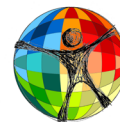


Service and Subordination: Human Rights Perspectives on the Domestic Work Sector in the United Arab Emirates

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ABSTRACT

Although the United Arab Emirates outlawed slavery in 1963, the practice continues in the form of labor exploitation among foreign domestic workers. My concern is with the legal dimensions of this issue. Factors such as a visa system that ties migrants' legal status to their employers, retention of workers' passports by employers, and unjust contractual practices ensure that domestic workers who face abuse in the UAE have little access to justice. These factors enable slavery to effectively continue in the UAE, which contradicts the UAE's prohibition of the practice and provisions of international law relative to migrant workers.

I first examine the source countries of domestic workers who accept jobs in the UAE and how these workers fit into Emirati society. Next, I focus on the forms of abuse that domestic workers in the UAE often face. Abuse is often hidden due to the private nature of domestic work. I turn to instruments of international law that relate to foreign domestic workers; the UAE has not ratified many of them. A bulk of the paper will be spent describing provisions of Emirati law that affect domestic workers. Migrants do not have adequate protection under Emirati law, if they have legal status in the first place. An aspect of the Emirati legal system that will receive substantial attention is the kafala visa system, under which a migrant's legal status depends on her employer. This segment will involve a discussion of the unlawful but widespread practice of passport retention. Attention will also be given to injustices in employment contracts.

These abuses are intimately connected to the legal regime that governs the relationship between employers and workers. To better understand the experiences of domestic workers who have survived abuse in the UAE, we must understand the involvement of these regimes therein.

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Introduction

"They slap me in the face and kick me...If I make a small mistake they would hit parts of my body—back legs, back and head. Sir would slap or punch me in the face. If they come back from the mall and I am not finished they would beat me. They would say, 'If you had done work then we won't hit you.'"¹

Shelly, the person who spoke these words, is from the Philippines. Like many women from her country, she worked as a maid for a family in the United Arab Emirates. Her words represent both her experiences and those of many other domestic workers who have faced abuse during their time in the UAE. Journalists, academics, and human rights organizations throughout the world have written about the UAE's booming domestic service industry and the countless women who have reported physical, economic, sexual, and emotional abuse in connection therewith. While such publications have raised awareness on the matter, the industry continues to attract women from much of the global south with promises of financial security and professional advancement in a wealthy nation.

This is a topic of which I was largely unaware before my internship. During my work at One Earth Future Foundation, I spent weeks researching labor migration patterns. Part of this research involved reading and writing about forced labor in several African and Asian countries; in the context of the UAE, domestic workers were frequently mentioned. My research has revealed that this issue touches several aspects of our course this semester, including poverty, gender, difficulties related to the (non)enforcement of laws, capability, societal integration, and personal dignity.

Although the UAE outlawed slavery in 1963,² my contention will be that the practice continues in the form of labor

¹ Rothna Begum, "'I Already Bought You': Abuse and Exploitation of Female Domestic Migrant Workers in the United Arab Emirates" (22 October 2014) at "Physical, Sexual, and Psychological Abuse", online: *Human Rights Watch* <https://www.hrw.org/report/2014/10/22/i-already-bought-you/abuse-and-exploitation-female-migrant-domestic-workers-united#page>.

² See Michael Muhammad Knight, *Journey to the End of Islam* (New York: Soft Skull Press, 2009) at 93.

exploitation among foreign domestic workers. My primary concern will be with the legal aspects of this issue. Factors such as a visa system that ties migrants' legal status to their employers, unlawful retention of workers' passports, and unjust contractual practices ensure that domestic workers who face abuse at work in the UAE have few opportunities to seek justice. Many resort to escaping their employers, which effectively voids their legal status and that of any children to whom they give birth in the UAE. The whole time, they face a legal system that is stacked against them. These factors enable slavery to effectively continue in the UAE, which contradicts the UAE's prohibition of the practice and provisions of international law.

I will begin by laying out the dynamics of migration and domestic work in the UAE in Section II. Notably, I will examine the primary source countries for domestic workers who accept jobs in the UAE and how these workers fit (and do not fit) into Emirati society. I have chosen to focus this paper on the UAE due to the fact that foreign nationals make up nearly 90% of its population, resulting in a massive demographic imbalance between foreign nationals and those with Emirati heritage.

In Section III I focus on the forms of abuse that domestic workers often face while working in Emirati households. The hidden nature of domestic work makes these workers even more vulnerable. Abuse that happens in the home is often difficult for outsiders to detect. I adopt as a baseline the definition of forced labor housed in the 1930 International Labour Organization (ILO) Forced Labour Convention: "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."³

I turn in Section IV to relevant instruments of international law that relate to foreign domestic workers. The majority of these documents come from the United Nations (UN), including, specifically, the ILO; the UAE has not ratified many of them. The abuse that domestic workers face will be examined through the lens of international law. I will revisit this lens at the end of the paper by describing recommendations that organizations like

³ *Convention concerning Forced or Compulsory Labour* C029, 28 June 1930, 39 UNTS 55, art 2(1) (entered into force 1 May 1932) [*ILO Forced Labour Convention*].

Human Rights Watch have made to the UAE to bring it into compliance with international law.

It will then be appropriate to delve into Emirati law. I will spend Sections V-VII describing provisions of Emirati law that affect domestic workers in particular and migrant workers in general. Migrants do not have adequate protection under Emirati law, if they even have legal status in the first place. An aspect of the Emirati legal system that will receive substantial attention is the *kafala* ("sponsorship" in Arabic) visa system, under which a migrant's legal status depends on her employer. Workers who flee abusive employers face steep consequences, including deportation. This segment will involve a discussion of the unlawful but widespread practice of passport retention. Attention will also be given to unjust contractual factors relevant to work contracts. This section seeks to fill a gap in the literature on this topic, as some sources focus primarily on international law and do not devote sufficient time to the domestic laws in operation in the UAE.

I end by setting out recommendations, both at the policy level and the societal level. Reforms of both varieties are needed to prevent further abuse of domestic workers in the UAE; legislation alone, particularly without enforcement, is not sufficient. I suggest that authorities must consider the rights of children born to domestic workers when implementing reforms. Such children, who are effectively deprived of legal personhood from birth if born to a domestic worker who has fled her employer, are often forgotten in the literature on this subject.

Abusive employers of domestic workers engage with the Emirati legal system in tangible ways, whether by exploiting the advantage that the *kafala* visa system gives them, by depriving workers of their passports, or by using the facade of contract law to ensnare them in unfair agreements. The abuse, in each of these cases, is intimately connected to legal regimes that govern the relationship between employers and workers. To better understand the experiences of domestic workers who have survived abuse in the UAE, we must understand the involvement of legal factors therein.

Migration and Domestic Work in the UAE

“When I first moved to the Middle East, my conversations with those back home often revolved around how different the UK and the Gulf region were; in the Gulf life (for some) is so easy and the ‘service’ (a euphemistic reference to domestic labour) so cheap. The novelty of being able to have a five-hour cleaning service for under £50 has never quite worn off, however the pangs of guilt have certainly languished and have evolved into moral quandaries that I now have to grapple with.”⁴

The first question that we must consider involves the countries from which domestic workers come and why they choose to leave home in hopes of taking a job in the UAE and other wealthy Gulf states. Several source countries, mostly in south and southeast Asia and sub-Saharan Africa, have been identified: “The UAE’s domestic workers are mostly recruited from the Philippines, Indonesia, India, Bangladesh, Sri Lanka, Nepal, and Ethiopia.”⁵ That same source also mentions Kenya and Uganda,⁶ and the Migration Policy Institute also identifies Pakistan as a source country.⁷

These migration trends are on par with those of the other oil-rich Gulf states: Saudi Arabia, Kuwait, Oman, Bahrain, and Qatar. This region is “the most popular destination for temporary labor migrants of any world region and flows have continued to increase over the past three decades...[T]hese migrants comprised more than 43% of the region’s total population in 2010.”⁸ In other words, in 2010 over two-fifths of the Gulf region’s population of over 43 million⁹ was comprised of migrants. “The vast majority of foreign-born working men are employed in low-skilled service

⁴ Victoria Basma, “‘I was screaming but there was no one around’: the exploitation of domestic workers in the Gulf region”, *gal-dem* (17 July 2018), online: <http://gal-dem.com/i-was-screaming-but-there-was-no-one-around-the-exploitation-of-domestic-workers-in-the-gulf-region/>.

⁵ Begum, *supra* note 1 at “Migration of Domestic Workers to the UAE”.

⁶ *Ibid.*

⁷ See Froilan T. Malit Jr. & Ali Al Youha, “Labor Migration in the United Arab Emirates: Challenges and Responses” (18 September 2013), online: *Migration Policy Institute* <https://www.migrationpolicy.org/article/labor-migration-united-arab-emirates-challenges-and-responses>.

⁸ *Ibid.*

⁹ See “Factbox: Gulf Arab countries’ population, economy, military”, *Reuters* (14 May 2012), online: <https://www.reuters.com/article/us-gulf-union-fact-idUSBRE84D19B20120514>.

sectors, while women are most often employed in domestic services and retail jobs.”¹⁰

Developments in labor migration since 2010 are even more telling. In Saudi Arabia “in mid-2017, the number of non-Saudis stood at 12,185,270 persons, or 37 per cent of the total resident population.”¹¹ In 2014, foreign nationals comprised approximately half of Bahrain’s population; the same can be said for Oman in 2016.¹² By that year, the proportion of foreign nationals in the Gulf region had risen to 49%, up from about 43% in 2010.¹³

The most striking migration dynamic in the Gulf, however, is found in the UAE. While a national census has not been conducted since 2005¹⁴ and “UAE population figures and demographic characteristics of the resident population...are not yet disclosed to the public in real time,”¹⁵ estimates indicate that as of 2015, foreign nationals comprised a massive 88.4% of the UAE’s population.¹⁶ This number is virtually unchanged from the 2010 estimate of 88.5%.¹⁷ “[O]f the UAE’s 9.4 million inhabitants, about 70% are low-paid migrant labourers.”¹⁸ The fact that migrants comprise nearly 90% of the Emirati population

¹⁰ Malit Jr. & Al Youha, *supra* note 7.

¹¹ Françoise De Bel-Air, “Demography, Migration and Labour Market in Saudi Arabia” (2018) Migration Policy Institute Explanatory Note No. 5/2018 at 8: http://gulfmigration.org/media/pubs/exno/GLMM_EN_2018_05.pdf.

¹² See “GCC: Total population and percentage of nationals and foreign nationals in GCC countries (national statistics, 2010-2016) (with numbers)” (20 April 2016), online: *Gulf Research Center & Migration Policy Centre Gulf Labour Markets, Migration and Population program* <https://gulfmigration.org/gcc-total-population-percentage-nationals-foreign-nationals-gcc-countries-national-statistics-2010-2016-numbers/>.

¹³ *Ibid.*

¹⁴ See Françoise De Bel-Air, “Demography, Migration, and the Labour Market in the UAE” (2015) Migration Policy Institute Explanatory Note No. 7/2015 at 6: https://cadmus.eui.eu/bitstream/handle/1814/36375/GLMM_ExpNote_07_2015.pdf.

¹⁵ *Ibid.*

¹⁶ See “International migrant stock (% of population)–United Arab Emirates”, online: *World Bank* <https://data.worldbank.org/indicator/SM.POP.TOTL?locations=AE&view=chart>.

¹⁷ De Bel-Air, *supra* note 14 at 8.

¹⁸ Katie McQue, “‘It’s a very big torture’: the children growing up in hiding in Dubai”, *The Guardian* (2 January 2019), online: <https://www.theguardian.com/global-development/2019/jan/02/children-growing-up-in-hiding-in-dubai>.

is precisely why this country's labor regimes deserve specific study.

This massive migrant population is unevenly distributed. According to the 2005 census, "the most populated regions, Abu Dhabi and Dubai, hosted two-thirds of the total as well as foreign populations in the UAE. However, the share of non-nationals ranged from 55 per cent in the small emirate of Ajman to 90 per cent of all residents in Dubai that same year."¹⁹ Similarly to the national-level information above, as of 2019, migrants comprise about 85% of the population of the emirate of Dubai.²⁰ In the UAE in general, and in its largest city, Dubai, in particular, migrants make up the overwhelming majority of the population.

We have thus far established that migrant workers comprise the backbone of the Emirati workforce and that most women who come for domestic work are from south and southeast Asia, with a significant proportion also hailing from west and central Africa. The question remains: why?

The short answer is that they hope to find better financial and professional opportunities than those that are available at home. Many factors can push a woman to accept domestic work in the Gulf, including "poverty, family pressure, conflict or natural disasters."²¹ As is often true of people who migrate for work, many of these women want to financially support their families by sending them remittances. To give one example among many, in Kenya, a prominent source country for domestic workers in the Gulf, "42% of the population live below the poverty line and many women are prepared to risk abuse to send their desperately needed salary home."²²

However, this answer does not tell the whole story. The oil wealth of the Gulf states has played a significant role in attracting

¹⁹ De Bel-Air, *supra* note 14 at 9.

²⁰ See "Dubai Population 2019" (12 May 2019), online: *World Population Review* <http://worldpopulationreview.com/world-cities/dubai-population/>.

²¹ Sophie Cousins, "Will Migrant Domestic Workers in the Gulf Ever Be Safe From Abuse?" *Refugees Deeply* (31 August 2018), online: <https://www.newsdeeply.com/refugees/articles/2018/08/31/will-migrant-domestic-workers-in-the-gulf-ever-be-safe-from-abuse-2>.

²² Jillian Keenan & Njeri Rugene, "'They see us as slaves': Kenyan women head for the gulf despite abuse fears", *The Guardian* (29 October 2019), online: <https://www.theguardian.com/global-development/2019/oct/29/kenyan-women-gulf-despite-abuse-fears-domestic-workers>.

migrants: "Soaring oil prices during the 2000s gave a new impetus to the hiring of large numbers of foreign workers from everywhere in the world."²³ Due in large part to Dubai, a shimmering metropolis often considered the financial and tourism center of the Middle East, the UAE has completed many expensive construction projects in recent decades, which required reliance on migrant workers:

Annual demographic growth rates peaked at more than 20 per cent during this period [2000-2008], propelled by the massive, short-term recruitment of labourers to complete the mega-projects undertaken during the decade (the Palm and World Islands, Burj Khalifa, landmark shopping malls and housing projects, as well as other large-scale infrastructural projects).²⁴

The particularities of the Emirati population also prop up the nation's demand for migrant workers:

Roughly 10 percent of the UAE's 9.2 million residents are citizens. The rest are 'expats' (if they're white-collar professionals) or 'migrant labor' (if they're working class). Foreigners can live in the Emirates for generations, but short of proving Emirati heritage, there's no way they can get citizenship [...] Amid this disenfranchisement, Emiratis can appear to foreigners like aristocrats. One can be arrested just for flipping them off in traffic.²⁵

With this in mind, the words of Egyptian-British writer Alya Mooro become deeply personal. While she's writing of the Arab world broadly, her words are relevant to the UAE: "Indeed, everything is readily available and accessible in the Arab world—even McDonalds, pharmacies and corner shops deliver straight to your door, facilitating the belief that everything can and should be done for you."²⁶ Relatedly, according to Balqesa Maalim, "It's that mentality of 'if someone can do it for me, why should I?' I

²³ De Bel-Air, *supra* note 14 at 4.

²⁴ *Ibid* at 8.

²⁵ Molly Crabapple, "Slaves of Happiness Island" *Vice* (4 August 2014), online: https://www.vice.com/en_ca/article/gq889w/slaves-of-happiness-island-0000412-v21n8.

²⁶ Alya Mooro, "Where Maids Are Treated Like Slaves" *Vice* (20 November 2015), online: https://www.vice.com/en_us/article/9ae4qd/where-maids-are-treated-like-slaves.

think that logic makes it easy for many to view maids...as merely a 'service' as opposed to human beings."²⁷

The UAE—especially the wealthy metropolises of Dubai and Abu Dhabi—continues to attract untold numbers of women seeking a better life. However, there are also untold numbers of sources detailing the abuse that many of these women face there, both during and after their time as domestic workers.

Varieties of Abuse

"A housewife who tortured her maid by banging her head against the wall and shoved a pair of scissors in her ear causing her partial deafness has been jailed for one year...[T]he Dubai Court of First Instance found the housewife guilty of torturing her maid, beating her and causing her a permanent disability."²⁸

We would do well, both in this section and throughout the paper, to bear in mind that "abuse of power is global and universal. Just like how slavery has long been present in societies the world over...the same is the case in the Arab world. Indeed, the exploitation of domestic workers is far from unique to Arab countries."²⁹ To this end, Mooro lists examples from places like Singapore and Guinea.³⁰ Similar critiques have been made of the Canadian live-in caregiver visa regime.³¹ My goal here is thus to describe how this global form of abuse looks in the UAE.

The abuse that domestic workers experience can be emotional, physical, sexual, or economic; often, it transcends these boundaries. While a detailed analysis of these forms of abuse is not this paper's focus, I see fit to discuss them in some detail. In what follows I will describe how these types of abuse can manifest in a domestic worker-employer relationship in the

²⁷ *Ibid.*

²⁸ Bassam Za'za', "Housewife jailed for torturing maid", *Gulf News* (8 February 2017), online: <https://gulfnews.com/uae/crime/housewife-jailed-for-torturing-maid-1.1975182>.

²⁹ Mooro, *supra* note 26.

³⁰ *Ibid.*

³¹ See Kathleen Harris, "Liberals launch 2 new immigration pilots for foreign caregivers", *CBC News* (23 February 2019), online: <https://www.cbc.ca/news/politics/liberal-hussen-caregiver-immigration-pilot-programs-1.5030231>.

UAE, occasionally adding comparable examples from other Gulf countries.

Emotional abuse often takes the form of verbal harassment. Employers sometimes scream at domestic workers for little or no reason. In fact, a Human Rights Watch report mentions that most of the domestic workers interviewed for the report “alleged that their sponsor or members of their household had subjected them to forms of psychological and verbal abuse, including by shouting at and insulting them, threatening them, and humiliating them.”³² Such insults include refusing to refer to workers by name,³³ calling workers “animals,”³⁴ and death threats.³⁵ Additionally, some domestic workers are forcibly “locked inside the house for days at a time.”³⁶

Similarly, physical abuse can take many forms: “Of the 99 domestic workers interviewed by Human Rights Watch, 22 alleged that their sponsors had physically abused them. The methods described included beating with sticks or cables, punching, slapping, kicking, choking, spitting, and pulling of their hair.”³⁷ Physical abuse can escalate to the point of grave injury. A Kenyan domestic worker in Saudi Arabia reported that “after more than a year of abuse, her employer’s son threw [her] down the stairs, breaking her leg, leaving her unable to work.”³⁸ And “in 2016, Joanna Demafelis, a Filipina worker in Kuwait, was brutally beaten by her employers before finally being murdered and stuffed into a freezer in an abandoned apartment.”³⁹

Such brutality is comparable to the case of domestic workers in the UAE. Indeed, regarding the housewife referenced in the quote that opens this section, sources indicate that she threw hot water on her employee and stabbed her in the ear with scissors, damaging her ability to hear.⁴⁰ Another case involves a Dubai woman who was “charged with torturing and starving her

³² Begum, *supra* note 1.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ Keenan & Rugene, *supra* note 22.

³⁷ Begum, *supra* note 1.

³⁸ Keenan & Rugene, *supra* note 22.

³⁹ Basma, *supra* note 4.

⁴⁰ See Za’za’, *supra* note 28.

Indonesian maid to death”⁴¹ in 2016. Finally, there is evidence of Emirati families forcing domestic workers to “sleep under stairwells, in hallways, on living-room floors, or in common living quarters.”⁴² Some have also underfed the domestic workers that they employ,⁴³ including even the Emirati royal family. In 2017, eight Emirati princesses were “convicted of human trafficking and degrading treatment of their servants by a Brussels court,”⁴⁴ committed during a 2008 visit to Belgium. Among the evidence was a servant’s allegation that the princesses “forced [servants] to eat the princesses’ leftovers.”⁴⁵

Many domestic workers in the UAE have also “alleged that their employers or members of their employer’s household had sexually assaulted or harassed them.”⁴⁶ In one case, a Filipina worker reported that someone who was living in her employer’s house with her tried to rape her and threatened her life when she resisted.⁴⁷ He lied to her employer, saying that she had stolen money from him, and while her employer believed her over him, he failed to report the incident to the authorities.⁴⁸

There are other instances of abuse that I consider economic in nature. This can include withholding wages; paying workers poverty wages; forcing workers to work too much, often beyond the work hours specified in the employment contract; and preventing them from sending money to their families.⁴⁹ Domestic workers in the UAE have attested that their employers withheld

⁴¹ Marie Nammour, “Housewife accused of starving maid to death in Dubai”, *Khaleej Times* (16 April 2016), online: <https://www.khaleejtimes.com/nation/crime/housewife-accused-of-starving-maid-to-death>.

⁴² Andrew McGill & Angela Modica Scala, “UAE Migrant and Domestic Workers Abuse” (31 May 2019), online (blog): *Americans for Democracy & Human Rights in Bahrain* <https://www.adhrb.org/2019/05/uae-migrant-and-domestic-workers-abuse/>.

⁴³ Begum, *supra* note 1 at “Summary”.

⁴⁴ “UAE princesses guilty of servant abuse in Belgium”, *BBC* (23 June 2017), online: <https://www.bbc.com/news/world-europe-40380071>.

⁴⁵ *Ibid.*

⁴⁶ Begum, *supra* note 1.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ See Omayya Chidiac, *Migrant Construction and Domestic Workers in the Arab Gulf States: Modern-Day Slaves?* (LLM Thesis, York University Osgoode Hall Law School, 2014) [unpublished] at 36-38: <https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1015&context=llm>.

wages “for periods ranging from 2 weeks to 31 months.”⁵⁰ In the case of workers on a two-year contract, some employers refused to pay them until the end of the contract period to prevent them from running away.⁵¹ Finally, some workers report that employers “charged unwarranted deductions”⁵² from their wages.

International Law Perspectives

“The right to life of migrant workers and members of their families shall be protected by law. No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No migrant worker or member of his or her family shall be held in slavery or servitude. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.”⁵³

The primary instruments of international law relevant to migrant workers and, sometimes, domestic workers specifically, come from the UN, including the ILO, a UN agency. Among the instruments of the former, one finds the 1990 Migrant Workers Convention. The UAE has also contributed to UN initiatives to combat human trafficking. Relevant ILO initiatives include the 1930 Convention Concerning Forced or Compulsory Labour and the related 2014 International Protocol P029, the 1975 Migrant Workers Convention, and the 2011 Domestic Workers Convention.

The above quote was taken from the UN Migrant Workers Convention, which was adopted in December 1990 and came into effect in July 2003.⁵⁴ Neither the UAE, nor any other Gulf state, nor the US and Canada has ratified it.⁵⁵ In fact, “only a small number of states have ratified it and no western migrant-receiving

⁵⁰ Begum, *supra* note 1 at “Wage Abuses, Excessive Work, and Lack of Rest”.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 18 December 1990, A/Res/45/158, 2220 UNTS 3 arts 9-11(2), (entered into force 1 July 2003) [*Migrant Workers Convention*].

⁵⁴ *Ibid.*

⁵⁵ See “United Nations Treaty Collection, Status of Treaties: 13. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families”, online: *United Nations* https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&clang=_en.

country has done so,"⁵⁶ even though the Convention is one of "the most ambitious international law instrument[s] ever designed to protect migrants' fundamental rights."⁵⁷

The Convention mentions several rights, including rights to life;⁵⁸ freedom from torture, inhuman treatment, slavery, and forced labor;⁵⁹ freedom of religion;⁶⁰ privacy;⁶¹ equality before courts;⁶² and freedom from imprisonment based on "failure to fulfil a contractual obligation."⁶³ One can see how these rights are relevant to domestic workers in the UAE. For example, shoving a pair of scissors into someone's ear, damaging her ability to hear, is clearly inhumane treatment, and forcing domestic workers to sleep on a kitchen floor deprives them of privacy in a very intimate way.

Theoretically, the 1990 Migrant Workers Convention "[makes] it easier for irregular migrants and their advocates to claim [rights] and have them implemented"⁶⁴ on the international stage. However, considering that the UAE has not ratified it, how are its domestic workers meant to use it to invoke these rights?

There also seems to be an incongruency between the reality of the domestic work sector and the efforts that the government has made to fight labor rights abuses internationally. Notably, the UAE has contributed to UN anti-trafficking efforts. In September 2017 the country "pledged US\$100,000 in financial support to the United Nations Voluntary Trust Fund for Victims of Trafficking in Persons, Especially Women and Children"⁶⁵ at a UN meeting. At the same meeting, it also "expressed its support for the UN Global Plan of Action to Combat Trafficking in Persons."⁶⁶

⁵⁶ Antoine Pécoud, "The UN Convention on Migrant Workers' Rights at 25", *Open Democracy* (18 December 2015), online: <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/un-convention-on-migrant-workers-rights-at-25/>.

⁵⁷ *Ibid.*

⁵⁸ *Migrant Workers Convention*, *supra* note 53 at art 9.

⁵⁹ *Ibid* at arts 10-11.

⁶⁰ *Ibid* at art 12.

⁶¹ *Ibid* at art 14.

⁶² *Ibid* at art 18.

⁶³ *Ibid* at art 20.

⁶⁴ Pécoud, *supra* note 56.

⁶⁵ "UAE pledges US\$100,000 to UN Fund to combat human trafficking", *Emirates News Agency* (30 September 2017), online: <http://wam.ae/en/details/1395302635378> [UAE pledges].

⁶⁶ *Ibid.*

According to the UAE's state news agency, the Emirati News Agency, "as a nation which receives a significant number of temporary workers of different nationalities each year, the UAE is committed to combatting this crime."⁶⁷ We will see later, however, that Emirati law provides little protection for migrants, specifically foreign domestic workers.

I turn now to the ILO. We must start in 1930 with the Forced Labour Convention, which the UAE ratified in 1982.⁶⁸ Article 1 begins with these words: "Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period."⁶⁹ This article imposes a twofold obligation. Parties must not only work to eliminate forced labor; they must do so as quickly as possible. The temporal aspect of this obligation is particularly significant; although it does not impose a date by which forced labor must be eliminated, it highlights the importance of acting quickly.

In 2014, the ILO adopted an updated resolution⁷⁰ to the 1930 Convention, which is "a new, legally-binding instrument that requires States to take measures regarding prevention, protection and remedy in giving effect to the Convention's obligation to suppress forced labour."⁷¹ The 2014 Protocol gives states that have ratified the 1930 Convention "guidance on effective measures to be taken to eliminate all forms of forced labour."⁷² The Protocol includes measures on preventing forced labor through education and inspection, "addressing root causes and factors that heighten the risks of forced labour,"⁷³ and preventing

⁶⁷ UAE pledges, *supra* note 65.

⁶⁸ See "Ratifications of CO29 – Forced Labour Convention, 1930 (No. 29)", online: International Labour Organization https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312174.

⁶⁹ ILO Forced Labour Convention, *supra* note 3.

⁷⁰ See Protocol of 2014 to the Forced Labour Convention, 1930 P029, 11 June 2014, ILO (entered into force 9 November 2016).

⁷¹ "Strengthening the global fight against all forms of forced labour: The Protocol to the Forced Labour Convention" at 2, online (pdf): International Labour Organization https://www.ilo.org/wcmsp5/groups/public/-ed_norm/-declaration/documents/publication/wcms_321414.pdf.

⁷² *Ibid.*

⁷³ *Ibid* at 3.

unnecessary prosecution of victims.⁷⁴ The Emirati government abstained from voting for this measure.⁷⁵

Another relevant document—which the UAE has not ratified—is the 1975 ILO Migrant Workers Convention, pursuant to which 25 nations have agreed to “suppress clandestine movements of migrants for...illegal employment”⁷⁶ and “pursue a national policy designed to promote...equality of opportunity and treatment”⁷⁷ for migrant workers. The Convention also provides for cooperation between states to reunite workers with their families and prosecute “authors of manpower trafficking”⁷⁸ regardless of where it occurs. If the UAE ratifies this convention, it would likely be required to substantially alter its visa regime for migrant workers and prosecute more instances of forced labor than it currently does.

Finally, there is the 2011 Domestic Workers Convention, which defines “domestic work” as “work performed in or for a household or households.”⁷⁹ It sets out general principles and goals that ratifying states must respect, namely “freedom of association and...the right to collective bargaining”⁸⁰ of domestic workers, “the elimination of all forms of forced or compulsory labour,”⁸¹ “the effective abolition of child labour,”⁸² and “the elimination of discrimination in respect of employment and occupation.”⁸³ It stipulates that ratifying states must set a minimum age limit for legal domestic workers and guarantee them employment protections regarding work conditions, contracts, wages, and working hours.

The number of countries that have ratified the Domestic Workers Convention is slightly higher than the number of countries

⁷⁴ *Ibid.*

⁷⁵ See “Record Vote on Protocol 2014 to Forced Labor Convention, 1930”, online: *Migrant-Rights.org* <https://infogram.com/record-vote-on-protocol-2014-to-forced-labor-convention-1930>.

⁷⁶ *Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers* C143, 24 June 1975, ILO art 3 (entered into force 9 December 1978).

⁷⁷ *Ibid* at art 10.

⁷⁸ *Ibid* at art 5.

⁷⁹ *Convention concerning decent work for domestic workers*, 16 June 2011, PRNo.15A, ILO at art 1 (entered into force 5 September 2013).

⁸⁰ *Ibid* at art 3(2)(a).

⁸¹ *Ibid* at art 3(2)(b).

⁸² *Ibid* at art 3(2)(c).

⁸³ *Ibid* at art 3(2)(d).

that have ratified the ILO Migrant Workers Convention, at 29. Again, the UAE has not ratified this convention.⁸⁴

Domestic Law Perspectives: What does Emirati law say?

“Domestic workers are excluded from the protections offered under the country’s national labor law...Domestic workers face legal and practical obstacles to redress, and many return home without justice.”⁸⁵

These words concisely summarize the Emirati employment law regime as it applies to domestic workers. Simply put, the law does not apply to them, meaning that “domestic workers have virtually no legal safeguards governing their employment.”⁸⁶ This is also true in neighboring countries; labor legislation in most Gulf states excludes domestic workers.⁸⁷ “Qatar, Kuwait, and Oman, like the UAE, totally exclude domestic workers from protection under their labor laws.”⁸⁸ The exclusion of domestic workers from general labor protections is thus not limited to the UAE.

The UAE’s primary labor law, *Federal Law No. 8 of 1980*, has seen several amendments and clarifying regulations since its inception.⁸⁹ The 60-page law contains provisions on things like working hours, contracts, and wages, with certain sections specifically applicable to women and children.⁹⁰ Omayya Chidiac is not wrong to point out that this law “explicitly excludes domestic

⁸⁴ See “Ratifications of C189 – Domestic Workers Convention, 2011 (No. 189)”, online: *International Labour Organization* https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:2551460.

⁸⁵ “UAE: Domestic Workers’ Rights Bill A Step Forward” (7 June 2017), online: *Human Rights Watch* <<https://www.hrw.org/news/2017/06/07/uae-domestic-workers-rights-bill-step-forward>> [Domestic Workers’ Rights Bill].

⁸⁶ Begum, *supra* note 1 at “Main Findings”.

⁸⁷ See Chidiac, *supra* note 49 at 27.

⁸⁸ Begum, *supra* note 1 at “Reforms in the Gulf and Beyond for Domestic Workers”.

⁸⁹ See online: *UAE Labor Law* <<https://www.uaelaborlaw.com/>>.

⁹⁰ See *United Arab Emirates, Federal Law No. (8) of 1980, Labour Law and its Amendments* [United Arab Emirates], 2011, online (pdf): http://www.dsg.gov.ae/sitecollectionimages/content/pubdocs/uae_labour_law_eng.pdf.

workers.”⁹¹ Amending laws *Federal Law No. 24 of 1981*⁹² and *Federal Law No. 12 of 1986*⁹³ clarify that “the provisions listed in the law do not apply to...domestic servants in private households and similar occupations.”⁹⁴

Fortunately, a more recent law covers domestic workers: *Federal Law No. 10 of 2017*,⁹⁵ informally called the “domestic helpers law.”⁹⁶ This law began in 2012, when it was approved by the government’s Federal National Council but never came into effect in that form.⁹⁷ Years later, in May 2017, the Council “adopted a revised version”⁹⁸ of the 2012 law, which “covers 19 categories of workers, including domestic workers, regulates recruitment, and addresses terms and conditions of employment.”⁹⁹

As the law is only available in Arabic, it is worth reproducing a lengthy overview of its content:

The bill requires that employers treat the worker ‘in a good manner that preserves their dignity and the integrity of their body.’ It also requires employers to provide domestic workers with accommodation and food, but is vague on minimum standards. It provides 30 days of annual paid leave and daily rest of at least 12 hours – including at least eight consecutive hours of rest. It will also guarantee 15 days of paid sick leave, 15 days of unpaid sick leave, and

⁹¹ Chidiac, *supra* note 49 at 27.

⁹² See *United Arab Emirates, Federal Law No. (24) of 1981* [United Arab Emirates], 7 November 1981.

⁹³ See *United Arab Emirates, Federal Law No. (12) of 1986* [United Arab Emirates], 29 October 1986.

⁹⁴ “Employment laws and regulations” (last modified 22 July 2019), online: *United Arab Emirates government* <https://government.ae/en/information-and-services/jobs/employment-laws-and-regulations-in-the-private-sector>.

⁹⁵ See *United Arab Emirates, Federal Law No. (10) of 2017 On Domestic Workers* [United Arab Emirates], 11 June 2017, online (pdf): http://gulfmigration.org/database/legal_module/United%20Arab%20Emirates/National%20Legal%20Framework/Labour%20Migration/53.2%20Federal%20Law%20No%2015%20of%202017%20Domestic%20workers.pdf.

⁹⁶ “UAE policy on domestic helpers” (last modified 2 October 2019), online: *United Arab Emirates government* <https://government.ae/en/information-and-services/jobs/domestic-workers/uae-policy-on-domestic-helpers> [UAE policy on domestic helpers].

⁹⁷ Begum, *supra* note 1 at “Reforms in the Gulf and Beyond for Domestic Workers”.

⁹⁸ *Domestic Workers’ Rights Bill*, *supra* note 85.

⁹⁹ *Ibid.*

compensation for work-related injuries or illnesses. The bill sets out a weekly rest day but permits the employer to make the domestic worker forgo the rest day if paid. The bill does not lay out stipulations that workers should be free to leave the workplace during their non-working hours. These provisions are weaker than the UAE labor law, which stipulates an 8-hour workday or 48-hour workweek, and 15 days of paid sick leave, 15 days at half pay, and unpaid sick leave thereafter.¹⁰⁰

Stated plainly, this recent law that ostensibly protects domestic workers seems relatively comprehensive but still fails to provide them the same protections that it provides to those who are covered by *Federal Law No. 8 of 1980*. Enforcing the law must also be a priority; legislation alone cannot protect workers from abuse.

Other rights to which this law entitles domestic workers include health insurance at employers' expense, decent housing standards, the right to retain one's passport, and exemption from legal fees if they file a lawsuit.¹⁰¹ It also forbids employers from physically harming domestic workers.¹⁰² As I will show later, passport retention remains common in the UAE, and there remain many barriers that prevent domestic workers from receiving redress in Emirati courts.

The Kafala Visa System

"The power that the Kafala system delegates to the sponsor over the migrant worker, has been likened to a contemporary form of slavery. The kafeel [sponsor] meets their labour needs in the context of immense control and unchecked leverage over workers creating an environment ripe for human rights violations and erosion of labour standards."¹⁰³

The visa regime that applies to migrant workers in the UAE and other Gulf states—as well as most of the Middle East and

¹⁰⁰ *Ibid.*

¹⁰¹ *UAE policy on domestic helpers, supra* note 96.

¹⁰² *Ibid.*

¹⁰³ "Policy Brief No. 2: Reform of the Kafala (Sponsorship) System" International Labour Organization Migrant Forum in Asia at 1, online: <https://www.ilo.org/dyn/migpractice/docs/132/PB2.pdf> [Policy Brief No. 2].

North Africa—is known as the *kafala* system. “*Kafala*” is an Arabic word that roughly translates to “sponsorship.” This term is fitting; the system centers on employers, who must sponsor migrants for a visa to secure their arrival in the UAE. While such a system is found in many countries, the *kafala* system is particular in that it gives immense power to employers at the expense of migrants: “In the UAE...the *kafala* system ties migrant workers to individual employers who act as their visa sponsors, and restricts migrant workers’ abilities to change employers. The system gives employers great power over employees because it entitles them to revoke sponsorship at will.”¹⁰⁴

This concept is enshrined in *Federal Law No. 6 of 1973*, which deals with the UAE’s temporary visa regime and states that all migrants who wish to work legally in the UAE must do so through the *kafala* system.¹⁰⁵ The law is relatively short but certain articles merit mention.

Article 11, for example, reflects the glue that binds migrant workers to employers. The English version of this article reads, “If the visa is issued to work for an individuals [sic] or an establishment, holder may not work for another individual or establishment without the written consent of that individual or establishment and the approval of the Directorate of Nationality and Immigration.”¹⁰⁶ In other words, migrants are legally unable to change jobs without the permission of the employer who sponsored their visa. One can imagine an abusive employer refusing to allow a domestic worker to find other work. Article 19 continues: “Foreigners who have obtained residence license shall be subject to the provisions of Article (11) herein.”¹⁰⁷

The problem lies in the fact that employers can “petition the authorities to cancel the [worker’s] residency leading to forcible deportation”¹⁰⁸ for more or less any reason. Some employers have falsely accused domestic workers of crimes like theft, often as punishment if workers attempt to report abuse to the Emirati police.¹⁰⁹ The legal status of domestic workers is thus

¹⁰⁴ Begum, *supra* note 1 at “Main Findings”.

¹⁰⁵ See *United Arab Emirates: Federal Law No. 6 for 1973 Concerning Immigration and Residence* [United Arab Emirates], 2 September 1973, online: <<https://www.refworld.org/docid/3fb9fab24.html>>.

¹⁰⁶ *Ibid* at art 11.

¹⁰⁷ *Ibid* at art 19.

¹⁰⁸ *Policy Brief No. 2*, *supra* note 103 at 4.

¹⁰⁹ See Chidiac, *supra* note 49 at 28.

dependent on the whims of the employers who sponsor them. Employers can revoke domestic workers' legal status at a moment's notice. Stated succinctly, "the *Kafala* system denies the migrant worker the basic human right to freedom of movement"¹¹⁰ housed in Article 13 of the *Universal Declaration of Human Rights*.¹¹¹

Related to the vast powers that the *kafala* system gives employers is the act of passport retention. Employers of domestic workers often confiscate their passports upon arrival, restricting their movement from the beginning. Indeed, most of the 99 domestic workers that Human Rights Watch interviewed said that their employers forced them to surrender their passports.¹¹² Sometimes, employers or recruitment agencies confiscate "mobile phones and other documents,"¹¹³ as well: "Somayya S., an Indonesian worker, recounted how her agency took all of her possessions except her clothes, including her contract, documents, and books."¹¹⁴ Depriving domestic workers of their mobile phones and personal items only serves to further isolate them in an employer's household.

Passport retention is illegal in the UAE, pursuant to "a 2002 decree from the Ministry of Interior."¹¹⁵ Emirati courts have taken up the notion: "In Abu Dhabi...the highest courts have ruled that retaining passports is illegal."¹¹⁶ However, as is hopefully clear by now, legislation without enforcement is insufficient to prevent human rights abuses of this type. According to critics, the decree banning passport retention lacks clarity; namely, it does not delegate authority to a governmental body to enforce the prohibition,¹¹⁷ and one may reasonably wonder whether the listed maximum penalties for employers who confiscate migrants'

¹¹⁰ *Policy Brief No. 2*, *supra* note 103 at 4.

¹¹¹ *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71 [UDHR].

¹¹² Begum, *supra* note 1 at "Main Findings".

¹¹³ *Ibid* at "Recruitment Agency Practices".

¹¹⁴ *Ibid*.

¹¹⁵ Jen Thomas, "Bid to stamp out illegal retention of passports", *The National* (16 June 2012), online: <https://www.thenational.ae/uae/bid-to-stamp-out-illegal-retention-of-passports-1.378956>.

¹¹⁶ *Ibid*.

¹¹⁷ *Ibid*.

passports—imprisonment or a fine of up to about CAD \$7200—are strict enough.¹¹⁸

As is the case in every human rights issue, there are many perspectives to consider. One may instinctually respond that a domestic worker whose employer illegally confiscates her passport need only go to the nearest police station and report that her employer has violated a federal law. However, things are unfortunately not so simple. Her employer may cancel her work authorization and have her deported. He could also physically, sexually, or emotionally abuse her; withhold or reduce her wages; or arbitrarily increase her work responsibilities.¹¹⁹ Domestic workers who are aware of the very real possibility of retaliation will likely think twice before airing their complaints against their employers.

It is thus clear that, as Jeena Sharma puts it, “the law only works on paper”¹²⁰ for domestic workers who wish to maintain control over their passports while working in the UAE. Passport confiscation deprives workers of their aforementioned right to mobility.¹²¹ If a migrant does not have access to her own passport, how is she meant to legally leave the UAE and return to her home country? Simply put, she cannot do so. Although the UAE, especially Dubai, “has often been deemed the mecca of dreams for citizens of poorer countries...if you don’t have the right to hold onto your own identity, does it really matter?”¹²²

Unfair Contractual Practices as Human Rights Abuses

“Due to the seemingly voluntary nature of migrant labor, it is an unfortunate reality that many of these women effectively enslave themselves abroad in hopes of improving their economic situation at home. This is not to suggest that migrants are to blame for their plights; once the choice has been made and the contract signed, all future choices are restricted or

¹¹⁸ See Jeena Sharma, “Why are Migrant Workers’ Passports Still Being Held Hostage in the UAE?”, *Pacific Standard* (17 July 2017), online: <https://psmag.com/social-justice/why-are-migrant-workers-passports-still-being-held-hostage-in-uae>.

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

¹²¹ UDHR, *supra* note 111.

¹²² Sharma, *supra* note 118.

nonexistent. Most of these domestic servants are unaware of what they are getting into..."¹²³

Contract law is a hallmark of the curriculum of practically every North American law school, and the subject is considered essential to the successful practice of law. During my first year of law school, I took a year-long Contracts class that taught me that certain requirements must be fulfilled in order for one to prove the existence of a contract. Assuming the parties are in a common law jurisdiction, one must convince the court that the "minds" of the parties met, that they intended to create a recognizable legal relationship with obligations incumbent on both parties. Indeed, classical contract theory sees contracting parties as possessing an equal amount of bargaining power, able to exchange information and arguments and arrive at a set of contractual terms that is favorable to both of them.

Needless to say, this is not what a foreign domestic worker in the UAE experiences. Equal bargaining power simply cannot exist between a wealthy family—particularly where the members have Emirati citizenship—and a worker who likely does not speak Arabic, the official language of the UAE, and does not have substantial experience with Emirati society and culture.

Here, it may be objected that this is ultimately not very important, since in 2014 the Emirati government imposed a revised standard-form contract that all domestic workers must sign in order to legally live and work in the UAE.¹²⁴ Recall the benefits that the Emirati domestic worker law purports to guarantee, including health insurance, paid vacation time, prompt payment, and one day off each week¹²⁵ (even though, regarding time off, "this is less than many workers are promised when they are recruited in their home countries, and far short of international standards"¹²⁶).

¹²³ Romina Halabi, "Contract Enslavement of Female Migrant Domestic Workers in Saudi Arabia and the United Arab Emirates" (2008) in Sarah Bania-Dobyns et al, eds, "Human Rights and Contemporary Slavery" 43 at 44, online: University of Denver Josef Korbel School of International Studies *Human Rights & Human Welfare* <https://www.du.edu/korbel/hrhw/researchdigest/slavery/slavery.pdf>.

¹²⁴ Begum, *supra* note 1 at "Employment Contracts and Sending Country Requirements". See also UAE policy on domestic helpers, *supra* note 96.

¹²⁵ See UAE policy on domestic helpers, *supra* note 96.

¹²⁶ Begum, *supra* note 1 at "Main Findings".

As true as this information is, the fact remains: many employers of domestic workers have been known to unilaterally alter the terms of workers' contracts after they are signed, giving the illusion that the worker knowingly consented to heinously unjust working terms.¹²⁷ Further still, "agents and employers in the UAE [have] 'substituted' new contracts for those the workers had signed before leaving their home countries, requiring them to work for less pay and under worse conditions."¹²⁸ Additionally, the fact that many foreign domestic workers have no or very little knowledge of Arabic means that these contracts are often "signed in a language that the migrant domestic worker does not understand,"¹²⁹ which makes them even more vulnerable to exploitation at work.¹³⁰

If a domestic worker objects to the abuse or unfair treatment of her employer, he may simply respond that her contract allows it and that it was her responsibility to read and understand the contract before signing. And if she unilaterally cancels the contract, which the Emirati government does give her the right to do,¹³¹ her Emirati legal status is void and she may not legally remain in the country. Domestic workers who are ensnared in abusive contracts are thus left with few options.

It is for this reason and others that critics have dubbed the Emirati migrant visa regime as the continuation of slavery through seemingly licit means such as a contract. The term "contract slavery"¹³² is sometimes used in this context, referring to a situation "where a contract acts as a disguise to entice the workers into slavery and makes it appear legal and legitimate."¹³³

Difficulties arise in navigating the use of the word "slavery," namely the fact that Kevin Bales, cited above for his use of the term "contract slavery,"¹³⁴ seems to believe that a slave cannot receive a wage: "...the [contract] slave is under threat of violence, has no freedom of movement and is paid nothing."¹³⁵

¹²⁷ See Chidiac, *supra* note 49 at 52.

¹²⁸ Begum, *supra* note 1 at "Main Findings".

¹²⁹ Chidiac, *supra* note 49 at 85.

¹³⁰ *Ibid* at 52.

¹³¹ UAE policy on domestic helpers, *supra* note 96.

¹³² Kevin Bales, "Expendable People: Slavery in the Age of Globalization" (2000) 53:2 J. Int. Aff. 461 at 464.

¹³³ Chidiac, *supra* note 49 at 52.

¹³⁴ Bales, *supra* note 132.

¹³⁵ *Ibid*.

This definition leaves no room for the UAE's exploited domestic workers, who may be paid part of their contractually stipulated salary, or may even be paid their full salary and exploited in other ways. As I understand it, Bales's definition of a contract slave, which is now nearly two decades old, is too narrow and should be widened to accommodate the Emirati domestic labor industry, which has grown drastically since the start of the millennium.

In addition to the complication of determining the (un)inclusiveness of the term "slavery," further complications arise when we consider the undeniably gendered nature of domestic work in the UAE. The people who take jobs in Emirati households are overwhelmingly female, with male migrants generally working in industries like construction.¹³⁶ Employers exist on the other side of this gendered sector. Martin Beck, writing about domestic workers in Lebanon, illustrates a potential objection to using terms like "slavery" in this context: "[I]f we apply the concept of contract slavery...there is no way not to denote postmodern career mothers with a feminist identity as slaveholders."¹³⁷ While the appropriateness of the term "slavery" is not the focus of this paper, I must say that I disagree with the viewpoint that Beck outlines. I am convinced that identifying as a feminist does not inherently prevent an employer from simultaneously participating in systems that exploit women.

Access to Justice (?) and Potential Solutions

"Jahanara had had enough. For a year, the Bangladeshi cook had been working 12 to 16 hours a day, eating only leftovers and sleeping on the kitchen floor of her employer's Abu Dhabi home—all for half the salary she had been promised. She had to prepare four fresh meals a day for the eight-member family, who gave her little rest...[I]n the middle of the night after a long day's work, she snuck out into the driveway, scaled the front gate and escaped."¹³⁸

¹³⁶ Crabapple, *supra* note 25.

¹³⁷ Martin Beck, "Contract Slavery? On the Political Economy of Domestic Work in Lebanon", E-International Relations (6 February 2018), online: <https://www.e-ir.info/2018/02/06/contract-slavery-on-the-political-economy-of-domestic-work-in-lebanon/>.

¹³⁸ Cousins, *supra* note 21.

To whom are abused domestic workers who flee their employers—an act officially known as absconding¹³⁹—meant to turn? The short answer is often “nobody,” because domestic workers who abscond, even in cases of abhorrent abuse from employers, are considered under Emirati law to have forfeited their legal status in the country. Even “the UAE standard contract...specifically states that a domestic worker’s rights are ‘null and void’ if the worker leaves work without informing the sponsor.”¹⁴⁰ Absconding thus exposes domestic workers to penalties including daily fines for residing in the UAE illegally, deportation, and a temporary ban on returning to the UAE.¹⁴¹

These risks legally begin when an employer reports an absconded domestic worker to the authorities. According to Emirati newspaper *Gulf News*, “The sponsor should report to authorities right away or within seven days of the maid going missing.”¹⁴² However, if a sponsor wishes to file criminal charges against an absconding domestic worker, she must do so before reporting her to the immigration authorities.¹⁴³ The possibility of employers filing erroneous charges is always a threat. “In some cases, domestic workers who have run away from their employers or filed complaints against them have found themselves facing charges that employers and prosecutors have filed against them. While such charges are sometimes well-founded...often they appear intended to intimidate workers.”¹⁴⁴ This can result in innocent workers who have fled abusive households—sometimes by literally escaping the house after being trapped there without permission to leave— “being treated as criminals rather than victims if they report abuses.”¹⁴⁵

There is, moreover, a glaring inconsistency in the requirements for employers who wish to report an absconded domestic worker. While passport retention is “unlawful in the UAE...the authorities expect employers to be in possession of their employees’ passport when they cancel sponsorship visas or report

¹³⁹ See Janice Ponce de Leon, “What to do if our maid absconds”, *Gulf News* (23 May 2015), online: <https://gulfnews.com/uae/government/what-to-do-if-our-maid-absconds-1.1510040>.

¹⁴⁰ Begum, *supra* note 1 at “Immigration and Recruitment Policies and Practices”.

¹⁴¹ *Ibid.*

¹⁴² Ponce de Leon, *supra* note 139.

¹⁴³ *Ibid.*

¹⁴⁴ Begum, *supra* note 1 at “Criminal Charges against Domestic Workers”.

¹⁴⁵ *Ibid.*

'absconding' workers."¹⁴⁶ This is consistent with the aforementioned *Gulf News* article, which lists "maid's original passport (to be surrendered)"¹⁴⁷ among the documents that an employer must present when reporting an absconding domestic worker. If the law tells employers to do one thing and immigration regulations functionally obligate them to do the opposite, the law cannot be as enforceable as it must be to protect domestic workers' right to free movement.

So, a maid in a family home in Dubai runs away late at night, tired of being abused. Where does she go? Perhaps a shelter? This is certainly possible; shelters "for women subjected to sex trafficking or domestic violence"¹⁴⁸ are available. However, I found no evidence of a shelter that is tailored specifically to the needs of domestic workers. Thus, while the shelters that are available, like Ewa'a in Dubai, are a necessary step, domestic workers who flee their employers might not find the support that they need there due to factors including cultural and linguistic barriers and a lack of knowledge on the part of staff members about the domestic labor sector.¹⁴⁹

The maid may instead turn to clandestine "networks" of people who help domestic workers flee. Such is the case of Jahanara (the article does not divulge her real name), the Bangladeshi domestic worker mentioned at the beginning of this section. After "escap[ing] in the dead of night,"¹⁵⁰ she came across a friendly taxi driver who was passing by. He drove her over an hour from Abu Dhabi to Dubai and "introduced her to...an Indian woman in her late fifties who had been working in the Gulf for more than two decades."¹⁵¹ This woman, named as Vijaya in the article, took Jahanara in and found her a safer domestic work position in the area.

While Jahanara was, from the moment she absconded, deprived of legal status in the UAE, for some domestic workers, working "outside official channels"¹⁵² may actually be an

¹⁴⁶ *Ibid* at "Main Findings".

¹⁴⁷ Ponce de Leon, *supra* note 139.

¹⁴⁸ Begum, *supra* note 1 at "Main Findings".

¹⁴⁹ See "Trafficking in Persons Report" (June 2019) at 479, online: *United States Department of State* <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>.

¹⁵⁰ Cousins, *supra* note 21.

¹⁵¹ *Ibid*.

¹⁵² *Ibid*.

advantage. According to Vijaya, undocumented domestic workers in the UAE can sometimes make several times more money than those who are registered through the *kafala* system.¹⁵³ She says that being able to live in one's own home rather than with one's employers, receiving one's pay in a timely manner, and being able to change employers as needed—albeit clandestinely—are potential benefits of working “*khalli walli*,” an Arabic expression that “loosely translates as ‘take it or leave it.’”¹⁵⁴ Ultimately, though, these benefits still depend in large part on employers.

For Jahanara and women like her, working illegally has proven to be empowering. However, doing so can also have severe human rights implications. Extramarital sex is a criminal offense in the UAE, with penalties up to imprisonment even in cases of rape.¹⁵⁵ “Figures...indicate several hundred migrant workers a year...make the decision to go into hiding after they become pregnant outside of marriage”¹⁵⁶ in the UAE. These women cannot pass any legal status to their children, not having one themselves after absconding. As a result, children of absconding domestic workers sometimes “[grow] up without a birth certificate or any other identification”¹⁵⁷ and have “no access to education and...a doctor.”¹⁵⁸ They are effectively stateless.

Detection by the authorities can mean deportation. But for many of these women, particularly those who come from poverty-stricken areas, deportation simply is not an option; they have to work and send remittances to their family. Indeed, the families of these workers often depend on such remittances for survival, leaving absconding domestic workers feeling obligated to stay in the UAE without legal access to healthcare or labor law protections. For the sake of their children, some women in this situation “surrender to the authorities”¹⁵⁹ just to be able to legally

¹⁵³ *Ibid.*

¹⁵⁴ *Ibid.*

¹⁵⁵ See McQue, *supra* note 18. See also “Rape Victims Are Being Jailed Under Extramarital Sex Laws in the UAE”, *Vice* (26 October 2015), online: https://www.vice.com/en_us/article/xw3gmw/rape-victims-are-being-jailed-under-extramarital-sex-laws-in-the-uae.

¹⁵⁶ McQue, *supra* note 18.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*

“leave after serving a jail sentence.”¹⁶⁰ All the while, they and their children are deprived of any semblance of human rights.

In this way, the *kafala* visa system in the UAE can effectively force some foreign domestic workers to work illegally, circumventing the boundaries of existing immigration laws to escape abuse and make a living. Their children, forced to live without legal rights, bear their own share of this burden.

How, then, can foreign domestic workers in the UAE hope to access any kind of justice? It seems clear that authorities should substantially reform the *kafala* system and accompanying legislation to, for one, “allow domestic workers to transfer employment without employer consent and without losing valid immigration status.”¹⁶¹ They should also amend the recent law concerning legal protections for domestic workers to ensure that the protections it provides are on par with those provided by the UN and ILO conventions on migrant workers. Perhaps most importantly, they should prioritize enforcement of existing legislation. What, after all, is the purpose of law without the possibility of enforcement?

However, as I hope I’ve demonstrated, legislation in itself, even when enforced, is insufficient. It seems, too, that a certain shift in the popular mindset regarding migrant workers is also required to ensure that domestic workers are adequately protected. Namely, Emirati authorities must stop treating absconding domestic workers as criminals if there is no evidence of genuine criminal behavior. Fleeing abuse should not be criminalized, nor should domestic workers who seek help have to fear deportation and imprisonment at every turn. I believe that it would be beneficial to provide absconding domestic workers the option of remaining legally in the UAE if they would like to continue working there, with safeguards in place to ensure that they are not forced to return to similarly abusive employment relationships.

Finally, specific protections should be instituted regarding the children of absconding domestic workers. These children should receive legal status and have access to adequate healthcare and education alongside their peers in the UAE. While certain shelters, including the aforementioned Ewa’a shelter and

¹⁶⁰ *Ibid.*

¹⁶¹ Begum, *supra* note 1 at “Key Recommendations”.

the Dubai Foundation for Women and Children, accept children,¹⁶² I have found no specific legal protections for the children of absconding migrant workers. My research leads me to believe that the children's rights aspect of this issue is often ignored in popular discourse.

Conclusion

"'The Gulf needs us,' Vijaya says. 'But like a bad husband, it also exploits us.'"¹⁶³

As we recently discussed in class, migration is a fact of life. It can be redirected, slowed, or impeded in various ways, but it cannot be stopped. To take a drastic example, even if all of the major source countries of domestic workers outright ban women from traveling to the UAE for domestic work, this kind of migration would still happen illicitly. For someone who lives in poverty and has no feasible professional opportunities in her area, leaving may seem like—and indeed be—the only option.

I have attempted to use this paper to demonstrate the role of the Emirati legal system in the exploitation of foreign domestic workers. Whether through unfair contractual practices; passport confiscation; physical, sexual, and emotional abuse; or binding a migrant's legal status to her employer, those who exploit domestic workers interact with the UAE's legal system in tangible ways. The abuse, in this way, is not limited to a housewife speaking unkindly to her maids; it is institutional and depends on the legal system itself.

Organizations like Human Rights Watch and the International Labour Organization have made excellent recommendations, calling for, among many other things, reforms of the *kafala* system, stricter oversight of domestic worker recruitment agencies in labor-sending countries, and stronger enforcement of the ban on passport retention. As I have proposed, the rights of the children of foreign domestic workers must not be forgotten as these reforms are implemented. Children of absconding domestic workers in the UAE effectively have no legal identity and are thus locked out of the Emirati educational and healthcare sectors. They and their mothers often live in abysmal, overcrowded housing, in constant fear of imprisonment

¹⁶² *Ibid* at "Lack of Shelters for Abused Domestic Workers".

¹⁶³ Cousins, *supra* note 21.

and deportation. Adding a children's rights lens to the discourse on domestic workers in the UAE is essential to ensure not only that the abuse of domestic workers ceases, but also that this cycle of abuse is not reborn in a new generation.

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