are applicable to Kuwait, a country that has made great strides in recent years regarding reforming its laws to offer better protections for unskilled migrant workers. By working closely with international organizations and NGOs, as well as by ratifying relevant treaties and agreements, the government is better able to align its laws and practices with international standards, thereby eliminating all forms of slavery within its borders.

### ***5.5 Conclusion***

At present, Kuwait's reliance on foreign labour continues to increase. As a result, the number of migrants in the country is at an all-time high, which is in contrast to the minimal protections they are offered under the law. Modern "slaveholders" take advantage of the global economy to exploit what are often illiterate, unskilled, needy laborers for their own economic benefit. Furthermore, the debts that migrants incur in order to obtain work abroad force them into a cycle of debt bondage that essentially exposes them to exploitation before they have even landed in the host country. The overall sponsorship system as well as false labour contracts, contract substitution and visa trading are all modern methods that are used to conceal slavery among unskilled foreign laborers in Kuwait. Greed and corruption, coupled with a lack of law enforcement has allowed employers to take advantage of these workers. As a result, the situation of unskilled foreign workers in Kuwait can accurately be labeled as slavery, servitude, indentured slavery, and forced labour. There is a lack of supervisory mechanisms that monitor the working conditions of unskilled foreign labour, who often live and toil under severe conditions. The lack of enforcement of existing laws, signed MOUs, ratified conventions and treaties, and bilateral agreements, have bred an environment that is rife with corruption, and allows abusers to escape unpunished, thereby perpetuating the cycle of maltreatment.

One reason used to explain the presence of slavery in a country where, theoretically, it should not occur, is rentierism and rentierist mentality. Despite the exceptions, Kuwait can still be classified as a rentier state, and rentier state theory may be used to explain why slavery and forced labour occur in the country, despite indications that it should not. The country's oil wealth has allowed the government to become the

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<sup>80</sup> IOM, (2016). *Over 106,000 Iraqis Displaced by Mosul Operations: Kuwait Donates USD 4 Million in Aid*. [Online] Available from: <https://www.iom.int/news/over-106000-iraqis-displaced-mosul-operations-kuwait-donates-usd-4-million-aid>

<sup>81</sup> OCHA, (2017). *Pledging Conference for the Rohingya Refugee Crisis*. [Online] Available from: <https://www.unocha.org/sites/unocha/files/Pledge%20announcements%20Bangladesh%20Pledging%20Conference%2023%20Oct.pdf>

distributor rather than the extractor of the nation's rent, thereby providing generous welfare benefits to its citizens. Over time, these benefits have created a labour hierarchy, where certain employment sectors are either dominated by nationals or unskilled Asians. Rentierism also explains the reasons for certain elitist attitudes that are a result of a generous welfare system and the prevalence of customary laws that continue to persist long after they have been prohibited. This is revealed in the contrasting living conditions between nationals and unskilled migrants; while nationals enjoy the full political and social rights of citizenship, unskilled migrants are often unprotected and vulnerable to abuse. As Beblawi states, "even if they form the core of the productive manpower, expatriates nevertheless remain alien to the body politic. Though they serve the country, live -and also die- on its soil, they are not part of it. Expatriates are thus part of the labour force but not of the society."<sup>82</sup> Although their earnings may be higher in Kuwait compared to their home countries, their lives are nevertheless unstable and endangered. On the other hand, Kuwait's politically active society, as well as its parliamentary history, are in opposition to the traditional rentier theory and may explain the reason for its progress, albeit slow, in incorporating international standards into its national laws. More progress is needed however, and it is important that the Kuwaiti government implements measures to ensure proper adherence to the rights and principles engrained in the various international conventions and treaties that it has ratified over the years. The right to liberty and freedom for all those living in Kuwait is a right protected in the Constitution and must not be applied to nationals only.

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<sup>82</sup> Beblawi, *supra* note 47, p.59.



## **Chapter 6**

### **Recommendations and Conclusion**

#### ***6.1 Introduction***

As we have seen, Kuwait is a country of contradictions. On the one hand, great oil-wealth has allowed it to become a generous welfare state, providing substantial services for its nationals, but on the other hand, a reliance on unskilled foreign labour has exposed slavery and forced labour within its borders. Although the country has made great strides toward becoming an active member of the international community, there is a great deal that must be done in order to meet international labour standards. Ending slavery will require a determined effort on the part of the government in addressing economic, political, and social issues. Kuwait does not fully conform to any political or academic model, and therefore, needs to be examined according to its unique circumstances. In my view, there isn't one solution to the problem of infringement of labour rights of unskilled foreign workers in Kuwait. There are several suggestions that may be made however, to improve their status within the Kuwaiti labour force. Firstly, abolishment of the sponsorship system is crucial in removing notions of ownership over migrants, as it is a system that continues to cause a great deal of problems for both unskilled laborers and domestic workers. This would require the assistance of agents and governments from sending countries, in order to coordinate efforts. This can also be done in conjunction with an awareness campaign that would educate people on the realities of importing unskilled foreign labour, and the consequences on the future of the country's economy. In this chapter, recommendations will be made regarding measures the Kuwaiti government may take to increase protections for migrant workers. These measures include amendments to the current laws; effective monitoring and enforcement of recruitment agencies, as well as subagents; cooperation with international organizations and NGOs; and awareness campaigns aimed at shifting long-held attitudes concerning migrant workers.

Labour migration is a global issue, and the protection of migrants remains an important concern for the international community. Unlike skilled migrants who are usually more aware of the terms and conditions of their jobs, unskilled migrant workers are especially vulnerable to exploitation. Throughout the GCC region, dependence on foreign migrants continues to increase, while in many cases, legal protections lag behind. International institutions, NGOs and other organizations have called for changes to the sponsorship system that currently governs all migrants in this region. In order for real change to occur, it is imperative for GCC countries to work together in addressing the issue. More research is required in order to understand the scale of the problem, and governments should work together with NGOs to implement a region-wide policy that benefits both employers and workers. Databases on migrants should be established in each country specifying details of workers such as name, age, sex, nationality and the names of the employer and recruitment agency. Information such as this would help governments

manage data concerning migrant workers in order to enact policies that correspond to this information.

## ***6.2 The Sponsorship System and Slavery***

Throughout the world, migrant workers are relied upon to fulfil certain areas of the labour market, and Kuwait is no exception. The main differences however, lie in the rights they are granted, the enforcement of those rights, and the social cohesion between migrants and nationals. Historically, migrant workers have taken advantage of their abilities to organize in unions, settle with their families, and apply for citizenship to become a more empowered workforce. In Kuwait however, unskilled Asian migrants are defined by their temporary status, and are therefore excluded from any social integration. This has created a skewed relationship between nationals and migrants, where unskilled labourers are seen as servants and not employees. In order for perceptions to change, the situation of unskilled workers needs to be changed.

There are a number of steps the Kuwaiti government can take in order to improve the working conditions of unskilled foreign migrants in the country. Firstly, the sponsorship system needs to be reformed or replaced. The restrictions imposed by the sponsorship system do not offer adequate protections for migrant workers. A better system would be one where workers are not tied to one employer for the duration of their employment contract, but instead issued with an employment visa that specifies the profession but not the name of the employer. This type of visa is currently used in the United Kingdom, as well as other countries, and allows workers to change employers without risking their legal status in the country. Under this system, workers would still have to offer proof of a job offer in Kuwait before issuance of an employment visa, although the name of the employer is not specified. This would give workers more choice in employers and allow them to change jobs in cases of deception or maltreatment. It would also allow workers to operate on a more flexible or freelance basis in order to maximise income. The Ministry of Labour would be responsible for issuing visas and it would be this visa, not the employer, that regulates the migrant's legal status. Migrant Forum Asia suggests this as an alternative:

To discontinue the individual sponsorship system and replace it with the National Employment Office or Ministry of Labour (MOL) in the destination country overseeing the recruitment process. A Government officer under the MOL would take full responsibility for entry, transfer and departure of migrant workers. Thus the migrant worker would make a contract with the department, as would the employer who would pay the wages to the department.<sup>1</sup>

Alternatives such as this would take away the power employers may exert over migrant workers, who are often thought of as 'property,' and exploited as a result. Providing migrants with the option of seeking better employment conditions safeguards against

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<sup>1</sup> Migrant Forum in Asia. *Reform of the Kafala (Sponsorship) System*, p.7. [Online] Available from: <https://www.ilo.org/dyn/migpractice/docs/132/PB2.pdf>,

potential abuse. It is important that the government takes more responsibility for migrant workers, as opposed to relying on citizens to implement the law.

Currently, unskilled foreign workers are unable to change employers without first obtaining the current employer's permission and assuming they are in possession of their passports, departing the country and applying for a new visa under the new employer's sponsorship. This cumbersome process deters many migrants from leaving their employers, even in cases of maltreatment or abuse. Furthermore, many migrants choose to abscond and remain in the country without valid immigration status. Migrants wishing to change employers should be granted a grace period after the termination of their employment in order to seek a new sponsor, which would decrease the number of illegal workers in the country. This would reduce the amount of costs to migrants and in turn, reduce their overall debts. Furthermore, in cases of disputes between employers and employees, workers should be allowed to seek employment while pursuing claims against employers. Currently, workers who are found guilty of absconding or working illegally are taken to detention centres where they await eventual deportation, thus depriving them of employment and thus, a means to earn a living. The ability to seek employment would allow migrants to identify better employment opportunities and facilitate the process of changing employers. By granting a grace period that provides an extension on their visa, they are legally able to remain in the country to pursue their claims. Otherwise, if their status is illegal, and they are unable to financially support themselves throughout the duration of their claim, the right to recourse becomes futile. Under the current sponsorship system, migrants who wish to leave their employment must obtain an exit permit from their sponsor and in cases where this is not granted, migrants are classified as illegals and if found, placed in detention centres. A grace period would eliminate the need for exit visas, as migrants would not be tied to one employer, and would be able to seek employment while awaiting a verdict on their claims. Labour-exporting countries should also include grace periods and provisions regarding deportation in bilateral agreements and MOUs, as this would help minimize the time spent in detention. It is important for governments to recognize the differences in various types of illegal migrants in order to better implement protection measures. Special consideration, for example, should be given for victims of maltreatment or abuse who have absconded from their employers in order to facilitate their transition from illegal to legal migrants. In 2019, the Walk Free Initiative reported that Kuwait is one Arab state that had "significant gaps in services for some victims of modern slavery...domestic workers, or forced labour victims."<sup>2</sup> Like most countries in the region, Kuwait does not have a special, independent rapporteur to monitor the government's response to the maltreatment of migrants. More needs to be done to identify victims of slavery or trafficking so that they have access to proper support services. A national committee should be established that includes members of NGOs, civil society, as well as academics, and that is led by a designated commissioner to develop and monitor the implementation of national laws and policies and ensure that they are in line with international conventions.

In addition, despite laws that allow migrant workers one day of rest per week, many employers severely restrict the movement of their employees, by either denying them a day of rest or confining their day of rest to the employer's home. Though the law is clear on a

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<sup>2</sup> Minderoo Foundation's Walk Free Initiative (2019). *Measurement Action Freedom*. Australia, p.74.

mandatory rest day, it does not state how or where that day may be spent. As a result, employers are free to decide whether or not workers may leave their place of employment, even on rest days. Restrictions such as these hinder the independence of workers and constitute forced labour, especially for domestic workers who work in their places of employment. Unskilled migrant workers should be granted the same employment privileges as other migrant workers, who are normally granted two days of rest (weekend), and public holidays. Statutory holidays such as these should be extended to migrant workers, aligning their labour rights with those of other workers in the country. In Hong Kong, for example, mandatory holidays such as New Year's Day are granted to domestic workers, in addition to their annual leave. In this way, domestic workers are equal to other employees for whom mandatory holidays are allocated. Measures such as this are consistent with international standards and should be included in Kuwait's labour laws. This would help change the present perception that domestic workers are not real employees, but servants at the beck and call of their employers. Including provisions for mandatory holidays as part of a domestic worker's contract and making it illegal for employers to deny them those rights may deter employers from restricting the movements of these workers. On the other hand, proper enforcement and monitoring mechanisms are needed in order to prosecute employers for any breach of contract, which is problematic as domestic workers are employed in the home, and the home is not considered a workplace. Domestic workers must have proper access to grievance mechanisms such as hotlines in order to lodge formal complaints regarding their condition or treatment. Once a formal complaint has been lodged, a designated task team may investigate the situation and issue a citation if necessary. The complaint would be entered into a database that will help law enforcement and the Domestic Workers Department identify possible victims of trafficking or forced labour.

National governments in both labour exporting and labour importing countries play a crucial role in the lives of migrants, both in their home country, and abroad. Increased knowledge and awareness for migrants aids in their acclimation in a foreign country. Potential migrants need to be armed with certain information in order to make the most of their labour experience in Kuwait. This information may include a brief background or history of the country of migration, as well as its culture and language. As Anti-Slavery International states, "the availability of information to migrant workers throughout their stay in the destination country, irrespective of their immigration status, is crucial in preventing abuses, including forced labour outcomes of trafficking."<sup>3</sup> When possible, migrants, especially domestic workers, should enrol in training courses that teach basic housekeeping skills, as well as language classes so as to learn basic phrases that may assist in better communication with the employer. Migrants should also be aware of the economic, political, and social situation in their destination countries and what impact those issues may have on their experience. It is also important that migrants are fully aware of their rights under the legal system of the destination country. Workers should have an understanding of the immigration and employment laws and regulations of the country, especially those that directly impact them. Further information that may prove useful relates to the role of consulates and embassies and other migrant organizations that may be

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<sup>3</sup> Anti-Slavery International (2006). *Trafficking in Women Forced Labour and Domestic Work in the Context of the Middle East and Gulf Region*, p.40. [Online] Available from: [http://www.antislavery.org/wp-content/uploads/2017/01/traffic\\_women\\_forced\\_labour\\_domestic\\_2006.pdf](http://www.antislavery.org/wp-content/uploads/2017/01/traffic_women_forced_labour_domestic_2006.pdf)

helpful in difficult situations. In cases where migrants wish to leave their employers, they must be aware of their rights and where they are able to seek assistance. In recent years, the government of Hong Kong, with the aid of non-governmental organizations, has sought to provide migrant workers, especially domestic workers, wishing to work in Hong Kong with an informational guide on a variety of issues. The guide contains a general introduction to the city, as well as information related to employment rights, job termination, recruitment agencies, health care, cultural and social activities, local currency and financial institutions, places of worship, public services such as postal offices, embassies, consulates, NGOs and other migrant organizations. The guide also contains information about legal services, helplines, a list of useful phrases in Cantonese, as well as tips on employee-employer relationships. Guides such as this provide migrants with information that may guide them throughout their employment. The more information that is provided to migrants, the more equipped they are in managing their employment opportunities. By understanding their rights under the legal system of their countries of destination, workers are better able to identify instances that breach the terms of their contracts, and have access to means of redress.

### ***6.3 Recommendations for Recruitment Agencies and Subagents***

National governments also have an obligation to monitor recruitment agencies in order to safeguard the rights of unskilled foreign workers. Recruitment companies play a key role in the experience of migrants and should be supervised to ensure their activities are not in violation of labour laws. Currently, only licensed employment agencies are permitted to recruit migrant workers and penalties exist for agencies that operate without a valid license or if agencies are found to have charged workers recruitment fees. Migrants should be aware of the legal limits on recruitment fees in their own country, as well as their country of destination. Recruitment agencies, agents, or subagents that are found to be in breach of labour laws, should be penalized, and a black list should be created for repeat offenders. This list should be made available for all employers and sponsors, including those employing domestic workers, as well as potential employees. Additionally, the monitoring of subagents is important in implementing reforms in both labour-exporting and labour-importing countries. Although recruitment agencies are required to be licensed in Kuwait and in most other labour-exporting countries, there are no laws requiring licensed subagents. As a result, many employment agencies rely on subagents to recruit migrants in rural areas, and pay them commissions, which in turn, results in more costs to migrants. States need to work together in order to ensure that intermediaries such as subagents are licensed, monitored and given formal government approval.

Migrant workers wanting to complain about agencies or agents, should be made aware of complaint mechanisms that exist, and ways to seek redress, both in Kuwait, and in their home countries. Employers should also be monitored to ensure that they do not extract recruitment fees from workers and employers who are found in violation of this law should be penalized. Also, NGOs and human rights organizations within Kuwait should take a more proactive role in identifying companies, agencies, individual employers, as well as government officials who have abused workers' human and labour rights. Naming and shaming constitutes an important step in raising public awareness about the situation. The names of these companies may be put on a list in order for future migrants to know the

risks involved in working with such companies. Kuwaiti companies that operate on an international basis, as well as foreign companies operating within Kuwait are obliged to obey international standards of labour, and should take a more hands-on role in making sure that their company, as well as any related agents that they work through, operate in a legitimate, legal and transparent manner. This means informing foreign laborers of their labour rights under Kuwaiti law, prior to arrival, so that migrants have all the information they need to make informed choices. Publicity campaigns help in bringing the issue to the forefront of the public's attention, making them more aware of the particulars of labour importation and reliance.

In addition, recruitment agencies should take proactive measures to implement regulations among themselves that aim for fair recruitment according to international labour standards. The role that agencies, agents and subagents play in the lives of migrant workers is considerable and the success of recruitment agencies should be measured less by profits and more by the reliable employment placements that add to the quality of the lives of migrant workers and their families. Accreditation systems for licensed recruitment agencies should contain information regarding knowledge of current immigration laws in both labour-exporting and labour-importing countries, without which it would be difficult for agencies to feign ignorance concerning certain laws. Recruiters should also be liable for practices such as contract substitution, so that migrants who have to suddenly leave their employers may have recourse to the courts in their home countries.

#### ***6.4 Improvements to Access Grievance Mechanisms***

In cases of abuse or maltreatment, the Kuwaiti government should provide legal aid in the form of representatives who are able to explain the legal system and its procedures. Cases of absconding should be treated individually in order to better understand the circumstances leading to the employee fleeing the employer. When workers are unable to recover their passports, the government should issue temporary travel documents so as to reduce the amount of time workers spend in overcrowded detention centres or shelters. Also, collecting statistical information on the number of complaints by unskilled foreign migrants and the outcome of those complaints would help in better assessing the situation and finding solutions to persistent problems. HRW suggests that Kuwait "collect and publish statistics on a yearly basis regarding the number and type of complaints filed with both courts of law and the Domestic Workers' Department (or any authority that assumes supervision of domestic labour) as well as on how these complaints are resolved."<sup>4</sup> This information would also enable NGOs and various other human rights and labour organizations to improve their work with migrants by identifying key areas that require modification. This would also enable the government to better identify possible cases of trafficking, forced labour or slavery. Currently, there is a lack of access to grievance mechanisms for those trapped in those situations, and who are unable to file complaints or leave their place of employment.

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<sup>4</sup> Human Rights Watch (2010). *Walls at Every Turn: Abuse of Migrant Domestic Workers Through Kuwait's Sponsorship System*. [Online] Available from: <https://www.hrw.org/report/2010/10/06/walls-every-turn/abuse-migrant-domestic-workers-through-kuwaits-sponsorship-system>

For many migrants, domestic workers especially, the police station is usually the first place they seek help in instances of abuse, maltreatment or other types of conflicts with their employers. As previously mentioned, police stations are not equipped to handle many of these cases, and many times, migrants are treated in a dismissive or aggressive manner. The Kuwaiti government can do more to improve facilities in police stations that will aid staff in handling cases linked to unskilled foreign workers. First of all, female police officers should be present at all police stations, and should be trained in dealing with migrants and domestic workers specifically. Counsellors, translators, medical, and legal staff should be on hand to assist workers, and administer treatment. This way, migrants are better able to understand their situation, as well as any charges that may be levelled against them. Training programs for officers should be implemented in order to sensitize and educate staff on the best ways to handle situations adequately. These protocols would better enable police and immigration authorities to assess each case individually, as opposed to grouping all runaway workers as absconders. It is important, for example, to identify trafficking victims early, respond and refer the matter to the appropriate government authority. Crucially, officials in police stations should be prohibited from returning runaway workers to their employers without following certain protocols. Migrant workers rely on government authorities in cases of dispute resolution and in order to ensure justice in these cases, it is vital that authorities are properly equipped to identify and handle such cases.

The Kuwaiti government can protect the labour conditions of domestic workers by enacting legislation that would allow government inspectors to monitor the living and working conditions of these workers. As previously mentioned, there is a lack of government supervision regarding domestic workers, mostly due to the fact that their work takes place in private domiciles. HRW has suggested that Kuwait authorize inspectors to enter homes in order to monitor domestic workers,<sup>5</sup> though this is a topic that invokes debate. Such legislation will be difficult to pass, due to the sanctity of the private home within Kuwaiti culture, but it will help provide equal protection to domestic workers as other unskilled foreign workers. As stated previously, a task force appointed through the Domestic Workers Department should be created, composed of members of NGOs, civil society, academics, as well as government workers. This task force would have the capacity to investigate complaints and issue citations for employers found in breach of the law. Embassies should also be closely involved, as they are usually the first port of call for migrants seeking aid. Through embassy contacts or hotlines, this task force may investigate claims of abuse or maltreatment and act accordingly. This way, there would be a legitimate reason for government officials to enter the private homes of employers. Employers who are found in breach of the conditions of the labour contract should face penalties for violating the law.

The Kuwaiti government should also increase the services provided for unskilled foreign migrants. As discussed in Chapter 3, currently, there is a single government shelter for domestic workers and the conditions of entry are somewhat rigid, which excludes many other workers seeking refuge from their employers and puts a massive strain on individual embassies. Another shelter for all domestic workers, regardless of their immigration status,

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<sup>5</sup> Human Rights Watch (2006). *Swept Under the Rug: Abuses Against Domestic Workers Around the World*. [Online] Available from: <https://www.hrw.org/sites/default/files/reports/wrd0706webwcover.pdf>

should be created in order to accommodate the many runaway and absconding workers. The shelter should employ staff that is specially trained to deal with traumatized or abused women, with facilities for medical check-ups and legal aid. The Kuwait Society for Human Rights (KSHR) has established a hotline for migrant workers, available in five languages (Arabic, English, Tagalog, Hindi and Urdu), managed by a team of experts in various legal fields. The government should also launch its own hotline for complaints or questions, in order to provide aid for migrants. All domestic workers arriving to Kuwait should be issued with a guide that includes the location and telephone numbers of the relevant embassy or consulate, as well as the government shelter.

Much of the maltreatment of unskilled foreign workers, domestic workers especially, exists due to long-standing attitudes regarding manual labour, as well as an underlying mistrust of foreigners. Raising awareness about the issues surrounding domestic work would help people understand the hardships involved in migration. This would also help change stereotypes and allow people to recognize the work that domestic workers perform and the difficulties they face. In addition, the government should place a limit on the number of domestic workers each household may employ over the course of one year. This measure would help ensure that employers take extra care during the recruitment process in order to hire a worker that is a good match with the required job. If employers placed a higher premium on their employees, perhaps they would make more of an effort at keeping workers satisfied. “In turn, this would protect workers from the ‘disposable people’ syndrome in which many employers have little incentive to cultivate a decent employment relationship because of an abundant labour supply.”<sup>6</sup> The government, along with the media and NGOs, can play an important role in publicizing the issue to the public. Public information campaigns aimed at educating the public would be a significant step in reducing the incidents of maltreatment and abuse.

As Kuwait forges its way into the modern arena of international relations, its native population is forced to deal with issues regarding their lifestyle, work, home, family, society and national identity. Often, there is the temptation to resort to past beliefs and ways of life, in order to preserve a traditional lifestyle considered safer and sensible in a fast-changing modern world. National and personal wealth have allowed many modern Kuwaitis to enjoy educated, well-endowed lives however, long-held customs and attitudes cannot be changed overnight and will require a great deal of work and effort.

### ***6.5 Recommendations for NGOs***

In addition, more allowance must be given to NGOs and human rights societies for them to actively participate in the politics of the country, so as to establish themselves among other political lobbyists and activists.<sup>7</sup> NGOs and other such societies should study, investigate, and monitor the working, living, and housing conditions of these laborers in order to publish factual, detailed and impartial reports to be made available to the general public, as well as to international associations. It is important for internationally recognized organizations such as the ILO, Human Rights Watch, and Amnesty International, to

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<sup>6</sup> KAFA (enough) Violence and Exploitation (2012). *Policy Paper on Reforming the “Sponsorship System” for Migrant Domestic Workers: Towards an Alternative Governance Scheme in Lebanon*, p. 42

<sup>7</sup> Political lobby groups are not legally permissible in Kuwait, although they operate on an informal basis.



become more involved with local NGOs, as they have established reputations for standards of research, as well as the necessary resources required for in-depth studies. At the same time, their reports carry considerable weight and may influence countries into taking more action regarding the labour rights of unskilled foreign workers in Kuwait. Collaboration between NGOs and governmental institutions, recruitment and employment agencies, as well as international organizations, allows the formulation of comprehensive policies regarding migrants.

Recently, NGOs have taken a more active role in raising awareness to abuses against unskilled foreign migrants. The KSHR, for example, works closely with the Dutch Embassy in Kuwait to transmit information concerning migrant workers. In 2017, KSHR launched a website, [togetherkw.org](http://togetherkw.org) providing information for migrant workers regarding their rights under the Kuwaiti law. Moreover, KSHR, in partnership with the Department of Domestic Labour in the Ministry of Interior and the Dutch Embassy, launched a booklet containing information in several languages aimed at raising awareness of local laws among this group of workers. This booklet is free and available at airports, clinics and local churches, though it does not contain advice in cases of maltreatment, such as contact information for embassies, consulates or the Domestic Labour Department. This kind of information is vital for migrant workers and should be included in all booklets or information packets. In addition, HRW recently launched a campaign in Lebanon and Kuwait aimed at raising awareness about the rights of domestic workers. The campaign, titled “Put Yourself in Her Shoes” depicts photos of local women dressed in uniforms worn by housekeepers and nannies and focused on issues such as abuse and maltreatment. Unlike most campaigns aimed at governments, this campaign’s intended audience is families and women in particular, as they are usually responsible for the supervision of domestic workers. Furthermore, the IOM has worked closely with Kuwait to provide training for government employees working with migrant workers. In past years, the IOM has held workshops on shelter management training,<sup>8</sup> managing temporary workers,<sup>9</sup> counter trafficking measures,<sup>10</sup> awareness campaigns,<sup>11</sup> and other subjects.<sup>12</sup> Workshops and training opportunities such as these are important in ensuring that the people tasked with dealing with migrant workers are properly qualified to do so.

## ***6.6 Recommendations for Embassies and Consulates***

There are also steps that embassies and consulates can take to ensure that the arrival and work experience of unskilled foreign laborers is up to international labour standards. Embassies should work with the relevant ministries in Kuwait to promote adherence to these standards. To an extent, several embassies, such as those from Bangladesh and the Philippines already have such programs in place. The Bangladeshi Embassy in Kuwait, for

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<sup>8</sup> IOM (2008). Training Course on Shelter Management, Press Release.

<sup>9</sup> IOM (2009). Kuwait Hosts Workshop on Managing Temporary Foreign Labour. [Online] Available from: <https://www.iom.int/news/kuwait-hosts-workshop-managing-temporary-foreign-labour>

<sup>10</sup> IOM (2009). Capacity Building & Awareness Raising on Counter Trafficking in Kuwait.

<sup>11</sup> IOM (2017). IOM Launches “Together Against Trafficking in Persons” Campaign in Kuwait. [Online] Available from: <https://www.iom.int/news/iom-launches-together-against-trafficking-persons-campaign-kuwait>

<sup>12</sup> IOM (2009). Workshop on Training National Trainers on Expatriate Labour.

example, has worked with the Ministry of Social Affairs and Labour on standard documents that would guarantee both employer and employee's rights under the law. These documents include sample contracts, rules and procedures, as well as a list of responsibilities for both employee and sponsor (see Appendices 5-7). Documents such as these represent an important step in improving the experience of foreign workers. The Philippine embassy has also instituted education measures aimed at explaining the culture of Kuwait, as well as the labour circumstances in the country. Although most of the training courses are offered to domestic workers, there are also educational tools available for other unskilled migrants, including pamphlets specifying labour rights and other important information. These measures encourage the smooth transition of workers from their native countries and promote full disclosure in order for the migrant to decide whether or not to seek employment in Kuwait. Embassies offer services such as legal counselling, and representation in cases of criminal charges against their citizens however, there are more proactive measures that should be taken. Embassies and consulates should closely monitor the situation of their citizens in Kuwait and work to alleviate problems. Training programs and courses are helpful in providing the necessary tools to migrants, and help ease the culture shock that often comes with working abroad. Periodic reports should be submitted to the Ministry of Social Affairs and Labour, in order to collaborate with staff on addressing certain issues. Domestic workers make up the majority of those seeking shelter at embassies, therefore, systems should be put in place to address the growing numbers. All embassies I visited were understaffed, and in need of resources to accommodate the number of workers seeking assistance or shelter.<sup>13</sup> Shelters themselves were often overcrowded, with large numbers of workers awaiting pending cases. Most embassies hire personnel who are trained to provide counselling and legal services to workers, however, their numbers are few and their resources limited. With the necessary resources, embassies would be able to exercise more initiatives aimed at protecting workers. Of course, this would have to be done with cooperation from local police authorities. Additionally, a system should be put in place to monitor workers who have previously contacted the embassy for assistance with employer issues. Embassies themselves need to keep a list of employers or companies that have received complaints in order to report data to their home and host countries. It is crucial that embassies work in conjunction with ministries and labour authorities in identifying problems and pursuing remedies.

### ***6.7 International Treaty and Convention Ratification***

On the international level, the Kuwaiti government can improve the situation of unskilled foreign workers by ratifying certain ILO Conventions, such as the Equal Remuneration Convention (No.100), which promotes equal pay for equal work; the Private Employment Agencies Convention (No.181), that sets to discourage discrimination in the hiring, and employment of workers; the Revised Migration for Employment Convention (No.97); the Migrant Workers (Supplementary Provisions) Convention (No.143), which promotes equal opportunity; and the Domestic Workers Convention (No.189). Conventions such as these would hold the government accountable in ensuring that the labour rights of all migrants in Kuwait are protected. It is also important for labour-

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<sup>13</sup> Personal interview with Ms. Swarnageetha, Legal Help Desk Coordinator, Indian Embassy, 2010.

exporting countries to ratify these conventions, although currently, only the Philippines has made an effort ratifying some conventions.

The UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (referred to as the Migrant Workers' Convention) is also an important convention that Kuwait has yet to sign despite the ratification of the Convention by Bangladesh, Sri Lanka and the Philippines. This Convention "is currently...the most comprehensive and detailed legal treaty to address the rights that governments worldwide need to tackle in any attempt to promote integration and cohesion in their societies."<sup>14</sup> By identifying the vulnerability of migrant workers who are often exploited by the migration system in both their own countries as well as countries of destination, this Convention seeks to impart protections for this group of workers. Its aim is to promote norms that will ensure the human rights of migrant workers and their families and it contains provisions for the equality of treatment between male and female migrants, nationals and non-nationals, as well as documented and undocumented workers. In addition, it clarifies the responsibilities of sending and receiving states, and prohibits "distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth, or other status."<sup>15</sup> Distinction or discrimination is clearly present in the Kuwaiti labour law, with unskilled foreign migrants occupying the lower rungs of the labour hierarchy. It is important to note that "non-discrimination does not prohibit all preferential treatment for citizens, only those which are unjustified or unreasonable."<sup>16</sup> Additionally, in 1996 Kuwait ratified the International Covenant on Civil and Political Rights (ICCPR), which also contains a provision against discrimination. Article 26 states, "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law,"<sup>17</sup> therefore, although the protections against discrimination in the Migrant Workers' Convention are not new, they do offer a more comprehensive approach. Only three labour-exporting countries discussed in this thesis have ratified the ICCPR: the Philippines (1995), Sri Lanka (1996), and Bangladesh (2011). Possible reasons for non-ratification of this Convention may be an increase of obligations that States must adhere to, as well as a fear that these obligations may deter labour-importing countries from hiring workers, as "countries fear they will lose markets if they ratify."<sup>18</sup> Under the Migrant Workers' Convention, several provisions relate to pre-departure services such as providing migrants with information, access to consular or embassy staff in cases of disputes, and the obligation to monitor recruitment agencies, which may be beyond the capabilities of certain countries such as Bangladesh. For labour-importing countries such as Kuwait, possible reasons for non-ratification revolve around socio-political and national attitudes towards migrant workers. Moreover, there is a lack of experts in areas of international law in many governmental organizations, whether they are

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<sup>14</sup> Fernand De Varennes (2003). *Strangers in Foreign Lands: Diversity, Vulnerability and the Rights of Migrants*. UNESCO, p.19. [Online] Available from: <https://unesdoc.unesco.org/ark:/48223/pf0000146681>

<sup>15</sup> UN OHCHR (1990). International Convention on the Protection and Rights of All Migrant Workers and Members of Their Families. [Online] Available from: <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>

<sup>16</sup> De Varennes, *supra* note 14, p. 26.

<sup>17</sup> UN OHCHR (1966). International Covenant on Civil & Political Rights. [Online] Available from: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>18</sup> Robyn Iredale and Nicola Piper (2003). *Identification of the Obstacles to the Signing and Ratification of the UN Convention on the Protection of all Migrant Workers – The Asia Pacific Perspective*. UNESCO, p.4. [Online] Available from: <https://unesdoc.unesco.org/ark:/48223/pf0000139529>

in judicial courts or ministries and therefore, there is limited proficiency on the application of these conventions.

In addition to international treaties and conventions, bilateral treaties such as MOUs enable labour-exporting countries to compensate for shortcomings within the labour laws. For example, in the absence of a government hotline to provide aid for migrant workers, an MOU between Kuwait and the Philippines signed in 2018 includes “the activation of a 24/7 hotline for distressed Filipinos in need of assistance and the creation of a special police unit to respond to complaints.”<sup>19</sup> In addition, the MOU states that domestic workers are allowed to own and keep mobile phones. These provisions are not in the labour law, but their implementation would provide for increased protections for migrant workers. It is important that bilateral agreements such as these are enforced, even if they require the establishment of institutional structures that do not currently exist.

Ratification of these conventions however, does not guarantee an improvement in the lives of workers. Instead, a combined effort from various governments, international companies and businesses, NGOs and human rights organizations, as well as the international community, may help in improving conditions of foreign laborers by setting clear standards and penalties. At the same time, concerted efforts should be made to incorporate ratified international treaties and conventions into domestic legislation, and have frameworks in place to effectively apply those treaties. Even though abolishment of the sponsorship system has been discussed numerous times, it continues to exist. Mechanisms should be put in place to address “the particular monitoring and enforcement challenges that have rendered previous reforms ineffective in achieving greater protection for this sector.”<sup>20</sup> Labour-importing countries and labour-exporting countries tend to hold each other responsible for the abuses against migrant workers, without acknowledging that a migrant’s labour experience encompasses both home and migrant countries. Kuwait’s labour migration policies focus on reducing the inflow overall migrant workers, directing them to mostly unskilled sectors, and nationalizing the workforce, in order to maintain its generous welfare system. On the other hand, the migration policies of labour-exporting countries focus on increasing the outflow of migrant workers, in order to reduce unemployment and earn remittances. Although the labour migration policies of Kuwait and those labour-exporting countries it relies on are contradictory in many ways, both are based on decisions involving the number and type of migrants that are admitted, and the rights that are granted to them. Both home and destination countries need to be held accountable for the labour employment experience of unskilled migrants, as they both play an important role in whether that experience will be positive or negative.

Kuwait has made great strides in enacting a Domestic Workers Law (2016), the first of its kind in the region and which set standards regarding minimum wage, working hours, overtime payment, days of rest, annual leave and standardized contracts. Yet there is still much to be done. Abolishment of the sponsorship system would be an important step in extending the rights of migrant workers. This may prove difficult, however, due to the fact that, for most Kuwaitis, the sponsorship system is the only one they have ever known. In spite of news reports and increased international attention on the plight of migrant

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<sup>19</sup> Gulf News (2018). *Kuwait, Philippines Sign Deal to Regulate Domestic Labour*. [Online] Available from: <https://gulfnews.com/world/gulf/kuwait/kuwait-philippines-sign-deal-to-regulate-domestic-labour-1.2219791>

<sup>20</sup> *Walls at Every Turn*, *supra* note 4.

workers in the GCC, the debate surrounding abolition or reformation of the system remains largely personal. Fargues and Shah state,

Yet, for all this rhetoric and anxiety, for most citizens the debate over the *kafala* is much more personal and banal. Public opinion on reforming the *kafala* does not revolve around such esoteric concerns but those of any household: *How will reform affect me? Will my maid quit? Will my driver demand a higher wage?* In short, the debate over immigration reform evokes fear, anxiety and, most importantly, great uncertainty for the citizens of the Gulf. In the view of these local populations, the complex system of control essential to the *kafala* helps minimize security and cultural threats, while safeguarding their traditional values and basic economic interests.<sup>21</sup>

With these uncertainties, personal attitudes and beliefs need to be addressed along with economic and security issues. It is important to address such issues in order to gain a better understanding of the social aspects that contribute to Kuwait's heavy reliance on foreign labour. Moreover, proper enforcement of existing labour laws is important in encouraging and promoting standards of good practice. By granting migrant workers their full rights according to international standards, the government would be acknowledging the important role that unskilled foreign workers have played in the development of the country. Improvements in the treatment of unskilled foreign labour in Kuwait require the collective efforts of all GCC countries, in addition to support from the international community. This is not a regional problem affecting Kuwait, but one that affects the rest of the world. Increased awareness about migration and labour concerns will help educate the public about the circumstances of foreign laborers. Due to the complicated legal, social, and administrative issues involved, change will be slow, and will require a great deal of effort.

In the final analysis, the rights of unskilled foreign workers in Kuwait are infringed upon to an extent that can be classified as indentured labour or slavery. In the first place, the sponsorship system bestows upon nationals a great deal of control over migrant workers through various restrictions and constraints. In addition, the Kuwaiti government lacks the means to enforce existent laws, allowing corruption to flourish. Corruption has led to low public opinion regarding law enforcement, leading many to conclude that laws only apply to expatriates, while nationals pick and choose which laws to obey, many times without proper recourse. This creates inconsistencies within government policies, which may have adverse effects in the implementation process. Without the means to enforce constitutional orders and decrees, these laws cease to carry weight. Secondly, an important aspect in the discussion of labour rights in Kuwait is the social attitude of nationals. Their outlook regarding manual work remains negative and as long as certain fields of work remain restricted to expatriates, the attitudes of nationals are unlikely to change. In years to come, Kuwaitis will have to re-evaluate their ways of viewing manual labour so as to relieve the country's reliance on foreign workers. It is important for nationals to understand their relationship to the foreign workforce, and become educated about labour and migration issues. Furthermore, the establishment of

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<sup>21</sup>Philippe Fargues & Nasra Shah (2018). *Migration to the Gulf: Policies in Sending and Receiving Countries*. Gulf Labour Markets and Migration (GLMM), Gulf Research Centre, Cambridge, p.44.

technical schools and centres of education may help in encouraging young Kuwaitis to pursue different career paths than those involving business, trade or banking. At the same time, social attitudes regarding foreigners need to be addressed. It is crucial to understand what motivates Kuwaitis in order to gain a better understanding of the intricacies of the society as a whole. Increased awareness and education regarding these issues may help to build a new, more inclusive ethos to Kuwaiti society. One thing however, is certain- real and long-term change can only occur if Kuwaitis dedicate themselves to change in terms of labour supply. It is necessary that change arises from within the country, through its nationals, as this is the most effective way to promote change and progress. Although recognizing the presence of slavery in Kuwait may be shameful, it is a necessary step in acknowledging the situation as it currently exists, and taking steps to remedy this problem.

<b>EMPLOYMENT AGREEMENT FOR MANPOWER RECRUITED FROM BANGLADESH BETWEEN EMPLOYER &amp; EMPLOYEE</b>	
<p>This EMPLOYMENT AGREEMENT is made and entered into on the date of ....., by and between:</p> <p>The First Party (Hereinafter called as Employer):                      Name:                      Nationality:                      Civil ID No:                      Address:</p> <p>Telephone &amp; Mobile No:                      Fax No:</p> <p>The Second Party (Hereinafter called as Employee):                      Name:                      Nationality:                      Passport No:                      Permanent Address in Bangladesh:</p> <p>Whereas the Employer desires to employ the Employee in the Company                      .....                      ..... as                      ..... on the conditions set forth hereafter.                      And whereas the Employee agrees to work in conformity with the Employer's instructions at the assigned work place, in consideration of the mutual covenants herein contained, the Parties have agreed as set forth hereinafter:</p> <p><b>1. CONTRACT PERIOD OF EMPLOYMENT</b></p> <p>1.1) The CONTRACT PERIOD of Employment shall be 2 (two) years effective from the date of the Employee's arrival in Kuwait to the date of his/her departure there from.</p> <p>1.2) The CONTRACT can be renewed for a period on the terms and conditions both the parties agreed upon by written consent before 60 (sixty) days of the expiry of the CONTRACT.</p> <p><b>2. PROBATION PERIOD</b></p> <p>2.1) The Employee shall be subject to a probationary period of 90 (Ninety) days from the date of commencement of his/her duties.</p> <p>2.2) In case of the Employee is evaluated to be unqualified or unsuitable for the job he/she is recruited during the probation period, the</p>	



## Ministry of External Affairs

Government of India

[Home](#) › [Overseas Indian Affairs](#) › [Dialogues & Agreements](#) › [Model Contracts](#)

### Model Contracts

*(Details to be furnished in employment agreement)*

An agreement under sub-section (3) of section 22 of the Emigration Act r.w.r 15 of the Emigration Rules IPB3 shall provide for the following matters:

- Period of employment/place of employment
- Wages and other conditions of service
- Free food and food allowance provision
- Free accommodation
- Provision in regard to disposal or transportation to India, of dead body of the emigrant
- Working hours, overtime allowance, other working conditions, leave and social security benefits as per local labor laws
- To and fro air passage at the employers costs
- Mode of settlement of disputes
- Medical benefits
- Leave benefits
- Travel and transportation expenses
- Conditions for the termination of employment
- Provisions in regard to coverage of special risks including war
- Provisions in regard to remittances
- Provisions in regard to renewal of contract



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الصورة PHOTO		am HOUSE RECRUITMENT استقدام العمالة المنزلية "Placement"	
REF NO	ABP-0093	CONTACT NO	+63926996546
DATE	27-05-12		
POST APPLIED FOR	HOUSEMAID	الوظيفة	
MONTHLY SALARY	85 KD	الراتب الشهري	
CONTRACT PERIOD	2 YEARS	مدة العقد	
FULL NAME	[REDACTED]		
DETAILS OF APPLICATION		بيانات صاحب العمل	PASSPORT DETAILS
			بيانات جواز السفر
NATIONALITY	PHILIPPINES	الجنسية	NUMBER
RELIGION	CHRISTIAN	الديانة	FR4415908
DATE OF BIRTH	04 FEB 1968	تاريخ الميلاد	DATE OF ISSUE
AGE	44 YEARS OLD	العمر	10 JAN 2012
PLACE OF BIRTH	RIZAL CAGAYAN	مكان الميلاد	PLACE OF ISSUE
LIVING TOWN	RIZAL CAGAYAN	مكان السكن	DFA, TUGUEGARAO
MARITAL STATUS	MARRIED	الحالة الاجتماعية	DATE OF EXPIRY
NO. OF CHILDREN	5 CHILDREN	عدد الاطفال	09 JAN 2017
WEIGHT	48 KGS	الوزن	
HEIGHT	152 CM	الارتفاع	
COMPLEXION	FAIR	لون البشرة	
EDUCATION	HIGH SCHOOL GRAD	المستوى التعليمي	
KNOWLEDGE OF LANGUAGES		اجادة اللغات	
ENGLISH	انجليزي	ARABIC	عربي
POOR			
FAIR	✓		
EXPERT			
WORK EXPERIENCE		خبرة العمل	
COUNTRY/ البلد		PERIOD/ المدة	
BAHRAIN	HOUSEMAID	1999-2012	
تربية الاطفال	التنظيف	الطبخ	الغسل
BABY SITTING	CLEANING	COOKING	WASHING
✓	✓		✓
REMARKS She is 40 years old, married with 5 children. She is high school graduate. She worked as housemaid in Bahrain for 13 years. She speaks English and Arabic language. She can do all around household works such as washing, cleaning, ironing and babysitting. She promised to finish her 2 years contract.			
Hawally, Tunis St., Naser Al-Rumaih Complex Tel: 22652852/3/4/5 2265852/3 Fax: 22653852			





making the vehicle that appeared on the networking sites exit parts of the load from the back door << Latest News



OpenForm)

electronic passport  
if/EPStatus?OpenForm



Ministry of Interior 2018-  
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State of Kuwait  
visa/home\_a.do



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ights/HumanRights\_Ar.aspx



جواز  
طلب موعد اصدار جواز سفر

### Transactions of the General Directorate of Nationality and Travel Documents



#### First: Applications for Kuwaiti citizenship for the first time

- .1. Nationality of the original father + a copy of it .
- .2. Original birth certificate + a copy of it to the son
- .3. The civil card + a copy of it for the son and the father
- .4. The (last qualification received by the son (photo
- .5. Five non-immediate color images size 4 x 6
- .6. (Marriage of the Father on the Mother (picture
- .7. In the event of the death of the father, a letter must be submitted by the General Authority for Minors' Affairs and the Genetics Inventory

#### Second: Issuing the certificate of proof of nationality.

- .1. A parent's sexual image .
- .2. The presence of the father or his legal representative .
- .3. One personal photo of those over the age of ten .

#### Third: Applications for the addition of a newborn baby.

- .1. Copy of the nationality of the parent with his or her legal representative .
- .2. A certificate of birth and a copy of the original .
- .3. Copy of marriage contract in case of first child .

#### Fourth: Requests for Article 5 / Second paragraph for the treatment of Kuwaitis treatment of Kuwaitis until they reach the age of majority or nomination of them

- .1. Book submitted by the mother .
- .2. Nationality of mother + civil card .
- .3. Marriage contract .
- .4. Death certificate + inheritance in the event of death of the husband, and in case of divorce bring the certificate of divorce .
- .5. Marriage certificate .
- .6. Birth certificates of children + passport copy + civil ID in case of identification of father's nationality .
- .7. The sequence of the sons .
- .8. Statistical series of children .
- .9. Attendance of the mother to sign .
- .10. witnesses + pictures of their nationalities + civil ID (2) .

#### Fifth: The documents required for the nationality applications of the wife to her father for incorporation or naturalization

- .1. Copy of the father's nationality and a copy of the civil ID .
- .2. Copy of the nationality of the husband and a copy of the civil ID .
- .3. A copy of the marriage contract and a signed book from the husband granting his wife citizenship .
- .4. Copy of birth certificate .
- .5. The number of (5) color picture measuring (4 x 6) + passport .
- .6. Attendance of the parent with the husband to sign the transaction .
- .7. Attendance of the parent with the husband to sign the transaction .
- .8. In the case of death of the father or husband, the inheritance and death certificate and the presence of one of the brothers shall be requested with his civil card

#### Sixth: المستندات المطلوبة للحصول على الجنسية الكويتية استنادا لجنسية الإثفاء بالتأسيس

أولا : المستندات المطلوبة من صاحبة العلاقة :

- .1. شهادة ميلاد او تقدير السن .
- .2. عقد الزواج .

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(showpage.aspx?objectID=  
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{033D0B458358  
Official Portal  
(http://www.e.gov.kw  
How to complete your  
(transactions (services.aspx  
Electronic models  
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Security Awareness  
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{D93A7CD5-8FCE-420E-9D1E-  
{3DC36F9B02CD  
Ministry sectors  
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Electronic Publications  
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Ministry vehicles  
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Contact us



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Modifying a telecom company to  
serve text messages

((SMSSubscriptions/Subscribers/SMSRegister.aspx



(https://www.moi.gov.kw/ssgd)

General Administration of  
Security Systems

((https://www.moi.gov.kw/ssgd

**RULES AND PROCEDURES**  
**RECRUITMENT OF MANPOWER FROM BANGLADESH**  
**FOR**  
**KUWAIT**

**General Rules:**

1. All the man power recruiting companies/Individual Companies/Agent in Kuwait and in Bangladesh must apply to the Bangladesh Embassy in Kuwait with a demand letter properly attested by the Chamber of Commerce and Ministry of Foreign Affairs of State of Kuwait, where every detail of job description and offerable facilities for recruitment are to be mentioned. No Companies/Agents shall be eligible to apply for recruitment of manpower without proper and valid license. For Individual Sponsor, he/she must apply to the Bangladesh Embassy in Kuwait through a licensed Agent for the recruitment of house hold workers.
2. Every single visa must be supported by a **CONTRACT** (sample is attached) where every offerable facilities must be declared by the company according to the Labour law & and law of Kuwait.
3. Every **CONTRACT** must be in duplicate and signed by the Owner/Authorized officer of the concerned company and concerned Agent/Attorney of the Agent and it is to be submitted to the Embassy of Bangladesh in Kuwait for authentication. This **CONTRACT** paper needs to be attested by the Ministry of Foreign Affairs of State of Kuwait before submitting to the Embassy of Bangladesh in Kuwait. After attestation from the Embassy of Bangladesh in Kuwait, every individual **CONTRACT** paper must be sent for signing of the incumbent and must be submitted to the Kuwaiti Embassy in Bangladesh for authentication.
4. Each interested and selected worker's photocopy of Passport (First 5 pages) and 2 (Two) colored Passport size recent photographs must be submitted to the Embassy of Bangladesh along with the individual Visa and **CONTRACT** paper signed by the company/sponsor (duly attested by the Ministry of foreign Affairs, State of Kuwait) for attestation by the Embassy of Bangladesh in Kuwait.
5. All Individual Companies/Agents must sign one **UNDERTAKING** letter in English and Arabic language with the Embassy of Bangladesh in Kuwait describing the facilities to be provided to the employee and the personal liability of the employer, as per prescribed form supplied from the Bangladesh Embassy. This **UNDERTAKING** letter must be attested by the Ministry of Foreign Affairs of State of Kuwait.
6. The minimum age and Minimum wage/monthly salary must be as per schedule shown below:
  - a. The minimum age for every individual worker is to be twenty-five years old;
  - b. The entry level minimum monthly salary is to be at least 50.000 Kuwaiti Diner with a provision of yearly increment;

***\* Any kind of salary deduction on account of placement fee, Residence (Iqama) and other fees is strictly prohibited. Any such deduction would be treated as violation of CONTRACT and subjected to appropriate legal action.\****

**UNDERTAKING OF THE EMPLOYER  
FOR RECRUITING WORKERS FROM  
BANGLADESH**

I,.....bearing  
Civil ID No: ....., the owner of  
.....  
Address:.....  
Telephone No: ..... (Office),  
Telephone No: .....(Residence), do  
hereby declare and guarantee that,

- a) All the workers to be recruited to my/our Company shall be provided with proper job and facilities for the Project (Name of the Project:....., Name of the Ministry/Government office: .....)  
inside Kuwait only with Work Visa (Article 18);
- b) I/We also guarantee and give assurance that:
  - i) The Company shall abide by the terms and conditions of the Agreement signed with the workers and shall not change any terms or conditions without the consent of the Embassy and the Worker and any such changes without the consent of the Embassy and the Worker shall be considered null and void;
  - ii) The minimum wages/salary of each worker would be no less than 50.000 (fifty) Kuwaiti dinner with a provision of yearly increment;
  - iii) The Company shall provide appropriate and standard accommodation to the workers according to the labour law of the State of Kuwait;
  - iv) The Company shall provide Air ticket free of cost for bringing worker from Bangladesh and also provide Air ticket free of cost every after 2 years of work and after the completion of work contract;
  - v) The Company shall arrange to receive the worker in the Airport after his/her arrival;
  - vi) The Company shall provide appropriate transportation free of cost for the workers to go to their work place and to get back to their accommodations;
  - vii) The Company shall fix the residence for the workers free of charge within one month from the date of their arrival in Kuwait;
  - viii) The Company shall pay salary/wages

**UNDERTAKING OF THE AGENT  
FOR RECRUITING WORKERS  
FROM BANGLADESH  
FOR COMPANIES BASED IN KUWAIT**

I,.....bearing  
Recruiting License No: ....., the owner of  
.....  
....., Address in  
Bangladesh:.....  
....., Recruiting License No:  
.....valid up to:....., Telephone  
number in Bangladesh: .....(Office),  
.....(Residence), Fax number in Bangladesh:  
.....do hereby declare and guarantee  
that.

- a) All the workers to be recruited by my/our Company shall be provided with proper job and facilities for the Project (Name of the Project:....., Name of the Ministry/Government office: ..... inside Kuwait only with Work Visa (Article 18);
- b) I/We also guarantee and give assurance that, I/We shall abide by the terms and conditions of this UNDERTAKING signed with the Embassy of the People's Republic of Bangladesh, Kuwait and shall be liable to the followings:
  - 1) I/We shall recruit suitable candidate for the.....according to the Demand of .....
  - 2) I/We undertake to take all the responsibilities to take good care of the workers recruited by my/our Company in case of need and shall provide shelter and food in emergency to the worker and shall arrange repatriation at my/our expenses of the workers when needed;
  - 3) I/We undertake to take all the responsibilities to repatriate the worker at my/our expense if the worker is evaluated to be unqualified or unsuitable for the job he/she is recruited during the probation period and if the Employer terminates the worker for disqualification.
  - 4) I/We undertake to submit photocopy of the Passports along with 2 (Two) Passport size recent photograph of the workers to the Embassy before processing for VISA for the workers;
  - 5) I/We undertake to arrange registration of the workers within first 15 (fifteen) days of their arrival in Kuwait;

## CONTRACT OF EMPLOYMENT FOR DOMESTIC HELPERS FORM SRI LANKA IN THE MIDDLE EAST COUNTRIES - PRIVATE RECRUITMENT

### عقد عمل لعمال المنزلية السري لانكية في دول شرق الأوسط - توظيف خصوصي

This employment contract is executed and entered into by and between:

هذا الإتفاق بين كل من :

A. Employer : .....  
Nationality : ..... ID. No: .....  
Home Address: .....  
P.O. Box : ..... Home Tel. No: .....  
AND  
B. Employee : .....  
Job Description : .....  
Civil Status : ..... Passport No: .....  
Address : .....

أ. صاحب العمل : .....  
الجنسية : ..... رقم الهوية : .....  
عنوان السكن : .....  
صندوق البريد : ..... رقم الهاتف : .....  
و  
ب. العامل / العاملة : .....  
الحالة الإجتماعية : .....  
نوع العمل : ..... رقم الجواز : .....  
العنوان : .....

Voluntarily binding themselves to the following terms and Conditions:

ارتباطاً بأنفسهم على الشروط الآتية:

1. Site of Employment shall be the residence of employer. The Embassy of Sri Lanka / Consulate shall be informed of any change of residence within seven (7) days.
2. Contract Duration: Two (2) years inclusive of ninety (90) days probation period commencing from employee's departure from the point of origin to the site of employment.
3. Monthly Salary ..... to be paid at end of each month. If requested by her the sponsor should help the Housemaid to remit the salary into a Bank Account.
4. Working hours of the employee shall not exceed twelve (12) staggered hours per day.
5. Employer shall provide free passage from Sri Lanka to the site of employment and upon expiration or termination of contract due to no fault of employee from the site of employment back to Sri Lanka.
6. The employer shall ensure that the resident visa / work permit for the employee is obtained when due without delay at the expense of the employer.
7. The employer shall provide the employee free of charge suitable and sanitary living quarters as well as adequate food.
8. The employer shall provide all medical services including hospitalization expenses, medicine, etc, free and also winter clothing whenever outside temperature is below 20° C.
9. In the event of death of the employee during the term of this contract, the Sri Lanka Embassy / Consulate shall be immediately informed and her remains and personal belongings shall be repatriated to Sri Lanka at the expense of the employer. In case the repatriation of remains is not possible the same may be disposed of upon prior approval of the employee's next of kin and the Sri Lanka Embassy / Consulate.
10. a. Termination:  
The employer may terminate the employee's contract of employment for any of the following just causes: serious, misconduct or willful disobedience by the employee of the lawful orders of the employer or immediate household members in connection with her work gross habitual neglect by the employee of her duties, violation of the laws of the host country. The employee shall pay for the return air ticket to Sri Lanka. The employer may also terminate this contract.

1. سيكون موقع العمل في منزل صاحب العمل وإن كان تغير في موقع العمل فستعلن إلى السفارة أو القنصلية السري لانكية خلال (7) أيام.
2. أن تكون مدة العقد بستين شاملة مدة التجريبية بتسعين (90) يوماً ابتداءً من تاريخ المغادرة من المنشأ إلى موقع العمل.
3. الراتب الشهري يدفع بصاحب العمل في نهاية كل شهر بمبلغ و قدره ..... ، لو طلب العامل كفيله بتحويل المبلغ إلى حساب البنك فيساعد إياه في هذا الشأن.
4. ساعات العمل لا تتجاوز 12 ساعة متهادية لليوم.
5. إن صاحب العمل ليوفر تذكرة الذهاب مجاناً من سري لانكا إلى موقع العمل وكذلك للإياب من موقع العمل إلى سري لانكا وذلك على إتمام مدة الإتفاقية أو عند الاستقالة التي ليس من غلط العامل.
6. سيضمن صاحب العمل بحسابه الخاص لحصول العامل دفتر الإقامة و رخصة العمل بدون أي تأخير من جهته.
7. إن صاحب العمل يوفر للعامل السكن مجاناً صالماً ونظيفاً وكذلك يوفر غذائه.
8. صاحب العمل يوفر له كل خدمات الصحية مجاناً شاملة مصاريف العلاج في المستشفى والنواء وغيرها وكذلك لباس البردية في حالة الحرارة الخارجية أقل من 20 درجة الحرارة.
9. في حالة وفاة العامل أثناء مدة الإتفاقية سيتم الإفادة فوراً إلى السفارة / القنصلية السري لانكية بدولة التوظيف وسيتم ترحيل جثمانه وكذا أمتعة الشخصية إلى بلدة (سري لانكا) على حساب صاحب العمل. وإذا كان غير ممكناً ترحيل الجثة فتدفن في دولة التوظيف بموافقة من أقرب أولياء المتوفى وبموافقة السفارة / القنصلية بدولة التوظيف.
10. أ - إنتهاء الخدمة:  
يتم إنهاء خدمة العامل لأسباب الآتية : سوء السلوك ، والتمرّد عمداً من أداء أوامر صاحب العمل أو أوامر أعضاء منزله وأن هذه لتؤذن متصلة دوامة العادية للعامل. وخرقة قوانين بلاد التوظيف وفي هذه الحالات يتحمل العامل تذكرة رجوعه إلى سري لانكا وكذلك لصاحب العمل إمكانية إنهاء العقد العامل لأسباب الخاصة بالصحة بعد دفع له راتباً لمدة شهرين مقمناً مع التحمل تذكرة رجوعه إلى سري لانكا.

**UNDERTAKING OF THE EMPLOYER  
FOR EMPLOYING HOUSEHOLD WORKERS  
FROM  
BANGLADESH**

I .....  
bearing Civil ID No: ..... the owner of  
.....  
Address:.....  
.....

Telephone No: .....(Office),  
Telephone No: .....(Residence),  
Telephone No:.....(Mobile),

do hereby declare and guarantee that,

- a) The house hold worker to be recruited for my house shall be provided with proper job and facilities for working inside the house in Kuwait only with Work Visa (Article 20);
- b) I also guarantee and give assurance that:
  - i) I shall abide by the terms and conditions of the Contracts signed with the worker and shall not change any terms or conditions without the consent of the Embassy and the worker and any such changes without the consent of the Embassy and the worker shall be considered null and void;
  - ii) The minimum wages/salary of worker would be no less than 50.000 (fifty) Kuwaiti dinner with a provision of yearly increment;
  - iii) I shall provide adequate food in commensuration to the worker's food habit;
  - iv) I shall provide appropriate and standard accommodation to the worker according to the law of the State of Kuwait;
  - v) I shall provide Air ticket free of cost for bringing the worker from Bangladesh and also provide Air ticket free of cost every after 2 years of work and after the completion of work contract;
  - vi) I shall fix the residence for the worker free of charge within one month from the date of his/her arrival to Kuwait;
  - vii) I shall pay salary/wages to the worker from the date of his/her arrival in Kuwait irrespective of any work or job given to the him/her or not;
  - viii) I shall pay the monthly salary/wages to the workers directly to the Bank accounts of the worker within the first week of the following month;
  - ix) I shall extend all possible assistances in remitting his money to his home;
  - x) Duty hours of the worker shall be according to the law of Kuwait with appropriate resting time in a day and in a week;
  - xi) Annual leave for my worker shall be in

**EMBASSY OF INDIA, KUWAIT**  
**EMPLOYMENT OF DOMESTIC WORKERS (VISA 20)**  
 توظيف العمالة المنزلية (تأشيرة رقم: 20)

**DOCUMENTS REQUIRED & CONDITIONS FOR ATTESTATION OF LABOUR CONTRACT**

**المستندات المطلوبة لتصديق عقود عمل للعمال المنزلية**

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>▪ Request Letter from sponsor</li> <li>▪ Employment contract (original + 1 copy )</li> <li>▪ Basic information sheet (please complete all columns)</li> </ul> | <p>كتاب طلب من الكفيل<br/>عقد عمل (أصلي وصورة)<br/>صفحة المعلومات الأساسية ( يرجى تعبئة جميع البيانات المطلوبة)<br/>صورة عن جواز سفر الكفيل<br/>شهادة راتب/ اثبات الدخل للكفيل (اختياري)<br/>صورة عن جواز سفر العامل المراد احضاره<br/>صورة عن البطاقة المدنية/ جواز السفر لقریب أو صديق العامل في الكويت</p> |
|--|---|

**Note**

- Wages offered shall not be less than KD 55/- per month in case of housemaid /houseboy /cook, and KD 65/- per month in case of drivers
- The age of the female domestic worker shall not be less than 30 years and not more than 50 years on the date of application
- Death & Disability Insurance policy for a sum assured of KD 2000 and valid for two years in favour of the worker, from any of the companies listed below:

**1. Warba Insurance Company K.S.C.**

Hawally Branch Office, Building No. 3, Mezzanine Floor, Block No. 183, Office No. 4B Tunis Street, Hawally, Kuwait.  
Tel: 22655084; Fax:22655072

**2. Gulf Life Insurance Company K.S.C.C**

-Sharq – Al-Shuhada'a Street – Opp. Al-Rayah Center, PO Box 1040 Safat, 13011 Kuwait  
Tel: 22961562; 22961566

- The fee/service charge for each contract is KD 45/-. Please collect receipt on payment
- For any further clarifications on the subject, please call the Embassy at 22530600 (Extension: 236, 220, 240, 251, & 233) between 0900 hrs-1630 hrs on working days ( Sunday to Thursday) Fax: 22573902 email:labour@indembkwt.org

- Forms can be downloaded from the Embassy's website:

[http://www.indembkwt.org/forms/Visa\\_20\\_contract\\_domestic.pdf](http://www.indembkwt.org/forms/Visa_20_contract_domestic.pdf)

- Please advise the worker to open a bank account in his/her own name in India before leaving for Kuwait
- Please ensure that information given in the data sheet and contract forms is correct.

- Labour Contract documents may be submitted to the Kuwait Union of Domestic Labour Offices (KUDLO): Hawally, Al-Othman Street, Kurd Roundabout, Al-Abraj Complex, Mezzanine Floor, Office No. 4B.  
Tel: 22620980 /22620984 /22630488; Extn: 13/ 14/ 15/ 16/ 17/ 18

- Forms that are not complete in every respect are likely to be rejected by the Embassy.
- The Embassy has the sole discretion to accept or reject a labour contract submitted to it for attestation.

**ملاحظات**

يجب أن لا يقل الراتب للعامل المنزلي - خادم /خادمة- طباخ - عن 55 دينار كويتي شهريا وفي حالة السائق المنزلي 65 دينار كويتي شهريا.  
يجب أن لا يقل عمر الخادمة المنزلية عن ثلاثين (30) سنة يوم تقديم الطلب .

يجب تقديم وثيقة تأمين لصالح العامل تغطي مبلغا مؤمنا عليه وقدره 2000 د.ك وسارية المفعول لستين وذلك من أي من شركات التأمين التالية:-

**(1) شركة وربة للتأمين (ش.م.ك)**

مكتب فرع - حولي، العمارة رقم: (3)، الميزانين، القطعة (183)، مكتب رقم: (4 ب)، شارع تونس، حولي، الكويت  
الهاتف: 22655084 / الفاكس : 22655072

**(2) شركة الخليج للتأمين**

الشرق، شارع الشهداء، مقابل مركز الريان، ص. ب: 1040، الصفاة، 13011 الكويت  
(الهاتف: 22961562 الهاتف:22961566)

رسوم/ رسوم الخدمة : 45 دينار كويتي فقط . يرجى استلام الإيصال.

لأي معلومات أخرى يرجى الاتصال برقم

الهاتف: 22530600 الداخلي 236, 2120, 240, 251, 233 من الساعة 9 صباحا إلى 4.30 مساء من الأحد إلى الخميس الفاكس: 225733902 البريد الإلكتروني: labour@indembkwt.org

يمكن الحصول على النماذج من موقع الإنترنت :

[http://www.indembkwt.org/forms/Visa\\_20\\_contract\\_domestic.pdf](http://www.indembkwt.org/forms/Visa_20_contract_domestic.pdf)

يرجى الإيعاز إلى العامل لفتح الحساب في البنك باسمه/اسمها بالهند قبل الخروج إلى الكويت يرجى التأكد من أن البيانات المذكورة في صحيفة المعلومات والعقد وهي صحيحة.

يجب تقديم معاملات عقود العمل لاستقدام العمالة المنزلية إلى مكتب الإتحاد الكويتي لأصحاب مكاتب العمالة المنزلية ويمكن الإتصال بالإتحاد على ارقام الهواتف التالية:  
حولي، شارع العثمان، دوار الكرد، مجمع الأبراج التجاري، ميزانين، مكتب رقم: (4B)

الهاتف: 22620980 - 22620984 - 22630488

Extension: 13 / 14 / 15 / 16 / 17 / 18

النماذج الغير مستوفية البيانات بأكملها لا يتم قبولها ويمكن رفضها من قبل السفارة.

السفارة لديها صلاحية كاملة لقبول أو رفض عقد العمل الذي تم تقديمه للتصديق.



Appendix 11

HEAT CATEGORY AND EMPLOYMENT.

Mr / Mrs :  
Nationality :  
Civil ID No :  
Address :  
Number of family members :  
Telephone No :  
Fax / Mobile :

Mr / Mrs :  
Nationality :  
Sex :  
Date Of birth :  
Occupation :  
Passport NO :

Name of bank-A/C NO

Country

Address

Known as the Second party

The Sponsor

(Second party)

First: the sponsor (the first party)

- The first party is obliged place equipped with necessary life needs for the third party. He is also obliged to feed and clothe the third party to be living, adequate life. The sponsor is also obliged to provide medical treatment in government hospitals and not to force him to an unrelated job or any other despicable job.
- In case of the death of the first party is obliged to pay aid to his next of kin equal to two months salary in addition to the salary of the month he died in.
- Also the first party obliges to bear the expenses to transfer the remains of the second party to his country of origin in case of his family's request.
- The first party is obliged to pay the full salary the second party starting from the first date of work at the end of every month. The salary should not be less than KID 40 per month.
- The first party is obliged to complete all the procedures for the domestic's residence permit domestic servants directly after their arrival to stamp the residence permit in accordance to the legal period determined (two month)
- The first party is responsible for paying compensation for the second part for any work injuries according the decisions of Kuwaiti Civil law.
- The first party will be held responsible to face other people (the damage done by the second party through his illegal work at the time or because of his services.
- The first party is obliged to bear the expenses of returning the second party to the country and it is prohibited get refund from the second party. Also the first party is obliged to provide a return ticket for the second party to return to his country.
- It is not permitted for the second party work for others in accordance to article no 12 repeated from the decree no 17/59 in the expatriates' residence permit law and its amendments. If any contradiction to this law is discovered. The first party will be responsible to return the second party to his homeland (country) on his expense with implementation of the stated penalties article no 24 repeated from the law.

Second: the second party (domestic servants)

- The second party must have three rest periods and each period must not be less than one hour in addition to the sleep period deserving one day (period) rest each week and can be spent with the family.
  - The first party accepted to work for the second party as profession.
  - The third party agrees to work in exchange of salary equivalent to KID to be paid at the end of each calendar month with receipt signed by the latter as proof of salary.
  - The third party is entitled to one month vacation leave with pay per year and also entitled to spend two (2) months vacation and round trip ticket after reddening a service of two (2) years of contract. Except if the third party leaves for final exit which in such a case he/she is only entitled to one way ticket.
  - The third party shall keep the secrets and properties of the second party and undertake to compensate the second party of any damage to the interest of the second party or his dependents in addition, the third party shall perform her job faithfully follow instruction of the second party, execute them properly and respect the customs, laws and tradition of the country.
  - The third is prohibited, during the agreed contract period with the second party to work with another party with or without salary the agreed contract shall be canceled and the third party will be sent to his country at his / her own expense.
- Thirdly: General Provisions / Terms
- the validity of the contract between the second and the third party commences on ..... (Date arrival of the 3<sup>rd</sup> party to the) to which can be extended or renewed automatically for similar terms unless other wise one of the parties notifies. The other of his / her intention to terminate the contract but the notification should be done at least two months prior to the original or extended contract.
  - In case of the existence of any security obstacle - physical - mental - psychological - hygienic or any other contagious diseases (Mongolian) confirmed by medical report - issued from any respective authority that prevents the servant from performing his / her job, he is to be deported to his / her country on the expense of the first party.
  - The second party's profession is determine, desired to be brought in accordance to the need of the first party in addition to determine the number of the family members of the second party and type of residences.
  - Any dispute emerging consuming the terms of this contract is should be transferred to the Kuwaiti courts to be settled.
  - This contract contains 4 copies. The first to be sent to the department of domestic servants. The second is to be sent to the first party. The third is to be sent to the second party and the fourth is attached with the visa application, and submitted by the first party to general department of immigration sending the original contract with the visa to the servant him / her to his country to be signed at the Kuwaiti embassy in the second party's country if available to enter the country accordingly.

THE FIRST PARTY  
Sponsor

THE SECOND PARTY  
Houseboy / Housemaid

الطرف الثاني  
الخادم / الخادمة

الطرف الأول  
التفيل

له في يوم  
1- السيد / السيدة  
الجنسية  
ويجوز بظافة ثانية ورقم  
عائلي  
عنوان الأسرة الإمارة  
تسجيل رقم  
الجنس / تفيل  
والسمن فيما بعد ( بالطرف الأول )  
2- السيد / السيدة  
الجنسية  
التفيل  
تاريخ الميلاد  
الجنسية  
ويجوز جواز سفر رقم  
رقم حساب له في بنك  
السعودية  
عائلي  
والسمن فيما بعد ( بالطرف الثاني )  
3- السيد / السيدة  
الجنسية  
التفيل  
تاريخ الميلاد  
الجنسية  
ويجوز جواز سفر رقم  
رقم حساب له في بنك  
السعودية  
عائلي  
والسمن فيما بعد ( بالطرف الثاني )  
4- السيد / السيدة  
الجنسية  
التفيل  
تاريخ الميلاد  
الجنسية  
ويجوز جواز سفر رقم  
رقم حساب له في بنك  
السعودية  
عائلي  
والسمن فيما بعد ( بالطرف الثاني )

- يؤثر الطرف الأول بتوفير سكن مناسب وجوز برساتل لتغطية الضرورية للطرف الثاني كما يلتزم بإعطائه رخصة ما يخص له حياة مناسبة ويلزم كذلك بملامها في المستشفيات الحكومية وعد تعليمه في غير الفروض تخصص لاستفادته أو في أعمال تهيئة لكرامة الإنسان.
- في حالة وفاة الطرف الثاني يلتزم الطرف الأول بدفع أعباء المستحقين عنه تعادل راتب شهريين بالإضافة إلى راتب الشهر الذي توفي فيه كما يلتزم بتكاليفه في بلد الأصل على نفقته في حال طلب أسرته ذلك.
- يؤثر الطرف الأول بمقدار راتب كامل للطرف الثاني منذ اليوم الأول لصلته لديه وذلك في نهاية كل شهر ميلادي، حتى أن لا يقل عن (4000 ك.د.) (اربعمائة الف دينار) شهرياً.
- يؤثر الطرف الأول بتكاليف إيمارات، ضل الإثنية (العمارة) الخاصة بعد وصوله مباشرة على أن يتم عليه (الطعم) خلال امدة التوقيف (شهرين).
- الطرف الأول مسئول عن توظيف الطرف الثاني عن اصابات العمل وفقاً لأحكام القانون المعمى للتأمين.
- يؤثر الطرف الأول بمنوال في مواجهة الغير عن الضرر الذي يبعثه الطرف الثاني بمسئله غير المشروع من فان وقفاً منه أثناء عمله أو بسببه.
- يتحمل الطرف الأول مصاريف استخدام الطرف الثاني ولا يجوز له الرجوع بها على الطرف الأخير كما يلتزم الطرف الأول بتغطية تكاليف عودة الطرف الثاني إلى بلده.
- يؤثر على الطرف الأول تشغيل الطرف الثاني لدى الغير مستخدماً إلى نص المادة [12] مكرر من المرسوم رقم [95/71] مكرر المادة الإيجاب والحد والحد، وإذا تبين خلاف ذلك يلتزم بإعادته على نفقته مع تطبيق العقوبات المقررة في المادة [4] مكرر من القانون.
- تأجيل الإعدام والتجديف (الطرف الثاني )  
1- يتلقى ثالث قران راحة بحيث لا يقل كل فترة عن ساعة بالإضافة إلى فترة النوم مع استراحة ليوم راحة في اليوم مفوض الأجر ويجوز المنع به مع الأسرة.  
2- قبل الطرف أن يمتد لدى الطرف الأول بمهنة.  
3- قبل الطرف الثاني هذا الحق بتفويض مبلغ وقدره (4000 ك.د.) شهرياً تدفع من الطرف الأول إلى الطرف الثاني في نهاية كل شهر ميلادي، وذلك بموجب إيصال يوقع عليه الطرف الثاني بما بعد تأجيله الأخير.  
4- للطرف الثاني الحق في إجازة شهر كل عام مدفوع الأجر، ويحق له السفر لتفادي إجازة لمدة شهرين بعد انتهاء مدة عمل سنتين فضلاً عن استحقاقه تكاليف سفر ذهاب وعودة كما يمكن السفر بفرض المتعارفة بصورة نهائية حيث يستحق حين اذا تكافؤه عودة فقط إلى بلده.  
5- يتعهد الطرف الثاني بالمحافظة على أسرار وأموال الطرف الأول كما يتعهد بان لا يقوم بالأضرار بتسليمه الطرف الأول أو من حد برعيته والقيام بالأعمال التي تخدم إليه ويقام تعليمات الطرف الأول وتطبيقها على الوجه الأمثل وباحترام قوانين وعادات وتقاليد البلد.  
6- يحظر على الطرف الثاني أثناء مدة العقد أن يقوم بأي عمل باجر أو بدون أجر لدى أي طرف آخر ولا حق للطرف الأول إلقاء هذا العقد وإعادة الطرف الثاني إلى بلده على نفقته.  
ثالثاً: أحكام عامة  
1- يبدأ مريان هذا العقد اعتباراً من ..... ولغاية  
ويجوز لتكملة لمدة أو لمدة أخرى مسجلة ما لم يخطر أحد الطرفين الآخر برغبته في عدم التجديد قبل نهاية مدة العقد أو أي مدة يتعهد فيها شهريين على الأقل.  
2- في حالة وجود أو عائق جسدي - نفسي أو مرض من الأمراض المعدية أو مرض ( متولدي ) تمت سرخه تقرير من إحدى الجهات الطبية بحول ثوب تلبية الخادم / الخادمة لتعلمه يتم إعاقته إلى بلده على نفقة الطرف الأول.  
3- بعد تجديف مهنة الطرف الثاني المطلوب استفساره وفي حاجة الطرف الأول مع تجديف أفراد أسرة الأخير وقوع السنن الذي يقطن فيه.  
4- أي نزاع ينشأ بخصوص بنود هذا العقد يرفع إلى القضاء المختص في مباحث الكويت.  
5- حذر هذا العقد من أربع نسخ المتسخة الأولى ترسل إلى إدارة العمالة المنزلية والثانية للطرف الأول والثالثة للطرف الثاني والرابعة ترفق بطلب التنسيرة للمقدم من الطرف الأول إلى الإدارة العامة للهجرة ويرسل اصل العقد مع التنسيرة إلى الخادم / الخادمة في بيده للتوقيف عليها لدى السفارة الكويتية في بلد الطرف الثاني أو وخته المفوض إلى البلاد بموجبها.

## Interview Questions for Saoud Al-Artaj

- ① Explain the exact nature of the job in relation unskilled foreign laborers
- ② What are their salaries?
- ③ What are their working conditions?
- ④ Where are they mostly from?
- ⑤ Any idea about their backgrounds?
- ⑥ How do you bring them to Kuwait?
- ⑦ What type of contract, if any, do they have?
- ⑧ What are their living conditions?
- ⑨ Why do you think the situation is as it is?
- ⑩ Any recommendations/suggestions?

## Appendix 13

service companies - maintenance for offices - cleaning  
of hand for government & private companies  
there is a school to train on how to clean

• 8,000 workers - 6,000 unskilled most of them men (80%) and  
one from Bangladesh, Nepal, India, Philippines

• when government puts out tenders they are looking, and they  
eventually go for the lowest price, this forces companies to  
bring in and seek the cheapest laborers

• the government also specifies the amount of workers that  
are to be used for the job, even if the job can be done better  
for less workers

many of these workers are opportunistic criminals who  
seek work in Kuwait

some institutions require them to be Muslim - such as for  
cleaning mosques, which means that Bangladeshis are  
in much demand

by trying to get the lowest price, the country is ultimately  
losing because the laborers that are being brought into the  
country will end up costing the government a lot

cleaning companies in Kuwait don't have to meet certain  
requirements, so anyone can open a cleaning company, with  
no qualifications or certifications, which means there  
is no minimum standard of quality

when many laborers come to Kuwait, they are prepared to sell  
possessions and may pay as much as KD 1,000 to work in Kuwait  
which leads to government personnel taking advantage - they  
take their money and leave them unemployed

- this company is the most expensive in Kuwait because  
their laborers are trained and are paid more

- by Kuwaiti law, all government contracts or tenders, which  
involve laborers, when the job is finished, they have to be  
sent back

→ there is a window of 2-3 months, when they are  
allowed to transfer from one contract to another

contracts always depend on how long the government says  
the tender/job will last

companies are obligated to provide housing only to the laborers  
and not meals

government gives you a permit to import labor into the country  
once the tender has been awarded, this is provided that once  
the contract is over, the laborers have to leave

- exceptions can be made to

there are some companies that require skilled laborers

workers, so they spend half their shift waiting mental jobs since technically they were brought into the country on a cleaning company contract

• Alhassija, Jeleeb Al-Shuyokh, Mahbarah, "bachelor apartment" - 4-10 per room - living conditions

• working conditions - 8 hours per day, if more, then they have to be paid more

• laborers come through agencies in that particular country

• there are joint companies in Kuwait (example Benali-Kuwaiti) company - local agents with Kuwaiti partners that go to local companies and ask if they would like to have their workers

Ministry of Social Affairs.

Situation can be improved by monitoring those companies that request laborers, and it has to be monitored by 5 actions: Ministry of Social Affairs / Interior Ministry / a separate committee of ministers / Ministry of Planning / this should be done to prevent corruption

it can also be improved by qualifying cleaning companies so that there aren't any inexperienced companies  
these qualifications have to also be tiered - A, B, C

Interview w/ Saud Al-Arfaj

July 2001

Al-Arfaj Cleaning Company - laborers who clean  
in room take schools etc... They deal with agents who have

## Questions

- explain exact nature of job relation to UK foreign lawyers
- what are their salaries?
- what are their working conditions?
- what are their living conditions?
- where are they mostly from?
- what are their backgrounds? does it matter? will checks?
- how do you bring them to Kuwait?
- why do you think the situation is as it is?
- recommendations or suggestions?
- what type of contract do they have?

Interview w/ Indian ambassador Sept. 25, 2001

- 5625/3 - 24 July 2001 Ministry of Interior
- Article 20, 18 visas - unskilled private sector
- Ministry of Interior → not the same -
- overall, Kuwaitis take care of their staff
- nonpayment, underpayment, sexual harassment, physical, sexual harassment, false cases which we they can't change their job or leave Kuwait
- accommodations are short coming - no AC
- Ministry of Foreign Affairs has been helpful with a delay but there is a response
- chips are heavily loaded in the favor of the plaintiff due to the defendant's lack of money, knowledge legal nuances, and inability to speak Arabic
- embassy has legal clinic
- shelters are provided for runaways - women because of their various disadvantages
- insurance, medical cover, shelter, food, clothing, legal advice
- mistreatment are majority of cases that come before the embassy
- 70% of sponsors withdraw passports
- embassy isn't legally involved although there is lawyer that is in charge of those cases
- expat community provides comfort, cultural events which allow expats to keep in touch with culture
- "sensitivity of the dead should be accepted and respected" - case taken up with Ministry
- contracts - vets them out - provisions as per law
- employers should respect contracts, incumbent on

India's database of nationals working abroad

## Appendix 16

Ashok Kumar - labour Attache,  
Indian embassy

• Visa #20 - Domestic servants

• Ministry of Foreign Affairs

• 40-50 women 10-15 men

• Ministry of external affairs  
Ministry of overseas Indian <sup>at</sup>

• Arab mentality

Kerala Muslim Associations  
Kuwait Art lovers Associations

2800 complaints in last year - report

100,000 Indians Kuwait

## Appendix 17

Swarnageetha - legal help desk  
coordinator

2 years @ embassy

helpline number on contract

61 women

15% of all maids have problems



## Appendix 18

2 children -

8th grade education

Mother-in-law looks after children

2 years - since 2010

Safafa Roieah agency - Hawaii  
taking <sup>care</sup> children → 6-8 years

15,000 wpcas → Lebot

agent has passport

KD 90 - paid regularly

18 hours a day work

- slavery isn't the right word - form of a work principle  
if contracts are respected  
- if terms are not respected then yes

## Appendix 19

A [REDACTED] S [REDACTED]  
: 42  
: married  
: 2 children - 23/25

ル払っ切。と・ん

3 1/2 months working

daughter 10th grade - unmarried  
son - 10th grade married

Riaz - agent - agency unknown  
15,000 rupees

agent has passport

pushing, hitting, burning  
NO FOOD

4 members in house -

## Appendix 20

Indian Embassy

L [redacted] M [redacted]

41  
Indian

married - 2 children 15/14½

intermediate 2 years (college)  
children in school

Al-Jaber Recruitment - Hawally

14,150 salary  
25,000 rpeas

[Shams Al-Deen]

upon arrival was told to be maid - 3 babies  
stayed in office - 1 month

1 month 6 days  
ham - ham sleep

2-3 times of physical abuse

## Appendix 21

## Interview w/ Bangladesh Embassy

- what is the situation as you see it?
- what cases come to the embassy?
- what is the embassy's role?
- recommendations?
- number of estimated Bangladeshi workers in Korea
- amount of cases (annually) regarding maltreatment
- how does this affect families of laborers back in Bangladesh?

# Labor Attache - Phillipine embassy

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- no idea how many currently working in kuwa
- most problems deal with domestic help
- Unpaid salaries, mistreatment, no freedom, no "freedom of movement is affected"; working normal hours
- temporary shelter for women 100 capacity
- embassy's role is counseling, mediation, if doesn't help, a case will be filed with local court
- "overseas employment" major source of income government + equal protection
- regulation for recruitment agencies "excess collection" banned placement fee
- "Akin to slaves" - blacklist employers "workers sentiment"
- actual implementation of contract implementation of policies ↓
- Ministry of Interior - Office of Domestic Workers
- embassy has set a "standards of salaries minimum wage \$400 per month"
- training is given to domestic workers
  - balaything/cleaning/laundry/culture/orientation
- have 2 pass these requirements/qualifications to be deployed abroad

## TESDA

- Technical Educational Skills Development
- Dec. 16, 2006 New Policy
- large social, cultural community - sports,
- Angap - Panarah Program - explaining culture Kuwait and people so expats can adjust easily (education)

## Appendix 23



M [REDACTED] S [REDACTED] (0)

Filipina

Single

1 child - girl 35

college graduate - agriculture

1980 started work

present employer 27 years

factory worker back home

Sulaiman Malallah

4-6 hours a day

like sister

## Appendix 24

F B [redacted], 48  
Philippine  
married / separated  
2 - 24/22  
college - 3rd year business administration

1991 arrived in Kuwait  
same household  
supports 2 children

through recruitment office  
bound to Saudi in Manila airport  
decided to come to Kuwait

paid half fee to recruitment office  
rest to be taken out of salary for 3  
months, but employer took no  
deductions

Fadhel Ashkanani

no debt incurred  
same employer  
80 Kd regular

share room with 4 girls / bathroom,  
TV / internet

6:30 am - 10 am  
rest in afternoon

6 people in house  
clean / prep breakfast / sometimes cook  
salads / desserts

## Appendix 25

M [redacted] O [redacted], 45

Philippina  
married - separated  
1 - girl medical technology 18  
high school graduate - stenotyping  
computer technology

March 4, 1980 - 32 years in Kuwait  
with same family

Philippines - work in store selling dry  
goods

sister takes care of daughter

4 children (employer) only 1 at home

recruitment office - didn't pass  
interview because of age  
sent papers to Kuwait

male employer - religious does what  
he says

money to buy you own house,  
allowed to go home for mother's funeral

paid minimal fee for paperwork &  
physical

€150 a week abroad

before passport was taken now with  
her

KD 200 per month  
KD 45 upon arrival

yes paid regularly with extra  
sometimes

employer gives interest on money  
every year  
bonus given @ Eid / Ramadan

in charge of other household staff

in charge of shopping for medications

own room / TV / dish / internet /  
bathroom

6:30am - 8 breakfast

cleaning living room

madam breakfast

make bed / others clean

light work  
1pm lunch

separate food - bought by employer

free to leave / after permission

no verbal abuse

1 day off per week / + holidays  
≈ 2 years vacation 3 months

church / hairdressers / dinner

purchase — toilet paper, shampoo  
oil/perfume

Internet keep in touch  
laptop given by employer

send money every week to sister  
& daughter / sometimes others

• earned more money / help family /  
do buy whatever she wants  
save money to buy home \$5000

daughter loves her sister more because she  
takes care of her

dating advice to daughter

future hope for daughter to finish college  
employers supported daughter to college

like a mom / sister → female employer

"until I have strength, I cannot leave  
them"

Speaks Arabic

Appendix 26

[redacted] S [redacted], 51  
Filipino  
married - separated  
4 children - 31/1001  
29/21/25  
finished evening school  
23 years working in Kuwait  
throughout who was working here

then mother  
yes - passport taken / when travel outside  
passport kept with me  
KD 150 per month  
KD 50 starting increased by year  
allowances / bonuses  
paid regularly / sometimes advance  
stays in room with youngest daughter  
(5) own bathroom / TV / access  
to internet - own laptop  
12 hours average a day  
learn wake up  
take kid school / errands  
groceries  
free to leave



female employer never shouts / good relationship

communicate well with employers  
tell problems  
treated like members of family

1 day off per year  
holidays  
every year or 2 years  
1-3 months

keep in touch through internet  
church / dinner / walk-around

employers pay for necessities  
personal clothing

regularly send money back home  
to children once a month

low salary in home  
education for children  
loss of family unit

economic situation back home

## Appendix 27

M. [REDACTED] [REDACTED], 52-

Philippina  
married  
high school

16 years - same family  
recruitment agency - Ashkanani

bad treatment at agency - no food  
3 days - 1 day 1 piece of bread

passport with her  
sleeping on floor without blanket

KD 100 more per year  
paid regular

own room / bathroom / TV / internet

9am - 11pm

husband & wife  
cleaning female employer's room

free to leave

1 day off + holidays

church / dinner w/ friends

monthly money back home to  
sister & husband

## Appendix 28

## Interview with Nadeem Al-Draij

- Describe your work
- Do you think there are abuses toward unskilled foreign workers?
- Describe your interaction with these laborers
- What are your views on the Kuwait sponsorship system?
- What do you think is the level of awareness about this issue?
- How do you see this issue affecting Kuwait in the long run?
- Do you foresee a solution? What would this entail?

- Health Policy Think & Do Tank - translate into policies / political analysis
- Saha - Strategy & Analysis for Health for LDC countries - registered as corpora
- primary mission is to focus on national / regional health reform / strengthen health systems with emphasis on equality
- areas of interest - health & human rights (expatriates) / dynamics between population environmental health / health education

• 託心しこら

- addressing "micro" issues - improving management in hospitals
- recommendations put forth towards social media / parliament / "multi-state holder approach"

→ grew up in Switzerland - medical school in Geneva / trained in emergency care Boston / Masters in public health

ghealth.org — blog  
to create an institution for public health expertise

- 2-3 months to get license with one colleague taking time off to devote to this
- いとせしごう 0  
license issue

- 2 years ago, newspapers mentioned privatization of health care / at same time Minister of Health summoned report arising from complaints from Saudis about over crowding in hospitals, waiting in line
- Ibrahim Abdul Hadi - Undersecretary of health / hospitals are strained and solution is needed

Hamad Al-Sabah  
KIPCO

See health reform tab on website

- system of segregated HMO system which would takeover insurance of expatriates in private sector which would cover them at 3 as yet unbuilt hospitals / for profit system that would generate profit

created small group (Health Care Reform Advisory Group) who worked to promote comprehensive reform to fix system as a counter proposal to the above

formed human rights group like Transparency International / Human Rights Watch

so KIPCO pulled out and capability was laid to build these hospitals  
- as of now, it looks like project will be

scrapped

- getting people to understand segregation  
human rights violation doesn't work so  
approaching it from a financial approach



## Appendix 30

NW/Faisal Al-Hasoud

Sept. 23

## Social Work Society of Kuwait

第ベレ

- research on domestic labor - labor sector
- ordinary labors - rather than unskilled
- human rights - coordinate w/embassies
- research consists of labor in private sector which showed lack of sponsorship system, injustices and shortcomings in terms of law
- "the Society also coordinates with MPs and sponsors of Human Rights Committee and Committee of to discuss labor laws which will play a large role in solving the crisis"
- all laws go to parliament - one member society in Human Rights Committee of Parliament
- visa traders and abuse of sponsorship system between labor and businessmen
- to each their rights
- human rights - society's role is to follow cases that come before it through embassy or country's association - or hospitals or police stations
- brochures were distributed to all embassies concerned / hospitals / health clinics that deal with laborers
- through distribution and through newspaper ads or articles
- what is the alternative to sponsorship system? the government undertakes the sponsorship through MOL which deals with labor issues and community centers through coordination with MOL which deals with business sectors to study the need for sponsorship according to businesses and business managers.

- the society also increases the work and in the case of non-payment of labour to the nation the work he must be replaced without transfer ~~cost~~ which gives businessmen more ~~power~~ to give them the ability to control their business which is reflected in the profits of the company which influences the right labour in the right line of work

- the country bears what it has already borne in terms of sponsorship system, so as not to face in problems

+ the country becomes the sponsor which will decrease negative activity ~~and~~ to improve the country's reputation abroad and in terms of human rights

- health issue which must be on this level because Kuwait which has natural resources and abundance and there are many orgs and businesses in investment, industry, engineering - in terms of the population and the number - there appears to be a need to import labour from other parts of the world with the result being, and in terms of a lack of coordination of labour law was helped this ~~is~~ and the competition of businessmen on which the country's leaders has caused them to create cheap labour and the which is not effective in implementing the necessary

- last month a great deal of work / the law provide that they volunteer from ~~their~~ ~~work~~ parts, so they ask their loved ones to donate

- the society

- the society improves the relationship between workers and businessmen and then in the case of

the society follows up according to the proper channels to give each their rights and it pays the many expenses of the cost of legal and business fees!

## **Appendix 31**

Sept. 12, 2007

Khaled Al-Rayes

- General Manager - Al-Oula Kuwaiti Cleaning Co.
- General cleaning: city cleaning / waste management, recycling
- caters to private sector - used to be under Q8 Authority / privatized since 21 years
- more than 300 cleaning companies currently operating in Q8
- in the absence of a strategy for the country as whole  $\rightarrow$  direct result of an intention ~~not~~ to fix the country from authorities
- corruption, bribery under the guise of a competitive problem - tenders don't go to most qualified but to the lowest price
- 50KD salary monthly - by QOSA law
- 5KD social security a month
- 25-30 housing
- 10 transportation
- 5 ticket debt repayment
- $\approx$  70KD cost of each laborer
- companies that charge KD25 per laborer a so far collecting  $\approx$  KD500 from laborer prior to arrival in Q8
- this company doesn't charge them for bringing them to Kuwait, and their salaries are kept in full still since the company is in transitional phase  $\rightarrow$  cannot compete w/ other companies so target private sector
- 1,500 garbage collectors mostly Bengalis
- workers who get paid less resort to other means such as scavenging - unofficially collect recyclable

- pimps, robbery in order to make money
- + some don't mind doing this as long as they've brought into Kuwait
  - government is fully aware of this, but since many of them are stakeholders in the company and want to make a profit
  - workers in this company are provided housing (4 room), but in actuality, this isn't implemented
  - Kuwait Municipality supervises living conditions & waste management, but because of bribery, govt officials keep quiet
  - this is why certain companies are always favored
  - "people have become desensitized to these issues - no one seems to care"
  - Institute of Applied Science - lots of complaints, sexual harassment
  - 3 year contract - Municipality  
Renewable year - private sector
  - work in the private sector is much less problematic
  - "will for change", "no sense of nationalism", "no sense of development", "will for reform"
  - behaviors who, by nature follow greener pastures are still following that behavior now when they are in charge
  - lots of money + passion + envy
  - "instantaneous money making"

## Appendix 32



Muhammad Ja'far

欠(にん台ツを (と)をわ  
photocopy of civil ID  
advances KD 20

2 months until arrival

medical fee in Phillipines  
authentication National Bureau of  
Integration

salary KD 80

contract

stamp

seminar for house work

insurance

ticket

Stamping - Kuwait embassy

100 days trial full money back

Phillippines

Sri Lanka } 680 KD / salary KD 60

India \$2,003 690 / salary KD 90 #29%

Nepal \$2,034 620 / salary KD 50 #16%

embassy sets minimum wage

no discrimination or black listing

name  
husband's name  
work / salary  
house / flat  
how many people in the house  
age

. embassy blacklists

## Appendix 33

1. 2. の/PKつー、"ら宅ーし

Sept. 24, 2008

- What is the situation as you see it?
- Where does the problem lie?
- Solutions/Suggestions?
- how does the fact that migrant workers are not allowed to bring their families affect them?
- psychological isolation
- domestic servants are not covered by labor laws  
what affect does this have?

To what extent are labor rights protected?

- Ministry of Health keeps all passports for their foreign employees including consultants
- perhaps this is to control/guarantee.
- most cannot afford to bring their families - they come here to save money/improve quality of life

KD 250 - government

KD 450 - private

### \* Bachelor City

- people are willing to pay that money and be in situation without their families - matter of price rather than reality
- improving

Mando Billa - NO - November visit to Kuwait

- too entrenched - sponsorship system - ~~too~~ continue source of income - so many people involved
- politically very difficult to do away
- 23 years - very little change
- labor unions for non-Kuwaitis - against the law
- locals benefitting from sponsorship system
- poverty, unemployment in sending countries as

- oil exploration itself begun with foreigners because locals neither skill nor money
- infrastructural development, growth, diversification of industry, economic
- infusion of wealth combined with goals for economic development
- delaying progress in order for locals to catch up
- people are needed to build
- unnecessary - doesn't add to productivity but leisure (domestic workers)
- 11% of population are maids
- no direct contribution to productivity
- ensuring a more leisurely lifestyle
- despite policies there is no change
- now they are willing to talk about it as an issue - change - deal with the issue and recognizing that it's an issue that needs to be dealt with
- slow down - selective development goals
- welfare economy → productive economy  
goal for Kuwait + UNDP
- huge contradictions
- in terms of contracts - no slavery
- in terms of living conditions -
- relative costs and benefits to both parties
- country could not have developed this far without foreign labor
- skilled vs. unskilled → skilled will always be needed
- majority of economic activity by private sector
- 60% Asian workers in Kuwait Indians being largest group - Egyptians next
- as long as benefits for both sides outweigh the costs, it will continue
- case of Korea - 80s many came to ME for projects

not individuals, but then Korea became an  
importing country that needs its own laborers  
- Bangladesh, India, Philippines, Sri Lanka - on  
matters improve in sending countries, migration  
will not slow down - most for least amount

- International Migration Review
- International Migration

## Appendix 34

### Botchal Al-Khatib

- 、<sub>イ</sub> - 111、一、わ。℃ 蜷舞。~和tion
- MP "selling to their election base"
- "merchants of iqama"
- SLAVERY
- mentality - stems from sponsorship
- uniform
- economy decides everything
- they share the wealth but they don't have the rights
- tribal ideas → judge people
- "even if you refuse to see the problem, it's still there"
- をい。
- social circumstances - huge houses, social life, cheap labor,
- blaming the women for the dependency on domestic labor - where is the man in the discourse

## Appendix 35

KAM

670A-EO

office guarantee 100 days  
if problem money back

training

if there is a problem  
runaway - call employer

standard employment contract for  
Filipino household service workers  
→ Dept. of labor & employment  
Philippine Overseas employment  
administration



## Appendix 36

## Salah Al-Hashem -

What is the situation as you see it?

What types of cases do you deal with?

What could improve the situation?

Where does the problem lie?

4 years ago - <sup>القانون</sup> <sup>العربي</sup> <sup>العالمي</sup> <sup>الذي</sup> <sup>يغطي</sup> <sup>العاملين</sup> <sup>البيوت</sup> <sup>الكويتيين</sup>

- with prominent lawyers to improve the Kuwaiti relationships with others
- domestic servants are not covered by Kuwait law and so many cases deal with their problem
- to improve relationships with embassies
- through the press, they discover cases and with the help of the victim, they can act
- the harmed person must complain in order for their crime to be reported
- if the case is taken to trial, the victim will stay in the opinion of the embassy and will affect the rest of the domestic servants here
- lack of cooperation between humanitarian agencies and embassies who don't "want to make waves"
- <sup>القانون</sup> <sup>العربي</sup> <sup>العالمي</sup> is in charge of domestic servants
- <sup>القانون</sup> <sup>العربي</sup> <sup>العالمي</sup> <sup>الذي</sup> <sup>يغطي</sup> <sup>العاملين</sup> <sup>البيوت</sup> <sup>الكويتيين</sup>

## Slavery

- Company Y receives contract to \_\_\_\_\_ and requires for example 1000 workers, 250KD for each worker, their salaries for the first month will not be given
- agent puts ad to get workers to Kuwait for 1000\$



- government contracts doesn't include housing and food which is all deducted from their salary
- workers resort to begging, stealing, recycling
- government contract tenders are renewed
- passports are confiscated

## UNICEF - Saad Abdulla

- the agent Kuwaiti government - through the minister should

حقوق الانسان

الجزيرة

u

### Appendix 37

いし乙しれい仏。 -- な、の、 . . . , [

◦ *○ provides better conditions*

、しれ)し)つ

- minimum wage
- annual leave
- working conditions
- right of association
- employment in the private sector
- proposed legislation for domestics who have no legal code
- no social responsibility
- no vocational training for Kuwaitis
- no economic plan - no understanding of how to restructure the economy
- resources - oil & people
- HRS - protect people
- independent authority to oversee human rights
- MOSAL - monitors
- proposed law to establish labor authority to replace MOL → set policies & have its own board - cancel sponsorship
- 1000 recruitment agencies in Kuwait
  - no law to regulate them
  - MOL ~~then~~ monitors them

- Larson Dept - MOA
- Domestic Violence Dept - MOI
- ILO Office - UN House in Mishref

ameratameemi@gmail.com

... in the private sector ...

... for investment in domestic ...

... in order to provide ...

... the national training for ...

... to provide them ...

... from to restore the economy

... resources - oil & gas

... HRG - protect people

... independent ...

... MOA - ...

... provided ...

... court ...

... and law to ...

... other ...

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