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# Migrant Construction and Domestic Workers in the Arab Gulf States: Modern - Day Slaves?

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**Migrant Construction and Domestic Workers in the Arab  
Gulf States: Modern-Day Slaves?**

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**A Thesis submitted to the Faculty of Graduate Studies in partial  
fulfillment of the requirements for the degree of Master of Laws**

**Graduate Program in Law  
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## ABSTRACT

This thesis examines the conditions of migrant construction and domestic workers in the Arab Gulf. I explore literatures on migrant labour, precariousness, and slavery. I also look at international and domestic legal instruments as well as data produced by several human rights organizations. This thesis shows how the mechanisms involved in the migration of migrant construction and domestic workers exacerbate vulnerability and precariousness. I examine the ways in which social locations including gender and race play a role in discrimination against migrant construction and domestic workers in the Arab Gulf, thus assisting conditions of slavery to arise. My aim is not to generalize the situation of migrant construction and domestic workers in the Arab Gulf as amounting to slavery. Rather, I argue that migrant construction and domestic workers in the Arab Gulf enduring conditions tantamount to possession fall under the category of slavery in view of the 1926 Slavery Convention as interpreted by international guidelines and scholars.

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## Chapter I – Introduction

Living in the Arab Gulf for seven years, I found it difficult to ignore discrimination against low-skilled migrant workers such as construction and domestic workers<sup>1</sup> mainly from South and Southeast Asia. Various human rights organisations and activists have raised awareness to the issue of Migrant Workers<sup>2</sup> in the Arab Gulf and the conditions they face. Human Rights Watch (HRW) called for attention to the situation of Migrant Workers in the region, claiming that several suffer from conditions of slavery.<sup>3</sup> The organization also released a report on migrant domestic workers in Saudi Arabia, recounting their experiences and describing some cases as amounting to slavery.<sup>4</sup> Similarly, Amnesty International recently published a report on the situation of migrant domestic workers in Qatar detailing the experiences and harsh conditions they endure.<sup>5</sup> Anti-Slavery International sets out possible conditions where domestic servitude may amount to slavery such as through denial of movement, withheld or unpaid wages, use of or threat of violence, confiscation of passports and legal documents, limiting ability to contact families back home, and deceiving of their labour rights,<sup>6</sup> all of which are present elements in the experiences of many Migrant Workers in the Arab Gulf as will be set forth later.

Migrant Workers have also fallen under the spotlight of media. Headlines often refer to the notion that many Migrant Workers in the region experience modern-day slavery due to harsh conditions. CNN, for example, published a news article titled

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<sup>1</sup> In this thesis, “domestic workers” refers to female housemaids.

<sup>2</sup> Migrant domestic and construction workers are referred to in this thesis as “Migrant Workers”. When I refer to ‘migrant workers’ I am referring to both migrant domestic and construction workers.

<sup>3</sup> Human Rights Watch, News Release, “South Asia: Protect Migrant Workers to Gulf Countries” (18 December 2013) online: HRW

<sup>4</sup> Human Rights Watch, News Release, “South Asia: Protect Migrant Workers to Gulf Countries” (18 December 2013) online: HRW <http://www.hrw.org/news/2013/12/18/south-asia-protect-migrant-workers-gulf-countries>.

<sup>5</sup> Human Rights Watch, “As If I Am Not Human: Abuses against Asian Domestic Workers in Saudi Arabia” (2008) 1 at 34.

<sup>6</sup> Amnesty International, “My Sleep is My Break: Exploitation of Migrant Domestic Workers in Qatar” (April, 2014) 5.

<sup>6</sup> Slavery Today, *Domestic Work and Slavery*, online: Anti-Slavery International [www.antislavery.org](http://www.antislavery.org).

“Modern day slavery in the Gulf,” portraying conditions of migrant construction workers as suffering modern-day slavery.<sup>7</sup> Vice TV presented a documentary titled “The Slaves of Dubai,”<sup>8</sup> where BBC’s Ben Anderson describes the harsh working and living conditions of migrant construction workers in Dubai. Moreover, Qatar has recently received severe criticism from human rights organizations as well as the media for mistreating migrant construction workers involved in the upcoming FIFA World Cup in 2022. François Crépeau, the United Nations (UN) Special Rapporteur on the human rights of migrant workers, has voiced his opinion and called on the government to improve the situation of migrant workers and their families. He also called for abolishing the *Kafala* sponsorship system<sup>9</sup> and urged Qatari authorities to grant migrant workers their basic rights (minimum wage, right to organize, collective bargaining...etc.<sup>10</sup>)

Exploring literature on migrant labour, precariousness, and slavery<sup>11</sup>, I argue that Migrant Workers in the Arab Gulf enduring conditions tantamount to possession<sup>12</sup> fall under the category of slavery in view of the 1926 Slavery Convention<sup>13</sup> as interpreted by international guidelines and scholars. My aim, however, is not to generalize the situation of migrant construction and domestic workers in the Arab Gulf as amounting to slavery. Moreover, I shed light on the various social and legal mechanisms such as the *Kafala* sponsorship system that play key roles in discriminating against Migrant Workers. These

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<sup>7</sup> Dimitri Gkiokas, “Modern day slavery in the Gulf”, *CNN* (24 April 2013) online: CNN World <http://globalpublicsquare.blogs.cnn.com>.

<sup>8</sup> “The Slaves of Dubai”, *Vice News* online: [www.vice.com](http://www.vice.com).

<sup>9</sup> Explanation of *Kafala* on page 18 – the sponsorship system in the Arab Gulf.

<sup>10</sup> “Qatar World Cup a crucial opportunity to improve plight of migrants – UN rights expert”, *UN News Centre* (13 November 2013) online: [www.un.org](http://www.un.org).

<sup>11</sup> Nuanced by literature on unfree labour and forced labour.

<sup>12</sup> Guideline 5 in Bellagio-Harvard Guidelines in Appendix A.

<sup>13</sup> *Slavery Convention*, 25 September 1926, (entered into force 9 March 1927), Article 1(1).

(“Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”)

mechanisms allow for abuse and exploitation, thus facilitating conditions of slavery to arise.

## 1.1 Method/Methodology

My research is based on (1) an analysis of the issue of Migrant Workers in the Arab Gulf in light of literature on migrant labour, precariousness, and slavery, and (2) collecting data from human rights organizations such as HRW and Amnesty International, as well as media reports that regularly cover the situation of Migrant Workers in the Arab Gulf countries. Migrant work in the Arab Gulf has been put under scrutiny specifically regarding construction workers and domestic workers whose rights are either neglected or non-existent. Migrant Workers occupy the lowest levels of employment in the region and are often victims of abuse mainly due to their sponsorship under the *Kafala*, which is a systemic form of discrimination that has been criticized by not only human rights organizations and activists,<sup>14</sup> but also by numerous scholars and researchers.<sup>15</sup>

To assess the notion that many Migrant Workers in the Arab Gulf suffer from slavery, it is necessary to look at the data on the issue: What are the rights of Migrant Workers in the Arab Gulf States? Who is included and who is excluded? What are the conditions endured by these Migrant Workers? What aggravates these conditions? How does the concept of precariousness relate to such conditions? How does the *Kafala* exacerbate the vulnerability of Migrant Workers? How can they be classified or not classified as slaves?

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<sup>14</sup> See Introduction.

<sup>15</sup> Lori, Longva, Bajracharya & Sijapati, Gardner, Jureidini & Moukarbel, Jarallah, Manseau.

As part of my research, I turn my attention to social science and legal scholars to answer these questions and bridge the literatures together for a better understanding of the conditions of Migrant Workers in the Arab Gulf. An interdisciplinary socio-legal approach to the issue is needed, as it involves social factors contributing to the vulnerability of Migrant Workers. They are discriminated against, maltreated, and may suffer from conditions of slavery. To assess such situations, it is necessary to examine the opinions of legal scholars, which not only helps deepen understanding of the issue from a legal perspective, but also allows for legal solutions.

It is also imperative to look at the law, both domestic and international, and highlight the role it plays. Is it implemented? Is it effective? Is it even available? I explore the UAE 1980 Federal Labour Law<sup>16</sup> to better understand the type of protection provided to Migrant Workers in the UAE. I also look at international conventions relevant to slavery, migrant work, and human rights. This entails an overview of the rights granted under the International Labour Organization (ILO) Decent Work Convention<sup>17</sup> and other set ILO standards such as the Rights to Organize and Collective Bargaining.<sup>18</sup>

My thesis does not involve primary research and collecting original primary data, but rather engages in a review and analysis of available material produced by international reports and media outlets. Amongst the major reports I rely on are HRW's 'Building Towers' (2006),<sup>19</sup> 'As If I'm Not Human' (2008),<sup>20</sup> and Amnesty

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<sup>16</sup> Federal Law No. 8 of 1980 Regulating Labour Relations (amended by Federal Laws No. 24 of 1981, No. 15 of 1985 and No. 12 of 1986).

<sup>17</sup> *Convention on Domestic Workers*, ILO, 16 June 2011, (entered into force 5 September 2013).

<sup>18</sup> *Convention on Right to Organise and Collective Bargaining*, ILO, 1 July 1949, (entered into force 18 July 1951).

<sup>19</sup> Human Rights Watch, "Building Towers, Cheating Workers: Exploitation of Migrant Construction Workers in the United Arab Emirates" (2006) 8 at 2.

<sup>20</sup> *Supra* note 4.



International's 'My Sleep is My Break' (2014).<sup>21</sup> 'Building Towers' was written based on research in the UAE through interviews with sixty migrant construction workers in the emirates of Dubai, Sharjah, and Ajman. The report also consists of interviews with government officials, lawyers, journalists, health professionals, foreign diplomats, as well as employers. Various locations were visited such as labour camps, hospitals, and construction sites. Yet, there proved to be no access to local organizations with possible data on the conditions of Migrant Workers. Interviews with forty-seven additional migrant construction workers were conducted by HRW regarding the issue. Although their testimonies are not included in the report, the organization claims that it has valid reasons to believe that the exploitation and abuse is not limited to construction workers.<sup>22</sup>

Research on migrant domestic workers in Saudi Arabia by HRW in 2008 proved as well to be somewhat difficult as there were requests for information with no response. Nonetheless, the report produced by the organization was useful as it relied on a two-year research involving meetings with government officials in Saudi Arabia and Sri Lanka, and including analysis of various existing laws and regulations, press reports, studies done by the Saudi government, international organizations and civil society. Interviews were conducted with migrant domestic workers either working or who had worked in Saudi Arabia. HRW was successful in interviewing recruitment agents, members of civil society, and government officials but unfortunately failed to find employers willing to undergo a formal interview.

HRW was able to converse informally with employers, allowing the unfolding of some of their experiences with hiring domestic workers and their perception towards

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<sup>21</sup> *Supra* note 5.

<sup>22</sup> *Supra* note 19 at 19.

these migrants.<sup>23</sup> HRW's research did not flow without hindrances. The report recounted a significant incident where despite promise of allowing an open visit to the Ministry of Social Affairs (MOSA) centre for domestic workers in Riyadh, the centre's administration transferred temporarily hundreds of women from the facilities to portray the shelter as having only a few dozen women and to hide the overcrowded and corrupt conditions that they are placed in.<sup>24</sup>

Despite obvious obstacles in conducting research, the data provided by these reports are a reliable source of information on the situation of Migrant Workers, as there is scarcity in finding available data internally with limited access encountered. Having said that, I also look at various news stories and releases such as HRW's 'South Asia: Protect Migrant Workers to Gulf Countries'<sup>25</sup> and Ben Anderson's 'The Slaves of Dubai',<sup>26</sup> where despite the difficulties in access, the reporter was able to talk briefly to construction workers living in labour camps.

My reliance on such sources helps review available material and sheds light on the limited access to primary resources and information by the host governments. This is shown in documentaries such as 'The Slaves of Dubai' where secrecy tends to be an efficient policy when collecting raw information on the real-life experiences of Migrant Workers. I tried to contact Hadi Ghaemi, the researcher of HRW's report 'Building Towers', to obtain some more primary data he collected as part of his research on migrant construction workers in the UAE; however, I received no response. Still, I am confident to rely on primary data produced by international organizations and media articles, all

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<sup>23</sup> *Supra* note 4 at 10-11.

<sup>24</sup> *Ibid* at 10.

<sup>25</sup> *Supra* note 3.

<sup>26</sup> *Supra* note 8.

demonstrating evidence that indicate to the same issues: physical and psychological abuse of Migrant Workers, confiscation of passports and legal documents, low wages or non-payment of wages and so on. To provide a needed richness to my project, I find it necessary to take an interdisciplinary approach in tackling the issue. I discuss my interdisciplinary theoretical framework in the next chapter.

To further understand why it may be valid to state that slavery exists in the Arab Gulf, it is insightful to acknowledge briefly some of the historical dimensions of slavery in the region, i.e. the environment in which it existed, the political and economic factors that played a role in maintaining its continuity, as well as the events leading to its abolition.

## **1.2 Brief History on Slavery in the Arab Gulf**

Barbara Degorge, an academic in Middle Eastern studies, asserts that slavery in the Middle East is not a new concept but rather it has existed for many years and has been a “constant feature from the beginning of recorded history.”<sup>27</sup> She claims that slavery was an indication of a person’s social status, adding that the earliest examples of slavery can be traced back to Ancient Mesopotamia. Slavery, according to Degorge, is also mentioned in Sumerian, Babylonian, and Egyptian texts, as well as the Old and New Testaments.<sup>28</sup> Along with the Old and New Testaments, the Qur’an also suggests that slavery was a way of life. This explains that slavery was a practice openly justified from a religious point of view up until the nineteenth century.<sup>29</sup>

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<sup>27</sup> Barbara Degorge, “Modern Day Slavery in the United Arab Emirates” (2006) 11 *The European Legacy: Toward New Paradigms* 657 at 658.

<sup>28</sup> *Ibid* at 659.

<sup>29</sup> *Ibid*.

Slavery in Islam underwent a process of evolution, starting from being an accepted practice and part of everyday life until finally being limited to non-Muslims.<sup>30</sup> Furthermore, Degorge states that the growth of the Ottoman Empire was accompanied by army recruitment of slaves who gain freedom once military duty ends. When the supply of slaves declined in the European Christian countries, slaves were recruited from other parts of the world such as Africa. This increased the influx of slaves to the Islamic world, which, according to Degorge, is a pattern that can still be seen today.<sup>31</sup>

Engaging in a detailed discussion on the Arab slave trade, Matthew S. Hopper highlights the political and economic interests that affected slavery in the region. Hopper asserts that changes in the institution began in the nineteenth century where British responses to the problem were voiced.<sup>32</sup> As anti-slavery advocate in the nineteenth century, Great Britain faced the dilemma of suppressing the slave trade in the Arab Gulf and maintaining free trade, the latter largely relying on the former.<sup>33</sup>

The Arab Gulf administration feared that the complete suppression of slave trade and the outlawing of slavery as an institution would jeopardize the economic success in the region by restraining production, limiting exports, reducing revenues, retarding imports, and consequently curbing the popularity of the administration and dwindling its power.<sup>34</sup> However, by the 1920s there was international and regional pressure on the Arab Gulf administration to abolish the slave trade. The two main factors triggering such abolition are the collapse of pearl prices in the wake of introducing Japanese cultured

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<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid* at 660.

<sup>32</sup> Matthew S. Hopper, "Imperialism and the Dilemma of Slavery in Eastern Arabia and the Gulf, 1873-1939" (2006) 30 *Itinerario* 76 at 77.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

pearls, as well as the international pressure by the League of Nations, particularly after the forming of the Advisory Committee of Experts on Slavery in 1933.<sup>35</sup>

Hopper's historical analysis provides significant insight on the idea that slavery might still exist in the area up to date. He claims that attitudes towards slavery back in the nineteenth century revolved around a sense of normalcy towards the institution and the belief that it is sanctioned by Islam and is part of Arab life. These attitudes revolved also around the idea that Arabs are naturally lazy, unwilling to perform manual work and largely dependent on slave labour.<sup>36</sup> This behaviour is one that can be very well observed in the Arab Gulf today, where foreign workers constitute the large majority of the workforce, especially with regards to manual labour.

Hopper refers as well to the idea that Arabs in the nineteenth century perceived slavery as a tolerable institution that was beneficial to slaves themselves. This relied upon the view that slavery in the Arab Gulf took a mild form where slaves generally received good treatment and faced minimal abuse.<sup>37</sup> In linking between the existence of slavery in the nineteenth century Arab Gulf and the twenty-first century Arab Gulf, further insight is provided on why it may be valid to consider the abuse of many Migrant Workers as nothing less than slavery.

Surūr is an Ethiopian man, kidnapped at eleven years old and shipped to Jedda with fifty other captives. He was sold to a man in Qatar and then to a pearl merchant who engaged him as a diver. Spending five years in slavery in the Arab Gulf, Surūr attempted

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<sup>35</sup> *Ibid* at 90.

<sup>36</sup> *Ibid* at 81.

<sup>37</sup> *Ibid*.

to escape twice but was returned to his master and was severely beaten. Finally, he succeeded in escaping to Djibouti.<sup>38</sup>

Maria, a Filipina woman, migrated to Qatar for domestic work to support her family back home. She signed a contract with a promise of 1450 Riyals (equivalent to USD 400) per month but was paid approximately half that amount. Her recruiter charged her a two-month salary fee for his services. Maria's travel and legal documents were confiscated at her arrival along with her clothes, and was forced to wear a uniform at all times. Maria was not permitted to be in contact with anyone and had to work daily from 5:30 a.m. till midnight, i.e. more than eighteen hours. She was not provided full meals and was often given inadequate food or leftovers. Maria was also physically abused, claiming that her employer pushed her head into the toilet and pulled her hair. Maria finally escaped the household where surveillance cameras are installed to monitor the domestic workers. She arrived to the Philippines embassy where she sought help, but she was not able to leave the country without her passport.<sup>39</sup>

How do the stories of Surūr and Maria relate to one another? And how do they relate to the issue at hand? The story of Surūr took place in the nineteenth century when slavery in the Arab Gulf was legal and prominent. The story of Maria took place in 2013, at a time when slavery is abolished. Yet, similar patterns of behaviour towards the two are observed, despite the fact that one was legally and officially recognized as a slave and the other was designated a migrant worker who had voluntarily travelled for a job. The comparison demonstrates that legal abolition of slavery in the Arab Gulf may not necessarily mean the absence of slavery in the region. Individual cases of abuse such as

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<sup>38</sup> *Ibid* at 76.

<sup>39</sup> *Supra* note 5 at 34.

that of Maria's, and several, as will be elaborated shortly, establish possible existence of slavery in the Arab Gulf. However, such an assertion can only be made valid after considering various legal and sociological literatures.

### 1.3 Roadmap

My thesis explores the conditions of Migrant Workers in the Arab Gulf and emphasizes themes of migrant labour, precariousness, as well as legal and sociological explanations of slavery. Chapter II provides a literature review on the overarching themes above, which helps understand the conditions of Migrant Workers in the Arab Gulf. It also helps understand how the migration process and its complexities create precarious status and precarious employment, and how the latter are further intensified by engaging in discriminatory practices such as the *Kafala* sponsorship system, leading to racialization and abuse, thus allowing for possible conditions of slavery to arise. Chapter II also examines the concept of slavery nuanced by literature on unfree labour and forced labour. The Chapter then delves into a historical background of slavery in international law to better understand the parameters of the concept and test the validity of categorizing a certain practice as slavery. Chapter II further examines the legal definition of slavery as stipulated in the 1926 Slavery Convention<sup>40</sup> and the ways in which it is interpreted by international scholars to fit certain practices.

Chapter III sets forth data on migrant construction workers, recruitment, working conditions, living accommodations, and real-life experiences. This chapter also engages in a discussion on the UAE's domestic labour laws, as well as an overview of migrant construction workers involved in the 2022 FIFA World Cup preparations in Qatar.

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<sup>40</sup> *Supra* note 13.

Similarly, Chapter IV highlights data on migrant domestic workers' migration to the Arab Gulf, recruitment, working conditions, living accommodations, and real-life experiences. It is important to note the gendered aspect of migration experiences, especially with regards to female migrant domestic workers.

Chapter V concludes my paper with a set of important remedies that could possibly improve the situation of Migrant Workers in the Arab Gulf. The Chapter focuses on the implementation of international laws and standards and their incorporation into the domestic laws of the Arab Gulf States. The Chapter also calls for the abolition of the *Kafala* sponsorship system, and most crucially, the engagement in efforts to change the negative perceptions of Migrant Workers in the Arab Gulf societies.

Through an examination of various fields of literature, namely, contemporary labour migration, precariousness, and slavery, this thesis offers a view of the conditions that Migrant Workers are placed in due to migration to Arab Gulf States. I look at the issue from a socio-legal perspective that takes into consideration social characteristics affecting the law, causing discrimination and 'othering' to arise. The *Kafala* sponsorship system is an example of systemic discrimination that is both affected by and has an effect on social attitudes. The *Kafala* grants disproportionate power to local citizens over migrant workers, which opens the door to abuse and exploitation. Similarly, the *Kafala* ensures migrant workers' precarious or insecure legal status by tying workers' residency in the host country to their employment. As can be observed, the nature of laws such as the *Kafala* in Arab Gulf States contributes majorly to the vulnerability of Migrant Workers. To further understand the vulnerabilities of Migrant Workers, this thesis delves into the concept of precarious employment, showing that the jobs Migrant Workers obtain in



Arab Gulf States are largely dependent on the worker's social status, ethnicity/race, and gender, among others. In turn, this contributes to job racialization and 'othering'. To fulfill the purpose of this thesis, I link these issues with literature on slavery. I explore the concepts of unfree labour and forced labour and the ways in which these relate to slavery. Understanding the differences between the three concepts clarifies how a practice or institution may be categorized as slavery or not. This thesis focuses on the idea that slavery exists as the most severe form of unfreedom under the umbrella of unfree labour. It sheds light on the tensions present in trying to differentiate between forced labour and slavery, especially in practical terms. Can we really pinpoint a difference between the two concepts in light of their effect on the individual? Another major tension relates to understanding what slavery means in our contemporary world. How can a practice be categorized as slavery? I explore key debates on the applicability of the 1926 legal definition of slavery to contemporary forms of slavery. This highlights further tensions such as the problematic of labelling a practice "modern-day" slavery, "contemporary" slavery, or merely "slavery". Can slavery be understood as slavery regardless of the timeframe in which it is being evaluated? This is further tackled and clarified through an exploration of the Bellagio-Harvard Guidelines.

In examining the mentioned fields of literature and key tensions involved, it becomes clearer to determine whether or not Migrant Workers in the Arab Gulf suffer conditions of slavery. This thesis aims to raise awareness to the dire conditions that many Migrant Workers are subjected to in Arab Gulf States. Host governments need to be aware of the possible presence of slavery conditions within their territories; a possibility that may have further serious legal implications on an international scale. There is a

pressing need for implementation of labour laws on the part of host governments as well as for adaptation of international labour standards to accommodate the rights of migrant workers adequately. By raising awareness to the roots of discrimination and the social and legal issues and mechanisms contributing to possible conditions of slavery, this thesis allows for further examination of ways to remedy the problem through, both, social and legal means.

## **Chapter II – Literature Review**

The three fields of literature relevant to my thesis are: (a) contemporary labour migration, (b) precarious employment, including issues of discrimination, racialization and ‘othering, and (c) slavery. Only through discussion of the main ideas of these literatures would it be possible to conduct an analysis of the issue and provide insight on certain aspects that are often left undebated.

For the most part, literature on the sociology of migration and migrant labour, specifically in the context of the Arab Gulf, does not engage directly with the issue of slavery; it is usually focused on the process of migration, the push and pull factors, the recruitment process, and the consequences of migration on migrants as well as societies in host and sending countries. The framework of my thesis highlights the gaps between these fields of literature and aims to show how several cases of voluntary migration may end up as conditions of slavery due to the nature of the work and the treatment of migrant workers by their employers.

The concepts of precariousness and precarious employment are also central to the discussion. Literature on said subjects tends to take a national approach rather than to look at how international migration may often create precarious and vulnerable

conditions through migration processes, recruitment and sponsorship systems. My research aims to bridge the three main fields of literature and create integration among them to better understand the complexities of migrant labour in the Arab Gulf and the way in which conditions of slavery may arise.

## 2.1 Contemporary Labour Migration

Mizanur Rahman analyses how the experiences of migrant men and women differ by exploring the process of migration from home countries to destination of employment. Focusing on Bangladeshi migrant workers in the UAE, Rahman states that migration policies are normally either supply-driven or demand-driven, claiming that developed countries have supply-driven policies whereas developing countries tend to adopt a demand-driven system where foreign workers of all skills are hired temporarily to fulfill manpower needs.<sup>41</sup> This is essentially the system implemented in the UAE and other Arab Gulf countries, where the host country benefits from foreign manpower and ideally the migrants benefit from economic gains such as remittances.<sup>42</sup> According to Rahman, the UAE has been prominent in developing a ‘life-cycle’ approach to migrant workers, involving cooperation between governments to deal with recruitment, work abroad, preparation for return, and the reintegration of migrant workers in sending societies.<sup>43</sup>

Gwenann Manseau provides an overview of migrant labour in the Arab Gulf, the costs and benefits to workers who travel to the region, as well as the increasing feminization of the workforce due to demand in domestic workers. The workers who migrate from poorer areas of the world, typically South and Southeast Asia seek

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<sup>41</sup> MD Mizanur Rahman, “Bangladeshi Migrant Workers in the UAE: Gender-Differentiated Patterns of Migration Experiences” (2011) *Middle Eastern Studies* 395 at 398.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

employment in the rich Arab Gulf where they are often better paid. The jobs they obtain may not even be possible in their home countries.<sup>44</sup> Manseau makes a compelling argument that while migrant workers may benefit greatly from their migration through increased financial stability and possibly an enhanced social status in their home countries, the social cost of being away from their families can be extremely high.<sup>45</sup>

To highlight certain roots of discrimination and understand the recruitment and sponsorship system for Migrant Workers' employment, I explore the *Kafala* Sponsorship System as set forth below.

### **2.1(a) *Kafala* Sponsorship System**

The six Arab Gulf States – Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE – are independent politically, socially, and economically, with various structural and historical differences. It is however important to acknowledge their similarities, mainly with respect to significant reliance on foreign labour.<sup>46</sup> According to Noora Lori, the *Kafala* benefits the Arab Gulf governments as a temporary measure that maintains formal and legal control over migrants.<sup>47</sup> One of the main reasons for such measure is that four of the six Arab Gulf States have a majority population comprised of non-citizens.<sup>48</sup>

Centrally administered and controlled by the Ministry of Interior of each of the Arab Gulf States, the *Kafala* regulates migrant workers through citizen sponsorships.

This shows that the mechanisms of enforcing temporary residency are widely dispersed

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<sup>44</sup> Gwenann S. Manseau, "Contractual Solutions for Migrant Labourers: The Case of Domestic Workers in the Middle East" (2006) 2 The Human Rights Law Commentary 25 at 26.

<sup>45</sup> *Ibid* at 27. (This idea is demonstrated in Chapter 4 on the real-life effects of migration on migrant workers in the Arab Gulf.)

<sup>46</sup> Noora Lori, "Temporary Workers or Permanent Migrants? The *Kafala* System and Contestations over Residency in the Arab Gulf States" (2012) Center for Migrations and Citizenship 3 at 11-12.

<sup>47</sup> *Ibid* at 4.

<sup>48</sup> *Ibid* at 3.

whereas the authority over residency decisions is highly concentrated.<sup>49</sup> The nature of such a dispersed system of enforcement leaves large discretion to the national sponsor or employer risking the system to be ineffective and discriminatory. The *Kafala* operates under the control of the Ministry of Interior with the Ministry of Labour responsible for receiving applications of labour permits and approving residency permits. The Ministry of Interior has the ultimate authority over how long an individual worker is allowed to stay in the country under an employment contract.<sup>50</sup> Lori describes the *Kafala* as “an extensive and institutionalised Inter-Asian guest worker scheme that moves millions of people and generates billions of dollars for sending and receiving countries annually.”<sup>51</sup>

The *Kafala* sponsorship system places full legal and economic responsibility of the migrant worker in the hands of the individual national citizen or company sponsor, the *kafil*.<sup>52</sup> It is not a system where the foreign worker has the opportunity to enter the host country and join the labour market and seek employment. Rather, the migrant worker is already tied to his/her employer and to a particular job before arriving in the host country.<sup>53</sup> The *kafil* or employer assumes legal and economic responsibility for the migrant worker. Any changes in the migrant worker’s status and his/her employment contract must be reported to the Ministry of Interior.<sup>54</sup> The *kafil* is also responsible for the migrant worker’s repatriation once the employment contract ends. Lori points that the national sponsor plays an important role in the system for being held legally and financially accountable for the migrant worker, stating that “through the *Kafala*, States

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<sup>49</sup> *Ibid* at 12.

<sup>50</sup> *Ibid* at 14.

<sup>51</sup> *Ibid* at 15.

<sup>52</sup> *Ibid* at 4.

<sup>53</sup> *Ibid* at 15.

<sup>54</sup> *Ibid* at 16.

delegate to private citizens the surveillance of migration.”<sup>55</sup> The process systemically places a dividing line between migrants and nationals, showing power imbalance and creating virtual hierarchy where the national sponsor has control over the foreign worker.

An important feature of the *Kafala* system is that migrant workers are considered ‘guest workers’ rather than migrants. They often have very little or no recourse to permanent residency or citizenship.<sup>56</sup> Arab Gulf governments may justify non-compliance with international norms on migration by claiming that non-citizen workers are in fact ‘guest workers’ sponsored under a ‘guest worker program’ – a justification that has indeed been used by the UAE government as will be elaborated shortly.<sup>57</sup>

Andrew M. Gardner perceives the *Kafala* as more of a cultural than a legal arrangement, stating that it is only partly codified in law with its cultural roots dating back to the twentieth century.<sup>58</sup> Gardner adds that citizens use the notion of *Kafala* as a cultural practice to exercise control over the migrants and claim responsibility for their moral and cultural misbehaviours.<sup>59</sup> In the same vein, Lori and other researchers in the field such as Rooja Bajracharya and Bandita Sijapati,<sup>60</sup> claim that the system stems from Bedouin principles of hospitality where a local temporarily provides the guest with shelter, food, protection, and even tribal affiliation.<sup>61</sup> This system, however, is generally not commended for its hospitable roots but rather has been criticized by international human rights actors such as HRW<sup>62</sup> and the UN rapporteur on migrant rights, François

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<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid* at 4.

<sup>57</sup> *Supra* note **Error! Bookmark not defined.** at 20.

<sup>58</sup> Andrew M. Gardner, *Engulfed*, ed by Nicholas De Genova & Nathalie Peutz (Duke University Press, 2010) 1 at 211.

<sup>59</sup> *Ibid.*

<sup>60</sup> Rooja Bajracharya & Bandita Sijapati, “The Kafala System and Its Implications for Nepali Domestic Workers” (2012) Centre for the Study of Labor and Mobility 1 at 10.

<sup>61</sup> *Supra* note 46 at 15.

<sup>62</sup> *Supra* note 3.

Crépeau,<sup>63</sup> as being a main factor in exploiting Migrant Workers and allowing abuse to go unnoticed.

Dependence on sponsors may breed human rights violations and systemic exploitative actions.<sup>64</sup> Some abusive practices include the possibility of sponsors externalizing the costs of visas onto the migrants themselves despite the system dictating that all such financial responsibilities are to be borne by the sponsors. Similarly, local recruiters in sending countries may charge fees on prospective migrants seeking employment in the Arab Gulf. Sometimes, such costs to enter Arab Gulf States can be so excessive that Migrant Workers incur debts and have to work in harsh employment conditions in order to repay the same.<sup>65</sup> Manseau refers to this as a form of ‘debt bondage’,<sup>66</sup> which ranks amongst the four institutions of servitude under international law.<sup>67</sup>

An employer, according to Lori, may resort to ‘pre-emptive measures’ such as arbitrarily accusing the migrant worker with ‘morally reprehensible behaviour’, thus leading to his or her deportation.<sup>68</sup> Anh Nga Longva highlights the difficulty of verifying the number of cases where employers or sponsors falsely accuse Migrant Workers of behaving in a morally unacceptable manner. It is interesting, nevertheless, to note Migrant Workers’ overwhelming fear of the *kafil*’s threats of deportation.<sup>69</sup>

Through granting such disproportionate powers to nationals (using the *Kafala*), Arab Gulf governments reiterate and reinforce the notion that citizens are outnumbered

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<sup>63</sup> Peter Kovessy, “UN official: Qatar should scrap kafala, enforce existing labour laws” online: McGill <http://oppenheimer.mcgill.ca>.

<sup>64</sup> *Supra* note 46 at 16.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Supra* note 44 at 31.

<sup>67</sup> *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, 30 April 1956, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/SupplementaryConventionAbolitionOfSlavery.aspx> (entered into force 30 April 1957), Article 1(a).

<sup>68</sup> *Supra* note 46 at 31.

<sup>69</sup> Anh Nga Longva, “Keeping Migrant Workers in Check: The Kafala System in the Gulf” (1999) Middle East Report 20 at 22.

by foreigners, which naturally invites hostility on the part of local nationals. Such systemic separation between local and foreigner inevitably creates discrimination of various sorts. Lori emphasizes the discriminatory nature of the *Kafala*, describing the latter as an informal hierarchy of the labour force,<sup>70</sup> based on nationality, ethnic background, class, education, and/or skill level of migrant workers.<sup>71</sup>

Evidently, the *Kafala* is a key source of hardships for Migrant Workers in the Arab Gulf. It perpetuates discrimination and ‘othering’, and leaves the door open for various sorts of abusive employment relationships. The *Kafala* not only creates and contributes to precarious status, but also provides necessary tools for enslaving a migrant worker who is very often unaware of his/her rights.

In view that the *Kafala* does not differentiate between male and female migrant workers, I find it necessary to shed light in the section below on female working experiences due to the fact that women are comparably vulnerable and thus more susceptible to conditions of slavery.

### **2.1(b) Gendered Aspect of Migration**

How do experiences of female migrants differ from those of male migrants? Rahman argues that there has not been enough empirical research on the gendered nature of migration experiences in the Arab Gulf countries. His research on Bangladeshi migrants to the UAE shows that women have comparatively fewer options of employment and explains that women migrants tend to take on cleaning jobs and domestic work, whereas men resort to construction work or sales.<sup>72</sup> Women domestic workers are at a disadvantage due to the nature of their work stemming out of the roles

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<sup>70</sup> *Supra* note 46 at 27.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Supra* note 41 at 399.



they are expected to fulfill as female migrant workers. Scholarly literature on migrant domestic work has focused on the experiences of female domestic workers and the often-gendered nature of their migration process.

Gloria Moreno Fontes Chammartin states that it is more difficult for women to migrate legally. This renders them more vulnerable to abuse, exploitation, and violence.<sup>73</sup> With respect to push and pull factors, Chammartin asserts that the UAE is an example of a receiving country with a high level of ‘pull’ factors for migrant workers. Since the 1980s, women migrants have dominated the influx of workers in the area, especially in domestic work and personal services – roles which had previously been occupied by men.<sup>74</sup> This opens an important aspect of the literature on gender analysis of migration. Eleonore Kofman refers to Barbara Ehrenreich and Arlie Russell Hochschild<sup>75</sup> who have analysed the transfer of labour globally from richer to poorer areas of the world in services associated with a wife’s traditional role – childcare, homemaking, and sex work.<sup>76</sup> In turn, Mary Beth Mills views that wherever they locate in the world, global factories reproduce similar models of organization where women tend to occupy the lowest levels of pay and authority, whereas men take on more prestigious jobs such as in the supervisory and managerial ranks.<sup>77</sup>

The demand for domestic labour in the Arab Gulf has increased the demand for female workers.<sup>78</sup> Chammartin states that domestic labour is the single most important category of employment among female migrants from Southeast Asia to the Arab Gulf

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<sup>73</sup> Gloria Moreno Fontes Chammartin, “The Feminization of International Migration” (2002/4) *Migrant Workers*, International Labour Organization (ILO) 1 at 41.

<sup>74</sup> *Ibid* at 88.

<sup>75</sup> Barbara Ehrenreich & Arlie Russell Hochschild, “Global Woman: Nannies, Maids, and Sex Workers in the New Economy” (2004) Henry Holt and Company 1.

<sup>76</sup> Eleonore Kofman, “Gendered Global Migrations” (2011) *International Feminist Politics* 643 at 649.

<sup>77</sup> Mary Beth Mills, “Gender and Inequality in the Global Labor Force” (2003) *32 Annual Review of Anthropology* 41 at 43.

<sup>78</sup> *Supra* note 44 at 28.

States. She adds that due to the individualized nature of the working environment, domestic work renders women workers more vulnerable to exploitation and abuse, whereas men workers are less likely to face such vulnerability as they tend to work in groups and on construction sites or plantations.<sup>79</sup> According to Fiona Williams, migrant women's occupation of domestic work may create a gendered and racialized hierarchy where the local female employer exercises superiority over the female migrant working in the household.<sup>80</sup> Female migrant domestic workers are also often at risk of physical, sexual and psychological abuse. All of this contributes to female susceptibility to conditions of slavery.

Migrant women not only are vulnerable in the hosting countries but also are susceptible to abuse and violence in their own home countries. The possible factors that push women to seek employment abroad include, "unemployment, violence, poverty and aspirations for a better life."<sup>81</sup> One of the gendered difficulties that women migrants face is portrayed by Mills. Presenting an interesting notion on the gendered hierarchies that develop as a result of a woman's endeavour to seek employment abroad, Mills discusses the 'crises of masculinity' that may often develop among husbands left behind. Mills provides the example of Sri Lankan women who travel to Saudi Arabia to work as maids claiming that their husbands may feel the need to establish a masculine breadwinner identity in the household.<sup>82</sup>

The abuse of remittances, which are a major source of income for migrant families, may be detrimental to children left back home. The persistent power of gender

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<sup>79</sup> *Supra* note 73.

<sup>80</sup> Fiona Williams, "Towards a Transnational Analysis of the Political Economy of Care" (2011) The Stockholm University, Linnaeus Center for Integration Studies (SULCIS) 2 at 5.

<sup>81</sup> Fiona Williams, "Migration and Care: Themes, Concepts and Challenges" (2010) 9 *Social Policy and Society* 385 at 385.

<sup>82</sup> *Supra* note 77 at 53.

hierarchies in home societies makes it difficult for women to face their husbands in case of remittance abuse.<sup>83</sup> Manseau contributes to this issue by emphasizing difficulties migrant women may face upon returning home due to an inability to reintegrate into society.<sup>84</sup> Other hardships mentioned by Manseau are the possibilities of divorce, children leaving school, husbands resorting to alcohol, and child sexual abuse.<sup>85</sup>

It is also important to note that not only female migrant domestic workers face difficult conditions due to gender factors, but so do migrant construction workers who are predominantly male. It can be argued that migrant construction workers' vulnerabilities create gendered problems as well. This can occur through the hardships they face by having to work under harsh conditions in the Arab Gulf as well as having the responsibility to earn enough money to support families dependent on them back home. Difficulty or inability to fulfill the role of the male breadwinner may reflect negatively on the migrant construction worker's well being. These workers also face discrimination due to other factors such as race, ethnic backgrounds, and social status. This is shown in the section of this thesis<sup>86</sup> on experiences of migrant construction workers in the Arab Gulf.

That said, as elaborated below, both male and female workers encounter precariousness and precarious employment.

## **2.2 Precariousness**

To gain further understanding of the ways in which Migrant Workers find themselves in precarious situations and precarious employment, it is beneficial to provide an overview of the capitalist structure formed by Arab Gulf States over time. This helps

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<sup>83</sup> *Ibid.*

<sup>84</sup> *Supra* note 44 at 27.

<sup>85</sup> *Ibid.*

<sup>86</sup> See Chapter 3.

explain the flow of migrant labour to the region as well as the conditions and vulnerabilities that Migrant Workers are often subject to.

## **2.2(a) Development of Capitalism in the Arab Gulf**

Migrant Workers are among the most vulnerable groups in the Arab Gulf States. This has developed over the manifestation of a capitalist Arab Gulf structure between the 1930s and 1970s, influenced by the region's oil boom and Western powers' involvement in the process. As Adam Hanieh recounts, the Arab Gulf States developed a capitalist structure and maintained a capitalist class formation since the period of state building in the area.<sup>87</sup> Around the same time, the oil discovery also contributed to the development of capitalism in the Arab Gulf States. British and U.S. rivalries and their interest in keeping control of oil resources out of the hands of local people affected the processes of state and class formation.<sup>88</sup> While it is possible to explore the economic events marking the development of the region as a major source of wealth, along with the often-unmentioned anticolonial sentiments calling for greater local control over oil resources, I find it more useful to focus on how class formation occurred as it portrays a clearer picture of how the local citizen has advantage over the foreign worker and how this separation creates 'othering' and discrimination.

According to Hanieh, with the independence of Arab Gulf States, the governments in the region established a "spatial strategy", where "class was constituted through its spatialization – an acute reliance on temporary migrant labour flows came to overlay an extremely narrow definition of citizenship."<sup>89</sup> Only a tiny minority of the population in each Arab Gulf State was provided with citizenship and the accompanying

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<sup>87</sup> Adam Hanieh, *Capitalism and Class in the Gulf Arab States*, (New York: St. Martin's Press, 2011) at 57.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid* at 60.

benefits of oil revenues.<sup>90</sup> This formed an elite class of ruling members and wealthy national merchant families. As citizens began to occupy higher-level employment, those temporary migrant workers who performed the most crucial work were denied citizenship rights and remained in the less prestigious jobs and positions.<sup>91</sup>

How has the development of capitalism in the Arab Gulf States led to the vulnerable and precarious conditions that Migrant Workers often face? The development of each independent Arab Gulf State was accompanied by a series of laws defining citizenship and nationalist rights while curbing those of temporary migrant workers.<sup>92</sup> Such rigid separation between the two groups has caused vulnerability of migrants. The ‘spatial fix’ adopted by Arab Gulf States ensured the persistence of Arab Gulf capitalism. As Hanieh explains, the process of spatialization allowed local governments to exercise a powerful mechanism of social control.<sup>93</sup> This is directly related to the legal status of Migrant Workers entirely reliant on their employment contracts. When the employment contract is severed, Migrant Workers are rendered illegal, which shows the social control that the Arab Gulf governments exercise, to ensure that national citizens remain with the utmost control. To understand the dimensions of precarious status and precarious employment in the context of the Arab Gulf, it is noteworthy to examine the two latter concepts in distinct theoretical frameworks.

### **2.2(b) Precarious Status**

As the *Kafala* sponsorship system demonstrates, Migrant Workers enter the Arab Gulf inevitably tied to their employment. This places them in an insecure legal status as

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<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

<sup>92</sup> *Ibid* at 61.

<sup>93</sup> *Ibid* at 65.

they are dependent on their employment contracts and placed under the control of their employers. Luin Goldring sheds light on this issue, defining ‘precarious status’ as “the insecurities of a worker with ‘less than full legal status’.”<sup>94</sup> Goldring states that precarious status may apply to legal status such as that of a temporary worker normally depending on the sponsor or employer to authorize stay and employment in the host country – a notion leading to the situation of migrant workers in the Arab Gulf States.<sup>95</sup> Put differently, this kind of precarious status describes that of Migrant Workers under the *Kafala* sponsorship system, where they have little to no control over their status in the host country.

The legal status of migrants also plays a role in their well being as such status intersects with “language, accent, racialization, gender, and other dimensions of stratification to channel precarious status workers into particular jobs and conditions at the bottom of the labour market.”<sup>96</sup> Here, Goldring and Patricia Landolt refer to the ways in which precarious legal status inevitably overlaps with precarious employment and the ways in which non-citizenship status often causes difficulties and negative repercussions on migrant workers.<sup>97</sup> It is imperative to note that there are various mechanisms that work to keep precarious status workers poor and in precarious employment,<sup>98</sup> such as the fact that they have little control over their work terms and conditions and the pitifully low wages they are paid. These mechanisms, including the lack of workers’ organization, operate in a way to ensure that Migrant Workers remain in precarious conditions.

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<sup>94</sup> Luin Goldring, “Temporary Worker Programs as Precarious Status: Implications for Citizenship, Inclusion and Nation Building in Canada” (2010) *Canadian Issues* 3 at 50.

<sup>95</sup> *Ibid* at 51.

<sup>96</sup> Luin Goldring and Patricia Landolt, eds, *Producing and Negotiating Non-Citizenship: Precarious Legal Status in Canada*, (Toronto: University of Toronto Press, 2013) at 170.

<sup>97</sup> *Ibid*.

<sup>98</sup> *Ibid* at 171.

Moreover, an important aspect suggested by Goldring's literature on precariousness is her idea of the 'fuzziness' of having precarious status:

The concept of precarious status points to fuzziness in the boundaries between authorized and unauthorized. Migrants may end up on the "wrong" side of the line as a result of overstaying or entering without authorization for example, but they may also fall through the cracks because of confusing, lengthy, or expensive procedures.<sup>99</sup>

This idea of 'fuzziness' can explain the situation faced by 'runaway' migrant domestic workers in the Arab Gulf; the lack of control over their legal documents instantly renders them as 'illegal aliens'.<sup>100</sup> These workers are dependent on their employers. In case they run away, even if due to abuse or exploitation, they will face legal consequences and possibly deportation.<sup>101</sup>

The precarious status of Migrant Workers can be rooted in their exclusion from domestic labour laws or in the lack of effective enforcement. Migrant domestic workers are deliberately excluded from the labour laws of the Arab Gulf States. This initiates their precarious status and makes them more vulnerable to exploitation and abuse.<sup>102</sup> Not only are domestic labour laws unavailable, unenforced, or ineffective, there are international Conventions that Arab Gulf States have signed but do not abide by yet.<sup>103</sup>

### **2.2(c) Precarious Employment**

Migrant Workers tend to occupy precarious jobs such as domestic work and construction work. Leah F. Vosko et al. refer to Gerry Rodgers' four dimensions of establishing whether or not a job is 'precarious'. These are (1) degree of certainty of continuing employment – time horizons and/or risk of job loss; (2) control over the

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<sup>99</sup> *Supra* note 94.

<sup>100</sup> Ray Jureidini & Nayla Moukarbel. "Female Sri Lankan Domestic Workers in Lebanon: A Case of 'Contract Slavery'?" (2004) 30 *Journal of Ethnic and Migration Studies* 581 at 596.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Supra* note 60 at 9.

<sup>103</sup> *Ibid* at 10.

labour process – the presence or absence of a trade union, control over working conditions, wages and pace of work; (3) degree of regulatory protection – whether the worker has access to an equivalent level of regulatory protection through union representation or the law; and (4) income level – a job may be secure in the sense that it is long-term and stable but is precarious due to a low wage, which may mean that the worker is not able to support him/herself and his/her family.<sup>104</sup>

The dimensions of precarious employment are sufficiently satisfied in the case of Migrant Workers in the Arab Gulf. The certainty of maintaining jobs is not as secure as one might assume. The restrictive employment contract of Migrant Workers places their fate in the hands of their employer/sponsor. The employer/sponsor may decide to terminate the contract at any time and perhaps even maliciously accuse the worker of false allegations that may end up in deportation. Moreover, the income level of Migrant Workers is considerably low. Not only is it often lower than promised prior to recruitment (as will be elaborated in Chapters 4 and 5), but also insufficient to support the worker and his/her family. Migrant Workers' precarious employment is exacerbated by little to no control over the labour process as migrant workers are denied the right to form any sort of worker organization to advocate on their behalf.

Precariousness and precarious employment are exacerbated by social locations as set forth below.

### **2.2(d) Social Locations**

While the concepts of precarious status and precarious employment have distinct features, they necessarily overlap to create the vulnerable conditions faced by

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<sup>104</sup> Cynthia J. Cranford, Leah F. Vosko & Nancy Zukewich, "Precarious Employment in the Canadian Labor Market: A Statistical Portrait" (2003) 3 Forum on Precarious Employment 6 at 6.



marginalized groups in society such as Migrant Workers in the Arab Gulf region. As Vosko explains, social locations such as sex/gender and race/ethnicity exacerbate or mitigate precariousness.<sup>105</sup> As mentioned earlier, female domestic workers are placed in intensely precarious situations due to their gender which dictates types of jobs they are entitled to, thus rendering them more vulnerable to exploitation and as I argue below, possibly conditions of slavery. Goldring shows how precarious status and social exclusion are linked. Precarious status affects migrant workers' ability to access various public goods including health services and education.<sup>106</sup> This explains the way in which many Migrant Workers are excluded from society, which has led to various forms of discrimination against them – underscoring the idea that Migrant Workers may experience social exclusion even when they obtain legal status in the country. Discriminatory ideas and behaviours such as negative perceptions of migrants within the host society are major factors in the precarious situations that Migrant Workers face.

To sum up, as soon as Migrant Workers enter the Arab Gulf States, they are placed in precarious status. The fact that their legal status is inescapably linked to their employment contracts demonstrates the overlap between their precarious status and precarious employment. Social locations of Migrant Workers affect their status in society; sex, race and ethnic background, and social class play a significant role in their marginalization.

Race and ethnicity not only exacerbate discriminatory attitudes towards Migrant Workers but also place them in certain types of employment. This shows the racialization of jobs as discussed below.

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<sup>105</sup> *Ibid.*

<sup>106</sup> *Supra* note 94 at 53.

## 2.2(e) Racialization and ‘Othering’

As mentioned earlier, Migrant Workers leave their countries of origin for employment, higher wages, and better lives in general. Not only are they already disadvantaged by poverty, but also they are not adequately protected under domestic laws in the receiving Arab Gulf States. This often places them at risk of exploitation and abuse. The relevance of race and nationality in Migrant Workers’ experiences is of importance: When and where do these factors come into play?

Kevin Bales, an important figure in the literature on slavery, discusses the fading relevance of race and ethnic differences as reasons for enslaving certain people.<sup>107</sup> He specifically mentions that in the oil-rich countries (Saudi Arabia and Kuwait), Muslim Arabs “enslave Sri Lankan Hindus, Filipino Christians and Nigerian Muslims.” Bales states that poverty and vulnerability are the common denominators in this equation rather than race or colour.<sup>108</sup> This provides insight on the view that race may not necessarily be the primary factor in the discrimination faced by Migrant Workers. It is likely their poverty and vulnerability that play a significant role in their marginalization and push them to the area in the first place.

While I agree with Bales that poverty plays a significant role in placing Migrant Workers in precarious situations and thus at risk of enslavement, I find the explanation by Ray Jureidini and Nayla Moukarbel in their article on Sri Lankan domestic workers in Lebanon to be more compelling. Jureidini and Moukarbel suggest that where there are patterns of recruitment from particular ethnic groups, notions of ethnic hierarchy are

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<sup>107</sup> Kevin Bales, *Disposable People: New Slavery in the Global Economy*, (Los Angeles: University of California Press, 1999) at 11.

<sup>108</sup> *Ibid.*

naturally enforced by the widespread employment of such household workers.<sup>109</sup> This introduces the idea of job racialization, where certain jobs become practically designated to certain ethnic/racial groups in society. Having looked at the views of Bales, Jureidini and Moukarbel, I find it misleading to assume that race is a factor of diminishing impact on discrimination towards Migrant Workers and risk of enslavement. Applying Bales's view to the situation of Migrant Workers is plausible when considering the push factors of poverty and low living standards in home countries. However, the influx of Migrant Workers from the same sending countries (South and Southeast Asian countries) along with their employment in the same sectors creates a link between ethnicity and occupation. When such jobs, considered less prestigious than others, become designated to only certain ethnic groups in the host society, the key role that race plays becomes more evident. Hanieh states that in the Arab Gulf, particular national or ethnic groups drawn from various parts of the world tend to concentrate in certain occupations or layers within the social class. Such a mechanism inevitably reinforces segregation between groups in society and sometimes even among marginalized groups themselves.<sup>110</sup>

An example of racialization of Migrant Workers' jobs is also portrayed by Jureidini and Moukarbel. Even though the context of their article involves Sri Lankan female domestic workers in Lebanon, the same still applies to Migrant Workers in the Arab Gulf States due to the equally abusive *Kafala* sponsorship system. This is observed in the terms often used when referring to a domestic worker, whether Sri Lankan or other, as: 'Sirilankeyeh', which literally means 'Sri Lankan'. Ethnicity has become directly related to the role of domestic workers. According to Jureidini and Moukarbel, a little

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<sup>109</sup> *Supra* note 100 at 586.

<sup>110</sup> *Supra* note 87 at 65.

boy at school was heard asking his friend: “Is your Sirilankeyeh a Filipina? ‘Sirilankitak Filipiniyeh?’”<sup>111</sup> The term has almost lost its meaning as a mere reference to nationality and has been incorporated as a racial slur. Yara Jarallah referred to the same type of racialization in the context of the Arab Gulf stating that ‘Sri Lanky’ has become a word in spoken Arabic synonymous to ‘servant’.<sup>112</sup> This shows racialization of the job and causes further discrimination and racism against Migrant Workers.

An interesting thought on this matter was suggested by Bridget Anderson, who claims that ethnicity is a main player in the discrimination against migrant domestic workers. The employer typically places herself in a higher position vis-à-vis the domestic worker to ensure that it is understood who is the ‘boss’. Anderson gives examples of how such differentiation is applied; it can be seen in “an overt fear of contamination from the bodies of these “others”... typically, workers’ clothes have to be washed separately...”<sup>113</sup> Jureidini and Moukarbel add that:

The racial assumption of Sri Lankan domestic workers being ‘unclean’ is exemplified by Lebanese employers (with only one bathroom) insisting she scrub the whole bathroom with anti-bacterial products after taking a shower or using the toilet.<sup>114</sup>

Roger Sanjek and Shellee Colen discuss how ethnicity plays a major role in the process of choosing and recruiting domestic workers. Some have better reputations than others merely due to ethnicity and background.<sup>115</sup> Amnesty International documented examples of such mentality when examining migrant domestic workers in Qatar. The organization recounted some remarks made by a Qatari national whose family employs

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<sup>111</sup> *Supra* note 100 at 587.

<sup>112</sup> Yara Jarallah, “Domestic Labor in the Gulf Countries” (2009) 7 *Journal of Immigrant & Refugee Studies* 3 at 7.

<sup>113</sup> Bridget Anderson, *Doing the Dirty Work: The Global Politics of Domestic Labour*, (London: Palgrave Macmillan, 2000) at 57. See also *supra* note 100 at 586.

<sup>114</sup> *Supra* note 100 at 586.

<sup>115</sup> *Ibid.* See also Roger Sanjek and Shellee Colen, eds, *At Work in Homes: Household Workers in World Perspective* (Washington, DC: American Anthropological Association, 1990).

domestic workers. The national asserts that recruiting Filipina housemaids is a source of concern to local families for the reason that children may adopt the Philippines culture – a threat to the moral identity and values of Qatari society. Racial categorization of migrants also applies to women from Indonesia and Ethiopia. These women are perceived as cold-blooded and therefore dangerous and liable to commit crimes against the employer’s children. A representative of a Doha domestic worker recruitment agency stated that employers think that Ethiopians are ‘dirty’ and ‘different’ and so prefer Filipinas because they are ‘clean’ and understand English better.<sup>116</sup> Interestingly, Manseau claims that domestic work has become racialized to the extent that nationals of receiving countries refuse to perform such work even if persistently poor and unemployed.<sup>117</sup> He states that in some Arab Gulf States, like the UAE and Saudi Arabia, the racialization of domestic work can be perceived as a continuation of the ‘social structure of slavery’, which was only abolished in the 1960s.<sup>118</sup>

It is by now evident that the exclusion of migrant domestic workers and the lack of effective enforcement of labour laws regarding migrant construction workers are crucial factors placing these workers in the most vulnerable and precarious situations as soon as they enter the region. Jarallah, writing on the lack of adequate laws to protect migrant domestic workers in the Arab Gulf States, argues that such shortcomings result in the ‘othering’ of Migrant Workers and place them in vulnerable situations, thus at risk of exploitation and abuse.<sup>119</sup> Ahmed Kanna also draws attention to the prevalent tendency in the Arab Gulf of forgetting how “nationality and class continue to determine the level of

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<sup>116</sup> *Supra* note 5 at 36.

<sup>117</sup> *Supra* note 44 at 29.

<sup>118</sup> *Ibid.*

<sup>119</sup> *Supra* note 112 at 3.

mobility that a group or an individual has in the global economy.”<sup>120</sup> This captures the notion that the level of vulnerability associated with one’s social class and nationality or race is fundamentally related to the way one is treated in society. I find it here appropriate to note that discrimination against Migrant Workers and the conditions of slavery they may face are the product of poverty, racial/ethnic differences, and social status, all playing interconnected roles leading to highly vulnerable situations.

### **2.3 Slavery**

In this section, I examine literatures on slavery, forced labour, and unfree labour to qualify the conditions of Migrant Workers in the Arab Gulf States and determine whether these conditions amount to or are analogous with slavery. Here, I find it important to clarify that my thesis does not delve into discussion on the ways slavery is best termed in our present day (modern-day slavery or contemporary forms of slavery...etc.). Rather, I engage in legal and sociological interpretations of the concept of slavery to determine whether the conditions of Migrant Workers in the Arab Gulf meet the international legal threshold as interpreted by international scholars and guidelines.

#### **2.3(a) Unfree Labour**

It is useful to examine the concept of unfree labour<sup>121</sup> as discussed by scholars such as Vic Satzewich, Kendra Strauss, and Judy Fudge. While the concept is not discussed specifically in the context of the Arab Gulf, it does seem analogous to the situation of Migrant Workers in the region, whether they face conditions of slavery or

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<sup>120</sup> Ahmed Kanna, “Dubai in a Jagged World” (2007) Middle East Report 22 at 29.

<sup>121</sup> Kendra Strauss, “Coerced, Forced and Unfree Labour: Geographies of Exploitation in Contemporary Labour Markets” School of Geographical and Earth Sciences, University of Glasgow 137 at 139. (Literature on unfree labour tends to focus on the ways in which ‘unfreedom’ in the labour process is related to context specific forms of capitalist development and political relations. The concept is derived from political economic theory, particularly Marx’s notion that the transition from feudalism to capitalism created freedom of labour in the sense that one could sell his labour, enter into contracts, and agree to wage payment. However, such labour was only free to the extent of being compared with slavery or serfdom; the reality is that commodified labour under capitalist relations is not truly free labour.)

not. Strauss argues that unfree labour is a part of the continuum of exploitation and is the umbrella under which slavery and forced labour are subsets.<sup>122</sup> This shows the ways in which these concepts can be interpreted differently depending on the scholar and approach being adopted. The concept of unfree labour is important to the issue at hand because it demonstrates the ways in which a migrant worker's freedom may be curbed. Satzewich examines the situation of Polish veterans of World War II who migrated to Canada in the mid 1940s.<sup>123</sup> He recounts how unfree labour developed when Canada was experiencing labour scarcity but wanted to ensure that control was maintained over labour influx – a situation that has similarities in the Arab Gulf States, major labour receiving countries. Satzewich defines unfree labour as:

... relations of production in which labour power is acquired [exploited] and retained through the use of extra-economic coercion, or in which labour is constituted as part of the private property of another.<sup>124</sup>

Satzewich adds by stating that conditions dictating unfree labour endured by Polish veterans at the time include, among others: inability to initially determine who they wanted to work for and state restriction on mobility in the labour market.<sup>125</sup> Such conditions can be observed in the context of Migrant Workers in the Arab Gulf.

Fudge and Strauss discuss the concept of unfree labour in the context of migrant domestic workers in the United Kingdom (UK), asserting that it is the condition where “a worker is unable to enter the labour market (of the receiving country) through a process of ‘free’ contract, but her labour power is nevertheless commodified.”<sup>126</sup> Fudge and

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<sup>122</sup> *Ibid.*

<sup>123</sup> Vic Satzewich, “Unfree Labour and Canadian Capitalism: The Incorporation of Polish War Veterans” (1989) 28 *Studies in Political Economy* 89 at 89.

<sup>124</sup> *Ibid* at 91.

<sup>125</sup> *Ibid* at 100.

<sup>126</sup> Judy Fudge & Kendra Strauss, “Migrants, Unfree Labour, and The Legal Construction of Domestic Servitude: Migrant Domestic Workers in the UK” in Cathryn Costello and Mark Freedland, eds, *Migrants at Work: Immigration and Vulnerability in Labour Law* (Oxford: Oxford University Press, 2014 in press) at 5.

Strauss claim that the two main features of unfree labour are (1) the intersection of race, gender, class, citizenship, and sexuality, as well as precarious migrant status that creates unfreedom by the State where migrant workers become open to exploitation and abuse, and (2) the private nature of a domestic worker's employment, which increases vulnerability.<sup>127</sup> This can be observed in the situation of Migrant Workers in the Arab Gulf under the *Kafala* sponsorship system.

Forced labour is another concept worthy of discussion as set forth below.

### **2.3(b) Forced Labour**

Forced labour is defined by the ILO Forced Labour Convention 1930 as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”<sup>128</sup> An overview of the indicators determining the existence of forced labour is useful to recognize the way in which this concept relates to unfree labour and slavery, as will be discussed shortly. Indicators set by the ILO, as quoted by Strauss, include: threats of or actual physical harm, restriction of movement and confinement to the workplace or a limited area, debt bondage, withholding of wages or making excessive reductions that violate previously made agreements, retention of passports and identity documents, and denunciation to authorities in cases where the worker is an undocumented migrant or has irregular status.<sup>129</sup> The indicators above can be noted in one way or another in the situation of Migrant Workers in the Arab Gulf. An overlap is observed between unfree labour and forced labour where a worker may voluntarily undergo an employment condition that becomes coercive or has undergone the same upon already unfree terms such as mobility

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<sup>127</sup> *Ibid* at 6.

<sup>128</sup> *Forced Labour Convention*, 28 June 1930, (entered into force 1 May 1932), Article 2(1).

<sup>129</sup> *Supra* note 121 at 141.



curtailment. I find Strauss' rationalization in relation to unfree labour, forced labour, and slavery most appealing. She holds that unfreedom should be understood as a continuum of exploitation where certain individuals are rendered more vulnerable than others based on various factors such as gender, ethnicity, and social status. Strauss elaborates on this idea from a Marxist approach to free and unfree labour. She claims that the extremes of this continuum are marked by the 'freedom' of a worker to commodify his/her labour under conditions of disclosed information and imbalanced power relations between employer and worker. On the other hand, the extreme of the continuum is marked by a situation where a worker is unable to commodify labour, as is the case of a slave who is a commodity but cannot sell his/her labour power.<sup>130</sup>

How does forced labour relate to slavery? I argue that the major difference between the two is based on their separate legal definitions. The 1926 Slavery Convention defines slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."<sup>131</sup> Some claim that slavery is a form of forced labour.<sup>132</sup> Others such as the first Special Rapporteur on Contemporary Forms of Slavery, Gulnara Shahinian, categorized forced labour as a form of modern-day slavery, along with debt bondage, serfdom, child slavery, sexual slavery, forced or early marriages, and the sale of wives.<sup>133</sup> I find Strauss' interpretation compelling: forced labour and slavery exist under the umbrella of unfree labour where slavery is the most severe form of exploitation. Having said that, I also find it viable to focus on Joel Quirk's view that forced labour and contemporary forms of slavery tend to

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<sup>130</sup> *Ibid* at 144-5.

<sup>131</sup> *Slavery Convention*, Article 1(1), *supra* note 40.

<sup>132</sup> International Labour Organization (ILO), Report on A Global Alliance Against Forced Labour, 2005, ILO, 1 at 8.

<sup>133</sup> Annie Bunting & Joel Quirk, "Introduction: Contemporary Slavery as More than Rhetorical Strategy" 1 at 4. (On file with authors)

cover some of the same grounds and the same set of experiences faced by individuals.<sup>134</sup>

It is thus difficult to strictly classify certain conditions under rigid concepts. While the legal definitions of both concepts differ, I find that the practical conditions are similar. In line with Anti-Slavery International and David Weissbrodt, I argue that forced labour and slavery, despite ownership being absent in the legal definition of forced labour, tend to impose a similar degree of restriction on the individual's freedom, often through violent means. This makes forced labour and slavery similar in their effect on the individual.<sup>135</sup>

Despite the overlap, I explore legal and sociological interpretations of slavery. This helps examine the ways in which various actors and organizations have considered the conditions of Migrant Workers in the Arab Gulf as slavery.

### **2.3(c) Legal and Sociological Interpretations of Slavery**

One of the main concerns amongst scholars has been over the parameters of contemporary slavery and what can be determined as such. When examining the key difficulties of applying legal definitions of slavery to any human activity, Bales refers to the problematic that is a 'mix of definitional frameworks.'<sup>136</sup> He claims that some legal definitions include institutions such as forced marriage, and even organ trafficking. Others define slavery as a subset of other practices such as human trafficking.<sup>137</sup>

Austin Choi-Fitzpatrick states that slavery can be interpreted as being situated on a 'continuum of exploitation'<sup>138</sup> occurring worldwide, rather than a fixed institution as traditionally known. He claims that slavery has now become 'a state of affairs' that

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<sup>134</sup> Joel Quirk, "Competing Visions: Human Trafficking versus Forced Labour?" 1 at 11.

<sup>135</sup> David Weissbrodt & Anti-Slavery International, "Abolishing Slavery and its Contemporary Forms" 2002, OHCHR, 1 at 12.

<sup>136</sup> Kevin Bales, "Slavery in its Contemporary Manifestations" in Jean Allain, ed, *The Legal Understanding of Slavery: From the Historical to the Contemporary* (Oxford: Oxford University Press, 2013) 281 at 282.

<sup>137</sup> *Ibid.*

<sup>138</sup> Austin Choi-Fitzpatrick, "Rethinking Trafficking: Contemporary Slavery" in Brysk & Choi-Fitzpatrick, eds, *From Human Trafficking to Human Rights: Reframing Contemporary Slavery* (Philadelphia: University of Pennsylvania Press, 2012) 13 at 16.

resembles a human relationship “punctuated by violence and threats of violence”.<sup>139</sup> Choi-Fitzpatrick adds that “we can see being held against one’s will, threats/violence, and economic exploitation as the key factors that connect contemporary slavery to its manifest prior forms.”<sup>140</sup> Though it may be at odds with narrower legal interpretations, as will be demonstrated shortly, such classification of slavery fits well with the situation of Migrant Workers in the Arab Gulf. This is also established in Choi-Fitzpatrick’s interpretation: the manifestations of contemporary slavery indicate that the enslavement of people through violence, control, and coercion is not solely physical but has also become psychological and cultural.<sup>141</sup> As elaborated later, many Migrant Workers in the Arab Gulf suffer from psychological stress. This is due to factors such as having to exist without control over legal status in the host country, being discriminated against based on nationalities and jobs, being away from families, as well as being unaware of stay duration.

To understand the complexities of slavery, it is imperative to examine some of the key points in the literature on this concept. What does contemporary slavery mean? What practices can be considered as such? Is there really a difference between the understanding of slavery as grounded in the 1926 legal definition and the understanding of contemporary slavery? These questions are handled from both legal and sociological perspectives.

### **2.3(c)(i) Legal Perspective**

#### ***Brief History of Slavery in International Law***

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<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.*

<sup>141</sup> *Ibid* at 18.

The 1926 Slavery Convention was developed in the twentieth century by the League of Nations.<sup>142</sup> The definition in Article 1(1) has been a key point in interpreting whether or not a practice constitutes slavery. Contributors to this debate such as Jean Allain, Joel Quirk, Robin Hickey, and Holly Cullen discuss the legal understanding of contemporary slavery.

Allain highlights the relevance of historical and political factors that shaped the current definition of slavery in international law. According to Allain, there are three significant timeframes: (1) 1922-1956, “when legal parameters of slavery were drawn against a colonial backdrop,”<sup>143</sup> (2) 1966-1989, “when decolonization meant a focus away from the legal definition of slavery,”<sup>144</sup> and (3) 1989 onwards, a period that marked the end of the Cold War and the growth of international criminal laws, which allowed for “renewed emphasis on slavery and a consideration of the 1926 definition in light of the requirements of criminal justice.”<sup>145</sup> It is thus interesting to note that while slavery was considered unacceptable to ‘civilised nations’, forced labour was deemed necessary for the development of colonial powers,<sup>146</sup> therefore asserting a difference between the two concepts based on political necessity.

Allain recounts that in 1936, the League of Nations Committee of Experts on Slavery considered the issues of serfdom and debt bondage to establish some parameters to the definition of slavery. The League stressed that “a distinction is to be made between slavery as defined by the 1926 Convention and lesser forms of exploitation.”<sup>147</sup> Allain

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<sup>142</sup> Jean Allain, “The Legal Definition of Slavery into the Twenty-First Century” in Allain, *supra* note 136 at 200. See also *supra* note 40.

<sup>143</sup> *Supra* note 142.

<sup>144</sup> *Ibid.*

<sup>145</sup> *Ibid.*

<sup>146</sup> *Ibid.*

<sup>147</sup> *Ibid* at 203.

stresses the League's input that "the status of 'serfdom' is a condition 'analogous to slavery' rather than a condition of actual slavery..."<sup>148</sup> He also states debt bondage is "not slavery' within the definition set forth in Article 1 of the 1926 Convention, unless any or all of the powers attaching to the right of ownership are exercised by the master."<sup>149</sup> This demonstrates that the powers attached to the rights of ownership are the 'sine qua non' of slavery, which means that without such powers, slavery does not exist.<sup>150</sup> The 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery<sup>151</sup> broadened the scope of the 1926 Slavery Convention by adding four institutions of servitude: debt bondage, serfdom, servile marriage, and child trafficking.<sup>152</sup> Such broadening expanded the legal parameters of the 1926 Slavery Convention, thus allowing further flexible interpretations.

Of importance is the 1953 Secretary General's authoritative pronouncement of what may constitute the powers attaching to a right of ownership. Examples provided by the pronouncement are:

- (1) The individual of servile status may be made the object of a purchase. The master may use the individual of servile status, in particular his capacity to work, in an absolute manner without restriction other than that which might be expressly provided by law.
- (2) The individual of servile status becomes the property of the master without compensation commensurate to the value of the labour.
- (3) Ownership of the individual of servile status is transferrable to another person.

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<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.*

<sup>150</sup> *Ibid.*

<sup>151</sup> *Supra* note 67.

<sup>152</sup> *Supra* note 142 at 206-07.

(4) Servile status is permanent. It cannot be terminated by the will of the individual subject to it.

(5) Servile status is transmitted *ipso facto* descendants.<sup>153</sup>

Some Migrant Workers in the Arab Gulf fall under such freedom restrictions due to exclusion from domestic laws or the laws' ineffectiveness. It is important to acknowledge that legal ownership of one person by another is no longer possible. This means that the legal parameters requiring proof of ownership rights must be treated in a more flexible manner. Otherwise, there is a risk of neglecting contemporary factors that may contribute to the enslavement of a person as well as the various ways in which ownership can be asserted.

A historical background on the definition of slavery under international law is useful. Cautioning against overuse of the term, this background stresses the vitality of distinguishing between abusive relationships on the one hand, and conditions that amount to slavery on the other. Quirk warns against over categorizing exploitative practices as constituting slavery. According to Quirk, there was a "minimalist approach"<sup>154</sup> to slavery during the nineteenth century to justify and legitimate colonial behaviours of coercive labour. The early twentieth century, however, witnessed stretching of the "boundaries of slavery"<sup>155</sup> by categorizing various forms of exploitation under slavery.<sup>156</sup> Criticizing human rights activism, Quirk states that the United Nations and other human rights organizations developed a tendency of 'popularizing an expansive model of contemporary slavery' that trespasses the boundaries of the 1926 definition.<sup>157</sup> He

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<sup>153</sup> *Ibid* at 208-09.

<sup>154</sup> Joel Quirk, "Defining Slavery in all its Forms: Historical Inquiry as Contemporary Instruction" in Allain, *supra* note 136 at 276.

<sup>155</sup> *Ibid.*

<sup>156</sup> *Ibid.*

<sup>157</sup> *Ibid.*

explains that separation between the law and politics has formed “conceptual incoherence”.<sup>158</sup> According to Quirk, this has caused difficulties in determining which practices may fall under slavery and whether it is even “legitimate to invoke the language of slavery.”<sup>159</sup>

Each of Hickey and Allain argues that the ‘power’ exercised in a certain case may be applied to “either *de jure* (slavery as a legal status) or *de facto* (slavery as a lived condition) circumstances, with the key threshold in the case of the latter being whether or not an individual is controlled in a way which is functionally equivalent to legal ownership.”<sup>160</sup>

Quirk claims that two main challenges need to be overcome in order to define slavery. These are (1) formulating a general definition on how slavery has been and continues to be practiced in different contexts; and (2) developing a definition that distinguishes between slavery and other forms of human bondage and exploitation.<sup>161</sup> These challenges reflect the issue being discussed and underscore the grey area in which they function. In the same vein, Quirk emphasizes the analytical and political dimensions of the problem. At an analytical level, with the absence of a ‘legal signifier’, the challenge is to determine whether a practice falls under slavery in illicit and irregular settings. This challenge entails considering levels of consent, coercion, compensation, and working conditions involved.<sup>162</sup> At the political level, Quirk explains that the problem is using the concept of slavery as a ‘rhetorical device’ to prioritize and tackle

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<sup>158</sup> *Ibid.*

<sup>159</sup> *Ibid.*

<sup>160</sup> *Supra* note 154 at 265.

<sup>161</sup> *Ibid* at 253.

<sup>162</sup> *Ibid* at 253.

issues such as rape as slavery or economic injustice as slavery. This consequently renders the concept meaningless.<sup>163</sup> Quirk adds:

In an analytically and politically contentious environment, contemporary human rights activists have tended to favour their own definitions of slavery, rather than relying upon established legal instruments.<sup>164</sup>

Quirk's view is a criticism to scholars such as Bales who adopts a more sociological approach to the issue (as will be elaborated below). Quirk claims that said approach lacks solid legal grounds in the sense that there is no legal definition basing such sociological interpretations thus could be challenged for being a mere personal opinion.

Moreover, Quirk argues that it is essential to consider a practice with the backdrop of what slavery looked like throughout history. He claims, the “operative threshold”<sup>165</sup> of determining a certain practice as slavery should not be “whether or not various practices and institutions are broadly similar to slavery (i.e. contemporary forms of slavery), but instead whether specific cases are the *de facto* equivalent of historical experiences of slavery (i.e. slavery in all its forms).”<sup>166</sup> This is important when considering the possible link between the historical slave system in the Arab Gulf and the current situation of Migrant Workers in the region. This can be linked to the situations of Surūr and Maria mentioned earlier; where similarities can be observed in the way that control was exercised in both cases despite the fact that one took place in the nineteenth century Arab Gulf when slavery was legal, and the other took place in 2013, a time when slavery is illegal. Having said that, I would warn against solely relying on a historical basis when it comes to determining slavery in all its forms. This is to avoid neglecting the

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<sup>163</sup> *Ibid* at 253-54.

<sup>164</sup> *Ibid* at 254.

<sup>165</sup> *Ibid* at 256.

<sup>166</sup> *Ibid*.



fact that ways in which people may become enslaved differ significantly from the past. It is important to keep in mind that contemporary slavery is manifested through various dimensions, thereby taking non-traditional forms. This is demonstrated in Bales' discussion on 'contract slavery' as part of a 'new slavery', as discussed below.<sup>167</sup>

Allain argues that the difficulty in determining whether a certain form of human bondage falls within the definition of legal slavery can be resolved by recognizing the issue as:

Whether or not individual cases of human bondage associated with these categories can be classified in terms of 'powers attaching to the rights of ownership', and can therefore be legally defined as slavery.<sup>168</sup>

Allain's argument makes flexible the interpretation of a practice as slavery according to the legal definition. In this frame, it becomes possible to label a certain case or condition as slavery, without having to deem the entire practice or institution as slavery. This is in turn related to Choi-Fitzpatrick's interpretation that slavery ought to be situated on a 'continuum of exploitation'<sup>169</sup> occurring worldwide, rather than a fixed institution as traditionally known.

To further elaborate on the importance of considering *de facto* slavery as well as interpreting the powers attached to the rights of ownership, it is essential to highlight in the following section certain cases under international law as observed by Holly Cullen.

### ***Considering Slavery in International Law Cases***

Cullen's views provide legal support to the situation of Migrant Workers in line with legal parameters of the 1926 slavery definition. She examines the following cases:

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<sup>167</sup> See text accompanying note 202, below, for more on this topic.

<sup>168</sup> *Supra* note 154 at 258.

<sup>169</sup> Austin Choi-Fitzpatrick, "Rethinking Trafficking: Contemporary Slavery" in Brysk & Choi-Fitzpatrick, eds, *From Human Trafficking to Human Rights: Reframing Contemporary Slavery* (Philadelphia: University of Pennsylvania Press, 2012) 13 at 16.

(1) *Kunarac et al.*<sup>170</sup> of the International Criminal Tribunal for the Former Yugoslavia (ICTY); (2) *Siliadin v France*<sup>171</sup> of the European Court of Human Rights (ECHR); (3) *R v Tang*<sup>172</sup> of the Australian High Court; and (4) *R v Kovacs*<sup>173</sup> of Queensland Court of Appeal. Cullen argues that the cases above involve *de facto* slavery and the exercise of powers attaching to ownership yet without the legal right of ownership.<sup>174</sup>

Cullen criticizes these courts by stating that they tend to ignore the concept of the ‘powers of ownership’ i.e. the powers of ownership that have been used over a person. Instead, said courts focused on the ‘degree of control and coercion’ exercised. Cullen claims that by stressing the degree of control and coercion exercised over the victim, courts confuse the concept of forced labour with the concept of slavery.<sup>175</sup> She asserts that overlooking the nature of control, and whether that control equates to possession or merely to coercion, is the core problem in judicial decisions on cases of slavery.<sup>176</sup>

*Kunarac et al.*<sup>177</sup> involves a case where the accused were charged with, among others, torture, rape and enslavement of women and children, and committing crimes against humanity. While the case falls in the context of international criminal law, parts of the judgment can be applied to the conditions of many Migrant Workers in the Arab Gulf. The judgment includes “indications of enslavement”, as referred to by Cullen:<sup>178</sup> (1) elements of control and ownership; (2) restriction/control of an individual’s autonomy;

<sup>170</sup> *Prosecutor v Kunarac*, IT-96-23T and IT-96-23/1, Judgment of Trial Chamber II, 22 February 2001.

<sup>171</sup> *Siliadin v France* (2006), 43 EHRR 16.

<sup>172</sup> *R v Tang* [2008] HCA 39.

<sup>173</sup> *R v Kovacs* [2009] 2 Qd R 51.

<sup>174</sup> Holly Cullen, “Contemporary International Legal Norms on Slavery” in Allain, *supra* note 136 at 304-05.

<sup>175</sup> *Forced Labour Convention 1930*, *supra* note 128.

<sup>176</sup> *Supra* note 174 at 305.

<sup>177</sup> During the armed conflict between Serb and Muslim forces in the period of 1992-1993, the three accused, Dragoljub Kunarac, Radomir Kovac, and Zoran Vukovic, participated in the campaign by Bosnian Serb forces to cleanse the Muslim population in the municipality of Foča in Bosnia and Herzegovina, where women and children were largely affected. Based on the Statute of the Tribunal, the accused were charged with torture, rape and enslavement of women and children, committing crimes against humanity and breaching the laws of war, violating Articles 7(1), 3 and 5. See also *Kunarac*, *supra* note 170.

<sup>178</sup> *Supra* note 174 at 306.

(3) freedom of choice or freedom of movement; (4) accrual of some gain to the perpetrator; (5) absence of consent or free will of the victim – rendered impossible or irrelevant by threat or use of force; (5) fear of violence or other forms of coercion; (6) deception or false promises; (7) abuse of power; (8) vulnerability of victim's position; (9) detention or captivity; (9) psychological oppression; and (10) socio-economic conditions.<sup>179</sup> These indications represent a mixture of actions reflecting the exercise of 'control' indicating slavery, as well as actions reflecting coercion, indicating forced labour. This shows the practical intersections between the two concepts.

A narrower list of factors limited to slavery includes: (1) controlling a person's movement and physical environment; (2) resorting to psychological measures to prevent or deter escape; (3) using threat of force or coercion; (4) controlling duration and assertion of exclusivity; (5) subjecting a person to cruel treatment and abuse; and (6) controlling sexuality and inducing forced labour.<sup>180</sup> The indicators above may be observed in the conditions faced by Migrant Workers in the Arab Gulf, specifically under the *Kafala*. Several female migrant domestic workers are vulnerable to such conditions of slavery, especially in light of the private nature of their workplace.

Cullen interprets the ECHR case of *Siliadin v France*.<sup>181</sup> The case refers to a Togolese girl who was brought to France through deceptive means and was forced to perform domestic labour and childcare without pay.<sup>182</sup> The Court found that the applicant experienced forced labour and was held in servitude rather than in slavery.<sup>183</sup> Cullen criticizes the judgment as having failed to include the possibility of *de facto* slavery. She

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<sup>179</sup> *Ibid.*

<sup>180</sup> *Ibid* at 307.

<sup>181</sup> *Siliadin*, *supra* note 171.

<sup>182</sup> *Ibid* at 308.

<sup>183</sup> *Ibid.*

claims that while the decision was in the applicant's favour, the Court failed to recognize the extent and severity of the human rights violations. Cullen asserts that the applicant was denied the recognition that she had suffered slavery.<sup>184</sup>

In *R v Tang*,<sup>185</sup> the defendant, a licensed brothel owner in Melbourne, faced charges for bringing women to Australia to work as prostitutes under conditions amounting to slavery.<sup>186</sup> The complaints included, purchase of these women, work without pay until debts were repaid, confiscation of passports and legal documents, controlled living conditions, and long working hours.<sup>187</sup> The complaints above can be found in the experiences of many Migrant Workers in the Arab Gulf, specifically female migrant domestic workers. In a 6-1 High Court decision, Gleeson CJ accepted that the rights of ownership were exercised over the complainants. He held that they were made the object of purchase and that the defendants had the powers to use the complainants 'in a substantially unrestricted manner'. Additionally, Gleeson CJ claimed that the defendants were able to profit from the complainants' work without adequate compensation. The judge acknowledged the importance of distinguishing between exploitative labour and slavery but equally stressed the importance of the 'nature and extent' of the powers exercised over a person.<sup>188</sup> Moreover, the prosecution was not required to prove that the defendants were aware of exercising powers attaching to the right of ownership; it was sufficient to convict them based on the fact that they intentionally exercised those rights.<sup>189</sup> This decision provides perspective on the dimensions that need to be considered when looking at Migrant Workers in the Arab

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<sup>184</sup> *Ibid* at 309.

<sup>185</sup> *Tang*, *supra* note 172

<sup>186</sup> *Supra* note 174 at 316.

<sup>187</sup> *Ibid*.

<sup>188</sup> *Ibid* at 315.

<sup>189</sup> *Ibid*.

Gulf. Allain comments on the case claiming that the Australian courts used the parameters of the 1926 legal definition of slavery adequately, noting that said definition not only applies to cases where a person might legally own another, but also in cases where *de facto* exercise of ownership exists.<sup>190</sup>

Cullen refers to the case of *R v Kovacs*<sup>191</sup> to further explain the interpretation of slavery in courts.<sup>192</sup> In this case, The Kovacs were a married couple who arranged for a Filipino woman to enter a marriage with an acquaintance of theirs and be brought to Australia to work for them in their shop and home where she suffered from sexual abuse. Amongst other crimes, the Kovacs faced charges of purchasing and using a slave. The Court of Appeal confirmed that it is not necessary to determine that the complainant had been in a condition of slavery during the entire time she worked for the defendants. The Court ruled that slavery is “constituted by a course of conduct which comprises a number of acts over an extended period.”<sup>193</sup> This aspect of the case is beneficial to understand that slavery may still be present despite the fact that Migrant Workers in the Arab Gulf may not necessarily be held under supervised control at all times as well as the fact that they may obtain the chance to leave the employment premise.

*De facto* slavery is fundamental and needs to be considered more often by courts. Cullen refers to a comment made by Gleeson CJ in the High Court’s decision in *Tang*. He states that “the definition [of slavery] turns upon the exercise of power over a person. The antithesis of slavery is freedom.”<sup>194</sup> As can be seen under the *Kafala* sponsorship system, the view that Migrant Workers exercise freedom is nothing short of an illusion.

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<sup>190</sup> *Supra* note 142 at 217.

<sup>191</sup> *Kovacs*, *supra* note 173.

<sup>192</sup> The Kovacs were a married couple who arranged for a Filipino woman to enter a marriage with an acquaintance of theirs and be brought to Australia to work for them in their shop and home where she suffered from sexual abuse. See also *Kovacs*, *supra* note 173.

<sup>193</sup> *Supra* note 174 at 315.

<sup>194</sup> *Ibid* at 316.

The freedom exercised by Migrant Workers largely depends on the employer's manner of behaviour and treatment. In essence, the system in the Arab Gulf States formally curbs these migrants' freedom.

A final but essential part of Cullen's discussion on the issue relates to the notion of 'legal disability of the slave'.<sup>195</sup> She states:

Just as legal ownership of a person no longer exists but *de facto* slavery can still be found, we can see in these situations of exercise of the powers attaching to the right of ownership the imposition of *de facto* restrictions on the capacity of victims to access remedies.<sup>196</sup>

Such *de facto* restrictions include the confiscation of passports and other legal documents, which renders the person in a highly precarious situation. Said restrictions can also manifest in various ways such as the retention of identity documents. The victim may also be threatened that should he/she resort to authorities at the host country, he/she could be deported or even imprisoned.<sup>197</sup> This behaviour prevents the migrant from seeking legal assistance or remedies, which places them in an increasingly vulnerable situation. Cullen argues that the restriction of freedom and the inability to access the law in conditions of *de facto* slavery is factual or practical in nature. This is observed through retention of identity documents, imprisonment, and possible threats to the victim or their family members.<sup>198</sup> Cullen claims that the 1926 legal definition of slavery does not pose 'insurmountable difficulties' for courts and draws attention to *de facto* legal disabilities that various forms of control may lead to. Cullen finally asserts that even in a time where legal ownership of a person is impossible, there are current situations involving the

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<sup>195</sup> *Ibid* at 318.

<sup>196</sup> *Ibid.*

<sup>197</sup> *Ibid.*

<sup>198</sup> *Ibid* at 318-19.

exercise of possession, use, and disposal of another human being. Cullen reiterates the necessity for courts to “call this exploitation by its proper name, which is slavery.”<sup>199</sup>

Despite her examination of case law in the context of international criminal courts and regional human rights courts, Cullen’s analysis presents powerful legal support to the notion that there are cases of Migrant Workers in the Arab Gulf suffering from slavery. She does so through (1) focusing on the ‘exercise of powers attached to the right of ownership’ rather than on coercion; (2) highlighting the importance of *de facto* slavery; and (3) stressing the slave’s lack of legal personality and denial of freedom.

### **2.3(c)(ii) Social Science Perspective on Slavery**

Social scientists and sociologists generally take a more flexible approach to the interpretation of contemporary slavery and the practices that can be determined as such.<sup>200</sup> As it is useful to examine legal dimensions of slavery, it is also important to take a look at social science perspectives. Bales<sup>201</sup> views that slavery has become enmeshed within the process of globalization and has taken a path into the ‘illicit economy’. This has transformed slavery into a fairly hidden and a less understood phenomenon.<sup>202</sup> He claims that though legal ownership of slaves is no longer possible, the enslavement of people is still present. This is an aspect that needs to be acknowledged when dealing with Migrant Workers in the Arab Gulf States.

Bales distinguishes between ‘new slavery’ and ‘old slavery’. He holds that ‘new slavery’ comprises short-term relationships, low purchase costs, surplus of potential slaves, and very high profits. Other differences include the notion that ethnic differences

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<sup>199</sup> *Ibid* at 321.

<sup>200</sup> *Supra* note 138 at 284.

<sup>201</sup> “Free the Slaves”, online: <https://www.freetheslaves.net/>. (Bales is a leading author and advocate on modern-day slavery and has had an immense influence on the field. He is the co-founder of Free the Slaves, which is an organization dedicated to freeing slaves around the world and changing the systems that allow for their enslavement.)

<sup>202</sup> Kevin Bales, “Expendable People: Slavery in the Age of Globalization” (2000) 53 *Journal of International Affairs* 461 at 462.

have become less important.<sup>203</sup> This, however, may not necessarily be the case in the Arab Gulf States. Bales also claims that poverty facilitates the enslavement of people around the world – <sup>204</sup> a view to consider in light of Migrant Workers’ migration from poorer regions of the world to the oil-rich Arab Gulf States. He asserts that slavery increases with the increase of economic vulnerability.<sup>205</sup>

Furthermore, Bales emphasizes that contemporary slavery is not only an outcome of economic globalization but is also a part of the process itself.<sup>206</sup> He states, “slavery today has moved away from slaves as capital investments to the use of slaves as inputs in an economic process.”<sup>207</sup> Bales further claims, “the bait that lures people into slavery may be money, food, work, the opportunity to migrate or a colour television. Whatever its form, it is still slavery.”<sup>208</sup> This implies that slavery may not need to be forced but rather entered into voluntarily. This may occur through initially entering a regular employment relationship. Bales labels this ‘contract slavery’, where a contract acts as a disguise to entice the workers into slavery and makes it appear legal and legitimate.<sup>209</sup> Many Migrant Workers often sign contracts that they do not fully understand prior to leaving their home countries. Upon arrival of Migrant Workers to host countries, these contracts may often be replaced or altered, which further exacerbates vulnerability. Migrant Workers leave their home countries not expecting the abuse, exploitation, and conditions of slavery faced at the destination of employment.

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<sup>203</sup> *Ibid* at 465.

<sup>204</sup> *Supra* note 136 at 295.

<sup>205</sup> *Ibid*.

<sup>206</sup> *Supra* note 202 at 473.

<sup>207</sup> *Ibid* at 474.

<sup>208</sup> *Ibid* at 475.

<sup>209</sup> *Supra* note 107 at 20.



Bales also discusses contemporary slavery or ‘new slavery’.<sup>210</sup> He argues that owning a person is no longer a necessary factor in determining whether slavery exists. ‘New slavery’ operates through ‘slaveholding’, rather than owning a person. Bales adds, “when people buy slaves today they don’t ask for a receipt or ownership papers but they do gain control – and they use violence to maintain this control.”<sup>211</sup> In the Arab Gulf, Migrant Workers are not necessarily ‘owned’ – they are placed under the name of the sponsor or employer who has complete control over them. Those who are unfortunate face conditions that may amount to slavery.

Bales defines slavery as:

... the control of one person (the slave) by another (the slaveholder or slaveholders). This control transfers agency, freedom of movement, access to the body, and labour and its products and benefits, to the slaveholder. The control is supported and exercised through violence and its threat. The aim of this control is primarily economic exploitation, but may include sexual use or psychological benefit.<sup>212</sup>

To determine whether or not a practice is a form of slavery, Bales engages with social science and legal definitions, emphasizing the importance of a cooperative nature between the two. He argues that:

An operational social science definition of slavery is needed to identify it within its social and cultural context and at the same time a universally applicable legal definition is needed to recognize and enforce its status as a crime *jus cogens*.<sup>213</sup>

Bales refers to the works of legal scholars (Honoré, Hickey, and Penner) on the powers attributed to the right of ownership – otherwise known as ‘instances of ownership’. These include (1) the right to possess, involving the exercise of control; (2) the right to use; (3)

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<sup>210</sup> *Ibid* at 1.

<sup>211</sup> *Ibid* at 5.

<sup>212</sup> *Ibid*.

<sup>213</sup> *Supra* note 136 at 285.

the right to manage; (4) and the right to income.<sup>214</sup> Bales states that it is those ‘instances of ownership’ that need to be tested within a given situation to determine whether slavery exists.<sup>215</sup>

Bales claims that the attributes of possession that must be evaluated include rights of security, transmissibility, and absence of a term.<sup>216</sup> Transmissibility can be observed in the case of Migrant Workers in the Arab Gulf under the *Kafala* – a system that allows for certain *de facto* ownership. Lack of transmissibility is evident where a worker is not permitted to change legal sponsorship or ‘ownership’ even in cases of abuse and exploitation. In addition to transmissibility, *de facto* ownership through the *Kafala* is manifested through controlling, using, managing, and profiting from a Migrant Worker, which are factors set forth by Bales as powers of ownership.<sup>217</sup>

Of great relevance to my thesis are Bales’ examples of slaves in the U.S. today. He claims that those who enter the U.S. economy often find themselves in types of employment that involve sexual exploitation, domestic service, agriculture, factory work, and restaurant and hotel work. Bales states that in many cases, migrant workers’ conditions in the U.S. develop into slavery, where the slaveholders use violence and threats of deportation, confiscate passports and identification documents, forbid workers from leaving their workplace and even contacting their families.<sup>218</sup> Such conditions are of significant equivalence to the circumstances in which many Migrant Workers in the Arab Gulf find themselves, as will be discussed in more detail shortly.

### **2.3(c)(iii) Reconciling the Legal with the Sociological**

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<sup>214</sup> *Ibid* at 283-84.

<sup>215</sup> *Ibid* at 284.

<sup>216</sup> *Ibid*.

<sup>217</sup> *Ibid*.

<sup>218</sup> *Ibid* at 299.

To reconcile the parameters of the 1926 legal definition of slavery with the reality of contemporary slavery, I find it appropriate to look at Bales and Allain. Both provide a cooperative framework between the legal and the sociological for a better understanding of contemporary slavery. When examining the situation of Migrant Workers in the Arab Gulf in view of legal explanations on slavery, one must look at exercise of control over a person tantamount to possession. This can be observed through the control exercised over Migrant Workers travelling to the Arab Gulf from the moment they are sponsored to the moment they start work. Their freedom is curtailed through mechanisms such as the *Kafala*. The legal and sociological ground of reference provided by Bales and Allain is adequate for considering contemporary slavery with respect to Migrant Workers in the Arab Gulf.

Bales and Allain highlight the limits of merely relying on a sociological definition of slavery, which is confined to the use of violence and the ability to control for the purpose of economic exploitation.<sup>219</sup> Furthermore, Bales's definition does not engage with the parameters of the legal definition, which renders it inoperable as an anti-slavery tool under the rule of law.<sup>220</sup> Economic exploitation may not be the forefront purpose for enslaving a person. As observed in cases of female migrant domestic workers in the Arab Gulf, an employer may place the worker under conditions of slavery to establish superiority. Such behaviour could also stem out of racist perceptions. Bales and Allain state that the difficulty in reconciling the sociological and legal aspects of the definition of slavery is resolved by turning attention to the concept of possession. They claim that "when considering the legal definition and seeking to apply it to a case of contemporary

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<sup>219</sup> Jean Allain & Kevin Bales, "Slavery and Its Definition" (2012) Queen's University Belfast Law 1 at 4.

<sup>220</sup> *Ibid* at 6.

slavery, one should look for the exercise of control over a person tantamount to possession.”<sup>221</sup>

Bales and Allain state that the *Bellagio-Harvard Guidelines on the Legal Parameters of Slavery*<sup>222</sup> emphasize the importance of proving ‘possession’ in a relationship of control by one person over another. The scholars claim that slavery is present where control tantamount to possession is achieved using violence. Such conditions include loss of personal liberty and loss of free will – transferred to the slaveholder. Such control allows for labour exploitation, sexual and physical abuse...etc.<sup>223</sup> It is important to note that according to Bales and Allain, the manner in which a person is enslaved is not a determining factor as to whether slavery exists in a particular case. Rather, “slavery is a status or condition, not the means by which a person is removed into that state or condition of control.”<sup>224</sup> Three central examples of the exercise of ‘the powers attaching to the right of ownership’ include: managing, selling, and possessing a person.<sup>225</sup> Other examples of such powers provided by Bales and Allain include: use, profit, transfer of a person, and treating a person in a manner as though they are disposable.<sup>226</sup> As will be demonstrated in the coming sections, various cases of Migrant Workers in the Arab Gulf show such exercise of control. Many migrant construction workers are used for economic benefits and are disposed in inhumane and unhealthy working and living conditions. Similarly, cases of migrant domestic workers will show the use and management, as well as neglect and abuse of these women. Control

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<sup>221</sup> *Ibid.*

<sup>222</sup> *Ibid* at 7. See also Appendix A.

<sup>223</sup> *Ibid* at 7.

<sup>224</sup> *Ibid* at 6.

<sup>225</sup> *Ibid* at 7.

<sup>226</sup> *Ibid.*

tantamount to possession is seen in various circumstances. This is apart from the fact that they are practically owned under the *Kafala* by having their freedom curtailed.

Bales and Allain assert that the Guidelines reconcile the sociological interpretations of contemporary slavery with the applicability of the 1926 legal definition, claiming that:

In cases of slavery, the exercise of ‘the powers attaching to the right of ownership’ should be understood as constituting control over a person in such a way as to significantly deprive that person of his or her individual liberty, with the intent of exploitation through the use, management, profit, transfer or disposal of that person. Usually this exercise will be supported by and obtained through means such as violent force, deception and/or coercion.<sup>227</sup>

Bales and Allain assert that there is no true gap between the 1926 legal definition of slavery i.e. ‘a legal reading of ownership’ and the lived circumstances of slaves today.<sup>228</sup>

This provides a balanced framework upon which evaluations and understandings of contemporary slavery are to be grounded. More specifically, Guideline 5 elaborates on determining whether slavery exists as set forth below:

The exercise of any or all of the powers attaching to the right of ownership just considered shall provide evidence of slavery, insofar as they demonstrate control over a person tantamount to possession.

Accordingly, in determining whether slavery exists in a given case, it is necessary to examine the particular circumstances, asking whether ‘powers attaching to the right of ownership’ are being exercised, so as to demonstrate control of a person tantamount to their possession.

In evaluating the particular circumstances to determine whether slavery exists, reference should be made to the substance and not simply to the form of the relationship in question.

The substance of the relationship should be determined by investigating whether in fact there has been an exercise of one or more of the powers attaching to the right of ownership. This will include a determination as to

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<sup>227</sup> *Supra* note 219 at 7.

<sup>228</sup> *Ibid.*

whether control tantamount to possession is present.<sup>229</sup>

One can see this line of analysis in Degorge's claim that various forms of slavery are still prevalent in the Arab Gulf States, specifically in the UAE. She states that there is an 'active slave trade'<sup>230</sup> manifested through three types of slavery: exploitation of children, chattel slavery, and 'migrant worker' slavery. Degorge explains that 'migrant worker' slavery consists of people who arrive at their own will in attempt to better their lives.<sup>231</sup> She describes the type of slavery faced by migrant workers as 'wage work', i.e.:

Workers who have no choice in their employer or in the type of job they do, whether because of economic and geographic circumstances, or their lack of competence or education.<sup>232</sup>

Degorge also defines 'wage slavery' as "the state where you are unable to perceive choices and action different from the grind of work..."<sup>233</sup> and "a wage earner whose livelihood is completely dependent on the wage earned."<sup>234</sup> She describes such 'wage slavery' as being dependent on the concept of freedom and 'the ability to be mobile'.<sup>235</sup>

Degorge's analysis of 'wage slavery' is intriguing. She describes this type of slavery as 'voluntary'. However, once the choice is made to enter an employment contract, freedom is almost entirely curtailed.<sup>236</sup> Such a concept is similar to Bales' 'contract slavery' where the worker is indefinitely tied to the sponsor/employer for the duration of employment. This is the case regardless of any abuse that they may face. Degorge specifically mentions domestic workers and construction workers who migrate to the UAE and often work in poor conditions with wages 'pitifully low' compared to

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<sup>229</sup> *Ibid* at 12. See also Appendix A.

<sup>230</sup> *Supra* note 27 at 660.

<sup>231</sup> *Ibid*.

<sup>232</sup> *Ibid* at 662.

<sup>233</sup> *Ibid*.

<sup>234</sup> *Ibid*.

<sup>235</sup> *Ibid*. (This analysis intersects with the literature on unfree labour.)

<sup>236</sup> *Ibid*.

other workers in the country. She draws attention to migrant construction workers living in labour camps and describes their living accommodations as crowded and minimally air-conditioned – a detrimental condition during the high temperatures of the region in the summertime.<sup>237</sup> Degorge also argues that many migrant domestic workers have next to no rights at all and are subject to abuse in their employers' homes. She states:

Locked in the homes where they work, they rarely receive any wages. These women, some of whom are as young as six-year old girls, are often beaten by their mistresses and sexually abused by their masters.<sup>238</sup>

Degorge claims that the majority of these workers fall into wage slavery voluntarily but are unaware of the conditions awaiting them. She adds:

It is this psychological aspect of the wage slave that turns them into slaves. It is inconceivable that intelligent humans fall prey to the subtle machinations of employers who infuse fears into their minds of losing their livelihood or the chance to return home. These tactics of fear contribute to the ongoing practice of wage slavery.<sup>239</sup>

Again, such interpretation shows the ways in which a person may be enslaved and the idea that contemporary slavery can manifest in various forms. An overview of the experiences faced by Migrant Workers in the Arab Gulf emphasizes this interpretation. Slavery must be taken into consideration when looking at the ways in which migrants' freedom is curtailed and legal personality rendered non-existent with limited options to seek help.

This section sheds light on unfree labour, forced labour, and slavery pointing to the intersections between the three fields of literature. Understanding the differences between the three concepts clarifies how a practice or institution may be categorized as slavery or not. The importance of proving *de facto* ownership in a relationship where slavery is

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<sup>237</sup> *Ibid.*

<sup>238</sup> *Ibid.*

<sup>239</sup> *Ibid* at 664.

present is shown through a discussion of various international law decisions as well as the Bellagio-Harvard Guidelines and the way in which these guidelines have reconciled between the 1926 legal definition of slavery and contemporary manifestations of slavery. I stress on Strauss's appealing interpretation of slavery as the most severe form of unfreedom under the umbrella of unfree labour.

Also of importance in this section is the tension present between the concepts of forced labour and slavery. I find the practical similarities between the two create confusion when attempting to distinguish which practices fall under which categories. How can we decide whether a certain practice constitutes forced labour or slavery if they tend to have the same practical effect on the individual? In legal terms, the distinction is more straightforward. Slavery cannot be said to exist unless the right of ownership is exercised over a person. Such ambiguity between the two concepts creates a problematic when it comes to the laws that can be applied to certain situations. Where is it appropriate to invoke the language of slavery or forced labour? How do the implications differ? Is slavery invoked only in the most severe cases? This tension between forced labour and slavery raises various questions that tackle consequences of invoking one concept or the other.

Other tensions raised by the discussion on slavery constitute the problematic of using the term 'modern-day slavery' as opposed to 'slavery'. I find that the distinction implies that the 1926 legal definition of slavery does not quite apply to 'modern-day slavery' as it does to 'slavery', even though that is not necessarily the case. The Bellagio-Harvard Guidelines, as will be elaborated below, demonstrate reconciliation between the legal definition of slavery and contemporary manifestations of slavery. I find it



appropriate to use the term ‘modern-day slavery’ in view of the different circumstances in our present day such as the absence of *de jure* slavery that makes impossible for one person to legally own another. Moreover, different social contexts of our current day allow for various manifestations of slavery. That being said, slavery should be understood as slavery, whether modern, contemporary, or other.

Having highlighted some of the main tensions, the following sections provide some data on the situation of migrant construction workers and migration domestic workers in the Arab Gulf, allowing for the dimensions of slavery as elaborated above to be put in perspective and context.

### **Chapter III - Data on Construction Workers**

My discussion on migrant construction workers and their experiences focuses on the UAE and partly on Qatar. The two countries are particularly important due to their huge economic booms in the past decade. Migrant construction workers have been flooding the Arab Gulf area for employment in emerging construction projects.

#### **3.1 The United Arab Emirates: Brief Contextual Information**

The UAE, Dubai in particular, has emerged from a desert into a revolutionized State with modernized architecture and facilities. However, it is necessary to look at what goes on behind the scenes and how this beautiful city came to be. The UAE’s economy

started booming in 2000 and has been ‘traditionally fuelled by the oil sector.’<sup>240</sup> The UAE’s economic success has generated a lot of interest among people across the world. According to a 2006 HRW report, in 2005 Dubai became the hub of construction activity in the country with 304,983 workers employed in that emirate’s construction sector only.<sup>241</sup> Many construction workers in the UAE face unfortunate circumstances such as inadequate living accommodations, appalling working conditions, withholding of passports, non-payment of wages, and unenforced legal protection.<sup>242</sup> According to a report made by Emirates Centre for Human Rights, the UAE ranked among the wealthiest economies in the world with much of this success resulting from cheap labour provided by migrants who move from across the world to emerge from poverty and build better lives.<sup>243</sup>

The 1970s marked the integration of Dubai (and the UAE in general) into the world economy. According to Ahmed Kanna, Dubai’s economy increased ‘sevenfold’ between 1968 and 1973.<sup>244</sup> In the 1990s, Dubai began to visibly transform. Kanna claims that Sheikh Muhammad Bin Rashid Al Maktoum held “an ambitious campaign to revolutionize the cityscape...”<sup>245</sup> Construction activity in Dubai is distinct due to the large-scale projects embarked on, such as the Emaar Marina Complex, comprising 190 new residential high-rises and Burj Dubai – the world’s tallest tower, more commonly known as Burj Khalifa.<sup>246</sup> Such ambitious projects need stringent workforce supplied through the influx of Asian migrant labour.

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<sup>240</sup> *Supra* note **Error! Bookmark not defined.** at 21.

<sup>241</sup> *Ibid* at 22.

<sup>242</sup> Emirates Centre for Human Rights, *Migrant Workers in the United Arab Emirates (UAE)*, ECHR, 1 at 1.

<sup>243</sup> *Ibid.*

<sup>244</sup> *Supra* note 120 at 23.

<sup>245</sup> *Ibid* at 24.

<sup>246</sup> *Supra* note **Error! Bookmark not defined.** at 22.

The economic boom in the 1990s brought in migrants from various parts of South and Southeast Asia such as Bangladesh, India, Pakistan, and Sri Lanka.<sup>247</sup> The majority of these workers have taken jobs in the construction sector. According to HRW's report, migrant construction workers are all male and most of them come from rural areas. The report also states that all construction workers interviewed during the organization's research were illiterate and their ages ranged between 18 and 60 years old.<sup>248</sup> A powerful visual description of migrants' influx to the UAE is provided by Kanna:

Even in the wee hours of the morning, when larger airports like Heathrow would be fairly empty, Dubai International, or DXB as it is known to admiring locals, is thronged with thousands of tourists, business people and migrant workers, a diverse array of people with equally diverse agendas, all knocking at the doors to the most famously booming city-state in the Persian Gulf.<sup>249</sup>

### 3.2 Recruitment and Sponsorship Process

To be sponsored for employment in the UAE, migrant construction workers claimed to have paid fees ranging from USD2000 to USD3000 to recruitment agencies in their home countries.<sup>250</sup> The HRW report states that these workers typically enter into work contracts for a period of two to three years, subject to renewal. The monthly wage ranges from USD106 to USD205 with migrant workers usually earning an average of USD175 a month. It is interesting to compare these wages with the average per capita monthly income in the UAE, amounting to USD2500.<sup>251</sup> There is a clear difference between migrant construction workers' wages and the average income of the population.

In many cases, prospective migrant workers are promised a certain wage but end

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<sup>247</sup> *Ibid.*

<sup>248</sup> *Ibid* at 23.

<sup>249</sup> *Supra* note 120 at 23.

<sup>250</sup> *Supra* note **Error! Bookmark not defined.** at 23.

<sup>251</sup> Central Intelligence Agency, *The World Factbook, Middle East: United Arab Emirates*, online: Central Intelligence Agency <<https://www.cia.gov/library/publications/the-world-factbook/geos/le.html>>.

up getting paid less.<sup>252</sup> Employers have been reported to switch migrant workers' contracts. These workers are recruited at a certain wage but paid a lower rate once they start work. One of the workers interviewed by HRW states:

There are about 60 of us working for a construction and landscaping company. I paid an agency in India \$2,300 to get a visa to come here and work. For the first six months, we were getting paid \$250 per month. Then the company shut down a month ago. The company's owner owns another business, and he wants us to work for that company for \$5 a day. That is half of what we were making before.<sup>253</sup>

### 3.3 Accounts of Migrant Construction Workers in the UAE

Accounts of migrant construction workers interviewed by Kanna during his research in the UAE provide further clarity on the situation at hand.

Kanna's host, Ma'moun, had been in Dubai for over three years and claims to have heard about his job from an agent in his home country. The hiring company paid for some expenses while he paid USD655 for visa and airfare. Ma'moun is required to renew his visa every three years at the rate of about USD260. Every two years, he is allowed a two-month paid vacation and is permitted to travel only in case of emergencies. As with most local sponsors or recruiters, the company holds his passport. Ma'moun's monthly salary is USD300 paid in cash yet, he does not always get paid on time. The delay in payment may last for two months or even longer.<sup>254</sup>

Hamid from Pakistan works in construction. He paid the labour agent in Islamabad a total of 130,000 Pakistani Rupees (equivalent to USD2138) for visa and travel expenses. Upon arrival to Dubai, the company confiscated Hamid's passport. Hamid was required to pay USD272 in deposit. All this was to ensure that he does not

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<sup>252</sup> *Supra* note **Error! Bookmark not defined.** at 36.

<sup>253</sup> *Ibid.*

<sup>254</sup> *Supra* note 120 at 26.

abscond.<sup>255</sup> According to Kanna, absconding has been a serious problem in emirates such as Sharja where accommodations are much worse than in other areas (such as Dubai) due to lack of scrutiny by international organizations.<sup>256</sup> Curtailing freedom of movement is a primary aspect among many sponsors and employers once the migrant arrives to the destination country.

Hamid's salary is significantly lower than Ma'moun's at USD163 a month. Hamid works for about 48 hours a week and 2-3 hours overtime every week, increasing his monthly income to about USD218.<sup>257</sup> While the UAE Government requires that all sponsors pay for accommodation and electricity, the workers have to pay for food and cooking gas. Hamid is left with a monthly income of USD136 sent to his family in Pakistan.<sup>258</sup> As per Kanna, the canteen at the labour camp is quite expensive and even pricier than some of the European chains found in the most stylish shopping malls of the city, such as Spinney's and Carrefour.<sup>259</sup>

Ahmad, an elderly Pakistani construction worker, had been with the company for fifteen years. He found a job in Dubai through the same process mentioned above.

Ahmad, however, offered more insight on why he had to leave Pakistan:

Work in Pakistan was too little, and the government does not care about its people. I used to make less than \$2 per month. How can you live on that? How can you support a family?<sup>260</sup>

Many of these workers are practically forced to leave their home countries due to dire financial situations. However, migration to the Arab Gulf does not necessarily mean financially improved lifestyles. Ahmad claims that agencies in home countries are

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<sup>255</sup> *Ibid* at 27.

<sup>256</sup> *Ibid*.

<sup>257</sup> *Ibid*.

<sup>258</sup> *Ibid*.

<sup>259</sup> *Ibid*.

<sup>260</sup> *Ibid*.

deceitful:

The agencies lie. They say, ‘Go to Dubai. The work is easy; the life is easy. You will do light work like lifting crates. Small work, little work.’<sup>261</sup>

On top of that, migrant construction workers are often illiterate in Arabic and English, which means that they sign contracts that they cannot read. Companies often use this as a “pretext to escape responsibility when workers make complaints.”<sup>262</sup> Ahmad states:

The Dubai government is good, better than the Pakistani government. It cares more about workers. But the companies are not good.<sup>263</sup>

While the latter idea could be contested, it is interesting to note that this worker believes it to be true. This may be a reflection of the extremely poor conditions faced back in the home country. Nonetheless, it should not undermine the severity of migrant construction workers’ experiences in the UAE.

VICE<sup>264</sup> reported on a documentary – titled “Slaves of Dubai” produced by BBC reporter, Ben Anderson – about the conditions of migrant construction workers in the UAE, which provides a vivid portrayal of what it means for many migrant workers to be living in labour camps.<sup>265</sup> Anderson and his team focused mostly on Bangladeshi workers and their experiences of migration starting their departure from homeland. Anderson states that workers normally find themselves indebted by the time they arrive to the UAE – a condition of indebted labour. Indebted labour or debt bondage is a violation of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions

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<sup>261</sup> *Ibid.*

<sup>262</sup> *Ibid.*

<sup>263</sup> *Ibid.*

<sup>264</sup> VICE is a documentary TV series. In VICE team’s own words, “VICE specializes in exploring uncomfortable truths and going to place we don’t belong.” <https://www.youtube.com/user/vice/about>.

<sup>265</sup> *Supra* note 8.

and Practices Similar to Slavery.<sup>266</sup> This further highlights possible presence of slavery in this environment.

Anderson also describes the recruitment process: the migrant worker is approached by a local recruiter in his home country and is offered a job that supposedly pays well (about 300 pounds equivalent to USD500) – an amount workers consider to be a good salary. However, the local recruiter typically asks for an amount of money to initiate the recruitment process – about 200,000 taka (Bangladeshi currency), equivalent to USD3300. The debt requires about six months to pay off, after which the migrant worker starts earning money. Anderson holds that these workers are “easy prey for recruitment agents in their home countries, who charge them huge fees just for the privilege of working in Dubai.”<sup>267</sup> Many have to borrow money or sell family land to pay these expenses. This is supposed to cover the visa and flight fees. Claiming that such expenses are very overpriced, Anderson asserts that the ‘visa fee’ is not a legal requirement; nonetheless, it is a practice by local recruiters. Migrant workers are made to pay said fees in return for employment in the Arab Gulf ‘paradise’. The situation is often wounding: many migrant construction workers find themselves earning a salary of about USD200 to USD270 only.<sup>268</sup>

While figures may vary between researchers and actors in the field, the general idea is that the majority of migrant construction workers often have high expectations for employment, payment of wages, and living conditions in the Arab Gulf States. However, they often arrive in the destination country to discover that they: (1) are paid extremely low; (2) perform difficult and dangerous work under harsh working conditions; (3) live in

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<sup>266</sup> Article 1(a), *supra* note 67.

<sup>267</sup> *Supra* note 8.

<sup>268</sup> *Ibid.*

appalling accommodations; and (4) lead lives not better (even much worse) than they had back home. Nicholas McGeehan, a Middle East researcher at HRW echoes the above by mentioning:

There would be a contract signed in the host state, and he would then be flown to Dubai. On arrival to Dubai, that contract would effectively be ripped up. He would be paid sometimes half of what the intended salary was and his passport would also be confiscated.<sup>269</sup>

### 3.4 Living Conditions

Reflecting on his research in labour camps in the UAE, Anderson describes:

First impressions are, if you didn't know it was a place where workers lived, you'd think it was a place where machinery was stored. No street lights, you can smell sewage. Just sheets of corrugated iron protecting rows of huts. It looks like a shanty town.<sup>270</sup>

The 2006 HRW report depicts living conditions that many migrant construction workers endure. These workers are usually housed in the outskirts of urban areas in “dormitory style dwelling”,<sup>271</sup> commonly known as labour camps.<sup>272</sup> Some workers claimed that their employers provided them with food allowances. Others claimed that their employers provided them access to food canteens.<sup>273</sup> HRW conducted fieldwork in two labour camps: Sonapur (also mentioned in Kanna's research)<sup>274</sup> and Al Quoz.<sup>275</sup> As per said report, standard dwelling consists of one room (12 feet by 9 feet) in which as many as eight workers live together. The room consists of three or four double bunk beds with no additional furniture. Workers use communal washrooms and showers.<sup>276</sup>

Though workers seemed reluctant to speak openly about their conditions in fear of

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<sup>269</sup> *Ibid.*

<sup>270</sup> *Ibid.*

<sup>271</sup> *Supra* note **Error! Bookmark not defined.** at 23.

<sup>272</sup> *Ibid.*

<sup>273</sup> *Ibid.*

<sup>274</sup> *Supra* note 120 at 24.

<sup>275</sup> *Supra* note **Error! Bookmark not defined.** at 23.

<sup>276</sup> *Ibid* at 23-24.



deportation, Anderson was able to speak to workers who informed him that they receive very minimal nourishment: rice, potatoes, and bread as their only meals each month, with an exception of meat or fish meals (in very small amounts) about two or three times a month.<sup>277</sup> Heart wrenching footage in the documentary shows a migrant construction worker complaining about his situation and sobbing like a child. He cried about having been so hungry that he has had to beg for food. He also wept for his family back in his home country, claiming he has no way of returning. The worker stated:

It's been five months, and he has not paid me at all. I have begged for food or remained hungry. Somehow or other, I'm surviving. My wife and children tell me to send money or come back. Where will I go?<sup>278</sup>

His sobbing portrayed the sort of desperation that many Migrant Workers face.

Other sites depicted in the documentary show unsanitary and unacceptable conditions. One of the sites appeared inadequate to shelter animals, let alone human beings. The footage shows two toilets and one shower unit for forty-five migrant workers. Almass Pardiwala, a former Indian recruiting agent, stated that she does not see much moral consciousness among employers in the country. She condemned the actions of more than one company, claiming that they have no regard for human life or the human element of this job.<sup>279</sup>

Anderson's visit to labour camps proved to him firsthand how horrid the conditions were, especially having to conduct his research with a stench of human waste filling the air. The reporter states:

There were so many rivers of sewage blocking so many of the walkways that workers had actually set up a network of stepping stones to get back

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<sup>277</sup> *Supra* note 8.

<sup>278</sup> *Ibid.*

<sup>279</sup> *Ibid.*

to their accommodation.<sup>280</sup>

In an unfortunate reflection to the unsanitary and sewage-filled accommodations, a company representative stated:

Their standards of cleanliness and hygiene are not up to your or our standards... it is very difficult to change the habits that they unfortunately bring with them from their countries of origin.<sup>281</sup>

The representative's comments show a type of racism unfortunately abundant in Arab Gulf societies. This inevitably intensifies the discrimination against these migrant workers. It is disappointing to come across such ignorance but it is with unenlightened dismissal of facts that responsible actors can escape the reality of the situation and continue to be unresponsive. On a comparably more positive note, the documentary then states that the government had warned the company about insufficient cleaning inside toilets. A month before Anderson was on site to film the documentary, the government had fined the company approximately USD3350. However, at least a month after the fine was issued, no change seemed to have ensued.<sup>282</sup> When asked about the chances of improving conditions in Dubai, a worker told Anderson:

We have no hope for the future. We are helpless.<sup>283</sup>

Describing the conditions as “absolutely squalid”,<sup>284</sup> Anderson asserts that considering migrant construction workers as ‘slaves’ is “not an exaggeration”.<sup>285</sup> It is worth mentioning that Anderson and his team were not allowed access to working sites and labour camps for interviews. However, Anderson's team succeeded in accessing labour camps secretly, despite the closely monitored entry gates. Such strict supervision

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<sup>280</sup> *Ibid.*

<sup>281</sup> *Ibid.*

<sup>282</sup> *Ibid.*

<sup>283</sup> *Ibid.*

<sup>284</sup> *Ibid.*

<sup>285</sup> *Ibid.*

raises red flags. Why are reporters restricted from accessing the area? Why are these workers hidden in dark outskirts of the city with no access from the outside world?

### 3.5 Working Conditions

#### *Unpaid and/or Low Wages*

The inhumane living conditions are not the only hardships experienced by migrant construction workers in the UAE. According to HRW, a common complaint by many is the non-payment of wages. HRW also asserts that the non-payment of wages is a frequent labour dispute issue handled by the Ministry of Labour.<sup>286</sup> A migrant worker interviewed in Anderson's documentary states that the non-payment of wages could result in workers having no money to eat. Borrowing money to survive will thus become inevitable. Other consequences resulting from the non-payment of wages include falling into further debt with recruiting agencies in home countries, incurring additional interest, and being short of money to send home.<sup>287</sup> Typically, migrant construction workers' wages are withheld for the first one or two and a half months as a customary practice to prevent absconding. It is only after this period that migrant workers complain about the non-payment of wages.<sup>288</sup> According to HRW, company officials justify non-payment of wages beyond the two-month 'security withholding' by claiming that such non-payment is due to cash-flow problems.<sup>289</sup> HRW describes consequences of non-payment of wages in a nutshell. Workers with withheld wages have little or no recourse. They cannot simply quit their jobs and return home as they remain indebted to recruiting agents.

We can't just go back. Each of us owes a lot of money to recruiting agents back home. How can we go back when we have taken such

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<sup>286</sup> *Supra* note **Error! Bookmark not defined.** at 29.

<sup>287</sup> *Ibid.*

<sup>288</sup> *Ibid* at 30.

<sup>289</sup> *Ibid.*

huge loans?<sup>290</sup> One worker mentions to HRW.

Even when migrant construction workers receive their wages on time, they still remain financially burdened. This is due to the extremely low monthly wages. Lack of a standard minimum wage exacerbates these migrants' financial situation. In March 2006, a violent protest erupted in at the Old Town commercial section of the Burj Dubai complex with low wages representing a large proportion of complaints. In May 2006, more than 8,000 workers from Besix Company ceased to work until their employers met their demands.<sup>291</sup>

### ***Safety and Health Hazards***

“The extent of death and injury of migrant workers is one of the most troubling, if poorly documented, aspects of the construction sector in the UAE,”<sup>292</sup> HRW states. The problem with lack of accuracy on the matter is that companies often fail to report cases of deaths and injuries. According to HRW, few local sources have provided figures on deaths of migrant construction workers in the UAE. In 2004, Dubai Municipality recorded 34 construction workers dead at their workplaces. In 2005, the municipality reported 39 dead. *Construction Week*, a local construction trade publication, recorded more deaths of migrant construction workers, not known whether all work-related. In 2004, 880 migrant construction workers died in the UAE – 460 from India, 375 from Pakistan, and approximately 45 from Bangladesh.<sup>293</sup> According to HRW, K. Kumar, an official with the Indian Community Welfare Committee, mentioned that nearly 30% of the deaths are work-related.<sup>294</sup>

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<sup>290</sup> *Ibid* at 35-36.

<sup>291</sup> *Ibid* at 37.

<sup>292</sup> *Ibid* at 40.

<sup>293</sup> *Ibid*.

<sup>294</sup> *Ibid*.

The Arab Gulf is notorious for its unbearable hot weather especially during the summer. HRW states that the temperature peaks well above 32°C from April to September, with humidity of 80%<sup>295</sup> making it dreadful to be outdoors, let alone work outside for long hours. Heat and humidity, as mentioned by HRW, are considered a health hazard especially during the months of July and August, a time when temperatures regularly peak above 100°F (38°C). Many construction workers are reported to suffer from heat strokes and dehydration. HRW explains that during the months of July and August of 2004, as many as 5,000 construction workers were brought monthly into the accident and emergency department of Rashid Hospital in Dubai.<sup>296</sup> Acting head of the department, Dr. G.Y. Naroo, told *Construction Week* that the hospital recorded double the initial assessment of 2,500 heat-related cases per month.<sup>297</sup> In 2005, the Ministry of Labour attended to complaints regarding heat endured during working hours. The Ministry issued a decree banning outdoor work from 12:30 pm to 4:30 pm. during July and August.<sup>298</sup> However, the issue remained unresolved due to non-compliance by private companies with this decree. Penalty enforcement on law-breaking companies has been absent. Due to lobbying by private companies, the said decree was not introduced on a permanent basis. The hours of midday break were consequently reduced by one hour and a half, i.e. from 12:30 p.m. to 3:00 p.m. When asked about the situation, former Minister of Labour, Ali bin Abdullah Al Kaabi, deferred responsibility on contractors:

They are the ones who decided the timings.<sup>299</sup>

This shows the construction industry's powers to influence labour laws with no regard to

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<sup>295</sup> *Ibid* at 41.

<sup>296</sup> *Ibid.*

<sup>297</sup> *Ibid.*

<sup>298</sup> *Ibid* at 42.

<sup>299</sup> *Ibid* at 43.

migrant workers' health and safety.<sup>300</sup>

### ***Confiscation of Passports***

Although an illegal action under international law and UAE domestic labour laws, confiscating passports and legal documents is commonly practiced by employers and/or sponsors.<sup>301</sup> According to an interview with HRW, Assistant Director of follow-up and investigation at the Dubai Naturalization and Residency Administration claimed that even though legally prohibited, employers confiscate passports for the purpose of keeping them safe.<sup>302</sup> Nonetheless, Maj. Aref Mohammad Baqer, Deputy Director of the Human Rights Department at Dubai Police, stated that such reason is provided to justify confiscation and protect employers' interests:

The companies say that holding of passports is part of the business culture. They justify it by saying it would prevent the workers from stealing money or trade secrets and information from the company. Also employers say that by holding on to their workers' passports, they can guarantee they will get a return on the money they invest on each worker in visa fees and other expenses.<sup>303</sup>

The act of confiscating passports allows employers to exercise complete control over their workers and denies them of the basic right to freedom of movement.

### **3.6 UAE Domestic Labour Law**

Migrant construction workers in the UAE face difficulties due to ineffective enforcement of domestic labour laws. Private companies hiring construction workers are left with considerable discretion with respect to the application of law. This places workers in vulnerable and precarious situations. In this section, I refer to relevant provisions of the UAE's labour laws dictated by the Federal Law No. 8 of 1980

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<sup>300</sup> *Ibid.*

<sup>301</sup> *Ibid* at 38.

<sup>302</sup> *Ibid* at 38-39.

<sup>303</sup> *Ibid* at 39.

Regulating Labour Relations.<sup>304</sup>

Labour Laws in the UAE apply to staff and employees, both nationals and expatriates.<sup>305</sup> While this sounds fair at first glance, Article 3 of the law states that certain categories of workers are exempted from the law. These include, among others, domestic workers, and those employed in local and federal Government projects.<sup>306</sup> The UAE Labour Laws address several work-related matters such as maximum working hours, annual leave and overtime, industrial safety and health care for employees. Requiring protection from work hazards and occupational injuries and diseases,<sup>307</sup> these laws also cover workers' medical care, including regular medical examinations every six months.<sup>308</sup> The issue at hand is not the absence of a sophisticated legal system, but rather, the ineffectiveness of Labour Laws due to poor enforcement by government and private businesses.

### 3.6(a) Recruitment

Chapter III of the Federal Law No. (8) of 1980 addresses contracts, records and remuneration. The Federal Law requires that the employment contract is made in duplicate – a copy given to the employee and the other to the employer.<sup>309</sup> The law also dictates that the employment contract must specify the date of its conclusion, the date on which work begins, the nature and place of work, the duration of the contract where relevant, and the amount of remuneration.<sup>310</sup>

While specific remuneration may be promised prior to migration, many migrant

<sup>304</sup> *Supra* note **Error! Bookmark not defined.**

<sup>305</sup> *Supra* note **Error! Bookmark not defined.** at 48.

<sup>306</sup> Chapter I, Article 3, *supra* note **Error! Bookmark not defined.**

<sup>307</sup> *Supra* note **Error! Bookmark not defined.** at 48.

<sup>308</sup> *Ibid.*

<sup>309</sup> Chapter III, Article 35, *supra* note **Error! Bookmark not defined.**

<sup>310</sup> Chapter III, Article 36, *Ibid.*

workers often find themselves deceived and being paid much less. Migrant construction workers are often employed on a monthly basis wage system in line with Article 56 stating that workers must be paid at least once a month.<sup>311</sup> As mentioned earlier, many migrant construction workers have complained about non-payment of wages, which has led to public protests. This demonstrates poor implementation of the country's Labour Laws.

Article 63, which addresses minimum salary, does not determine a minimum wage or salary.<sup>312</sup> As such, there is no codified minimum wage in the UAE.<sup>313</sup> This inevitably contributes to workers' precariousness.<sup>314</sup>

### **3.6(b) Working Conditions**

#### ***Working Hours***

Article 65 of the Federal Law No. (8) of 1980 sets out the maximum normal working hours for adult employees to be 8 hours per day or 40 hours per week.<sup>315</sup> Article 66 stipulates that no employee working daily shall work over five hours consecutively without break times no less than one hour for rest, food, and prayer, provided that these hours shall not be counted as working hours.<sup>316</sup> Articles 67<sup>317</sup> and 69<sup>318</sup> address circumstances where a worker may need to work overtime; the worker must receive remuneration equal to that corresponding to his/her usual working hours in addition to an extra of at least 25% of remuneration, on condition that overtime does not exceed two hours per day unless the work is necessary to prevent substantial loss or serious accident.

<sup>311</sup> Chapter III, Section 4, *Ibid.* See also Article 56.

<sup>312</sup> Chapter III, Article 63, *supra* note **Error! Bookmark not defined.**

<sup>313</sup> "UAE Labor Law", online: <http://uaelaborlaw.com/>.

<sup>314</sup> Leah F. Vosko, *supra* note 104.

<sup>315</sup> Chapter IV, Article 65, *supra* note **Error! Bookmark not defined.** (A few exceptions are made by decision of the Minister of Labour and Social Affairs, where working hours may be reduced in cause of hazardous work or work detrimental to health.)

<sup>316</sup> Chapter IV, Article 66, *Ibid.*

<sup>317</sup> Chapter IV, Article 67, *Ibid.*

<sup>318</sup> Chapter IV, Article 69, *Ibid.*



As Sönmez et al. state, over 30% of construction workers in the UAE work 50 hours or more per week without any days off. This usually continues for weeks or even months. Article 65 dictates that employees who have worked more than six months during their first year must receive 2 days off per month and one-month paid annual leave thereafter. However, most companies ignore these laws and choose not to grant their workers any such leaves until the second year of employment.<sup>319</sup>

### ***Health and Work Hazards***

Migrant construction workers in the Arab Gulf face multiple health and work hazards due to the nature of their work along with the notorious high temperatures in the region. The Federal Law No. 8 of 1980 addresses these issues in detail. Protections are guaranteed with respect to safety of workers in the workplace, health and social care related matters, as well as provision of services by employers to ensure proper living conditions.<sup>320</sup> Once again, the issue is not the absence of a sophisticated legal system, but rather, the ineffectiveness of Labour Laws.

### ***Protection and Compensation***

Furthermore, Chapter VIII of the Federal Law provides extensive procedures in cases of labour injuries or occupational diseases.<sup>321</sup> Article 144<sup>322</sup> addresses the issue of labour accidents as to expenses and the employer's medical responsibilities towards the employee. There have been cases of suicide, not only due to the non-payment of wages leading to financial distress,<sup>323</sup> but also due to employers neglecting their employees' medical care needs. One construction worker's suicide note explicitly mentioned that the

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<sup>319</sup> Sevil Sönmez et al, "Human Rights and Health Disparities for Migrant Workers in the UAE" (2011) 13 Health and Human Rights 17 at 20.

<sup>320</sup> Chapter V, *supra* note **Error! Bookmark not defined.**

<sup>321</sup> Schedule (1) and (2), *Ibid.*

<sup>322</sup> Chapter VIII, Article 144, *Ibid.*

<sup>323</sup> *Supra* note **Error! Bookmark not defined.** at 46.

worker was compelled to work without being paid and that he suffered from a constant headache for which he required to see a doctor. He asked for AED 50 equivalent to USD14 at the time but was told to get back to work.<sup>324</sup>

### ***Labour Inspections***

Chapter X of the Federal Law No. 8 of 1980 addresses labour inspection and details responsibilities that the labour inspector must observe.<sup>325</sup> These include duty to offer guidance in implementing the Labour Law, particularly regarding working conditions, remuneration, and protection and safety of employees. Additionally, labour inspectors are to report any deficiencies with the established law and propose whatever they see necessary in this respect. They are also responsible for addressing any labour conflict issues and applying the procedures necessary to resolve them.<sup>326</sup> One could question whether labour inspections are active and if so, whether labour inspectors' recommendations are implemented. This is to ensure migrant workers are being adequately protected by Labour Laws. Lack of proper legal protection or poor implementation exacerbates the vulnerability and precariousness of Migrant Workers in the UAE and further places them at risk of slavery conditions.

Moreover, the process of resolving a labour dispute between employer and employee is complex.<sup>327</sup> Labour dispute resolution often result in solutions at the expense

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<sup>324</sup> *Ibid* at 47.

<sup>325</sup> Chapter X, *supra* note **Error! Bookmark not defined.**

<sup>326</sup> Chapter X, Article 179, *Ibid*.

<sup>327</sup> *Supra* note **Error! Bookmark not defined.** at 50. (Officials and inspectors of the Ministry of Labour are granted 'the status of judicial officers for the purposes of the application of the law and its executive regulations and orders,' and the law requires the Ministry of Labour to set up an arbitration board to resolve conflicts between employees and employers. When a labour dispute arises, the Ministry of Labour must be notified in writing, in which case a ministry official will ask the worker and employer to resolve their conflict through direct negotiations. If direct negotiations fail, a ministry official is required to arbitrate the case within 30 days. If the official does not succeed in resolving the dispute, the case is referred to an 'arbitration committee' within the Ministry. Finally, if the committee also fails to resolve the dispute, the case is referred to the judiciary. Workers are not permitted to file their cases directly with the judiciary. This process needs to take place first.)

of the worker and to the employer's benefit,<sup>328</sup> thus rendering the process biased. The process also consists of many difficulties for the migrant worker who is often unaware of his rights, fearful of possible consequences by the employer, and lacks the required assets such as literacy to be able to write to the Ministry of Labour.<sup>329</sup> The ineffectiveness of labour dispute resolution further aggravates the situation of migrant workers. The difficulties with the process of resolving labour disputes make it unlikely for workers to forward their complaints and better their conditions. Once again this risks conditions of slavery to arise.

### **3.7 Deficiencies in UAE Federal Labour Law**

Article 2 states that the Arabic language is to be used in contracts and other employment documents.<sup>330</sup> However, Article 2 does not provide for guarantees to ensure that migrant workers understand the terms and conditions of their contracts. These could include bilingual contracts and translation services.

Furthermore, two key deficiencies are observed in the Federal Law No. (8) of 1980. These are: lack of determining a minimum wage<sup>331</sup> and disallowing workers' organizations. As discussed earlier, non-determination of minimum wage for workers in the UAE has caused a number of protests among migrant construction workers. Needless to say, the Government is the only body to introduce a minimum wage with which private companies must comply – a development not occurring to date.

Another basic right for workers is the freedom to organize and forward complaints through forming trade unions and engaging in collective bargaining.

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<sup>328</sup> *Ibid* at 51.

<sup>329</sup> *Ibid* at 52.

<sup>330</sup> Chapter I, Article 2, *supra* note **Error! Bookmark not defined.**

<sup>331</sup> *Supra* note **Error! Bookmark not defined.** at 56.

Nonetheless, with the workers' rights being marginalized and neglected, the only option left to the workers is to handle and fight their issues on their own. Article 112 under Chapter VI<sup>332</sup> of the Federal Law No. (8) of 1980 addresses the act of striking by stating that any employee opting to engage in such action may be temporarily suspended from work. The act of striking is categorized under the same provision as that of premeditated crime. While the law does not go as far as considering the act of striking as such, it is notable how such framing portrays this act as a severe breach likely accompanied with harsh consequences.

Apart from strikes, the UAE bans all sorts of workers' organizations. In a ministerial resolution directed at migrants, the federal government prevented migrant workers to work in the country for at least one year in case of an 'illegal strike or its instigation'.<sup>333</sup> In this frame, HRW highlights the vital role of unions, deeming the latter as "the most important vehicle for workers to communicate grievances with relevant government bodies, to negotiate with employers, and to seek structural reforms"<sup>334</sup> – a mechanism unavailable to date.

### 3.8 Qatar: 2022 FIFA World Cup Preparations

In this section I address an ongoing issue increasingly demonstrating conditions of slavery among migrant construction workers in Qatar – a consequence of the 2022 FIFA World Cup preparations.

"Qatar under the spotlight for workers' rights",<sup>335</sup> "FIFA 'powerless' over Qatar labour rights",<sup>336</sup> "Qatar urged to stamp out labour abuse",<sup>337</sup> "UN recommendations on

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<sup>332</sup> Chapter VI, Article 112, *supra* note **Error! Bookmark not defined.**

<sup>333</sup> *Supra* note **Error! Bookmark not defined.** at 56.

<sup>334</sup> *Ibid.*

<sup>335</sup> Sam Bollier, "Qatar under the spotlight for workers' rights", *Al Jazeera*, (4 October 2013) online: *Al Jazeera*

<<http://www.aljazeera.com/indepth/features/2013/10/qatar-under-spotlight-for-workers-rights-2013103133435476752.html>>.

Qatar migrant rights”<sup>338</sup> – headline after headline in critique of Qatar as a World Cup host in 2022 clearly shows how controversial an issue it has become. Amnesty International produced an extensive report on Qatar and its upcoming World Cup project providing important information and data. Qatar is a booming country with 10.5 per cent population growth between August 2012 and August 2013. It is interesting to note that “twenty new people are added to the population every hour.”<sup>339</sup> Low-paid migrant workers have been in great demand due to labour needed for infrastructure and construction mega projects. Not only does the 2022 FIFA World Cup project itself need massive construction but so do the facilities such as hotel rooms and accommodations.<sup>340</sup>

Qatar’s reputation regarding the World Cup has not been popular. Rather, the situation of migrant construction workers involved in the project has been viewed as conditions of slavery on various accounts, specifically by Sharan Burrow, General Secretary of the International Trade Union Confederation (ITUC):

If you continue to run the World Cup in a state which enslaves workers, it shames the game. The government must end the system of *Kafala* if the World Cup is to be played in Qatar in 2022.<sup>341</sup>

### ***Abuse of Nepalese Migrant Workers***

Significant attention has been paid to the abuse of Nepalese construction workers involved in building the 2022 FIFA World Cup project. The types of abuse documented by Amnesty International’s 2013 report include deceitful work agreements. Many

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<sup>336</sup> “FIFA ‘powerless’ over Qatar labour rights”, *Al Jazeera*, (21 March 2014) online: Al Jazeera <<http://www.aljazeera.com/sport/football/2014/03/fifa-powerless-over-qatar-labour-rights-2014321171311619626.html>>.

<sup>337</sup> “Qatar urged to stamp out labour abuse”, *Al Jazeera*, (18 November 2013) online: Al Jazeera <<http://www.aljazeera.com/news/middleeast/2013/11/qatar-urged-stamp-out-labour-abuse-2013111852644713338.html>>.

<sup>338</sup> “UN recommendations on Qatar migrant rights”, *Al Jazeera*, (10 November 2013) online: Al Jazeera <<http://www.aljazeera.com/news/middleeast/2013/11/un-recommendations-qatar-migrant-rights-2013111014476802649.html>>.

<sup>339</sup> Amnesty International, “The Dark Side of Migration: Spotlight on Qatar’s Construction Sector Ahead of the World Cup” (2013) 5.

<sup>340</sup> *Ibid.*

<sup>341</sup> Ian Traynor, “Fifa says there is little it can do about labour conditions in Qatar” *The Guardian*, (13 February 2014) online: The Guardian <<http://www.theguardian.com/world/2014/feb/13/fifa-labour-conditions-qatar-world-cup>>.

migrant construction workers arrive in Qatar to find that the terms and conditions agreed upon during the recruitment process are altered with wages lower than promised.<sup>342</sup> Other abuse occurs through economic exploitation such as delaying or withholding payment of wages. Confiscating passports is also prominent among employers in Qatar. This leaves workers undocumented and in danger of being arrested and deported.<sup>343</sup> Moreover, many migrant construction workers are forced to work excessive hours under extreme conditions of heat, which often jeopardizes their health and safety. In addition to harsh working conditions, migrant construction workers in Qatar live in unsanitary and inadequate accommodations. Research was carried out in candlelight and interviews were held with workers sleeping on the roof of their accommodation due to absence of air conditioning.<sup>344</sup> Amnesty International states that "... many workers face the cumulative effect of being subjected to several components of such abuse simultaneously, an experience which can be difficult to capture."<sup>345</sup>

Types of exploitation and abuse faced by migrant construction workers in Qatar are almost identical to those faced by migrant construction workers in the UAE and other parts of the Arab Gulf. Amnesty International's report highlights the personal suffering that many of these workers experience: "severe psychological distress due to the treatment they had received and their sense of powerlessness to resolve their own situations."<sup>346</sup> Many also suffer from non-payment of wages, which consequently renders them unable to pay debts to moneylenders back home. This often has negative repercussions on their family members.

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<sup>342</sup> *Supra* note 339 at 6.

<sup>343</sup> *Ibid.*

<sup>344</sup> *Ibid* at 7.

<sup>345</sup> *Ibid.*

<sup>346</sup> *Ibid.*

The ITUC states there will be approximately 4000 workers dead before the soccer ball is first kicked in the stadium.<sup>347</sup> A report by DLA Piper<sup>348</sup> on migrant labour in the construction sector in Qatar shows the number of dead migrant construction workers to be 964 from Nepal, India, and Bangladesh in 2012 and 2013. The majority of deaths were the result of cardiac arrest, noting that the Government claims very low numbers of work-related injuries.<sup>349</sup>

The ITUC recommends political and legal solutions to improving the situation, (1) ending the *Kafala* system to ensure freedom to leave the country whenever desired; (2) granting the right to change employers; (3) passing national laws that incorporate the freedom of association and workers' organization; and finally (4) working with international recruitment companies to better organize the mass recruitment of migrant workers.<sup>350</sup>

The conditions of migrant construction workers involved in the preparations for the 2022 FIFA World Cup in Qatar as well as those in the UAE highlight multiple issues that consolidate the existence of slavery conditions. These workers endure conditions that involve several factors indicating the possible presence of slavery including, deception and false promises, exercise of control, and curtailment of freedom of movement.

It is evident that the UAE, for instance, has a sophisticated labour law system allowing a possibility for improvement. The implementation of already existing labour laws can considerably improve the situation of migrant construction workers. However, to compliment such initiative, Arab Gulf governments need to comply with international

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<sup>347</sup> "Global dispute over Qatar 2022 World Cup needs immediate settlement to save lives", *ITUC*, (4 October 2013) online: ITUC <<http://www.ituc-csi.org/global-dispute-over-qatar-2022>>.

<sup>348</sup> An international law firm.

<sup>349</sup> Owen Gibson, "Qatar government admits almost 1,000 fatalities among migrants", *The Guardian*, (14 May 2014) online: The Guardian <<http://www.theguardian.com/world/2014/may/14/qatar-admits-deaths-in-migrant-workers>>.

<sup>350</sup> *Supra* note 347.

labour law standards and adapt their domestic laws in a way to ensure migrant workers are receiving the rights they are entitled to. The *Kafala* system needs to be reformed significantly or otherwise abolished in order to stop facilitating slavery conditions to arise. As will be elaborated below, the situation of migrant domestic workers is also in need of major attention in terms of implementing domestic and international laws as well as working to eliminate negative attitudes widely spread in Arab Gulf societies.

#### **Chapter IV – Data on Domestic Workers**

Discussion on migrant domestic workers borrows accounts and conditions experienced in various Arab Gulf States as recounted by two HRW reports on the situation of migrant domestic workers in the region. The first report was produced in 2008<sup>351</sup> and focuses on Saudi Arabia; the second was produced in 2014<sup>352</sup> and focuses on

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<sup>351</sup> *Supra* note 4.



the UAE. Such exploration helps emphasize and outline the ways in which the concepts of contemporary slavery and precariousness are relevant.

Similar to migrant construction workers in the Arab Gulf, migrant domestic workers are recruited and sponsored through the *Kafala* sponsorship system. As Manseau describes, sponsors are required to pay a fee to the recruiter in addition to the worker's travel expenses for, among others, airfare, employment visa, work permit, and back home flight. Domestic workers often do "not engage in legal binding contracts that set out their protections, rights, responsibilities, terms of reference to their situation, earnings, hours of work, relationship to the employer or other aspects."<sup>353</sup> Dishonest transactions are not uncommon; these include contracts signed in a language that the migrant domestic worker does not understand.<sup>354</sup> With the *kafil* having complete control over mobility, it is difficult for domestic workers to escape abusive employment relationships and leave the country without obtaining an exit visa. This often results in exploiting the domestic worker. For example, when the two-year contract period ends, the domestic worker needs to find another sponsor within a short period of time to avoid being penalized under immigration laws.<sup>355</sup> Deceitful sponsors/employers may avoid renewing the domestic worker's documents on purpose or accuse the domestic worker of theft in order to leave the worker undocumented and escape the payment of taxes and airplane ticket. This, nonetheless, may consequently lead to the imprisonment of the domestic worker the latter

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<sup>352</sup> Human Rights Watch, "I Already Bought You: Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates" (2014) 1.

Human Rights Watch, "As If I Am Not Human: Abuses against Asian Domestic Workers in Saudi Arabia" (2008) 1 at 34.

<sup>353</sup> *Supra* note 44 at 30.

<sup>354</sup> *Ibid* at 43-44.

<sup>355</sup> *Ibid* at 30.

left with no benefit of due process and with likely being monetarily penalized for absconding.<sup>356</sup>

Such process of recruitment and employment involves the exercise of powers attaching to the right of ownership as manifest in depriving the domestic worker of individual liberty through confiscating passport and legal documents. Guideline 2 of the Bellagio-Harvard Guidelines provides elaboration on the same.<sup>357</sup>

The nature of experiences endured by many domestic workers is echoed in an account by Farah S., an Indonesian domestic worker:

The work wasn't what I expected it to be. It was totally different. I would wake up to start cooking, then cleaning, washing clothes, and then cooking again. No rest, there was just no rest... Because she kept yelling, I cried and asked to go back to agency, but madam said "I already bought you" ...<sup>358</sup>

#### 4.1 Conditions of Employment

Hardships encountered by domestic workers in the Arab Gulf do not only start with the recruitment and sponsorship process but also continue during the employment period and even thereafter. Domestic workers perform various kinds of housework: cleaning, cooking, and caring for children and elderly dependents.<sup>359</sup> As Nasra M. Shah and Indu Menon explain, the risk of violence is intensified for domestic labour and entertainment-related services.<sup>360</sup>

Indeed, domestic workers experience economic violence. Payment of wages are either delayed or withheld; the ability of sending money back home is curtailed.

Domestic workers also experience social and psychological violence manifested in poor

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<sup>356</sup> *Ibid* at 31.

<sup>357</sup> *Supra* note 219 at 10. See also Appendix A.

<sup>358</sup> *Supra* note 352 at 1.

<sup>359</sup> *Supra* note 44 at 32.

<sup>360</sup> Nasra M. Shah and Indu Menon, "Violence Against Women Migrant Workers: Issues, Data and Partial Solutions" (1997) 6 *Asian and Pacific Migration Journal* 1, 5 at 6.

living conditions (insufficient or lack of living space), long working hours, harsh working conditions, lack of holidays, minimal or no free time, and lack of access to friends and social networks.<sup>361</sup> According to Manseau, the foremost concern by the majority of migrant domestic workers interviewed by the ILO in Kuwait, Bahrain, and the UAE is the presence of physical, sexual, psychological and verbal abuse.<sup>362</sup> This is exacerbated by lack of communication with the outside world, which curtails the chances of seeking help.

Abuse has become so routine and normalized that it rarely attracts attention from media and authorities.<sup>363</sup> Domestic workers are often considered less worthy of basic humane treatment. Media's lack of attention to even the least severe cases of abuse sends out a message to the public that the issue is not deserving much of consideration. It is very rare for complaints of abuse by domestic workers to come to light. In Kuwait, for example, most domestic workers complain to their employers or sponsors about salary and physical abuse, and in case of no response, they will be left with no other options for help. Complaints to embassies rarely meet success whereas complaints to the Government are always unsuccessful.<sup>364</sup> It is noteworthy to mention that for many domestic workers to reach their home countries' embassies, they would have to escape the household of employment. This often places them at risk of being caught and accused of having illegal immigration status and/or not possessing legal documents – a further indication of their highly precarious status.

### ***Psychological, Verbal, Physical, and Sexual Abuse***

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<sup>361</sup> *Supra* note 44 at 31.

<sup>362</sup> *Ibid* at 33.

<sup>363</sup> *Ibid* at 34.

<sup>364</sup> *Ibid*.

This section highlights real-life accounts by migrant domestic workers recounting their experiences of psychological, physical, and sexual abuse in the Arab Gulf.

Sabban's fieldwork in the UAE in 2001 captures some of the unfortunate conditions in which many domestic workers find themselves. Some employers exercise control on every aspect of the domestic worker's life, even her clothing. A Sri Lankan domestic worker who worked eight years for a family in the UAE, mainly caring for an elderly woman, was verbally humiliated for wearing shorts prior to entering the swimming pool to help the elderly woman with daily exercises. The employer shouted:

Can't you see the little boys? Aren't you ashamed of yourself? Go put on your long dress. We do not have women going in the pool with swim wear.<sup>365</sup>

Although it could be argued that the employer does not allow the domestic worker to put on swimwear due to cultural and religious reasons, still the issue exceeds cultural sensitivities. The problem is the control exercised over the domestic worker and the verbal humiliation and abuse that often prevail.

Another Sri Lankan domestic worker complained of the demeaning treatment that she faced, even after years of being employed in the same household:

We are treated like strangers; we are not allowed to sit on the furniture. It does not matter to them if you have a profession or not, you are here, you are a maid. I talk to other Filipinas I see in the park, they say the same thing.<sup>366</sup>

She continued to explain how domestic workers are often not considered human:

They think we are lower, we are not considered human, and we don't have the same necessities as they do... When they talk about us they say words like: stupid, know nothings or maid. We are

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<sup>365</sup> Rima Sabban, "Women Migrant Domestic Workers in the United Arab Emirates" (2004) *Gender & Migration in Arab States: The Case of Domestic Workers*, International Labor Organization (ILO) 7 at 93.

<sup>366</sup> *Ibid* at 94.

always inferior in their place. I feel I am treated as a lower person because I am poor...<sup>367</sup>

As mentioned earlier, discrimination against migrant domestic workers is intensified by factors such as social status, race, ethnicity, and gender. These factors functioning interchangeably to perpetuate discrimination are difficult to separate. Many employers do not perceive their domestic workers as human beings worthy of adequate living accommodations, food, and good treatment. Adelina Y., a Filipina domestic worker in Jeddah, described the abuse by her employer:

She always said bad things, like ‘you’re a dog, you’re poor, you’re only a servant here.’ I said, ‘Yes, I’m a servant.’ She was angry everyday. She was jealous of me. She told me, “Don’t talk to your Baba, if you do, I will kill you.” I said I treated him like my father. She said, ‘Don’t say that, you’re not a baby...’ I heard all bad things from her, she told me, “You’re crazy, you’re garbage.” I was hurt. I said, ‘I’m human.’ She said, ‘No, you are not human, you are an animal.’<sup>368</sup>

Another experience of verbal and psychological abuse is recounted by Sadiyah A, a Filipina domestic worker in Abu Dhabi:

Madam keep shouting – always like that. She would say I “don’t have brain,” “don’t have common sense,” “donkey” in Arabic. In Abu Dhabi mall, I was crying in the restaurant because she shouted at me saying, “You have no brain,” in front of other people. It really hurt.<sup>369</sup>

Farah S., an Indonesian domestic worker, also claimed that her employer only referred to her as “worker” and never by her name. She stated:

They thought of me as dirty. They didn’t think of me as human. I know because they never talked to me like I was a person and they had no manners at all.<sup>370</sup>

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<sup>367</sup> *Ibid.*

<sup>368</sup> *Supra* note 4 at 62.

<sup>369</sup> *Supra* note 352 at 35.

<sup>370</sup> *Ibid.*

The examples of maltreatment mentioned above are not the worst of experiences. Real-life accounts by some can be unbearably gruesome but still necessary to mention in order to understand the conditions of domestic workers in the region.

Wati S., an Indonesian domestic worker in Jeddah, mentioned:

She beat me until my whole body burned. She beat me almost every day... She would beat my head against the stove until it was swollen. She threw a knife at me but I dodged it. I had a big black bruise on my arm where she had beaten my arm with a cooking spoon, she beat me until the spoon broke into two pieces. This behavior began from the first week I arrived. It was the lady employer, the man was good... she would scream, "I hope you die! I hope your family dies! I hope you become deformed!" She never paid me for 10 months. I thought if I don't escape, I will die.<sup>371</sup>

Shelly A., a Filipina domestic worker in the UAE, told HRW:

They slap me in the face and kick me. They have a stick for you. If I make a small mistake they would hit parts of my body—back legs, back and head. Sir would slap or punch me in the face. If they come back from the mall and I am not finished they would beat me. They would say, 'If you had done work then we won't hit you.'<sup>372</sup>

Another domestic worker named Leilani P. voiced a similar concern:

My Madam... hit me, she kicked me. When she got angry, she would pull my hair and slap my face. She always told me that I'm shit. She used a lot of bad words. She said, 'You're a liar, you're shit.'<sup>373</sup>

Likewise, a Sri Lankan domestic worker told HRW:

They beat me, they told me they would heat the iron and burn me. She slapped me and said she was going to iron my face. I got scared and ran away.<sup>374</sup>

Arti L., a domestic worker from Indonesia, stated:

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<sup>371</sup> *Supra* note 4 at 61.

<sup>372</sup> *Supra* note 352 at 32.

<sup>373</sup> *Supra* note 4 at 62.

<sup>374</sup> *Ibid* at 64.

He [the sponsor] slapped me and banged my head on the wall, then spit on me. He beat me with a cable on my back and put a knife to my face. After beating me up he left. [Later] Some of the family asked, “Why you have bruises?” I was afraid if I tell I will get beaten up again.<sup>375</sup>

Moreover, and in light of mobility curtailment, domestic workers often fall victim of sexual abuse in the employers’ household. An employer interviewed in Saudi Arabia mentioned:

There is a social cost and a financial cost [of the fees paid to hire a domestic worker]. I am an employer of a maid, driver, and a cook. I do not let my maid out. I will take her out with my family. But if she goes out alone, she may go with a foreign man, and get pregnant. No one can accept this.<sup>376</sup>

This statement, nevertheless, does not reflect the truth. HRW asserts that, in 2007, the Indonesian embassy in Saudi Arabia handled only 17 pregnancy cases out of an estimated 600,000 – 900,000 women working in the country.<sup>377</sup> Some of these cases were the result of rape – an experience that many domestic workers have to endure in the Arab Gulf.

The 2014 HRW report recounted an Indonesian domestic worker’s experience of sexual abuse by her male employer:

I fight him, I was screaming but there is no one around. He slapped me. When he finish he put on his clothes and left me in the room and locked me in. I went into the bathroom and cleaned myself. I came back and he took me back to the house. I was crying all night. Madam said, “What happened to you? Why are you crying?” I wasn’t given time to speak, he said, ‘Go to your room.’<sup>378</sup>

The 2008 HRW report mentions that “in some cases, employers harassed women by offering money for sex or threatening to withhold their salaries unless they submitted to

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<sup>375</sup> *Supra* note 352 at 32.

<sup>376</sup> *Supra* note 4 at 53.

<sup>377</sup> *Ibid.*

<sup>378</sup> *Supra* note 352 at 34.

rape.”<sup>379</sup> These women often find themselves with the choice to submit to their employer’s will or remain unpaid.

Another consequence of rape is the possibility of impregnation that leads to adverse repercussions in the host country as well as back in the domestic worker’s home country. Impregnated women often find themselves shamed and sometimes violently beaten by their husbands. “My husband beat me when I told him what happened,”<sup>380</sup> a Sri Lankan domestic worker claimed.

This treatment indicates the sort of control exercised by employers over their domestic workers who are not treated as humans but more like objects. As per the Bellagio-Harvard Guidelines, the conditions suffered by several female migrant domestic workers as recounted above indeed reflect conditions of slavery. This can be noted from Guidelines 3 and 4. Guideline 3 describes the abstract manifestations of control over a person.<sup>381</sup> Guideline 4 highlights further examples of powers attaching to the right of ownership, specifically in 4(b) using a Person, 4(d) profiting from the use of a person, and 4(f) disposal, mistreatment or neglect of a person.<sup>382</sup>

These women also suffer from psychological damage not only due to physical and sexual abuse or inadequate and uncomfortable living conditions, but also due to missing their children and families back home. Manseau describes the emotional struggles of many migrant domestic workers as mothers and wives; he views that the social cost of their absence to their families can be extremely high.<sup>383</sup> Williams elaborates on the issue of care deficit of the migrant domestic workers and offers a perception on the matter:

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<sup>379</sup> *Supra* note 4 at 68.

<sup>380</sup> *Ibid* at 71.

<sup>381</sup> *Supra* note 219 at 10. See also Appendix A.

<sup>382</sup> *Ibid*. See also Appendix A.

<sup>383</sup> *Supra* note 44 at 27.



In a context where women globally are taking on more responsibilities to earn income without a significant reduction of their care responsibilities, the transnational movement of women into care and domestic work in private households represents a profoundly asymmetrical solution – not only between women and men but between poorer and richer regions – to women’s attempts to reconcile these dual responsibilities.<sup>384</sup>

Williams further states that “the exodus has reconfigured family life. Women dispense maternal love through letters, cash and cassettes sent home. Divorce, children leaving school, husbands turning to alcohol, and child sexual abuse have become routine by-products of the women’s absence.”<sup>385</sup> In many cases, some of these women are not even able to share motherly affection due to their exclusion from the outside world, which creates further emotional and psychological distress.

Still, it may be argued that if conditions endured by Migrant Workers in the Arab Gulf are that devastating, then migration to the region should decrease if not come to an end. Andrew Gardner specifically addresses the question: “If things are as bad as you say, then why do migrants keep coming?”<sup>386</sup> This argument, nevertheless, sounds simplistic and fails to take various considerations into account. Not only does this argument neglect the push factors (mainly economic and socio-political<sup>387</sup>) leading to migration, but also it generalizes the experiences of Migrant Workers across the region. This argument also ignores the fact that not all Migrant Workers endure such conditions. Various employers understand the concept of respecting an employee regardless of the power imbalance inherent in the employment relationship.

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<sup>384</sup> *Supra* note 80.

<sup>385</sup> *Supra* note 81 at 27.

<sup>386</sup> Andrew Gardner, “Why Do They Keep Coming? Labor Migrants in the Gulf States” in Kamrava & Babar, eds, *Migrant Labor in the Persian Gulf* (London: Hurst & Company, 2012) 41 at 44.

<sup>387</sup> *Ibid* at 46. (Gardner expands on the notion of ethnographic pull factors.)

Arab Gulf States are required to abide by international labour standards and comply with international human rights laws. The section below sheds some light on possible legal remedies including the needed social change in negative perceptions of Migrant Workers by Arab Gulf societies.

## **Chapter V – International Legal Instruments**

### **5.1 International Labour Organization Standards**

## 5.1(a) ILO Fundamental Conventions

ILO standards and conventions help improve the situation of Migrant Workers in the Arab Gulf. Given that the UAE is a major Arab Gulf State discussed in this thesis, it is worthy to mention its ratifications. The UAE<sup>388</sup> ratified the majority of ILO Fundamental Conventions, including the Forced Labour Conventions and 1958 Discrimination (Employment & Occupation) Convention. Though the UAE has yet to ratify the Conventions on Freedom of Association and Protection of the Right to Organise (1948),<sup>389</sup> the Right to Organise and Collective Bargaining (1949),<sup>390</sup> and Minimum Wage Fixing Convention (1970),<sup>391</sup> and incorporate those rights within domestic labour laws, the main problem falls with ineffective implementation. As mentioned earlier, the UAE has a sophisticated legal system, indicating that despite some deficiencies (minimum wage and rights to organize), the problem is that these laws are not effectively enforced. This has allowed for conditions of slavery to arise. It is noteworthy to mention that Kuwait is the only Arab Gulf State to ratify the Conventions on Freedom of Association and Protection of the Right to Organise (1948) and the Right to Organise and Collective Bargaining (1949).<sup>392</sup>

Where Arab Gulf States fail to protect workers through non-compliance with international labour standards, penalties must be enforced by the international community.

<sup>388</sup> UAE Ratifications: C029 Forced Labour Convention, C100 Equal Remuneration Convention, C105 Abolition of Forced Labour Convention, C111 Discrimination (Employment & Occupation Convention, C138 Minimum Age Convention, C182 Worst Forms of Child Labour Convention. ([http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:103495](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103495)).

<sup>389</sup> *Convention on Freedom of Association and Protection of the Right to Organise*, ILO, 9 July 1948, (entered into force 4 July 1950).

<sup>390</sup> *Convention on Right to Organise and Collective Bargaining*, ILO, 1 July 1949, (entered into force 18 July 1951).

<sup>391</sup> *Convention on Minimum Wage Fixing*, ILO, 22 June 1970, (entered into force 29 April 1972).

<sup>392</sup> Kuwait Ratifications: C029 Forced Labour Convention, C087 Freedom of Association and Protection of the Right to Organise Convention, C098 Right to Organise and Collective Bargaining Convention, C105 Abolition of Forced Labour Convention, C111 Discrimination (Employment & Occupation Convention, C138 Minimum Age Convention, C182 Worst Forms of Child Labour Convention. ([http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:103423](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103423)).

## 5.1(b) Decent Work Convention

Of special importance is the implementation by Arab Gulf States of the ILO Convention on Decent Work for Domestic Workers.<sup>393</sup> The ILO's Decent Work Agenda report<sup>394</sup> elaborates on the Convention and can be used accordingly as a guideline to reform domestic labour laws, including migrant domestic workers to protect them from conditions of abuse and slavery.

Excluded by Arab Gulf States' domestic labour laws, migrant domestic workers are particularly vulnerable to conditions of slavery. These women have little or no recourse to justice despite adverse conditions they face, including non-payment of wages, inadequate living accommodations, and physical or sexual abuse. This explains why the Decent Work Convention needs to be adopted and implemented by Arab Gulf States.

In 1965, the International Labour Conference adopted a resolution on the working conditions of domestic workers. The resolution recognized the urgency to set minimum living standards 'compatible with the self-respect and human dignity which are essential to social justice' for domestic workers in both developing and developed countries.<sup>395</sup> Research for that conference showed that domestic workers in particular lacked any legal and social protection rendering them singularly subject to exploitation.<sup>396</sup> The fact that domestic workers are not categorized as 'real workers' is used as justification in many countries to deprive these workers from 'full legislative recognition and protection'.<sup>397</sup> Domestic workers are indeed often considered 'like one of the family'. This deviates

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<sup>393</sup> *Convention on Concerning Decent Work for Domestic Workers*, ILO, 16 June 2011, (entered into force 5 September 2013).

<sup>394</sup> International Labour Organization (ILO), Report on Decent Work for Domestic Workers, 2010, ILO, 1.

<sup>395</sup> *Ibid* at 11.

<sup>396</sup> *Ibid*.

<sup>397</sup> *Ibid*.

from the usual employment relationship between employer and employee.<sup>398</sup> Given the private nature of domestic work – the employer’s home as the working place – it is difficult to monitor the employment relationship and working conditions, which allows for abuse to go unnoticed and risks conditions of slavery to arise.

Domestic labour laws need to be tailored to address domestic workers and acknowledge the unique nature of the work as well as reaffirm it as a usual employment relationship. The point is to treat domestic work ‘as work like any other, and as work like no other’.<sup>399</sup> The ILO’s Decent Work Agenda addresses the fact that domestic work is one of the most essential types of employment for women. This work can be the source of income for multiple families as it enables workers with family responsibilities to participate actively in the labour market.<sup>400</sup> Additionally, the ILO’s agenda also ensures the rights of domestic workers not only as workers but also as human beings worthy of dignified treatment and respect.<sup>401</sup>

Despite the lack of explicit mention of domestic workers in international instruments, the ILO considers that domestic workers are included in labour standards. The ILO reiterates the position that unless a convention or recommendation explicitly excludes domestic workers, they are to be considered within the scope of law.<sup>402</sup> The Committee of Experts on the Application of Conventions and Recommendations (CEACR) draws attention to:

The vulnerability of these workers, in particular migrant domestic workers, to multiple forms of discrimination and abuse due to the individual employment relationship, lack of legislative protection,

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<sup>398</sup> *Ibid* at 12.

<sup>399</sup> *Ibid* at 13.

<sup>400</sup> *Ibid* at 14.

<sup>401</sup> *Ibid*.

<sup>402</sup> *Ibid*.

stereotyped thinking about gender roles and undervaluing of domestic work.<sup>403</sup>

The imbalance of power in the employment relationship of an employer and a domestic worker needs to be addressed. A power imbalance allows for abuse and conditions of slavery to arise.<sup>404</sup>

New employment policies for migrant domestic workers in the Arab Gulf need to account for the ILO Decent Work Convention. The ‘unified draft law’ on domestic workers adopted in January 14, 2013 by the Under Secretaries of the GCC’s Ministries of Labour does not meet the recommendations listed in the ILO Convention on Domestic Workers. *Migrant Rights*<sup>405</sup> notes that the ‘unified draft’ fails to provide the right of free association and collective bargaining as set out under Article 3 of the ILO Convention.<sup>406</sup> The draft also falls short of Article 11, which requires member States to ensure that domestic workers enjoy a set minimum wage (if available), and that remuneration is established without discrimination based on sex.<sup>407</sup> The draft fails as well to provide improved regulation of recruitment agencies for the protection of migrant domestic workers from exploitation prior to departure,<sup>408</sup> as set forth in Article 7<sup>409</sup> and 15<sup>410</sup> of the Convention. Among other failures to meet the terms of the ILO Decent Work Convention is the lack of assurance to equal treatment of domestic workers and other workers generally. This relates to working hours, overtime compensation, daily and weekly rest

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<sup>403</sup> *Ibid* at 17.

<sup>404</sup> *Ibid* at 13.

<sup>405</sup> “Migrant Rights Urges Revised Draft Law on GCC Domestic Workers” (6 Feb 2013) online: Migrant Rights <<http://www.migrant-rights.org/2013/02/migrant-rights-urges-revised-draft-law-on-gcc-domestic-workers/>>.

<sup>406</sup> Article 3, *Convention Concerning Decent Work for Domestic Workers*, 16 June 2011, *supra* note 393

<sup>407</sup> Article 11, *Ibid*.

<sup>408</sup> *Supra* note 405.

<sup>409</sup> Article 7, *Convention Concerning Decent Work for Domestic Workers*, 16 June 2011, *supra* note 393.

<sup>410</sup> Article 15, *Ibid*.

and paid annual leave in accordance with domestic labour laws, regulations or collective agreements, without disregarding the specificities of domestic work.<sup>411</sup>

None of the Arab Gulf States has signed the Convention on Domestic Work that came into force in September 2013.<sup>412</sup> Having worked on the regulation of Decent Work for Domestic Workers, Adelle Blackett notes the difficulties with applying the law and refers to the gap between the law on the books and the law in practice. Blackett claims that this gap needs a continued ‘proliferation of literature and activism’ over domestic workers’ conditions, more specifically a focus on regulatory approaches in distinct national jurisdictions.<sup>413</sup> Applying the recommendations set out under the Decent Work Convention in practice may require time and effort, but the ratification of this Convention by Arab Gulf States would be the primary initiative to be undertaken.

### ***Labour Inspection***

Another measure to be taken into consideration is labour inspection. According to the ILO, a number of creative applications of the labour inspector’s role needs to be forwarded to enforce the rights of domestic workers.<sup>414</sup> Conducting visits to employers’ households is recommended despite the difficulties associated with such a task. In 2007, in response to the CEACR’s observation on Convention No. 81 [Labour Inspection Convention], Kuwait held that it was difficult for labour inspectors to enter people’s households and private spheres to verify the implementation of the Labour Code. Kuwait added that it had formed a special committee to examine the situation of migrant

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<sup>411</sup> Article 10, *Ibid.*

<sup>412</sup> “Ratifications of C189 – Domestic Workers Convention, 2011 (No. 189)” online: International Labor Organization (ILO) <[http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:2551460](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:2551460)>.

<sup>413</sup> Adelle Blackett, “Introduction: Regulating Decent Work for Domestic Workers” (2011) 23 Canadian Journal of Women and the Law 1 at 10.

<sup>414</sup> *Supra* note 394 at 72.

domestic workers.<sup>415</sup> Labour inspection of the household, nonetheless, has proven feasible in other contexts. Brazil, indeed, applied labour inspection policy of the private home despite constitutional restriction with respect to “inviolability of the privacy of the home.”<sup>416</sup> Such inspections are necessary, especially in light of accounts of brutal abuse behind closed doors as recounted by many female migrant domestic workers.

Using ILO standards to improve the rights of Migrant Workers in the Arab Gulf provides for a more effective approach. Migrant Workers experiencing unfree labour and risks of forced labour and slavery need to be empowered by rights and protections granted by international labour conventions. By doing so, Migrant Workers will be able to migrate to the Arab Gulf, being aware of their rights and therefore less susceptible to abuse. Conditions of slavery can be avoided through weakening the mechanisms that allow for the vulnerability and precariousness of Migrant Workers. Such weakening would be possible through abolishing the *Kafala* system – a major contributor to abusive conditions faced by Migrant Workers. With the absence of the *Kafala*, Migrant Workers are less likely to experience unfree labour and thus less likely to be at risk of slavery conditions.

## 5.2 Other International Legal Instruments

Of importance in this respect are various international legal instruments including UN Convention on the Protection of the Rights of All Migrant Workers and Members of

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<sup>415</sup> *Ibid* at 73.

<sup>416</sup> *Ibid*.



Their Families<sup>417</sup> and the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>418</sup>

The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families calls for non-discrimination and protection of human rights of migrant workers. Yet, none of the Arab Gulf States signed this Convention at a time compliance with the same is essential given the large influx of migrant labour to these countries. A setback from possible compliance is manifest in the 2006 UAE Minister of Labour's statement that:

... workers hosted by the UAE and other GCC countries cannot be considered migrant workers, as they work on a temporary basis and according to fixed-term employment contracts. Upon expiration of these contracts, they return to their home countries. Therefore, the immigration laws applicable in the western countries cannot be applied to these workers.<sup>419</sup>

The International Convention on the Elimination of All Forms of Racial Discrimination calls for elimination of discrimination based on race, colour, national or ethnic origin.<sup>420</sup> The six Arab Gulf States ratified the Convention, and thus are under the obligation to take adequate measures towards eliminating any type of discrimination. Still, the *Kafala* continues to differentiate between citizens and migrants, thus perpetuate further discrimination and 'othering'. Abolition is crucial to eliminate all sorts of discrimination that often lead to abuse and even slavery.

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<sup>417</sup> *UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, United Nations, 18 December 1990.

<sup>418</sup> *UN Convention on the Elimination of All Forms of Racial Discrimination*, United Nations, 21 December 1965, (entered into force 4 January 1969).

<sup>419</sup> *Supra* note **Error! Bookmark not defined.** at 70.

<sup>420</sup> Article 1, *UN Convention on the Elimination of All Forms of Racial Discrimination*, *supra* note 418.

Regardless of whether Migrant Workers are recognized as deserving protection under either domestic or international laws, a human rights approach leaves no justification for any kind of exploitation, abuse, or enslavement.

### **5.3 Changing Perceptions**

Apart from discussing the need of implementing international and domestic laws, an additional problem still needs to be addressed to cover the whole picture. This pertains to the negative perception of the local community towards migrant domestic and construction workers.

After his visit to Qatar to assess the conditions of migrant workers, François Crépeau urged the Qatari Government to create a more positive perception of migrant workers in society, stating that “migrants undertake important jobs in the country, are an essential part of Qatar’s economic success, and deserve to see their dignity and rights protected on par with that of citizens.”<sup>421</sup> Indeed, without a fundamental change in attitude, discrimination and abuse would unlikely diminish.

Notably, an advertisement launched by the Abu Dhabi Judicial Department<sup>422</sup> aims at raising awareness among people through recommending the well-treatment of female migrant domestic workers. However, the advertisement portrays the migrant domestic worker as mentally challenged and innately evil. By doing so, the message of the advertisement does not address the fact that migrant workers deserve proper treatment just because they are equally human. The advertisement rather conveys that migrant domestic workers might turn evil due to bad treatment by employers, thus leading to the risk of having employers’ children suffer reactionary consequences. Produced by a

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<sup>421</sup> *Supra* note 10.

<sup>422</sup> Media Centre, *Abu Dhabi Judicial Department Ridicules Maids* (6 August 2013), online: Migrant Rights <<http://www.migrant-rights.org/2013/08/abu-dhabi-judicial-department-ridicules-maids/>.

governmental department, the advertisement encourages locals to develop feelings of animosity towards migrant domestic workers through exacerbating attitudes of discrimination.

This calls for the need to undertake serious initiatives by activist groups in order to raise awareness about the real roots of discrimination and point out the prejudices and misperceptions that many still maintain towards Migrant Workers. Only then, with enforced developed labour laws, can the situation of migrant domestic and construction workers improve and the conditions of slavery in the Arab Gulf undermined.

## Chapter VI – Conclusion

This thesis concludes that Migrant Workers in the Arab Gulf enduring conditions tantamount to possession fall under the category of slavery in view of the 1926 Slavery Convention as interpreted by international guidelines and scholars. Although the 1926 definition emphasizes the concept of legal ownership (i.e. “right to ownership”), interpretations provided by international guidelines and scholars stress instead the exercise of control tantamount to possession. The exercise of control over Migrant Workers starts with the recruitment process and persists throughout the employment period. This includes, among others: (1) recruiters offering fraudulent contracts and extremely low wages; (2) employers confiscating passports and legal documents; (3) sponsors switching contract terms and conditions upon arrival; (4) sponsors/employers curtailing movement and travel during employment period; (5) workers working far beyond legally set time, hazard, and health restrictions; (6) employers delaying and withholding payment of wages; (7) employers/sponsors committing physical, sexual, and psychological abuse; all along with States failing to implement labour law provisions. Actions of control demonstrate “possession” of Migrant Workers, and thus Migrant Workers controlled as such fall under the category of slavery absent legal ownership.

I connected the dots provided in the three main fields of literature (migrant labour, precariousness, and contemporary slavery) in order to understand the conditions of migrant domestic and construction workers in the Arab Gulf. I examined the ways in which Migrant Workers seek employment in the Arab Gulf along with the vulnerabilities that they are subject to due to various social locations such as race, ethnic backgrounds, and gender, which vulnerabilities are further intensified by the recruitment and

sponsorship system (*Kafala*), the latter incurring precariousness. The point is to engage in the dimensions involved in the migration process of Migrant Workers to the Arab Gulf and highlight the ways in which these workers are perceived and discriminated against. My thesis recognizes the specific difficulties that female migrant domestic workers encounter due to various factors including the nature of their work in the private household. That said, both male and female migrant workers experience the hardships of migration to the Arab Gulf States.

In the same frame, the development of capitalism in the Arab Gulf States helped form the divide between national citizens and migrant workers entering the region. Moreover, the *Kafala* places Migrant Workers in a highly precarious situation. Being tied to their employment contracts, Migrant Workers are especially vulnerable to exploitation as well as arbitrary deportation. The jobs occupied by Migrant Workers are also highly precarious in the sense that migrants have little certainty over the continuity of employment, little control over the labour process as well as working conditions, wages, and nature of the work. Additionally, migrants may not receive sufficient income to support themselves or their families. Such precarious situations place Migrant Workers at risk of exploitation and abuse. Such condition may be interpreted as unfree labour. In turn, this allows for the possibility of conditions of slavery to arise. Migrant Workers are discriminated against through racialization of their jobs as well as ‘othering’. This intensifies discrimination against Migrant Workers and renders them more susceptible to exploitation and abuse. The norm of employing certain ethnicities in certain types of employment over time creates a mentality of racialization, placing the Migrant Worker in further vulnerable condition and at risk of enslavement.

An important part of my thesis is an exploration of the ways in which Migrant Workers face abuse. To provide a clearer understanding of the concept of slavery and the way it can be understood to day, I presented an overview of debates on unfree labour, forced labour and slavery. My research shed light on the idea of a continuum of exploitation, discussed by Strauss as well as Choi-Fitzpatrick, where slavery exists as the most severe form of exploitation. To validate the assertion that there are cases of migrant work in the Arab Gulf amounting to conditions of slavery, I delved into a legal and sociological analysis of contemporary slavery to determine the terms required for a certain practice to fall under the rubric of slavery. The reconciliation by Bales and Allain between the legal understanding of slavery and the sociological understanding of slavery has proved to be most beneficial to my research. The Bellagio-Harvard Guidelines highlighted the idea that slavery exists where control tantamount to possession is present. For this reason, my thesis concludes that Migrant Workers in the Arab Gulf States enduring conditions tantamount to possession fall under the category of slavery in view of the 1926 Slavery Convention as interpreted by international scholars and guidelines.

The above interestingly opens the subject on adequate mechanisms to avoid conditions of slavery in terms of adopting the relevant laws and conventions but also effectively implementing them on the ground. On the one hand, indeed, it is essential to have the Arab Gulf countries ratify and incorporate in domestic labour laws the ILO Fundamental Conventions (e.g. Forced Labour Convention and Discrimination Convention), as well as, among others, the Conventions on Decent Work Concerning Domestic Workers (2011), Freedom of Association and Protection of the Right to Organize (1948), Collective Bargaining (1949), and Minimum Wage Fixing (1970). On

the other hand, nevertheless, ratifying and incorporating said Conventions in domestic labour laws is not sufficient given the absence or ineffective implementation by both local governments and private businesses. The UAE, for example, which represents a major focus of this thesis, has ratified and incorporated in its domestic labour laws the majority of ILO Fundamental Conventions, yet it still falls short in addressing slavery conditions due to ineffective enforcement of existent laws albeit a sophisticated legal system at hand.

Here, it is worthwhile mentioning that the law in this context acts as a double-edged sword. On the one hand, labour laws in the Arab Gulf, if implemented adequately, such as adherence to contract terms and implementation of labour inspection, are capable of alleviating some of the main issues at hand. Similarly, labour laws and other domestic laws may be improved through adopting international laws and conventions such as the ILO Decent Work Convention and the ILO Minimum Wage Convention. However, on the other hand, the law may also act as a source of problems for many Migrant Workers. For example, being partly codified in law, the nature of the *Kafala* sponsorship system is a main contributor to Migrant Workers' precarious legal status in Arab Gulf States. The fact that this system ties the migrant worker's legal status in the host country to a particular job shows how the law limits freedom in this context and opens the door for exploitation and conditions of slavery to arise. This paradox further strengthens the idea that a socio-legal approach must be forwarded in treating the issue at hand. It is more effective and long lasting to adopt an interdisciplinary perspective that looks at the social construction of laws and the way 'othering' may be perpetrated as a result of the discriminatory nature of laws and systems such as the *Kafala*. Activists in Arab Gulf

societies need to forward educative campaigns that highlight the evils of ‘othering’ and discriminating against Migrant Workers, as well as shed more light on the conditions of slavery arising as a result of such attitudes and discriminatory systems. This should push governments to act on effective implementation of labour laws and international standards. Conditions of slavery do arise in the Arab Gulf among Migrant Workers – a situation that should inevitably place governments in the region under international pressure.

This thesis relevantly opens the door to examine the nature and extent of international responsibility in view of States’ obligations under international conventions – a subject noteworthy of further scrutiny.



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**Appendix A:**

## **Bellagio-Harvard Guidelines on the Legal Parameters of Slavery**

We, the Members of the Research Network on the Legal Parameters of Slavery,

*Recognizing* that there has been a lack of legal clarity with regard to the interpretation of the definition of slavery in international law;

*Conscious* that the starting point for understanding that definition is Article 1(1) of the 1926 Slavery Convention which reads: ‘Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised’;

*Recalling* that this definition is reproduced in substance in Article 7(a) of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery;

*Also noting* that the 1926 definition of slavery is once again reproduced in substance in the definition of enslavement found in Article 7(2)(c) of the 1998 Statute of the International Criminal Court and developed in more detail in the secondary legislation of the Court, in its Elements of Crimes;

*Bearing in mind* the provisions in international human rights law regarding slavery within the 1948 Universal Declaration and 1966 International Covenant on Civil and Political Rights; as well as the provisions regarding slavery in regional human rights conventions of the African, European, and Inter-American systems;

*Considering* the inclusion of slavery as an enumerated type of human exploitation in both the 2000 United Nations Palermo Protocol on Trafficking in Persons and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings;

*Mindful* of the pronouncements and case-law related to slavery of international, regional and domestic courts;

Having met to consider the issue at the 2010 symposium entitled: ‘The Parameters of Slavery’ at the Rockefeller Foundation’s Bellagio Conference Centre in Bellagio, Italy; having further deliberated in 2011 at a meeting under the auspices of the Harriet Tubman Institute for Research on the Global Migrations of African Peoples, York University, Canada; and came together once more at a 2011 symposium entitled: ‘The Legal Parameters of Slavery: Historical to the Contemporary’ at Harvard University, under the auspices of the Charles Hamilton Houston Institute for Race and Justice, Harvard Law School; the Harvard Sociology Department; the W.E.B. Du Bois Institute;

*Recommend the following Guidelines related to the legal parameters of slavery:*

### **Guideline 1 – The Legal Definition**

The legal definition of slavery in international law is found at Article 1(1) of the 1926 Slavery Convention, which reads: ‘Slavery is the status or condition of a person over

whom any or all of the powers attaching to the right of ownership are exercised’.

### **Guideline 2 – The Exercise of the Powers Attaching to the Right of Ownership**

In cases of slavery, the exercise of ‘the powers attaching to the right of ownership’ should be understood as constituting control over a person in such a way as to significantly deprive that person of his or her individual liberty, with the intent of exploitation through the use, management, profit, transfer or disposal of that person. Usually this exercise will be supported by and obtained through means such as violent force, deception and/or coercion.

### **Guideline 3 – Possession is Foundational to Slavery**

Where there is a right of ownership in respect of a thing, ownership implies a background relation of control. That control is the power attaching to the right of ownership known as possession.

Possession is foundational to an understanding of the legal definition of slavery, even when the State does not support a property right in respect of persons. To determine, in law, a case of slavery, one must look for possession.

While the exact form of possession might vary, in essence it supposes control over a person by another such as a person might control a thing. Such control may be physical, but physical constraints will not always be necessary to the maintenance of effective control over a person. More abstract manifestations of control of a person may be evident in attempts to withhold identity documents; or to otherwise restrict free movement or access to state authorities or legal processes; or equally in attempts to forge a new identity through compelling a new religion, language, place of residence, or forcing marriage.

Fundamentally, where such control operates, it will significantly deprive that person of his or her individual liberty for a period of time which is, for that person, indeterminate.

Cases of slavery are to be distinguished from those where, though there has been control exercised, it does not constitute control tantamount to possession, such as where employers make legitimate decisions about the management of workers.

Possession is foundational in that, not only is it a power attaching to the right of ownership, it also creates the factual conditions for the exercise of any or all of other powers attaching to the right of ownership, such as those set out in Guideline 4.

### **Guideline 4 – Further Examples of Powers Attaching to the Right of Ownership**

Where a person controls another such as he or she would control a thing owned, such possession makes possible the exercise of any or all of the powers attaching to the right of ownership.

Correlatively, the exercise of any or all of the powers attaching to the right of



ownership may serve to indicate the presence of control of a person tantamount to possession, and so provide evidence of slavery.

The following are further examples of powers attaching to the right of ownership:

#### **a) Buying, Selling or Transferring a Person**

Buying, selling or otherwise transferring a person may provide evidence of slavery. Having established control tantamount to possession; the act of buying, selling or transferring that person will be an act of slavery.

Evidence of slavery may also be found in similar transactions, such as bartering, exchanging, or giving or receiving a person as a gift, where control tantamount to possession has been established.

#### **b) Using a Person**

Using a person may provide evidence of slavery. Having established control tantamount to possession; the act of using that person will be an act of slavery.

Evidence of such use of a person may include the derived benefit from the services or labour of that person. In such cases, a person might be used by working for little or no pay, utilised for sexual gratification, or used by providing a service.

#### **c) Managing the Use of a Person**

Managing the use of a person may provide evidence of slavery. Having established control tantamount to possession; the act of managing that person will be an act of slavery.

Evidence of such management of the use of a person may include indirect management such as a brothel owner delegating power to a day manager in a situation of slavery in the context of sex work.

#### **d) Profiting from the Use of a Person**

Profiting from the use of a person may provide evidence of slavery. Having established control tantamount to possession; the act of profiting from the use of that person will be an act of slavery.

Evidence of profiting from the use of a person may include cases where a person is mortgaged, lent for profit, or used as collateral.

Evidence of profiting from the use of a person may also include making money or deriving any other kind of income or benefit from the use of the person. Such as the use of an agricultural worker in a situation of slavery, where the profit from the picking of a crop is taken or received by another whether in the form of wages or of the harvest.

### **e) Transferring a Person to an Heir or Successor**

Transferring a person to an heir or successor may provide evidence of slavery. Having established control over a person tantamount to possession; the act of willing that person to a child or other heir or successor will be an act of slavery.

Evidence of such transferring of a person may include a case of inheritance where a woman, on the death of her husband, is deemed to be inherited by another person.

Evidence of such a transferring of a person may also include the conveying of a status or condition of a person to that of a successive generation, such as from mother to daughter.

### **f) Disposal, Mistreatment or Neglect of a Person**

Disposing of a person following his or her exploitation may provide evidence of slavery. Having established control over a person tantamount to possession; the act of disposing of a person will be an act of slavery.

Mistreatment or neglect of a person may provide evidence of slavery. Having established control tantamount to possession, such disregard may lead to the physical or psychological exhaustion of a person, and ultimately to his or her destruction; accordingly the act of bringing about such exhaustion will be an act of slavery.

Evidence of such mistreatment or neglect may include sustained physical and psychological abuse, whether calculated or indiscriminate; or the imposition of physical demands that severely curtail the capacity of the human body to sustain itself or function effectively.

### **Guideline 5 – Making a Determination as to whether Slavery Exists**

The exercise of any or all of the powers attaching to the right of ownership just considered shall provide evidence of slavery, insofar as they demonstrate control over a person tantamount to possession.

Accordingly, in determining whether slavery exists in a given case, it is necessary to examine the particular circumstances, asking whether ‘powers attaching to the right of ownership’ are being exercised, so as to demonstrate control of a person tantamount to their possession.

In evaluating the particular circumstances to determine whether slavery exists, reference should be made to the substance and not simply to the form of the relationship in question.

The substance of the relationship should be determined by investigating whether in fact there has been an exercise of one or more of the powers attaching to the right of ownership. This will include a determination as to whether control tantamount to possession is present.

## **Guideline 6 – Expropriation**

Ordinarily exclusion from expropriation or ‘security of holding’ would be deemed a power attaching to the right of ownership. However, as the State generally does not support a property right in persons, a negative obligation against the State generally no longer exists.

However, the State has at minimum the positive obligation to bring about the end of either the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

The State may have further positive obligations with regard to the prohibition against slavery on the basis of domestic law as well as regional or international instruments.

## **Guideline 7 –Terminology**

The term ‘slavery’ has often been utilised to describe circumstances that go beyond the legal definition as established by the 1926 Slavery Convention.

In law, only ‘slavery’ and ‘institutions and practices similar to slavery’, which is often abbreviated to ‘practices similar to slavery’ have standing and are defined in international law via the 1926 Slavery Convention and the 1956 Supplementary Convention.

## **Guideline 8 – Distinction between Slavery and Forced Labour**

The 1926 Slavery Convention recognises that forced labour can develop ‘into conditions analogous to slavery’.

Although forced or compulsory labour is defined by the 1930 Forced Labour Convention as ‘all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’; forced labour will only amount to slavery when, in substance, there is the exercise of the powers attaching to the right of ownership.

Slavery will not be present in cases of forced labour where the control over a person tantamount to possession is not present.

## **Guideline 9 – Distinction between Slavery and ‘Institutions and Practices Similar to Slavery’**

Article 1 of the 1956 Supplementary Convention recognises that the ‘institutions and practices similar to slavery’, that is: debt bondage, serfdom, servile marriages, or child exploitation; may be ‘covered by the definition of slavery contained in article 1 of the Slavery Convention of 1926’.

The distinction between these servile statuses as defined by the 1956 Supplementary Convention in the following terms and slavery is that slavery is present where in

substance there is the exercise of the powers attaching to the right of ownership.

It should be emphasised that slavery will only be present in cases of such ‘institutions and practices similar to slavery’ where control over a person tantamount to possession is present.

The following are the conventional servitudes set out in the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery:

(a) Debt bondage, that is to say, 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;

(b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;

(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

(iii) A woman on the death of her husband is liable to be inherited by another person;

(d) Any institution or practice whereby a child or young person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

#### **Guideline 10 – When Slavery and Lesser Servitudes are Present**

Accepting that both slavery and lesser servitudes such as forced labour or ‘institutions and practices similar to slavery’ may be found in substance in a particular circumstance; the manner to proceed is by making reference to that substance and not simply to the form, and first ask whether there has been an exercise of the powers attaching to the right of ownership. If so, then the more serious offence of slavery is present.

If not, reference should be made to the legal definition of the lesser servitude which corresponds in substance to the particular circumstance in question.

*Adopted on this day, 3 March 2012, by the Members of the Research Network on the Legal Parameters of Slavery.*

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