

The Protection of the Rights of Migrant Domestic Workers in a Country of Origin and a Country of Destination:

Case Studies of the Philippines and Kuwait

2013

International Human Rights Clinic



JOHNS HOPKINS
SCHOOL of ADVANCED
INTERNATIONAL STUDIES

INTERNATIONAL LAW *and*
ORGANIZATIONS PROGRAM

The Protection  Project

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Introduction

In January 2012, The Johns Hopkins University School of Advanced International Studies (SAIS) International Law and Organizations Program and The Protection Project, a human rights research and training institute based at SAIS, pioneered a joint project—the International Human Rights Clinic. The clinic is designed to teach students human rights research and advocacy skills by using simulations, discussions, and case studies as well as relevant academic material. In addition, each student taking the clinic course is directly involved in international human rights work by supporting the programs of The Protection Project. In the past, students have drafted a model law on the rights of the elderly in a joint project with the United Arab Emirates University College of Law Legal Clinic, which has been sent to the United Nations Open-Ended Working Group on Ageing. Students have also identified best practices in corporate social responsibility to support The Protection Project’s publication “100 Best Practices in Corporate Social Responsibility” and have researched and documented the rights of vulnerable populations to be included in a textbook for Iraqi law schools.

During the spring semester of 2013, the SAIS International Human Rights Clinic researched the protection and promotion of the rights of migrant domestic workers in a country of origin and a country of destination by example of the Philippines and Kuwait. The students embarked on a weeklong fact-finding mission to gain insights into (a) the underlying causes and social consequences of labor migration, (b) the mechanisms to protect migrant domestic workers from abuse and exploitation, and (c) the preventive activities carried out in the two countries. One group of three students led by Professor Tiffany Basciano, associate director of the International Law and Organizations Program, conducted interviews and briefings with government officials and nongovernmental organization representatives in Manila 18–22 March 2013. Another group of four students, together with Professor Mohamed Mattar, executive director of The Protection Project, and Julia Braunmiller, director of legal affairs, visited Kuwait during the same period.

The findings of the two fact-finding missions, supported by academic research and scholarship, policy papers, and press releases, are published in this report. These findings will also be presented by members of the Spring 2013 International Human Rights Clinic during The Protection Project Eighth Annual Symposium on Trafficking in Persons: Domestic Work as a Form of Trafficking in Persons, on 6 November 2013, in Washington, DC.

The report describes the situation of migrant domestic workers from the start of their journey in the Philippines, through their arrival and work in Kuwait, and through their repatriation. Chapter 1 of the report outlines the scope of the problem, looking at the history of labor migration to Kuwait and the economic factors that spur such migration from the Philippines. This chapter defines the relevant terms. Chapter 2 describes the situation of domestic workers in Kuwait. It explains the sponsorship system that ties a migrant worker’s work and residence permit to his or her employer’s approval; the lives of Filipino migrant workers in Kuwait; the role of labor recruitment agencies; and the problems in the interactions between employers and domestic workers, especially nonpayment of wages, withholding

of passports, and instances of physical and sexual abuse. Chapter 3 analyzes the legal protections for migrant domestic workers in the international framework, with a special focus on the recently adopted International Labour Organization Convention Concerning Decent Work for Domestic Workers (C189), and the domestic legal frameworks in Kuwait and the Philippines. It also details obligations under the standard labor contracts and available remedies for violations of domestic workers' rights in the Kuwaiti judicial system. Chapter 4 identifies the appropriate responses from government agencies and civil society organizations in the two countries. The report concludes with recommendations addressed to all relevant stakeholders to better protect the rights of migrant domestic workers and to increase cooperation between countries of origin and destination, governments, and civil society.

This report aims (a) to raise public awareness about the rights of migrant domestic workers; (b) to offer practical solutions to policymakers in countries of origin and destination; and (c) to offer practical solutions specifically to the Kuwaiti and Philippine governments to take decisive action to better prevent human rights abuses, punish human rights violators, and protect vulnerable populations. By focusing on Filipino migrant domestic workers, the report aims to facilitate the further development of Kuwait–Philippines intergovernmental cooperation that may serve as a model for labor-receiving and labor-sending countries.

Acknowledgments

First and foremost, we would like to thank Ruth Wedgwood, Edward B. Burling Professor of International Law and Diplomacy and director of the International Law and Organizations Program at The Johns Hopkins University School of Advanced International Studies (SAIS), for her continued support and vision, without which the SAIS International Human Rights Clinic would not be possible.

We would also like to thank Julia Braunmiller, director of legal affairs at The Protection Project, for guiding the clinical project development and for supervising, compiling, organizing, and editing this report.

We would also like to recognize the students of the Spring 2013 International Human Rights Clinic—Julie Louise Aaserud, Miriam D’Onofrio, Kelly Flanagan, Benjamin Kalt, Veronica Ko, Kristoff Kohlhagen, and Stanley Seiden—for their valuable contributions and dedication to the research for this report, including their work on the fact-finding missions to the Philippines and Kuwait and their paper submissions that addressed the different issues covered herein.

We deeply appreciate all of our interview partners in Manila and Kuwait City who devoted the time to meet with us, especially representatives of the Philippines Overseas Workers Welfare Administration; the Overseas Labor Office at the Embassy of the Philippines, Kuwait; the Embassy of the Philippines, Washington, DC; the Philippine Government Inter-Agency Council Against Trafficking; the Blas F. Ople Policy Center and Training Institute; the Center for Migrant Advocacy; the GABRIELA National Alliance of Women’s Organizations in the Philippines; the Institute for Migration and Development Issues; Migrante International; the Migration Policy Institute; the Scalabrini Migration Center; the Labor Relations Administration at the Kuwait Ministry of Social Affairs and Labor; the Office of Domestic Workers Affairs at the Kuwait Ministry of Interior; the Industrial Bank of Kuwait; Kabe Human Rights Society, the Kuwaiti Association of the Basic Evaluators of Human Rights; the Legal Group Al-Khashti, Al-Qallaf, Khuraibut; the Kuwait University College of Law, and Political Science Department; the Kuwait International Law School; the Holy Family Cathedral Parish, Kuwait City; the Kuwait Social Work Society; the Asian Development Bank; the International Organization for Migration offices in the Philippines and Kuwait; and the International Labour Organization offices in Beirut and Kuwait City.

We commend all government and intergovernmental officials and members of civil society who tirelessly strive to improve the lives of migrant domestic workers.



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1. Scope of the Problem

1.1. Background

1.1.1. 20th-Century Labor Migration to Kuwait

With the 1938 discovery of oil,¹ wealth in Kuwait rapidly increased. But it was not until the 1970s that all Kuwaiti people would benefit from the discovery. The tiny, impoverished, tribal sheikhdom at the northern tip of the Persian Gulf, nestled between Iraq and Saudi Arabia, remained a British protectorate through the 1940s and 1950s as the ruling Al-Sabah family struggled to negotiate a greater share of oil profits from the British. By independence in 1961, massive infrastructure projects and rapid commercial development were transforming the State of Kuwait. The oil crisis of 1973² caused global oil prices to soar, and Kuwaiti export revenues flooded into the country. By 1975, Kuwait had pushed the British out completely and taken full control of its oil.³ Government oil wealth distribution schemes were designed to ensure that the wealth would reach all Kuwaiti citizens.⁴

*“If you don’t have a servant,
you’re not Kuwaiti.”*

—Lawyer, Kuwait City

Independently continuing the enormous national project of modernization would require a growing workforce, and with Kuwaitis accumulating more and more wealth, the demand for

1 Kuwait Petroleum Corporation, “Kuwait Oil History,” 2009, <http://www.kpc.com.kw/AboutKPC/KuwaitOilHistory/>.

2 The October 6 (Yom Kippur) War of 1973 pitted Israel against Egypt and Syria and triggered an oil embargo by the Organization of Arab Petroleum Exporting Countries (OAPEC). The OAPEC embargo raised the global price of oil by 70 percent. See Daniel Yergin, *The Prize: The Epic Quest for Oil, Money and Power* (New York: Simon & Schuster: 2008, 537). The complexity of Kuwaiti intergovernmental relationships with Western countries, specifically the United States, also needs to be understood in light of the 1991 US Operation Desert Storm, which expelled Saddam Hussein’s Iraqi forces from Kuwait. As of 2004, Kuwait is one of 15 “major non-NATO (North American Treaty Organization) allies” (MNNAs) of the United States. MNNA status entails military and financial benefits, eligibility for cooperative technological research and development with the US Department of Defense, the same exemption from the Arms Export Control Act enjoyed by NATO members, and other preferential treatment (but MNNA status does not entail the same mutual defense and security guarantees that NATO membership does). For more information, see GlobalSecurity.org, “Major Non-NATO Ally (MNNA),” 2013, <http://www.globalsecurity.org/military/agency/dod/mnna.htm>.

3 Kuwait Petroleum Corporation, “Kuwait Oil History.”

4 In 2012, Kuwaiti gross domestic product per capita was roughly US\$44,000, the 18th highest in the world. See Central Intelligence Agency (CIA), “Kuwait,” in *World Factbook* (Washington, DC: CIA, 2013), <https://www.cia.gov/library/publications/the-world-factbook/geos/ku.html>.

low-skilled, low-paying labor had to be met from abroad. Additionally, Kuwaitis' demand for foreign live-in servants to clean, cook, and care for children would skyrocket. Over the next three decades, massive labor migration—predominantly from India, Indonesia, Sri Lanka, Nepal, the Philippines, and Ethiopia—would transform Kuwait into a foreigner-majority society. This society would have the highest proportion of domestic workers of any country in the world—660,000 domestic workers⁵ in a population of 2.7 million—nearly one-fourth of the population.⁶ Today, “if you don’t have a servant, you’re not Kuwaiti.”⁷

Kuwait’s oil boom in the 1970s dramatically increased individuals’ wealth. The prospect of hiring one or two workers to perform menial household tasks became more feasible as Kuwaiti families had more cash to spend. Women were hired to perform household tasks such as cleaning, cooking, and caring for children and for the elderly. As Kuwait amassed oil revenue, having a household worker became a symbol of affluence among Kuwaiti citizens. Domestic workers grew in popularity and demand, and there was an increasing sense that having a household worker was an essential component of the Kuwaiti identity. As a result, fewer Kuwaiti women were willing to occupy these roles within the home, and families had to look to foreign sources of labor to satisfy this demand. From 1980 to 2000, the number of foreign domestic workers in Kuwait increased from 28,833 men and women to almost 200,000; the estimated number of foreign domestic workers in Kuwait now exceeds 600,000. The number of Kuwaiti families that have domestic workers is well over 90 percent of the total population.⁸

1.1.2. A Much Longer History of Domestic Servitude

Although newfound oil wealth has driven unprecedented demand for live-in servants in Kuwait over the past 50 years, servitude and social hierarchy—between slaves and

*“It is like winning the lottery—
but for the whole country.”*

—Lawyer, Kuwait City

5 See Saroj Pathirana, “Kuwait’s Abused Domestic Workers Have ‘Nowhere to Turn,’” BBC News, 13 October 2010, <http://www.bbc.co.uk/news/world-south-asia-11444167>. See also Kuwaiti Association for the Basic Evaluators of Human Rights, “First National Shadow Report about the Level of Execution [of] the International Convention for Civil and Political Rights in the State of Kuwait, Kuwait City, 2011, http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KWT/INT_CCPR_NGO_KWT_103_9445_E.pdf. Regarding the difficulty of estimating exact numbers of domestic workers, who often work in hidden areas, see Helen Schwenken and Lisa-Marie Heimeshoff, eds., *Domestic Workers Count: Global Data on an Often Invisible Sector* (Kassel, Germany: Kassel University Press, 2011), 6, <http://www.uni-kassel.de/upress/online/frei/978-3-86219-050-8.volltext.frei.pdf>. See also International Labour Office, *Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection* (Geneva: International Labour Office, 2013).

6 CIA, “Kuwait.”

7 School of Advanced International Studies (SAIS) International Human Rights Clinic interview with the Legal Group Al-Khashti, Al-Qallaf, Khuraibut, Kuwait, 21 March 2013.

8 See Nasra M. Shah, Makhdoom A. Shah, Rafiqul Islam Chowdhury, and Indu Menon, “Foreign Domestic Workers in Kuwait: Who Employs How Many,” *Asian and Pacific Migration Journal* 11, no. 2 (2002): 247–69. Another statistic from the Ministry of Planning of Kuwait’s Population Census 2005 counts 246,100 domestic workers, amounting to 21.9 percent of total employment in the country in 2005. See International Labour Office, *Domestic Workers across the World*, 127.

free people, town dwellers and nomadic Bedouins, Muslims and non-Muslims, and men and women—had been part of Arabian culture long before the rise of Islam in the 7th century as well as afterward. Historian Albert Hourani explains that during the Abbasid period, from the 8th to the 13th centuries, there were military slaves and agricultural slaves, but the majority of slaves were females who worked as domestic servants:

[A] more or less distinct element in the working population was that of domestic servants. They stood apart because many of them were women, since such service, or other work which could be done in the house, was almost the only kind of urban occupation which was open to women, and also because many of them were slaves.⁹

It was also common for female slaves in the cities to serve as concubines. Because she was the master's personal property, he could take any slave woman as a concubine if he so desired.¹⁰

Hourani also describes the concept of slavery under Islamic law, which is different from the Western slave tradition that developed in North and South America beginning in the 16th century:

Slavery was a status recognized by Islamic law. According to that law, a free-born Muslim could not be enslaved: slaves were non-Muslims, captured in war or otherwise procured, or else children of slave parents and born in slavery. They did not possess the full legal rights of free men, but the sharia (Islamic law) laid down that they should be treated with justice and kindness; it was a meritorious act to liberate them.¹¹

The relationship of master and slave "could be a close one, and might continue to exist after the slave was freed: he might marry his master's daughter or conduct his business for him."¹² Slavery was common in pre-Islamic societies, and the prevailing view is that Islam did not abolish slavery at the outset:

[L]ike the Hebrew Bible and the New Testament, the previously revealed texts of the Abrahamic faiths, the Qur'an accepted the institution of slavery as an established part of the lives of believers. At the outset, it thus sought to humanize and regulate the practice of slavery rather than seek its outright and immediate abolition.¹³

9 Albert Hourani, *A History of the Arab Peoples* (Cambridge, MA: Harvard University Press, 1991), 116–17.

10 Harold Richard Patrick Dickson, *The Arab of the Desert* (London: Allen and Unwin, 1949), chapter 10. This practice was observed only in urban settings, not among the Bedouins, see *ibid.*

11 Hourani, *A History of the Arab Peoples*, 116–17.

12 *Ibid.*

13 Bernard K. Freamon, "Slavery, Freedom, and the Doctrine of Consensus in Islamic Jurisprudence," *Harvard Human Rights Journal* 11 (1998): 1–64.

However, many verses in the Qur'an are devoted to freeing slaves, and generally emancipation was encouraged because the Qur'an deems freeing a slave a good deed that makes up for a wrongdoing.¹⁴

Such Arabian cultural practices would continue for centuries through the Ottoman era. Early in the 18th century, the Bani Utub tribe (from whom Kuwait's ruling Al-Sabah family descend) migrated from the Nejd, the central region of the Arabian Peninsula, and abandoned their nomadic, pastoral way of life to found a fishing, pearl diving, trading, and seafaring settlement at the natural harbor that would eventually become Kuwait City.¹⁵ Trafficking, buying, or selling slaves was never a prime aspect of Kuwaiti trade but "domestic slaves, born in captivity of slave parents who may have been in one family for several generations, [were] commonly to be found in well-to-do [Kuwaiti] households."¹⁶ According to historian J. G. Lorimer, in 1904 Kuwait had a population of 35,000, among them "4,000 assimilated slaves and ex-slaves of African origin."¹⁷ By 1924, the sheikh of Kuwait decreed trading in slaves a crime, effectively ending the practice.

Historian H. R. P. Dickson wrote in 1949 about the relationship between owners and their domestic slaves, which tended to be a personal one:

Masters in Kuwait town are as a general rule kind to domestic slaves born in their families, whom they bring up much as they do their own children. These family slaves hold positions of trust, and are provided with wives and husbands, as the case may be, when they so desire. When slaves marry they go through the same ceremonies as the freeborn, the master and mistress of the slave acting the part of the parents of the bridegroom.¹⁸

Dickson goes on to say that "the family will evince as much interest in the marriage of one of their slaves as in that of one of the family. The slaves' children mix on terms of affection and equality with the master's children."¹⁹

Although slaves lived harmoniously with their owners and enjoyed considerable respect, accounts also exist of slaves being treated unfairly or violently:

[B]ut in such cases they may appeal to their shaikh. The Shaikh of Kuwait always took pains to listen to any slave who came to him with complaints of

14 For a balanced account of the concept of slavery in Islam, see Mohamed Mattar, "Combating Trafficking in Persons in Accordance with the Principles of Islamic Law," United Nations Office on Drugs and Crime, New York, 2010.

15 Anh Nga Longva, *Walls Built on Sand: Migration, Exclusion, and Society in Kuwait* (Boulder, CO: Westview, 1997), 19.

16 Dickson, *The Arab of the Desert*, chapter 10.

17 J. G. Lorimer, *Gazeteer of the Persian Gulf, Oman and Central Arabia* (Westmead, UK: Gregg, 1970). See also pp. 24–25 at <http://www.yale.edu/glc/indian-ocean/hopper.pdf>; J. G. Lorimer, *Gazeteer of the Persian Gulf* (Calcutta: Superintendent Government Printing, 1915); and Campbell Gibson and Kay Jung, "Historical Census Statistics on Population Totals by Race, 1790 to 1990," U.S. Census Bureau Population Division Working Paper Series No. 56 (Sept. 2002), <http://www.census.gov/population/www/documentation/twps0056/twps0056.html>.

18 Dickson, *The Arab of the Desert*, chapter 10.

19 Ibid.

ill-treatment, and if he decided that the petitioner could not safely be returned to his owner he would buy him himself, giving him [his] monthly salary and encouraging him to look upon himself as an ordinary servant.²⁰

In summary, customs of Kuwaiti patriarchy, domestic servitude, and racial and social hierarchy are rooted in millennia of history in Arabian culture. Having servants has long been a status symbol of the wealthy elite.

1.1.3. Vulnerability of Domestic Workers

In contemporary Kuwait, employers not only pay wages but also feed, house, and clothe their foreign domestic workers, which adds to the dependency domestic workers experience in relation to their employers. A long-held Kuwaiti and Islamic notion of benevolent treatment of servants seems to position the practice somewhere between the Western concepts of slavery and adoption, with inevitable variations in treatment of servants across society. Though foreign workers make up a majority of the population of Kuwait, they have no path to naturalization and retain their legal status as “temporary workers” no matter how long they stay in Kuwait, which is sometimes for decades on end. The fact that migrant workers are noncitizens to a large extent legitimates, in the migrants’ own eyes, Kuwait’s politics of exclusion.²¹ Foreign domestic workers, who are overwhelmingly female, occupy an even lower social stratum than do other foreign workers because they are exempted from all labor laws and protections. Furthermore, domestic workers typically cannot communicate effectively in Arabic with their employer or with law enforcement, have limited independence, and have restricted freedom of movement, if any, outside their employer’s home.

Many domestic workers form warm and caring relationships with their employer’s family. However, domestic workers’ legal residency is at the mercy of their local *kafeel* (sponsor), and legal protections are lacking. These factors, combined with the long tradition of domestic servitude and the strong cultural value of the privacy of the home, mean that domestic workers are a group vulnerable to abuse.

“Domestic workers are in the house without rest; they’re always available. That’s what you’re used to. You don’t see it as something inhumane. Kids grow up with it. And it is very comfortable.”

—Sheikha Bibi Nasser Al-Sabah,
Chairperson, Kuwait Social Work Society

²⁰ Ibid.

²¹ Longva, *Walls Built on Sand*, 5.

This vulnerability is often compounded by the workers' personal circumstances. Many have fled poverty in their home country, have taken on sizable debts to migrate, and have strong familial pressure to send remittances home to support their families. They therefore have a great fear of deportation. Consequently, many workers who are not being paid, who are forced to repay their recruitment fee to their employer before being transferred to another employer (which is in violation of Kuwaiti regulations), or who are abused choose to run away rather than go to the police to register a complaint and take their chances in the Kuwaiti legal system. Without their passport, which is typically held by their employer, these workers, if reported by their sponsor, are charged with "absconding" under Kuwaiti law. Runaways are the most vulnerable group of all because, without their passports, they are susceptible to blackmail by threats of deportation or imprisonment if criminal charges are pending against them. In some cases, these runaways are pushed into prostitution.

Many of those who flee the homes of abusive Kuwaiti employers seek refuge in their countries' embassies.²² The Kuwaiti government has taken some steps, such as opening a small shelter for "runaway" workers, but many problems persist. In 2009, the embassies of labor-sending countries in Kuwait received more than 10,000 complaints from domestic workers regarding nonpayment of wages; withholding of passports; excessively long working hours without rest; and physical, sexual, and psychological abuse. Many more cases of abuse likely go unreported.²³

In short, migrant domestic workers are too legally vulnerable, movement restricted, and politically weak to organize and fight effectively for their rights. Because of entrenched cultural norms, most Kuwaitis do not see demanding long hours of their workers, not allowing breaks, withholding workers' passports, or withholding wages until the recruitment fee has been recouped as improper or immoral, much less illegal.²⁴ As many Kuwaitis point out, though Kuwait has the most meaningful elected parliament in the Gulf region and the freest press, Kuwait is not a fully democratic society and Kuwaitis themselves are still trying to assert their own rights as workers and citizens.²⁵ Therefore, widespread societal recognition and respect for the rights of migrant domestic workers will take time to evolve.

One of the prevailing reasons that problems faced by employers and workers alike persist today is the social entrenchment of having domestic workers. Most Kuwaitis think that

22 This phenomenon has been widely documented. See Michele E. Beasley and Dorothy Q. Thomas, *Punishing the Victim: Rape and Mis-treatment of Asian Maids in Kuwait* (New York: Middle East Watch, Women's Rights Project), 8–9.

23 Human Rights Watch, *Walls at Every Turn: Abuse of Migrant Domestic Workers through Kuwait's Sponsorship System* (New York: Human Rights Watch, 2010), <http://www.hrw.org/en/reports/2010/10/06/walls-every-turn-0>.

24 SAIS International Human Rights Clinic interview with the Kabe Human Rights Society, Kuwaiti Association for the Basic Evaluators of Human Rights, Kuwait, 21 March 2013.

25 SAIS International Human Rights Clinic interview with Dr. Ghanim al-Najjar, professor, Political Science Department, Kuwait University, Kuwait, 20 March 2013. Tens of thousands of undocumented Kuwaiti "bedoon" are Arabs "without nationality." Unrecognized by the state, the status of the bedoon has been a long-standing social and human rights problem as many have faced *de jure* discrimination in education, employment, and other areas.

“domestic workers are a necessity of life.”²⁶ Because Kuwaiti citizens have for their entire lives had domestic workers in their houses, they have grown accustomed to having such workers attend to their every wish. Having a domestic worker is part of Kuwaitis’ self-identity. At the same time, monitoring of workers’ rights is inhibited by the fact that labor inspectors, for social and legal reasons, cannot enter private homes to investigate the treatment of workers and allegations of abuse. The circumstances of the situation are at once a legal issue, a social issue, a women’s issue, a moral issue, an economic issue, and a political issue.

1.2. Terminology

The different terms that are being used to refer to individuals engaged in domestic work—slaves, servants, (migrant) domestic workers, maids, domestic helpers, temporary contractual laborers, household service workers, and so forth—are loaded with a range of different associations and connotations. Moreover, there are terms that refer to migrant workers more generally. In the Philippines, Overseas Filipino Worker (OFW) is used to describe a migrant worker, and those migrant workers are seen as “*bagong bayani*,” or “new hero.” Inherently, the choice to use a certain term can be quite telling. It reflects underlying attitudes, conceptions, and politics and can be at the crux of human rights advocacy. As will be discussed, a migrant domestic worker may be trapped between two extremes, being viewed as “*khedm*,” or servant, in Kuwait to being hailed as “*bagong bayani*,” or new hero, in the Philippines.

In Kuwait, indeed, the moral outrage at the prevalence and severity of the abuse of migrant domestic workers has induced some human rights advocates to generalize that Kuwait’s sponsorship system itself is a form of “modern-day slavery.”²⁷ Although a number of severe cases involving physical confinement, imposed social isolation, forced labor through debt bondage, threats of physical violence, or criminal punishment, for example, are dehumanizing and objectively similar to slavery, generalized systemic comparisons to slavery or debt bondage tend to (a) blur important distinctions; (b) ignore the prevalence of problem-free cases where employers develop an affectionate, familial bond with their domestic workers; and (c) typically use media to “name and shame” governments in ways that may not be directly constructive.

Though human trafficking for the purpose of domestic work is a major problem in Kuwait,²⁸ the overwhelming majority of migrant domestic workers travel to the country of their own

26 SAIS International Human Rights Clinic interview with the Legal Group Al-Khashti, Al-Qallaf, Khuraibut, Kuwait, 21 March 2013. A court case was mentioned, in which a woman successfully sued her husband to pay for a domestic worker for her household as a “necessity of life.”

27 Walden Bello, “Labor Trafficking: Modern Day Slave Trade,” *Foreign Policy in Focus*, 11 May 2012, http://www.fpi.org/articles/labor_trafficking_modern-day_slave_trade. See also Malcolm Borthwick, “Sponsored Workers in Kuwait are ‘Modern Day Slaves,’” BBC News, 12 December 2009, <http://news.bbc.co.uk/2/hi/business/8409533.stm>.

28 See, for example, H el ene Harroff-Tavel and Alex Nasri, *Tricked and Trapped: Human Trafficking in the Middle East* (Beirut: ILO, 2013), 36, http://www.ilo.org/wcmsp5/groups/public/...arabstates/...ro-beirut/documents/publication/wcms_211214.pdf.

free will to secure employment with higher pay than they could receive at home, and they often willingly incur heavy debts to do so. That said, deceitful recruitment; psychological, physical, or sexual abuse; and a lack of credible legal recourse can undermine the fundamental voluntary nature of domestic employment. However, in a system where workers are (at least theoretically) paid and where deportation is a threat, the worker is, by definition, free to leave and therefore is not “slave property” analogous to African slaves in the 19th-century American South. The reality, however, is that workers stay in abusive situations because they cannot switch employers and because they risk deportation if they work for someone other than their legal sponsor. Furthermore, recognizing the individual agency of migrant domestic workers is integral to understanding the Kuwaiti situation and developing practical solutions to domestic workers’ problems in Kuwait. Reckless use of the sensationalist term *modern-day slavery* does not illuminate analysis and can be counterproductive.²⁹

The term *servant*, though less pejorative than *slave*, also entails a hierarchical power imbalance that indicates a superior master and an inferior servant. In multiple interviews conducted in Kuwait, interviewees, among them many Kuwaiti human rights advocates, when speaking in Arabic used the term *khedm*, or servant, sometimes catching the mistake and correcting themselves to use the Arabic term *aamel menzelleeyuh*, or domestic worker. Similarly, even the standard employment contracts for domestic workers that have been designed to improve working conditions by setting contractual minimum standards use both terms, *khedm* and *aamel menzelleeyuh*, when referring to the domestic worker as a contractual party.³⁰ Clearly, the use of the term “servant” is at odds with professionalizing and advancing the conditions of domestic workers.

The difference is consequential. Because of the strong Arabian cultural value of the sacrosanct privacy of the home, a domestic helper has not historically been seen as a worker who enjoys the same rights that other workers enjoy. The underlying concept was that the nature of work done inside private homes was unlike work done in public or other workplaces. Furthermore, because effectively enforcing such laws would necessitate police or other officials violating, unannounced, the privacy of employers’ homes to monitor working and living conditions—an unacceptably insulting cultural affront to the family and head of the household—the exemption of domestic workers from labor law protections was seen as prudent. Therefore, the Kuwaiti popular culture conceptual shift from the term *servant* to the term *domestic worker*—with the workers’ rights that the latter term implies—is a central public awareness objective for human rights advocates.

29 For more on shifting the focus from slavery to exploitation in efforts to define the concept of human trafficking, see Mohamed Mattar, “Interpreting Judicial Interpretations of the Criminal Statutes of the Trafficking Victims Protection Act: Ten Years Later,” *American University Journal of Gender, Social Policy and the Law* 19 (2011): 1247–304.

30 See section 3.3, titled “Contracts” in chapter 3.

In stark contrast to the term and connotation of the word *khedm*, or servant, used for domestic workers in Kuwait, from a Philippine perspective, the term *Overseas Filipino Workers* (OFW) usually applies.

According to Philippine legislation, OFW

refers to a person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a state of which he or she is not a citizen or on board a vessel navigating the foreign seas other than a government ship used for military or non-commercial purposes or on an installation located offshore or on the high seas; to be used interchangeably with migrant worker.³¹

OFWs are championed by the Philippine government and in popular culture as *bagong bayani*, or new hero, for sacrificing to provide for their families and country. Moreover, OFWs enjoy special treatment and privileges, such as separate lines at the airport and reduced cost shipping. They are generally highly respected,³² not unlike military personnel in the United States. Indeed, there are even the Bagong Bayani Awards to “pay tribute to the country’s outstanding Overseas Filipino Workers (OFWs) as the new heroes of our time.”³³

The international community has weighed in on the use of terminology with the International Labour Organization (ILO) Convention Concerning Decent Work for Domestic Workers (C189).³⁴ The thrust of the convention is to annihilate the still-dominant cultural paradigm that domestic work is not the same as nondomestic work and therefore should be left to the unsupervised discretion of the employer rather than be subject to legally enforced labor standards. The notion that domestic work *is* work and that domestic workers are entitled to the same rights and protections as any other workers lies at the heart of the ILO convention. For that reason, the preamble recognizes “the significant contribution of domestic workers to the global economy,”³⁵ and article 6 calls on member states to “take measure to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions.”³⁶

Article 1 of ILO C189 defines domestic work as “work performed in or for a household or households”³⁷ and domestic worker as “any person engaged in domestic work within an employment relationship.”³⁸ Domestic workers are therefore people who are employed by and provide services for a private household.

31 Section 3, paragraph (a), Republic Act 8042, as amended by section 2 of Republic Act 10022, http://www.lawphil.net/statutes/re-pacts/ra2010/ra_10022_2010.html.

32 SAIS International Human Rights Clinic interview with the Asian Development Bank, Manila, 19 March 2013.

33 Bagong Bayani Foundation, “Bagong Bayani Awards,” October 17, 2013, <http://www.bbfi.com.ph/bagong-bayani-awards-2013/>.

34 ILO Convention Concerning Decent Work for Domestic Workers (C189), adopted 16 June 2011, entered into force 5 September 2013.

35 ILO C189, preamble.

36 ILO C189, article 6.

37 ILO C189, article 1(a).

38 ILO C189, article 1(b).

The international community has also opined on the definition of a migrant worker. According to the description in article 2 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), a migrant workers is “a person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a State of which he or she is not a national.”³⁹

With due regard to the definitions in ILO C189 and the CMW, this report will use the terms *migrant worker*, *domestic worker*, or *Overseas Filipino Worker* as appropriate when referring to foreign nationals engaged in domestic work.⁴⁰

1.3. Who Is Coming? The Role of Young Filipino Women

According to an annual survey of the Philippine National Statistics Office, the number of Filipinos working abroad from April to September 2012 is approximately 2.2 million⁴² out of a total population of more than 105 million.⁴³ This number is steadily increasing in recent years.⁴⁴ The biggest group of these migrant workers, roughly one-third, consists of laborers and low-skilled workers; however, more than half of all female OFWs are low-skilled.⁴⁵ This lack of skills reduces female OFWs’ wage-negotiating leverage and makes them more vulnerable to exploitation.⁴⁶ Female OFWs are generally younger than male OFWs. By Filipino regulations, OFWs must be at least 23 years of age.⁴⁷ A significant number leave the Philippines to work in “gendered” occupations such as nursing, domestic work, and entertainment.

“Filipino workers are also preferred by local Kuwaiti employers because of their excellent communication and interpersonal skills.”⁴¹

39 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, or the Migrant Workers Convention, adopted 18 December 1990 at the 45th session of the General Assembly of the United Nations, article 2(1).

40 As explained in the text, from a Kuwaiti perspective every domestic worker is a “migrant” worker; no Kuwaitis are employed inside the home. The term Overseas Filipino Worker (OFW) is particularly used in sections describing the Philippine perspective.

41 Department of Foreign Affairs, “DFA–PHL Embassy Officials Meet with Kuwait Agency Owners,” press release, Republic of the Philippines, Manila, 17 November 2010, <http://www.gov.ph/2010/11/17/dfa-phl-embassy-officials-meet-with-kuwait-agency-owners/>.

42 National Statistics Office, “2012 Survey on Overseas Filipinos,” Republic of the Philippines, Manila, 4 September 2013, <http://www.census.gov.ph/content/2012-survey-overseas-filipinos>.

43 CIA, “Philippines,” in World Factbook (Washington, DC: CIA, 2013), <https://www.cia.gov/library/publications/the-world-factbook/geos/rp.html>.

44 In 2012, 2.22 million OFWs were estimated, in comparison to 2.16 million OFWs in 2011. See National Statistics Office, “2012 Survey on Overseas Filipinos.” In 2010, the number was 2.0 million. See National Statistics Office, “2011 Survey on Overseas Filipinos,” Republic of the Philippines, Manila, 9 October 2012.

45 Laborers and low-skilled workers represent 31.3 percent of OFWs according to National Statistics Office, “2012 Survey on Overseas Filipinos.” However, the same survey indicates that 55 percent of female OFWs are low-skilled.

46 SAIS International Human Rights Clinic interview with Ellene Sana, Center for Migrant Advocacy, Manila, 18 March 2013.

47 Philippine Overseas Employment Administration, Governing Board Resolution No. 02, Series of 2007, modifying Governing Board Resolution No. 04, Series of 2006, as modified by Governing Board Resolution No. 04, Series of 2011.

World Bank data for 2012 show that the Philippines, with remittances reaching US\$24 billion, is the third-largest recipient of migrant remittances globally, behind India and China.⁴⁸ In 2012, remittances were 10 percent of the country's gross domestic product—the largest contributor to the Philippines' gross domestic product, which totals approximately US\$250 billion.⁴⁹ According to a December 2012 news report, "Today, as nearly 4,000 workers leave the Philippines each day, state-sponsored migration has proven quite lucrative for the Philippine state and remittances remain a catalyst of economic growth."⁵⁰ Remittances are therefore a critical source of foreign exchange for the Philippine economy.⁵¹ Labor migration is encouraged by popular opinion, which attributes high respect to OFWs, and by government incentives such as beneficial treatment.⁵²

Saudi Arabia is the number one receiving country for migrant workers from the Philippines (20.6 percent of all OFWs in 2012), followed by the United Arab Emirates (14.9 percent).⁵³ Kuwait received 4.2 percent of the total number of OFWs in 2012. Though Saudi Arabia and the UAE import more foreign workers overall, 80 percent of Kuwait's workforce is foreign. In Kuwait, in addition to its domestic workers, migrant workers are prevalent in the construction, retail, and sanitation service sectors, among others, and are outside the focus of this report. The labor attaché in the Philippines Embassy in Kuwait, David Des Dicang, estimated that, as of March 2013, 170,000 Filipino workers were in Kuwait and that 80,000 to 85,000 of them were domestic workers.⁵⁴ The vast majority of those workers are female, between the ages of 23 and 45 years, and the principal duties are cleaning, cooking, and caring for children. Approximately 1,000 Filipino male drivers are included in this category of domestic workers and have the same *iqama*, or residency visa (Visa 20). Visa 20 is overseen by the Ministry of Interior (MOI). In contrast, foreign nondomestic workers are issued Visa 18, which is overseen by the Ministry of Social Affairs and Labor. Kuwait has the highest ratio of domestic workers to citizens in the Middle East (approximately one domestic worker for every two Kuwaitis),⁵⁵ and Filipinas compose a large number of them. Filipina domestic workers are in relatively high demand, compared to Indians, Sri Lankans, Nepalese, and Ethiopians, at least partially because of their English-language skills and higher level of education.

48 With populations over 1 billion people, India and China export the most laborers in the world and receive the most remittances. According to the recent available data, in 2012, India received an estimated US\$69 billion, China received an estimated US\$60 billion, and the Philippines received an estimated US\$24 billion in remittances. See Migration and Remittances Unit, Development Prospects Group, Migration and Development Brief 20, World Bank, Washington, DC, 19 April 2013, 2.

49 CIA, "Philippines."

50 Tanya Kaur Bindra, "In Pictures: The Misery of Migrant Workers," *Al Jazeera*, 18 December 2012, <http://www.aljazeera.com/indepth/inpictures/2012/12/20121217981786357.html>.

51 The Philippines' external debt is more than US\$70 billion. See *Ibid.*

52 See section 1.2. Terminology.

53 National Statistics Office, "2012 Survey on Overseas Filipinos."

54 SAIS International Human Rights Clinic interview with the Overseas Labor Office, Philippine Embassy in Kuwait, 21 March 2013.

55 Saroj Pathirana, "Kuwait's Abused Domestic Workers Have 'Nowhere to Turn,'" *BBC News*, 13 October 2010, <http://www.bbc.co.uk/news/world-south-asia-11444167>.

1.4. Why Are They Coming? The Role of Migrant Labor in the Philippine Economy

Historically, the migration of Filipinos abroad is mostly a product of extreme poverty, underdevelopment, and lack of employment opportunities at home. The Philippines is a country with rich and vast natural resources and with an educated and skilled workforce. In the 1960s, a large number of Filipino medical professionals, including doctors, nurses, and medical technicians, filled the skills gap in Western countries (i.e., the United States, Canada, and Western European countries). In the 1970s, the phenomenon of overseas contract workers emerged. These groups of workers departed the Philippines to fill labor shortages in more industrial countries, becoming construction workers, caretakers, domestic workers, nurses, and entertainers in the Middle East (Saudi Arabia and Kuwait) and Asia Pacific (Hong Kong, Singapore, Taiwan, and Malaysia).⁵⁶ This phenomenon started a culture of remittances that has largely increased over the past 10 years. The “labor export policy” that was instituted by deceased dictator Ferdinand Marcos in the 1970s has thus become a permanent policy in the country.⁵⁷ This situation may be problematic for the sustainability and health of the Philippine economy in the future. However, it is having positive effects on the country’s current economic development. The Philippines had a 6.6 percent growth rate in 2012,⁵⁸ which was almost on par with China’s at 7.8 percent.⁵⁹ In fact, the Philippines was one of the top economic performers in Asia in the 2000s. The main reason for its high growth is the large demand coming from private domestic consumption, undoubtedly partially fueled by remittance money. This phenomenon can be observed in the country’s shopping malls.⁶⁰ Although other Asian countries are growing because of exports,⁶¹ the Philippine economy is not as dependent on exports and is thus better able to withstand the global economic recession.⁶²

A unique factor to the Philippines is the movement of agricultural workers to the service industry beginning in 1960. In other Asian countries, agricultural workers moved to services as well, but more frequently they moved to industry. The Philippines, on the contrary, actually reduced its share of industrial workers. Among workers, 53 percent are employed in the service sector in the Philippines, whereas only 15 percent are employed in

56 World Economic Forum, “Annex 4: Case Studies on Business Migration 2011–2012,” 3, http://www3.weforum.org/docs/WEF_GAC_Annex4CaseStudiesBusinessMigration_2011-12.pdf.

57 Jomay Amora-Mercado, “Remittance Policy Bad for Filipinos, Philippines,” *Winnipeg Free Press*, 3 March 2012, <http://www.winnipeg-freepress.com/opinion/analysis/remittance-policy-bad-for-filipinos-philippines-141282013.html>.

58 CIA, “Philippines.”

59 Ramy Inocencio, “China’s Economy Grows 7.8% for 2012, Better Than Expected,” CNN, 18 January 2013, <http://edition.cnn.com/2013/01/17/business/china-gdp-2012>.

60 See, for example, Marnette Federis, “‘Malling’ Consumes Shoppers in the Philippines,” Reuters, 24 August 2008, <http://www.reuters.com/article/2008/08/25/us-philippines-malls-idUSMAN28283520080825> (discussing, *inter alia*, that remittances are “[a]nother factor keeping malls popular.”)

61 SAIS International Human Rights Clinic interview with the Asian Development Bank, Manila, 19 March 2013.

62 CIA, “Philippines.”

the industrial sector.⁶³ Because of the lack of manufacturing jobs, low-skilled and unskilled workers have few employment options in the country and often face either joblessness or migrant work abroad. Many choose the latter. Norio Usui, senior country economist for the Asian Development Bank, states that “job generation remains inadequate, reflected in fairly rigid rates of unemployment, growing underemployment, and continuous deployment of workers overseas.”⁶⁴ He also named the failure of the country’s past growth strategies to generate enough manufacturing jobs as a fundamental reason for the persistence of mass poverty. The lack of manufacturing can be blamed partly on deficient infrastructure and partly on corruption.⁶⁵ Indeed, the Philippines has one of the highest costs of power in the world.⁶⁶ Moreover, in 2012, the Philippines scored only 34 out of 100 on Transparency International’s Corruption Perceptions Index, in which 0 means that a country’s public sector is perceived as highly corrupt and 100 means a country’s public sector is perceived as very clean. This score implies that the Philippines ranks number 105 out of 174 countries in terms of transparency.⁶⁷ Thus, it is important to create the necessary infrastructure and to improve the business climate to bring manufacturing jobs to the Philippines.

Another major hindrance to Filipinos gaining long-term employment and the stagnation of hiring is reported to be the labor law, which obliges employers to provide social welfare benefits to workers who have been employed more than six months and makes firing a worker after that timeframe very difficult.⁶⁸ Employers have adopted strategies of hiring workers for a time slightly less than six months and rehiring the same person to work at the same company but in a different location, thereby avoiding the obligation to pay benefits for the worker.⁶⁹ This practice creates another incentive for Filipinos to travel overseas for work, because at least they are promised a two-year contract. As a result, it is important to promote policies and practices that increase job security and prevent circumvention of the labor code.

The problems linked to underemployment are exacerbated by the needs of a typically large Filipino family.⁷⁰ Birth rates remain high because of deep religiosity among poor families and the traditional Catholic rejection of birth control. In fact, the Philippine legal framework includes a nationwide criminal ban on abortion without any clear exceptions, prevents

63 CIA, *ibid.*

64 SAIS International Human Rights Clinic interview with Nori Usui, Asian Development Bank, Manila, 19 March 2013.

65 *Ibid.*

66 Roderick L. Abad, “High Electricity Rates Hobble Philippine Bid for Energy Efficiency,” *BusinessMirror*, 7 August 2013, <http://www.abs-cbnnews.com/business/08/07/13/high-electricity-rates-hobble-ph-bid-energy-efficiency> (“... the Philippines is one of the highest-rated country in the world when it comes to the cost of power. Current electricity rate in the country is P10.52 per kilowatt-hour. This is the fifth-highest rate in the world.”)

67 The Philippines is on par with Algeria, Armenia, Bolivia, Gambia, Kosovo, Mali, and Mexico. See Transparency International, “Corruption Perceptions Index 2012,” <http://cpi.transparency.org/cpi2012/results/>.

68 SAIS International Human Rights Clinic interview with Institute for Migration and Development Issues, Manila, 22 March 2013.

69 SAIS International Human Rights Clinic interview with GABRIELA, Manila, 21 March 2013.

70 SAIS International Human Rights Clinic interview with Blas F. Ople Policy Center and Training Institute, Manila, 18 March 2013.

government health facilities from providing modern contraceptives, and restricts information on family planning and contraceptive services.⁷¹

The overwhelming motivation for mass labor migration from the Philippines to Kuwait (and other labor-receiving destinations) is thus simple economics. Lower-class and lower-middle-class Filipinos, who are struggling to find stable, well-paid employment in the Philippines, may opt to be placed by a recruitment agency into a home in Kuwait as a domestic worker, where they will be paid much higher wages. Even though—in accordance with Philippine legislation—the standard employment contract for Filipino domestic workers in Kuwait drafted by the Philippine Overseas Employment Administration officially requires that Filipino domestic workers be paid a minimum wage of US\$400 per month, the market wage in recent years has been US\$200 to US\$320 per month (i.e., KD 55 to KD 100).⁷² However, because employers of domestic workers in Kuwait pay to feed, house, and clothe their workers on top of paying them wages, workers' disposable income is effectively much higher, enabling them to live expense-free in Kuwait and remit almost all of their wages to their families back home. According to a 2012 news article, "In a state where nearly 33 percent live under the poverty line, 17.4 percent of youth are unemployed, and 42 percent experience vulnerable and under-employment, the impetus to migrate for a better job and a better life remains strong."⁷³ Groups such as Migrante International, a migrants' rights network, have criticized the Philippine government's inability to reduce widespread unemployment as one of the root causes of outmigration.⁷⁴

Although economics is the prime driver of Filipino labor migration to Kuwait, significant social problems in the Philippines also contribute. According to Ellene Sana at the Center for Migrant Advocacy in Manila, many migrants, especially women, cite a desire for independence, "a sense of being liberated ... from all pressure" as part of their motivation to seek work abroad.⁷⁵ The GABRIELA National Alliance of Women's Organizations in the Philippines reported receiving 1,670 complaints of violence against women, including domestic violence, rape, sexual harassment, sex trafficking, child sexual abuse, and discrimination in the workplace, from January 2010 to September 2012.⁷⁶ GABRIELA emphasizes that these cases "are just the tip of the iceberg": thousands of cases go unreported, and GABRIELA blames

71 See Center for Reproductive Rights, "Imposing Misery: The Impact of Manila's Contraception Ban on Women and Families," *Linangan ng Kababaihan, Reproductive Health, Rights and Ethics Center for Studies and Training, and Center for Reproductive Rights*, Quezon City, Philippines, 2010, <http://reproductiverights.org/sites/crr.civicaactions.net/files/documents/Imposing%20Misery%20Updated.pdf>. See also Center for Reproductive Rights, "Forsaken Lives: The Harmful Impact of the Philippine Criminal Abortion Ban," Center for Reproductive Rights, New York, 2010, http://reproductiverights.org/sites/crr.civicaactions.net/files/documents/phil_report_Spreads.pdf.

72 See section 3.3. Contracts.

73 Bindra, "In Pictures."

74 *Ibid.* See also SAIS International Human Rights Clinic meeting with Migrante International, Manila, 22 March 2013 (which indicates that the consensus is that if the government would create jobs at home, then individuals would stay in the Philippines).

75 SAIS International Human Rights Clinic interview with Ellene Sana, Center for Migrant Advocacy, Manila, 22 March 2013.

76 Ina Alleco R. Silverio, "Rape, Cases of Violence against Women on the Rise—GABRIELA," 9 November 2012, <http://bulatlat.com/main/2012/11/09/rape-cases-of-violence-against-women-on-the-rise-%E2%80%93-gabriela/>.

poverty, a culture of impunity, and the failure of the legal system to assist victims of violence.⁷⁷ Citing the prevalence of abuse of maids in Filipino homes, Dovelyn Agunias of the Migration Policy Institute added that abused maids “might as well go abroad ... if someone was going to pay you four to eight times your income, you would do it.”⁷⁸ As Carmelita Dimzon of the Overseas Workers Welfare Administration put it, “As much as possible we want to keep our women home, but it is their choice. [They are] always looking for greener pastures.”⁷⁹

Additionally, because of the popular veneration of OFWs in Philippine society, women can leave impoverished, unhealthy, or dangerous situations at home, while still being connected to their families and societies and without feeling guilty abroad after leaving behind husbands to raise children on their own, fundamentally altering family life.⁸⁰ Many Filipinos have family traditions of OFWs, have worked as domestic workers in multiple countries for years, or have followed friends or family members abroad in “chain” or “network” migration. Indeed, there is an area in Batangas, Philippines known as “Little Italy” due to chain migration and a common recruiter.⁸¹

Another factor contributing to migration is the prevalence of deep religiosity in the Philippines. More than 81 percent of Filipinos are Catholic, and the church is very active in civil society.⁸² Filipinos have a culture of being tough and persevering through difficulties. Many Filipinos believe that God will protect those who put their faith in God under any circumstances and feel that if they have a bad experience in one country they just got unlucky and should try a different one.⁸³ Others’ faith fuels a strong desire to go to Jordan or Israel because it is the Holy Land.

1.5. How Are They Coming? The Role of Recruitment Agencies

Domestic workers generally migrate to Kuwait through recruitment agencies in the Philippines, which maintain relationships with recruitment agencies in Kuwait. To travel, the prospective Filipino domestic worker, a Kuwaiti employer, a Kuwaiti agency, and a Philippine

77 Ibid.

78 SAIS International Human Rights Clinic interview with Dovelyn Agunias, Migration Policy Institute, Manila, 18 March 2013.

79 SAIS International Human Rights Clinic interview with Carmelita S. Dimzon, Philippines Overseas Workers Welfare Administration, Manila, 20 March 2013.

80 SAIS International Human Rights Clinic interview with The Center for Migrant Advocacy, Manila, 18 March 2013.

81 SAIS International Human Rights Clinic interview with GABRIELA, Manila, 21 March 2013; Volt Contreras, “OFWs Turn Batangas Town into La Dolce Vita,” *Philippine Daily Inquirer*, 12 March 2009, <http://globalnation.inquirer.net/philippineexplorer/philippineexplorer/view/20090312-193763/OFWs-turn-Batangas-town-into-La-Dolce-Vita>.

82 CIA, “Philippines.”

83 SAIS International Human Rights Clinic interview with the Migration Policy Institute, Manila, 18 March 2013.

agency must all sign the same contract.⁸⁴ Before being matched with a sponsor–employer, the prospective worker must complete a physical exam to assure fitness for the job.⁸⁵ Prospective sponsors pay recruitment fees, which vary by agency but can be around KD 700 (US\$2,500) for Filipino workers, plus international airfare of US\$700 to US\$1,000.

Typically, recruitment agencies in Kuwait City have binders for prospective employers, which are full of profiles of prospective workers, including photographs and information such as age, height, weight, educational level, religion, work experience, language skills, and monthly wage. At a recruitment agency visited during the fact-finding mission in March 2013, wages ranged from KD 52 per month (US\$183) for Ethiopian domestic workers to KD 92 (US\$324 per month) for Filipina domestic workers. Having a Filipina domestic worker is frequently seen as a status symbol in Kuwait because workers from the Philippines generally speak English better than most migrant workers, have often completed higher levels of education (though an estimated 70 percent are low-skilled), and have a reputation as dutiful workers.

Though some recruitment agencies do try to arrange an international telephone call or Skype meeting between a prospective worker and the sponsor–employer before the contract is signed, a major life decision for both parties is based on scant information—for the Filipina, who accepts being legally, financially, and often socially dependent if not physically controlled in a foreign country and for the sponsors in Kuwait, who take into their home and care a foreign woman, often to raise their own children. The Filipina domestic worker and the sponsor–employer in Kuwait are strangers abruptly thrust into the intimate, private environment of the home. Often they struggle with cultural and language barriers for even simple communication. The sponsor will have made a major upfront investment of up to US\$3,500 on the basis of little information. International labor standards and a 2010 Kuwaiti ministerial order prohibit the recruitment agency from charging any fees to workers, but such fees are reportedly common.⁸⁶

To address problematic employee–employer matches, the Kuwaiti MOI has instituted a 100-day trial period, during which the recruiting agency in Kuwait that placed the worker has the responsibility, if the worker becomes sick or pregnant, runs away, or dissatisfies the employer for another reason, to provide a refund or a replacement worker to the employer at agency expense.⁸⁷ Many human rights advocates, such as the vice head of the Kuwait Social Work Society, Dr. Faisal M. Al-Masoud, have asserted that the 100-day trial period

84 SAIS International Human Rights Clinic interview with the Overseas Labor Office, Philippine Embassy in Kuwait, 21 March 2013.

85 SAIS International Human Rights Clinic interview with the Kuwait Social Work Society, 18 March 2013. An approved medical report is required to receive a visa. See VisaInfo, “Kuwait Visa Requirements,” <http://visainfo.co.in/gulf-visa/77-kuwait-visa-requirements>.

86 Harroff-Tavel and Nasri, *Tricked and Trapped*, 36.

87 SAIS International Human Rights Clinic interview with the International Organization for Migration, Kuwait, 18 March 2013. See also section 3.3 Contracts.

is too brief. He finds that many abusive or problematic situations develop after 100 days, when recruiting agencies have washed their hands of all responsibility and the worker's *iqama* (legal residency visa) is solely in the name of the sponsor and not the agency. It is the sponsor who is then responsible for paying repatriation and all other fees associated with the worker. A 2010 Human Rights Watch report found that some recruiting agencies in Kuwait would accept worker exchanges after the 100-day trial period in the hopes that they could place the "returned" worker in a new household and recoup the entire recruitment fee and airfare.⁸⁸ Domestic workers, often pressured by debt obligations, may fear that if they leave a problematic household, they will be unable to secure a new contract and placement and will have no means to repay their debts. Consequently, many domestic workers become so desperate to keep their job that they will endure maltreatment. Also, the implications of the sponsorship system are such that many domestic workers decide to remain in an abusive labor situation. Because their stay in Kuwait is contingent on the sponsor's approval, the only option to escape such a situation is to return to the Philippines.

Recruiting agencies in Kuwait are typically staffed with nationals of the labor-sending countries from which they recruit (e.g., the Philippines), but under Kuwaiti law, all agencies must be registered in the name of a Kuwaiti citizen and, at least theoretically, be managed by a Kuwaiti. According to Iman Eriquat, who is chief of mission of the International Organization for Migration in Kuwait, 400 agencies were shut down in a 2010 government crackdown because no Kuwaiti manager was present on inspection.⁸⁹ The Kuwaiti MOI, whose primary role is in internal security, policing, and intelligence gathering, is the government agency tasked with handling migrant domestic worker problems (whereas migrant nondomestic workers are overseen by the Ministry of Social Affairs and Labor). For a recruiting agency to obtain a license in Kuwait from the MOI, it must make a KD 20,000 deposit that can be drawn on to pay unpaid debts, fines, fees, and so forth that are incurred by the agency. For example, if a runaway domestic worker comes to the MOI during the 100-day trial period, the recruiting agency is responsible for the cost of repatriation airfare, which can be deducted from the agency's deposit if the amount is not paid. Then, if the recruiting agency delays in replenishing the deposit, the MOI has the power to suspend the agency's license until the full KD 20,000 is restored.⁹⁰ It has been argued that while the deposit creates a useful mechanism for dealing with agencies, the only real requirement for obtaining a license is paying the deposit, which is no substitute for formal organizational screening of applicant agencies. The director of the MOI's Office of Domestic Workers Affairs, Abdullah Awadhi Al-Ali, cited past overproliferation of profiteering recruiting agencies as contributing to insufficient ministry

88 Human Rights Watch, *Walls at Every Turn*.

89 SAIS International Human Rights Clinic interview with Iman Eriquat, International Organization for Migration, Kuwait, 18 March 2013.

90 SAIS International Human Rights Clinic interview with the Office of Domestic Workers Affairs, Ministry of Interior, Kuwait, 20 March 2013.

oversight, and he added that no new recruiting agency licenses had been issued by the MOI in the past “six or seven years.”⁹¹

Although recruitment is mostly voluntary, deceptive recruiting practices are prevalent, including false promises related to wages, working conditions and the nature of work, content or legality of employment contract, housing and living conditions, legal status, job location, and so forth. There is a thin line between voluntary and deceptive recruitment, and either may result in a human trafficking situation.⁹² For example, some prospective workers might be lured by the promise of work in a restaurant and independent home life, only on arrival to find themselves placed as domestic workers with limited time outside the home. Other women may have freely agreed to be placed as domestic workers; however, on arrival in the country, they may find conditions of “nonpayment of wages, long working hours without rest, deprivation of food, threats, physical or sexual abuse, and restrictions on movement, such as confinement to the workplace and the withholding of passports.”⁹³ The US State Department’s *Trafficking in Persons Report 2013* also notes the existence of fraudulent recruitment practices for which “[t]raffickers, at times in partnership with organized crime syndicates and corrupt government officials, recruit family and friends from villages and urban neighborhoods, sometimes masquerading as representatives of government-registered employment agencies.”⁹⁴ Those traffickers increasingly use e-mail and social networking websites to recruit Filipinos for work overseas. Impoverished, abused, or indebted women are especially susceptible to coercive or fraudulent recruitment and their families or communities may compound the pressure.

Because of the large number of recruitment agencies and the lack of standardized procedures, migration experiences vary widely. Although the majority of workers come through agencies, others have a Filipino friend or family member already working in Kuwait whom they join within the same household. Thus, migrant workers are sometimes even united with family members while abroad because of this phenomenon of chain migration. In fact, Kuwaitis view chain migration as a better way

“Migration is like having one foot in and one foot back in your home country.”

—Susan Ople, Founder and President, Blas F. Ople Center

91 SAIS International Human Rights Clinic interview with Abdullah Awadhi Al-Ali, director, Office of Domestic Workers Affairs, Ministry of Interior, Kuwait, 20 March 2013.

92 For an account of various recruitment practices and the link to human trafficking, see Harroff-Tavel and Nasri, *Tricked and Trapped*, 35–44. For an overview of the legal framework and appropriate legislative responses to human trafficking in countries of the Middle East, see Mohamed Mattar, “Trafficking in Persons, Especially Women and Children, in the Countries of the Middle East: The Scope of the Problem and the Appropriate Legislative Responses,” *Fordham International Law Journal* 26, no. 3 (2003): 721–60. See also Mohamed Mattar, “Human Rights Legislation in the Arab World: The Case of Human Trafficking,” *Michigan Journal for International Law* 33, no. 1 (2011): 101–31.

93 Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2013*, (Washington, DC: US Department of State, 2013), 226.

94 *Ibid.*, 300.

of obtaining domestic help than the use of recruitment agencies. A Kuwaiti employer who is happy with a worker will ask the worker to recommend a Filipino family member or friend to bring over.

Still other migrants arrive on a “bridge visa”—a tourist visa or a visa for nondomestic work—but then become domestic workers. For Filipino workers to get a visa for Kuwait, they must also be endorsed by the labor attaché at the Philippine Embassy in Kuwait. Once the visa is obtained, Filipino workers are to attend a predeparture orientation, overseen by the Philippines Overseas Employment Administration and administered by nongovernmental organizations. The orientation is on working and living in Kuwait and includes cultural training and basic Arabic-language instruction.⁹⁵

Domestic workers-to-be then board a plane and say goodbye to their friends and family. On arrival in Kuwait, they are typically transported from the airport to the recruiting agency, where they are picked up and taken to the home of their employer to meet their sponsoring family and begin working. However, in some cases, weeks or months may pass before an employer in Kuwait is found and a contract is signed by all parties, leaving the worker in limbo, often lingering at the premises of the recruitment agencies and doubtful about the future.

95 See the discussion in section 4.5.3, titled “Predeparture Orientation Programs” in chapter 4.

2. The Situation of Migrant Domestic Workers in Kuwait

2.1. The Kafala, or Sponsorship, System

The legal framework for domestic workers in Kuwait is the *kafala* (sponsorship) system, which is based on the Aliens' Residence Law of 1959. This system is used to monitor migrant workers in Kuwait and other Persian Gulf countries. Under the system, employers act as sponsors of foreign workers' legal residency and employment in Kuwait. Sponsors have the discretionary authority to cancel a worker's legal residency and to allow or block the person under their sponsorship from transferring to another sponsor. The *kafala* system stipulates that the employer fully pays the expenses of bringing and hosting the domestic worker. The employer is then solely responsible for the worker's visa (*iqama*) and legal employment status.

The control sponsors have over their foreign workers' legal residency exacerbates the unequal power dynamics between sponsors and workers and the prevalent hierarchical structures in society.⁹⁶ If a worker runs away and reports nonpayment of wages or abuse, the employer can petition immigration authorities to cancel the worker's legal residency.⁹⁷ The worker has no real means of redress because the worker has no legal status in Kuwait unless he or she is working for the specific employer.

“Domestic workers are like a part of the family, though they’re not in the family. Like a mother can go to the police and report that her child has been missing, the sponsor goes and reports that her worker has been missing.”

—Sheikha Bibi Nasser Al-Sabah,
Chairperson, Kuwait Social Work
Society

96 The International Labour Organization (ILO) affirmed that this system creates an unequal power dynamic. See “Migrant Workers in the Middle East Often Exploited, UN Reports at Human Trafficking Conference,” UN News Centre, 9 April 2013, <http://www.un.org/apps/news/story.asp?NewsID=44604>.

97 Human Rights Watch, *Walls at Every Turn: Abuse of Migrant Domestic Workers through Kuwait's Sponsorship System* (New York: Human Rights Watch, 2010).

Kuwaiti civil society organizations have repeatedly denounced the uneven power dynamics stemming from the *kafala* system. Because employers pay large sums of money to receive domestic workers, they will do anything to keep them, may demand excessively long working hours to recuperate some of the incurred costs, and will prevent workers from transferring to another employer when the relationship between the worker and the current employer becomes problematic.⁹⁸ In fact, most Kuwaiti citizens, including the emir of Kuwait, Sabah Al-Ahmad Al-Jaber Al-Sabah, agree that the *kafala* system is flawed and should be reformed or abolished.⁹⁹ The challenge is reaching political agreement on exactly what system will replace it and overcoming the obstacles and resistance to change. Alternatives to the *kafala* system do exist, and the Kuwaiti emir has made overtures about abolishing the system. The newly proposed system would allow the workers to move their residence permits from their employers to the Kuwaiti Ministry of Social Affairs and Labor after they have completed one year of work—a positive step to protect the rights of the workers.¹⁰⁰

2.2. Common Complaints from Employers

The dynamics of unequal power, the intimate daily contact, the cultural differences, and the mutual dependency of employer and worker are prone to creating many problems in the day-to-day relationships of migrant domestic workers and their sponsors. Issues can arise for both the workers and the employers.

Recruiting and hiring workers are time consuming and costly for the employer; the employer's frustration is therefore high if the domestic worker does not turn out to be a good fit for the household or runs away. Employers pay large amounts for their workers to travel to Kuwait and to cover other fees included in the workers' transfer. In addition, after the 100-day trial period, employers (and not the recruiting agency) are solely responsible for the worker, which

includes the obligation to pay for workers' repatriation. Runaway workers therefore pose large problems for the sponsors. After the 100-day probation period, if, for example, an employer is dissatisfied or a domestic worker runs away, the employer is out up to US\$3,500 in recruitment

The top complaints reported by employers are the following:

- Runaway workers
 - Distraught workers (because of physical or mental health issues)
 - Workers who commit assaults
-

98 Kuwait Society for Human Rights (KSHR), "Shadow Report on the Second Periodic Report of the State of Kuwait to the Concerned Committee on the International Covenant on Civil and Political Rights," KSHR, Kuwait City, August 2011.

99 "Kuwait Keen to End Sponsorship System: Residence May Transfer to Ministry," *Arab Times Online*, 3 March 2013, <http://www.arab-timesonline.com/NewsDetails/tabid/96/smld/414/ArticleID/193698/refTab/96/Default.aspx>.

100 Ibid.

fees and airfare to Kuwait. If domestic workers cannot be placed in different households, their sponsors are additionally responsible for paying the full airfare for their return to the country of origin.¹⁰¹ The general feeling of Kuwaiti employers is that this financial responsibility is unfair. Often reasons for distress among domestic workers are in no way related to their employer's behavior but, instead, are because workers are unprepared for the job and life in a foreign country or are feeling homesick. "I paid KD 800, and now she runs away, and I have to pay? It's not my fault!" is the general exclamation of employers.¹⁰²

Also, if workers are not properly screened before arriving in the country, they might have physical or mental health problems, which are costly and difficult to address. After the 100-day trial period, if the worker is not physically able to complete the assigned tasks, it is the responsibility of the employer to repatriate the worker. Kuwaiti employers often cite mental health issues to explain instances of workers' violent behavior.¹⁰³ Kuwaitis often recount an infamous case to emphasize that not only are there instances of abuse of workers—which receive wider press coverage abroad—but also there are assaults committed by domestic workers against their sponsors. In 2011, a domestic worker from Ethiopia murdered her 25-year-old employer with an axe the night before the Kuwaiti woman's wedding.¹⁰⁴ Kuwaitis therefore emphasize the need for proper medical examinations and orientation trainings before migrants depart from their home countries.

2.3. Common Complaints from Workers

Instances of domestic worker exploitation are recorded from both sides—the Philippines and Kuwait. The Kuwaiti Association for the Basic Evaluators of Human Rights observes that the number one complaint from workers is nonpayment of wages.¹⁰⁵ This complaint can be for nonpayment altogether, late payment, or the withholding of certain amounts. In addition, workers often face excessively long working hours without time off for rest. "In Kuwait, domestic workers work an average of 78–100 hours per week."¹⁰⁶ Kuwait's standard domestic employment contract contains a mandatory rest period, but often it is not granted.

101 School of Advanced International Studies (SAIS) International Human Rights Clinic interview with Kuwait Social Work Society, Kuwait, 18 March 2013.

102 SAIS International Human Rights Clinic interview with the Office of Domestic Workers Affairs, Ministry of Interior, Kuwait, 20 March 2013.

103 SAIS International Human Rights Clinic interview with ILO Kuwait, 18 March 2013.

104 However, also in that case, the worker alleged mistreatment suffered by the hands of her employer as a reason for her violent behavior. See "Maid Severed Girl's Head Due to Mistreatment," *Emirates* 24/7, 19 November 2011, <http://www.emirates247.com/news/region/maid-severed-girl-s-head-due-to-mistreatment-2011-11-19-1.428994>.

105 Kuwaiti Association for the Basic Evaluators of Human Rights, "First National Shadow Report about the Level of Execution [of] the International Convention for Civil and Political Rights in the State of Kuwait," 2011, 8, http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KWT/INT_CCPR_NGO_KWT_103_9445_E.pdf.

106 Human Rights Watch, "Decent Work for Domestic Workers: The Case for Global Labor Standards: Human Rights Abuses, Best Practices, and Recommendations for an ILO Convention," 2007, 13, http://www.hrw.org/sites/default/files/related_material/HRW_ILO_brochure_lores.pdf.

Carmelita S. Dimzon, administrator at Overseas Workers Welfare Administration (OWWA) in Manila, also notes that in Kuwait workers have rarely been able to get the stipulated salaries. Furthermore, they often face substandard terms and conditions. They are given no day off; are forced to work around the clock, especially during religious holidays; live in poor conditions; and suffer from unfair wage deductions.¹⁰⁷

Verbal abuse is common against domestic workers. This abuse is exacerbated by cultural differences; for example, raising the voice, yelling, and scolding someone have very different connotations and are perceived as much more severe measures in the Philippines than in Kuwait, leaving the migrant workers offended or shocked.¹⁰⁸

Some workers face physical abuse, and several female workers report having suffered sexual assaults, including rape, by their male sponsor. Spurred by a recent increase in reported maltreatment and sexual abuse cases, Mga Oragon sa Kuwait (a Kuwaiti-based Filipino rights group) presented a petition on 2 September 2013 to the Philippine consul, General Raul Dado. Signed by more than 10,000 Filipino workers in Kuwait, it called for an immediate moratorium on the further deployment of Filipina domestic workers to Kuwait and the Middle East.¹⁰⁹

2.3.1. Withholding of Wages and Other Contractual Benefits

Minimum wages, as well as modality of payment, are determined by a standard contract of the Kuwaiti Ministry of Interior, Office of Domestic Workers Affairs (ODWA). However, the Philippine Overseas Employment Administration has its own master contract for Filipino domestic workers in Kuwait, which exhibits significant differences, especially with regard to the minimum wage. The minimum wage is stipulated at US\$400 (KD 110) by Philippine law, which is reflected in the Philippine's standard contract,¹¹⁰ but only at KD 40 (US\$150) in the Kuwaiti contract.¹¹¹ In addition, the worker is granted accommodation, food and clothing, insurance, and round-trip airfare. Of course, employers, agencies, and workers are free to negotiate their own contracts with higher levels of protection than are granted by the standard contracts. However, recruitment agencies often modify the standard contract so that it affords

107 SAIS International Human Rights Clinic interview with Carmelita S. Dimzon, Overseas Workers Welfare Administration (OWWA), Manila, 20 March 2013.

108 SAIS International Human Rights Clinic interview with the Legal Group Al-Khashti, Al-Qallaf, Khuraibut, Kuwait, 21 March 2013.

109 The petition stems from both the continued lack of legal protection for household workers and a recent spate of sexual abuse and rape cases. The alleged gang rape of an OFW by Kuwaiti policemen and the "sex-for-flight" scandal, in which Filipino government officials in the Middle East were alleged to have taken sexual advantage of desperate Filipina overseas workers, have helped to generate the current outcry. Dado promised the petitioners he would present their demands as part of a larger report to the Filipino secretary of foreign affairs. See "Increase in Number of Abuse, Rape Cases: Filipinos Seek Brief Suspension of DH Deployment to Kuwait," *Kuwait Times*, 3 September 2013, <http://news.kuwaittimes.net/increase-number-abuse-rape-cases-filipinos-seek-brief-suspension-dh-deployment-kuwait/>. See also Courtney Trenwith, "Filipinos Call for Ban on Helpers in Kuwait amid Abuse," *Arabian Business*, 4 September 2013, <http://www.arabianbusiness.com/filipinos-call-for-ban-on-helpers-in-kuwait-amid-abuse-516572.html>, and Michelle Fe Santiago, "Pinoys Petition for Moratorium on HSW Deployment to Kuwait, ME," *Arab Times*, 3 September 2013, <http://www.arabtimesonline.com/RSS/tabid/69/smId/414/ArticleID/199480/t/Pinoys-petition-for-moratorium-on-HSW-deployment-to-Kuwait-ME/Default.aspx>.

110 See section 3.2.2.1. "Migrant Workers and Overseas Filipinos Act of 1995", as well as section 3.3. "Contracts" in section 3.

111 See section 3.3. Contracts.

fewer benefits to the worker. And even if all parties sign the contract, it is often outright ignored.¹¹²

The problem is thus one of contract enforcement and how the Philippines can implement its high legal standards in another country. The Philippine government's strategy to address this problem is to deploy a labor attaché in every country where OFWs are present. The attaché's role is to advocate for migrant workers and assist them when they encounter injustices in their workplaces.

Problems arise because workers often do not receive the benefits included in the signed contract. The US Department of State's *Trafficking in Persons Report 2013* notes that "[w]hile Kuwait requires a standard contract for domestic workers delineating some basic rights, many workers report work conditions that are substantially different from those described in the contract; some workers never see the contract at all."¹¹³ Regarding the US\$400 regulation pay, Carmelita Dimzon observes that, in practice, "nobody is getting this amount."¹¹⁴ At most, workers will receive US\$220 or US\$240, and often the payment is not made on time or sometimes not even made until they are repatriated.

Additionally, employers sometimes try to recuperate the money they spent on airfare and recruiting by withholding wages. Often, an employer does not withhold wages because of bad intentions but rather from a sense of entitlement, which is rooted in the hierarchic structure of society and unequal power dynamics.¹¹⁵ Wages may be withheld because an employer wishes to receive compensation for the fee paid to the recruitment agency or for other expenses incurred for the domestic worker, such as food, accommodation, and clothing. Because the

The top complaints reported by domestic workers are the following:

- Nonpayment of wages, late payment, or lower payment than the agreed-upon salary
 - Withholding of passports
 - Long working hours
 - No sufficient rest periods or time off
 - Limited freedom of movement, including confinement to the house
 - Compulsory tasks different from those agreed upon in contract
 - Personal or emotional problems, including homesickness
 - Maltreatment, including verbal, physical, and sexual abuse
-

112 SAIS International Human Rights Clinic interview with ILO Kuwait, Kuwait, 18 March 2013.

113 Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2013* (Washington, DC: US Department of State, 2013), 226.

114 SAIS International Human Rights Clinic interview with Carmelita S. Dimzon, OWWA, Manila, 20 March 2013.

115 SAIS International Human Rights Clinic interview with the Legal Group Al-Khashti, Al-Qallaf, Khuraibut, Kuwait, 20 March 2013.

relationship between the domestic worker and sponsor is a very personal one, it is often seen as not regulated by a legally binding contract but, instead, by good intentions and personal favors. Another motivation employers may have to withhold wages could be to tie domestic workers to their households. Employers may think that if they withhold wages, workers will be obliged to stay with them and not return home for fear that they would otherwise risk not receiving any payment at all. Wages are often withheld before religious holidays or annual leave to ensure that the workers will return.¹¹⁶

Another problem that often arises is contract substitution. Once workers arrive in the foreign country, the original contract is replaced with a new contract that has a different salary or even a different employment position. The workers are threatened with deportation if they do not sign the contract. However, if they do sign the contract with new terms, they cannot legally claim the terms of their original contract.¹¹⁷ Contract substitution also allows recruiting agencies to avoid the wage of US\$400 per month stipulated in the standard Philippine contract. Instead the agencies draft contracts in which the workers are “dressmakers” or “chicken grillers,” positions that pay a lower salary, when in fact the workers are employed as domestic workers.¹¹⁸

2.3.2. Withholding of Passports

Passports are usually confiscated from the workers when they arrive at the airport, when they are transferred from the agency to the employer, or within the first week of the workers’ tenure. This practice is not part of the *kafala* system or otherwise required by law. To the contrary, the Kuwaiti legal system prohibits withholding passports from workers. However, the practice is widespread and well documented. Employers think that they paid a substantial recruiting fee for their workers and are therefore entitled to withhold their passports to discourage them from absconding. They also think that because of the *kafala* system they have legal responsibility for the workers under their sponsorship.¹¹⁹ According to an International Labour Organization (ILO) study conducted in collaboration with Heartland Alliance International titled, *Tricked and Trapped: Human Trafficking in the Middle East*, the “owner of a recruitment agency in Kuwait argued that ‘99 percent of the domestic workers give their passports to their employers willingly. This is a kind of protection for the domestic workers.’”¹²⁰ The study goes on to observe that the owner’s “statement reflects the paternalistic approach to domestic workers found in many Middle Eastern households, according to which the domestic worker is a junior member of the family and should be protected as one of the children by the head

116 SAIS interview with ILO Kuwait, Kuwait, 18 March 2013.

117 “Beware of Employment Contract Substitution,” OFWGguide, 29 March 2009, http://www.ofwgguide.com/article_item-1010/Beware-of-Employment-Contract-Substitution.html.

118 SAIS International Human Rights Clinic interview with the Scalabrini Migration Center, Manila, 21 March 2013.

119 SAIS International Human Rights Clinic video and phone interview with ILO Beirut, Kuwait, 18 March 2013.

120 Hélène Harroff-Tavel and Alex Nasri, *Tricked and Trapped: Human Trafficking in the Middle East*, (Beirut: ILO, 2013), 48. This quote is part of an interview with an owner of a recruitment agency, Kuwait, 27 March 2012.

of the household. In such cases, the line between paternalist protection and coercion is very thin.”¹²¹ Thus, in these cases, if domestic workers feel the need to leave their employers, they are forced to do so without their passports.

2.3.3. Physical and Sexual Abuse

Various instances of physical abuse suffered by domestic workers in their employers’ homes can be cited. Reports exist of workers being slapped, punched, hit, pinched, kicked, and burned; food, rest, sleep, and health care are withheld from them; and they are locked in the home against their will. OWWA reported that in Kuwait abuses have included ironing a worker’s back and even, allegedly, forcing a worker to drink her own urine.¹²² Sometimes the worker is locked in a room or severely beaten. Sometimes a wife’s jealousy of a young and pretty domestic worker may turn into maltreatment. A Filipina woman who had worked in Kuwait reported being abused verbally and physically by her sponsor’s wife. The woman was happy when her two-year contract was over and wanted to leave, but at that point, the wife begged her to stay, promising she would change her ways. Because the worker had become attached to the baby of the family, which she had been raising, she decided to stay. However after a month, the beatings started again. Though the husband usually looked the other way, one day the beatings were so bad and the worker’s cries so pitiful that he restrained his wife and told the worker to flee. She sought help from the Philippine Embassy in Kuwait. Today, she is back in the Philippines but hopes to go abroad again and work in a safer place.¹²³

Some domestic workers also face unwanted sexual advances, sexual abuse, and rape by their employer or their employer’s friends or family members. When victims of rape get pregnant as a result of the abuse, Kuwaiti law exacerbates their misery. Because in Kuwait it is illegal to have a baby out of wedlock, even in instances of rape, the pregnant domestic worker may be sent to prison.¹²⁴ When the woman brings a lawsuit against the alleged perpetrator, she is not allowed to leave the country for the duration of the trial. Therefore, some babies are born in prison; sometimes these infants are sent to the country of the mother’s origin while she waits for the trial’s conclusion.

2.3.4. Runaway Workers

Domestic workers who find themselves in an abusive situation are often trapped because the *kafala* system makes their stay in the country contingent upon the sponsor’s approval. They often remain in a situation of abuse or exploitation out of fear of losing their livelihood,

121 Ibid.

122 SAIS International Human Rights Clinic interview with OWWA, Manila, 20 March 2013.

123 SAIS International Human Rights Clinic interview with an anonymous Filipina who had worked in Kuwait, Manila, 18 March 2013.

124 SAIS International Human Rights Clinic interview with the Kuwait Social Work Society, Kuwait, 18 March 2013.

knowing that the only way to remedy the situation is to be deported.¹²⁵ Their only option to escape circumstances of abusive or forced labor is to run away from the sponsor and thus lose the endorsement for their legal residency and any means of legal employment. Indeed, workers run away because of abuse so frequently that in the Philippines, Kuwait has been referred to as a “runaway country.”¹²⁶ In cases where a domestic worker is confined to the home, an escape often entails dangers such as climbing out of a window or down from a balcony and often results in serious injuries.¹²⁷

By leaving their sponsors, runaway workers become illegal residents and thus more vulnerable to exploitation. Workers who face this dilemma may choose illegality over deportation. To survive, they mostly end up in illegal employment, and many women “fall prey to forced prostitution by agents or criminals who exploit their illegal status.”¹²⁸

Workers often do not see reporting abuse to the police as an option. They fear that they will not be believed or will be returned to the abusive employer. Every resident in Kuwait is obliged to show his or her civil ID card if asked by the police. For foreign workers, this ID card includes the contact information of the sponsor. Police often side with employers and will call to inform them of the whereabouts of domestic workers. Absconding workers generally do not receive counseling or special assistance but are treated as immigration law violators.¹²⁹ As mentioned, victims of rape may face criminal charges for pregnancy out of wedlock. It has also been reported that

[w]orkers who left their employer’s residences without permission faced criminal and financial penalties of up to six months’ imprisonment, the equivalent of over approximately \$2,000 in fines, and deportation, even if they were fleeing from an abusive sponsor. The threat of these consequences discouraged workers from appealing to police or other government authorities for protection and from obtaining adequate legal redress for their exploitation.¹³⁰

But even if the worker files a complaint and the police believe the worker and start investigating the exploitative situation, the police eventually will have no other option than to deport the worker to his or her home country.

For many abused domestic workers, running away and seeking refuge in their home country’s embassy is their escape strategy. Most embassies of sending countries in Kuwait

125 Kuwaiti Association for the Basic Evaluators of Human Rights, “First National Shadow Report,” 2011, 12.

126 SAIS International Human Rights Clinic interview with OWWA, Manila, 20 March 2013.

127 SAIS International Human Rights Clinic interview with the Legal Group Al-Khashti, Al-Qallaf, Khuraibut, Kuwait, 21 March 2013.

128 Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2013*, 226.

129 Human Rights Watch, *Walls at Every Turn*, 7.

130 Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2013*, 226–27.

have designated shelters for runaway workers. At times, the Philippine embassy has had to accommodate up to 500 runaway distressed workers, and currently between 100 and 200 workers are in the embassy shelter on any given day.¹³¹

To reduce this number of distressed workers, law enforcement needs to more speedily resolve repatriation cases and have greater awareness of the issues domestic workers face. One example of close cooperation between police and ODWA is a special desk established at the Ministry of Interior to address the workers' various complaints: this route leads to a faster resolution of complaints brought by runaway domestic workers.¹³² ODWA has quasi-judicial powers over runaway workers. Facing a domestic worker who claims not to have been paid the agreed salary, for example, ODWA can contact the employer and insist that the employer pay the worker. If this attempt by ODWA does not resolve the issue, the case goes to court.

2.4. Domestic Workers in Distress Seeking Redress in Kuwait

When workers run away, they usually seek shelter by fleeing to their in-country embassy, or they turn to nongovernmental organizations and church-based organizations. These shelters accommodate runaways who encountered difficulties adjusting to the culture, nonpayment of wages, physical abuse, and other instances of exploitation. Shelters in Kuwait are often overcrowded and do not have favorable conditions.

When the Philippines Embassy's shelter, which is administered by OWWA, receives a runaway, the staff members immediately takes him or her to the hospital, regardless of the time of day or night. As mentioned previously, between 100 and 200 workers are housed in the shelter on any day. The workers staying there "just want to go home";¹³³ however,

"Kuwaiti policy is unique among Gulf Cooperation Council countries in that if a domestic worker cannot obtain his or her passport from their employer and he or she wants to go home, he or she can be permitted to return home by the Kuwaiti Ministry of Interior without the passport. The ministry issues a travel document and will even pay for the worker's airfare."

—Brigadier Abdullah Awadh Al-Ali,
Director, Office of Domestic
Workers Affairs, Kuwait

131 SAIS International Human Rights Clinic visit to the Embassy of the Philippines in Kuwait, 21 March 2013.

132 SAIS International Human Rights Clinic visit to the Office of Domestic Workers Affairs, Ministry of Interior, Kuwait, 21 March 2013.

133 SAIS International Human Rights Clinic interview with the Labor Relations Administration, Ministry of Social Affairs and Labor, and at the government's shelter for distressed domestic workers, Kuwait, 19 March 2013.

going home can take a long time. An official from the Philippines Department of Foreign Affairs states that “despite lack of resources, we are trying our best.”¹³⁴ If workers have their passports, they can return home in a week, but in most cases, their sponsors withhold their passports. Sometimes a simple phone call to the employer from the Kuwaiti police or the Philippines embassy staff will resolve this problem, but often the process of obtaining the passport can be lengthy and can result in a court case.¹³⁵

When workers file complaints against their employers, some of the employers are reported to quickly file countercharges that accuse workers of offenses such as stealing. Abuse in this regard persists because it is rarely punished.¹³⁶ The countercharges further prolong the process of repatriation. Workers trying to get home can be trapped in shelters anywhere from a month to a couple of years.¹³⁷

Deportation continues to be the main procedure by which the Kuwait government deals with the several thousand domestic workers who terminate their contracts by absconding. However, with criminal accusations pending against them, the workers are often confined to the country and are moved from “embassy shelters to police stations to criminal investigation facilities to deportation detention.”¹³⁸ Human Rights Watch interviewed many such workers and found that officers had not explained the charges that the workers were being held on. Furthermore, the police did not offer any estimations of when the case would be resolved, thereby leaving the workers completely in the dark.¹³⁹

OWWA reports that it first tries to obtain money for repatriation from the employer. If this does not work, OWWA turns to the recruitment agency. If the money has not been provided after 48 hours, then OWWA advances the money and waits for reimbursement from the recruitment agency, which is legally obligated in the Philippines to pay such expenses.¹⁴⁰ Conversely, the Kuwaiti Ministry of Interior reports that it usually ends up paying for airfare when it is unable to receive money from the sponsor or the recruitment agency and that it is difficult to get the Philippines Embassy to pay for costs associated with repatriation.¹⁴¹

134 SAIS International Human Rights Clinic Roundtable with the Government of the Philippines Inter-Agency Council against Trafficking, Manila, 20 March 2013.

135 See section 3.4. titled “Judicial System: Protection of Domestic Workers’ Rights in Court” in chapter 3.

136 Karim Fahim, “Immigrant Maids Flee Lives of Abuse in Kuwait,” *New York Times*, 1 August 2010, http://www.nytimes.com/2010/08/02/world/middleeast/02domestic.html?pagewanted=all&_r=0.

137 See section 4.3. titled “Shelters for Distressed Domestic Workers in Kuwait” in chapter 4.

138 Human Rights Watch, *Walls at Every Turn*, 9.

139 Ibid.

140 SAIS International Human Rights Clinic interview with OWWA, Manila, 20 March 2013.

141 SAIS International Human Rights Clinic interview with the Office of Domestic Workers Affairs, Ministry of Interior, Kuwait, 20 March 2013.

2.5. Filipino Community in Kuwait

Despite the many problems that are associated with international migration and the uneven relationship between domestic workers and their employers, Filipino and other migrant workers form an essential part of Kuwaiti everyday life and are accepted as such. Kuwaiti society would not function without them. Many Kuwaitis enjoy the variety that labor migration has brought to their country, especially the flavorful cuisine that is offered in restaurants concentrated in certain parts of Kuwait City. Stepping into those areas of vibrant Filipino community can make people feel as if they are in Manila on a day trip. Workers who are granted regular time off each week form part of this large community of Filipinos and other foreigners—a community that is visible to everybody strolling around downtown Kuwait City.

“She is like my daughter,” mused Dr. Mourad Fahim, an Egyptian working in Kuwait. He was speaking about Colletta, a Filipina domestic worker who had lived with his family for 18 years. While he and his family were on vacation in Alexandria, Egypt, Colletta met another overseas Filipino worker and fell in love. Dr. Mourad helped pay for the wedding, and he and Colletta stay in touch to this day. In fact, Colletta has recommended to Dr. Mourad several of her family members and friends whom he then employed within his household. This tie has helped to keep their families in contact and strengthened their connection. It has also circumnavigated agencies, their fees, and their sometimes-questionable practices.

On Friday (the Muslim weekly holy day), it is not only the mosques that are busy in Kuwait but also the churches. Most Christians in Kuwait are expatriates, although there are roughly 200 indigenous Kuwaiti Christians. In all, about 200,000 Christians live in the country.¹⁴² Although some Filipino migrant workers are Muslim, the majority are Roman Catholic. Currently, in Kuwait there are three Roman Catholic churches: the Holy Family Cathedral Parish in Kuwait City, Our Lady of Arabia Parish in Ahmadi, and St. Thérèse Parish in Salmiya. Services at the Holy Family Cathedral Parish are offered in 12 languages: Arabic, English, French, Italian, Konkani, Korean, Malayalam, Polish, Sinhalese, Spanish, Tagalog, and Tamil. The largest group of parishioners is from India, and the second-largest group is from the Philippines.¹⁴³ The complex of the Roman Catholic Church in Kuwait City is a social congregation point for Filipinos—especially on Fridays, the workers’ usual day off.

¹⁴² See Apostolic Vicariate of Northern Arabia, “Christians in Kuwait,” http://www.avona.org/kuwait/christians_in_kuwait.htm#.UZQGjOB-7SAO.

¹⁴³ The Holy Family Cathedral Parish in Kuwait boasts roughly 75,000 members. SAIS International Human Rights Clinic interview with Father Ramon, Catholic Church of Kuwait, Kuwait, 22 March 2013.

2.6. Staying Connected with Family and the Social Consequences of Labor Migration in the Philippines

To keep in touch with their families, workers ideally use cell phones with data plans to send text messages, or they connect through Skype, Facebook, and other social media sites.¹⁴⁴ Because they know many stories about recruitment agencies and employers that confiscate cell phones from workers, those workers hide their phones during the recruitment process and beyond. When en route to Kuwait, women have been reported to carry three cell phones, with one hidden in their underwear. Even so, agencies have been known to strip workers to confiscate the phones.¹⁴⁵ As will be discussed further in this report, access to technology is important not only so workers can maintain their connection to their family while abroad, but also so they can seek assistance when in distress.¹⁴⁶

Although the opportunity to send money home offers a significant benefit for the well-being of Filipino families, migration also has negative impacts. Migrant workers live away from their families for the majority of their employment, often leaving spouses and children behind. The lack of parental oversight and emotional proximity may cause developmental problems in children, who sometimes have difficulty in school or who stop attending school, become teen mothers, or even suffer abuse from their caregiver.¹⁴⁷ Moreover, children may become materialistic. The children look forward to their *balikbayan* box sent by the OFW parent, and thus they associate the parent with material goods as opposed to parental bonding.¹⁴⁸ Indeed, “[m]ost children accept the migration of their parents as an opportunity to have a better life; they only see the ‘money equivalent’ of migration. As long as they receive their money regularly, they will be fine.”¹⁴⁹ Consequently, the social costs of labor migration need to be observed and addressed.¹⁵⁰

2.7. Logistics of Sending Remittances, Remittance Culture, and Financial Literacy

A domestic worker wanting to send a remittance to his or her home country will typically use the services of Western Union or Al Muzaini to transfer the money. A large number of

144 Workers also use cell phones to ask for help if they are in trouble.

145 SAIS International Human Rights Clinic interview with the Migration Policy Institute, Manila, 18 March 2013.

146 See section 4.6. titled “The Promotion and Protection of Migrant Domestic Workers’ Rights: Efforts of Civil Society in the Philippines” in chapter 4.

147 SAIS International Human Rights Clinic interview with Gabriela, Manila, 21 March 2013.

148 Ibid.

149 Melanie M. Reyes, “Migration and Filipino Children Left-Behind: A Literature Review,” Miriam College/UNICEF, 2008, 11, which is citing Scalabrini Center and Overseas Workers Welfare Administration, *Hearts Apart: Migration in the Eyes of Filipino Children* (Manila: Episcopal Commission for Pastoral Care of Migrants and Itinerant People—CBCP/Apostleship of the Sea-Manila, 2004).

150 Please see section 4.6. titled “The Promotion and Protection Migrant Domestic Workers’ Rights: Efforts of Civil Society in the Philippines” for a discussion of the TULAY program, which aims, in part, to facilitate communication within OFW families.

offices can be found close to downtown Kuwait City behind the Sheraton Hotel, an area where Filipino workers spend their free time. Workers could also open a bank account at either Burgan Bank or the Commercial Bank of Kuwait (also known as Al-Tijari, CBK). However, because of the small amounts of money held by foreign workers, this option is rarely used.¹⁵¹ As already discussed, domestic workers receive all their daily necessities, such as clothing and food, from their employers. Thus, they typically do not save money but send everything to their home country.¹⁵²

Unfortunately, according to a microfinance study by Social Enterprise Development Partnerships, 1 in 10 OFWs ends up broke even after spending many years working overseas.¹⁵³ The study goes on to note that 8 out of 10 have no savings for retirement.¹⁵⁴ Minimal financial literacy leads to the remittances being spent on entertainment or luxury goods.

It seems that the government of the Philippines is encouraging this condition. For example, between 15 December 2010 and 15 January 2011, the Philippine Overseas Employment Administration (POEA) arranged for OFWs who were on vacation at home to process their overseas employment certificate or exit permit at two of the country's "supermalls." The intention was not only to reduce long lines at the POEA main office but also to "allow workers to enjoy the company of family members while shopping in the malls."¹⁵⁵ Since consumer spending is such a driving force in the economy, this arrangement is not surprising.

The private sector is equally encouraging remittance spending at malls. Ayala Malls, a premier shopping, dining, and entertainment conglomerate created a program called VIPinoy, which offers exclusive services to OFWs and their families.¹⁵⁶ Those services include discounts on merchandise, a private lounge with internet and video conference centers, currency exchange, remittance service, information on business and investment opportunities, and financial management.¹⁵⁷ This example highlights the reverence OFWs are given by the Filipino community, as well as by the country's remittance culture. This consumer culture is also expanding outside of Manila. In 2012, larger shopping chains started to tap into "emerging lucrative markets" in provincial cities in order to harness the economic advantages there.¹⁵⁸

151 SAIS International Human Rights Clinic Interview with the Industrial Bank of Kuwait, Kuwait, 19 March 2013.

152 Those remittances are exempt from income tax in the Philippines. As reinforced in the Philippines Bureau of Internal Revenue Memorandum 1-2011, the wage or income of an OFW "arising out of his overseas employment is exempt from income tax." See "Income Tax and Remittance Taxation Rules for OFWs," Pinoymoneytalk.com, 6 September 2012, <http://www.pinoymoneytalk.com/tax-rates-overseas-filipino-workers/>.

153 SAIS International Human Rights Clinic interview with Susan Ople, Blas F. Ople Policy Center, Manila, 18 March 2013 (citing to the SEDPI study); see also Macel Ingles, "1 out of 10 OFWs Financially Broke: Study," ABS-CBN Europe News Bureau, 11 November 2011, <http://www.abs-cbnnews.com/global-filipino/11/11/11/1-out-10-ofws-financially-broke-study>.

154 Ibid.

155 "Returning OFWs Can Now Process Documents," *Global Nation Inquirer*, 19 December 2010, <http://globalnation.inquirer.net/news/breakingnews/view/20101219-309843/Returning-OFWs-can-now-process-documents-at-SM-malls>.

156 "Ayala Malls Honors Overseas Filipinos with VIPinoy Program," *Philippine Star*, 29 May 2011, <http://www.atikha.org/news/ayala-malls-honors-overseas-filipinos-with-vipinoy-program.html>.

157 Ibid.

158 "Retailing in the Philippines," *Euromonitor*, May 2013, <http://www.euromonitor.com/retailing-in-the-philippines/report>.

Though significant percentages of remittances are spent on luxury goods, money is also designated toward more fruitful endeavors such as education and housing. In the Philippines, sending one's children to college is considered the "ultimate status symbol."¹⁵⁹ Though there is some investment of this kind, the Philippine Institute for Development Studies found that "[c]laims that households receiving remittances may be spending more on conspicuous consumption may have some validity. This is shown by the strong and consistent evidence that remittance induces households to allocate more on consumer goods and leisure."¹⁶⁰ Overall, savings by families and workers are minimal. OFWs return from abroad to find their families in exactly the same financial position as when they left. This lack of savings perpetuates a cycle of having to leave home to work abroad again.

2.8. Employment Agencies in Kuwait

A dozen or more agencies specializing in providing foreign domestic workers to Kuwaitis are located in the basement of a shopping mall in Hawalli, a suburb of Kuwait City. Each agency has a long counter with an employee seated behind it. These employees are more than happy to show their binders to all visitors who seem interested in acquiring a domestic worker. The binders contain page after page of foreign women's pictures, accompanied by their details, from height and weight to religion and country of origin.¹⁶¹ Also listed on the pages is the price for their recruitment and salary. One Kuwaiti gentleman standing outside of the offices offered to provide a Filipina domestic worker at a deeply discounted rate. Her sponsors had recently returned her. Some women had just arrived from Africa and sat in one of the offices waiting to be picked up by their sponsors. Within hours of arriving in Kuwait, they would be in the home of their sponsors.

"The advertising of domestic workers, setting up an ad for people, violates basic human rights."

—Dr. Yousif Theyab Al-Saqar,
chairman of the Board of the Kabe
Human Rights Society, the Kuwaiti
Association of the Basic Evaluators
of Human Rights

Various Kuwaiti ministries contribute to licensing and monitoring recruitment agencies. Some argue that recruitment agencies are the largest players and thus the largest problem in the situation concerning migrant domestic workers. Many sponsors pay exorbitant prices

159 SAIS International Human Rights Clinic interview with the Migration Policy Institute, Manila, 18 March 2013.

160 Aubrey B. Tabuga, "International Remittances and Household Expenditures: The Philippines Case," Philippine Institute for Development Studies, Discussion Paper Series No. 2007-18, December 2007, http://www.academia.edu/1109547/International_Remittances_and_Household_Expenditures_The_Philippine_Case.

161 SAIS International Human Rights Clinic visit at recruitment agencies in Kuwait City, 21 March 2013.

to recruitment agencies to employ a domestic worker. According to an ILO official “both the worker and the sponsor are exploited by these agencies.”¹⁶²

Kuwaitis also emphasize that employment agencies contribute to the exploitation of domestic workers. For example, there are accounts of agencies advising sponsors against providing domestic workers with mobile phones, warning sponsors that such a luxury would spoil the worker.¹⁶³ Agencies would similarly advise that access to outside contacts would convince the workers to run away in search of better work and higher salaries.

Kuwaiti families who have no personal relationships with migrant workers to recommend a friend or relative cannot use the so-called “chain migration” to hire workers. Instead, they rely on agencies to procure a domestic worker. The recruitment agencies operate within a single complex divided into several smaller shops, each with a long desk covered with piles of color-coded folders.¹⁶⁴ Typically, one large agency owns the complex and rents smaller venues to independent contractors. The interconnectedness allows the independent agencies to collude and establish uniform prices for each type of domestic worker offered.

Filipino workers are among the most popular and most expensive nationalities for domestic labor. English-speaking maids represent elevated prestige, and helpers from the Philippines often have completed at least primary school, and some have higher education. As of March 2013, the listed price per month of Filipino housemaids was KD 90 (about US\$315). Although the majority of Filipino housemaids are Christian, a higher premium is placed on Muslim workers (whose monthly salary rises about KD 20 to KD 110). This monthly wage is on top of a commissioning fee all sponsors must pay the agency in exchange for their service. Sponsors must also cover the costs of a medical evaluation, round-trip airfare, and costs to procure a visa, as well as overhead charged. Total fees typically range from KD 290 to KD 600 (US\$1,014 to US\$2,090).¹⁶⁵

162 SAIS International Human Rights Clinic interview with ILO Kuwait, Kuwait, 18 March 2013.

163 Ibid.

164 SAIS International Human Rights Clinic visit at recruitment agencies in Kuwait City, 21 March 2013.

165 Ibid.

3. Legal Protection of Migrant Domestic Workers

Legal protection of the rights of migrant domestic workers should be guaranteed at all stages of the labor migration process, from the decision to travel abroad, throughout the worker's stay in the country, through repatriation and reintegration. These protections should cover working conditions, times, and salary. Indeed, labor-sending and labor-receiving countries are jointly responsible for protecting all of their citizens, including those who have chosen to migrate for work. Similarly, it is in the interest of migrant labor-destination countries, whose economies are often completely reliant on the labor of foreign workers, to ensure that those workers enjoy decent working conditions and are protected from abuse and maltreatment while inside their borders.

“Domestic workers should have the same protection as all workers. Domestic work is real work and it should be recognized as such. Once you recognize workers under domestic law, all the ILO standards apply to them. This is the best way to guarantee their protection.”

—Azfar Khan, Senior Migration Specialist, International Labour Organization, Beirut

As a group, migrant domestic workers suffer from a double squeeze—they need more protections than migrant workers who work outside the home, but their protection is more difficult to guarantee. Domestic workers' workplace is the home, meaning that they are usually unaided by labor laws designed to guarantee workers' rights of (a) association, representation, and collective bargaining; (b) healthy and safe working conditions; (c) determined working hours and rest periods; and (d) a minimum salary. Laws on hours of work are almost impossible to monitor or enforce. Conversely, specifically in countries of the Middle East, laws protecting domestic workers are often more difficult to pass than common labor laws because they are viewed as intruding into the private life and space of families. Therefore, labor-receiving countries such as Kuwait have impediments to both improved legal protections and enforcement.

The Philippines has a robust legal regime to protect domestic workers. In the past decade, the Philippines has adopted several agreements aimed at protecting the rights of domestic

workers. The ratification of the International Labour Organization (ILO) Convention Concerning Decent Work for Domestic Workers (C189)¹⁶⁶ in 2012 and the passing of the Kasambahay bill¹⁶⁷ the same year ensure comprehensive legal protection of domestic workers in the Philippines.¹⁶⁸

However, Kuwait has been much more reluctant in its acceptance of any formalized law pertaining to domestic workers, domestically or internationally. Kuwait has signed a number of international conventions whose provisions can be extended to cover domestic workers, but it has not ratified any of the specific international frameworks available, such as ILO C189 and the United Nations (UN) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW).¹⁶⁹ Similarly, Kuwait has considered a number of draft laws on domestic workers over the past several years, yet none of these draft laws has made it through Kuwait's National Assembly.¹⁷⁰ However, it is encouraging that Kuwait has passed its first comprehensive antitrafficking law (Law No. 91 of 2013),¹⁷¹ which establishes severe penalties for perpetrators of human trafficking for the purpose of labor exploitation.

Issues of jurisdiction play an important role in determining the level of protection of migrant domestic workers. The legal framework of the country of origin applies only until the workers leave the home country and once they finish their employment abroad and return. The Philippine legislator is thus limited to regulating the predeparture period, including information-sharing and awareness-raising activities. Thus, it tries to prevent exploitation of workers abroad by informing them of their rights and the situations they may encounter in the countries for which they are departing. Philippine laws also regulate and monitor labor-recruiting agencies in the Philippines. Their counterparts in Kuwait are exclusively under the jurisdiction of Kuwaiti laws. Similarly, once Filipino workers start their employment in Kuwaiti homes, their protection depends on the level guaranteed by the host country. Although ILO C189 sets high international standards for the rights of domestic workers, unfortunately

166 ILO Convention Concerning Decent Work for Domestic Workers (C189), adopted 16 June 2011, entered into force 5 September 2013.

167 Republic Act No. 10361 of 23 July 2012, An Act Instituting Policies for the Protection and Welfare of Domestic Workers.

168 Maila Ager, "Senate Ratifies Kasambahay Bill," *Inquirer News*, 27 November 2012, <http://newsinfo.inquirer.net/314057/senate-ratifies-kasambahay-bill>. See also T. J. Burgonio, "Finally, Aquino Signs 'Kasambahay' Bill into Law," *Inquirer News*, 23 January 2013, <http://newsinfo.inquirer.net/345859/finally-aquino-signs-kasambahay-bill-into-law>.

169 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), adopted 18 December 1990 at the 45th session of the General Assembly of the United Nations.

170 It is encouraging that Saudi Arabia is the first of the Gulf Cooperation Council countries to enact comprehensive legislation on domestic workers. In 2013, Saudi Arabia passed a regulation on the rights of domestic workers (on file with The Protection Project), which stipulates that the contract is the basis of the relationship between the domestic worker and the employer (article 3) and requires that the contract detail all essential terms, including the type of work, wage, rights and duties of the contracting parties, the probationary period, and the duration of the contract (article 4). The law stipulates several obligations that a domestic worker must fulfill, including respecting the Islamic religion and observing the applicable regulations in the kingdom and the customs and traditions of the society (article 6). Conversely, the employer may not ask the domestic worker to perform any work that is detrimental to her health or her "human dignity" (article 7). The domestic worker is entitled under the regulation to nine hours of rest per day (article 7), weekly rest of one day (article 8), one month of paid leave every two years (article 10), and a one month end-of-service allowance after four years of service (article 16). The employer who violates this regulation may be prohibited from employing a domestic worker for three years (article 17), and in the event of repeating the violation three times, he or she may not be allowed to employ a domestic worker ever again (article 17).

171 Law No. 91 of 2013 on Combating Trafficking in Persons and Smuggling of Migrants, article 1. http://www.protectionproject.org/wp-content/uploads/2010/09/Kuwait_TIP-Law_20131.pdf

Kuwait is not a party to the convention and therefore, not bound by it. In the absence of ratification of ILO C189, however, a bilateral agreement or a memorandum of understanding between the two countries can greatly increase worker protection.

3.1. The International Legal Framework

A number of international conventions are relevant to migrant domestic workers, some of which apply to workers tangentially whereas others are directly focused on the lives and well-being of these workers.¹⁷²

3.1.1. International Law in the Philippine and Kuwaiti Legal Frameworks

International treaties become part of the Philippine legal framework through a process of ratification. A Supreme Court decision of 6 July 2005 lays out the guidelines for negotiation and ratification of international agreements.¹⁷³ After the treaty has been signed by the Philippines, the Department of Foreign Affairs (DFA) prepares the document for ratification. The president ratifies the treaty, and subsequently the DFA submits the document to the Senate for concurrence.¹⁷⁴ International treaties become the law of the land of the Philippines once they are ratified by Congress. Article 7, section 21, of the Philippine constitution provides that “[n]o treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.”¹⁷⁵

International law, treaties, and conventions are considered sources of law in the Philippines following the doctrine of incorporation. This doctrine is according to article 2, section 2, of the constitution, which provides that the Philippines “adopts the generally accepted principles of international law as part of the law of the land.”¹⁷⁶ Because an international treaty constitutes

172 CMW, 1990; Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime (Palermo Protocol), 2000; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979; International Covenant on Civil and Political Rights (ICCPR), 1966; International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1966; ILO C189.; ILO Private Employment Agencies Convention (C181), adopted 19 June 1997, entered into force 10 May 2000; ILO Workers with Family Responsibilities Convention (C156), adopted 23 June 1981, entered into force 11 August 1983; ILO Convention Concerning Migrations in Abusive Conditions and Promotion of Equality of Opportunity and Treatment of Migrant Workers, or Migrant Workers (Supplementary Provisions) (C143), adopted 24 June 1975, entered into force 9 December 1978; ILO Convention Concerning the Abolition of Forced Labour (C105), adopted 25 June 1957, entered into force 17 January 1959; ILO Migration for Employment Convention (C97), adopted 1 July 1949, entered into force 22 January 1952; ILO Convention Concerning Forced or Compulsory Labour (C29), adopted 28 June 1930, entered into force 1 May 1932; Association of Southeast Asian Nations Declaration on the Promotion and Protection of the Rights of Migrant Workers, signed 13 January 2007.

173 Supreme Court decision G.R. 158088 of 6 July 2005.

174 Supreme Court decision G.R. 158088 of 6 July 2005 regarding the negotiation and ratification of international agreements reads as follows: “Executive Order No. 459 issued by President Fidel V. Ramos on November 25, 1997 provides the guidelines in the negotiation of international agreements and its ratification. It mandates that after the treaty has been signed by the Philippine representative, the same shall be transmitted to the Department of Foreign Affairs. The Department of Foreign Affairs shall then prepare the ratification papers and forward the signed copy of the treaty to the President for ratification. After the President has ratified the treaty, the Department of Foreign Affairs shall submit the same to the Senate for concurrence. Upon receipt of the concurrence of the Senate, the Department of Foreign Affairs shall comply with the provisions of the treaty to render it effective.” For the full text of the decision, see http://www.lawphil.net/judjuris/juri2005/jul2005/gr_158088_2005.html.

175 1987 Constitution of the Republic of the Philippines, article 7, section 21.

176 *Ibid.*, article 2, section 2.

part of domestic law, it is attributed equal value as a statute of Congress.¹⁷⁷ As Ellene Sana of the Center for Migrant Advocacy, explains, international laws becoming part of the Filipino legal framework is positive. However, if the provisions are not in accord with domestic law, then the enforcement becomes difficult.¹⁷⁸ Therefore, enacting domestic legislation that implements international law and states the obligations in detail is important.

The Philippines has ratified eight of the core human rights treaties produced by the United Nations: (a) the International Covenant on Civil and Political Rights (ICCPR), (b) the International Covenant on Economic, Social, and Cultural Rights (ICESCR), (c) the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), (d) the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), (e) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), (f) the Convention on the Rights of the Child (CRC), (g) the Convention on the Rights of Persons with Disabilities (CRPD), and—most relevant for this report—(h) the CMW.¹⁷⁹ The Philippines has also ratified the two other most important international conventions for the protection of migrant domestic workers: ILO C189¹⁸⁰ and the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime (Palermo Protocol).¹⁸¹

The Kuwaiti constitution states that a treaty has the force of law after it has been signed, ratified, and published in the *Official Gazette*.¹⁸² Treaties are usually concluded by a decree of the emir who transmits them to the National Assembly.¹⁸³

However, treaties of peace and alliance; treaties concerning the territory of the State, its natural resources or sovereign rights, or public or private rights of citizens; treaties of commerce, navigation, and residence; and treaties entailing additional expenditure not provided for in the budget, or involving amendment of the laws of Kuwait; shall come into force only when made by a law.¹⁸⁴

177 In case of irreconcilable conflict between an international treaty and a domestic law, the prior act is superseded by the most recent act. When a subsequent statute of Congress supersedes a treaty, the treaty is abrogated or amended as part of the law of the land. It still subsists as an engagement of the Philippines, although it may not be enforceable by the Philippine courts. The other country may only present its complaint to the political organs (i.e., the president and Congress) of the Philippine government. Information provided by Jan Chavez-Arceo, executive officer, International Affairs Division, Inter-Agency Council Against Trafficking, Department of Justice, Republic of the Philippines. Sources used by Chavez-Arceo are as follows: Abbas v. Commission on Elections, 179 SCRA 287 (1989); Hector S. De Leon and Hector De Leon Jr., *Philippine Constitutional Law: Principles and Cases*, vol. 1, (Quezon City, Philippines: Rex Book Store, 2012, 135–37).

178 SAIS International Human Rights Clinic interview with Ellene Sana, Center for Migrant Advocacy, Manila, 18 March 2013.

179 Of the nine UN core human rights conventions, this leaves only the International Convention for the Protection of All Persons from Enforced Disappearance (CPED), 2006, that the Philippines has not ratified.

180 The ILO lists the ratification status of ILO C189 on its website. See the ILO Normlex Information System on International Labour Standards, http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0:NO:11300:P11300_INSTRUMENT_ID:2551460.

181 See the United Nations Treaty Collection database, chapter 18, “Penal Matters,” http://treaties.un.org/Pages/ViewDetails.aspx?s-rc=TREATY&mtmsg_no=XVIII-12&chapter=18&lang=en.

182 1962 Constitution of the State of Kuwait, article 70(1), http://www.pm.gov.kw/en/state_of_kuwait/kuwaitConstitution.jsp.

183 Ibid.

184 Ibid., article 70(2).

Thus, in the Kuwaiti legal framework, international law has the same force as domestic law. However, according to article 70(2) of the Kuwaiti constitution, any treaty Kuwait might sign on the protection of the rights of domestic workers would require the passage of a domestic law before holding any power in Kuwait.

Kuwait has not ratified any international instrument specific to domestic workers, although it is signatory to several significant international treaties on human rights. Kuwait is a party to six of the core UN human rights conventions; however, it has not signed CMW.¹⁸⁵ Kuwait is, however, a party to the Palermo Protocol.¹⁸⁶ Kuwait is also an active member of the ILO and has signed a large number of its conventions. The provisions of many of these ILO conventions were implemented in the recent reform of the Kuwaiti labor law, which is a source of pride to many Kuwaitis.¹⁸⁷

The ILO has identified 8 of its 189 conventions as “fundamental to the rights of human beings at work, irrespective of the level of development of individual member States,” because these 8 “are a precondition for all the others in that they provide a necessary framework from which to strive freely for the improvement of individual and collective conditions of work.”¹⁸⁸ Kuwait has ratified seven of these fundamental conventions:¹⁸⁹ the 1930 Forced Labor Convention (C29), the 1948 Freedom of Association and Protection of the Right to Organise Convention (C87), the 1949 Right to Organise and Collective Bargaining Convention (C98), the 1957 Abolition of Forced Labour Convention (C105), the 1958 Discrimination (Employment and Occupation) Convention (C111), the 1973 Minimum Age Convention (C138),¹⁹⁰ and the 1999 Worst Forms of Child Labour Convention (C182).¹⁹¹ Kuwait has also signed 12 other ILO conventions.¹⁹² Of the 19 ILO conventions Kuwait has ratified, all are in force and none have been denounced.¹⁹³ However, Kuwait has not signed ILO C189. Kuwait is also a member of the League of Arab States and has ratified the Arab Charter on Human Rights.¹⁹⁴

185 Moreover, Kuwait has signed neither the Convention on the Rights of Persons with Disabilities (CRPD) of 2006 nor CPED of 2006.

186 United Nations Treaty Collection database, chapter 18, “Penal Matters.”

187 SAIS International Human Rights Clinic Interview with ILO Kuwait, Kuwait, 18 March 2013.

188 ILO, “The International Labour Organization’s Fundamental Conventions,” ILO, Geneva, 2002, 7, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_095895.pdf.

189 The ILO lists the ratifications for Kuwait on its website. See the ILO Normlex Information System on International Labour Standards database, http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103423.

190 Kuwait has set its minimum working age at 15 years. *Ibid.*

191 Kuwait has not signed the 1951 ILO Equal Remuneration Convention (C100). C100, which is one of the fundamental conventions, aims to guarantee equal pay for men and women workers.

192 These 12 include 2 governance conventions: the 1947 Labour Inspection Convention (C81), and the 1976 Tripartite Consultation (International Labour Standards) Convention (C144). The remaining 10 are technical conventions: the 1919 Hours of Work (Industry) Convention (C1); the 1930 Hours of Work (Commerce and Offices) Convention (C30); the 1936 Holidays with Pay Convention (C52); the 1948 Night Work (Women) Convention (Revised) (C89); the 1957 Weekly Rest (Commerce and Offices) Convention (C106); the 1961 Final Articles Revision Convention (C116); the 1962 Social Policy (Basic Aims and Standards) Convention (C117); the 1963 Guarding of Machinery Convention (C119); the 1971 Benzene Convention (C136); and the 1983 Vocational Rehabilitation and Employment (Disabled Persons) Convention (C159).

193 See the ILO Normlex Information System on International Labour Standards, http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103423.

194 For more information on the Arab Charter on Rights, see Mohamed Mattar, “Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards,” *Harvard Human Rights Journal* 26, no. 1 (2013): 91–147.

3.1.2. ILO Convention Concerning Decent Work for Domestic Workers

The ILO Convention concerning Decent Work for Domestic Workers, or ILO C189, is the first comprehensive international legal document calling for the full protection of and respect for domestic workers. The convention was adopted during the 100th annual conference of the ILO on 16 June 2011 with an overwhelming majority of member states voting in its favor.¹⁹⁵ According to standard ILO proceedings, the convention came into force on 5 September 2013, one year after the first two countries (Uruguay and the Philippines) ratified it. The convention is accompanied by Recommendation 201, a nonbinding instrument that guides the implementation of the convention by illustrating practical legal and other measures.¹⁹⁶

Article 1 of ILO C189 gives the relevant definitions.

For the purpose of this Convention:

- (a) the term “domestic work” means work performed in or for a household or households;
- (b) the term “domestic worker” means any person engaged in domestic work within an employment relationship;
- (c) a person who performs domestic work only occasionally or sporadically and not in an occupational basis is not a domestic worker.

“This definition includes domestic workers engaged on a part-time basis and those working for multiple employers, nationals, and non-nationals, as well as both live-in and live-out domestic workers” as long as they are in an employment relationship with a member of the household or an agency that employs domestic workers.¹⁹⁷

The convention aims to bring visibility and value to domestic work by

[r]ecognizing the significant contribution of domestic workers to the global economy, which includes increasing paid job opportunities for women and men workers with family responsibilities, greater scope for caring for ageing populations, children, and persons with a disability, and substantial income transfers within and between countries.¹⁹⁸

Therefore, one of its fundamental principles is recognizing domestic workers as equal to all other workers and extending established labor and social protections to domestic workers

195 The convention was adopted by a vote of 396 to 16, with 63 abstentions, which is much more than the required two-thirds majority. See ILO, “100th ILO Annual Conference Decides to Bring an Estimated 53 to 100 Million Domestic Workers Worldwide under the Realm of Labour Standards,” press release, 16 June 2011, http://www.ilo.org/ilc/ILCSessions/100thSession/media-centre/press-releases/WCMS_157891/lang-en/.

196 ILO, Recommendation concerning Decent Work for Domestic Workers (R201), adopted 16 June 2011.

197 ILO, “C189 and R201 at a Glance,” ILO, Geneva, 2011, 8, http://www.ilo.org/wcmsp5/groups/public/...ed_protect/...protrav/...travail/documents/publication/wcms_170438.pdf.

198 ILO C189, preamble.

where they may have been excluded from such a protective framework. Article 10(1) formulates this principle:

Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.¹⁹⁹

The convention entitles domestic workers to the respect and protection of their fundamental principles and rights at work including the following:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.²⁰⁰

Member states that ratify the convention are thus bound to allow domestic workers to establish and join unions and other workers' organizations.²⁰¹ The convention protects children by demanding the establishment of a minimum age for domestic workers that is compatible with the provisions of the ILO's 1973 Minimum Age Convention (C138) and 1999 Worst Forms of Child Labour Convention (C182).²⁰² Other provisions include protection against abuse, harassment, and violence;²⁰³ guarantee of weekly rest periods of at least 24 consecutive hours;²⁰⁴ minimum wage coverage where it established;²⁰⁵ remuneration without discrimination based on sex;²⁰⁶ direct and regular payment of remuneration;²⁰⁷ safe and healthy working environment;²⁰⁸ social security and maternity protection;²⁰⁹ and effective access to justice.²¹⁰

199 *Ibid.*, article 10. Similar provisions ensuring the protection of domestic workers "as workers generally" can be found in articles 4 (minimum age), 6 (decent working conditions), 14 (social security protection), and 16 (access to justice).

200 *Ibid.*, article 3(2), repeating the 1998 ILO Declaration on Fundamental Principles and Rights at Work.

201 *Ibid.*, article 3(3).

202 *Ibid.*, article 4.

203 *Ibid.*, article 5. Regarding protection from abuse, harassment, and violence, ILO R201, paragraph 7, recommends that member states "(a) [establish] accessible complaint mechanisms for domestic workers to report cases of abuse, harassment and violence; (b) [ensure] that all complaints of abuse, harassment and violence are investigated, and prosecuted, as appropriate; and (c) [establish] programmes for the relocation from the household and rehabilitation of domestic workers subjected to abuse, harassment and violence, including the provision of temporary accommodation and health care."

204 ILO C189, article 10(2). ILO R201, paragraph 11(2), adds that "[t]he fixed day of weekly rest should be determined by agreement of the parties, in accordance with national laws, regulations or collective agreements, taking into account work exigencies and the cultural, religious and social requirements of the domestic worker."

205 ILO C189, article 11.

206 *Ibid.*

207 *Ibid.*, article 12.

208 *Ibid.*, article 13.

209 *Ibid.*, article 14(1).

210 *Ibid.*, article 16.

Additionally, the issue of labor contracts and their content is also addressed, noting that the conditions and terms of employment shall preferably be determined in a written contract.²¹¹ Of particular importance to the subject of this report, the protection of Filipino domestic workers in Kuwait, is article 8(1), which specifies the principle of extraterritoriality and requires that

migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment ... prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies.²¹²

Obviously, this requirement applies only to cases where both countries ratify the convention; however, it “does not apply to migrant domestic workers who are already within the territory of the country of employment.”²¹³ Recommendation 201 encourages member states to “consider establishing a model contract of employment for domestic work ...”²¹⁴ which shall be made available free of charge.²¹⁵

Another important provision for migrant domestic workers is their entitlement to keep travel and identity documents in their possession.²¹⁶ The convention also calls on member states to establish measures of cooperation to guarantee the effective protection of migrant domestic workers.²¹⁷ Once migrant domestic workers terminate their employment, countries need to specify the means of repatriation.²¹⁸ In addition to these repatriation measures,

211 *Ibid.*, articles 7 and 8. In particular, employment contracts, oral or written, according to article 7 shall specify “(a) the name and address of the employer and of the worker; (b) the address of the usual workplace or workplaces; (c) the starting date and, where the contract is for a specified period of time, its duration; (d) the type of work to be performed; (e) the remuneration, method of calculation and periodicity of payments; (f) the normal hours of work; (g) paid annual leave, and daily and weekly rest periods; (h) the provision of food and accommodation, if applicable; (i) the period of probation or trial period, if applicable; (j) the terms of repatriation, if applicable; and (k) terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.”

212 *Ibid.*, article 8(1).

213 ILO, “C189 and R201 at a Glance,” 21. According to article 8(2) of the convention, neither does article 8(1) “apply to workers who enjoy freedom of movement for the purpose of employment under bilateral, regional or multilateral agreements, or within the framework of regional economic integration areas.”

214 ILO R201, paragraph 6 (3).

215 *Ibid.*, 6(4).

216 ILO C189, article 9(c).

217 *Ibid.*, article 8(3). In addition, ILO R201, paragraph 20(2), advises member states to create bilateral, regional, or multilateral agreements to facilitate social security payments. Paragraph 26(2) advises them to “cooperate at bilateral, regional and global levels for the purpose of enhancing the protection of domestic workers, especially in matters concerning the prevention of forced labour and trafficking in persons, the access to social security, the monitoring of the activities of private employment agencies recruiting persons to work as domestic workers in another country, the dissemination of good practices and the collection of statistics on domestic work,” and paragraph 26(3) states that they should “assist one another in giving effect to the provisions of the Convention through enhanced international cooperation or assistance, or both, including support for social and economic development, poverty eradication programmes and universal education.” ILO R201, paragraph 24(4), also pays attention to the problem of diplomatic immunity, which excludes diplomats from legal punishment for the exploitation of domestic workers and asks member states to “consider: (a) adopting policies and codes of conduct for diplomatic personnel aimed at preventing violations of domestic workers’ rights; and (b) cooperating with each other at bilateral, regional and multilateral levels to address and prevent abusive practices towards domestic workers.”

218 ILO C189, article 8(4). Repatriation should be at no cost to the domestic workers, see ILO R201, paragraph 22.

countries of origin are encouraged to conduct predeparture trainings and other awareness-raising campaigns to inform migrant workers of their rights.²¹⁹

The special protections for migrant domestic workers are further outlined in Recommendation 201 (R201), paragraph 21(1), which includes the establishment of complaint mechanisms, legal redress, and shelters and other services for distressed workers, taking into consideration that many migrant domestic workers are not conversant in the language of their host country:

Members should consider additional measures to ensure the effective protection of domestic workers and, in particular, migrant domestic workers, such as:

- (a) establishing a national hotline with interpretation services for domestic workers who need assistance;
- (b) consistent with Article 17 of the Convention, providing for a system of pre-placement visits to households in which migrant domestic workers are to be employed;
- (c) developing a network of emergency housing;
- (d) raising employers' awareness of their obligations by providing information on good practices in the employment of domestic workers, employment and immigration law obligations regarding migrant domestic workers, enforcement arrangements and sanctions in cases of violation, and assistance services available to domestic workers and their employers;
- (e) securing access of domestic workers to complaint mechanisms and their ability to pursue legal civil and criminal remedies, both during and after employment, irrespective of departure from the country concerned; and
- (f) providing for a public outreach service to inform domestic workers, in languages understood by them, of their rights, relevant laws and regulations, available complaint mechanisms and legal remedies, concerning both employment and immigration law, and legal protection against crimes such as violence, trafficking in persons and deprivation of liberty, and to provide any other pertinent information they may require.²²⁰

Because most migrant domestic workers reside in the household for which they work, the provisions of the convention devoted to live-in domestic workers are of particular importance. Domestic workers shall be "free to reach agreement with their employer or potential employer on whether to reside in the household,"²²¹ enjoy "decent living conditions that respect their

219 According to ILO R201, paragraph 21(2), "Members that are countries of origin of migrant domestic workers should assist in the effective protection of the rights of these workers, by informing them of their rights before departure, establishing legal assistance funds, social services and specialized consular services and through any other appropriate measures."

220 *Ibid.*, paragraph 21(1).

221 ILO C189, article 9(a).

privacy,”²²² and “are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave.”²²³

The convention further recognizes that domestic workers are often recruited by private employment agencies that may engage in abusive practices. This problem requires special vigilance by the member states, which are called on to

- (a) determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers ...;
- (b) ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers;
- (c) adopt all necessary and appropriate measures, within its jurisdiction and, where appropriate, in collaboration with other Members ... [including] laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses;
- (d) consider, where domestic workers are recruited in one country for work in another, concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment; and
- (e) take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.²²⁴

Article 18 obligates the ratifying states to

implement the provisions of this Convention, in consultation with the most representative employers’ and workers’ organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.²²⁵

222 Ibid., article 6. ILO R201, paragraph 17, further specifies: “When provided, accommodation and food should include, taking into account national conditions, the following: (a) a separate, private room that is suitably furnished, adequately ventilated and equipped with a lock, the key to which should be provided to the domestic worker; (b) access to suitable sanitary facilities, shared or private; (c) adequate lighting and, as appropriate, heating and air conditioning in keeping with prevailing conditions within the household; and (d) meals of good quality and sufficient quantity, adapted to the extent reasonable to the cultural and religious requirements, if any, of the domestic worker concerned.” Paragraph 18 states, “In the event of termination of employment at the initiative of the employer, for reasons other than serious misconduct, live-in domestic workers should be given a reasonable period of notice and time off during that period to enable them to seek new employment and accommodation.”

223 ILO C189, article 9(b).

224 Ibid., article 15(1). See generally ILO C181 and ILO Private Employment Agencies Recommendation (R188), 1997.

225 ILO C189, article 18.

Regarding the implementation, enforcement, and monitoring of the convention, the document provides for establishing three important measures: (a) effective access to courts, tribunals, or other dispute resolution mechanisms for domestic workers;²²⁶ (b) “effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers;”²²⁷ and (c) the development of measures for labor inspection, enforcement, and penalties.²²⁸ This last provision causes problems because in implementing these measures, states would have to oblige citizens to allow labor inspectors to enter their private homes. The convention aims to balance the rights of employers to the privacy of their households with those of domestic workers. It asks the member states to specify the conditions under which such access may be granted with due respect to the right to privacy and in accordance with national laws and regulations.²²⁹

Article 20 gives precedence to international provisions applicable to domestic workers that are more favorable than the convention.²³⁰

3.1.3. Bill of Rights for Domestic Workers in Accordance with ILO C189

Under ILO C189, domestic workers are accorded a number of rights:

1. Freedom of association and the effective recognition of the right to collective bargaining (article 3)
2. Right to protection against all forms of abuse, harassment, and violence (article 5)
3. Right to equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest, and paid annual leave (article 10); social security protection, including with respect to maternity (article 14); effective access to courts, tribunals, or other dispute resolution mechanisms (article 16); and gender equality (article 11)
4. Right to accessible complaint mechanisms (article 17(1))
5. Right to not reside in the household, especially during periods of daily and weekly rest or annual leave (article 9); if they reside in the household, decent living conditions that respect their privacy (article 6)
6. Right to keep in their possession their travel and identity documents (article 9)
7. Right to a suitable working environment, including weekly rest of at least 24 consecutive hours (article 10), minimum wage coverage (article 11), cash payment in regular intervals at least once a month (12), and a safe and healthy working environment (13)

226 *Ibid.*, article 16, which emphasizes that conditions that shall be “not less favourable than those available to workers generally.”

227 *Ibid.*, article 17(1).

228 *Ibid.*, article 17(2).

229 *Ibid.*, article 17(3).

230 *Ibid.*, article 20.

8. Right to be informed of the terms and conditions of their employment in an appropriate, verifiable, and easily understandable manner, preferably, where possible, through written contracts in accordance with national laws, regulations, or collective agreements (article 7)
9. Right to receive a written job offer or contract of employment prior to crossing national borders that is enforceable in the country in which the work is to be performed and that addresses the terms and conditions of employment (article 8)
10. Right to education and training for domestic workers who are under the age of 18 (article 4)

3.1.4. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

The UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) was adopted in New York on 18 December 1990. Because of the convention's activation clause requiring ratification by 20 states, the convention did not enter into force until 1 July 2003.²³¹

The convention is unique in two distinct capacities. Although it has been grouped with other major UN conventions²³² as one of the core human rights conventions, CMW enjoys far less popularity than the other treaties with this classification. With only 47 parties,²³³ state accessions to CMW number less than one-third of accessions to any of the other core conventions. Whereas some might point to the recent promulgation of CMW as the reason behind its diminished membership, the Convention on the Rights of the Child, opened for signatures only one year before CMW, boasts 193 state parties—more than any other international convention. The second distinct feature of CMW—and perhaps a partial explanation of the first—is the extent to which the convention obligates a state to protect the citizens of another state. More explicitly and to a greater extent than any other core human rights treaty, CMW recognizes the rights of one state's citizens as they must be respected by both the state of origin and the state of employment, and the burden of these protections falls solidly on the latter.

The convention covers a broad range of those rights that must be acknowledged and actively defended by all states involved in the labor migration. This action involves primarily the states of origin and employment destination, but the convention also includes provisions for states of

231 CMW, article 87(1), which states, "The present Convention shall enter into force on the first day of the month following a period of three months after the date of the deposit of the twentieth instrument of ratification or accession."

232 CRPD, 2006; CRC, 1989; CAT, 1984; CEDAW 1979; CERD, 1965; ICCPR, 1966; ICESCR, 1966; Universal Declaration of Human Rights, 1948.

233 United Nations Treaty Collection database, chapter 4, "Human Rights," http://treaties.un.org/Pages/ViewDetails.aspx?mtmsg_no=IV-13&chapter=4&lang=en.

transit. To this end, the convention defines itself as applicable “during the entire migration process of migrant workers and their families which comprises preparation for migration, departure, transit, and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin...”²³⁴

Migrant worker is defined in article 2 of the convention as “a person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a State of which he or she is not a national.”²³⁵ The convention does not make any reference to or special categorization for migrant domestic workers. However, in its general comment no. 1 on migrant domestic workers, the Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families makes it clear that the convention in its entirety applies to domestic workers when they are migrant workers under article 2.²³⁶

CMW is unique among international conventions for the body of persons it protects. It not only protects migrant workers as individuals and members of a group, but also protects the rights of their families.²³⁷ Whether these workers reside in the country of employment with the workers or at home in the state of origin, the document has provisions for the well-being and cohesion of the families of migrant workers during their work experience. It especially protects the children of migrant workers by guaranteeing their “right to a name, to registration of birth, and to a nationality”²³⁸ and their “right of access to education on the basis of equality of treatment with nationals of the State concerned.”²³⁹

The convention protects the basic human rights and freedoms of all migrant workers and members of their families—whether documented or not—including: (a) the freedom of movement to and from their countries of origin;²⁴⁰ (b) right to life;²⁴¹ (c) freedom from torture or cruel, inhuman, or degrading treatment or punishment;²⁴² (d) right to freedom from slavery, servitude, and forced or compulsory labor;²⁴³ (e) freedom of thought, conscience, and

234 CMW, article 1.

235 *Ibid.*, article 2(1).

236 Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, general comment no. 1 on migrant domestic workers, 23 February 2011, states in paragraph 6, “The Committee considers that migrant domestic workers are included in the term ‘migrant worker’ as defined in article 2, paragraph 2, of the Convention and that any distinction made to exclude migrant domestic workers from protection would constitute a prima facie violation of the Convention.”

237 CMW, article 4, defines *members of the family* as “persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.”

238 *Ibid.*, article 29.

239 *Ibid.*, article 30.

240 *Ibid.*, article 8.

241 *Ibid.*, article 9.

242 *Ibid.*, article 10.

243 *Ibid.*, article 11.

religion;²⁴⁴ (f) freedom of opinion and expression;²⁴⁵ (g) right to privacy;²⁴⁶ and (h) the right to property.²⁴⁷

Articles 16–20 give due process rights to arrested, detained, and imprisoned migrant workers and their families, including the right to a fair trial under equal treatment as nationals.²⁴⁸ The convention also recognizes the right of migrant workers to equal treatment with nationals with respect to remuneration, conditions, and terms of employment²⁴⁹ and other economic, social, and cultural rights.²⁵⁰ Migrant workers are further protected from collective expulsion²⁵¹ and from confiscation and destruction of their travel and identity documents.²⁵² Migrant workers and members of their families who are documented or in a regular situation²⁵³ enjoy additional economic, social, and political rights.²⁵⁴ Part VI of the convention calls for the promotion of sound, equitable, humane, and lawful conditions in connection with the international migration of workers and members of their families by encouraging cooperation and exchange of information among member states, specifically with a view to eliminate and prevent illegal or clandestine migration.²⁵⁵

3.1.5. International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights is relevant for the protection of migrant domestic workers insofar as article 8 calls for the elimination of slavery and servitude and article 12 provides for freedom of movement. As a party to the ICCPR, Kuwait regularly reports its recent developments in civil and political rights protection in accordance with article 40 of the ICCPR. According to this process, the UN Human Rights Committee submits questions to states parties for clarification on important rights issues. The Human Rights Committee, in its 16 December 2010 list of issues to be taken up in connection with the

244 Ibid., article 12.

245 Ibid., article 13.

246 Ibid., article 14.

247 Ibid., article 15 .

248 Ibid., article 18.

249 Ibid., article 25.

250 Ibid. These rights are the right to freedom of association, including to join trade unions (article 26); right to the same treatment as nationals with regard to social security benefits insofar as requirements of applicable national legislation are fulfilled (article 27); right to emergency medical care (article 28); right to preserve cultural identity (article 31); and right to transfer earnings and savings on termination of stay in the state of employment (article 32).

251 Ibid., article 22.

252 Ibid., article 20.

253 Ibid., article 5 (a) defines workers as “documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party.”

254 Ibid. Workers have the following rights: right to predeparture information about conditions concerning their stay and their remunerated activities (article 37); right to be temporarily absent without effect on their authorization to stay or work (article 38); right to liberty of movement in the territory of the State of employment and freedom to choose their residency (article 39); right to form associations and trade unions for the promotion and protection of their economic, social, cultural, and other interests (article 40); right to political participation, to vote, and to be elected (articles 41 and 42); right to equality of treatment with nationals with regard to access to educational, vocational, social, and cultural services (articles 43 and 45); and right to equality of treatment with nationals with regard to protection against dismissal and unemployment benefits (article 54).

255 Ibid., articles 64–71.

second periodic report of Kuwait, referenced migrant domestic workers in questions 14 and 15 of the notification.²⁵⁶ These issues were contained in the category of elimination of slavery and servitude in compliance with article 8 of ICCPR, which states, “no one shall be held in servitude.”²⁵⁷

Question 14 asked whether Kuwait was planning to end the sponsorship system and what steps had been taken to address the issue of passports being withheld from migrant domestic workers by their employers.²⁵⁸ In its reply to the list of issues, the Kuwaiti government clarified that according to established case law by Kuwaiti courts, employers cannot hold passports, and Kuwaiti law prohibits such behavior. Article 8 of the 1959 Aliens’ Residence Act “which states that: ‘During their term of residence, aliens must present their passport or an equivalent document when requested to do so’”²⁵⁹ is interpreted to mean “that a passport is the property of the bearer and that it may not be held or confiscated by a third party.”²⁶⁰

This legal prohibition is equally reflected in the model employment contracts for domestic workers.²⁶¹ In response to concerns that workers are not receiving their monthly salaries, the government of Kuwait responded that employment contracts require employers to pay their workers by the end of every month and to receive written confirmation of receipt. “[T]he employer is not released from his financial obligation until after the worker has signed a receipt stating that he has received his agreed wage.”²⁶²

Current proposed legislation in Kuwait would require sponsors to provide a bank account for their domestic workers. This system would allow easier monitoring of appropriate remuneration of domestic workers by their employers as well as make it more difficult for employers to take back or borrow salaries already paid.²⁶³ If the employer does not pay the agreed salary or pays less than the contractually established minimum salary of KD 40 per month, the worker can file a complaint with the Office of Domestic Workers Affairs (ODWA), which is part of the Ministry of Interior (MOI).²⁶⁴

256 UN Human Rights Committee, “List of Issues to Be Taken Up in Connection with the Consideration of the Second Periodic Report of Kuwait (CCPR/C/KWT/2),” CCPR/C/KWT/Q/2, 16 December 2010.

257 ICCPR, article 8.

258 UN Human Rights Committee, “List of Issues to Be Taken Up in Connection with the Consideration of the Second Periodic Report of Kuwait (CCPR/C/KWT/2),” question 14.

259 UN Human Rights Committee, “Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Kuwait, Addendum: Replies from the Government of Kuwait to the List of Issues (CCPR/C/KWT/Q/2) to be Taken Up in Connection with the Consideration of the Second Periodic Report of Kuwait (CCPR/C/KWT/2),” CCPR/C/KWT/Q/2/Add.1, 17 August 2011, reply to question 14, paragraph 66.

260 Ibid.

261 See the discussion of the Standard Employment Contract of the Kuwaiti Ministry of Interior, later in this chapter.

262 UN Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Kuwait, Addendum: Replies from the Government of Kuwait to the List of Issues (CCPR/C/KWT/Q/2) to be Taken Up in Connection with the Consideration of the Second Periodic Report of Kuwait (CCPR/C/KWT/2),” reply to question 14, paragraph 67.

263 See the discussion later in this chapter of draft laws for domestic workers.

264 UN Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Kuwait, Addendum: Replies from the Government of Kuwait to the List of Issues (CCPR/C/KWT/Q/2) to be Taken Up in Connection with the Consideration of the Second Periodic Report of Kuwait (CCPR/C/KWT/2),” reply to question 14, paragraph 68.

Kuwait's response to question 14 of the UN Human Rights Committee also included an extensive list of ministerial decisions as concrete evidence of Kuwait's attempts to end the sponsorship system. Many of these decrees demonstrate important steps taken to protect the rights of migrant workers. However, they do not actually address the monolith of the sponsorship system in Kuwait or the impositions that the system places on all foreign workers within Kuwait's borders. The committee, in its concluding observations, specifically recommends that Kuwait "abandon the sponsorship system."²⁶⁵

In question 15, the UN Human Rights Committee asked about legal measures and practical steps taken to assist distraught domestic workers and protect them from abusive situations at their workplaces.²⁶⁶ Kuwait explains the legal and administrative framework, which includes the creation of government departments responsible for domestic workers' affairs; the regulation of domestic workers recruitment agencies through a licensing process; the development of a tripartite employment contract with fixed minimum wage, working hours, and annual leave; and the management of a shelter for distraught workers.²⁶⁷

Migrant domestic workers are also referenced in question 34 in accordance with the right to freedom of movement guaranteed by article 12 of the ICCPR. The committee inquires how Kuwait "ensures that migrant domestic workers whose passports have been confiscated by their sponsor can exercise their right to freedom of movement, including the right to leave the country."²⁶⁸ The Kuwait government responded that the ODWA would work with foreign embassies to issue travel documents and repatriate workers even if their passports could not be recovered.²⁶⁹

In addition to the official state reports, civil society organizations may also submit reports to the UN Human Rights Committee about the status of implementation of the ICCPR. The Kuwaiti Association of the Basic Evaluators of Human Rights submitted its first "shadow report," or alternative report, in 2011. In this document, the association denounces the legal vacuum in which domestic workers find themselves in Kuwait and explicitly demands that

265 UN Human Rights Committee, "Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee, Kuwait," CCPR/C/KWT/CO/2, 18 November 2011, paragraph 18.

266 UN Human Rights Committee, "List of Issues to Be Taken Up in Connection with the Consideration of the Second Periodic Report of Kuwait (CCPR/C/KWT/2)," question 15.

267 UN Human Rights Committee, "Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Kuwait, Addendum: Replies from the Government of Kuwait to the List of Issues (CCPR/C/KWT/Q/2) to be Taken Up in Connection with the Consideration of the Second Periodic Report of Kuwait (CCPR/C/KWT/2)," reply to question 15, paragraphs 70–72.

268 UN Human Rights Committee, "List of Issues to Be Taken Up in Connection with the Consideration of the Second Periodic Report of Kuwait (CCPR/C/KWT/2)," question 34.

269 UN Human Rights Committee, "Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Kuwait, Addendum: Replies from the Government of Kuwait to the List of Issues (CCPR/C/KWT/Q/2) to be Taken Up in Connection with the Consideration of the Second Periodic Report of Kuwait (CCPR/C/KWT/2)," reply to question 34, paragraph 105.

the country adopt legislation that protects domestic workers.²⁷⁰ It also shows dissatisfaction with the lack of protection and redress in situations of abuse, nonpayment, or late payment of wages.²⁷¹ The association urges the state to fulfill its promise to reform or even abolish the sponsorship system and increase protection for domestic workers.²⁷² It also alludes to the exploitation of domestic workers by human traffickers and calls for tighter monitoring of recruitment agencies to prevent this type of abuse.²⁷³

The Kuwait Society for Human Rights also reported to the UN committee that the sponsorship system needed to be revised and labor law protections needed to be extended to cover domestic workers.²⁷⁴

In its concluding observations of November 2011, the UN Human Rights Committee expressed its concern about the discriminatory and inhuman treatment suffered by migrant domestic workers and identified the sponsorship system and the lack of protection in formal laws largely responsible for this treatment. In addition to abandoning the sponsorship system, Kuwait “should also create a mechanism that actively controls the respect for legislation and regulations by employers and investigates and sanctions their violations, and that does not depend excessively on the initiative of the workers themselves.”²⁷⁵ In its response to the UN Human Rights Committee, Kuwait reiterates its commitment to protect the rights of domestic workers and explains that its regulatory approach consists in strict regulation of recruitment agencies and administrative oversight of workers’ complaints.²⁷⁶

In regard to the treatment of migrant workers according to the Philippines’ obligations under the ICCPR, the UN Human Rights Committee welcomed legislative steps undertaken by the Philippines, including the enactment of the Magna Carta of Overseas Migrant Workers (Republic Act No. 10022) in March 2010 and the ratification of ILO C189.²⁷⁷

270 Kuwaiti Association for the Basic Evaluators of Human Rights, “First National Shadow Report about the Level of Execution [of] the International Convention for Civil and Political Rights in the State of Kuwait,” Kuwait City, 2011, 17, http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KWT/INT_CCPR_NGO_KWT_103_9445_E.pdf.

271 *Ibid.*, 8,

272 *Ibid.*, 17.

273 *Ibid.*, 9.

274 Kuwait Society for Human Rights (KSHR), “Shadow Report on the Second Periodic Report of the State of Kuwait to the Concerned Committee on the International Covenant on Civil and Political Rights,” KSHR, Kuwait City, August 2011, 11.

275 UN Human Rights Committee, “Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee, Kuwait,” paragraph 18.

276 UN Human Rights Committee, “Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Kuwait, Addendum: Information Received from Kuwait on the Implementation of the Concluding Observations of the Human Rights Committee (CCPR/C/KWT/CO/2),” CCPR/C/KWT/CO/2/Add.1, 27 May 2012, reply regarding the recommendations in paragraph 18 of the concluding observations (CCPR/C/KWT/CO/2), paragraphs 2–6.

277 UN Human Rights Committee, “Concluding Observations on the Fourth Periodic Report of the Philippines, Adopted by the Committee at Its 106th session (15 October–2 November 2012),” paragraphs 3(c) and 4(d).

3.1.6. Convention on the Elimination of All Forms of Discrimination against Women

Since both the Philippines and Kuwait are parties to the Convention on the Elimination of All Forms of Discrimination against Women, a closer look at how the implementation of the convention extends to the protection of female domestic workers is pertinent. As noted previously, a majority of domestic workers are women, and CEDAW's protections against discrimination should therefore apply to them. Two provisions of CEDAW are particularly relevant: article 6, requiring legislation "to suppress all forms of traffic in women and exploitation of prostitution of women"²⁷⁸ and article 11, calling for the elimination of discrimination against women in the field of employment.

In its combined third and fourth periodic report submitted in 2010, Kuwait outlined several measures adopted for the protection of domestic workers from human trafficking in accordance with article 6 of CEDAW, including stringent penalties in the criminal code, regulations for procedures to obtain domestic workers, a model three-party employment contract, and a shelter for trafficking victims.²⁷⁹ In concluding observations on Kuwait's combined third and fourth periodic report, the Committee on the Elimination of Discrimination against Women (CEDAW Committee), however, encourages the country to "[a]ddress the root causes of trafficking, including its close link to prostitution and sexual exploitation of women and girls, including foreign domestic workers."²⁸⁰ Moreover, article 11 of CEDAW calls on states parties "to eliminate discrimination against women in the field of employment to ensure, on a basis of equality of men and women, the same rights"²⁸¹ Also, in concluding observations, the CEDAW Committee "expresse[d] concern at the serious reports on harassment of migrant women domestic workers who are discriminated against based on multiple grounds, including the sponsorship system and a related lack of social security and adequate mechanism to seek legal redress for contracted migrant workers."²⁸² Article 11(e) of CEDAW includes "the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave."²⁸³ The CEDAW Committee's remarks about Kuwait's lack of social security protections for female domestic workers suggest the state's failure to comply with its international obligations under CEDAW. The CEDAW Committee further urged Kuwait to

review the sponsorship system in order to decrease the dependency and vulnerability of migrant domestic workers, in particular women, in relation

²⁷⁸ CEDAW, article 6.

²⁷⁹ Committee on the Elimination of Discrimination against Women (CEDAW Committee), "Consideration of Reports Submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined Third and Fourth Periodic Report of States parties, Kuwait, 12 August 2010, paragraphs 62–68.

²⁸⁰ CEDAW Committee, "Concluding observations of the Committee on the Elimination of Discrimination against Women," 50th session 8 November 2011, Kuwait, paragraph 33 (e).

²⁸¹ CEDAW, article 11.

²⁸² CEDAW Committee, "Concluding Observations of the Committee on the Elimination of Discrimination against Women," paragraph 40.

²⁸³ CEDAW, article 11(e).

to their employers, and consider measures which would guarantee a minimal level of social insurance to migrant domestic workers, including insurance for a loss of income due to illness.²⁸⁴

The Philippines was last addressed by the CEDAW Committee in 2006 in response to the country's combined fifth and sixth report. The CEDAW Committee noted (a) the poverty of women and girls in the Philippines, which makes them prone to exploitation and trafficking in persons as well as induces them to leave the country to find work, and (b) the resulting feminization of migration as principal areas of concern.²⁸⁵ The CEDAW Committee commended the Philippines on concluding bilateral agreements and memorandums of understanding on migrant workers rights and urged it to conclude such agreements "with all countries and regions to which Filipino women migrate."²⁸⁶

3.2. The Domestic Legal Framework

3.2.1. Protection of Domestic Workers in the Kuwaiti Legal Framework

The preamble of the Kuwaiti constitution recognizes the importance of human rights and aims to enhance the dignity of the individual.²⁸⁷ But the constitution also reflects the Kuwaiti tradition of prioritizing the rights and privileges of Kuwaitis over those of foreign nationals by "striving toward a better future in which the Country enjoys greater prosperity and higher international standing, and in which also the citizens are provided with more political freedom, equality, and social justice."²⁸⁸

"There are 1 million Kuwaitis and 2 million foreigners in this country. We need laws to live in peace together."

—Dr. Faisal Mahsoud, Deputy Director, Kuwait Social Work Society

Many of the rights granted by the constitution are given only to citizens,²⁸⁹ but article 29 expressly states that "[a]ll people are equal in human dignity and in public rights and

284 CEDAW Committee, "Concluding Observations of the Committee on the Elimination of Discrimination against Women," paragraph 41(b).

285 See CEDAW Committee, "Concluding Comments of the Committee on the Elimination of Discrimination against Women," Philippines, 15 August 2006, 19–22.

286 *Ibid.*, paragraph 21.

287 1962 Constitution of the State of Kuwait, preamble.

288 *Ibid.*

289 *Ibid.*, articles 7 (State Goals), 8 (Guardian State/Equal Opportunities), 11 (Old Age Protection), 17 (Public Property), 20 (National Economy), 40 (Compulsory and Free Education), and 41 (Right and Duty to Work).

duties before the law, without distinction to race, origin, language, or religion.”²⁹⁰ Thus the constitution clarifies that basic rights apply to migrant workers as well as citizens.

The important role of privacy in Kuwaiti society, which has already been identified as one of the key obstacles to protecting domestic workers in Kuwait, is also visible in article 38. It recognizes that “[p]laces of residence shall be inviolable. They may not be entered without the permission of their occupants except in the circumstances and manner specified by law.”²⁹¹

Regarding economic rights, article 41, which grants the right to work and to choose the type of work and puts a positive obligation on the state to “endeavour to make it available to citizens and to make its terms equitable,”²⁹² applies only to Kuwaiti citizens. The protective standard of article 22 that calls on the legislator to create equitable employment conditions does not seem to exclude foreign workers: “Relations between employers and employees ... shall be regulated by law on economic principles, due regard being given to the rules of social justice.”²⁹³ Thus, there is no constitutional limit on enacting a labor law that includes domestic workers.

Whereas the Kuwaiti labor law has just been reformed and is generally applicable to migrant workers,²⁹⁴ article 5 of the New Private Sector Labor Law of Kuwait, No. 6 of 2010, excludes domestic workers from its application. It states:

The following workers shall be exempted from the application of the provisions of this law: ... Domestic Workers regarding whom a resolution shall be issued by the competent Minister for organizing their affairs and the rules and regulations governing the relationship between them and their employers.²⁹⁵

In the absence of a specific law, domestic worker issues are regulated by resolutions and overseen by administrative bodies. In addition to the Aliens’ Residence Law, which governs the sponsorship system, the only laws enacted to protect domestic workers in the country are those designed to regulate recruitment agencies for domestic workers. The Kuwaiti government defends this approach and insists that it does everything possible to protect the rights of migrant domestic workers, the most important manifestation of this commitment being the regulation of recruiting agencies.²⁹⁶ Through a strict licensing process, the Kuwaiti

290 *Ibid.*, article 29.

291 *Ibid.*, article 38.

292 *Ibid.*, article 41.

293 *Ibid.*, article 22.

294 The law addresses migrant workers as “foreign manpower.” See, for example, Private Sector Labor Law, Law No. 6 of 2010, article 10. The official English translation of this law is available at <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/83616/93041/F734599679/KWT83616%20English%202.pdf>.

295 *Ibid.*, article 5.

296 See UN Human Rights Committee, “Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Kuwait, Addendum: Information Received from Kuwait on the Implementation of the Concluding Observations of the Human Rights Committee (CCPR/C/KWT/CO/2),” paragraphs 4–6.

government aims to monitor recruitment agencies and thus prevent the exploitation of domestic workers through fraudulent recruitment practices. To this end, it has issued several decrees:

- Legislative Decree 40 of 1992 regulates agencies for the employment of private domestic workers and similar persons, as amended.
- Ministerial Decree 617 of 1992 regulates the rules and procedures for licensing of agencies for the employment of private domestic workers. Decree 617 is designed to implement Legislative Decree 40 of 1992 and specifies the conditions under which recruitment agencies can bring domestic workers to Kuwait. It stipulates the responsibility of the employer to pay the agency's commission and the worker's travel expenses, but if the employer is dissatisfied, the worker is repatriated at the agency's expense.
- Ministerial Decree 115 of 1996 promulgates statutes for private recruitment agencies. This decree includes criminal sanctions for employment agencies in case of violation of the law.²⁹⁷

To clarify the application of article 8 of the Aliens' Residence Act and case law on the prohibition of the confiscation of domestic workers' passports,²⁹⁸ the country has also issued Ministerial Decision 194/Ain of 2010, which prohibits employers from withholding workers' travel documents.²⁹⁹ The recently issued Ministerial Decision 200 of 2011 is geared toward limiting the negative effects of the sponsorship system on domestic workers by affording such workers, in certain cases, the right to transfer their residence permits to another employer, without the approval of their previous employer.³⁰⁰

In addition to these narrow legal standards, Kuwait relies on mandatory standard employment contracts to regulate domestic work.³⁰¹ "While these do provide some limited protection to domestic workers, they are not a full substitute for legislation,"³⁰² especially because of limited enforcement and monitoring options and a lack of sanctions for noncompliance.

297 See ILO's Natlex database, http://www.ilo.org/dyn/natlex/natlex_browse.country?p_lang=en&p_country=KWT. The legislative measures taken to protect foreign domestic workers are also outlined by the Kuwaiti government in Committee on the Elimination of Racial Discrimination, "Fourteenth Periodic Report of State Parties Due in 1996, Kuwait: Addendum," 19 June 1997, paragraph 31, and UN Human Rights Committee, "Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Kuwait, Addendum: Information Received from Kuwait on the Implementation of the Concluding Observations of the Human Rights Committee (CCPR/C/KWT/CO/2)," paragraph 4.

298 See the section titled "International Covenant on Civil and Political Rights," earlier in this section.

299 UN Human Rights Committee, "Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Kuwait, Addendum: Replies from the Government of Kuwait to the List of Issues (CCPR/C/KWT/Q/2) to be Taken Up in Connection with the Consideration of the Second Periodic Report of Kuwait (CCPR/C/KWT/2)," reply to question 14, paragraph 69.

300 Ibid.

301 See section III.3.

302 ILO, *Domestic Workers across the World: Global and Regional Statistics and the Extent of Legal Protection* (Geneva; ILO, 2013), 52.

Lacking a law governing domestic workers, the MOI has passed several decrees that restrict recruitment agencies' operations. Ministerial Order 617 of 1992 regulates the procedure for obtaining licenses for domestic services agencies. It "specif[ies] conditions of eligibility for a domestic service agency license.... Licensed agents are responsible for bringing domestic servants to Kuwait (usually from Asia) under a contract concluded with the prospective employer. The employer must pay the agency's commission and the servant's travel expenses, but if he is dissatisfied, the servant is repatriated at the agent's expense."³⁰³ This decree details the application of Legislative Decree 40 of 1992, requiring

that employment agencies supplying domestic servants must be licensed by the Ministry of Internal Affairs. Such agencies are now forbidden to charge job-seekers a fee for finding them employment.... Any agent acting in breach of these provisions is liable to a maximum penalty of three months' imprisonment and a fine of 400 dinars. The Decree is published with an explanatory memorandum which states its purpose as being, *inter alia*, to prevent the exploitation of domestic servants.³⁰⁴

The problem with Kuwait's legislative approach is that it addresses domestic workers' rights merely in an indirect manner, through the regulation of recruitment agencies or the designed standard employment contract. There is no law or regulation to address the relationship between employer and domestic worker. There is no law that specifically lists and guarantees the rights of domestic workers. Because of reasons explained previously, such as the privacy of the home and the constraints on domestic workers' willingness to file complaints about noncompliance with their employment contract, enforcing this standard employment contract is very difficult. It is equally difficult under the law for employers to have their rights recognized and to get redress in situations in which a domestic worker runs away or in which an employer is otherwise unsatisfied with a worker's performance.

3.2.1.1. 2013 Law on Combating Trafficking in Persons and Smuggling of Migrants

However, the passage of Kuwait's antitrafficking law in 2013 is a step in the right direction, signaling the country's new willingness to adopt human rights legislation. The law defines trafficking in accordance with the UN Palermo Protocol. Article 1 provides that

trafficking in person shall mean 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,

³⁰³ See ILO's Natlex database, http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=KWT&p_classification=17&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY.

³⁰⁴ *Ibid.*

for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.³⁰⁵

The law goes even further than the Palermo Protocol, because illegal means are not elements in the crime of trafficking. The Palermo Protocol states that the consent of the victim to exploitation in any of the forms of human trafficking “shall be irrelevant”³⁰⁶ only in cases where illegal means have been used (unless the victim is a child, in which case consent is irrelevant regardless of the means used). Instead, under the Kuwaiti law, illegal means are aggravated circumstances that may enhance the penalty. Article 2 of Law No. 91 states “in all cases, agreement or consent of the victim to the acts that constitute exploitation in this crime shall be irrelevant.”³⁰⁷

The law establishes penalties of imprisonment, ranging from 15 years to life, that “are sufficiently stringent and commensurate with penalties prescribed for other serious crimes, such as rape;”³⁰⁸ death penalty is the sanction for perpetrators of human trafficking if the victim dies as a result of the crime.³⁰⁹ In addition, the law provides for enhanced penalties if the victim of trafficking is “a child, a female, or a person with special needs.”³¹⁰ The law is, however, limited in providing protection to trafficking victims; article 12 of the law merely refers to medical and social care and placement in a shelter. The reason for this limited protection³¹¹ may be that the law covers trafficking and smuggling, and although a trafficked person is a victim who should be entitled to basic human rights, the smuggled person is perceived as a person who initiates the act of smuggling and should be returned to his or her country or origin.

3.2.1.2. Draft Laws for Domestic Workers

Draft laws for domestic workers have been proposed repeatedly in Kuwait. The Kuwait Social Work Society, a Kuwaiti nongovernmental organization (NGO) that has advocated for the rights of domestic workers for more than a decade, has been particularly dedicated to the cause of pushing a domestic worker law through the Kuwaiti legislature. Although the society’s

305 Law No. 91 of 2013 on Combating Trafficking in Persons and Smuggling of Migrants, article 1. See also article 3 (a) of the UN Palermo Protocol.

306 UN Palermo Protocol, article 3(b).

307 Law No. 91 of 2013, article 2.

308 Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2013* (Washington, DC: US Department of State, 2013), 226.

309 Law No. 91 of 2013, article 2.

310 Ibid.

311 Compare the Kuwaiti law to the legislation in other Arab countries. See Mohamed Mattar, “Human Rights Legislation in the Arab World: The Case of Human Trafficking,” *Michigan Journal for International Law* 33, no. 1 (2011): 101–31.

efforts have not yet succeeded, it continues to advocate for such a law.³¹² Another law has been proposed by the director of the General Immigration Department, Brigadier Kamel Al-Awadhi. This proposed law foresees strict government oversight over the recruitment of domestic workers.³¹³ The draft law would create one government agency in charge of all domestic workers' issues, and no new private recruitment agencies would be licensed. But this draft law tends to concentrate too much power in government hands, thereby making monitoring it difficult.³¹⁴

“We need a balanced law that protects the rights of both sides, the employers and the workers.”

—Iman Ereqat, Chief of Mission,
International Organization for
Migration, Kuwait

The Kuwaiti 2012 draft domestic worker law is comprehensive. The Kuwait Social Work Society conducted a large-scale research project, using personal interviews with domestic workers, including workers placed in detention centers, and sent the results to government officials and the National Assembly. The 2012 draft law is based on the research findings.³¹⁵

According to the Social Work Society founder and chair, Sheikha Bibi Nasser Al-Sabah, the NGO's proposed draft law would introduce three fundamental changes in the Kuwaiti legal system:

- Abolishment of the sponsorship system
- Proper monitoring of recruitment agencies by placing them under the oversight of the Ministry of Commerce
- Guarantee of good working conditions, including set hours, a minimum salary, and rest periods³¹⁶

The Social Work Society also envisions the creation of institutions—every municipality would have an office for foreign labor. Thus, domestic workers would not have to go to the police to report abuse, a process they usually fear because, commonly, police call sponsors to pick up their runaway domestic workers. Sheikha Bibi is confident about the success of the draft law, as her NGO successfully pushed for the adoption of the new private sector law, which has been well received.

312 SAIS International Human Rights Clinic interview with the Kuwait Social Work Society, Kuwait, 18 March 2013. For more information about the Kuwait Social Work Society, see the society's website at <http://www.q8sws.com>.

313 SAIS International Human Rights Clinic interview with the Office of Domestic Workers Affairs, Ministry of Interior, Kuwait, 20 March 2013, and SAIS International Human Rights Clinic interview with the Kuwait Social Work Society, Kuwait, 18 March 2013.

314 SAIS International Human Rights Clinic interview with the Kuwait Social Work Society, Kuwait, 18 March 2013.

315 Ibid.

316 SAIS International Human Rights Clinic interview with Sheikha Bibi Nasser Al-Sabah, the Kuwait Social Work Society, Kuwait, 18 March 2013.

The 2012 draft domestic worker law³¹⁷ delineates all the groups that would fall under its protections and obligations, including domestic workers, drivers, sponsors, gardeners, and guards, and gives the relevant definitions.³¹⁸ The process of recruiting domestic workers, bringing them to Kuwait, and then administering the process is left out of the draft law. Articles 6 and 8 provide that the competent minister will issue the relevant decrees.

A contract must be written in two languages: Arabic and the language of the worker's country of origin.³¹⁹ Article 4 of the draft law provides that if a contract provision is in violation of the law, the provision is void unless it affords greater benefits to the worker.

The law also leaves the establishment of the minimum wage to be paid to domestic workers to an administrative decree. For payment of salaries, however, the draft law introduces novel modalities. The employer is required to open a bank account in a local Kuwaiti bank and give the domestic worker a card to access the account; at the end of each month, the salary is paid into the bank account, as proven by a receipt given to the worker.³²⁰ The draft law also specifies that the worker has two breaks per day of not less than one hour, in addition to sleep time and one paid day off per week.³²¹ Vacation and sick days are detailed in articles 32–38; the worker is allowed to choose vacation days and has a schedule of sick days. The draft law further provides for mandatory health insurance³²² and injury compensation for workers.³²²

Another important protective provision is article 13, which establishes a minimum age of 18 for domestic workers.

Articles 21–27 outline the obligations of the employers and workers. The employer is obligated to provide the worker with an adequate place to live, food, clothes, and access to public hospitals.³²³ The employer must respect the worker's dignity and protect the worker from physical and moral harm; the employer must pay for all expenses and fees for bringing the worker to the destination country and for the repatriation after termination of the employment relationship.³²⁴

The worker's obligations are delineated in article 23. Workers must follow orders and do their work well. They must keep household secrets, must avoid harming the family of their sponsor, and are not allowed to perform work for persons other than the sponsor with or without pay.

317 Draft Law of 2012 Concerning Domestic Workers and Related Issues, on file with SAIS International Human Rights Clinic.

318 *Ibid.*, articles 1 and 2.

319 *Ibid.*, articles 15 and 16.

320 *Ibid.*, articles 22(1), 22(6) and 30.

321 *Ibid.*, articles 31 and 32.

322 *Ibid.*, articles 39–46.

323 *Ibid.*, article 21.

324 *Ibid.*, article 22.

Sanctions for violating the law are established for both sides. If a worker does not meet his or her obligations, article 24 stipulates that the employer can give a verbal warning, withhold parts of the salary for no longer than five days, threaten to terminate the contract, or terminate the contract. If the sponsor uses any of the latter three penalties, both the worker and the administration must be notified.³²⁵ Employers are allowed to use any of the above penalties only once a month. Penalties for employers are outlined in article 26. Workers can give notice to employers to correct their wrongful behavior within 60 days. If employers fail to correct their behavior, they will face a penalty of up to KD 100. A repeated offense within a single year will result in a fine twice that of the original.

The draft law introduces a revolutionary monitoring concept in article 27. Female employees appointed by the MOI will inspect homes employing domestic workers.³²⁶ These inspectors will ask domestic workers about their working conditions, their treatment by the family, and any complaints they may have. Inspectors will also speak to the families and request to see all relevant documents pertaining to the worker's employment. If they notice any signs of violence, they will file a report and submit it to the competent committee to initiate the legally established proceedings.

Articles 54–57 outline the conflict resolution process between workers and employers. The law requires that disputes be first resolved through informal negotiations. The law also calls for a dispute committee to be established, headed by a judge who will adjudicate issues between workers and sponsors.³²⁷ Workers are guaranteed their salaries and contracted benefits until the dispute is resolved.³²⁸

3.2.1.3. What If? Potential Effects in Kuwait of ILO C189

Whereas the Philippines was the second country to ratify ILO C189, Kuwait has not done so, although the lives and livelihoods of domestic workers in Kuwait stand to gain a great deal from incorporation of the convention's principles into the domestic legal framework. Kuwait has not signed the convention for complex political and social reasons.

One sentiment made by a Kuwaiti human rights lawyer highlights an important aspect. He expressed that although many Kuwaitis wished to improve the rights of all people living in Kuwait, the Kuwaitis themselves were "people still fighting for ... [their] own rights."³²⁹ Moreover, the system of domestic workers is so deeply entrenched in Kuwaiti culture that

³²⁵ *Ibid.*, article 24.

³²⁶ These inspections can take place between 8 a.m. and 6 p.m. after receiving permission from the employer, see *ibid.*, article 27. If the domestic workers are male, employed as gardeners or security guards, male employees of the MOI will carry out the inspection, see *ibid.*

³²⁷ Draft Law of 2012 Concerning Domestic Workers and Related Issues, article 54. Decisions of the committee are final; see article 55.

³²⁸ *Ibid.*, article 56.

³²⁹ SAIS International Human Rights Clinic interview with the Legal Group Al-Khashti, Al-Qallaf, Khuraibut, Kuwait, 21 March 2013.

any changes to it would require a complete rethinking of values and large adjustments in the daily lives of many citizens. Arab culture places a premium value on the sanctity and privacy of the family, and few Kuwaitis are willing to accept or support laws governing something as personal as family interactions with a domestic worker.

The convention's passage in Kuwait would represent a key improvement for the living and working conditions of the hundreds of thousands of domestic workers employed in the country. The convention and its accompanying recommendation "are founded on the fundamental premise that domestic workers are neither servants, nor members of the family nor second-class workers."³³⁰ The core message of the convention lies in the call for "equal treatment between domestic workers and workers generally."³³¹ But so far, domestic work in Kuwait is considered as a distinctive form of work that is of lesser value than other work. Kuwaitis often refer to domestic workers as servants and family members but rarely as workers.

The Kuwaiti labor law upholds this distinction of domestic workers. Article 5 of the New Private Sector Labor Law of Kuwait explicitly exempts domestic workers from its application, upholding the legal vacuum in which they find themselves.

Article 9 of ILO C189 also evinces a large deficiency in the Kuwaiti societal and legal framework on domestic work. Article 9 guarantees the freedom of domestic workers to choose whether to live in the household for which they work—a circumstance that is unheard of in Kuwait. Nothing in Kuwait law prevents a domestic worker from living away from the employer's residence, but without government support, the inertia of tradition would prevent such a change from taking place, even though it could significantly improve the quality of life of domestic workers.

The most important function of the convention is its guarantee of protections to domestic workers on par with those granted to other categories of workers. Whether or not Kuwait decides to ratify ILO C189, there is currently no mechanism in Kuwait capable of ensuring this minimum protection standard for domestic workers. Whatever steps Kuwait takes to establish any protection for domestic workers should use this standard.

3.2.2. Protection of Migrant Workers in the Filipino Legal Framework

Because so many Filipinos are overseas foreign workers (OFWs), the legislation in the Philippines devoted to the protection of Filipino OFWs is extensive. The main legal documents are the following:

330 ILO C189 and ILO R201, preface.

331 ILO C189, article 10; see also articles 4, 6, 14, and 16.

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- 1987 Constitution of the Republic of the Philippines
 - 1974 Labor Codes of the Philippines
 - Republic Act No. 8042 of 1995, an act to institute the policies of overseas employment and establish a higher standard of protection and promotion of the welfare of migrant workers, their families, and overseas Filipinos in distress, and for other purposes (known as the Migrant Workers and Overseas Filipinos Act of 1995)
 - Republic Act No. 10022 of 2009, an act amending the Migrant Workers and Overseas Filipinos Act of 1995, so that it further improves the standard of protection and promotion of the welfare of migrant workers, their families, and overseas Filipinos in distress and for other purposes
 - Omnibus Rules and Regulations implementing the Migrant Workers and Overseas Filipinos Act of 1995, as amended by Republic Act No. 10022
 - Republic Act No. 9422 of 2010, an act to strengthen the regulatory functions of the Philippine Overseas Employment Administration (POEA), amending for this purpose the Migrant Workers and Overseas Filipinos Act of 1995
 - Republic Act No. 10364 of 2012, an act expanding Republic Act No. 9208 (the Anti-Trafficking in Persons Act), titled an Act to Institute Policies to Eliminate Trafficking in Persons, Especially Women and Children, Establishing the Necessary Institutional Mechanisms for the Protection and Support of Trafficked Persons, Providing Penalties for Its Violations and for Other Purposes (known as the Expanded Anti-Trafficking in Persons Act of 2012)
-

“There is wisdom in regulation.”

—David Des Dicang, Labor Attaché,
Embassy of the Philippines, Kuwait

The 1987 constitution recognizes a plethora of basic human rights and freedoms for Filipino citizens.³³² Regarding economic rights, article 2 formulates state policies and puts a positive obligation on the state to “free the people from poverty [and] promote full employment”³³³ and “protect the rights of workers and promote their welfare,”³³⁴ article 12 provides the principles of the national economy including foreign investment, and article 13 is dedicated partially to labor rights. It includes migrant workers in its protective framework by obliging

332 1987 Constitution of the Republic of the Philippines, article 3.

333 *Ibid.*, article 2, section 9.

334 *Ibid.*, article 2, section 18.

the state to “afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.”³³⁵ In addition, a comprehensive legal and regulatory framework is dedicated to the protection of migrant workers.

3.2.2.1. Migrant Workers and Overseas Filipinos Act of 1995

Republic Act No. 8042 of 1995, or the Migrant Workers and Overseas Filipinos Act of 1995, is a groundbreaking legal document dedicated to the protection of OFWs.³³⁶ It guarantees important rights for migrant workers and sets up an institutional framework to monitor and enforce these rights.

The enactment of the Migrant Workers and Overseas Filipinos Act was triggered by events making the news in 1995. A Singapore-based Filipina domestic worker, Flor Contemplacion, was executed in Singapore on the basis of what many thought were unsubstantiated murder allegations.³³⁷ When news about her impending death reached the Philippines, Filipinos throughout the nation and around the world, began demanding that the government of the Philippines intercede to stop Contemplacion’s execution.

Fidel Ramos, president of the Philippines at the time, was apprehensive of tarnishing diplomatic relations between the Philippines and Singapore and was hesitant to intervene regardless of evidence that may have substantiated Contemplacion’s innocence.³³⁸ In the end, Contemplacion was hanged.

Following the death of Contemplacion, thousands of Filipinos were outraged that their government did not intervene on her behalf and demanded that the government be held responsible for her death. A mass candlelight vigil in her memory was held, and “many speculate that the numbers of people in the streets rivaled the numbers who had participated in the 1986 ‘People’s Power Revolution’ that led to the downfall of the Ferdinand Marcos dictatorship.”³³⁹

335 Ibid., article 13, section 3. The article further reads: “It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy- and decision-making processes affecting their rights and benefits as may be provided by law. The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace. The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth.”

336 Republic Act No. 8042 of 1995, section 3.

337 See Robyn M. Rodriguez, “Migrant Heroes: Nationalism, Citizenship, and the Politics of Filipino Migrant Labor,” *Citizenship Studies* 6, no. 3 (2002): 341–56, http://robynrodriguez.com/wp-content/uploads/2012/10/Rodriguez_Citizenship_Studies.pdf.

338 Ibid.

339 Ibid.

Contemplacion became a symbol of the abandonment of OFWs by the Philippine government and stirred a global network of migrant rights advocates such as Migrante International, an alliance of migrant workers' organizations that led protests against Contemplacion's execution in the Philippines and in other locations around the globe.

Section 2 of the Migrant Workers and Overseas Filipinos Act outlines the state policies, including the obligation to "uphold the dignity of its citizens whether in country or overseas, in general, and Filipino migrant workers, in particular"³⁴⁰ and to "provide adequate and timely social, economic and legal services to Filipino migrant workers."³⁴¹ It recognizes the specific vulnerability of women migrant workers and the need for gender-sensitive measures in creating and implementing the policies and programs.³⁴² It also states that the vision of the Philippine state is not to rely on migrant labor: in fact, "the State does not promote overseas employment as a means to sustain economic growth and achieve national development"³⁴³ but aims to promote the national economy and create more jobs domestically.

The act further guarantees free access to justice and adequate legal representation to distressed Filipino workers abroad,³⁴⁴ including free legal assistance for victims of illegal labor recruitment,³⁴⁵ and the right to be involved in political decision making and to be represented by institutions relevant to overseas employment.³⁴⁶

The act also establishes illegal recruitment as a criminal offense, including the procurement or contracting of workers for employment abroad by authorities that are not properly licensed under the labor code, and establishes strict penalties of imprisonment and fines. Criminal liability is established for natural and for legal persons.³⁴⁷ POEA is legally mandated to oversee, regulate, and monitor private sector participation in recruitment and overseas placement of migrant workers.³⁴⁸ To this end, POEA issues licenses for labor recruitment agencies; implements a system of penalties for agencies in breach of their legal obligations; and monitors overseas job advertisements in print, on broadcast, and on television.³⁴⁹

340 Republic Act No. 8042 of 1995, section 2(a).

341 *Ibid.*, section 2(b).

342 *Ibid.*, section 2(d).

343 *Ibid.*, section 2(c).

344 *Ibid.*, section 2(e).

345 *Ibid.*, section 13. A legal assistant for Migrant Workers Affairs in charge of providing legal assistance services to Filipino migrant workers is also established at the Department of Foreign Affairs. See section 24. Under section 26, a legal assistance fund is set up as well to cover "the fees for the foreign lawyers to be hired by the Legal Assistance for Migrant Workers Affairs to represent migrant workers facing charges abroad, bail bonds to secure the temporary release of workers under detention, court fees and charges and other litigation expenses."

346 *Ibid.*, section 2(f).

347 *Ibid.*, sections 6–13.

348 See Republic Act No. 9422 of 2010, which amends Republic Act No. 8042 of 1995.

349 See "About POEA," <http://www.poea.gov.ph/html/aboutus.html>.

The act also introduces a process of terminating or banning deployment of Filipinos to countries that do not have an adequate standard protecting the human, labor, and social rights of migrant workers.³⁵⁰ Other preventive measures include issuing travel advisories and disseminating information on labor conditions in the countries of destination.³⁵¹

Section 15 of the act delineates the responsibilities for repatriation of workers after their term of employment ends. Such responsibilities fall exclusively on the recruitment agency abroad, unless the termination of employment is exclusively the worker's fault. In cases of war, natural disaster, and similar instances, the Overseas Workers Welfare Administration (OWWA) will take care of the repatriation of workers; to this end, the law establishes an emergency repatriation fund to be administered by OWWA.³⁵²

To assist with the repatriation of workers, the act also creates a replacement and monitoring center within the Department of Labor and Employment.³⁵³ The center coordinates with government agencies and the private sector to reintegrate and employ workers after they return from abroad.³⁵⁴ The law also creates an institutional framework in countries of destination—at least in those “where there are large concentrations of Filipino migrant workers,”³⁵⁵ by providing for a Migrant Workers and Other Overseas Filipinos Resource Center at every Philippine Embassy. The center is to be open 24 hours a day, and it offers legal and medical services, postarrival orientation, skills training, and more.³⁵⁶ In addition, an interagency committee is created to coordinate activities and share information among all government agencies that deal with migrant workers.³⁵⁷

The Migrant Workers and Overseas Filipinos Act was amended by Republic Act No. 10022, which was enacted in 2009 along with the Omnibus Rules and Regulations guiding the act's implementation to further improve the protection and promotion of the welfare of migrant workers. The act (a) defines the roles, functions, and personnel of the various agencies in charge of the protection of migrant workers in more detail;³⁵⁸ (b) recognizes nongovernmental organizations, trade unions, workers associations, and similar entities as equal partners;³⁵⁹ (c) introduces stricter penalties for illegal recruitment;³⁶⁰ (d) establishes compulsory insurance coverage for agency-hired workers for accidental death, permanent disability, and medical

350 Republic Act No. 8042 of 1995, sections 4 and 5.

351 *Ibid.*, section 14.

352 *Ibid.*, section 15.

353 *Ibid.*, section 17.

354 *Ibid.*, section 18.

355 *Ibid.*, section 19.

356 *Ibid.*

357 *Ibid.*, section 20. The roles of the various agencies are outlined in section 23.

358 Republic Act No. 10022, sections 10–17 and 20.

359 *Ibid.*, section 2(h).

360 *Ibid.*, section 6.

evacuation;³⁶¹ and (e) sets up a new congressional oversight committee to monitor the implementation of the act.³⁶²

The Philippine legal framework is comprehensive and recognizes the fundamental rights of workers and their families. Problems arise in the law's implementation (and the lack of efficiency) in the Philippines, not in the legal framework itself. One of the challenges in the Philippines is the vast number of agencies working to protect and promote the rights of migrant workers. Coordinating their practices is difficult, and discovering where things go wrong is a challenge.

In 2006, the POEA Governing Board approved a series of resolutions defining policy reforms aimed at improving the lives of migrant domestic workers.³⁶³ This so-called reform package increases the minimum monthly wage for domestic workers employed overseas from US\$200 to US\$400³⁶⁴ and raises the minimum deployable age from 18 to 25.³⁶⁵ After careful deliberation, POEA reduced the minimum age to 23 a year later.³⁶⁶ Envisioning that it would help domestic workers to adjust better and more effectively in a new environment, the reform package also mandates a skills assessment for domestic workers in the four core competencies of house cleaning, preparation of hot and cold meals, provision of food and beverage service, and laundry and ironing. The reform package also mandates a three-day country-specific language and culture training.³⁶⁷

To this end, the Governing Board Resolution No. 08 of the Series of 2006 establishes that a prequalification of domestic workers heading for overseas employment is required consisting of "1. Possession of the National Certificate for Household Service Workers (NCII) issued by the Technical Education and Skills Development Authority (TESDA), and 2. Attendance in a country-specific language and culture orientation conducted by the Overseas Workers Welfare Administration (OWWA)."³⁶⁸ These documents must be provided by either the domestic worker or the recruiting agency for the worker to receive exit clearance from the Philippines.

361 Ibid., section 23.

362 Ibid., section 24.

363 POEA, "Policy Reforms on Deployment of Domestic Helpers," dated 23 August 2007, <http://www.poea.gov.ph/hsw/hsw.html>. For the various resolutions of the reform package, see Governing Board Resolution No. 08, Series of 2006, <http://www.poea.gov.ph/hsw/hsw.pdf>.

364 POEA, Governing Board Resolution No. 05, Series of 2006.

365 POEA, Governing Board Resolution No. 04, Series of 2006, modifying Governing Board Resolution No. 03, Series of 2001.

366 POEA, Governing Board Resolution No. 02, Series of 2007, modifying Governing Board Resolution No. 04, Series of 2006, as modified by Governing Board Resolution No. 04, Series of 2011.

367 POEA, "Guidelines on the Implementation of the Reform Package Affecting Household Service Workers," <http://www.poea.gov.ph/hsw/Guidelines%20on%20the%20Implementation%20of%20the%20Reform%20Package%20Affecting%20Household%20Service%20Workers.pdf>.

368 POEA, Governing Board Resolution No. 08, Series of 2006.

3.2.2.2. Expanded Anti-Trafficking in Persons Act of 2012

In 2003, in accordance with its obligations under international law, the Philippine government enacted the Anti-Trafficking in Persons Act of 2003 (Republic Act No. 9208).³⁶⁹ This act criminalizes trafficking for the purpose of sex and labor exploitation. The Inter-Agency Council Against Trafficking (IACAT) was created under the act to coordinate and monitor the implementation.³⁷⁰ In February 2013, the Philippines enacted an amendment to the 2003 Anti-Trafficking in Persons Act (Republic Act No. 10364). Under the Expanded Anti-Trafficking in Persons Act of 2012, persons responsible for attempted trafficking are also subject to prosecution. The new act also provides for “extraterritorial jurisdiction of trafficking crimes committed by Filipino citizens or legal residents or against Filipino citizens abroad.”³⁷¹ Another significant addition is the provision of free legal assistance to OFWs; the new law obliges the government to

provide Filipino victims of trafficking overseas with free legal assistance and counsel to pursue legal action against his or her traffickers, represent his or her interests in any criminal investigation or prosecution, and assist in the application for social benefits and/or regular immigration status as may be allowed or provided for by the host country.³⁷²

The Philippines has adopted a comprehensive legal framework; however, the implementation of the laws and the prosecution of the trafficker is not always as thorough. The US State Department *Trafficking in Persons Report 2013* identifies inefficiencies in the judicial system as a major impediment to the prosecution process.³⁷³

Despite the efforts to prevent trafficking and to protect victims, there are not enough resources to face the imminent challenges. One of the main reasons for people leaving the Philippines is the lack of economic opportunities and prosperity at home. Therefore, it is crucial to work at all stages of the recruitment process to prevent women, men, and children from being exploited. Disseminating information on the danger of human trafficking before workers depart is a fundamental tool, although many have often made up their minds early on. The government needs to look at preventive measures and especially opportunities for economic development domestically.

369 Republic of the Philippines, Inter-Agency Council Against Trafficking (IACAT), “About us: History,” 9 May, 2013, <http://www.iacat.net/index.php/about-us-2/16-about-us-history/38-about-us-history>.

370 Republic Act No. 9208 of 2003, sections 20–21.

371 Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2013*, 301.

372 Republic Act No. 10364 of 2012, section 15.

373 Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2013*, 301.

3.3. Contracts

Both Kuwait and the Philippines have developed standard employment contracts for domestic workers that are to be used by all parties involved in recruiting and hiring. Kuwait's ODWA requires that all contracts signed between Kuwaiti sponsors and domestic workers follow the designated 2010 model; however, several different models of contracts exist. Three main sources of draft contracts come from ODWA, POEA, and individual recruitment agencies. ODWA attempts to standardize domestic worker contracts to better organize the domestic labor sector and establish at least a de facto governing regime in the hope that it will someday turn into law. Despite the Kuwait MOI's laudable enforcement efforts of a standard contract, POEA also has its own master contract in use, and the two contracts are by no means identical.

3.3.1. Standard Employment Contract of the Kuwait Ministry of Interior (2010)

Standard employment contracts were drafted by the Kuwait MOI's ODWA in 2004 pursuant to a decree requiring all licensed domestic worker recruitment agencies to use a standard contract.³⁷⁴ Previously, each agency was free to draft and use its own contracts, which made protection of migrant workers and their employers difficult for the Kuwaiti government because the contract alone defined the responsibilities of the parties. The standard contract was updated in 2010 pursuant to the Aliens' Residence Law (Law 17 of 1959), Legislative Decree 40 of 1992, Ministerial Decree 617 of 1992 on recruitment agencies, and the Private Sector Labor Law (Law No. 6 of 2010). This last law gives regulative powers on domestic workers affairs to the MOI. The 2010 standard contract was designed to substitute for any and all of the varied contracts in use by recruitment agencies in Kuwait.³⁷⁵

In fact, there are two standard contracts: one for newcomers to Kuwait titled "Housemaid/Servant Recruitment and Employment Contract" and a different one for workers who want to transfer to new sponsors titled "Employment Contract Worker/Housemaid."³⁷⁶

Both are tripartite contracts intended to be signed by and to be binding on all agents involved,³⁷⁷ with the first party being the owner of the recruitment agency, the second party the sponsor or

374 Human Rights Watch, *Walls at Every Turn: Abuse of Migrant Domestic Workers through Kuwait's Sponsorship System* (New York: Human Rights Watch, 2010), 38.

375 SAIS International Human Rights Clinic interview with the Office of Domestic Workers Affairs, Ministry of Interior, Kuwait, 20 March 2013.

376 These contracts are on file with SAIS International Human Rights Clinic.

377 The contract is intended to be made with several copies: the first copy is given to the Domestic Workers Department (i.e., the Office of Domestic Workers Affairs); the second copy is for the recruitment agency; the third copy is for the employer; the fourth copy is for the domestic worker; and the fifth copy is to be attached to the visa application, which is submitted to the immigration authorities. The original contract is to be sent to the country of origin of the domestic worker, where it is signed by the Kuwaiti Embassy. See "Housemaid/Servant Recruitment and Employment Contract," general provisions, paragraph 5, and "Employment Contract Worker/Housemaid," general provisions, paragraph 6.

employer, and the third party the domestic worker. The terminology in the standard contracts is not uniform. Whereas the standard contracts identify the third party as “servant,” *khedm*, they also refer to “domestic worker,” *aamel menzelleeyu*, in the title and throughout the document.

This report will continue to use the term *domestic worker*. As explained earlier, the term *servant* is traditionally used by Kuwaitis, but it perpetuates the power imbalances and devaluation of domestic work. The same is true for the term *housemaid*. In fact, Abdullah Awadh Al-Ali, director of ODWA, explained that this standard contract is still a work in progress and that he is heading an effort to remove the word *servant* from the document.³⁷⁸

The contract identifies the second party as the “sponsor” and not the “employer,” because it is illegal for a domestic worker to be employed in a house other than that of her or his sponsor. There are instances, however, of family members acting as sponsors for one another’s domestic worker, which means that there can be a discrepancy between sponsor and employer.

Families that apply to receive a domestic worker must obtain authorization from the MOI that verifies their need for and ability to care for a domestic worker. Size of the household, number of individuals within the family, and yearly income are all taken into consideration in the approval process. The MOI has the ability to visit an applicant’s home and inspect the premises to verify that the information on the application is true; however, in most cases the submission of a picture of the household is sufficient.

In the event that an application for a domestic worker is rejected,³⁷⁹ often the unsuccessful applicant asks a friend or a relative to file the application instead and thus obtains a domestic worker illegally. As mentioned previously, a domestic worker may not be employed in a household other than that listed on his or her contract. This clause corresponds to similar legislation for foreign workers in the private sector, according to which a foreign worker may not be simultaneously employed by two employers, nor may he or she work for an individual or firm not listed as the designated sponsor on his or her work permit.³⁸⁰

The standard contract is written in Arabic and English.³⁸¹ It establishes the liabilities of all parties and specifies the working conditions for the domestic worker.

378 SAIS International Human Rights Clinic interview with the Abdullah Awadh Al-Ali, director, Office of Domestic Workers Affairs, Ministry of Interior, Kuwait, 20 March 2013.

379 The reasons for this rejection might be that the household is not large enough, that it already has enough domestic workers, that it has insufficient income, or that the individual requesting a worker is blacklisted; SAIS International Human Rights Clinic interview with Office of Domestic Workers Affairs, Ministry of Interior, Kuwait, 20 March 2013.

380 Private Sector Labor Law, Law No. 6 of 2010, article 10.

381 In case of discrepancy, the Arabic text shall prevail. See “Housemaid/Servant Recruitment and Employment Contract,” general provisions, paragraph 4, and “Employment Contract Worker/Housemaid,” general provisions, paragraph 5.

The responsibilities of the first party—that is, the recruitment agency—are the following:³⁸²

- Recruit the domestic worker for a specified fee to be paid by the sponsor on receiving the domestic worker and within a certain timeframe (only applicable to the “Housemaid/Servant Recruitment and Employment Contract”).
- Transfer the domestic worker to employer within 24 hours of the worker’s arrival in the country (only applicable to the “Housemaid/Servant Recruitment and Employment Contract”).
- Provide photo, passport copy, and all other relevant information and necessary papers of the worker for the sponsor.
- Repatriate the worker and pay all associated fees within the first 100 days after the arrival of the worker and refund collected money to the sponsor in all cases set forth in article 12 of Decree 617 of 1992, including disease, physical inability, or refusal of the worker to perform the required tasks; misinformation by the agency; and absconding of the worker.³⁸³

The standard contracts specify the responsibilities of the sponsor as the following:³⁸⁴

- Provide suitable accommodation, food, and clothes for the domestic worker, including medical treatment in a public hospital if necessary.
- Pay a minimum monthly salary of KD 40 (US\$150) to the domestic worker at the end of every calendar month, as proven by a receipt signed by the domestic worker.
- Pay for recruitment costs (only applicable to the “Housemaid/Servant Recruitment and Employment Contract”).
- Compensate the domestic worker for work-related injuries in accordance with Kuwaiti civil law.
- Do not make the worker conduct any work that has not been previously been agreed upon, and do not employ the worker for any other party (i.e., do not conclude subcontracts).
- Provide a return ticket for the domestic worker to the country of origin when sponsorship term expires.

382 See “Housemaid/Servant Recruitment and Employment Contract,” article 4, and “Employment Contract Worker/Housemaid,” article 3.

383 Article of Decree 40 of 1992 as updated in 2010 (on file with The Protection Project) reads: “Without prejudice to the penalties in Legislative Decree No. 40 of 1992 the recruitment office is obligated to return the domestic worker to his/her country and return the money which was taken from the sponsor within 100 days from entry to the country in the following situations: 1. The domestic worker has a physical barrier that prevents him from doing his work or any other obstacle that prevents the sponsor from obtaining a residency for the domestic worker. 2. It turns out that the worker carries an infectious disease or faces any other physical or psychological health issues that would prevent him from doing his work or any other consideration required by public interest. 3. There is an obstacle in issuing a residency permit to the domestic worker. 4. The recruitment office provided the sponsor with misleading information about the domestic worker. 5. The domestic worker commits any act involving moral turpitude or dishonesty as proven by a final court judgment. 6. It is proven that the domestic worker refused to perform the work or left it. 7. The domestic worker committed suicide. 8. The domestic worker was deported for public safety reasons. 9. The owner of the office declined to refund the sponsor of a returned domestic worker.”

384 See “Housemaid/Servant Recruitment and Employment Contract,” article 5, and “Employment Contract Worker/Housemaid,” article 4.

- In case of the death of the worker, pay an amount of two monthly salaries to eligible persons and transfer the body to the country of origin.
- Understand that there is no possibility to return the domestic worker to the recruitment agency after the 100-day probation period.

The domestic worker is obliged to:³⁸⁵

- Work for 48 hours per week while being entitled to one paid day of rest per week, which may be spent with his or her family.
- Complete activities as specified in the contract for the previously agreed salary, working under the employer's guidance.
- Sign a payment receipt on receiving the agreed salary at the end of the month while being entitled to be paid for overtime work.
- Take paid vacation of one month per year; after two years of working the worker is entitled to two months of vacation in the country of origin, with the sponsor being responsible for providing a return ticket back to Kuwait.
- Maintain secrets, funds, and properties of the sponsor and not cause damage to any of the sponsor's interests.
- Do not work for any other party, remunerated or not.

The 100-day probation or trial period is a new development aimed at putting stricter obligations on labor recruitment agencies and deterring them from fraudulent recruitment practices.³⁸⁶ It protects new domestic workers, who have time to decide whether they want to stay with their original sponsor or move to a new sponsor, and it also protects the sponsor's interest of finding an adequate worker.

Within the first 100 days of a worker's arrival in Kuwait, the agency remains responsible for the worker. If the sponsor finds that the worker is not a good fit, the sponsor can return the worker to the agency and recover the fees paid for the recruitment. This clause is especially relevant in cases of absconding workers, because the sponsor will not be responsible for repatriation costs within the first 100 days; rather, the recruitment agency is responsible for the costs. The probation period also allows the domestic worker to switch sponsors in case he or she is not pleased with the employer.

The 2010 contract is still deficient in setting a limit for daily work hours and guaranteeing freedom of movement to workers by not explicitly stating that they will be allowed to leave

385 The standard employment contract uses the term *servant* for the third party, however, in accordance with the terminology applied in this report the term *domestic worker* will be used to address the third party. For the worker's obligations, see "Housemaid/Servant Recruitment and Employment Contract," article 6, and "Employment Contract Worker/Housemaid," article 5.

386 SAIS International Human Rights Clinic interview with the Office of Domestic Workers Affairs, Ministry of Interior, Kuwait, 20 March 2013. Regarding the cases in which the 100-day probation period is effective, see Legislative Decree 40 of 1992, article 12.

the home during their time off.³⁸⁷ The general provisions at the end of both standard contracts, however, address the important issue of passport withholding by restating Kuwaiti law that the passport belongs only to the domestic worker, who has the right to maintain it. The period of validity is also stipulated in the contract, which states that the contract will “be automatically renewed for a similar period unless one of the parties notifies the other in writing with his desire of non-renewal two months at least before the termination of this contract.”³⁸⁸ Any arising dispute between the parties is referred to ODWA.

According to ODWA, there are sanctions for noncompliance with the contract.³⁸⁹ The penalty for an agency that does not abide by the stipulated contract could be as serious as closure. Recruitment agencies are required by law to pay an initial deposit of KD 20,000. The Kuwaiti government may take money out of this deposit to pay for a domestic worker’s repatriation fees if he or she runs away from the sponsor within the first 100 days and the employment agency does not abide by its obligation to find a new sponsor or pay for transportation back to the country of origin. In addition to imposing fines on the agency, the Kuwaiti government has the power to shut down a business if it does not abide by the law. According to Al-Ali, this practice has been widely used over the past few years, reducing the number of recruiting agencies from around 2,500 to only 350 agencies currently operating. In the past six years, not a single new license for operating recruitment agencies has been issued.³⁹⁰

The sponsors themselves also face punishments for violating terms of the contract.³⁹¹ If a domestic worker files a complaint regarding nonpayment of his or her salary and the sponsor refuses to pay, including the court fees, the sponsor can be blacklisted from government affairs after two or three such violations. This blacklisting can mean being excluded from requesting such government services as license plates for a new car. Blacklisting currently remains the only punishment against sponsors who violate terms of the contract; there are no additional fines associated yet. The US Department of State’s *Trafficking in Persons Report 2013* therefore noted that

Kuwaiti law enforcement generally treated cases of forced labor as administrative labor infractions, for which punishment was limited to assessing fines, shutting down employment firms, issuing orders for employers to return withheld passports, or requiring employers to pay back-wages.³⁹²

387 See also Human Rights Watch, *Walls at Every Turn*, 39.

388 “Housemaid/Servant Recruitment and Employment Contract,” general provisions, paragraph 1, and “Employment Contract Worker/Housemaid,” general provisions, paragraph 1.

389 SAIS International Human Rights Clinic interview with the Office of Domestic Workers Affairs, Ministry of Interior, Kuwait, 20 March 2013.

390 SAIS International Human Rights Clinic interview with Abdullah Awadh Al-Ali, Office of Domestic Workers Affairs, Ministry of Interior, Kuwait, 20 March 2013.

391 SAIS International Human Rights Clinic interview with the Office of Domestic Workers Affairs, Ministry of Interior, Kuwait, 20 March 2013.

392 Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2013*, 226.

3.3.2. POEA Master Contract for Filipino Household Service Workers in the State of Kuwait

The Philippine Overseas Employment Administration of the Department of Labor and Employment has also recently drafted its own model contract, the “Master Contract for Filipino Household Service Workers in the State of Kuwait,” which exhibits significant differences to the Kuwaiti ODWA standard contracts.

Whereas ODWA puts forward a tripartite contract, the POEA master contract has only two parties: the employer represented in Kuwait by the foreign placement agency and the household service worker represented in the Philippines by the Philippine recruitment agency. Both parties and their representatives must sign the contract.

Although many of the rights of the worker are similar to the ones established in the ODWA model contract, the POEA contract adds the following:

- Basic monthly salary of US\$400³⁹³
- Continuous rest of at least eight hours per day³⁹⁴
- Personal life, accident, medical, and repatriation insurance provided by the employer³⁹⁵
- Treatment in a just and humane manner and prohibition of physical violence³⁹⁶

The biggest discrepancy between the two model contracts is thus the established minimum monthly salary, which, according to the Kuwait administration, is set at KD 40, or roughly US\$150, whereas the Philippines authorities demand US\$400.

Contract termination is also regulated in a different manner: the POEA contract clearly delineates the reasons for contract termination by the employer and the worker.³⁹⁷ The ODWA contract is valid for two years—the same period of validity of the visa—after which (a) the contract can be renewed for the same timeframe, (b) the worker must return home, or (c) the sponsorship must be transferred. The POEA contract allows for early termination by the employer in case of “serious misconduct or willful disobedience by the household service worker of the lawful orders of the employer or immediate household members in connection with his/her work; gross habitual neglect by the house service worker of her duties; [or] violation of the laws of the host country,”³⁹⁸ in which case the worker pays for the repatriation expenses. If the worker terminates the contract for a just cause, including “when the helper is maltreated by the employer or any member of his household; when the employer violates the terms and

393 “Master Contract for Filipino Household Service Workers in the State of Kuwait,” paragraph 3.

394 *Ibid.*, paragraph 4.

395 *Ibid.*, paragraph 10.

396 *Ibid.*, paragraph 15.

397 *Ibid.*, paragraph 13.

398 *Ibid.*, paragraph 13(a).

conditions of this contract; when the employer commits any of the following acts—deliberate non-payment of salary, physical molestation, and physical assault,”³⁹⁹ the employer must pay for the repatriation expenses. The employer also pays for repatriation when the contract is terminated because of illness, disease, or injury suffered by the helper.⁴⁰⁰ All other cases are seen as “termination without just cause,”⁴⁰¹ and the worker is responsible for the repatriation fees.

The POEA contract therefore leaves the recruitment agencies out of the contractual obligations,⁴⁰² whereas the Kuwaiti regulatory framework focuses heavily on their regulation, as discussed previously.

Regarding the settlement of disputes, the Philippine contract asks the parties to refer to the Philippine Embassy in Kuwait, which will settle the issue amicably to the best interest of both the employer and the worker.⁴⁰³ This settlement method differs from the Kuwaiti contract, which puts ODWA in charge of all dispute settlements.⁴⁰⁴

3.4. Judicial System: Protection of Domestic Workers’ Rights in Court

In the event of unpaid salaries, confiscated passports, physical abuse, or other offenses, domestic workers can file a case with Kuwaiti police. In most cases though, they are referred through the Philippine Embassy. As mentioned, workers in distress mostly revert to their embassies; Philippine law makes this procedure standard because it allows distressed workers to file an onsite complaint against the foreign employer with the Philippine Overseas Labor Office.⁴⁰⁵

The embassy will then typically organize visits to the police office, which is established at ODWA to deal with workers’ complaints. ODWA has quasi-judicial powers over runaway

399 *Ibid.*, paragraph 13(b)(2).

400 *Ibid.*, paragraph 13(c).

401 *Ibid.*, paragraph 13(b)(1).

402 Recruitment agencies are, however, regulated by law. See section 15 of the Migrant Workers and Overseas Filipinos Act of 1995: “The repatriation of the worker and the transport of his personal belongings shall be the primary responsibility of the agency which recruited or deployed the worker overseas. All costs attendant to repatriation shall be borne by or charged to the agency concerned and/or its principal. Likewise, the repatriation of remains and transport of the personal belongings of a deceased worker and all costs attendant thereto shall be borne by the principal and/or local agency. However, in cases where the termination of employment is due solely to the fault of the worker, the principal/employer or agency shall not in any manner be responsible for the repatriation of the former and/or his belongings. The Overseas Workers Welfare Administration (OWWA), in coordination with appropriate international agencies, shall undertake the repatriation of workers in cases of war, epidemic, disasters or calamities, natural or man-made, and other similar events without prejudice to reimbursement by the responsible principal or agency. However, in cases where the principal or recruitment agency cannot be identified, all costs attendant to repatriation shall be borne by the OWWA.”

403 “Master Contract for Filipino Household Service Workers in the State of Kuwait,” paragraph 14.

404 “Housemaid/Servant Recruitment and Employment Contract,” general provisions, paragraph 3, and “Employment Contract Worker/Housemaid,” general provisions, paragraph 4.

405 Republic of the Philippines, Department of Labor and Employment, Order 87-08, Series of 2008.

workers; it can contact the employer and try to find a solution for the case, such as payment of the previously agreed salary.⁴⁰⁶ Only if this effort does not resolve the issue does a case go to court.

Domestic workers' cases appear in Kuwaiti courts frequently and often are quickly resolved once they reach the court level. Lawyers express a strong trust in the fairness of the justice system and the impartiality of Kuwaiti judges when it comes to domestic workers' affairs.⁴⁰⁷ Most enter the court system under the representation of the Philippines Embassy, which employs Kuwaiti lawyers to argue cases for its workers. Most cases involve litigation for the payment of the agreed salary or the return of the passport to the worker so she or he may leave the country.

Although easy to resolve, the larger issue relating to unpaid salary disputes lies in the scale of associated time and fees. In most cases, the unpaid salary at stake amounts to less than the lawyer would charge for the time needed to try the case. In some instances, lawyers choose to simply pay the worker the contested amount themselves. As far as the lawyer is concerned, this method is more cost-effective.⁴⁰⁸

Many workers' claims are taken to court through the representation of the embassy. As long as they have not been accused of a crime, some Filipino workers will return home before their case is decided. If the embassy wins the case, the portion of the damages owed to the worker will then be sent to the worker in the Philippines. This system can easily be abused, and there are accounts of embassy officials who have kept part of the compensation money—up to 70 percent—that is due the victim.⁴⁰⁹ However, the system is abused on both ends. There are also accounts of recruitment agencies that have instructed domestic workers to tell fake stories of sexual violence committed by a sponsor; the sponsor would pay hush money to the worker so that his wife does not find out about the story. The agency then keeps the money.

“In court, I ask the sponsor: Can I take away your hand, your body, your hair? No. The passport is like a piece of your body. It belongs to every human being and you cannot take it away from them. When I order a sponsor to hand back the passport to an employee, I make a point of not having the sponsor give the passport to me so that I would hand it back to the worker. No. The sponsor has to understand that it is the worker’s right to have the passport even without the court interference. He has to give it back to the worker himself.”

—Judge, Labor Court, Kuwait City

406 SAIS International Human Rights Clinic visit at the Office of Domestic Workers Affairs, Ministry of Interior, Kuwait, 20 March 2013.

407 SAIS International Human Rights Clinic interview with the Legal Group Al-Khashti, Al-Qallaf, Khuraibut, Kuwait, 21 March 2013.

408 Ibid.

409 Ibid.

Although an administrative and judicial framework exists for domestic workers, its effective execution faces many obstacles. Domestic workers are legal residents in Kuwait only by the grace of their sponsors, meaning that anywhere they go without their sponsors' approval is illegal. Some workers will surreptitiously leave home to report mistreatment at a local police center. Once the workers arrive at the center, police will ask for their civil ID and read the sponsor's name on the back. As mentioned previously, often police assume the worker is a runaway, side with the sponsor, and call the sponsor directly to retrieve their worker. Furthermore, although Kuwaiti police are procedurally obligated to file every report submitted to them, procrastination and deflection of reports have been observed. Unfortunately, when faced with a police officer who is not interested in filing a worker's claim or who lacks the relevant training to understand signs of distress, the worker has no recourse but to flee to the embassy.

Whereas most domestic worker court cases are about passports or salaries, sometimes workers refer to the court system because of physical or sexual abuse. In one case that involved a married couple (two doctors), the wife accused her husband of being in love with their domestic worker.⁴¹⁰ The wife then brutally beat the domestic worker. To prove that he was not in love with the domestic worker, the husband helped push her from a ladder and poured scalding water on her. Because the worker was seriously injured, the sponsors called the authorities saying that she had fallen from a ladder. The police noticed bruises and burns and became suspicious. The case went to court, where the couple was ordered to pay compensation to the domestic worker, and after it was proven that the wife had assaulted the worker, the wife was sentenced to 10 years in prison. When, at the beginning of the case, the domestic worker's lawyer asked the brutalized girl what she wanted from her former abusive employers, she responded, "I want them not to beat the next girl."

"I want them not to beat the next girl."

—Abused domestic worker
witness in Kuwaiti Court

410 Ibid.

4. Appropriate Responses

4.1. Bilateral Cooperation and Memoranda of Understanding

Cooperation between the Kuwaiti and Filipino governments on issues of domestic workers generally occurs between the Philippine Overseas Employment Administration (POEA), which is based out of the Philippine Overseas Labor Office at the Philippines Embassy in Kuwait City, and the Office of Domestic Workers Affairs at the Kuwait Ministry of Interior (MOI). The parallel arrangement of ministerial responsibilities in Kuwait—all domestic worker issues are dealt with by the MOI, whereas nondomestic migrant worker issues are dealt with by the Ministry of Social Affairs and Labor (MOSAL)—may unnecessarily complicate dispute settlement and protection of workers' rights.

“At the global level, forging of bilateral and multilateral agreements with and among governments is essential for making life better for Filipino domestic workers.”

—Luzviminda G. Padilla, Labor Attaché, Philippines Embassy, Washington, DC

When conditions in labor destination countries are unsatisfactory, one tool that has been used is deployment bans. Indeed, in 1988, the government of the Philippines issued a worldwide ban on the export of Filipino domestic workers.⁴¹¹ The ban was “aimed at securing better conditions [for domestic workers] in countries such as Saudi Arabia and Kuwait.”⁴¹² To have the ban lifted, individual countries needed to negotiate regarding the employment standards.⁴¹³ With respect to Kuwait, it took nine years for the Philippines to lift the ban.⁴¹⁴ Although there were benefits from the worldwide ban, such as “push[ing] the destination countries to establish and improve standards of employment for Filipino domestic ... [workers],”⁴¹⁵ there were also

411 Terry Slavin, “Why Asian Nations Export ‘Guest Workers’ Desperate for Cash, Many Are Virtual Slaves,” *Toronto Star*, 26 October 1990, A27.

412 Ibid.

413 Nicole J. Sayres, “An Analysis of the Situation of Filipino Domestic Workers,” International Labour Organization (ILO), 14 December 2007, 9, http://www.ilo.org/wcmsp5/groups/public/...asia/...ro-bangkok/...ilo-manila/documents/publication/wcms_124895.pdf.

414 “Philippines President Visits Kuwait,” United Press International, 13 September 1997.

415 Sayres, “An Analysis of the Situation of Filipino Domestic Workers,” 9.

negative consequences, such as retaliation from destination countries and illegal migration.⁴¹⁶ Indeed, deployment bans do not necessarily stop the influx of workers.

Notwithstanding the above-referenced ban to Kuwait, it was reported that “24,000 Filipinas were working there as domestics in 1995.”⁴¹⁷ Consequently, while the intent of a ban may be to protect workers, it may leave some individuals even more vulnerable and outside of government monitoring.⁴¹⁸ Thus, implementing a deployment ban as a negotiation tactic can prove to be a risky maneuver.

During the visit of the Philippine president to Kuwait on 13–15 September 1997, the Philippines and Kuwait signed two memoranda of understanding (MOUs): an MOU on labor and manpower development and an MOU on the establishment of bilateral cooperation. Neither MOU covers domestic workers.

A recent agreement between the two countries, titled Memorandum of Understanding between the Government of the State of Kuwait and the Government of the Republic of the Philippines in the Field of Labor Cooperation, was executed on 23 March 2012, during an official five-day visit of the royal emir of Kuwait to the Philippines.⁴¹⁹ The Philippines labor and employment secretary, Rosalinda Dimapilis-Baldoz, and the Kuwaiti minister of commerce, Anas Al-Saleh, in the presence of President Benigno Aquino III and Sheikh Al-Sabah, the royal emir of Kuwait, signed the MOU to reinforce bilateral labor cooperation and improve workers’ well-being in response to the growing labor and economic relations between the two countries. The agreement addresses issues regarding the conditions of employment, contracts, and amicable dispute settlement between employer and employee. The MOU also establishes a Philippine–Kuwait joint working group to

(a) ensure the implementation of the MOU; (b) jointly review and agree on a standard employment contract (for OFWs); (c) propose revisions of the MOU as may be necessary and to resolve problems in its implementation; and (d) study emerging employment opportunities and suggest measures of technical cooperation, training skill enhancement and to provide all the sectors with technically skilled personnel for the benefit of both parties.⁴²⁰

The MOU, however, does not extend to domestic workers.

416 Sayres, “An Analysis of the Situation of Filipino Domestic Workers,” 9 (regarding retaliation, “Kuwait ... enacted a ban against OFWs that lasted ten years”).

417 Janet Henshall Momsen, “Maids on the Move: Victim or Victor,” in *Gender, Migration and Domestic Service*, ed. Janet Henshall Momsen (New York: Routledge, 1999), 7 (citing D. K. Stasiulis and A. B. Bakan, “Negotiating Citizenship: The Case of Foreign Domestic Workers in Canada.” *Feminist Review*, 57 [1997]: 112–39).

418 The former labor secretary for the Philippines, Jose Brillantes, observed, “With a ban in place, he said, the government would be unable to monitor workers’ employment conditions.” Oliver Teves, “Labor Secretary Opposes Total Ban of Filipino Maids Working Abroad,” Associated Press Worldstream, 27 July 1995.

419 See Department of Labor and Employment, “Philippines, Kuwait Sign MOU Strengthening Bilateral Labor Cooperation, Workers Welfare,” press release, 27 March 2012, <http://www.gov.ph/2012/03/27/philippines-kuwait-sign-accord-strengthening-bilateral-labor-cooperation-workers-welfare/>.

420 Ibid.

4.2. Kuwait Government Agencies involved in the Protection of Domestic Workers

In Kuwait, several government agencies deal with domestic workers' issues, though the Office of Domestic Workers Affairs (ODWA) at the MOI is the main place for domestic workers to turn to. The Ministry of Commerce and Industry (MOCI) is responsible for registering labor recruiting agencies, whether managed by Kuwaiti nationals or foreigners. MOSAL oversees employment contracts for foreign workers; however, migrant domestic workers' contracts are supervised by the MOI.

4.2.1. Ministry of Commerce and Industry and the Process of Registering a Recruitment Agency in Kuwait

MOCI is only tangentially related to the situation of migrant domestic workers in that it approves and registers the recruitment companies that operate in Kuwait. More than 700 recruitment agencies distribute approximately 600,000 migrant workers in Kuwait.⁴²¹ Recruitment agencies are, for the most part, operated by nationals of the country whose workers they handle; that is, agencies that primarily offer contracts for Filipino domestic workers will most often be managed by a Filipino national. Every recruitment agency has partner agencies based in countries that send domestic workers, and it jointly deals with these "sending country branches" in a supply–demand relationship. The connections between agency branches in sending and receiving countries are not always official. For example, the same company may not operate both branches; rather, the branches may be independently owned and their connection be de facto and relationally based. For example, a recruitment agency manager in Kuwait may work with a cousin who operates an agency in Manila.

Walking into a recruitment hub, one immediately sees that the individuals behind desks are non-Kuwaitis, usually of the same nationality as the domestic workers that particular agency mainly offers. Although foreign nationals manage recruitment agencies, they are not permitted to own more than 49 percent of a company within Kuwait. Foreign companies wishing to operate a business in Kuwait must designate at least 51 percent of company shares to a Kuwaiti citizen, meaning the majority of ownership stays domestic. In reality, many expatriates will pay Kuwaitis to hold the agency's business license in their name yet otherwise operate independently of their management.⁴²²

421 School of Advanced International Studies (SAIS) International Human Rights Clinic interview with the Kuwait Social Work Society, 18 March 2013.

422 See International Finance Corporation and World Bank, *Doing Business 2011: Making a Difference for Entrepreneurs* (Washington, DC: World Bank, 2010).

To set up a company in Kuwait, the founders must file an application with the Department of Partnerships at MOCI.⁴²³ The application designates the names and information of the company's founding partners, the start-up capital, the percentage distributions of ownership, and the company mission statement. In addition, the entrepreneurs are subject to a required background check through the MOI, which receives and responds to the company's license application. The company must also designate the commercial bank at which its primary account will be opened and start-up capital deposited. The bank checks the deposits of capital from each designated founder and matches it to the distribution of ownership shares declared in the submitted license application at MOCI.⁴²⁴ The primary account holder, however, will be the Kuwaiti citizen who owns the largest share of the company. Therefore, the individual with the most to lose in the event of law violations is the primary shareholder, who usually does not directly manage the agency. Expatriates operate the agencies; managers of larger agencies will rent out space within their company to individual recruiters, who help them diversify the ethnicity of domestic workers they are able to offer.⁴²⁵

Officials from the municipality in which the company intends to open its branch inspect the address listed on the application and verify that it is the site specified in the license application and conforms to relevant regulations. After the founders receive the necessary approvals and certificates from the fire department, municipality, Department of Partnerships, and any other government bodies relevant to the nature of the business (i.e., Ministry of Health, Ministry of Energy), the company must register as a member of the Chamber of Industry and Commerce. To deal with government bodies, the company is issued a civil number from the Public Authority for Civil Information (PACI), which enters the firm's identification number into a database it shares with the MOI.⁴²⁶ Once these steps are completed, the company must open a labor file at MOSAL, which inspects the size and business scope of the firm and identifies the number of nonnational employees. Companies wishing to employ foreign workers must apply for work permits through MOSAL; MOSAL then has the authority to oversee work contracts and ensure that labor standards are maintained for all employees, both foreign and domestic.⁴²⁷

MOCI's role beyond issuing business licenses for entrepreneurs is limited, and it does not possess its own enforcement mechanisms that can periodically ensure that standards of operation are being maintained.

423 International Finance Corporation and World Bank, "Starting a Business in Kuwait," 2013, <http://www.doingbusiness.org/data/exploreconomies/kuwait/starting-a-business>.

424 Ibid.

425 Human Rights Watch, *Walls at Every Turn: Abuse of Migrant Domestic Workers through Kuwait's Sponsorship System*, (New York: Human Rights Watch, 2010), 42.

426 More information is available at Kuwaiti Government Online, <http://www.e.gov.kw>.

427 For further information about the process of issuing work licenses, see 4.2.2. Ministry of Social Affairs and Labor and the Oversight of Labor Conditions.

MOCI's process of registering commercial businesses is not inherently problematic, but its role in registering recruitment agencies as private companies is difficult given the nature of the goods and services that these agencies trade—namely, human labor. The MOI's Immigration Department and foreign embassies are involved in the movement of foreigners across borders, but domestic workers cannot be equated to mere commodity trade. For example, labor standards are not taken into account in recruitment agencies' applications to MOCI, yet they are essential when it comes to dealing with human labor. Technically, labor standards are enforced by MOSAL, but the cross-ministerial responsibilities are convoluted. Clearer stipulations of the division of responsibilities (mainly concerning monitoring and sanctioning) among MOCI, MOSAL, and the MOI are necessary. The way the system of registering and monitoring recruitment agencies is set up also increases the opportunities for recruitment agencies to participate in illegal human trafficking. MOCI grants licenses to private firms that have start-up capital and demonstrated profitability, but apart from that function its role in monitoring recruitment agencies is narrow.

4.2.2. Ministry of Social Affairs and Labor and the Oversight of Labor Conditions

MOSAL oversees all work permits for foreign workers in the private and public sectors and implements and enforces labor standards stipulated in the new Private Sector Labor Law of 2010. MOSAL supervises the employment of foreign workers by reviewing companies' assessments of required labor and by issuing work permits that correspond to the estimated demand for human resources. According to article 10, employers need authorization from MOSAL to employ foreign workers.⁴²⁸ The law also provides for its monitoring and enforcement by allowing labor inspections, including the right to enter workplaces and to access a company's books and records.⁴²⁹ As noted, article 5 expressly excludes domestic workers from the protections of the labor law.⁴³⁰

MOSAL oversees the process by which a foreign worker in the private sector obtains an employment contract, which then enables him or her to obtain a residence permit. For all foreign workers other than domestic workers, an offer of employment must first be established before the worker can obtain residence on a work visa; Kuwaiti sponsoring employers must apply for a work permit from MOSAL.⁴³¹ Domestic workers are required to undergo the same processes of obtaining work and residence permits, but the process is overseen by the MOI. Overlap between these two ministries convolutes the entire system of administering foreign labor.

428 Private Sector Labor Law, Law No. 6 of 2010, article 10.

429 *Ibid.*, article 134.

430 *Ibid.*, article 5.

431 See, for example, VisaInfo, "Kuwait Visa Requirements," <http://visainfo.co.in/gulf-visa/77-kuwait-visa-requirements>.

4.2.3. Ministry of Interior and the Office of Domestic Workers Affairs

There are several divisions in the MOI that handle migrant domestic workers—for example, ODWA, the Department of Immigration, PACI, and the Criminal Evidence Department.

In most Gulf countries with similar sponsorship systems, MOSAL or its equivalent oversees all issues regarding domestic migrant workers; however, the MOI is responsible for most of the outlets providing protection and provision for migrant workers.⁴³² The MOI houses Kuwait's policing, immigration, and crime divisions. Individuals who reside in Kuwait, both national and nonnational, must apply for residence and have their papers processed through the Department of Immigration within the MOI. All visas for visitors are also issued through the MOI.

Filipino citizens wishing to travel to Kuwait must procure a visa before arrival.⁴³³ Domestic workers come to Kuwait on Visa 20. Other migrant workers in the private sector require Visa 18, which binds them to an employer (in their case, the business) and guarantees them protection under the Private Sector Labor Law of 2010. Domestic workers applying for a visa must provide the work agreement that they concluded with a company or sponsor in Kuwait.⁴³⁴ In addition, all foreign workers wishing to enter Kuwait must present a medical certificate obtained through a medical center that is approved by the Kuwait Embassy in the country of origin. On arrival, the employee must also undergo a security clearance involving fingerprinting administered by the MOI. Employees need this fingerprinting certificate to finalize their work visa and application for residence. All necessary forms are then submitted to the MOI, which approves the residence permit (*iqama*), thereby finalizing the work and residence permit processes.

The MOI plays a large role in regulating domestic workers because of its overarching responsibility as the main monitoring body for residents within Kuwait. All residence and citizenship applications, car registration, and criminal complaints are filed with the MOI. One of the major aspects of the MOI's operations is that it shares a database with PACI, which is the body that issues and catalogs civil identification cards required for every individual residing in Kuwait. The civil identification cards are required for residents, whether native or nonnative, to conduct business within the country, and most transactions cannot be made without them. The PACI database is linked to the MOI database via a specific number. PACI

432 The following issues are conducted and resolved within the Ministry of Interior: (a) issuing visas; (b) replacing a lost passport; (c) applying for residence, renewing a residence permit, or transferring residence; (4) registering intent to become a Kuwaiti citizen; (5) monitoring (in collaboration with PACI on civil ID cards); and (6) formal filing of a complaint or criminal case.

433 Nationals of 38 countries may obtain a Kuwaiti visa on arrival. Nationals of countries that are not among the 38 must procure a Kuwaiti visa before arrival. Key exporters of domestic labor such as the Philippines, Indonesia, India, and Bangladesh are required to obtain Kuwaiti visas for their citizens before departure. See Move One, "Immigrating to Kuwait," <http://www.moveoneinc.com/country-profiles/kuwait/immigration-to-kuwait/>.

434 See, for example, Anand Group, "Visas India to Kuwait, Domestic Visa Procedures in India," http://visas.indiatokuwait.com/Domestic_Visa_Stamping_Procedures_in_india.html.

has continued to consolidate and improve over the past 15 years; it is now fully computerized and able to provide accurate labor force statistics such as demographics, popular occupations, education levels, and residents.⁴³⁵ When a domestic worker arrives in Kuwait, his or her civil ID is tied directly to her sponsor's such that if he or she is caught absconding and brought to the police department, officials can use the domestic worker's civil ID to track him or her to the sponsor and hold the sponsor responsible.

Kuwait's ODWA operates within the MOI and is headed by Abdullah Awadhi Al-Ali. The International Labour Organization (ILO), International Organization for Migration (IOM), and some workers' rights groups in Kuwait are advocating for the MOI to be less involved with domestic workers. They declare that it should not be the task of the police to monitor working conditions.⁴³⁶ Conversely, others argue that the MOI is the only ministry with the capacity to monitor domestic conditions and inflict punishment on sponsors and recruitment agencies. Because the applications for car registration, residence transfer, and other transactions are all processed through the MOI, sponsors with multiple complaints filed against them by domestic workers can be blacklisted by the MOI from conducting government affairs.⁴³⁷ The logic is that regulating domestic workers through the MOI will effectively "scare sponsors into compliance."⁴³⁸ Despite this ability to blacklist both sponsors and recruitment agencies that do not maintain healthy and safe household standards for workers, no fines or formal punishments are stipulated because of the lack of a domestic workers law that would establish such sanctions. This situation constitutes a major enforcement problem: without significant fines or other forms of punishment, there are no mechanisms to deter a sponsor from violating standards in the future. In most cases, a sponsor "waits out" the blacklist period or asks a friend or a relative to secure a domestic worker in his or her name.

The Immigration Department is housed within the MOI, and therefore direct collaboration between the MOI and foreign embassies occurs daily. ODWA and the labor attaché at the Philippine Embassy in Kuwait have an integrated process of tracking visa issuances for Filipino laborers in every sector—that is, public, private, or domestic. All Kuwaiti visa requests are approved through the labor attaché, and a database with exact numbers of all Filipinos in each sector is kept.⁴³⁹

Domestic workers primarily enter Kuwait through recruitment agencies that act as intermediaries between the sending and receiving countries. Recruitment agencies in the

435 Nasra M. Shah, "Recent Labor Immigration Policies in the Oil-Rich Gulf: How Effective Are They Likely To Be?" ILR School, Cornell University, Ithaca, NY, 1 January 2008, 28.

436 SAIS International Human Rights Clinic interview with the International Organization for Migration, Kuwait, and International Labour Organization, Kuwait, 18 March 2013.

437 SAIS International Human Rights Clinic interview with the Office of Domestic Workers Affairs (ODWA), Ministry of Interior, Kuwait, 20 March 2013.

438 Ibid.

439 See Philippine Overseas Employment Administration, Memorandum Circular 14, Series of 2006, at B.

Philippines work with a partner agency located in Kuwait. Filipinos wishing to work overseas will apply with a recruitment agency. The recruitment agency planning to send workers to Kuwait will submit batches of visa requests to the MOI. Visas for domestic workers are issued by the MOI, whereas work visas for company workers are issued by MOSAL. A domestic worker applying for Visa 20 must be paired with an identified individual sponsor before he or she is allowed to depart for Kuwait. If the domestic worker does not have a specific sponsor with whom he or she has signed a contract, the visa will not be issued. The fact that domestic workers must be paired with an individual sponsor is a recent development; until 2011, agencies were permitted to bring workers into Kuwait in their name.⁴⁴⁰

4.2.4. Processing Runaways, Issuing Travel Documents, and Other Opportunities for Redress

In most cases, a domestic worker who runs away because of unsatisfactory working conditions will not have a passport. It is common practice in Kuwait for sponsors to hold the passports of all individuals within the house, including those of domestic workers. There is a range of motivations for this practice. For example, the domestic worker might not feel comfortable holding his or her passport, and so he or she willingly gives it to the sponsor for safekeeping. Another scenario is that the sponsor intentionally holds the passport to prevent the worker from running away. In no case is the sponsor legally permitted to withhold a passport from an individual.⁴⁴¹

If a Philippine passport is lost, a domestic worker may replace it at the Philippines Embassy in Kuwait. However, without proper documentation about his or her entry into the country, it is not possible for the worker to be cleared to exit the country. In cases of withheld passports, ODWA cooperates with the embassies of the worker's country of origin and contacts the worker's sponsor. If the sponsor refuses to return the passport or the passport's retrieval is otherwise not possible, ODWA has the authority to draft and process interim travel papers that allow the domestic worker to leave the country.⁴⁴² After the 100-day probation period, sponsors are technically required to report runaways. If the worker then wishes to return home, the sponsor is obligated to pay for all costs, including airfare. If the runaway comes to the police and files for a missing passport, ODWA contacts the sponsor and requests that the sponsor comply with the regulation and return the passport and civil ID. Al-Ali explains cases in which enraged sponsors came to ODWA after ODWA had processed travel papers allowing their domestic workers to return home: "If a sponsor comes and complains about

440 SAIS International Human Rights Clinic interview with the Overseas Labor Office, Philippine Embassy in Kuwait, 21 March 2013. The recruitment agency also submits the employment contract for approval to the Philippine Overseas Labor Office. See the discussion of Philippine government agencies in section IV.5.

441 See section 3.2.1. titled "Protection of Domestic Workers in the Kuwaiti Legal Framework" in chapter 3.

442 SAIS International Human Rights Clinic interview with ODWA, Kuwait, 20 March 2013.

why the Ministry of Interior allowed the domestic worker to travel, I tell them three things: Why are you holding their passports? Why did you not report the runaway? And I just saved you from paying for a return ticket!”⁴⁴³

Runaway domestic workers are often brought to the MOI for one of two reasons: (a) they ran away from their sponsor and do not have their passports or required civil IDs with them, or (b) they are dissatisfied with working conditions within their household and want to file a case against the sponsor or recruitment agency. There are instances in which the domestic worker runs away from the house and comes independently to the MOI, but most often domestic workers will revert to their embassies, which then bring them to ODWA to settle disputes formally.⁴⁴⁴

The MOI has established a “nationalities day” in cooperation with foreign embassies. Each embassy has a specific day on which it may bring its distressed domestic workers to the Department of Immigration to file complaints or claims.⁴⁴⁵ Embassies bring groups of domestic workers to the MOI, where an interpreter is present to help them explain and formally file their cases, either a civil case, in the event of salary or passport withholding, or a criminal case with law enforcement officers in the event of physical or sexual assault.

4.3. Shelters for Distressed Domestic Workers in Kuwait

In 2007, the Kuwaiti government opened a shelter in Khaitan for domestic workers in distress. It was designed to hold 50 women and started on a small scale to test its efficiency and needs. A staff of 10 persons, including doctors and social workers, is employed at the shelter. In March 2013, 42 women from the Philippines were staying at the shelter.⁴⁴⁶ Upstairs there are certain dorm room doors labeled with different country names, such as Ethiopia and Nepal. The women who come to this government-run shelter do so in two-week rotating shifts. These shifts are to relieve pressure on different foreign embassies, which must act as makeshift shelters for absconded domestic workers who wait to be repatriated. Hadi Al-Enezi, the shelter’s current manager, explained that 1 to 2 percent of the women he encounters have suffered physical or sexual abuse, with the other 98 percent or so simply wanting to get paid for their work and leave for their home country.⁴⁴⁷ The vast majority of the Filipino women who were currently staying at the shelter confirmed this observation by saying that they had run away because they had not been paid. Asked if they wanted to go home, they all began clapping, smiling, and cheering.

443 SAIS International Human Rights Clinic interview with Abdullah Awadhi Al-Ali, director of ODWA, Kuwait, 20 March 2013.

444 SAIS International Human Rights Clinic interview with ODWA, 20 March 2013.

445 Ibid.

446 SAIS International Human Rights Clinic interview with the Labor Relations Administration, Ministry of Social Affairs and Labor, and at the government’s shelter for distressed domestic workers, Kuwait, 19 March 2013.

447 Ibid.

In some cases, women come to the shelter independently of their embassy. They find out about the shelter from brochures, television, newspapers, and word of mouth. However, according to Al-Enezi, when a woman arrives at the shelter, she may also have committed a crime. He tells us that it is mostly the Ethiopians who violently attack their employers. This assertion of Ethiopian domestic workers being dangerous appears to stem primarily from a horrific incident in November 2011. Aisha Al-Failakawi, a domestic worker from Ethiopia, admitted to beheading her 25-year-old employer the night before the Kuwaiti woman's wedding. The 28-year-old Aisha claimed that the murder was revenge for her mistreatment at the hands of her employer's father.⁴⁴⁸ This widely publicized case led to the MOI's considering a ban on the recruitment of all Ethiopian domestic workers in December 2011; however, the ban never came to pass.

According to security sources, Ethiopian nationals were accused of 87 criminal incidents in a four-year period from 2008 through 2011.⁴⁴⁹ It is difficult to verify whether Ethiopian domestic workers committed all 87 of these alleged criminal incidents or whether Ethiopian workers in other sectors were also accused of committing these crimes. However, Ethiopian domestic workers in Kuwait have also been the victims of violence. In December 2011, a Kuwaiti man admitted to killing his Ethiopian domestic worker when he found out that she had hit his children. The sponsor hit her in the head with a hard object, and when she collapsed to the floor, he realized he had killed her. He attempted to hide the crime by burying her in the desert. According to the Kuwaiti *Al-Rai* daily newspaper, the man consistently beat his domestic worker and often starved her.⁴⁵⁰

A new government shelter has been planned for the past several years. The goal is to house up to 700 runaway domestic and other foreign workers, female and male, as they prepare to repatriate to their home countries. According to Al-Enezi, 20 additional staff members for the new shelter—mostly social workers—have been hired and trained by the MOI in cooperation with the IOM. The future government shelter is located in a former school.⁴⁵¹ The classrooms have been revamped into bedrooms, with bed frames and mattresses replacing desks. There is also a large space where school assemblies were once held that will serve as a cafeteria. A medical station designed to offer medical and psychological assistance is located on the second floor, near dormitory-style showering facilities. In the center of the complex is a recreational space, which is open to the sunlight and carpeted with synthetic grass. Although the shelter appears operational with running water and functioning air conditioning, Abdullah Awadh

448 Katerina Nikolas, "Maid Beheaded Bride-to-Be as Revenge for Mistreatment," *Digital Journal*, 20 November 2011, <http://digitaljournal.com/article/314743>.

449 "MOI Eyes Suspending Hiring of Ethiopian Maids," *Arab Times*, 15 December 2011, <http://www.arabtimesonline.com/NewsDetails/tabid/96/smld/414/ArticleID/177314/reftab/36/t/Moi-eyes-suspending-hiring-of-Ethiopian-maids/Default.aspx>.

450 "Kuwaiti Citizen 'Admits' To Killing His Ethiopian Maid," *Arab Times*, 9 December 2011, <http://www.arabtimesonline.com/NewsDetails/tabid/96/smld/414/ArticleID/177090/reftab/69/Default.aspx>.

451 SAIS International Human Rights Clinic visit to new government shelter for distressed domestic workers, Kuwait, 23 March 2013.

Al-Ali, the director of ODWA, said that the current holdup to its opening was due to contractor issues: “All we need is the key. The contractor holds the key.”⁴⁵²

On 14 April 2013 the *Kuwait Times* reported that the new government labor shelter was opened on an experimental basis⁴⁵³. According to the report, 42 female “inmates” who had been staying at the temporary shelter in Khaitan had been relocated to the new shelter in Jleeb.

4.4. Protection Services for Distressed Domestic Workers: Efforts of Civil Society in Kuwait

Although there are approximately 100 official Kuwaiti nongovernmental organizations (NGOs),⁴⁵⁴ civil society organizations struggle with the restrictive legislative environment. NGOs in Kuwait are governed by Law No. 24 of 1962, on clubs and public welfare societies, which makes registration of NGOs mandatory for their establishment.⁴⁵⁵ MOSAL can reject an NGO’s application if it deems that there is already an existing NGO providing a similar service or if it deems that the proposed NGO will not provide a public service.⁴⁵⁶ And according to article 6 of Law No. 24 of 1962, NGOs are barred from involvement in politics.⁴⁵⁷ Before 2004, the Kuwaiti government gave money to NGOs to help them get established and operate.⁴⁵⁸ Although NGOs that were founded after 2004 do not receive any financial support from the government, all 45 NGOs established before 2004 continue to receive a government subsidy of KD 12,000 per year.⁴⁵⁹

Nevertheless, several Kuwaiti civil society organizations strive to engage citizens in human rights awareness campaigns and educate about fundamental human rights concepts. They appeal to Islamic principles of charity or universally recognized human rights.

452 SAIS International Human Rights Clinic interview with Abdullah Awadh Al-Ali, ODWA, Kuwait, 20 March 2013.

453 “New Labor Shelter Opened in Jleeb,” *Kuwait Times*, 14 April 2013, http://www.gulfinthemedia.com/index.php?m=politics&id=643273&lim=240&lang=en&tblpost=2013_04.

454 US Department of State, “Kuwait 2012 Human Rights Report,” in *Country Reports on Human Rights Practices for 2012* (Washington, DC: US Department of States, 2012), <http://www.state.gov/documents/organization/204580.pdf>.

455 Article 2 of Law No. 24 of 1962 reads, “Societies or clubs may not conduct any activities and shall not be proved an artificial person if their statute is not announced in accordance with the provisions of this Law.” See also article 3, which states, “Ministry of Social Affairs and Labor shall undertake registration of societies and clubs and shall publish the founding thereof in the official gazette and assist them in achieving their goals in serving society when conforming to conditions stated in this Law.” The International Center for Not-for-Profit Law has published a full text of the law at <http://www.icnl.org/research/library/files/Kuwait/24-62-en.pdf>

456 U.S. Department of State, “Kuwait 2012 Human Rights Report,” 12.

457 Article 6 of Law No. 24 of 1962 states, “Societies and clubs are not allowed to seek achieving any purpose that is illegal or defies ethics or related to purposes stipulated in the statute of any. Clubs or societies are prohibited from interfering with politics and religious conflicts or provoking fanaticism, sectarianism and racism.”

458 SAIS International Human Rights Clinic interview with the Kabe Human Rights Society, the Kuwaiti Association of the Basic Evaluators of Human Rights, Kuwait, 21 March 2013.

459 U.S. Department of State, “2010 Human Rights Report: Kuwait,” in *2010 Country Reports on Human Rights Practices* (Washington, DC: U.S. Department of States, 2010), <http://www.state.gov/j/drl/rls/hrrpt/2010/nea/154465.htm>.

Although having a domestic worker is seen as a fundamental right of every Kuwaiti citizen and the unequal power dynamic that the system brings about is taken for granted by most citizens, the misery that some of these migrants endure is well documented. Awareness of the issue has increased over recent years, mostly fueled by campaigns conducted by Kuwaiti NGOs, which are often supported by international organizations such as the IOM.

For example, Kuwaiti NGOs engage in the distribution of leaflets among migrant domestic workers to educate them about their rights. The presence of international organizations has also immensely benefited awareness of human rights issues. In addition to carrying out several trainings on domestic workers' rights with law enforcement and MOI officials, the IOM drafted a proposal for a joint project with the Ministry of Education to work with schools to educate every class and every student on domestic work and to "treat domestic workers as equals, as human beings."⁴⁶⁰ The ILO supported the drafting of the Private Sector Labor Law of 2010 by sending comments and recommendations. It also conducted a project with MOSAL, Kuwaiti trade union federations, and employers' representatives on international labor standards and inspections.⁴⁶¹

4.4.1. Holy Family Cathedral Parish in Kuwait City

The Roman Catholic Church in Kuwait also contributes its share to supporting distressed Filipino workers. Father Ramon Mantanaso arrived in Kuwait in September 2012 and serves as the current Filipino priest of the Roman Catholic Church of Kuwait. Father Mantanaso does see Filipino domestic workers attending his services but also recognizes that there are those who are not permitted to leave their employer's home and come to church. Runaway workers never stay at the church but are instead directed to the embassies. "We cannot send them to the police. The police do not understand English," is one of his complaints.⁴⁶² Every week Father Mantanaso goes to the Philippine Embassy to lead a Eucharist celebration for the runaway workers who are sheltered there. In the first seven months that Father Mantanaso worked in Kuwait, he came across two cases of rape of domestic workers and several more of molestation.⁴⁶³ He advised the women to get out of the house or to tell the wife of the husband who was abusing them. When distressed workers come to him, Father Mantanaso first asks about their problem. Many ask him to help them obtain a plane ticket to return home. He offers distressed workers spiritual guidance, but the church can also occasionally help the workers financially. During his tenure in Kuwait, the church has purchased 10 airline tickets for distressed workers to return home. He believes that most workers do not arrive with a real understanding of what their work environment will be like even though they receive orientation from the Philippines employment office.

460 SAIS International Human Rights Clinic interview with the International Organization for Migration, Kuwait, 18 March 2013.

461 SAIS International Human Rights Clinic interview with the International Labour Organization, Kuwait, 18 March 2013.

462 SAIS International Human Rights Clinic interview with Father Ramon Mantanaso, Roman Catholic Church of Kuwait, 22 March 2013.

463 Ibid.

4.4.2. Kuwait Social Work Society

Sheikha Bibi Nasser Al-Sabah founded the Kuwait Social Work Society in 2005. After seeing migrant workers laboring in temperatures hovering around 52°C, she realized that “I should help.”⁴⁶⁴ The group’s mission statement is “[t]o raise awareness about the plight of migrant workers in the Middle East and to encourage social action as a means to address the degradation of their human rights and dignity.”⁴⁶⁵ Sheikha Bibi Nasser Al-Sabah currently runs the organization with the help of the group’s vice president, Dr. Faisal Al-Masoud. Their goals are to abolish the system of private sponsorship (*kafala*) and replace it with a government sponsorship system for all foreign workers. In this system, the government will set minimum wages and working hours for all migrant workers. They also are seeking to abolish the nearly 700 recruiting agencies operating in Kuwait. The Kuwait Social Work Society has created a draft law for domestic workers, for which it is seeking parliamentary approval. According to Sheikha Bibi Nasser Al-Sabah, there are positive developments. For example, the deportation process is getting better. The Kuwaiti authorities used to handcuff absconded domestic workers in the airport and lead them around. Now this practice has stopped. Sheikha Bibi Nasser Al-Sabah also provides her private number as a hotline for distressed workers.⁴⁶⁶

4.4.3. Kabe Human Rights, the Kuwaiti Association of the Basic Evaluators of Human Rights

The Kabe Human Rights group registered with MOSAL in 2005. The NGO adopted the Universal Islamic Declaration of Human Rights as its constitution. Its main message is to “uphold human rights from an Islamic perspective,” and its objective is “spreading awareness of human rights appropriated by Islamic Sharia.”⁴⁶⁷ Kabe is interested in several different aspects of human rights, but in terms of migrant domestic workers’ rights in Kuwait, it has created an advertising campaign and an educational public outreach to schools.

The ad campaign, which aired across Kuwaiti television, is focused on the Prophet Mohammed’s saying “Pay the laborer his wages before his sweat dries.”⁴⁶⁸ In one of the advertisements, a foreign domestic worker is shown cleaning a house. As soon as she has finished her work, the woman of the house beckons to the worker and immediately pays her wage. This advertisement was used to inform the Kuwaiti general public that the way in which they treat their workers is important in the eyes of God. Through such strategies as these awareness campaigns, Kabe hopes to influence the Kuwaiti public to uphold human rights in a Muslim tradition.

464 SAIS International Human Rights Clinic interview with Sheikha Bibi Nasser Al-Sabah, Kuwait Social Work Society, 18 March 2013.

465 See the description of the Kuwait Social Work Society on the Migrants Rights website at <http://www.migrant-rights.org/organization/kuwait-social-work-society/>

466 Joana Saba, “EU Honors Kuwait’s SWS with Chaillot Prize,” *Arab Times*, 11 December 2012, http://www.arabtimesonline.com/Portals/0/PDF_Files/pdf12/dec/11/02.pdf.

467 SAIS International Human Rights Clinic interview with Kabe Human Rights Society, the Kuwaiti Association of the Basic Evaluators of Human Rights, 21 March 2013.

468 Sunan Ibn Majah, Hadith 2443.

Kabe also ran programs in schools over the course of three weeks to teach Kuwaiti children how to treat domestic workers appropriately.⁴⁶⁹ After the programs, the NGO asked 1,500 students if their view of how they should treat people changed. Ninety-four percent said that it had. Other schools have since contacted Kabe and asked the group to come and run these programs.

4.4.4. International NGOs

Several international NGOs operate in Kuwait. In 2010, Human Rights Watch issued a report, *Walls at Every Turn*, which focused on the plight of migrant domestic workers in Kuwait.⁴⁷⁰ That same year Human Rights Watch partnered with the Kuwait Society for Human Rights, Kabe Human Rights, the Kuwait Center for Expatriates' Rights, and the Kuwait Social Work Society. These groups launched an awareness campaign: "Put yourself in her shoes."⁴⁷¹ This campaign featured billboards and advertisements, with a Kuwaiti woman dressed as a domestic worker so that Kuwaitis could imagine themselves in the same situation.

Operation Hope and the Salvation Army also run clinics and trainings at the Philippines Embassy in an outreach program distressed workers to help prepare distressed workers for life after being a domestic worker by teaching them about investing and making handicrafts.⁴⁷²

4.5. Preventive Efforts of the Philippine Government

The increasing revenues that Filipino migrant workers have poured into the coffers of the Philippine economy through their remittances have provided a strong incentive for the government to organize the deployment of Filipino workers overseas. In 1977, during President Ferdinand Marcos administration, the Ministry of Labor created the Overseas Employment Development Board, which later created POEA in 1982 and the Welfare Fund for Overseas Workers, which in 1987 was renamed the Overseas Workers Welfare Administration (OWWA). The Department of Labor and Employment (DOLE) is the Philippine agency principally involved in providing welfare and protection of OFWs. The agency provides overall policy guidelines, directions, and coordination. Under DOLE are OWWA, POEA, and the National Reintegration Center for OFWs (NRCO).

469 SAIS International Human Rights Clinic interview with Kabe Human Rights Society, the Kuwaiti Association of the Basic Evaluators of Human Rights, 21 March 2013.

470 Human Rights Watch, *Walls at Every Turn*.

471 "Kuwait: Put Yourself in Her Shoes Campaign: Human Rights-Based Drive to Reveal Abuses and Improve Conditions for Domestic Workers," *Blog 37*, 3 October 2010, <http://www.blog37.com/blog/2010/10/hrw-says-put-yourself-in-her-shoes/>

472 SAIS International Human Rights Clinic interview with the Overseas Labor Office, Philippine Embassy in Kuwait, 21 March 2013.

4.5.1. Philippine Government Agencies

DOLE is the national government agency mandated to formulate policies, implement programs, and serve as the policy advisory arm of the Philippine government in the field of labor and employment.⁴⁷³

OWWA was created under DOLE by a welfare and training fund for overseas workers in 1977, and it is “the lead government agency tasked to protect and promote the welfare and well-being of Overseas Filipino Workers (OFWs) and their dependents.”⁴⁷⁴ The OWWA Fund is a single trust fund built on membership contributions of US\$25 from employers and OFWs, investment and interest income, and other sources. OWWA’s mandate is twofold: on the one hand, it includes delivery of welfare services and benefits, and on the other hand, it ensures capital buildup and fund viability.⁴⁷⁵ The membership payment of US\$25 entitles OFWs to OWWA’s services: that is, social benefits, including disability and death benefits; education and training benefits, including predeparture education programs (mandatory); workers’ welfare assistance program, including requests for assistance on OFWs’ whereabouts, psychosocial counseling, airport assistance, hospital and prison visitations, and legal assistance in labor cases in the host country; repatriation program for distressed workers; and a reintegration program to return OFWs to the Philippine society.⁴⁷⁶ OWWA offers its services through its operation center in the Philippines, which is available 24 hours a day, seven days a week, and through regional offices in 26 countries.

“Our goal is to create jobs at home so that there will be no need to look for employment abroad. However, as we work towards that end, I am ordering the [Department of Foreign Affairs], POEA, OWWA, and other relevant agencies to be even more responsive to the needs and welfare of our overseas Filipino workers.”

—President Benigno Aquino III,
Inaugural Speech, Manila, 30 June 2010

POEA is also organized under DOLE. With one main and three regional offices, it offers

473 See the profile of DOLE on the department’s website, <http://www.dole.gov.ph/pages/view/7>.

474 See OWWA’s website at <http://www.owwa.gov.ph:8080/wcmqs/about/>.

475 Ibid. OWWA’s objectives further include the following: (a) protect the interest and promote the welfare of OFWs in recognition of their valuable contribution to the overall development effort; (b) facilitate the implementation of the provisions of the Labor Code concerning the responsibility of the government to promote the well-being of OFWs; (c) provide social and welfare services to OFWs, including insurance, social work assistance, legal assistance, cultural services, and remittance services; (d) ensure the efficiency of collection and the viability and sustainability of the fund through sound and judicious investment and fund management policies; (e) undertake studies and research for the enhancement of their social, economic, and cultural well-being; and (f) develop, support, and finance specific projects for the welfare of OFWs.

476 For more information about these programs and services, see OWWA’s website at http://www.owwa.gov.ph:8080/wcmqs/programs_services/.

services to migrant workers, including domestic workers. Its main office serves “[a]n average of 3,000 clients and as much as 5,000 clients . . . daily.”⁴⁷⁷ It also offers its services to licensed labor recruiting agencies, foreign employers, applicant workers, NGOs, the media, and the general public. Its legal mandate includes the promotion and development of the Philippine overseas employment program, protection of the rights of migrant workers as workers and human beings, regulation of private sector participation in recruitment and overseas placement, and assurance of best terms of employment for OFWs.⁴⁷⁸ In fulfilling its core functions, POEA notably issues licenses for labor recruitment agencies; hears and arbitrates complaints and cases filed against recruitment agencies, foreign employers, and overseas workers for reported violations of its rules and regulations; monitors overseas job advertisements; assists departing workers at the ports of exit; carries out public education and information campaigns; conducts preemployment orientation and anti-illegal recruitment seminars nationwide; and provides legal assistance to victims of illegal recruitment.⁴⁷⁹

Returning OFWs and their families find support through NRCO. People helped include OFWs who have decided to return to the Philippines permanently, OFWs who have returned but wish to leave for overseas employment again, and distressed OFWs who are victims of human trafficking and illegal recruitment or have employment and health-related problems.⁴⁸⁰ NRCO counsels those OFWs and their families on options to reenter the work environment in the Philippines and on savings, financial planning, and investment.

In-country support for overseas workers is also provided by the Philippine Overseas Labor Offices (POLO), established at Philippine embassies and consulates around the world.⁴⁸¹ The labor attachés at the embassies are at the forefront of addressing domestic workers’ problems in the host countries by solving disputes and lobbying for workers’ rights. To this end, Philippine regulations demand that “POLO shall maintain and continuously update a database on the vital information of household service workers in their area of jurisdiction to ensure that requests for assistance are promptly acted upon.”⁴⁸²

477 See POEA’s website at <http://www.poea.gov.ph/html/aboutus.html>.

478 Ibid.

479 Ibid. POEA has four core functions. They are (a) industry regulation (issuing a license to engage in overseas recruitment and manning to private recruitment agencies; hearing and arbitrating complaints and cases filed against recruitment and personnel agencies, foreign principals and employers, and overseas workers for reported violations of POEA rules and regulations, except for money claims; implementing a system of incentives and penalties for private sector participants; setting minimum labor standards; and monitoring overseas job advertisements on print, broadcast, and television); (b) employment facilitation (accrediting and registering foreign principals and employers hiring Filipino workers, assisting departing workers at the ports of exit, and so forth); (c) workers’ protection (intensifying public education and information campaigns, conducting preemployment orientation and anti-illegal recruitment seminars nationwide, providing technical assistance in the drafting of bilateral and multilateral agreements, providing legal assistance to victims of illegal recruitment, implementing gender-sensitive programs, and providing repatriation assistance); and (d) general administration and support services (human resources development, financial management, and plans and policy development).

480 Information about NRCO’s programs and services is available at <http://www.nrco.dole.gov.ph/Services.aspx>.

481 A list of Philippine Overseas Labor Offices is available on DOLE’s website at <http://www.dole.gov.ph/pages/view/24>.

482 Philippine Overseas Employment Administration, Memorandum Circular 14, Series of 2006, at B.

POLO is further responsible for verifying all employment contracts that Filipino domestic workers sign and ensuring that they meet Philippine standards.⁴⁸³ To this end, the labor attaché or POLO of the Philippine Embassy in Kuwait, as in other labor-receiving countries, verifies and approves employment contracts. The recruitment agency must attach the visa obtained from the MOI to the contract to prove that a particular sponsor–employer has been issued a visa for a particular applicant (prospective domestic worker). The visa expires if the contract is not approved because of earlier violations by the recruitment agency or the sponsor–employer.⁴⁸⁴

4.5.2. Philippine Campaign on Decent Work for Domestic Workers

In 2009, the Philippines launched a campaign on decent work for domestic workers. This multisectoral initiative was geared “to generate massive public support in the advocacy to extend decent work standards, effective legal coverage, and protection for Filipino domestic workers.”⁴⁸⁵ The campaign served as a response to the ILO’s announcement to contemplate the adoption of an international instrument for domestic workers during its 99th session.⁴⁸⁶ A working group consisting of representatives from the Philippine government, employers’ associations, the domestic workers association, local and overseas migrant workers advocacy groups, and other NGOs conducted several roundtables, campaigns, and consultations to collect knowledge and research on domestic workers, identify gaps in legislation and shortcomings of policies, and adopt legal and policy reforms. The two main goals were the formulation of a Filipino position on what kind of instrument—that is, convention or recommendation, binding or nonbinding—the ILO should adopt to protect domestic workers and the elaboration of a national law on the topic. After the Second National Domestic Workers Summit, held 20–21 August 2009, the group unanimously supported the adoption of an international convention to set standards for the protection of domestic workers.⁴⁸⁷ The group also decided that a comprehensive domestic law on the protection of domestic workers (the Domestic Workers Act or *Batas Kasambahay*) should be adopted because it would underline the Philippines’ lobbying efforts for the ILO convention and its commitment to improving domestic workers’ rights on a global level.⁴⁸⁸ The Philippines thus played an important role in shaping the ILO Convention Concerning Decent Work for Domestic Workers (C189), which it ratified on May 18, 2012.

483 Ibid.

484 SAIS International Human Rights Clinic interview with the Overseas Labor Office, Philippine Embassy in Kuwait, 21 March 2013.

485 International Labour Organization (ILO), “Narrative Report on the Philippine Campaign on Decent Work for Domestic Workers,” 1 August 2009, 1, http://www.ilo.org/asia/whatwedo/publications/WCMS_120013/lang--en/.

486 Ibid.

487 Ana Liza U. Valencia, “Philippine Tripartite Constituents Support Decent Work for Domestic Workers: Unanimous Call for an International Convention to Set Standards,” International Labour Organization, 21 August 2009, http://www.ilo.org/wcmsp5/groups/public/-asia/-ro-bangkok/documents/event/wcms_120011.pdf.

488 ILO, “Narrative Report on the Philippine Campaign on Decent Work for Domestic Workers,” 2.

The *Batas Kasambahay*⁴⁸⁹ was passed on 23 July 2012 and signed into law by President Benigno S. Aquino III on 18 January 2013. The act is hailed as a “landmark piece of labor and social legislation that recognizes for the first time domestic workers as [being] similar to those in the formal sector.”⁴⁹⁰ This law provides an estimated 1.9 million domestic workers inside the Philippines⁴⁹¹ with proper employment recognition and income, social welfare benefits, and comprehensive protection from abuse and exploitation. Among other benefits, the law establishes minimum wages⁴⁹² and daily and weekly rest periods⁴⁹³ and sets the minimum age for domestic workers at 15.⁴⁹⁴ It also provides sanctions for violations of the law by employers and recruitment agencies.⁴⁹⁵

4.5.3. Predeparture Orientation Programs

The government of the Philippines makes significant efforts to disseminate information on labor migration and the dangers of illegal recruitment. Numerous programs are in place for domestic workers to become educated on their rights before they leave.⁴⁹⁶ The premise of predeparture trainings is that “(1) the protection of migrants begins at home, and (2) that information builds a foundation for migrant empowerment and protection.”⁴⁹⁷

To this end, Philippine law mandates that Filipino domestic workers wishing to travel overseas obtain the National Certificate for Household Service Workers issued by the Technical Education and Skills Development Authority and attend a country-specific language and culture orientation carried out by OWWA.⁴⁹⁸ Without having participated in this predeparture training, workers are not cleared to leave the Philippines. The mandatory predeparture education program is implemented by OWWA and carried out by OWWA, POEA, NGOs, recruitment agencies, and industry associations free of charge.⁴⁹⁹ The program consists of two parts. The first part, a country-specific predeparture orientation seminar (PDOS), is a “whole day orientation to OFWs consisting of a comprehensive module on employment

489 Republic Act No.10361.

490 DOLE, “Q& A on Batas Kasambahay (Republic Act No. 10361),” DOLE, Manila, 18 April 2013, 4, http://www.ilo.org/manila/whatwedo/publications/WCMS_211050/lang--en/.

491 Ibid.,12.

492 The wage is PHP 2,500 per month for those employed in the National Capital Region, PHP 2,000 per month for those employed in chartered cities and first class municipalities, and PHP 1,500 per month for those employed in other municipalities. See Republic Act No. 10361, section 24.

493 Ibid., sections 20 and 21.

494 Ibid., section 16. However, note that the minimum age for domestic workers employed overseas is 23. See the discussion of the Migrant Workers and Overseas Filipinos Act of 1995 in chapter III.

495 Ibid., section 40.

496 SAIS International Human Rights Clinic Roundtable with the Government of the Philippines Inter-Agency Council against Trafficking (IACAT), Manila, 20 March 2013.

497 Maruja M. B. Asis and Dovelyn Rannveig Agunias, “Strengthening Pre-Departure Orientation Programmes in Indonesia, Nepal and the Philippines,” Issue in Brief 5, International Organization for Migration and Migration Policy Institute, September 2012, 1.

498 Philippine Overseas Employment Administration, Governing Board Resolution 08, Series of 2006.

499 Asis and Agunias, “Strengthening Pre-Departure Orientation Programmes in Indonesia, Nepal and the Philippines,” 2.

contract familiarization, profile of the country of destination, stages of the OFW's life, health and safety, airport procedures, government programs and services."⁵⁰⁰ The second part is a comprehensive predeparture education program that provides a "3- to 6-day live-out training for Household Service Workers (HSWs) consisting of language training, culture familiarization and stress management to prepare them for life overseas."⁵⁰¹ Only PDOS is mandatory. It educates migrant workers on possible challenges they may face abroad; the laws, culture, and customs of the country they are traveling to; their rights and responsibilities under their employment contract; health and safety information, including HIV/AIDS information; financial literacy; OWWA services; and travel procedures.⁵⁰² PDOS can be supplemented with a postarrival orientation seminar, to be held in the host country.⁵⁰³ Several challenges have been observed in ensuring that the training meets the goal of preparing workers for the trip and life abroad. One challenge is that when the training is outsourced from the government to private providers, poor implementation of the syllabus might compromise the training goals. Tighter oversight by OWWA is therefore necessary.⁵⁰⁴ Another challenge lies in the "one-size-fits-all design"⁵⁰⁵ of the training. Increased specificity of the training material according to destination country, required skills, and gender of the worker may be necessary. Women will encounter different challenges than men face; domestic workers face difficulties other than those of construction workers. Key recommendations therefore include an appeal to the governments of the receiving countries to cooperate with the organizations facilitating the predeparture trainings and to contribute to those trainings. The receiving countries can contribute by designing specific materials and advising on the local laws, customs, culture, and available support mechanisms.⁵⁰⁶

4.5.4. Reintegration of Returning OFWs

The Philippine government provides reintegration services for returning OFWs. In fact, section 17 of the Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act No. 8042) established the Re-placement and Monitoring Center (RPMC) with the function of reintegrating returning OFWs into the society.⁵⁰⁷ In 2010, Republic Act No. 10022 (amending section 17 of Republic Act No. 8042) established the National Reintegration Center for Overseas Filipino Workers (NRCO).⁵⁰⁸ According to Republic Act No. 10022, the NRCO "shall provide a mechanism for their [returning Filipino workers] reintegration into the Philippine society,

500 See OWWA's website at http://www.owwa.gov.ph:8080/wcmqs/programs_services/.

501 Ibid.

502 Asis and Agunias, "Strengthening Pre-Departure Orientation Programmes in Indonesia, Nepal and the Philippines," 4.

503 Ibid. 5.

504 Ibid., 1, 5.

505 Ibid., 6.

506 Ibid., 8.

507 Republic Act No. 8042, section 17, <http://www.poea.gov.ph/rules/ra8042.html>.

508 Republic Act No. 10022, section 10 (amending Republic Act No. 8042, section 17), http://www.lawphil.net/statutes/repacts/ra2010/ra_10022_2010.html

serve as a promotion house for their local employment, and tap their skills and potentials for national development.”⁵⁰⁹ Returning OFWs and their families can find support through the NRCO, including counseling about options to re-enter the workforce in the Philippines and about savings, financial planning, and investments.⁵¹⁰

Other Philippine agencies are also involved in providing reintegration services, including the Overseas Workers Welfare Administration (OWWA). Specific reintegration initiatives include loan facilities such as (a) the 2 Billion-Peso Reintegration Fund (OWWA in partnership with the Land Bank of the Philippines [LBP] and (b) a program for OFWs by the Development Bank of the Philippines [DBP]) and the OWWA–National Livelihood Development Corporation (NLDC), as well as (c) the Department of Labor and Employment (DOLE) and OWWA project titled “Balik-Pinas, Balik Hanapbuhay,” which provides either starter kits or livelihood assistance to displaced or distressed OFWs.⁵¹¹ It should be noted that recently, the DOLE has “ordered a ‘massive’ onsite implementation of the ... Balik-Pinay Balik Hanapbuhay Project” in the hopes of persuading female OFWs—who are currently taking shelter in Filipino Workers’ Resource Centers (FWRCs) across the Middle East—to return to the Philippines.⁵¹²

With specific regards to the reintegration of victims of human trafficking, IACAT drafted the Philippines’ Second National Strategic Action Plan against Trafficking in Persons for the years 2012–2016, which includes “protection, recovery, rehabilitation, and reintegration” as Key Results Area 2.⁵¹³ The Department of Social Welfare and Development (DSWD), which co-chairs the IACAT, is in charge of implementing the relevant programs. Those programs are aimed at empowering victims of human trafficking by, for example, offering skills training for employment and by building victim support groups, so that victims “look at the possibility of becoming survivors themselves and eventually towards full reintegration into the mainstream society.”⁵¹⁴

Reintegration is not without its challenges. Part of the challenge is that economic reintegration cannot be separated from national development.⁵¹⁵ As discussed in a previous section, the Philippines faces several challenges to economic development, including quality

509 Ibid.

510 Information about the programs and services of the National Reintegration Center for OFWs is available at <http://www.nrcdo.dole.gov.ph/Services.aspx>.

511 OWWA, “Programs and Services,” http://webcache.googleusercontent.com/search?q=cache:Ruqj6KLdhoYJ:www.owwa.gov.ph:8080/wcmqs/programs_services/+&cd=1&hl=en&ct=clnk&gl=us.

512 DOLE, “DOLE Orders Massive Balik-Pinay Balik-Hanapbuhay Reintegration Package for FWRC Wards,” <http://www.gov.ph/2013/08/14/dole-orders-massive-balik-pinay-balik-hanapbuhay-reintegration-package-for-fwrc-wards/>. The *Official Gazette* notes that “[f]or the second half of 2013, [Labor Secretary] Baldoz has set aside an initial P10 million for the Balik-Pinay Balik-Hanapbuhay Project’s onsite implementation, specifically for 777 distressed OFWs who were sheltered at the FWRCs in Riyadh and Jeddah, Saudi Arabia; Abu Dhabi and Dubai, United Arab Emirates; Bahrain; Kuwait; Lebanon; Syria; Libya; Qatar; Oman; and Jordan.”

513 IACAT, “The Second National Strategic Action Plan against Trafficking in Persons, 2012–2016,” 14–17, <http://xa.yimg.com/kq/groups/14538523/1881126283/name/IACAT%E2%80%8E>.

514 Ibid., 15.

515 Email from Dr. Marla Asis, Scalabrini Migration Center, to SAIS International Human Rights Clinic, 21 October 2013.

job creation.⁵¹⁶ Moreover, for those returning migrants who are interested in starting a business, reintegration initiatives could benefit from more reflection.⁵¹⁷ Migrants often express the hope of setting up a business upon their return, but although overseas employment may provide the means to start a business, that experience does not necessarily translate into the necessary business acuity to succeed.⁵¹⁸ Migrants need not only to have the relevant startup capital but also to learn the necessary business know-how and management skills and to understand the business environment.⁵¹⁹ For migrants returning under distressed conditions, the challenges are even greater. Consequently, the effectiveness of economic reintegration initiatives may be limited without a program of adequate training, a conducive economic climate, and a number of quality employment opportunities at home.

A further challenge to reintegration initiatives is the lack of data about return migrants. A workable system is in place for monitoring when most types of migrants depart the Philippines.⁵²⁰ However, the system lacks monitoring when migrants return home.⁵²¹ Invariably, data about return migration would be of great importance for developing reintegration initiatives.⁵²²

4.6. The Promotion and Protection of Migrant Domestic Workers' Rights: Efforts of Civil Society in the Philippines

In contrast to Kuwait, numerous NGOs are operating in the Philippines. In fact, the Philippines has been referred to as the “NGO capital of the world.”⁵²³ NGOs and other members of civil society are integral to the promotion and protection of the rights of migrant domestic workers and, as such, can be valuable partners for the government.

In the Philippines, civil society has been a catalyst for government action. As discussed earlier, the 1995 execution of Flor Contemplacion, a Filipina domestic worker based in Singapore, sparked a movement in the Philippines for the better protection of OFWs.⁵²⁴ Migrante International, a global alliance of Filipino migrant organizations,⁵²⁵ was founded after

516 See section 1.4. titled “Why Are They Coming? The Role of Migrant Labor in the Philippine Economy” in chapter 1.

517 SAIS International Human Rights Clinic interview with Scalabrini Migration Center, Manila, 20 March 2013.

518 Email from Dr. Marla Asis to SAIS International Human Rights Clinic.

519 Ibid.

520 International Organization for Migration and Scalabrini Migration Center, “Country Migration Report: The Philippines 2013,” 82–83, http://publications.iom.int/bookstore/free/CMReport_Philippines2013.pdf.

521 Ibid., 83; Stella P. Go, “The Philippines and Return Migration: Rapid Appraisal of the Return and Reintegration Policies and Service Delivery,” ILO Country Office for the Philippines, Manila, 2012, 14.

522 International Organization for Migration and Scalabrini Migration Center, “Country Migration Report,” 83, 134.

523 Rina Jimenez-David, “The NGO Capital of the World,” *Philippine Daily Inquirer*, 11 June 2011, <http://opinion.inquirer.net/6139/the-ngo-capital-of-the-world>.

524 See discussion of Migrant Workers and Overseas Filipinos Act of 1995 in section “3.2.2. Protection of Migrant Workers in the Filipino Legal Framework.”

525 SAIS International Human Rights Clinic meeting with Migrante International, Manila, 22 March 2013.

her death.⁵²⁶ Indeed, Migrante “led the protests against the hanging of Flor Contemplacion both in the Philippines and globally—protests which led to the Republic Act No. 8042 [the Migrant Workers and Overseas Filipinos Act of 1995].”⁵²⁷ More recently, among other things, Migrante has been campaigning for the humanitarian release of Marilou Ranario, a Filipina domestic worker now serving a life sentence in Kuwait.⁵²⁸

In 2005, Ms. Ranario was convicted and sentenced to death for the murder of her employer.⁵²⁹ Migrante actively campaigned on her behalf, including picketing in front of the Philippine Department of Foreign Affairs with Ms. Ranario’s relatives to bring attention to her case.⁵³⁰ During that time, Connie Bragas-Regalado of Migrante International noted that “[g]iven the intense reliance of the administration on OFW remittances—the plight of OFWs, like Marilou who is on Kuwait’s death row, should be among its highest priorities.”⁵³¹

The campaign to save Ms. Ranario also had an international character. On 13 November 2007, the scheduled day for oral arguments in Ms. Ranario’s case before Kuwait’s Court of Cassation,⁵³² Filipino groups—which were led by Migrante and others in different countries such as Australia, Canada, Japan, and the United States, as well as in Hong Kong and across Europe—organized vigils and dialogs with the Kuwait embassies in their areas.⁵³³ Therefore, public pressure was being exerted on both the Philippine and Kuwaiti governments to take action. In fact, the Philippine president at the time, Gloria Macapagal Arroyo, visited Kuwait to personally appeal for Ms. Ranario’s life.⁵³⁴

In December 2007, Ms. Ranario’s death sentence was commuted to life in prison by Kuwait’s emir, Sheikh Sabah Al-Ahmad Al-Jaber Al-Sabah.⁵³⁵ In the Initial Statement of Migrante International to the United Nations Committee on Migrant Workers, Migrante observed the effect of protests in prompting action to spare Ms. Ranario’s life, noting that “Marilou Ranario’s death sentence was suspended and later commuted after protests exploded.”⁵³⁶ Thus, the work of Migrante both historically and currently is of grave importance to OFWs and their families.

526 Migrante International, “Our History,” http://migranteinternational.org/?page_id=7.

527 Robyn M. Rodriguez, “Migrant Heroes: Nationalism, Citizenship, and the Politics of Filipino Migrant Labor,” *Citizenship Studies*, 6, no. 3 (2002): 351–52, http://robynrodriguez.com/wp-content/uploads/2012/10/Rodriguez_Citizenship_Studies.pdf.

528 SAIS International Human Rights Clinic meeting with Migrante International, Manila, 22 March 2013.

529 Julie Javellana-Santos, “Kuwait Spares Filipino Maid’s Life,” *Arab News*, 10 December 2007, <http://www.arabnews.com/node/306558>.

530 “Migrante Takes Ranario Kin to DFA to Appeal for Help,” *GMA News*, 19 June 2007, <http://www.gmanetwork.com/news/story/47276/pinoyabroad/migrante-takes-ranario-kin-to-dfa-to-appeal-for-help>.

531 *Ibid.* (citing to Connie Bragas-Regalado).

532 Aubrey Makilan, “Pinoy Overseas Join Appeal for Clemency for OFW in Kuwait,” *GMA News*, 18 November 2007, <http://www.gmanetwork.com/news/story/69125/pinoyabroad/pinoy-overseas-join-appeal-for-clemency-for-ofw-in-kuwait>.

533 “Migrante Hopes Philippines Appeal Not Too Late for OFW on Death Row,” *Pinoypress*, 20 November 2007, <http://www.surigaotoday.com/2007/11/migrante-hopes-philippines-appeal-not.html>.

534 Javellana-Santos, “Kuwait Spares Filipino Maid’s Life.”

535 *Ibid.*

536 “Initial Statement of Migrante International to the United Nations Committee on Migrant Workers,” United Nations, Geneva, 23 April 2009, http://www2.ohchr.org/english/bodies/cmw/docs/ngos/Migrante_Int_Philippines_10.pdf.

Civil society is also an integral partner for the government in offering services and assistance programs for OFWs. As discussed earlier, NGOs, among other actors, carry out the mandated predeparture orientation seminar.⁵³⁷ With regards to combating human trafficking, NGOs are represented on the Inter-Agency Council Against Trafficking (IACAT).

In accordance with section 20 (g) of the Anti-Trafficking in Persons Act of 2003, there are “[t]hree (3) representatives from NGOs, who shall be composed of one (1) representative each from among the sectors representing women, overseas Filipino workers (OFWs), and children, with a proven record of involvement in the prevention and suppression of trafficking in persons.”⁵³⁸ The current NGO representative for OFWs is the Blas F. Ople Policy Center and Training Institute (Blas F. Ople Center), which was appointed to the three-year term by President Benigno Aquino III on 15 December 2011.⁵³⁹ Recently, Susan “Toots” Ople, the founder and president of the Blas F. Ople Center, was presented with a Trafficking In Persons (TIP) Hero Award by the US State Department.⁵⁴⁰ Ms. Ople was recognized for her tireless efforts “to reintegrate trafficking victims into Philippine society, believing that skills training combined with good job placement will empower these workers to secure safer employment.”⁵⁴¹

The Blas F. Ople Center is also involved in implementing the TULAY Program, which has been highlighted in the ILO’s database about good practices on labor migration, as “an innovative example of public–private partnership to improve the technological literacy of migrants.”⁵⁴² In 2004, Microsoft Philippines launched the TULAY Program, in partnership with DOLE and OWWA.⁵⁴³ In 2008, Microsoft Philippines provided a grant to the Blas F. Ople Center to expand the program in collaboration with OWWA.⁵⁴⁴ The program provides OFWs and their dependents with free computer classes.⁵⁴⁵ The objectives of the program include (a) expanding career opportunities, (b) assisting returning OFWs with reintegrating into the economy, and (c) facilitating communication for OFW families.⁵⁴⁶

As the ILO notes, “[t]he long-term separation of migrant workers from their families produces various social costs, which often include a lack of communication between spouses

537 See “Predeparture Orientation Programs” in section 4.5. titled “Preventive Efforts of the Philippine Government.”

538 Republic Act No. 9208, Section 20(g), http://www.lawphil.net/statutes/repacts/ra2003/ra_9208_2003.html.

539 “Two Feisty Anti-Human Trafficking Champions Meet,” IACAT, 16 September 2013, <http://www.iacat.net/index.php/120-two-feisty-anti-human-trafficking-champions-meet>.

540 “OFW Advocate Receives Trafficking in Persons Hero Award from US State Department,” Blas F.Ople Center, <http://www.blasoplecenter.com/blog/ofw-advocate-receives-trafficking-in-persons-hero-award-from-us-state-department/>.

541 “2013 TIP Report Heroes,” <http://www.state.gov/j/tip/rls/tiprpt/2013/210547.htm?goMobile=0>.

542 “Tulay or Bridge Education Program, Philippines,” ILO, http://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=89.

543 Maria Aleta Nishimori, “Grant Expands ‘Tulay’ Program for OFWs, Kin,” 10 February 2010, <http://www.abs-cbnnews.com/pinoy-migration/02/10/10/grant-expands-tulay-program-ofws-kin>.

544 “Tulay Program,” Blas F. Ople Center, <http://www.blasoplecenter.com/tulay-program/>.

545 *Ibid.*

546 *Ibid.*

as well as parents and their children that eventually causes or exacerbates family problems.”⁵⁴⁷ The ILO goes on to observe that “[t]he need for wider knowledge and understanding of information technology is also present for returning migrant workers who could use computers, the internet, e-mail, and relevant software in order to help them with entrepreneurial and employment opportunities back home.”⁵⁴⁸ Thus, communication tools and knowledge are vital to easing the social costs on OFW families, as well as enhancing employment opportunities for returning OFWs. As such, the TULAY Program is a wonderful asset for OFWs and their families.

For distressed OFWs, civil society can be a lifeline. Among other things, the Center for Migrant Advocacy (CMA), a Philippines-based NGO, facilitates direct assistance to distressed OFWs. There are several mediums by which a distressed OFW may reach out to CMA, including conventional methods, such as (a) by telephone, email, or in person; (b) by referral either from other NGOs both within the Philippines and abroad or from government agencies; and (c) finally through more modern means, such as social media and SMS technology (texting).⁵⁴⁹

In 2006, CMA launched an SOS SMS Helpline for distressed OFWs.⁵⁵⁰ Through the helpline, distressed OFWs—from all over the world—can text for assistance at any time.⁵⁵¹ As highlighted on the CMA website, “Help Is Just a Text Away with an SOS SMS.”⁵⁵² The text is logged and stored in a database and is automatically forwarded to (a) the CMA; (b) the Department of Foreign Affairs, Office of the Undersecretary for Migrant Works;⁵⁵³ (c) the CMA’s partner in the Kingdom of Saudi Arabia (many of the texts originate from Saudi Arabia); and (d) CMA’s IT volunteer.⁵⁵⁴ Once representatives of the CMA receive the message, they verify it and begin to collect necessary information that is based on the type of case and assistance requested.⁵⁵⁵ From there, the CMA can mobilize its partners and can coordinate assistance to the distressed OFW.⁵⁵⁶ The CMA closely monitors a case until it is resolved.⁵⁵⁷ In addition to being a tool to facilitate direct assistance, the SMS system collects data, which will enhance CMA’s advocacy

547 “Tulay or Bridge Education Program.”

548 *Ibid.*

549 Email from Ellene Sana, Executive Director, Center for Migrant Advocacy to SAIS International Human Rights Clinic, 13 October 2013.

550 “Initial Submission to the UN Committee on Migrant Workers: Annotated List of Issues in Consideration of the Philippine Government’s Initial Report to the Committee,” 20 November 2008, http://www.december18.net/sites/default/files/Report_Center_for_Migrant_Advocacy_the_Philippines.doc; see also SAIS International Human Rights Clinic interview with Ellene Sana, The Center for Migrant Advocacy, Manila, 18 March 2013.

551 “Help Is Just a Text Away with an SOS SMS,” Center for Migrant Advocacy, <http://centerformigrantadvocacy.com/support-help/sos-sms/>; SAIS International Human Rights Clinic interview with Ellene Sana, Center for Migrant Advocacy, Manila, 18 March 2013.

552 “Help Is Just a Text Away.”

553 “OFWs in Distress: Help Is Just a Text Away,” GMA News Online, 18 December 2007, <http://www.gmanetwork.com/news/story/73409/pinoyabroad/ofws-in-distress-help-is-just-a-text-away>.

554 Email from Ellene Sana.

555 *Ibid.*

556 *Ibid.* For example, when the CMA receives a message from a distressed OFW in the Kingdom of Saudi Arabia, they together with their Saudi partner connected to the SOS SMS system to verify the case. Once the case is verified, the Saudi partner will conduct a direct communication with the distressed OFW, and CMA will coordinate with the embassy and offices in Manila.

557 Email from Ellene Sana.

work in that the data can help to identify issues with current labor migration policies and practices.⁵⁵⁸ In sum, the SOS SMS Helpline is a great resource for those OFWs with access to a cell phone, as well as a helpful tool for data collection and analysis and for policy advocacy.

Civil society and intergovernmental organizations can be an important source for research on labor migration. This knowledge may be of great value to policymakers, advocates, and academics. Recently, IOM and the Scalabrini Migration Center (a research center that is based in the Philippines), in partnership with the government of the Philippines, published “The Country Migration Report: The Philippines 2013.”⁵⁵⁹ The report is the Philippines’ first Migration Profile pursuant to the IOM’s Migration Profile Development Project for the Philippines, a project that was launched in late 2011 as a result of the interest of Philippine government agencies, including the DOLE and DFA.⁵⁶⁰ The report gives an overview of the Philippines’ almost 40 years of labor migration experience.⁵⁶¹ It is also worth noting that the Scalabrini Migration Center publishes the first journal (titled *The Asian and Pacific Migration Journal*) that is dedicated to migration in the region.⁵⁶²

558 “OFWs in Distress.”

559 “Country Migration Report: The Philippines 2013,” International Organization for Migration and Scalabrini Migration Center, 2013, http://publications.iom.int/bookstore/free/CMReport_Philippines2013.pdf. See also “News,” Scalabrini Migration Center, 27 June 2013, http://www.smc.org.ph/index.php?comp=com_news_details&id=9.

560 “Migration Profile: Philippines Embarks on Its First Country Migration Report,” IOM Philippines Newsletter, November 2012, 3, http://www.iom.int/files/live/sites/iom/files/Country/docs/IOM_Philippines_Newsletter_November_2012.pdf; “Country Migration Report,” iii.

561 SAIS International Human Rights Clinic interview with Scalabrini Migration Center, 20 March 2013; “Country Migration Report,” 1.

562 SAIS International Human Rights Clinic interview with Scalabrini Migration Center; *Asian and Pacific Migration Journal*, 22, no. 2 (2013), <http://www.smc.org.ph/apmj/>.

Recommendations

1. Prosecution

- 1.1 As indicated in this report, accounts exist of domestic workers who are subject to abuse and exploitation in Kuwait. These cases must be thoroughly investigated, and the perpetrators, including legal persons (such as recruitment agencies), must be tried and convicted. Confiscation of a domestic worker's travel documents; nonpayment, late payment, or underpayment of salaries; excessive working hours; insufficient rest periods; emotional, physical, or sexual abuse; and other forms of exploitation should not go unpunished. This prosecutorial approach will send a strong message to every member of society that an abusive or exploitative act committed against a domestic worker has legal consequences.
- 1.2 It is encouraging that Kuwait has passed a new law, Law 91 of 2013, on combating trafficking in persons and smuggling of migrants. The law must be fully explained, and those who are in charge of its implementation need to be trained on all measures mentioned in the law, including (a) prosecution of those who commit the offense of trafficking or smuggling, (b) imposed penalties, and (c) aggravated circumstances that may enhance these penalties.

2. Legislative Reform

- 2.1 As this report indicates, several draft laws on the protection of domestic workers in Kuwait exist, and they include many protective measures that would ensure that domestic workers are treated fairly and justly. The government of Kuwait should consider passing a law to protect domestic workers in compliance with the International Labour Organization (ILO) Convention Concerning Decent Work for Domestic Workers (C189). The government should consider ratifying ILO C189.
- 2.2 In the absence of a comprehensive and specific law on the protection of domestic workers, the Kuwaiti legislature should consider extending the application of the new Private Sector Labor Law of 2010 and its protective measures to domestic workers, as appropriate.

- 2.3 Although domestic workers have the right to file a lawsuit in Kuwaiti courts, it may be worthwhile to consider establishing specialized dispute resolution mechanisms, such as specialized labor courts with judges trained in domestic worker issues.
- 2.4 Regulations for the establishment and operations of shelters should be drafted to ensure that domestic workers in distress have appropriate accommodations, their rights are fully protected, they are not detained against their will, and they are repatriated quickly and safely.
- 2.5 The relationship between an employer and a domestic worker must be governed by an employment contract that guarantees fundamental labor rights of the worker—the right to freedom of movement and the right to freely change employment. Consequently, the government of Kuwait should consider abolishing or redesigning the sponsorship system so that migrant workers' employment and immigration statuses are no longer tied to their employers' approval.

3. Policy Changes

- 3.1 Working conditions of domestic workers in Kuwait need to be closely monitored. Inspection of the workplace, as required by labor law, should be considered in the area of domestic work as appropriate. Monitoring may take the form of home visits or regular contact and follow-up with workers, including by phone to ensure privacy.
- 3.2 Payment modalities of domestic workers' salaries should be changed to allow better monitoring, for example, by setting up bank accounts for domestic workers with the option of direct deposits into their accounts and by giving the account access card to the worker.
- 3.3 Licenses granted to Kuwaiti labor recruitment agencies must be strictly reviewed and monitored. In addition, the work of the recruitment agencies should be constantly supervised and regulated. Illicit or exploitative practices by recruitment agencies must be sanctioned with appropriate penalties, which may include closing the agency, freezing the agency's bank accounts, and revoking the agency's operating license.
- 3.4 In accordance with ILO C189, domestic workers should have the option of living outside the residence of their employer, although this change may not be well received by employers in Kuwait.

4. Protective Measures

- 4.1 A confidential and accessible telephone hotline must be established to receive complaints from domestic workers 24 hours a day, free of charge. The hotline should be operated by Kuwaitis and representatives of the countries of origin of domestic workers who speak the workers' native languages. The hotline number needs to be widely publicized and given to workers during their predeparture and orientation training in their home country.
- 4.2 The government of Kuwait needs to make available services for victims of abuse and exploitation, including medical, psychological, and legal services. To this end, the Kuwaiti government should provide sufficient funds for these services and increase its cooperation with nongovernmental organizations (NGOs) as well as the governments of the sending countries.
- 4.3 It is encouraging that the government of Kuwait has opened a new shelter for distressed domestic workers with larger capacity than the previous one. Shelters providing safe accommodation to domestic workers who are subject to abuse and exploitation must be well maintained and staffed with trained personnel.

5. Prevention

- 5.1 Any response to the problems facing domestic workers in Kuwait must start in the Philippines or other countries of origin. Domestic workers must have full knowledge of the country that they are going to be working in; their legal rights; and their recourse in cases of abuse, maltreatment, or exploitation.
- 5.2 The government of the Philippines should enforce the protective laws that are designed to inform a migrant worker about his or her legal rights in countries of destination. In this regard, mandatory predeparture trainings should be intensified. The government may consider extending the duration of the mandatory trainings, separating workers according to employment field, adopting a gender-sensitive approach, and cooperating with countries of destination to draft more specific syllabi. The syllabi would be designed to fully inform departing workers about (a) the conditions they will find in the country of destination, (b) their rights, (c) the psychosocial and medical services, and (d) their legal recourses.
- 5.3 The government of the Philippines should increase its efforts to conduct awareness campaigns on financial literacy, for example, through the use of media and television. The awareness campaigns would increase financial literacy among migrant workers and their families and would address the benefits of saving and investment.

- 5.4 In long-term policy planning, the government of the Philippines should consider shifting economic growth from the services sector to the manufacturing sector and to other industries to create jobs for low-skilled workers. The government should also find ways to decrease the country's economic dependency on remittances.
- 5.2 Upon arrival of domestic workers from the country of origin to Kuwait, an orientation program should be conducted for domestic workers to explain to them their rights and to refer them to appropriate places where they can receive services, including safe accommodations and psychological, medical, and legal services.

6. A Role for Civil Society

- 6.1 NGOs and other members of civil society in Kuwait must be allowed to play a role in combating the problems that a domestic worker faces. This role may include increasing awareness and respect for the rights of domestic workers and effecting a conceptual shift to recognize domestic work as work and use of the term *domestic worker* instead of *servant*.
- 6.2 In the Philippines, the government should increase cooperation with civil society by providing funds to carry out programs on financial literacy for migrant domestic workers and by monitoring predeparture trainings to ensure that those training sessions conducted by NGOs abide by established legal standards.

7. Strengthening Bilateral Relationships between the Governments of Kuwait and the Philippines

- 7.1 The governments of Kuwait and the Philippines should increase bilateral measures that are designed to strengthen the relationship between the two countries in the area of migrant labor protection. These measures may include adopting bilateral agreements that cover domestic workers' issues.
- 7.2 The governments of Kuwait and the Philippines should hold regular meetings to increase cooperation among Kuwaiti police, other relevant government agencies, and the embassies of the countries of origin of migrant workers. With increased cooperation, the governments should aim to promptly and adequately assist domestic workers who become victims of abuse, maltreatment, or exploitation; to offer them the required services; and to ensure a speedy repatriation process that guarantees workers their fundamental rights.

7.3 The governments should also hold meetings about contract drafting, contract enforcement, and dispute settlement. These meetings should aim to reach an agreement on working conditions for domestic workers, especially the minimum salary and the working hours, so that a harmonized standard contract can be drafted, accepted, and jointly enforced on the Kuwaiti and Philippine sides.

Conclusion

Labor migration is a transnational phenomenon that requires international cooperation between origin, transit, and destination countries, alongside national laws that are aimed at protecting and promoting the rights of domestic workers and are consistent with the ILO Convention concerning decent work for domestic workers (C189).⁵⁶³ Such laws need to be effectively implemented and enforced. In this regard, national governments should cooperate with civil society organizations.

The Philippines is considered to be a model for other labor-sending countries. Central and South Asian countries (labor-sending regions) even come to the Philippines to seek advice.⁵⁶⁴ However, even in the case of favorable laws and policies that protect migrant workers, the issue is how to achieve effective implementation and coordination. Further, the root causes of labor migration need to be addressed, in particular economic development at home, which includes, among other things, (a) promoting policies and practices that improve domestic job security and (b) creating the necessary infrastructure and business climate to bring quality jobs to the Philippines.

Whether in a country of origin such as the Philippines or in a country of destination such as Kuwait, a transnational and multisectoral approach is needed to effectively protect migrant domestic workers. Such an approach should be based on the “4 Ps”: prosecution, protection, prevention, and partnership.

A person who exploits or abuses a domestic worker or who commits a crime against a domestic worker should be punished, and a penalty should be imposed against him or her that is commensurate with the gravity of the crime. Employment agencies that are in violation of the licensing requirements and that exploit the vulnerable and the needy should also be subject to sanctions.

In the meantime, domestic workers should have rights that are clearly defined in ILO C189. Those rights include the following: freedom of association and the effective recognition of the right to collective bargaining; right to protection against all forms of abuse, harassment, and

⁵⁶³ International Labour Organization, Convention Concerning Decent Work for Domestic Workers (C189), adopted 16 June 2011, entered into force 5 September 2013.

⁵⁶⁴ SAIS International Human Rights Clinic interview with Jeremiah Opiniano, Executive Director, Institute for Migration and Development Issues, Manila, 22 March 2013.

violence; right to equal treatment between domestic workers and workers generally in relation to hours of work, overtime compensation, rest periods, paid annual leave, social security protection, gender equality, and effective access to justice; right to accessible complaint mechanisms; right not to reside in the household (if workers do reside in the household, right to decent living conditions that respect their privacy); right to keep travel and identity documents in their possession; right to a suitable, safe, and healthy working environment, including weekly rest of at least 24 consecutive hours, minimum wage coverage, and cash payment in regular intervals at least once a month; right to be informed of the terms and conditions of their employment in an appropriate, verifiable, and easily understandable manner; right to receive a written job offer or contract of employment prior to crossing national borders, enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment; right to education and training for domestic workers who are under the age of 18.

Preventive measures are necessary to protect potential victims, and those measures include providing predeparture orientation for domestic workers to ensure full understanding of the working conditions in a country of destination. Also drafting a contract that preserves the rights of domestic workers is essential to ensure a fair and just relationship between an employer and an employee. Countries of origin and countries of destination must work together in designing policies that are aimed at protecting migrant workers. Such policies should include memoranda of understanding that spell out and detail the collaboration between both countries.⁵⁶⁵

The principle of partnership also requires engaging NGOs and other elements of civil society that are well qualified to provide services to victims of violence, exploitation, or abuse. It is encouraging that both governments, Kuwait and the Philippines, are taking some steps to address the problem and to find ways of combating it. Kuwait has passed a law to combat human trafficking and smuggling of aliens. The Philippines has ratified ILO C189. It is the hope that both countries work together to fully and effectively protect the rights of migrant domestic workers and to address any case of abuse or exploitation.

⁵⁶⁵ See Mohamed Y. Mattar, "Transnational Legal Responses to Illegal Trade in Human Beings," *SAIS Review*, 33, no. 1 (Winter–Spring 2013): 137–59.

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