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**Advancing the Rights of Migrant Workers in the Gulf Cooperation
Council: Reforming the *Kafala* System**

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Abstract

The aim of this thesis is to shed light on the need to reform, or abolish, the *kafala* (sponsorship) system through which the member states of the GCC operate to regulate the labor contracts of migrant workers wishing to work in their territories. While this system of sponsorship is mandatory for all non-nationals, regardless of color, religion, origin or social status, it is believed that those considered as low-skilled migrants are the ones who suffer the most because of this system, due to the structural dependence that it creates between a migrant worker and its employer. However, most of the GCC countries have no plans yet to abolish or even reform the sponsorship system. Moreover, they have refused to ratify the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families as well as several ILO Conventions related migrant workers. On the one hand, this thesis points out to the implications of the kafala system, highlighting its challenges and concerns from a human rights perspective. On the other hand, by analyzing previous work on the subject and listing the most common human rights violations that migrant workers are vulnerable to, it gives alternatives to put an end or reform a system highly regarded as a form of modern-day slavery.

Keywords: GCC, Migrant Workers, *kafala*, Human Rights.

To my beloved grandfather.

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Last but not least, I would like to thank my E.MA colleagues for their the moral support throughout this journey. It has and it continues to be a pleasure to share this road with you.

Table of Acronyms

| | |
|---------------|---|
| AI | Amnesty International |
| FIFA | <i>Fédération Internationale de Football Association</i> |
| GCC | Gulf Cooperation Council |
| HRW | Human Rights Watch |
| ICMW | International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ILO | International Labor Organization |
| IOM | International Organization for Migration |
| KTUF | Kuwait Trade Union Federation |
| NGO | Non Governmental Organization |
| OHCHR | Office of the High Commissioner for Human Rights |
| UAE | United Arab Emirates |
| UN | United Nations |
| UDHR | Universal Declaration of Human Rights |
| WPS | Wage Protection System |

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1. Introduction

Migration in the Gulf Cooperation Council countries¹ has almost no parallels with migration in other parts of the world if we take into account that in some of those countries the amount of migrants exceeds notably that of the national population (i.e. it is believed that in Qatar and the United Arab Emirates migrant workers constitute 95% of the total workforce). It is for this reason, among others, that the *kafala* system was put into practice.

In order to better understand the origins and peculiarities of the *kafala* system, it would be wise to analyze its meaning in Arabic, the language that gives rise to the word. The term *kafeel* in Arabic refers to someone who is responsible for someone else, or someone who can be trusted with the custody of another human being. In its literal translation it means, “to feed”. From the Arabic root *k-f-l*, as is called in Arabic, is where the term *kafala* comes from. In Sharia law it is used to describe the Islamic form of adoption, through which the *kafeel* becomes the guardian, or sponsor, of the adopted child.

It is with this meaning that these terms have been extrapolated to the situation of migrant workers in the Gulf countries. In this particular situation the *kafala* is the sponsorship system itself and the *kafeel* is the citizen or government agency in charge of sponsoring the migrant worker, without which, the worker would not be allowed to receive an entry visa and the consequent work and residency permits.

There has always been a constant inflow of workers to the Middle East even before oil was discovered, however it is between the 1950's and the 1970's, when the third migratory wave took place and several of these states become independent, that the big migration boom happened, with the majority of workers employed in the construction and domestic sectors. Due to this boom, the need to handle and regulate foreign workers appeared. As a result, “the *kafala* system emerged in the 1950's to regulate the relationship between employers and migrant workers in many countries in West Asia.”² Nowadays, it still is common practice in all the Gulf Cooperation Council countries

¹ Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and United Arab Emirates.

² Migrant Forum Asia, 2012, p. 1.

(Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates) as well as the neighbouring countries of Lebanon and Jordan. Under this system, the status of a migrant worker is legally bound to an individual sponsor, or *kafeel*, throughout the duration of his/her stay in the receiving country. It is important to highlight here that, even though there are no formal differentiated policies based on skills in the GCC, in practice there is a clear and widely known differentiation towards workers that emanates, not only from their skills, but also from their country of origin. Moreover, the *kafeel* has great power and control over the person they sponsor (be it a direct employee or someone else's), including the power to hold their passports or other identity documents, therefore denying them the right to free movement and the possibility to change jobs, creating the conditions for forced labor practices.

Once the worker enters the country, the *kafeel* becomes “legally and economically responsible for the foreign worker for the duration of the contract period,”³ thus becoming responsible for his or her actions. “Migrant workers receive an entry visa and residence permit only if a citizen or government agency sponsors them”⁴ and since any GCC national has the right to become a *kafeel* and recruit migrant workers (including domestic workers)⁵ the control over the migrant workers becomes tighter as the skill levels decreases. Employment conditions are thus left to the discretion of the sponsor, with little influence from the government and, in some cases such as domestic workers, no law to protect the workers themselves.

Due to the specificities of the system, the negative consequences brought upon the workers (and their families back in their home countries) are undeniable, resulting in outrageous human rights abuses. Thanks to the commitment of the international community together with the support of several international human rights organizations as well as changes that took place in the emigration policies of the major migrant workers' sending countries of Southeast Asia, the first steps towards a modification or, in some cases abolishment, of the sponsorship system are being analyzed. However, due the economic growth model of the countries as well as the amount of actors involved in the process, most of the GCC countries are reluctant to carry out any reforms that might

³ Lori, 2012, p. 4.

⁴ Baldwin-Edwards, 2011, p. 37.

⁵ Ruhs, 2013, p.98.

prejudice the welfare of its citizens and jeopardize their long-standing mandates.

1.1 Research and Interest Question

The purpose of my research is to do a comparative analysis of the sponsorship system in the 6 member states of the Gulf Cooperation Council and the possible violations to human rights that occur through the implementation of such a system in order to answer the following questions: taking account that none of the above mentioned countries has ratified the United Nations (UN) International Convention on the Protection of the Rights of All *Migrant Workers* and Members of Their Families (ICMW), what other conventions or treaties protect migrant workers in the GCC and how are they being enforced and implemented? Second, what should be the role of the International Labour Organization (ILO) and International Organization for Migration (IOM) in the process? What is the role of the private sector? Can multinational companies be influential, through their CSR policies and actions, in pushing states to respect the human rights of migrant workers? Third, what is the responsibility of migrant sending countries and how important are Bilateral Agreements between migrants' home countries and the receiving countries? And lastly, what could be a feasible and successful alternative to the *kafala* system resulting in an effective protection of migrant workers' rights?

1.2 Existing Research and Implications of this Project

In the last two decades there has been a lot of research done in the field of human rights and labour migration in the GCC countries. The work of Andrzej Kapiszewski (2006) titled 'Arabs versus Asian migrant workers in the GCC countries', was particularly important in describing the shifting in the employment of Arab migrant workers for those of Asian origin, "For historical, political and economic reasons, people of various nationalities have traditionally searched for work in the GCC states. The composition of these foreign populations has been changing with time."

In the same manner, the chapter titled 'Situating Labor Migration within the Persian Gulf' in Mehran Kamrava and Zahra Babar "Migrant Labor in the Persian Gulf" (2012) has been fundamental in analyzing the magnitude of the migration that has been taking place in the last century in the Gulf countries, "as the twentieth century began to draw to

a close, and as the pace and magnitude of infrastructural development in the region increasingly picked up speed and intensity, the demographic balance between the nationals and the laborers they imported began to shift.”

The study of Noora Lori (2012) ‘Temporary Workers or Permanent Migrants?, The Kafala System and Contestations over Residency in the Arab Gulf States’ has aided this research in the implications of the *kafala* and its relation with the local elites, she writes, “the *kafala* has produced a structural dependence on foreign labor that is not subsiding despite growing public discontent and rising unemployment rates among Gulf citizens.” Of equal importance for this research has been the work of Martin Ruhs “The Price of Rights: Regulating International Labor Migration” (2013), in which he explains the reasons behind restricting the stay of migrant workers in the Gulf countries, “the policy of strictly temporary migration with few or no opportunities to acquire permanent residence and citizenship has aimed at maintaining the identities of the citizen population without having to actively pursue policies of reducing the number of migrant workers.”

Yet, one of the leading researchers dealing with the subject of migrant workers’ rights in the region is Andrew M. Gardner (2012), who in his ‘Why do they keep coming? Labor Migrants in the Gulf States’, states that “that unskilled or low-income labor migrants typically face significant challenges and problems during their sojourn in the Gulf states.” In his ‘Engulfed’ (2010) chapter he further analyses the *kafala*, to help “explain the mechanics of the structural violence that characterizes the experience of the transnational proletariat in all the Gulf States.” His article ‘Labor Camps in the Gulf States’ has been a central piece of this research when analyzing the general conditions of labour camps. As he points out, “there has been little discussion of the labor camps in which many of the unskilled migrants dwell during their sojourn in the Gulf States.”

Furthermore, when it came to academic research on foreign workers in the UAE, I have benefited from the work of Keane and McGeehan (2008) who have described the systematic violations that migrant workers are subject to, “exploitation of these workers, ranging from non-payment of wages to physical abuse, is not simply commonplace or widespread, it is systematic”, as well as from the Human Rights Watch report (2006) ‘Building Towers, Cheating Workers: Exploitation of Migrant Construction Workers in

the United Arab Emirates”, which provides an extensive account of serious abuses of construction workers by employers in the United Arab Emirates, in the introduction of the report it reads: “behind the glitter and luxury, the experiences of these migrant workers present a much less attractive picture—of wage exploitation, indebtedness to unscrupulous recruiters, and working conditions that are hazardous to the point of being deadly.”

The factual conditions of migrant workers regarding the violation of their rights in Qatar are taken from the detailed reports of Amnesty International (2012), ‘The Dark Side of Migration’ which looks at how a permissive legal framework in Qatar allows unscrupulous employers to exploit and abuse migrant workers coupled with the report of HRW (2012) titled ‘Building a Better World Cup’. Also another report from HRW (2012) regarding abuses suffered by migrant workers in Bahrain, ‘For a Better Life’ has been key to document the exploitation and abuse that workers face in Bahrain despite government reforms.

The above-mentioned are, in my opinion, the main scholarly researches that have served to characterize the experiences of many, if not all, of the low-skilled workers who have migrated to the Gulf states during the last half of the 20th century and the beginning of the 21st century, and the ones that I found being the most influential when conducting the research.

Implications of this Project

It is necessary to familiarize the reader with the scope of this research. Even though there are migrant workers in almost all countries of the world, this is a regional study, taking into account the 6 countries (Oman, Kuwait, Qatar, Saudi Arabia, United Arab Emirates and Bahrain) that form part of the GCC. It could take a broader approach and include Jordan and Lebanon as other countries that receive a large influx of migrant workers but they mainly come from other Arab or North African countries and I prefer to center my research on migrant workers coming from South Asia and South East Asia, which constitute the majority of the workforce in the GCC countries.

By conducting this research I expect to provide food for thought for both, sending and receiving countries, as well as for civil society organizations, and to raise the general

public's awareness in order to be able to improve the situation of migrant workers residing in the GCC countries and prevent future workers to become victims of a systemic violation of their rights.

I believe this research comes in at a crucial time as the labor laws of the six Member States of the GCC are being revised and Qatar is about to begin the construction of the stadiums that will host the 2022 *Fédération Internationale de Football Association* (FIFA) World Cup and thus will need to hire an enormous amount of labor force.

1.3 Limitations of the Research

Even though migrant workers belong, in general, to three main sectors: construction workers, domestic workers,⁶ and services, I will only be dealing with construction workers (that constitute the second major sector of employment after services) and the specificities of their situation, since with the large amount of immigrant workforce employed in the sector, the range of abuse of human rights is greater and therefore bibliography and data related to this particular group is easily accessible but also the possibilities to conduct interviews, or informal, off the record talks,, in a relatively short time with workers, embassies representatives, government officials and NGO's representatives of some of the GCC countries.

My research will be limited due to the lack of data available both in the receiving and sending countries. Moreover, governments are reticent to share publicly data on the subject, as they do not wish to be in the eye of the storm and to be accountable for in the matter.

Moreover, some of the data that I could come across might be wrongly classified as a security problem but in reality is a labor conflict, therefore is highly unreliable data. In addition, the governments of the majority of the GCC members are very cautious in allowing any type of 'independent' research that deals with the matter and tries to collect any kind of data. As a result, the lack and absence of accurate data as well as the

⁶ Domestic workers rights in the GCC are either not protected by the domestic law of the countries (as it is the case in Kuwait, Oman, Qatar, and the UAE) or the existent laws are not being enforced by the government (which happens in Bahrain and Saudi Arabia), thus it becomes difficult to deal with the issue at a local level. Even though an unified draft law on domestic workers was adopted on 2013 by the Under Secretaries of the Gulf Cooperation Council's Ministries of Labor, it does fail to meet international labor standards, yet it constitutes a small step towards the inclusion of migrant workers in the domestic law and the recognition of their rights.

conflicting data according to the sources are a big challenge that the study faces.

1.4 Theoretical Framework

Since the study is about the need to reform the sponsorship system in place in the GCC countries in order to advance migrant workers' rights, the key frameworks to the study are theories on migration and human rights and analysis on the rights of all migrant workers. Therefore, in this section I present the theoretical framework used throughout this thesis. I will describe the theories that have been used in order to form the basis for my empirical study and the analysis of the empirical data.

The most unique thing when dealing with migration is that we are not dealing with a subject that does not belong to one exclusive domain of the social sciences but rather the opposite. Migration has been studied by all the disciplines of the social sciences, from sociology to development studies. As a result, the different paradigmatic orientation and approaches that have been used to study migration have led to widespread debates throughout the years on the nature, causes, and consequences of migration.

One of the leading debates that has guided the study of migration is the economic one. Researches from all over the world tend to focus on the effect that migration has on the receiving countries and often see it as a burden for the economic development of that country. Nevertheless, in the last decade or so, the paradigm has started to change and economists are also studying what is the impact that migration has in the sending countries, especially through the remittances they receive. However, these studies are still rather limited, as they tend to highlight only the positive effects of migration. A more comprehensive approach that also takes into account negative impacts as well as the effects of return migration is still missing.

The fact that the debate regarding migration is dominated by economic issues, means that the human aspect of migration has often been neglected and with it the rights of migrant workers. By providing a broader theoretical framework that includes a rights-based approach towards migration, is that the situation of migrant workers and their families will improve.

Basically, the notion of a rights-based approach to migration consists of a conceptual

framework that is based on international human rights standards and that is put into practice by the protection and promotion of human rights set out in core international human rights instruments. In theory, migrants are entitled to human rights by virtue of their condition as human beings. However, this is not always the case in practice, when migrants sometimes are regarded as second-class citizens but advocates of human rights have contributed to the interpretation of human rights by adding the notion of universality as a fundamental concept in human rights theory. According to which, every human being, irrespective of nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status, is a rights-holder.

In return, the duty-bearers (the institutions) are responsible for the fulfillment of those rights, which means that under international law, by becoming parties to international treaties, states assume obligations and duties to respect, to protect and to fulfil human rights, as reflected in all human rights treaties and related documents.

The obligation to respect means, “States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires states to protect individuals and groups against human rights abuses. The obligation to fulfil means that states must take positive action to facilitate the enjoyment of basic human rights.”⁷

1.5 Methodology

The aim of this study is to investigate what are the human rights’ implications of the sponsorship system in place in the GCC countries. This section will provide a detailed explanation on how the research was conducted. First, the choice of qualitative versus quantitative research will be discussed. Afterwards, data collection and its subsequent analysis will be explained.

Research Methodology

The two research methods, *par excellence*, in social sciences are:

– Quantitative: consists of mostly standardized procedures, trying to measure social phenomena by numbers and testing hypotheses through fixed variables. Following the

⁷ <http://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx>

definition of Aliaga and Gunderson, quantitative research is “explaining phenomena by collecting numerical data that are analysed using mathematically based methods (in particular statistics)”⁸

– Qualitative: “involves any research that uses data that does not indicate ordinal values.”⁹ Moreover, this type of research, following Denzin & Lincoln, “involves an interpretive, naturalistic approach to the world”¹⁰ through which the researchers try to interpret the problem and provide a solution for it. It also allows for the inclusion of many different kinds of data collection and analysis techniques, as well as the diversity of theoretical and epistemological frameworks.

The choice of research methodology will depend mainly on the nature of the research question. However, the use of one method does not necessarily exclude the other one. Taking into account that this thesis is mainly descriptive, qualitative methods seem the more suitable choice to perform the research. Nevertheless, if I see it necessary, I will use quantitative data to provide for more reliable and specific results.

Data Collection

In order to collect data to be able to answer the research questions, a suitable research method needed to be found. After a thorough discussion with the thesis supervisors, I have decided to gather data in two ways, which combined can give an optimal outcome to the research. Therefore, this thesis will be based on both primary and secondary data. Secondary data consists of data that has been originally collected by other sources for a different purpose and it is reused for another research question to give a complete background and to create a general knowledge in the area. To start with, secondary data will be reviewed through the EIUC library using a wide range of information sources such as the OPAC system, academic abstracts, newspaper articles, bibliographic databases from other universities, Internet search engines and journalistic as well as non fictional documentaries on the subject.

Due to the time frame and budget constraints, I had no option but to rely solely on

⁸ Aliaga and Gunderson, 2002 as cited in Muijs, 2004, p.1.

⁹ Nkwi, Nyamongo, and Ryan, 2001, p. 1.

¹⁰ Denzin & Lincoln, 2005, p. 3.

secondary sources. Even though I am well aware of the fact that primary sources would have enhanced my research and knowledge on the topic, I am confident that the scope of this thesis will be satisfied by the secondary literature available and I am positive that this research will be further improved in the future with the addition of primary sources.

1.6 Terminology

Taking into account the usual misunderstanding that arises from the different definitions used, I would like to make a brief reference to the main terminology that will appear in this research.

Migrants

For the purpose of this research, I will use United Nations definition of migrants as people who live outside their countries of birth for more than one year irrespective of the causes, voluntary or involuntary, and the means, regular or irregular, used to migrate.

Migrant Workers

According to the Convention on the Protection of the Rights of Migrant Workers and their Families, a migrant worker 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. By this definition I understand that this workers are located outside their country of citizenship and therefore they do not enjoy the same rights as the citizens of the country of where they are working do.

Temporary Migrant Workers

According to the Gulf governments there is a distinction between temporary contractual laborers and migrants, thus they see skilled, semi-skilled or untrained workers as people who remain in the destination country for definite periods as determined in a work contract with an individual worker or a service contract concluded with an enterprise. The term temporary migrant worker is going to be used interchangeable with contract migrant workers throughout the thesis.

Expatriates

The term expatriate will also be mentioned in this thesis, and by it I intend to refer to the wealthy class of Western, typically but not exclusively, workers, who benefit from a salary without taxation and do not usually suffer the serious working exploitation or discrimination that South Asian workers are victims of. Moreover, expatriates do not see themselves as migrants but as foreigners living and working in the host country for a definite period of time.

1.7 Outline

First, I will introduce the readers to what the *kafala* system actually is, its origins and its current state of affairs. While doing so, I will present my research and interest questions as well as the existing research on the topics. Later, I will expose the limitations of the research and the theoretical framework that will be guiding the research. Afterwards, I will explain the methodology used to research, collect and analyse the data and I will define the terminology used for the purpose of this thesis.

Following, I will start the chapter studying the currents of migration that took place in the Gulf Cooperation Council countries and its evolution to this day. I will continue with a thorough explanation of how the sponsorship system works in each country, where I also describe the several actors involved in the process to finish with a detailed description of the human rights that are being violated with the implementation of the *kafala* system.

In the fourth chapter, I will analyze the human rights instruments available for the protection of migrant workers' rights, both at a national and at an international level. I will also be discussing business and their human rights responsibilities as well as the role of migrants' sending countries to protect their countrymen's human rights.

To culminate the research, chapter 5 will be dealing with the detailed concluding observations in light of the research questions and recommendations and suggestions that could be useful for further analysis on the subject as well as for relevant actors dealing with the matter at a policy-making level.

Chapter 2: Migration in the Gulf

Human migration has been a recurrent fact in the world since the beginning of the human species. Early migration from Africa towards Asia and Europe was caused by several different factors, but mainly it was due to a change in the climate and landscape as well as due to the lack of resources, therefore, migration at the time was a necessity for survival of the *Homo sapiens*.

In the modern era, we have been witnesses to several waves of migration ranging from refugee migration during the First and Second World Wars period to labour migration, both types of migration that continue today. However, in the last two decades we have been witnessing migrations of great magnitude helped by globalization and more recently the lack of employment opportunities in sending countries due to the 2008 economic crisis. According to the ILO, there are an estimated 232 million migrant workers around the world.¹¹ Of those 232 million migrant workers, around 20 million are to be found in the GCC, thus constituting the largest recipients of temporary migrants in the world who form almost 43 percent of their population.¹²

| Year | Absolute Numbers | | | Percentage | | Annual Rate of Growth | |
|------|------------------|------------|------------|------------|---------|-----------------------|---------|
| | Total | National | Foreign | National | Foreign | National | Foreign |
| 1975 | 9,731,259 | 8,790,223 | 941,036 | 90.3% | 9.7% | 3.2% | 14.5% |
| 1990 | 22,522,620 | 14,281,239 | 8,241,381 | 63.4% | 36.6% | 3.3% | 5.0% |
| 2010 | 41,093,624 | 23,536,409 | 17,557,215 | 57.3% | 42.7% | | |

Source: National Offices of Statistics (Fargues, 2011)

¹¹ <http://www.ilo.org/global/topics/labour-migration/lang--en/index.htm>

¹² <http://gm.grc.net/index.php?pgid=Njk=&wid=Mjc>

2.1 The wave of Arab migration

The Gulf Cooperation Council, established in Abu Dhabi in 1981, is a political and economic union of 6 Arab States: Bahrain, Kuwait, Oman, Qatar, United Arab Emirates and Saudi Arabia, that share their source of wealth in terms of oil and gas reserves but also their lack of workforce due to the small numbers of their local population, therefore the need to employ foreign workforce.

The discovery of vast resources of oil in 1932 in Bahrain by the Standard Oil Company of California and in 1938 in Saudi Arabia, followed by the discovery of oil and gas in the four remaining countries, created unique economic opportunities for its citizens as well as the ‘opening’ of the labor market and a ‘world of opportunities’ for migrant workers. The first big wave of migration that arrived in the Gulf during 1940’s-1970’s, before the oil boom, was composed for the most part of Arab workers from Egypt, Syria, Yemen and Palestine,¹³ who were regarded as ‘brothers’ by the local populations as they shared the same language, Arabic, albeit with different dialects; very similar cultures and the same religion, Islam.

However, this harmonious coexistence was going to end very soon as a result of a combination of factors. First, these Arab immigrants brought with them radical socio-political concepts, such as the Pan-Arabism call for the abolition of the monarchies. Several of these workers were very politically active in their home countries and they continue to be so in the Gulf, in underground political parties. This ‘political workers’ were not afraid of fighting for their rights and they lead workers protests throughout the region in form of strikes, sit-ins and demonstrations, which resulted in numerous Arab workers being “prosecuted, jailed and deported because of their participation in the activities of these organizations.”¹⁴

In addition, during the 1973 Yom Kippur War between Israel and the Arab nations, the Organization of Arab Petroleum Exporting Countries (OAPEC) declared an oil embargo against Canada, Japan, the Netherlands, the United Kingdom and the United States in response to their siding with Israel. As a result, the prices of oil almost quadrupled

¹³ This last group especially after the 1948 occupation of Palestine and the creation of the State of Israel that forced millions out of Palestine and that were, at least in the beginning, warmly welcomed by the other Arab nations.

¹⁴ Kapiszewski, 2001, pp. 133-144.

within a year causing the first 'energy crisis' in the world. However, at a regional level this 'oil boom' gave rise to a rapid and massive development programme that increased the demand for labor import.

These factors combined started the demographic push towards the employment of migrant workers from the neighbouring Southeast Asian states detrimental of the Arab workers. The decline was so obvious that "by 1985, the percentage of migrants in the GCC countries accounted for by Arabs had fallen to 56 per cent of all workers in the Gulf in 1970, by 1985 Asians comprised some 63 per cent of the Gulf workforce".¹⁵

During the 1990's, with Saddam Hussein's invasion of Kuwait, "the preference for Southeast Asian workers over Arab workers became especially apparent (...), due to a perception that certain Arab migrants had sided with Iraq in the Gulf War, and therefore posed a security threat"¹⁶ to the stability of the GCC nations and their monarchies; that united to the PLO's refusal to condemn the invasion, resulted in the deportation of hundreds of thousands Palestinian workers from Kuwait and constituted, as the old Arabic proverb states, the straw that broke the camel's back.

2.2 The Wave of Asian Migrants

As it was previously mentioned, until 1940's most of the migrant workers in the GCC were from India. This changed when India gained its independence from the United Kingdom and many of the Indian workers that were in the Gulf returned to their country with high expectations and new employment possibilities. With the oil boom of 1970's, the cheap and numerous workforce coming not only from India, but also from the rest of Asia, started to arrive *en masse* to the Gulf.

With an increasing number of workers arriving, the Gulf states felt the need to manage and regulate the immigration, by adopting guest worker schemes that were, at the time, becoming obsolete in some parts of the world such as Europe, and to transfer (...) authority and regulation of residency decisions from the Ministries of Labor to the Ministries of Interior, "this move signaled the beginning of a trend towards the domestic

¹⁵ Chalcraft, 2012, p. 75.

¹⁶ Lori, 2012 p. 13.

centralization of authority over residency and naturalization decisions.”¹⁷

In the beginning India, followed by Pakistan and Bangladesh, were the major labour sending countries of low-skilled construction workers that were required to build the cities and the further developments of the Gulf countries. Later, countries such as Nepal, Pakistan, Sri Lanka and the Philippines started to become labor-sending countries to the GCC region, to a point that they now dominate the migrant community. Nowadays, about 10 million migrants from Southeast Asia are living in the GCC countries. This has an effect not only in the receiving country, which can rely on 'temporary workers', but also on the sending country that benefits heavily from the remittances¹⁸ that migrant workers send home. This, in addition to control unemployment, has been one of the reasons why some of the Asian countries governments have helped and also promoted emigration, as remittances make a significant contribution to the national GDP. According to a World Bank report published in 2013, titled “Migration and Remittance Flows: Recent Trends and Outlook 2013-2016,” the GCC accounted for 48 per cent of total remittance to South Asia region.¹⁹

At the same time the receiving countries governments were benefiting from the employment of low-skilled, low-paid workers, they also wanted to make sure that their stay in the Gulf was regulated in order to avoid the kind of issues that they had had to deal with Arab migrant workers in the past.

2.3 The GCC Policies to Regulate Migrant Workers

With the arrival of a large influx of migrants coming to their shores, the GCC countries saw the need to implement a regulatory system that would prevent them from any threats to their national security and to the existing monarchies, as well as helped them “manage the flow of workers by restricting them to temporary resident status and thereby protecting the native labour force as a result”²⁰. The *kafala* system of sponsorship came into existence, however, “the Gulf Cooperation Council that unites

¹⁷ Idem.

¹⁸ Remittances are private income flows related to personal transactions from migrants to their families. As they go directly into the households, the State only benefits indirectly from them. However, they have become a significant way of financing and tackling poverty for developing countries.

¹⁹ World Bank, “Migration and remittance flows: recent trends and outlook, 2013-2016”, p. 6

²⁰ Rakkee, T. and Sasikumaron, S.K., 2012, p. 16.

these six states has not institutionalized a common immigration and asylum policy in the way the Schengen agreement (and its subsequent modifications) has for the European community.”²¹

Even though “national citizens and companies in the Gulf apply for labor permits through the Ministry of Labor”²² the *kafala* system is regulated, in some of the countries, through the Ministry of Interior of each of the Gulf countries, which means that the same institution is in charge of domestic security forces and residency decisions.

Each migrant worker that arrives to the GCC has to be sponsored, either by a company or by an individual (a national), in order to reside and work in the Gulf.

There are workers that have been in the GCC for more than 20 years now, and have by now, their kids or brothers working side by side with them, however, they do not possess the same rights as citizens do. They are seen, by the governments as well as some international organizations, as 'temporary' workers that are not seeking permanent settlement and that are only there to make as much money as possible in the shortest time possible, to later return to their home countries. As a matter of fact, this statement has proven to be quite wrong in the past decades, and several of these 'permanent' workers have become immigrants and have been joined by their families or have raised kids in the Gulf.

It is important to highlight that this method of sponsorship is not only valid for low skilled workers coming from Southeast Asia but also for all kind of workers such as skilled workers, or expats, who come mostly from the West. Nevertheless, there are different procedures and restrictions based on the salary and the ethnicity of each worker; while for a construction worker is almost impossible to have his family with him, for a Western expat is a very normal thing, as visas are granted without restrictions to him and his spouse and children.

In the GCC, migration adopts peculiarities that are not witnessed anywhere else in the world. Migrants clearly outnumber nationals in almost all of the countries. As a result, a counter trend has emerged calling for a restriction on the hiring of migrant workers and

²¹ Lori, 2012, p. 11.

²² Ibidem, p. 14.

an 'emiratisation', in the case of the United Arab Emirates, or nationalisation program calling for private companies to hire national workforce and, in some countries, a national quota has been enforced. “The key goal of such programs is to provide more jobs for nationals and decrease the heavy reliance on expatriate labor force in addition to preserving national identities.”²³

In the following paragraphs, I would like to provide a brief overview of the current migratory situation in each of the GCC Member States.

In Qatar, a country rich in natural gas resources and with one of the highest GDP's per capita, 94 per cent of the total labor force (out of the almost 2 million inhabitants) is made of non-Qataris, making it the country that has the highest ratio of migrants to citizens worldwide. Its rapid expansion as well as the exploitation of its natural resources — mainly natural gas and oil — have been the pull factors of migrant workers, another fact that has started to attract a large amount of workers is the construction of the stadiums for the 2020 FIFA World Cup that will take place in Qatar. The country will need more than 1.5 million workers to build its infrastructure to host the World Cup. This event is of key importance considering that “according to 2010 census data, 47 percent of all male migrant workers in Qatar work in construction, making it the largest employment sector in the country.”²⁴

Since the last couple of years, the construction industry in Qatar is witnessing one of the highest growth rates in the region and this rate is only going to grow in the next couple of years, until the stadiums and the infrastructure needed for the soccer World Cup are finished.

Nowadays, Qatar has, together with Saudi Arabia, a leading role in the region, not only politically, but also economically. Their views in terms of foreign and domestic policy sometimes converge but they also diverge and the openness to talk about migrants' workers rights is also part of their agendas. Qatar is deemed by its counterparts in the GCC, as well as by other states, as one of the most liberal monarchies of the Gulf, a perception helped by its media channel, Al Jazeera, as well as by its openness to receive criticism from outside.

²³ Zohry, 2013, p.51.

²⁴ Qatar Statistics Authority, Census 2010, p. 19.

Part of the criticism that the State of Qatar is currently facing is related to the situation of migrant workers in its territory. Several C's, such as AI and HRW, have revealed the harsh conditions that low skilled workers are victims of in Qatar. These violations go from their inability to change sponsorship to another employer to underpayment, delays, sometimes of several months, in receiving their salaries or nonpayment of wages. Moreover, some experts have regarded the living conditions in the 'labour camps', as the accommodation provided by the company is called, as inhumane.

Stories like these seem to repeat themselves in the Gulf. The United Arab Emirates, an union of seven emirates with Abu Dhabi as their capital, are almost entirely dependent on migrants, 60 per cent of the population comes from Southeast Asia, 20 per cent is made up of Iranians, Arabs and Westerners and the remaining 20 is comprised of 'Emiratis', or locals, who are deemed to be one of the richest populations in the world.

Due to the rapid development of the country, the number of migrants more than doubled its size in the past decade. The UAE is a particular example, since it has, after Saudi Arabia, the largest host of migrant workers. The average time of permanence in the country is 1-4 years, but almost 30 per cent of the migrant workers have lived in the UAE for 10 years or more. If we take the above mentioned data into account, the statement made by the Permanent Representative of the United Arab Emirates to the United Nations in 2006, stating that "there is a clear legal distinction between temporary workers and migrants and that workers working in the UAE could not be considered migrants as they worked on a temporary basis and with a fixed contract,"²⁵ becomes obsolete.

Nowadays, migrant workers account for 85 percent of the population in the U.A.E,²⁶ coming second after Qatar. This workforce is found in several sectors of the economy, ranging from hydrocarbons in Abu Dhabi to services in Dubai, however, almost half of this workforce is made of workers with little or no education at all, which makes them more vulnerable to suffer human rights abuses, as they do not speak the country's official language, Arabic, and in some cases they do not how to read in English, the working language of the emirates.

²⁵ Letter dated 28 September 2006 from Mr. Abdulaziz Nasser R. El-Shamsi, UAE Permanent Representative to the United Nations to Human Rights Watch.

²⁶ Baldwin-Edwards, 2011, p. 9.

A similar situation takes place in Bahrain, a small island of only 25 kilometres that makes it the smallest Member State of the GCC. The Muslim country with a Shi'a majority that has been ruled by the Sunni al-Khalifa family since the 18th century became the first country in the region in which oil was discovered, in 1932, and soon its commercial exploitation began. Like the other members, it became heavily dependant on migrant workforce. According to the government, there are around 500,000 migrant workers in Bahrain, accounting for about 77 percent of the total workforce, with 33 percent of these workers found in the construction industry.²⁷

Another country where non-citizens outnumbered citizens is Kuwait, a British protectorate until 1961, where the discovery of oil in the late 1930's also had a big impact in its demographic composition. Even though at the beginning the demand for workers coming from abroad was significant, with the decline in oil prices there has been a subsequent decline in the immigrant proportion in the country. However, the proportion of immigrants in the workforce is still high, at 83 percent, ranking as the third highest in the GCC. One particularity of immigration in Kuwait is that "it has the largest share of women in its migrant population, at 33 per cent."²⁸

A similar situation is found in Oman, a former sending country that has become a major importer of labor like the rest of its neighbours when oil was discovered there in 1967. However, the number of migrant workers residing in its territory cannot be compared in any way to those of the UAE or Qatar, one of the main reasons being that Oman does not enjoy the same wealth as their neighbours. With a 30.6 per cent of the total population coming from abroad, Oman ranks in the last place among the other GCC countries as a migrant's receiving country, with the majority of the workers coming from India, Bangladesh, Pakistan, Sri Lanka and the Philippines.²⁹

The total workforce is still made out of 75 percent of migrants, what may bring some disadvantages for local's first time job seekers that do not possess any practical experience, and unemployment rates are close to 15 per cent in the Sultanate. As a result, the government has implemented an 'Omanisation' program for high skilled

²⁷Labour Market Regulatory Authority (LMRA), Kingdom of Bahrain, Bahrain Labour Market Indicators, <http://www.lmra.bh/blmi>

²⁸ Baldwin-Edwards, 2011, p. 55.

²⁹ UN Population Division, 2013.

labour, but the country is still and will still be dependant on migrant workforce for their lower skilled jobs.

Last but not least, the biggest country of the council, Saudi Arabia. Also like its neighbouring countries, Saudi Arabia is rich in oil reserves (oil was discovered there in 1938) but unlike its counterparts it has been able to maintain a fairly low proportion of migrant workers, around 27 per cent, coming mainly from Southeast Asia but also from Egypt and Yemen. It is important to point out that Saudi Arabia is a tricky country when it comes to data accuracy. Several researchers have shown that there had been times when data was manipulated due to political reasons.³⁰ Due to a hike in the unemployment rate together with a nationalization or 'Saudisation' plan implemented by the government, migration has had a small decline in recent years and the plan is to create more jobs for nationals, who little by little start to appear in the labor market of the country. In 2013, King Abdullah, the ruler of the country, ordered a 3-month amnesty for illegal workers. The objective of the measure was to reduce the steep number of foreigners to provide more jobs for Saudis and, as a result, reduce the high unemployment rate, the most pressing social issue of the Kingdom, “where the jobless rate currently stands at more than 12 percent.”³¹

However, it will still be difficult for the government to attract nationals to low skilled/low waged jobs in the private sector when employment opportunities in the public sector are much more attractive as they offer high-paid salaries and several other benefits, including short working hours.

Migration has always been and continues to be a main topic of analysis in the study of the GCC, since it is home to one of the highest concentrations of migrant workers in the world. As we can see from the trends in the six Member States of the GCC, there are some similar issues related to migration that the governments of all six countries have in their agendas, the success of their plans will lie on how they deal with the migrant's sending countries, who rely heavily on remittances coming from the Gulf.

³⁰ Winckler, 2009, pp. 23–31.

³¹ <http://www.arabianbusiness.com/saudi-king-orders-3-month-amnesty-for-illegal-workers-496801.html>

Chapter 3: The Implications and Challenges of the Kafala System

In order to be able to analyze the implications of the *kafala* system, we first need to be able to understand what the *kafala* system of sponsorship is, who are the actors involved and how does it work in practice in each one of the GCC Member States. In this chapter, I would like to provide the reader with detailed insight of the migrant workers' plight from the moment it starts until its very end.

3.1 The Migrant Workers Journey Begins

The struggle of several migrant workers that find themselves living in inhumane conditions and subject to debt bondage³² in the GCC starts in their country of origin, be it Bangladesh, India, Nepal, Sri Lanka or other. Due to the dire economic situation they and their families face or due to “socio-political forces that spill outside a strictly economic calculus”³³, they are forced to seek employment elsewhere in order to make a living and sustain and/or protect themselves and their families. This is by no means an extensive list of all the reasons why people migrate, as there are several other push factors that encourage workers to migrate, but these are the main reasons that workers in the Gulf expressed when being interviewed by the different NGO's.

Since the labour markets of the Gulf countries are restricted and do not allow the workers the possibility to search for work once they are in the country, the workers have no option but to look for a job from their home countries, where the recruitment takes place.³⁴

³² According Article 1(a) to the Additional Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, debt bondage is the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

³³ In his “Why do they keep coming?” report, Andrew Gardner explains that during his research in the field he discovered that even though the economics of migration tend to play an important role in the decision of a worker, or his family, to migrate to the Gulf; in some cases there are also other influential factors, such as the risk of structural violence that could affect them directly or indirectly and thus forces them to emigrate, as it has happened with several Sri Lankan workers from the northern region, the main stage of conflict during the 1983-2009 Civil War between the Tamil Tigers and the state forces.

³⁴ Sometimes workers can obtain a so called a “free visa”, arranged to them through the recruiters which allows them to arrive to the Gulf with a residency visa and secure their own employment. Through this

Recruiters are a key actor, and one that should be closely studied, in this intertwined process. Recruitment agencies and sub-recruiters in the sending countries often charge migrants for seeking employment in the Gulf.³⁵ At this point is where the difficulties for migrant workers begin. The fee that this recruitment agencies charge are usually very steep for the migrants income, forcing migrants and their families to use all their savings (if they have any), asks for loans or to sell whatever small possessions they may have (be it cattle, land, gold, etc.) in exchange for the possibility to obtain employment abroad. At this early stage, migrants have already brought upon themselves a significant debt and they have no other option but to endure harsh conditions until they are able to pay off their debts, which in some cases, as it will be exposed later, can take up to 2 years of work.

Another significant point to be mentioned is that recruiting agents often provide inadequate information, sometimes because they do not even know it themselves, or deceive workers about the jobs they will perform or the salary they will earn.³⁶ Workers may be signing a contract that it is written in Arabic or English, which they are unable to understand it. In some cases they would not be able to understand it even if it was written in their mother tongue, since several of them are illiterate.

It is under these conditions and with high expectations to repay their debts, support their families and build a brighter future for their kids that the workers arrive in Gulf.

3.2 The arrival at the receiving countries

Once the workers arrived in any of the six countries that they have obtained a job or a visa for, the first thing they do is go through very long queues at the airport, where their

scheme, the worker is still bound to his sponsor, who expects monthly payments from the worker. Even if it may seem advantageous at first glance, this arrangement is very risky for the worker because if he is found by the authorities to be working for someone other than his sponsor, he will automatically be deported to his home country.

³⁵ This (unlicensed) recruitment agencies located in the sending countries are usually the ones handling the visa applications of would-be migrant workers. In addition to the placement fee they charge to a worker they also charge the sponsor in the receiving country a 'recruitment fee' and they make the workers responsibilities to pay for their own visa and any travel costs they may have. Even though governments in the Gulf have made legal provision prohibiting companies from working with recruitment agencies that charge fees to workers, this law is not enforced.

³⁶ Several cases have been documented of workers that were promised a specific salary in their home countries but instead were constrained to sign another contract for a lower stipend.

documentation is checked and they have to undergo a retina exam for purposes of identification. Later they are met outside the airport by a representative of their company and are transported to their accommodation in the labour camps that are either owned or rented by the company. At this stage is where they receive the first shock and they realized that the accommodation that appeared to be so appropriate when talking to the recruiter, in reality it is not.

Labour camps, or labour accommodations, “are typically relegated to industrial zones or other marginal locations backstage to the city”³⁷ that have none, or few, public transportation connections that forbids the worker to freely move around the city in the little spare time he has. In order to arrive and depart their working site, they are transported by the company-arranged transportation.

Moreover, the living conditions are of poor-quality, cramped with several people living in a small space (in some of the camps 10-15 people can be found sharing the same room),³⁸ that sometimes lacks running water and/or electricity and with unhygienic toilets and showers. The kitchens that the workers have at their disposal are equipped, in some cases, with kerosene burners, which are a hazard and have been banned in several of the GCC countries. These poor accommodation standards clearly denote a lack of enforcement of the government's prescribed living standards, both at a national and at an international level.

After they are settled in the accommodation, they meet with their sponsor or its representative, who in return for issuing the working visa, withholds the workers' passport, as a way to ensure that the worker will not try to escape the employer, leaving the worker completely dependant on his *kafeel*.

The worker is also required to sign a working contract³⁹ (usually in Arabic, a language

³⁷ Gardner, 2010, p. 57.

³⁸ In his article “Labor Camps in the Gulf States”, Gardner found out while conducting research in the field that in some cases workers were free to choose who to share the room with, which they usually did based on nationality or language. Moreover, he also noticed that the caste system, so heavily installed in the Indian society, also plays an important role inside the camp structure as well as inside the rooms themselves. However, religion tensions between Muslims and Hindus that might sometimes be predominant in their home countries, acquire almost a non-existent status within the camps structure.

³⁹ This working contract is also tied to residency permit and by keeping the workers' passport the sponsor has control over mobility of the worker as the worker is not allowed to leave the country without obtaining prior approval from his sponsor, even for his vacation period. Thus, the migrant worker is put in a position that makes him totally dependent on the sponsor, for his subsistence as well as for his

the worker is not familiar with) for a period of two years time that can be renewed or extended. However, during those two years the workers is not allowed to change jobs during those two years, even in cases of *force majeure*. Once the contract has expired and either of the parties do not wish to renew it, the sponsor is “financially responsible for repatriating the worker”⁴⁰ back to his country of origin by providing the worker with the flight ticket home.

Once all the formalities have been dealt with, the labourer starts working but, in some cases, it is there that the workers realize that the position they had been hired for was different than what they are actually supposed to do.⁴¹ This not only implies a demoralizing factor for the worker but it also means that he will be paid less than he was promised and, as a result, he will be able to send less money back to his family.

Nevertheless, this is only one of the issues that a migrant worker will have to deal with upon arrival at the host country. In the following section, I will be describing the most common violations of human rights to which workers are subjected to during their stay in the GCC countries.

3.3 Recurrent Human Rights Violations of the Rights of Migrant Workers in the GCC

Even though Human rights violations of the rights of migrant workers have been documented in all the GCC states since the implementation of the *kafala* system, it would be an exaggerated generalization to analyze all the countries together since each of them has different domestic laws and has (or has not) ratified core human rights treaties or conventions. Therefore, in this part of the research I would offer a detailed country-by-country analysis of human rights violations that migrant workers are victims of in each of the six GCC Member States.

Bahrain

The small Kingdom of Bahrain is very particular as an example inside the council as the

residency.

⁴⁰ Lori, 2012, p.16.

⁴¹ Whereas this factor tends to be more common and riskier for young girls and women, who are usually hired as domestic workers but are then forced into prostitution. In the case of construction workers, the difference has more to do with the type of job they will be performing.

laws and regulations apply both to nationals as well as to migrant workers. Moreover workers are allowed to join trade unions, something that it is unthinkable of in the other countries. What is more, “Bahrain also requires contracts in the worker’s language spelling out job duties, hours and working conditions. Changing jobs without leaving Bahrain has become easier, and employers are required to pay migrant workers via bank deposits in order to leave a record so that wage disputes can be resolved quickly.”⁴²

Since the announcement of the government to abolish the sponsorship system by August 2009,⁴³ it created a precedent for the other countries to modify their laws in a region daily criticized for its treatment toward migrant workers.⁴⁴ The change meant that the *ad hoc* established Labour Market Regulatory Authority (LMRA)⁴⁵ was now going to be responsible for sponsoring migrant workers directly, removing the employers from the equation. As a result, the worker would not dependent on his employer for entering/exiting the country, would have some degree of employment mobility⁴⁶ as well as increasing the pressure on employers to treat workers fairly.

Despite being a welcome development by the international community and human rights activists, in reality, not much has changed and the changes have been more symbolic than anything. The sponsor has shifted from the employer to the LMRA, workers still need a company or an individual to be able to stay in the country and the laws are not being fully enforced and according to HRW’s last report on Bahrain “employers who violate migrant worker rights typically do not face the penalties provided in Bahraini law and rarely, if ever, face criminal consequences outlined in the penal code and laws against human trafficking”⁴⁷ These are the reasons why human rights violations are still taking place in the country.

⁴²<http://www.migrant-rights.org/research/the-unrecognised-life-of-migrant-workers-in-bahrains-construction-industry/>

⁴³ http://news.bbc.co.uk/2/hi/middle_east/8035972.stm

⁴⁴ Decree 79, 2009.

⁴⁵ <http://lmra.bh/portal/en/page/show/5#.U6BaDS85t0s>

⁴⁶ Even though the original reform stipulated that the worker could change his employer if faced with abuses or exploitations, a new law stating that the worker needs to wait for a period of one year before being able to change employer was passed after the old one was faced with several criticism from the recruitment agencies.

⁴⁷ <http://www.hrw.org/news/2012/09/30/bahrain-abuse-migrant-workers-despite-reforms>

Unpaid Wages

One of the most cited abuse workers face while working in Bahrain is the nonpayment of wages by their employer. Apart from the obvious issues that this create for the worker, who needs the money for survival, to send it back to his home country for his family to have an income and to repay his recruiter; it is a violation of article 302 (bis) of the Bahraini penal code which states that whoever withholds some or all of the wages of the worker is punishable with imprisonment or a fine⁴⁸ as well as a violation of the Bahraini labor law.

In some cases, workers had their salaries withheld for a period between three to ten months, which forces them to borrow money in order to cover their basic needs. Some workers even borrow money from other workers with the purpose of sending it back home to their families. In one of the last cases that came to light, a group of 350 workers employed by Bramco Group, a Bahraini conglomerate with interests ranging from mining to marble supply, revealed they had not received their salaries for a period of almost ten months and went on a two-day strike. Some of them were lodging a complaint in Bahrain's Labour Court with the help of the Indian Embassy while others had resigned and were eagerly waiting for their opportunity to return home.⁴⁹

As we can see, even with the reforms that were implemented in recent years, the non-payment of salaries still remain the number one complaint that migrant workers voiced, especially since the 2008 economic crisis. According to the Ministry of Labour statistics that were provided to HRW, “in 2009, the number of complaints of unpaid or late wages that the department of inspections received rose significantly to 140 out of a total of 371 complaints.”⁵⁰ As a result, several companies came under the direct scrutiny of the Labour Ministry and, with the help of the workers’ embassies, some were taken to justice. However, it is difficult to assess if the disputes had been favorably resolved for the workers due to the long and tedious times of the courts.

⁴⁸ Article 302 (bis) was added to the Bahrain Penal Code of 1976 by Legislative Decree No. 6 in 1993.

⁴⁹ <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=360168>

⁵⁰ HRW, 2012 (a), p. 35.

Low Wages

Another difficulty that migrant workers have to cope with are the low wages they receive. Despite that fact that Bahrain has a minimum wage for the public and private sector,⁵¹ which is set at 300 Bahraini dinars (US\$800), it only applies to Bahraini nationals.

As a result, some of the labour-sending countries have set minimum wages contracts for their nationals, such as is the case of the Nepalese government, which with the aid of the Ministry of Labour and Employment has set the minimum wage at a 100 Bahraini Dinars (US\$265) for workers going to Bahrain.⁵² Despite these provisions, these rates are hardly met by the employers, who with the help of the recruiters try to devise ways to trick the migrant-sending countries.

Human rights activists in the country as well as labour sending countries have been campaigning for several years now to obtain a minimum wage for foreigners included in the Bahraini labour law as a safeguard to the small wages some workers receive. However, according to the Ministry of Labour officials, this ‘concession’ could “undermine the country's economy by affecting foreign investment and its competitiveness in the region.”⁵³

Long Working Hours & Unsafe Working Conditions

Workers in Bahrain not only have to deal with non-payment of their wages or receiving very little money but they are also expected to work very long hours. The situation worsens for construction workers during the summer months when the temperatures rise up to 45 degrees. Most construction workers are supposed to work eight-hour days and to have Fridays off as stipulated in the domestic law for the private sector.⁵⁴ However, some of them are forced to work up to 12 hours a day, with no overtime pay.

⁵¹ A new bill introducing the minimum wage for the private sector was approved at the beginning of January 2014: <http://www.albawaba.com/business/bahrain-minimum-wage-545787>.

⁵² <http://site.thehimalayantimes.com/fullTodays.php?headline=Govt+sets+minimum+wage+for++migrants+going+to+Bahrain%26sbquo%3B+Oman+&NewsID=373289>

⁵³ <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=369372>

⁵⁴ Article 53 (a) of the Labour Law for the Private Sector states that: Subject to the provision of Article (51) (a) of this Law, a worker shall not work actually for more than eight hours in every day unless otherwise agreed upon, provided that the a worker’s actual hours of work shall not be more than 10 hours daily.

Since working in the sun can cause serious health issues and even death, in 2007 the Bahraini government decided on a working ban, from 12 noon to 4pm during the hot summer months of July, August and September for construction workers. Even though workers and workers' rights activists equally welcomed the ban, its implementation was not equally welcomed by employers, in some cases the ban was not fully respected.

It is for this reason that the government decided to fine companies not complying with the rules by implementing fines of up to BD300 for each worker involved. To make sure the ban is being enforced Ministry of Labor inspectors visit the worksites on a regular basis during the summer. In 2008 only, about 500 companies were taken to court after being caught violating the rules.⁵⁵ As the years go by, more companies start to comply with the rules. However, the high temperatures start as early as April and workers still have to be out in the sun and face serious risks for their health.

Inadequate Housing

Apart from dealing with dangerous working conditions, migrant workers also suffer from unsafe housing conditions. Accommodation for construction workers in Bahrain, like in the rest of the GCC countries, is provided by their employers in labour camps, which consist of dormitory-style buildings with shared bathrooms and kitchens. As reported by ministry figures, there are more than 3,000 registered labour camps in Bahrain that house around 140,000 workers.

According to HRW last country report, "these sites are usually cramped, dilapidated buildings with insufficient sanitation, running water, and other basic amenities,"⁵⁶ such as air conditioning, for a country that has recorded summer temperatures of 45 degrees.

Even though Bahrain sends inspectors to determine compliance with basic housing standards, and in several occasions found the company to be violating safety regulations, the follow-up of these inspections does not seem to be very thorough resulting, in some cases, in the death of several workers in fires taking place inside the labour camps.

Every year fatal fires are being reported. In 2006, 16 Indians were killed and another 7

⁵⁵ <http://www.gulf-daily-news.com/NewsDetails.aspx?storyid=254434>

⁵⁶ HRW, 2012 (a), p. 48.

injured in a fire at a labour camp in Manama, the capital. In 2007, in East Riffa 3 Bangladeshi workers housed in a run-down building (the roof was made up of corrugated sheets and plywood) had to be hospitalized and 100 other workers had to be evacuated from the site. The following year, the three workers were report dead. In 2009, two men were killed by a fire that started while they were sleeping. It was the sixth fire to break out in less than a month at labour camps in Bahrain.⁵⁷ In 2012, 10 Bangladeshi nationals were killed in a fire that struck an illegal makeshift labour camp capable only of holding half that number of workers.⁵⁸

Despite desperate calls to investigate the fires and make sure workers are housed in decent conditions; still in 2013 these incidents were taking place. In January that year, a fire collapsed the roof of the three-story building used to house workers causing the dead of 13 workers.⁵⁹

Putting workers in places that are not adequate for a person to live in clearly violates the rights of migrant workers to benefit from an adequate housing. It is the responsibility of the government and of the companies to make sure that housing facilities for all workers are in compliance with domestic and international standards.

Passport Confiscation

The second most cited abuse by migrant workers, after nonpayment of wages, is their passports confiscation. Employers (or sponsors) confiscate workers' passports when these arrive in the host country, as a way of 'making sure' the worker will remain in the country for the duration of his contract.

This practice is considered illegal both by domestic law: the Bahraini Labour Code of 1976 prohibits the withholding of passports and international customary law: according to Article 13 of the Universal Declaration of Human Rights (UDHR), everyone has the right to freedom of movement and residence within the borders of each State. Everyone has the right to leave any country, including his own, and return to his country.

However, in Bahrain the practice of passport confiscation still takes place in a regular basis and the local authorities have proven to be ineffective when it comes to enforce

⁵⁷ www.arabianbusiness.com/labourers-die-in-blaze-at-illegal-bahrain-camp-17166.html

⁵⁸ <http://www.migrant-rights.org/research/poor-working-conditions-cause-deaths-in-bahrain/>

⁵⁹ <http://www.aljazeera.com/news/middleeast/2013/01/201311261452849290.html>

the prohibition of the practice. The absence of an authority that will force the employers to comply with the rules as well as the lack of punishment for abusive employers can be cited as the reasons why this unjust practice is widely spread to date.

Workers are dependant on their employers to recover their passport and obtaining a cancellation of their visas to return home. In some cases, the workers are unaware of the fact that it is illegal for a company to hold their employees' passports.

Those workers who are aware and would like their rights to be enforced, can appeal to courts to get their passports back, but not only it can be difficult to urge companies to compel with court orders to return confiscated passports but also is a costly and lengthy process that most workers cannot afford to withstand.

Freedom of association and collective bargaining rights

In Bahrain, the principle of freedom of association is recognized, but the principle of the effective recognition of the right to collective bargaining is not. Moreover, Bahrain is one of the few Gulf States that allow migrant workers to join trade unions, even though there was only one union to join the Bahrain Trade Unions (GFBTU), who acted as the country's sole trade union federation until 2011, when the Law 33/2002 was amended "to allow the establishment of more than one trade union in a company and more than one trade union federation in Bahrain"⁶⁰ and the Bahrain Free Labour Unions Federation (BFLUF) was established.

Together with the help of the GFBTU, migrant workers have been able to organize strikes in which workers have voiced their discontent regarding mainly non-payment of salaries, low wages and their living conditions.

Kuwait

Following the footsteps of its neighbour, Kuwait has also started to look at ways of reforming its immigration system. In September 2010, the government announced that it was planning to 'scrap' the *kafala* system in the country, as a "gift" to foreign workers to mark the anniversary of the country's liberation from the 1991 Iraqi occupation, and replace it with the establishment of a public authority for the recruitment of foreign

⁶⁰ <http://www.hrw.org/node/116416/section/8>

workers to be set up in February of the following year.⁶¹ Thus becoming the second country in the GCC group to abolish the system, after Bahrain.

Even though the real reason behind this change is still being contested⁶², this was actually the result of several improvements that have been taking place in Kuwait in the last couple of years, after the country faced several criticisms for its treatment of migrant workers by neglecting them for almost 45 years.

The first of this step towards the reform took place in 2009, when a labour ministry decree that allows workers to find a new job without the prior approval of their sponsors after three continuous years of service, was implemented.⁶³

The second step took place in 2010 when the Kuwait's parliament passed a new labour law⁶⁴ that grants better rights and conditions for migrant workers, such as end of service bonuses and vacations. Moreover, it establishes tougher penalties for employers or companies who trade visas or who do not provide a worker with a job once he has been hired.

Despite what may have seemed a milestone in Kuwait's treatment of migrant workers, in reality Kuwait kept the sponsorship system in place, but made it easier for migrants to change sponsors. Moreover, "the absence of effective control mechanisms ensuring the respect for employment regulations by employers"⁶⁵, the workers still have to face daily violations of their rights in the country.

Unpaid Wages

As it is the case in Bahrain, in Kuwait migrant workers are also victims of employers

⁶¹http://www.khaleejtimes.com/DisplayArticle09.asp?xfile=data/middleeast/2010/September/middleeast_September524.xml§ion=middleeast

⁶² Some experts believe that since the visa trading was one of the main reasons that promoted the influx of migrant workers to Kuwait and the government was trying to fight the unemployment of its nationals, this would serve as a deterrent for employers who profit from this practice, thus limiting the immigrant workforce in the country. To add more, in 2013 the government announced plans to reduce the number of migrant workers by 100 thousand per year over the next 10 years to try to bring down the number to one million.

⁶³ Migrant workers who have worked for their sponsor less than three years still require their sponsor's consent to transfer to another job.

⁶⁴ The original Kuwaiti labour law that was issued by the late Sheikh Jaber Al-ahmed Al-Jaber on the 1st of August 1964 (before the large scale influx of migrant workers) and was then enforced by the Ministry of Social Affairs and Labour in order to regulate the workforce in the private sector had become outdated as the country developed.

⁶⁵ Universal Periodic Review of Kuwait, Human Rights Committee, 103rd session, 17 October – 4 November 2011.

that do not pay them their wages on a duly manner, this practice contravenes the national law of the country, where regulations and standard contracts oblige the employer to pay a monthly salary to the worker, as per article 56 (a) of the labour law for the private sector in Kuwait: workers with a monthly remuneration shall receive their remunerations at least once a month and, payment of remunerations shall not be delayed for more than seven days after the due date thereof.

According to an ILO report titled “Tricked and Trapped”, “the Kuwait Trade Union Federation (KTUF) has received many complaints of salary retention, and has pressed the Ministry of Social Affairs and Labour in Kuwait to solve them as a matter of urgency.”⁶⁶ Earlier this year, over 100 construction workers protested in front of Kuwait’s Ministry of Social Affairs and Labour (MoSAL) to demand payment of their salaries, which have been withheld for over four months.⁶⁷

Low Wages

Workers taking up jobs in Kuwait should expect to earn as little as 8 Kuwaiti Dinars (US\$28) per month, quite different than the minimum monthly wage for nationals, which was set at KWD 1,500 (US\$5,300) per month in 2013.⁶⁸ However, “in 2010 Kuwait also approved amendments to its labour law, which included the establishment of minimum wages for foreign workers.”⁶⁹

According to the new law, workers should receive at least 60 dinars (US\$208) when working in Kuwait’s private sector. Even if the new law was welcomed by migrant workers in the country, the real reason behind it was part of a drive by the MoSAL to reform the labour market and make the private sector more attractive to Kuwaiti nationals, who are traditionally interested in working in the public sector due to the generous benefits they receive there.

Moreover, representatives of major workers unions, “which essentially represent Kuwaitis rather than foreign workers, say pay increases are not being distributed fairly and that wages have failed to keep up with the cost of living for several years. Inflation

⁶⁶ ILO, 2013, p. 115.

⁶⁷ <http://www.migrant-rights.org/research/kuwaiti-migrants-endure-delayed-wages-government-apathy/>

⁶⁸ <http://www.arabianbusiness.com/kuwait-min-wage-plan-three-times-world-s-highest-490822.html>

⁶⁹ Babar, 2011, p.127.

reached a three-year high of 4.8 percent last year, although it is far below levels of over 10 percent hit in 2008.”⁷⁰

Long working hours & Unsafe Working Conditions

As per the new labour law, the standard contract in Kuwait should stipulate 48 hours of work and one day off per week for workers.⁷¹ Unfortunately several times employers do not comply with the law and workers find themselves working longer hours than stipulated but there is no research available regarding this specific topic for the country. During the summer months the temperatures become almost unbearable for any human being during the daytime and for many years workers were seen in construction sites in the hotter hours of the day. At last, in 2009 Prime Minister and Minister of Justice and Minister of Social Affairs and Labour Dr. Mohammad Al-Afasy, issued occupational health and safety standards banning outdoor work, from 11am until 4pm, starting from the June 1st until the end of August of every year,⁷² or when the temperature rises to more than 48C degrees in the shade. This ban was to be enforced by labour inspectors, who would visit the construction sites on a regular basis, and workers were also allowed to report these violations themselves to their embassies, the KTUF, or the Labour Disputes Department.⁷³

In spite of the ban, several employers continued with their projects throughout the summer months as the government failed to introduce a substantial fine that would deter violators, putting workers' health at risk. In 2011, the government implemented several deterrents from warnings or fines (up to 200 Kuwaiti dinars for each employee) to suspensions of company operations for companies that were found forcing labourers to work during the prohibited hours.⁷⁴

Apart from the dangers of working in the heat, migrant workers' lives are also at threat

⁷⁰ <http://www.reuters.com/article/2012/03/28/us-kuwait-wages-idUSBRE82R0U320120328>

⁷¹ Article (64) of the Kuwait Labour Law for the Private Sector states that: Without prejudice to the provisions of Article (21) of this Law, it is forbidden to allow workers to work for more than 48 hours per week or 8 hours a day, except in such events as are specified in this Law. Working hours during the month of Ramadan shall be equal to 36 hours per week. However, it shall be allowed, by a ministerial resolution, to reduce working hours in hard jobs, jobs that are harmful by nature or for severe circumstances.

⁷² <http://www.kuna.net.kw/ArticleDetails.aspx?id=2171933&language=ar>

⁷³ <http://www.state.gov/j/drl/rls/hrrpt/2012/nea/204370.htm>

⁷⁴ <http://www.thenational.ae/news/world/middle-east/kuwait-criticised-for-failing-to-implement-heat-ban>

due to unsafe conditions in their place of work. Several workers were reported dead in the last couple of years while on duty. In June of this year, 2 Indian workers died after an elevator they were working on at a building under construction plummeted from the 8th floor to the ground.⁷⁵

Inadequate Housing

Kuwait follows the same ‘standards’ of the other GCC countries when it comes to housing migrant workers. The companies provide them with labour camps accommodation. Often in appalling conditions, where 8 to 10 people share a small crowded room, in some cases without access to adequate running water or electricity. Some workers are only allowed off the camp compound on company transportation or with permission of the employer. Reports of workers being placed in places that would seem unlivable for any human being date back as early as 2006 when about 1,300 foreign workers held a protest demonstration at a labour camp in Kuwait against poor living conditions, according to one of the workers, the municipality had shut down the camp six months earlier but the contracting company had succeeded in reopening it.⁷⁶

Passport Confiscation

The retention of passports and the residency card (*iqama*) in the GCC countries is a widespread and well-documented practice. Even though most research focuses on the issue of passports’ confiscation of domestic workers, workers in other sectors also fall victims of this practice. In the words of Kuwait’s Ministry of Interior, the confiscation of passport is considered an effective crime-prevention measure, as they will not be able to leave the country to escape prosecution.⁷⁷

Freedom of association and collective bargaining rights

Even though Kuwait ratified ILO Convention no.98. in August 2007, the domestic law restricts freedom of association and collective bargaining rights for migrant workers,

⁷⁵ <http://connectkuwait.com/two-indian-workers-killed-hawally-elevator-fall/>

⁷⁶ <http://timesofindia.indiatimes.com/world/rest-of-world/Living-conditions-hurt-Indians-in-Kuwait/articleshow/2075513.cms>

⁷⁷ Mahdavi, 2011, p. 50.

who are only allowed to join a union (provided they had been working for that specific sector in the country for at least five years) and not to form one. They are also barred from electing officers or being elected. What is more, those workers instigating strikes can face termination of their contracts and subsequent deportation. Despite the risks, according to the International Trade Union Confederation (ITUC) Report for the WTO General Council Review of the Trade Policies of Kuwait,⁷⁸ unauthorised strikes and protests still take place in Kuwait when workers feel hopeless about their circumstances, which usually involve extreme financial distress.

In 2010, Kuwait enacted a new Labour Code that provides greater trade union pluralism, but maintaining only one general union, the KTUF, which in 1994 opened an office to help migrant workers' with their complaints. Since then, it has been gradually increasing the support it provides to migrant workers in various ways, including following up cases that are pending at the Ministry of Labour and ensuring that workers receive proper compensation.⁷⁹

Oman

Like the rest of the Gulf countries, Oman has a sponsorship system in place that jeopardize the lives of migrant workers by putting them at risk of exploitation and abuses of all sorts. With foreign workers rounding the 1.53 million, the risks for human rights abuses are always latent. One of the ways the government has found to deal with the issue (as well as to fight unemployment of the local workforce) is the implementation of the "Omanisation" program, reducing the numbers of foreign workers allowed in the country and improving the conditions for the ones that are already there. Since the implementation of the nationalization program is quite new and the country still needs to employ foreign manpower for construction and infrastructure projects, human rights violation are still being documented by NGO's and other monitoring institutions.

In the last year Oman has intensified its laws regarding the employment of migrant workers and as of now, if the worker's service period was less than two years, there

⁷⁸ http://www.ituc-csi.org/IMG/pdf/kuwait-final_tpr_.pdf

⁷⁹ ILO, 2013, p. 147.

must be a letter of no objection signed by the former sponsor, and approved by the Directorate General of Labour, indicating he approves of the worker to be employed by someone else. However, starting July 1st, as per Article 11 of the Passport and Residence Act, any worker who leaves his jobs will not be able to return to the country for a period of two years,⁸⁰ making it quite difficult for workers to change employers if they find themselves in an exploitative circumstance and constitute a step backwards towards the respect of workers' rights.

To follow is a mention of the several human rights abuses that workers suffer in Oman, as it was done for the other countries.

Unpaid Wages

Like in the other GCC countries analyzed so far, migrant workers in Oman risk not receiving their salaries in due time. Some of the workers organize sit-ins or marches to their respective embassies, where they expect to receive guidance. Following the directions of the consular personnel, they file a complaint with the Ministry of Manpower, and later they wait for the hearing of their case. In some cases, the outcome is not acceptable for all workers, as the companies usually pay the workers much less than they deserved.

In February 2012, seventy construction workers held a sit-in at the Indian Embassy for assistance, claiming they have not been paid for the past few months.⁸¹ Their situation was critical not only because they were not being paid but also because the company had possession of their passports, a security deposit of OMR 120 (US\$300) and some of them had expired labour cards.

Also in 2012, around 500 construction workers employed by Nagarjuna Construction Company took to the streets to address their complaints to the Ministry of Manpower (MoM),⁸² their main complaint regarded due payments for two months, but it also included the low wages they receive as well as the lack of proper healthcare.

⁸⁰<http://www.timesofoman.com/News/33638/Article-Oman-expatriate-labour-ban-2-year-work-restriction-returns-for-Omans-foreign-workers>

⁸¹<http://www.muscatdaily.com/Archive/Oman/Workers-alleging-non-payment-of-wages-gather-at-Indian-Embassy>

⁸²<http://www.muscatdaily.com/Archive/Oman/Construction-workers-take-to-the-streets-demanding-healthcare-hygienic-food>

Due to situations like these (and also to easily monitor the Omanisation program) is that the MoM together with the Central Bank of Oman (CBO) is in the process of implementing a new payment system, the Salary Payment System that will apply to local and foreign workers alike.⁸³ When the new system starts functioning, employers will have to pay workers their salaries through registered agents approved by the central bank. If the system is implemented properly, it will help track payments or non-payments of salaries and will serve as a tool for the workers in case of disputes with the employers.

Low Wages

In July 2013, the minimum wage became OMR 325 (US\$845) per month. However, the new minimum wage regulation does not apply to a variety of occupations and businesses the same way that it does not apply to non-citizens. As a result, migrant workers in Oman sometimes earn as little as OMR 55 (US\$142) plus OMR 15 for food allowance.⁸⁴

In 2013, more than 700 construction workers from a reputed construction firm in the country, embarked on a strike to complain about their low salaries as well as poor food and lodging standards. Workers admitted to be making as little as OMR 85-90 (US\$ 220-230) and they expected their salaries to increase to OMR 150 (US\$390).⁸⁵

In some cases workers were promised a different salary on their home countries and since when they arrive in the Sultanate they realized that money is not enough to make ends meet and in order to repay their debts and support their families, they resort to absconding.⁸⁶ According to figures of the Ministry of Manpower, there are at least

⁸³ <http://www.arabianbusiness.com/oman-scrap-cash-in-hand-salaries-539980.html>

⁸⁴ Some workers claimed that they never receive the food allowance because the company keeps it as payment for the meals that it provides them.

⁸⁵ <http://www.muscatdaily.com/Archive/Oman/More-than-700-workers-refuse-to-resume-work-after-strike-call-off-2jv3/%28language%29/eng-GB>

⁸⁶ Absconding refers to the practice of leaving or changing jobs without the employer's consent. Workers who take on other employment while "absconding" can also face fines, indefinite detention, blacklisting, and deportation. Usually, employers file an absconding complaint, six months after the worker's departure, with the Ministry of Labour in the event an employee is absent from work without informing them or has left the country without informing the employer. Upon receiving an absconding report, police officials cancel the worker's residency visa and register an order for his/her detention.

12,000 migrant workers absconding in Oman at the moment.⁸⁷ By leaving their sponsor and taking up ‘illegal’ jobs they try to make a decent salary and improve their situation back at home.

Long working hours & Unsafe Working Conditions

In Oman, the private sector workweek is 45 hours and includes a two-day rest period following five consecutive days of work. The law stipulates overtime pay for hours if exceeding forty-five hours of work per week. During the month of Ramadan the working hours are reduced to six hours per day for Muslims. Even though it is hard to believe the working hours are respected for nationals and migrant workers alike, no evidence was found throughout the research regarding working hours in Oman to support the argument.

The summer timing that bans employment of workers at construction sites or open spaces from 12:30pm to 3:30pm is also put in place in Oman during the months of June, July and August to guarantee the safety of workers at worksites.⁸⁸ However, in 2013 reports of workers claiming that the rule was not serving its purpose came out, as they were “forced to either spend the three hours under a tree (if they find one) or make do with the plastic tents temporarily erected near the site”⁸⁹ as not all companies provide workers with transportation to and from their accommodation during break hours. Moreover, workers felt they were having to work longer hours as their days started earlier and finished later, having to spend more hours in the outside heat, which can jeopardize the safety of workers.

Inadequate Housing

Like the rest of its neighbours, the condition of the accommodation provided to migrant workers in Oman is deplorable. Many of the camps are overcrowded, unsafe and lack air-conditioning, potable water and bathing facilities; as a result, a great number of them are in clear violation of workers’ rights, despite the government rules that define the

⁸⁷<http://www.muscatdaily.com/Archive/Oman/12-000-expatriate-workers-are-absconding-in-Oman-Manpower-Minister-20s2>

⁸⁸ Article 16 of Ministerial Decision 286/2008.

⁸⁹<http://www.muscatdaily.com/Archive/Oman/Workers-in-Oman-say-mid-day-break-rule-not-serving-its-purpose-2c03/%28language%29/eng-GB>

standards to be followed inside labour camps.⁹⁰ Most of the times, the workers do not complain to their superiors or to the authorities of their dire living conditions for fear of losing their jobs, even if they run the risk of losing their lives.

It is not unusual to read in the local newspapers stories of labour camps that caught fire resulting in workers losing their lives. In 2012, two workers suffocated to death in their accommodation due to a coal fire that they had lit to beat the cold while they were sleeping.⁹¹ In 2013, one Indian worker was found dead after a fire destroyed a construction company's labour camp, the rest of the workers survived but they lost all their possessions, including vital documents and savings.⁹²

In spite of the rules and the regular inspections of the MoM to working sites and labour camps, the Ministry does not have the resources and the legal authority to effectively enforce compliance with Omani law and bigger companies have more leverage to not respect the rules.

Passport Confiscation

In 2003, a Royal Decree stating that migrant workers' passports should not be retained by the employers without their previous consent was promulgated⁹³ and the Ministry of Manpower called on private companies not to retain the passports of their expatriate employees. But it this was highly ignored by employers.

In November 2006, the government granted invitation the UN Special Rapporteur for on trafficking in persons, especially in women and children to conduct a fact-finding mission, in which she heard reports that sponsors restricted workers' freedom of movement by confiscating their passports and other labor documents.⁹⁴

After the visit, the government the Ministry of Manpower issued a legally enforceable administrative circular that prohibited employers from withholding workers' passports.⁹⁵ However, since there are no penalties for those who retain the passports of their employees described in the legislation, employers still keep workers' passports.

⁹⁰ http://www.wikileaks.org/plusd/cables/06MUSCAT1635_a.html

⁹¹ <http://gulfnews.com/news/gulf/oman/two-suffocate-to-death-in-oman-1.1123166>

⁹² <http://www.timesofoman.com/News/Article-6916.aspx>

⁹³ Royal Decree 35, 2003.

⁹⁴ <http://www.muscatdaily.com/Archive/Oman/It-s-like-being-blackmailed-it-s-embarrassing-insulting>

⁹⁵ Report for the WTO General Council Review of Trade Policies of the Sultanate of Oman, 2008, p. 5.

Freedom of association and collective bargaining rights

In January 2006, Oman and the United States signed a bilateral free-trade agreement. In order to obtain approval of the U.S Congress, Oman had to amend its labour law and “bring them into accordance with International Labour Organization standards.”⁹⁶

It is for that reason that, in 2006, the government officially recognized workers' rights to form unions and allowed a general federation to represent unions in the regional and international arena, issuing two Royal Decrees that strengthened the legal framework for labour unions in Oman by explicitly recognizing labour unions and providing for collective bargaining and peaceful strike. Currently there are seventy-two trade unions, organized under the umbrella of the General Federation of Oman Trade Unions, which was established in February 2010 and although migrant workers have been allowed to join the unions, there are certain limitations regarding their election to executive functions.

Qatar

Qatar is nowadays probably one of the most criticized Gulf countries when it comes to the treatment of its foreign workforce. “With its abundance in oil and natural gas resources, Qatar has one of the highest per capita incomes in the world and one of the lowest unemployment rates”⁹⁷, but it is also heavily dependant on foreign manpower, which constitutes 90 per cent of the country’s workforce. In 2010 a Population and Housing census was conducted in the country, which documented that 505,721 of the non-Qatari workers were employed in the construction industry.⁹⁸ It is believed the number of foreign workers in Qatar have been boosted since then by construction planned for the 2022 FIFA World Cup to be hosted in the country.

In February 2014, Qatar introduced the Workers’ Charter, a 50-page document describing areas in which the Qatari government plans to act in order to improve the situation for migrant workers for the 2022 FIFA World Cup. However, together with Saudi Arabia, Qatar has not amended its sponsorship rules and workers are still not

⁹⁶ <http://freedomhouse.org/report/freedom-world/2007/oman#.U6qYqqg5t0s>

⁹⁷ Americans for Democracy and Human Rights in Bahrain, 2014, p. 26.

⁹⁸ http://www.qsa.gov.qa/QatarCensus/Economic%20characteristics/PDF/7_6_N_QA.pdf

allowed to change jobs without their employer's consent⁹⁹ and they are also required to obtain an exit visa from their sponsors in order for them to leave the country.¹⁰⁰

With the *kafala* system fully operational still in Qatar, documented abuses of migrant workers rights are known of in the country and as the date of the world cup becomes closer, more abuses are coming to light and human rights activities are advocating to set free labourers from a situation of forced labour or debt bondage, in which many of them are.

Unpaid Wages

Migrant workers that arrive already indebted in Qatar, have to struggle with employers who withhold their wages, as a way of making sure the workers are not going to quit. Non-payment of wages is in the top list of complaints that migrant workers voice in the country. In some cases, employers keep up to 3 month's wages.

In accordance with Article 66 the Qatari Labour Law "the wages of the workers employed on an annual or monthly wages shall be paid at least once in every month."¹⁰¹

Moreover, "the Labour Law currently requires employers to produce records proving payment of workers' salaries every six month [and according to] the Ministry of Labour (...) the Ministry conducts monthly inspections of all companies and institutions and audits their accounts to ensure that workers receive their wages."¹⁰²

However, in a HRW report published in 2012 titled "Building a Better World Cup", it was revealed that that "33.9% of workers surveyed were not paid regularly, and employers deducted wages to pay costs including visa fees, food and medical insurance."¹⁰³

In June this year, an article from the British newspaper The Guardian, exposed once more the situation of several workers that had not received their salaries for months.¹⁰⁴

⁹⁹ Law No.4 of 2009, art.22.

¹⁰⁰ Idem, art.18.

¹⁰¹ Law No.14 of 2004, art.66.

¹⁰² HRW, 2012 (b), p. 65.

¹⁰³ Idem p. 63 on data extracted from the Qatar National Human Rights Committee, Study on the Conditions of Unskilled Labor Force in the Construction Sector in Qatar, "Executive Summary" (Doha: National Human Rights Committee, 2011), p.13.

¹⁰⁴ <http://www.theguardian.com/global-development/2014/jun/20/qatar-promises-change-unpaid-migrant-workers>

Apart from being a breach of the law, this situation creates countless challenges for workers, who have to take more loans in order to make ends meet.

In 2013, an AI report revealed that more than 80 migrant construction workers who were working in the construction of a prestigious tower in Doha's financial district were facing serious food shortages after almost a year without receiving their salaries.¹⁰⁵ As a result, not only they could not afford to send money back home to their families or to pay off debts but also they were not able to buy food for their own survival.

Low Wages

Even though there is not a minimum wage established by the government, the average monthly income for a Qatari worker is around US\$7,000 per month. Several of these workers move to the country to earn a good salary compared to what they could make in their home countries and they are promised a higher salary (and sometimes even a totally different job position) than what they will get in reality. The HRW points out that “some workers said that they received as little as half the wages they had been promised before migrating, or [because of the debts they had brought upon themselves to pay the recruiters in their countries, they] found themselves with little choice but to accept jobs they would not have agreed to had they known the truth.”¹⁰⁶

Some migrants' sending countries have signed bilateral agreements with the government of Qatar to impose a minimum wage for their workers, such as it is the case of the Nepalese government, who has almost half a million Nepali workers placed in Qatar. In 2008, the minimum wage was set at QR 800 (US\$219) a month, agreed at a joint meeting of multi-stakeholders based on the recommendations made by the Nepali missions abroad. However, levels of inflation are quite high in the country, causing food prices and other expenses to rise considerably over the years but the salaries to remain the same. As a result, the Nepalese government was considering discussing with its Qatari counterpart a raise of the minimum wage to QR 1200 (US\$329).¹⁰⁷

¹⁰⁵ <http://www.amnesty.org/en/news/qatar-unpaid-migrant-construction-workers-left-go-hungry-2013-12-18>

¹⁰⁶ HRW, 2012 (b), p. 57.

¹⁰⁷ <http://dohanews.co/nepal-to-ask-qatar-to-raise-minimum-monthly-wage-to/>

Long working hours & Unsafe Working Conditions

Both AI and HRW, the two leading human rights organizations dealing with abuses in the country, have cited in their reports that “workers were being made to work excessive (sometimes extreme) hours and that employers were failing to protect workers’ health and safety.”¹⁰⁸

Migrant workers’ rights are set out under the Qatari Labour law, which is complemented with a set of related decrees. This law, which also applies to construction workers, includes limits on their working hours.¹⁰⁹ Moreover, in 2007 the government instituted the Ministerial Decree No. 16 of 2007, which stipulates that working hours outdoors must be limited during the hottest months of the year, from June 15th until August 31st between 11:30 am and 3pm.^{110 111}

In order to make sure the decree is respected, the ministry announced that there would be law enforcement officers inspecting worksites and that legal action might be taken against companies that do not respect the directives. However, in practice, this law is hardly respected by the companies or enforced by the authorities.

This brings serious mental and physical issues for workers, who feel demoralized about their situation, which in several occasions has led to suicide¹¹² and/or health complications, not only for the long hours spent at the worksite but also for the lack of proper hydration while they are at work, causing heat stroke or heat exhaustion¹¹³; and sometimes also for the lack of proper safety equipment for the type of tasks that these workers conduct. Based on AI report, “in January 2013 a Ministry of Labour official

¹⁰⁸ Amnesty International, 2013, p.6.

¹⁰⁹ Qatar Labour Law, Part Seven: Regulation of the Working Hours and Leave, Article (73): The maximum ordinary working hours shall be forty four hours per week at the rate of eight hours per day with the exception of the month of Ramadan when the maximum working hours shall be thirty six hours per month at the rate of six hours per day.

¹¹⁰ <http://www.almeezan.qa/LawView.aspx?opt&LawID=2679&TYPE=PRINT&language=ar>

¹¹¹ While companies may abide to the law and suspend work between 11.30am and 3pm, not all of them provide shelter or offer transportation back and forth from the worksite to workers. As a result, workers are found to be sleeping under whatever shade they are able to find, sometimes inside the same building they are working at.

¹¹² According to an Amnesty International report, Nepal ranks third, after Sri Lanka and India, in terms of the suicide rate among foreign migrant workers in Qatar.

¹¹³ In this situations, workers cannot always exercise their right to health, as it was noted during the UN Special Rapporteur on the human rights of migrants during his visit to Qatar in 2013, Many migrants do not have an identity card, because their employer did not provide them with one or did not extend its validity. As a consequence, they cannot obtain health cards to access subsidized health care.

told a local newspaper that during 2012 the Ministry issued around 5,245 warning notices relating to health and safety, and that around 30% of the companies working in Qatar had violated to some degree the safety standards.”¹¹⁴

During the last year, as the construction projects for the world cup started to develop, there have been numerous reports of workers losing their lives. In February, The Guardian reported the death of 400 Nepalese workers, the figures coming from the Pravasi Nepali Coordination Committee, the Nepalese human rights organisation that compiles lists of the dead by using official sources in Doha. If the deaths continue, they could amount up to 4,000 by the end of the building projects.¹¹⁵

Inadequate Housing

Similarly to the rest of the GCC countries, sponsors are expected to provide their employees with housing in Qatar, which normally consists of a dormitory-style accommodation. Since November 2011, it has become illegal for labour camps in Qatar to be located in residential areas,¹¹⁶ stressing the discrimination towards low-skilled workers.

In accordance with a Ministerial Decree of 2005¹¹⁷ that specifies what constitutes appropriate housing for workers, the Qatari authorities have the right to suspend a company from dealing with the Labour Ministry in case the provisions stipulated in the decree are being violated. Nevertheless, continuous violations to the decree take place in labour camps in Qatar every day.

Workers are forced to share their rooms with several other workers,¹¹⁸ when the decree clearly says that each room must host not more than four workers in residential units and no more than eight workers in temporary residences. Furthermore, the general conditions of the camps are often found to be insalubrious for a human being to live at, according to the AI report, in some of the camps visited the air conditioning was in some cases missing or non-functioning; in others the sewage had overflowed and

¹¹⁴ Amnesty International, 2013, p. 45.

¹¹⁵ Figure based on mortality trend data from the Indian and Nepalese embassies, obtained from ITUC Special Report: “The Case Against Qatar”.

¹¹⁶ <http://dohanews.co/laborers-living-in-residential-areas-must-clear-out-by/>

¹¹⁷ <http://www.almeezan.qa/LawPage.aspx?id=1872&language=ar>

¹¹⁸ <http://www.bbc.com/news/world-middle-east-26482775>

stagnant water was flooding the surrounding area or “the covers of septic tanks were left open with suction hoses connected to a static sewage tanker, creating a strong and unpleasant smell in the area around the accommodation.”¹¹⁹ In addition, the bathrooms and kitchens, which are communal areas for all the workers, were not clean regularly or properly maintained, as the law provides.¹²⁰

Passport Confiscation

Despite some negative drawbacks, the Sponsorship Law of 2009, which replaced the 1963 law, includes some positive legislative developments, such as the provision that made it illegal for sponsors to confiscate passports. Still workers are having their passports confiscated upon arrival, in what constitutes a breach of the Qatari Labour Law. Workers have to give their sponsors their passports in order for them to process their residency visa, and once the residence procedures are processed, sponsors are required by law to return their employees' passports to them. In reality, most low-income migrant workers do not have their passports returned to them. As it is routine in the GCC countries, this rite is performed so that workers will not run away from their employers. Even though during his visit to Qatar, the UN Special Rapporteur on migrants found that the testimonies he heard from migrants contrasts with the explanation provided by the authorities, that most migrants prefer to let their employers keep their passports for them out of fear of loss or theft.¹²¹

AI interviewed one of the workers that got his passport confiscated during their fact-finding mission in the country and this is what he told the researchers: "the sponsor has our passports. Most of the men's passports, probably around 80 per cent, are with the sponsor. Only the drivers keep their passports. The passports are actually kept by the *mandoob* [public relations officer, responsible for companies' interaction with government authorities]. It's a problem if a person is fired and the sponsor has the passport."¹²²

¹¹⁹ Amnesty International, 2013, p.49.

¹²⁰ Minister of Civil Service and Housing Decree No 17 of 2005 foresees that employers are responsible for ensuring that accommodation is cleaned, and that a supervisor is appointed to maintain equipment

¹²¹ Report of the Special Rapporteur on the human rights of migrants, Mission to Qatar, 2014, p.8.

¹²² Amnesty International, 2013, p. 37.

Freedom of association and collective bargaining rights

Under Qatar's laws, migrant construction workers' are denied the core labour rights of freedom of association and collective bargaining.¹²³ Migrant workers are banned from joining workers' committees or the national union that only allows membership of Qatari workers. Amnesty International remarks that: "this ban prevents migrant workers from responding in an organized manner to exploitative practices and other abuses by their employers, since they are prohibited from doing so."¹²⁴

In May 2014, at the International Trade Union Confederation meeting in Berlin there was a call for the FIFA Congress to impose five conditions on Qatar to host the 2022 World Cup, one of these conditions was to allow freedom of association and collective bargaining for ALL workers, without distinction of their race or nationality.

Saudi Arabia

Even if in 1962, slavery in Saudi Arabia was abolished by royal decree, fifty years later practices of slavery are still evident in the country through the treatment of migrant workers. In a country where migrant workers constitute 89 percent of the private sector workforce, 49 percent of them employed in the construction sector, the *kafala* system is up and running. In 2012, the Ministry of Labour "proposed abolishing the *kafala* system by transferring immigration sponsorship to newly created recruitment and placement agencies, but later decided to retain the current system."¹²⁵

During my research, I have come across reports that document migrant workers suffering from substantial overwork, exhaustion, torture, and even food and water deprivation on their job site while working in the country. It is not unusual for employers to confiscate workers' documents, refuse to pay their salaries and force them to work without rest days. Despite laws against forced labour, the government does not offer the workers any guarantee for the protection of their rights and as a result, employers feel powerful over workers and workers feel the lack of support to make their

¹²³ Article 116, Qatar Labour Law.

¹²⁴ Amnesty International, 2013, p.108.

¹²⁵ <http://www.hrw.org/news/2013/07/01/saudi-arabia-protect-migrant-workers-rights>

voices heard and their rights respected.

The country situation is fragile in terms of immigration as “it is one of the leading destination countries for men, women, and children subjected to human trafficking and forced labor.”¹²⁶ Every day young girls, women and men that enter the country are forced into prostitution or fall victims of disloyal employers who force them into exploitative practices. Unfortunately this topic escapes the scope of this research, as it requires a research on its own. Nevertheless, it is important to mention it to give the reader a general idea of the current state of affairs in the country.

Unpaid Wages

One of the most frequent abuse workers are vulnerable to in Saudi Arabia is the withholding of wages by their employers, in some cases, employers “force workers to leave the kingdom without full reimbursement of their earned wages.”¹²⁷ Workers wanting to return to their home countries are left with no option but to accept the employers terms if they want to receive their passports back, get their flight expenses covered and obtain an exit stamp that will allow them to leave.

According to article 116 of Saudi Arabia’s Labour Law, wages of daily-rated workmen shall be paid at least once a week and wages of monthly-rated workmen shall be paid once a month.¹²⁸ However, employers withhold up to 3 months of workers’ salaries, or even more, in some occasions, claiming they do not have enough money to pay them or any other unfounded pretense.

In 2013, “more than 7,000 Asian workers from Bangladesh, Pakistan, India and the Philippines went on strike in Riyadh for nonpayment of salaries by their sponsors and also as a mark of protest against their sponsors not willing to pay the SR 2,400 (US\$6,4000) requested by the Labour Department.”¹²⁹ As a response to this particular issue and several other disputes regarding unpaid wages, the Ministry of Labour decided to implement a Wage Protection System, under which all companies will have to pay

¹²⁶ Americans for Democracy and Human Rights in Bahrain, 2014, p. 41.

¹²⁷ HRW, 2004, p. 38.

¹²⁸ Saudi Arabia’s Labour Law, Chapter VI, Protection of Wages.

¹²⁹ <http://www.albawaba.com/business/saudi-arabia-dtrike-467029>

their employees electronically through bank accounts.¹³⁰

This constitutes a step forward in the protection the rights of workers in the Kingdom as the government agencies will be able to monitor and track employers' compliance with the law and workers will have, at last, some kind of protection in case of disputes arising from unpaid wages.

Low Wages

As per the Saudi Labour Law, the minimum wages for unskilled employees is set at SAR 3000 (US\$800) but there is no private sector minimum wage for foreign workers. As a result, another common complaint that workers voice is the fact that actual salaries they receive when they arrive in the Kingdom are much lower than the salaries they were promised, and were stated on their contract, in their home countries.¹³¹ Workers can earn as little as SAR 500 (about US\$133) while working in the Kingdom, too low of a figure if we take into account the major debts the workers have placed upon themselves to be working there.

As a response to this issue, the governments of the main migrants' sending countries, such as Nepal,¹³² are in the process of signing bilateral agreements with the Kingdom, through which their nationals will benefit from receiving a minimum wage and have a safeguard for their rights.

Long working hours & Unsafe Working Conditions

According to article 147 of the Labour Law, a workman shall not be employed for more than eight actual working hours in any one day, or forty-eight hours a week, in all months of the year, with the exception of the month of Ramadan when actual working hours shall not exceed six hours a day or thirty-six hours a week, exclusive of the intervals reserved for prayer, rest and meals. Moreover, article 149 adds that Friday,

¹³⁰ <http://www.arabnews.com/news/526421>

¹³¹ This contracts signed in English, or in their mother tongue in their home countries are replaced with contracts in Arabic language once they arrive in Saudi Arabia, and end up signing a contract in a language they do not understand and with different terms that the ones agreed upon in their home countries; and even if in some occasions workers are provided with an English copy of this contract, in case of disputes, the Arabic one is the only valid document.

¹³² <http://www.thehimalayantimes.com/fullNews.php?headline=Saudi+not+interested+in+signing+labour+pact&NewsID=413323>

which is the day observed as an official holiday, shall be a day of rest with full pay.¹³³

The law, which should be applicable to nationals and foreigners alike, is hardly respected with regards to migrant workers and reports have given accounts of workers being forced to work up to ten to sixteen hours a day, with no overtime pay.

In the construction sector, which has become one of the most profitable industries in the Kingdom, the lack of safety measures at the construction sites and the absence of protection for workers is evident. It constitutes one of the most dangerous sectors to work at.

It is not unheard of workers who are forced to work in hazardous conditions without safety harnesses, hard hats or protective masks because the company does not provide it to them. Unfortunately, regular inspections do not take place, or if they do, the hazards are usually ignored by the officials.

In 2011, the government implemented the midday work ban, which prohibits outdoor work between noon and 3:00 p.m. from July 1st through August 31st. That same year, the National Society for Human Rights (NSHR) said they had received several complaints about the ban not being enforced.¹³⁴

The following year the Ministry of Labour announced it was going to make sure the ban was being respected by sending out inspection teams to construction sites to enforce the ban. Moreover, companies found breaking the law, by forcing their employees to work during the hot midday hours, would face fines ranging from SAR 3,000 to SAR 10,000. In addition, they risked having their firms shut down for 30 days or permanently. In 2013, out of 74 companies that were inspected, 24 of them were fined for violating the midday break ban.¹³⁵

In 2014, due to the high temperatures in the country, the government decided to start implementing the ban from the 15th of June until September 15th¹³⁶ and announced a zero-tolerance policy for those not complying with the rules. In a move that benefits workers as it protects them from the serious health risks that working in the heat and directly exposed to the sun can bring them.

¹³³ Saudi Arabia's Labour Law, Chapter IX: Working Hours- Weekly Rest Vacation.

¹³⁴ <http://www.arabnews.com/saudi-arabia/midday-work-ban-comes-force>

¹³⁵ <http://english.alarabiya.net/en/business/economy/2013/08/20/Saudi-Arabia-fines-24-companies-for-violating-midday-work-ban.html>

¹³⁶ <http://gulfnews.com/news/gulf/saudi-arabia/midday-work-ban-implemented-in-saudi-arabia-1.1347376>

Inadequate Housing

The Ministerial Decision No. 399 of 2007/1428H sets the housing conditions for workers in Saudi Arabia, which lists the specifications regarding room sizes and beds it can accommodate, facilities and health conditions that should be respected, such as the availability of fresh water, a proper sewage system and a garbage disposal system. Yet, measures are often overlooked and accidents causing the deaths of workers are not unheard of. In 2009, six people were reported dead and 40 others missing after a fire broke out in a labour camp.¹³⁷

Passport Confiscation

Although not required by law, it is common practice in the Kingdom for sponsors to retain passports once an *iqama*¹³⁸ has been issued. What is worrisome about the practice in the country is that even members of the National Society for Human Rights (NSHR), such as Dr. Suhaila Zain Alabideen, who is also a prominent judge in the country, have stated that “whenever the expat worker has his papers with him, he may not hesitate to escape whenever he has the chance”¹³⁹, thus justifying employers who withhold their employees’ passports.

In order to avoid an exploitative situation for workers and to further protect their rights, some migrants’ sending countries, such as Sri Lanka, India and the Philippines, have started to sign a memorandum of understanding with the Kingdom.¹⁴⁰ So far these agreements are related to domestic workers, but it is the first step towards the recognition of the rights of all migrant workers.

Freedom of association and collective bargaining rights

National labour laws prevent migrant workers from creating labour unions, collectively bargaining for fair wages, or holding strikes. Foreign workers migrating to the Kingdom

¹³⁷ <http://www.constructionweekonline.com/article-6071-46-feared-dead-in-labour-camp-blaze/1/print/>

¹³⁸ The *iqama* is the residency permit issued by the government. All foreign workers in the Kingdom are required to carry it at all times and it should be used in lieu of the passport as passports are not acceptable forms of identification in Saudi Arabia both for citizens and for foreign residents.

¹³⁹ <http://www.saudigazette.com.sa/index.cfm?method=home.regcon&contentid=20131130188153>

¹⁴⁰ https://www.zawya.com/story/Sponsors_in_KSA_cant_withhold_passports_of_SL_workers-ZAWYA20140201040257/

are advised by their embassies not to strike at work or resort to agitations since they face the risk of being arrested, imprisoned and deported.¹⁴¹

Despite the risks that striking entails, workers have resorted to strikes when they have seen no other solutions to their problems. Such was the case in 2013, when a group of more than 700 employees working for a local company gathered in Riyadh to protest about low wages, delayed payments and the employer's failure to renew official work permits.¹⁴²

United Arab Emirates

For the specific case of the United Arab Emirates, I rely not only on reports from human rights organizations, migrant sending countries and official data but also on my personal experience, since I have lived in the country for four years and as an expatriate, high-skilled worker I have been victim of some of the human rights violations that low-skilled workers are victims of on a regular basis. Moreover, through my involvement in activities organized by volunteering groups and civil society organizations, I have been able to visit construction sites as well as some of the more centrally located labour camps in the emirate of Dubai, and I had the opportunity to see with my own eyes the conditions under which workers have to live and work.

I had the possibility to return to the Emirates during the last leg of my research where I had the chance to speak with some of the workers employed in the construction industry as well as with some of the main migrants' sending embassies and a few other people involved in, or interested about, the protection of migrant workers in the country, who were kind enough to give me an overview of the situation of labourers in the country.

According to UAE laws, foreign nationals have to be primarily sponsored by a UAE national, except in the case of domestic workers, that allows for foreign nationals to be sponsors too. As a general rule, foreign workers who are working in the private sector and wish to change employers without having completed a minimum of two years in service will have a six months to one year 'labour ban' imposed on them, which means that the worker will not be allowed to perform any kind of work in the UAE for a

¹⁴¹ <http://www.indianembassy.org.sa/Content.aspx?ID=790>

¹⁴² <http://www.arabnews.com/news/464447>

definite period of time. However, if the worker is offered a higher position and his salary is equal or above the salary set by the ministry against his or her qualifications, the ban can be lifted. Nevertheless, it is important to bear in mind that this rule applies only for workers that hold, at least, a high school diploma. Taking into account that most of the low-skilled workers employed in the construction industry, this rule hardly applies to them.

In 2011, the Ministry of Labour implemented new rules with regards to workers willing to switch jobs at the end of their two-years contract.¹⁴³ Since then, skilled workers are allowed to switch jobs at the end of their employment contracts without the need of a no-objection certificate from the former employer. On the other hand, unskilled and semi-skilled workers still need to receive the NOC if they want to change employers in the first two years of a job.

Unpaid Wages

As per article 56 of UAE Labour Law, “employees engaged on yearly or monthly remuneration shall be paid at least once a month. All other employees shall receive their remuneration at least once every two weeks.” In addition, article 58 of the same law states that “Settlement of the remuneration payable to employees irrespective of its amount or nature shall be evidenced only in writing, by declaration or oath.”¹⁴⁴

Like in the other countries analyzed, in the UAE the majority of disputes arise due to unpaid wages. In 2009, the Ministry of Labour implemented an initiative called "My Salary" which allows workers whose employers delay their payment for 15 days or more to file a complaint online or through a hotline.¹⁴⁵

However, newspapers frequently report employers not paying the salary of the employees regularly. In 2011, around 400 workers went on strike in an Abu Dhabi's Reem Island project after nearly three months without pay.¹⁴⁶ This year, Abu Dhabi was put on the spotlight of Western media when workers at New York University (N.Y.U.)

¹⁴³ <http://www.thenational.ae/news/uae-news/new-law-will-make-it-easier-for-expatriates-to-change-jobs>

¹⁴⁴ U.A.E. Labour Law, Federal Law No. (8) of 1980

¹⁴⁵ <http://gulfnews.com/news/gulf/uae/employment/hotline-set-up-for-uae-workers-to-lodge-complaints-over-unpaid-salaries-1.65881>

¹⁴⁶ <http://www.constructionweekonline.com/article-13292-workers-strike-in-abu-dhabi-over-unpaid-wages/>

went on strike to complain about their grim working conditions, including their salaries being withheld.¹⁴⁷

In Dubai, the emirate known for its lavish construction projects, stories of workers not being paid are common too. In 2013, 1,200 workers were left stranded when the owners of the firm they worked for vanished without paying them their due salaries for three months. As the last measure, they gathered at the company's main office to demand a settlement of their salaries, where police and Ministry of Labour officials pledged to resolve the case.¹⁴⁸

In order to avoid such situations from taking place, in 2009, the Central Bank of the UAE developed a WPS that “allows the Ministry of Labour to create a database to record wage payments in the private sector to guarantee the timely and full payment of agreed-upon wages.”¹⁴⁹ Through the WPS, salaries are transferred electronically and workers' wages can be paid through banks, bureaux de change, and financial institutions that have been previously approved and authorized to provide the service.

As a result of the government's active implementation of the WPS and enforcement of fines for those in noncompliance with the law, some employers have been discouraged from not paying salaries to foreign workers and workers felt more protected by the government and less anxious about keeping their small earnings with them in their accommodations.¹⁵⁰ Nevertheless, the implementation of the WPS measure has not been enough to prevent delays in the payment of wages due to the Labour Ministry's scarce resources to deal with the large the number of migrants workers that reside in the country.

Low Wages

No minimum wage is prescribed under UAE Labour Law, which means that low wages are another of the main complaints of construction workers. Some construction workers in the UAE have revealed to be making as little as Dh 350 (US\$95) to Dh 900 (US\$

¹⁴⁷ <http://www.nytimes.com/2014/05/19/nyregion/workers-at-nyus-abu-dhabi-site-face-harsh-conditions.html?hpw&rref=nyregion>

¹⁴⁸ bit.ly/1koafpV

¹⁴⁹ <http://www.mol.gov.ae/newMolGateway/english/wpsGuidelineEng.aspx>

¹⁵⁰ <http://gulfnnews.com/news/gulf/uae/general/workers-in-uae-happy-without-cash-1.1137661>

245), depending on the skills of the worker.¹⁵¹ These wages are considered to be relatively low in a country where the cost of living increases on almost a monthly basis, thus workers have very little chances to repay their debts or send money to their families.

In May 2013, workers of Arabtec, the UAE's largest construction company, held a four-day strike to protest about low wages and non-payment of overtime hours.¹⁵² As a result of the strike, the company announced a raise in the salaries of 36,000 workers at an average of 20 per cent for each worker even though the raise was not automatically announced after the strike.¹⁵³ However, as of May 2014 the wage increase promised by the contractor after the strikes in May 2013 had not yet materialised.¹⁵⁴

Long working hours & Unsafe Working Conditions

The UAE labour law, which applies to locals and foreigners alike, regulates maximum working hours, breaks, annual leave and overtime. According to Article 65 of the UAE labour law, "the maximum normal working hours for adult employees shall be eight hours per day or forty eight hours per week. However, working hours for the employees of commercial establishments, hotels, restaurants, watchmen and similar operations may be increased to nine hours per day as determined by the Minister of Labour. Likewise, working hours per day in respect of hazardous work or work detrimental to health, may be decreased by decision of the Minister of Labour and Social Affairs. During the month of Ramadan, normal working hours shall be reduced by two hours."¹⁵⁵ Article 66 of the same law states that "daily working hours shall be regulated in a way that no employee shall work over five hours consecutively without break times for rest, food and prayer"¹⁵⁶

In reality, the conditions are very different, workers sometimes spend between 10-15 hours a day at their work site without rest breaks or a day off, often exceeding what is established in the law. Arshad Hamid, a Bangladeshi construction worker employed by

¹⁵¹ <http://gulfnews.com/news/gulf/uae/employment/wages-too-low-for-survival-dubai-labourers-claim-1.993564>

¹⁵² <http://www.aljazeera.com/news/middleeast/2013/05/20135205143955857.html>

¹⁵³ <http://gulfbusiness.com/2013/09/arabtec-increases-worker-salaries-by-20/#.U7P3Sgg5t0s>

¹⁵⁴ <http://www.ft.com/cms/s/0/ea8605e-d200-11e3-8ff4-00144feabdc0.html#axzz36PZV76kY>

¹⁵⁵ Chapter 4, Federal Law No. 8 for 1980 on Regulation of Labour Relations.

¹⁵⁶ Idem.

Arabtec that was interviewed by Al Jazeera stated: “I haven't had a salary increase since first coming here. This month we haven't gotten paid. We are sweating, working hard in the hot sun and we aren't getting benefits. We are working 12 hours a day.”¹⁵⁷

As part of the many steps the UAE has been taking to improve labour standards in the country, since 2005, the Ministry of Labour has enforced mandatory midday breaks, from 12.30pm to 3pm, for workers who work in open areas during the peak summer months, from June 15th until September 15. As a way to enforce the measure, the government will deploy hundreds of inspectors all over the country and companies found breaking the midday ban will face fines of up to Dh15,000 (US\$4,000) and have their status for worker visas downgraded for three months.¹⁵⁸ Nevertheless, the hefty fines do not seem to be enough of a deterrent for companies to abide to the law, in 2013 alone, 148 companies were caught violating that law during the first month of inspections.¹⁵⁹

As a consequence of working in the extreme summer heat, exposed to direct sunlight and also without the proper safety measures in place, construction accidents constitute the country's second-most common cause of emergency cases after traffic accidents. According to a HRW report, “construction workers face some of the most hazardous working conditions in the country. The extent of death and injury of migrant construction workers is one of the most troubling, if poorly documented, aspects of the construction sector in the UAE, with government and private sources diverging as to the numbers involved.”¹⁶⁰

In 2012, Abu Dhabi's Health Authority (HAAD) released construction deaths statistics revealing that in the previous year, ten workers had died in 29 construction accidents on building sites in the capital. In 2010, the deaths amounted up to 75 workers.¹⁶¹ In Dubai, in 2011 alone, nearly 50 workers died and more than 400 were injured in construction sites. The previous year, 76 workers have been reported dead by the Dubai

¹⁵⁷ <http://www.aljazeera.com/indepth/features/2013/05/201352371226306130.html>

¹⁵⁸ bit.ly/1q9RWwo

¹⁵⁹ bit.ly/1jHNIts

¹⁶⁰ HRW, 2006, pp. 10-11.

¹⁶¹ <http://www.constructionweekonline.com/article-15408-ten-deaths-in-29-accidents-in-abu-dhabi-last-year/>

Municipality.¹⁶²

It is important to bear in mind that this data is only for the emirates of Abu Dhabi and Dubai, whereas for the other emirates that form part of the UAE, where there is also a large amount of buildings under construction, no reliable data has been found.

Inadequate Housing

Construction workers in the UAE are also provided accommodation by their companies in labour camps. The general conditions of the camps, which are built in municipal land, by big construction companies and later used by them to accommodate their staff or sublet to other companies, vary significantly from camp to camp, with camps where 4 people share one room to camps where people share a ‘bed-space’, which basically consists on two people sharing the same bed on alternate shifts.

Even though the topic has generated much controversy at an international level for the low standards of the accommodation provided to workers and despite the UAE government effort to improve the living conditions for migrant workers that are equal to those set by international labour standards,¹⁶³ labourers still face several issues when it comes to have a decent place to live.

According to Mahmoud Kaboor, a Dubai-raised filmmaker who had the possibility to visit several labour camps while filming his latest documentary “Champ of the Camp”, “a labour camp is by no means a pleasant place. It's made of cement. It's pretty large and houses up to 3000 to 4000 men and has very basic amenities in it and lacks in any sort of color.”¹⁶⁴

There are also life-threatening risks for workers housed in labour camps that do not comply with health and safety regulations imposed by the government. As a result, several workers have lost their lives or suffered serious health problems. According to HRW World Report for the year 2010, in June 2010, three Asian workers suffocated to death in their labour accommodation in Dubai after inhaling carbon dioxide from a

¹⁶² <http://www.thenational.ae/news/uae-news/safety-officers-will-be-required-at-dubai-work-sites>

¹⁶³ <http://www.constructionweekonline.com/article-5477-new-standards-for-uae-labour-camps-from-september/>

¹⁶⁴ <http://www.pri.org/stories/2014-01-20/new-documentary-gives-us-peek-life-inside-labor-camps-dubai>

generator. In August of that same year, a fire charred to death 11 sleeping workers.¹⁶⁵ In 2011, a fire that was presumably caused by an electrical fault killed four men in a makeshift Musaffah labour camp in Abu Dhabi.¹⁶⁶ The following year, also in Abu Dhabi, 2 workers died in their accommodation of apparent food poisoning, the doctors however said their deaths was from natural causes.

Passport Confiscation

Under UAE law, withholding employees' passports by employers is illegal. However, it is still a common practice in the construction industry, typically to ensure that the employees do not abscond. In 2001, the Dubai Court of Cassation issued a ruling that states "it is not permitted for an employer to confiscate the passport of an employee and prevent him from his natural right to travel and move whatever the nature of the relationship that ties them together."¹⁶⁷

A year later, Ministry of Interior issued a circular further reaffirming that "as the passport is a personal document that the law obliges its owner to keep and show when required by the governmental authorities, it is not allowed for any party to detain the passport except by the official parties with a judicial order and according to the law (...) In case of retaining passports there will be a suitable punishment by the law of UAE."¹⁶⁸ Unfortunately, despite the laws, the problem is that a worker does not possess the time and the means that are required to register a formal complaint to the Ministry of Labour regarding the confiscation of his passport. Unless the government takes serious measures to enforce the law, employers will continue the practice without any concern for the workers' rights.

Freedom of association and collective bargaining rights

Under UAE current law workers are not allowed to form or join unions, and no unions exist in the country, also the law does not recognize the right to collective bargaining. Moreover, UAE law prohibits strikes. Migrant workers who strike may be suspended,

¹⁶⁵ <http://www.hrw.org/world-report-2011/united-arab-emirates>

¹⁶⁶ <http://www.thenational.ae/news/uae-news/four-die-in-fire-at-makeshift-labour-camp>

¹⁶⁷ Ruling by Dubai Court of Cassation, Case # 268 (2001), October 27, 2001.

¹⁶⁸ Ministry of Interior Circular, December 2002.

fired, or even deported. In addition, the Labour Minister has the power to intervene to end a strike and force workers to resume work. In 2013, after the strike against Arabtec, more than 460 who were identified as instigating a strike were deported from the country, despite claims in the national media that the workers were “being helped to return home.”¹⁶⁹ In 2011, 71 Bangladeshi workers were deported after instigating a strike against the same company.¹⁷⁰

In 2006, the UAE labour minister announced that a new law was being drafted to allow the creation of construction unions and legalise collective bargaining.¹⁷¹ However, as of 2014, still no significant changes have been made to the law regarding freedom of association and collective bargaining rights.

Chapter 4: A Rights-Based Approach Towards the Employment of Migrant Workers

In this chapter I would like to present the reader with the human rights instruments that are available, both at an international and at regional/local level, for the protection of migrant workers. After which I will proceed to analyze the role of the governments of migrants’ sending countries in the protection of their nationals. In the last section of the chapter, I would be discussing what should be the human rights’ responsibilities for companies operating in the region and what can they expect to achieve through their CSR policies. All this analysis will be done taking into account the framework of a rights-based approach in the employment of migrant workers.

4.1 International Human Rights Instruments for the protection of Migrant Workers

Significant developments have taken place at a global level regarding the protection of human rights since the adoption of the UDHR in 1948 that sets fundamental human rights to be universally protected. Nonetheless, there are still a large number of people and groups in several parts of the world that are being denied access to those rights, be it for their religion, color of the skin, nationality, social status, etc. Migrant workers are

¹⁶⁹ <http://www.thenational.ae/news/uae-news/striking-arabtec-workers-in-uae-helped-to-return-home>

¹⁷⁰ <http://www.constructionweekonline.com/article-10892-update-striking-arabtec-workers-deported/>

¹⁷¹ <http://news.bbc.co.uk/2/hi/business/4861540.stm>

often vulnerable to become victims of human rights violation because of their status as foreigners or as non-citizens of the state where they are working. Moreover, since the rights related particularly to migrants are yet to receive full recognition by the law, migrants are even more subject to suffer human rights violations.

In order for these violations not to take place, migrant workers need to be protected by labour standards at an international, regional and domestic level, which can be used as guidance in determining their rights as well as the duty of the States to protect them.

At the international level, the legal framework for the protection of human rights of migrants is very broad and it has the function of promoting and protecting a basic set of rights for workers such as a minimum wage, safe working conditions, freedom of association and collective bargaining rights, etc.

Together with the UDHR, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), commonly known as the International Bill of Rights, the Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC), are the six main human rights treaties adopted by United Nations from 1948 to 1989. All these treaties can be used as legal instruments to promote human rights and, at the same time, they help to provide migrant workers with a basic protection of their rights.¹⁷²

Article 2 of the ICCPR states that countries party to it must respect the Covenant rights and make sure that “all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁷³ In addition, the ICCPR provides everyone, including migrant workers, with provisions against slavery and forced labour, and freedom from abuses and torture, which is also included in the CAT.

¹⁷² The Vienna Declaration and Programme of Action (1993) could also be mentioned as a relevant example since it stresses the role of the State’s parties to protect and promote human rights as their main responsibility and seeks to reaffirm the universality of human rights.

¹⁷³ ICCPR, Part II, Article 2.

Likewise, article 2 of the ICESCR, repeats what has been stated in Article 2 of the ICCPR and adds, in its article 7, the right of everyone “to the enjoyment of just and favourable working conditions,”¹⁷⁴ that should materialize in fair wages and equal remuneration for work of equal value, sufficient to provide a decent living for workers and their families; safe and healthy working conditions; equal opportunity for everyone to be promoted to a higher position; and sufficient rest and leisure, including limited working hours and remunerated periodic holidays.

Despite the fact that the rights of migrant workers are adequately covered in the six above mentioned core international human rights treaties, a common supranational framework establishing basic norms and principles on how to develop labour immigration policies was needed to further protect migrant workers’ rights due to “the dispersed and fragmentary nature of the provisions of international human rights law that are of direct relevance to migrants and migration-related situations.”¹⁷⁵

Last but not least, another UN instrument that could be used for the protection of migrant workers are the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, the three protocols, which supplements the 2000’s United Nations Convention Against Transnational Organized Crime (Palermo Convention), is now commonly known as the Palermo Protocol. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, that was adopted by General Assembly resolution 55/25 and entered into force on 25 December 2003¹⁷⁶, is the first universal legally binding instrument that counts with an agreed definition on trafficking in persons. In addition, it criminalises the extraction of forced labour or servitude, slavery or practices similar to slavery, through the use of coercion, threats, or deceptive recruiting.

¹⁷⁴ ICESCR, Part III, Article 7.

¹⁷⁵ Ghosh, 2003, p. 9.

¹⁷⁶ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

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

In addition, to the treaties mentioned above, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which was adopted on 18 December 1990 and entered into force on 1 July 2003, is also part of the United Nations “core human rights treaties” and it has become the most comprehensive international treaty in the field of migration and human rights.

While reaffirming and complementing existing protections for human rights in the other six core human rights treaties, the Convention seeks to establish minimum standards that the States parties should apply to migrant workers and members of their families, irrespective of their migratory status (including when they are working and living in an irregular situation)¹⁷⁷, to address the specific vulnerabilities in which they may find themselves while they are outside their home country.

The Convention aims at guaranteeing equal treatment and the same working conditions for migrants and nationals alike and while it does not create new rights for migrants, it encourages States to facilitate certain conditions such as family reunification, which is stated in Article 44 (2): “States Parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.”¹⁷⁸

Unfortunately in several occasions migrant workers are left out of the regulations regarding working conditions, article 25 addresses this situation by establishing that “migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration and other conditions of work, [such as] overtime, hours of work, weekly rest, holidays with pay, safety, health,

¹⁷⁷ The rights granted to documented and undocumented workers are not exactly alike. Those rights applicable to all migrant workers irrespective of their legal status are listed in part III of the Convention, whereas those applicable to migrant workers in a regular situation are mentioned in part IV of the same document.

¹⁷⁸ ICMW, Part IV, Art. 44.

termination of the employment relationship and any other conditions of work (...).”¹⁷⁹ Furthermore, article 26 recognizes the right of migrant workers and members of their families to take part in meetings and activities of trade unions and of any other associations established in accordance with law and to join freely any trade union.¹⁸⁰ In addition, the Convention provides migrants with effective remedy in case any of the rights recognized in it are being violated.¹⁸¹

Finally, since the implementation of the Convention rests with its States parties. Article 72 of the Convention establishes a treaty monitoring body, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, which is made up of 10 independent experts in charge of the examination of the initial and periodic reports submitted by each State Party.

Despite constituting a milestone in the development of human rights instruments for the protection of migrants, the impact of the Convention on remains very limited as the majority of states (essentially all major migrant-receiving countries) have not yet ratified it.

To date, only 47 states have ratified it¹⁸², and these are countries that host a limited number of the world's total migrant population. Therefore, only a minority of migrants has been able to benefit from the protections offered by the Convention.

4.1.2 ILO Conventions

The International Labour Organization is an international organization that was established in 1919, as part of the Treaty of Versailles that ended World War I, with the mission to promote social justice and internationally recognized human and labour rights. In 1946, it became a specialized agency of United Nations “responsible for drawing up and overseeing international labour standards.”¹⁸³ Nowadays it has the support of 185 Member States.

There are 8 ILO’s Fundamental Conventions, that are legally binding on every member regardless of its ratification and are referred to as the core labour standards, these are the

¹⁷⁹ Idem, Part III, Art. 25.

¹⁸⁰ Idem, Part III, Art. 26.

¹⁸¹ Idem, Part VIII, Art. 83.

¹⁸² https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-13&chapter=4&lang=en

¹⁸³ Ruhs, 2013, p. 192

following: Convention No.29 on Forced Labour; No. 87 on Freedom of Association and Protection of the Right to Organise; No. 98 on the Right to Organise and Collective Bargaining; No. 100 the Equal Remuneration Convention; No.105 about the Abolition of Forced Labour; No.111 Discrimination (Employment and Occupation) Convention; No.138 the Minimum Age Convention and No.182 Worst Forms of Child Labour Convention According to the 1998 ILO'S Declaration of Fundamental Principles and Rights at Work, "all members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote, and to realize, in good faith and in accordance with the [ILO] constitution, the principles concerning the fundamental rights which are the subject of those conventions."¹⁸⁴ Moreover, the Declaration specifically states that all members are obliged to allow freedom of association and the right to collective bargaining.

In addition, there are two ILO specific instruments for the protection of migrant workers: the Migration for Employment (Revised) Convention and the Migrant Workers (Supplementary Provisions) Convention, as well as their accompanying Recommendations. Together they "provide a framework for guidance on what should constitute the basic components of a comprehensive labour migration policy, the protection of migrant workers, the development of their potentials and measures to facilitate as well as to control migration movements."¹⁸⁵

To supervise the correct implementation of the conventions, the Committee of Experts on the Application of Conventions and Recommendations was set up in 1926. Once a country has ratified an ILO convention, it is compelled to report regularly on the measures that it has taken to implement the convention and, every two years, Member States must submit reports detailing the steps they have taken to implement any of the eight Fundamental Conventions.

Despite the fact that the GCC countries have ratified several of the above mentioned conventions, their "inadequate implementation and oversight of current legal provisions means they rarely translate to worker protections in practice and that employers can

¹⁸⁴ ILO, Declaration of Fundamental Principles and Rights at Work.

¹⁸⁵ ILO, 2007, p. 2.

pick and choose what protections to offer, with relative impunity.”¹⁸⁶ In order to address this issue, the ILO, in cooperation with the European Union (EU), has launched a new project aimed at migrant workers from India, Nepal and Pakistan who are migrating to the GCC countries, promoting safe migration offering, among other things, pre-departure orientation programmes.¹⁸⁷

Table 2: ILO’s fundamental conventions and their ratification status by country¹⁸⁸

| | Freedom of association and collective bargaining | | Elimination of Forced and compulsory labour | | Elimination of discrimination in employment and occupation | | Abolition of child labour | |
|----------------------|--|----------|---|-----------|--|-----------|---------------------------|-----------|
| | Conv. 87 | Conv. 98 | Conv. 29 | Conv. 105 | Conv. 100 | Conv. 111 | Conv. 138 | Conv. 182 |
| Bahrain | X | X | ✓ | ✓ | X | ✓ | X | ✓ |
| Kuwait | ✓ | ✓ | ✓ | ✓ | X | ✓ | ✓ | ✓ |
| Oman | X | X | ✓ | ✓ | X | X | ✓ | ✓ |
| Qatar | X | X | ✓ | ✓ | X | ✓ | ✓ | ✓ |
| Saudi Arabia | X | X | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| United Arab Emirates | X | X | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |

4.2 GCC Countries International Legal Obligations

At the international level, all six members of the GCC are part of the UN as well as the ILO and as a result, they have to respect certain international legal obligations as they are legally bound to international human rights standards through the international human rights treaties that they have ratified.

As we can see in Table 3, the Member States of the GCC have ratified several of the UN core human rights treaties, with the exception of the ICCPR and ICESCR, that only Bahrain and Kuwait have ratified and the ICMW, that has not been ratified by any of the Gulf countries, even though it reflects the rights set out in the other core human

¹⁸⁶ HRW, 2012 (b), p.7.

¹⁸⁷ http://www.ilo.org/kathmandu/whatwedo/projects/WCMS_234634/lang--en/index.htm

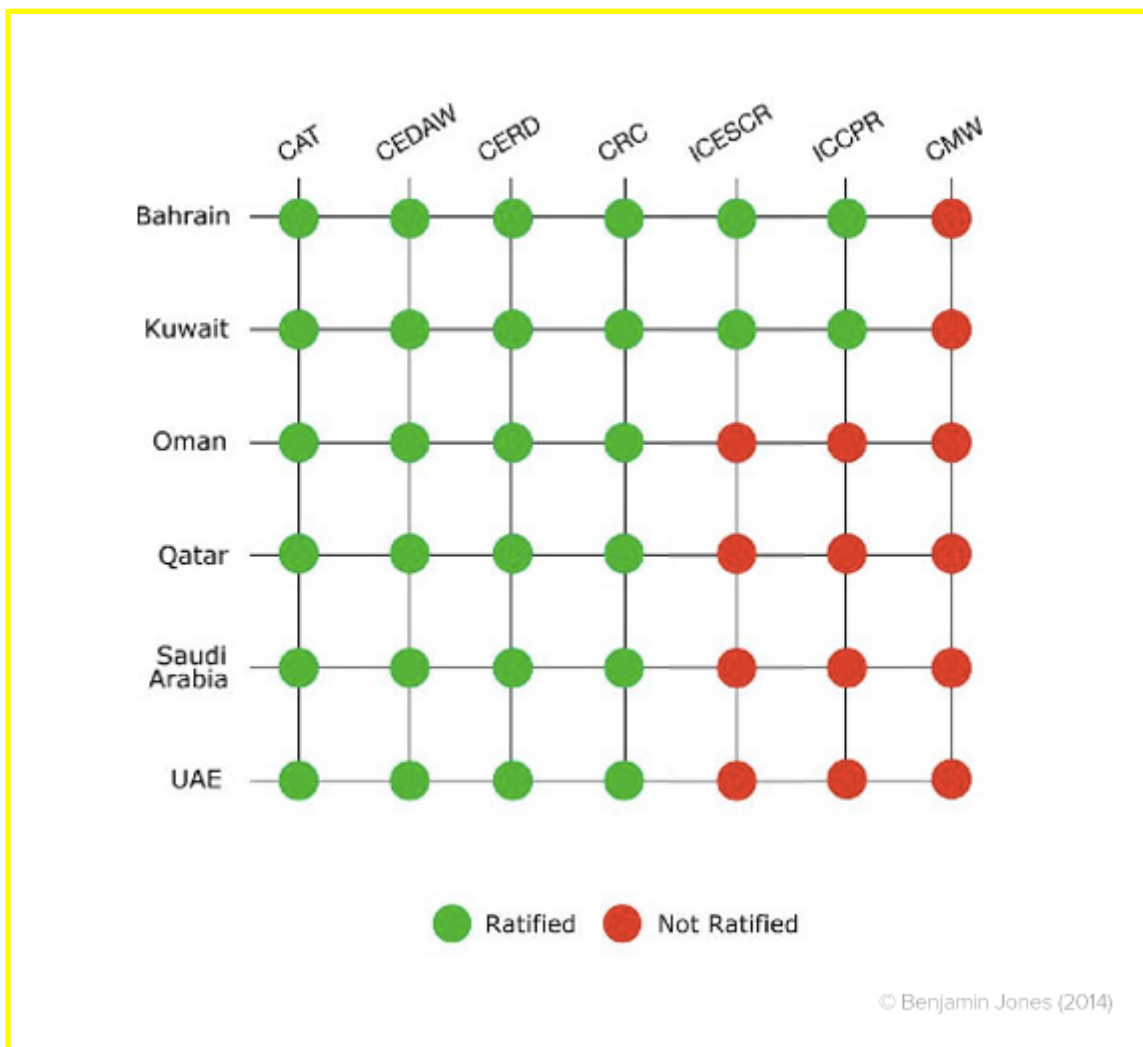
¹⁸⁸ Table slightly modified by the author with original data collected from Amnesty International, 2008, p. 18

rights treaties to which some of GCC countries are already party to.

Being Bahrain and Kuwait the only two GCC countries that have ratified six out of the seven UN core treaties, they have legal obligations to protect workers against nearly all labor-related abuses, such as to ensure and protect freedom of assembly and expression or guarantee fair and safe working conditions for nationals and migrants alike.

Even though the other four Member States of the GCC have not ratified the ICCPR and the ICESCR, all the remaining major human rights conventions that they did ratify, oblige all parties to safeguard the rights of all human beings under their legal jurisdiction, citizens and non-citizens without discrimination.

Table 3: Status of UN Conventions Ratifications by the GCC Countries¹⁸⁹



¹⁸⁹ Table modified by the author with original data extracted from: Ghanea, 2013, p. 3.

Moreover, All GCC Member States completely reject forced labour within their borders considering it a sinful act thus they have all ratified the Palermo Protocol, as well as promulgating national anti-trafficking laws (with the exception of Kuwait).¹⁹⁰ However, while this constitutes a positive step in the prevention of human trafficking and the protection of victims, substantial evidence demonstrates that both the international and domestic laws are not being enforced properly and that more emphasis is put in situations that involve sexual exploitation rather than on forced labour, which largely excludes a big sector of the population, including migrant workers.

With regards to the ILO's conventions, Bahrain has ratified a total of nine ILO Conventions, including four of the eight fundamental Conventions: the Forced Labour Convention, 1930 (No. 29); the Abolition of Forced Labour Convention, 1957 (No. 105); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Worst Forms of Child Labour Convention, 1999 (No. 182). As well as others, such as the Weekly Rest (Industry) Convention, 1921 (No. 14); the Labour Inspection Convention, 1947 (No. 81); the Night Work (Women) Convention (Revised), 1948 (No. 89); the Occupational Safety and Health Convention, 1981 (No. 155); and the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159).

Meanwhile, Kuwait has ratified seven out of the eight Fundamental Conventions, with the exception of the Equal Remuneration Convention. On the other hand, Oman has ratified only four out of eight, the country has not ratified ILO Conventions 87, 98, 100 and 111, "which are those core labour standards protecting freedom of association and collective bargaining and the elimination of discrimination in respect of employment and occupation as well as equal remuneration."¹⁹¹

While Qatar has ratified five out of the eight ILO core labour standards, both Saudi Arabia and the UAE have ratified six out of the eight Fundamental Conventions,¹⁹² not ratifying the Convention on Freedom of Association and Protection of the Right to Organise and the Convention on the Right to Organise and Collective Bargaining.

¹⁹⁰ ILO, 2013, p. 23.

¹⁹¹ http://www.ituc-csi.org/IMG/pdf/TPR_Oman.Final.pdf

¹⁹² The Minimum Age Convention (No. 138) was signed by Saudi Arabia in February 2014 and will enter into force on 02 Apr 2015: http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103208

4.3 The Role of Migrant-Sending Countries

Much has been said about the role of the receiving countries in dealing with the promotion and protection of migrant workers' rights. However, one should not forget that another key actor in the process of migration are migrant-sending countries, who also play a big role in it, especially if we take into account the fact that most of the migrant-sending countries regard migration as an asset to their economies as they highly benefit from the remittances they receive from workers as well as from the relief migration provides to their labour markets and, as a result, they generally encourage migration.

When asked about accidents at construction sites projects linked to 2022 World Cup that took the lives of 44 Nepali workers, Buddhi Bahadur Khadka, a spokesman for the labour ministry in Kathmandu, said: "We won't stop sending the workers just because their exploitation has been highlighted now. We can't stop it because that's the only major employment opportunity for the majority of Nepali youths"¹⁹³; which reflects the clear dependence some of the sending countries have on remittances, "all the major Asian countries sending workers to the Middle East (...) are concerned that too much emphasis on migrant rights may come at the cost of reduced or, in the worst-case scenario, no access to the labour markets of these countries."¹⁹⁴

Nevertheless, the economic benefits that sending countries receive from their nationals working abroad should not prevent them from demanding a fair treatment for their nationals abroad as they are obliged to protect, respect and fulfil their human rights.

Throughout the research it became clear that, in several occasions, migrants had to accept different working conditions than the ones they were offered at home when they arrived in their country of destination in the Gulf. This highlights the lack of compromise that is shown by sending countries when monitoring the actions of recruitment agencies operating in their territory.

In the past, sending countries had played a marginal role in the protection of their nationals abroad. However, during the last decade or so, due to the growing pressure migrant-sending countries were receiving from the international community, NGO's

¹⁹³ <http://gulfnnews.com/news/gulf/qatar/rights-groups-urge-protection-for-migrant-workers-1.1236134>

¹⁹⁴ Ruhs, 2013, p.140.

and their own embassies' personnel, they began to adopt policies to improve the situation of their migrant workforce in the GCC countries.

Among these policies, migrant-sending countries started to ban or restrict the outmigration to the Gulf States of certain group of workers,¹⁹⁵ especially domestic and construction workers, if they see their nationals are placed at a disadvantage in their workplace. Nonetheless, these policies had sometimes “limited, and in many cases contradictory effects [as in some cases] workers circumvented restrictions placed on their out-migration by traveling via third party countries”¹⁹⁶ and, in addition, recruiters have tried to ‘trick the system’ by turning to other source countries that offer less protection for workers. Moreover, “some labour-sending countries have been unwilling to employ similar restrictions or bans against countries they depend on for generating remittances”¹⁹⁷ and they are afraid that by imposing bans, the Gulf countries will turn to other sources of labour and they will remain without the economic benefits of migration they collect through remittances. It is also important to remark that by avoiding to make demands on receiving countries, sending countries show that the difficulties migrant workers have to go through in the destination country are not a top priority in their international affairs agenda.

Nonetheless, sending countries can count on other weapons for the protection of migrant workers such as bilateral agreements and unified standard employment contracts that they agree upon with the receiving countries. However, “both of these methods of reform typically contain provisions focusing primarily on recruiting logistics and specify terms of employment that are weaker than those provided in national labour laws.”¹⁹⁸ Furthermore, bilateral agreements become obsolete if they are not properly enforced by the authorities of the receiving countries, which is usually what happens in the Gulf countries.

Following the line of bilateral agreements, in 2008 the “Abu Dhabi Dialogue” forum,¹⁹⁹

¹⁹⁵ Bangladesh, India, Indonesia, Nepal and the Philippines are a few of the countries that had either banned or restricted migration to the Gulf in the past and they continue to do so if they considered it necessary.

¹⁹⁶ Ahmad, 2010, pp. 28-29.

¹⁹⁷ Murray, 2012, p. 463.

¹⁹⁸ Idem.

¹⁹⁹ bit.ly/1oN9fj6

fostered by the International Organization for Migration, was held in the UAE with Asian migrant-sending countries together with the GCC countries. The result of the meeting was the adoption of the “Abu Dhabi Declaration”, which consists in a collaborative approach to short-term labor mobility in Asia in order to maximize the benefits for sending as well as receiving countries. By focusing on developing four key, action-oriented strategic partnerships between countries, based on a notion of partnership and shared accountability, the Abu Dhabi Dialogue constitutes an important milestone in regional cooperation regarding migrant workers in Asia.

4.4 Business and Human Rights Responsibilities

In 2005, Professor John Ruggie was appointed as the United Nations Secretary-General's Special Representative on the issue of human rights and transnational corporations and other business enterprises with a mandate to identify and clarify standards of corporate responsibility and accountability with regard to human rights²⁰⁰. In that capacity, he produced the UN Guiding Principles on Business and Human Rights, which “provide an authoritative global standard for addressing adverse impacts on human rights linked to business activity, wherever such impacts occur.”²⁰¹

The instrument, which was adopted unanimously by the UN Human Rights Council in 2011²⁰², is based on three foundational pillars:

- 1) States’ protect against human rights abuses by third parties, including business;
- 2) The corporate responsibility to respect human rights;
- 3) Access to effective remedy for victims of human rights abuses.

With this mindset is that business operating in the GCC countries should work, in order to avoid causing or contributing to adverse human rights practices and to demonstrate that they are truly concerned about respecting the dignity and the rights of the people they, directly or indirectly, impact and interact with.

The GCC countries occupy at the moment a very important position at a global level and, as result of this together with several other benefits they receive, several leading multinationals companies have decided to set up business in the Gulf.

²⁰⁰ <http://www.un.org/News/Press/docs/2005/sga934.doc.htm>

²⁰¹ http://www.unglobalcompact.org/issues/human_rights/the_un_srsg_and_the_un_global_compact.html

²⁰² UN Human Rights Council resolution A/HRC/RES/17/4.

Even though the government of the GCC countries are the primary duty holders when it comes to protect human rights, including migrant workers' rights, business in their capacity as private actors also have a responsibility to respect human rights and avoid complicity in abuses. During the last years, some of them have been able to address some human rights issues in the region in a positive way, through their corporate social responsibility (CSR) initiatives.

However, the situation repeated itself when it came to deal with the construction of ambitious projects that involved famous Western institutions, such as the construction of the New York University (N.Y.U.) campus in Abu Dhabi that despite the fact that N.Y.U. issued a statement of labour values²⁰³, in accordance with labour laws of the UAE, that would guarantee fair treatment of workers before starting the construction project, several workers who built the N.Y.U.'s recently completed campus found themselves victims of working and living conditions that were often far from ideal.²⁰⁴

After hearing the workers' complaints, N.Y.U. apologized to any workers who had not been treated in line with their previously set standards,²⁰⁵ it also stressed that most workers on N.Y.U. Abu Dhabi were working for contractors²⁰⁶ not for N.Y.U. directly. Nevertheless, in order to comply with the Guiding principles, companies must make sure that workers, including subcontracted ones, are not subjected to exploitative working conditions.

Meanwhile, in the neighbouring State of Qatar, the role of the private sector in avoiding human rights abuses has gained momentum in the last year due to the 2022 World Cup projects. While the high proportion of migrants in the country creates unique challenges for it at any given time, at the moment the situation is even more pressing as the construction of the stadiums that will host the 2022 FIFA World Cup is underway.

In 2011, the Qatar 2022 Supreme Committee²⁰⁷ was created to monitor the infrastructure projects related to the World Cup and make sure all obligations under the hosting agreement are being fulfilled, including, but not limited to the respect for

²⁰³ <http://nyuad.nyu.edu/en/about/statement-of-labor-values.html>

²⁰⁴ nyti.ms/TklR6B

²⁰⁵ nyti.ms/lj4oMoC

²⁰⁶ In this case, the company in charge of the supervision of the construction of the campus was Mubadala, which is an investment agency wholly owned by the Government of Abu Dhabi.

²⁰⁷ Now known as the Supreme Committee for Delivery and Legacy, Emiri Decree No.3 of 2014.

migrant workers' rights. Since then, several cases have been reported of migrant workers suffering human rights violations,²⁰⁸ and while there are big multinational companies involved in the process, most of them work with subcontractors, who as the Special Rapporteur noted in his visit to Qatar, are the ones that commit the most serious abuses of migrants.²⁰⁹

However, the creation of the Committee alone is not enough to protect, respect and remedy human rights violations that migrant workers are being victims of; the State of Qatar and the FIFA, who has agreed “to add labour related criteria to the bidding process of future FIFA World Cups,”²¹⁰ together with the subcontractors as well as all the other relevant actors who are engaged in construction related activities in Qatar in view of the 2022 World Cup should ensure they are working in compliance with the Guiding Principles.

Chapter 5: Concluding Observations and Recommendations

In this thesis I set out to investigate whether the *kafala* system of sponsorship creates disadvantageous situations for South Asian migrant workers living in the GCC countries and how this situation is put in evidence in everyday life. Throughout the research I was able to document human rights violations that jeopardize the respect for the human rights of migrant workers and how these violations were breaching international human rights law, treaties, and conventions, as well as clauses stipulated in domestic law.

Through the findings of the research I was able to confirm the fact that the sponsorship system in place in the Gulf countries creates adverse circumstances for migrant workers as in most cases they are not able to change employers freely, claim their wages, access to collective bargaining or freely join trade unions.

Having said that, through the employment opportunities that the Gulf countries generate, the region is and will continue to be one of the main destinations for South Asian migrant workers trying to provide a better future for themselves and their future generations. Several temporary migrants were able to make a living, provide for their

²⁰⁸ See Chapter 3.

²⁰⁹ Crépeau, 2014, p.17.

²¹⁰ Statement from Jérôme Valcke on labour rights in Qatar, available at: fifa.to/1myQ5xe

families and saving money to either build a house or start their own business in their home countries, despite the working conditions, and for that they will always be grateful to the opportunities they received in the Gulf.

At the same time, GCC countries still need to employ large amounts of low-skilled, cheap labour to achieve their ambitious building projects and growth plans. It is because of this shared prospect that the governments of both sending and receiving countries need to make sure that workers are being treated according to labour standards set in international law and respecting domestic laws as well as any bilateral treaty that has been agreed between the parties.

In the last years much progress has been made in mainstreaming human rights in the region. The pressure that the international community together with NGO's and human rights activists have put on the GCC governments to improve the conditions for migrant workers employed in their countries has helped greatly to raise awareness and, even in some of the countries, start to implement reforms to the *kafala*. The Abu Dhabi Dialogue initiative fostered by the IOM is a clear example of the importance of the organization as a facilitator between sending and receiving countries to implement reforms. Nonetheless, the reforms are not sufficient if there is not a mechanism put into place to ensure that these reforms are being enforced. Should human rights violations come to light, the State must make sure that those affected in its territory or within its jurisdiction, have access to effective remedies.

Migrant-sending countries have the responsibility to protect their nationals the moment they start the recruitment process, which as the research showed, is a key moment in the migrant worker's journey and when most of the workers suffer abuse and exploitation. The recruitment fees that these agencies charge workers are not only forbidden by the labour laws of the receiving countries but also put the workers in a very vulnerable position by forcing them to borrow money or sell their possessions. In addition, these fees sometimes result in workers being hired for a job they are not qualified to do and as a result they are given a different job with a lower wage when they arrive at the receiving country. Recruitment agencies operating in sending countries should be closely scrutinized, by both the sending and the receiving countries, to guarantee that they are not acting as accomplices in the violation of human rights by placing migrant

workers in a forced labour situation, which could amount to trafficking in persons, according to the Palermo Protocol.

Moreover, migrant-sending countries have the power to monitor the implementation of the reforms, bilateral agreements as well as the principles set out forth in the Abu Dhabi Declaration, through their embassies in the Gulf. Last but not least, the economic benefits that migrant-sending countries reap through remittances from abroad should not prevent them from naming and shaming the countries that are not acting in accordance with international labour standards, and, if necessary, ban workers from accepting jobs that would result in their rights being violated by the employer.

Multinational companies operating in the region can manage human rights abuses and forced labour related risks inherent in the GCC's construction sector by ending practices such as the contract substitution, withholding of passports, non payment of wages, unsafe working conditions and inadequate living conditions, among others as well as refraining from trading with companies that are notable for committing abuses.

Furthermore, they can leverage their influence to advocate for stronger labour standards in the region. The adoption of a human rights framework by all companies operating in the Gulf, would allow them to safeguard migrant workers rights', making sure everyone involved in the process, including sub-contractors, are operating in conformity with internationally set standards.

At the same time, the UN and its agencies, such as the ILO have the responsibility to safeguard the lives of migrant workers by making sure receiving countries are respecting the treaties they are part of and that those countries that have not ratified the seven UN core human rights treaties do so as soon as possible. In addition, GCC Member States being elected for the United Nations Human Rights Council (UNHRC) should embrace the highest standards in the promotion and the protection of human rights and should not fall under an average standard like it has been the case when Qatar won the election, for the second time, to be a member of the UNHCR.

Simultaneously, the ILO has the means to pressure the GCC governments to reform the sponsorship system and to take effective action to ensure that this system does not place migrant workers in situations of increased vulnerability. Also, it should remind GCC Member States that even if they have not ratified the ILO's Fundamental Conventions

they have an obligation arising from their membership in the Organization to respect promote and realize the rights of workers.

On the other hand, civil-society actors at a national and international level, such as HRW, AI, the ITUC, among others, have been contributing a great deal to the reforms of the *kafala* and the improvement of migrant workers' conditions through their awareness campaigns, reports and active participation at the UN's Universal Periodic Reviews.

Last but not least, while a complete abolition of the sponsorship system does not seem feasible at the moment, receiving countries should undertake serious reforms to the sponsorship system currently in place by allowing workers to change sponsors at their own free will, making sure workers are being paid on time by implementing the Wage Protection System, inspect working sites as well as workers' accommodations on a regular basis to make sure employers are acting in compliance with domestic and international laws, in order to assure them a gratifying permanence in the Gulf.

Recommendations

In light of the data collected throughout the research and as a way to encourage further research on the topic, I wish to propose the following recommendations:

To the GCC countries

- Reform the *kafala* system of sponsorship so as to avoid the intrinsic human rights violations that it generates.
- Sign and ratify without reservations the ICMW as well as the ICCPR and ICESCR, for the countries that have not done so yet, as a symbol of the commitment your governments have for the respect and promotion of human rights in general and of migrant workers' in particular.
- Amend Labour Laws to guarantee the right of freedom of association and collective bargaining as well as workers' rights to strike for migrant workers and ensure that migrant workers have adequate protection against abuses by employers and the state.

- Prevent companies from doing business with recruitment agencies that charge workers fees for employment related costs, such as travel arrangements, working visas, etc.; and penalize recruitment agencies or brokers found doing so.
- Enforce bilateral agreements signed with migrant-sending countries and work closely with them to provide redress for workers that have been victims of human rights abuses while working in the region.

To migrant-sending countries

- Ratify and fully implement the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, for those who have not done so yet.
- Regulate recruitment agencies in order to avoid unethical recruitment that is not in compliance with international human rights and labour standards, such as charging migrant workers recruitment fees. Sanctions should be imposed to those violating such regulations.
- Organize pre-departure awareness seminars to provide accurate and timely information to workers in regards to their employment, informing them about their rights and how to access them as well as the domestic laws of the receiving countries.
- Have the embassies' personnel in the region trained to assist in situations of human rights violations.
- Make sure that bilateral agreements negotiated with the receiving countries contain terms and provisions regarding minimum wages, living and working conditions and access to legal mechanisms for returning workers and follow up closely the enforcement of those agreements.

Recommendations to the private sector

- Implement the United Nations Guiding Principles on Business and Human Rights.
- Ensure that migrant workers do not have to pay recruitment fees to be hired and that the contracts they have signed in their homes countries are not being substituted on arrival to the destination country and that they are written in a language they understand.

- Guarantee safe and adequate living and working conditions for all workers by respecting international human rights and labour standards and refrain from practices that violate workers' rights, such as passport confiscation or non-payment of their salaries. If working with subcontractors, take the necessary measures to safeguard workers' rights and penalize those not acting in accordance with domestic and international standards.
- Put in place due diligence mechanisms to identify, prevent, mitigate and account for how they address their impacts on human rights.

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