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**Migrant workers in the UAE's private sector: a critical  
analysis of employment dispute management and  
resolution from their perspective**

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# **Abstract**

The United Arab Emirates (UAE) and the wider Gulf region is an epicentre for global business. A hallmark of this prosperous oil-producing region is the reliance it has on migrant workers sourced from South Asia. Unfortunately these largely unskilled migrant workers have been subjected to poor employment practise and due to their vulnerability they experience an unprecedented amount of employment disputes.

A combination of the UAE's immigration and labour law manages not only the entry and stay of these migrant workers but also the avenues available for resolving their employment disputes. Furthermore, it is these policies and their enactment that have become the focus of international criticism for failing to provide the necessary protection to migrant workers from unscrupulous employers.

This study has examined these domestic policies in light of both international and Islamic law and has advocated a case for reform. Moreover, the fieldwork conducted includes a detailed quantitative investigation based on the opinions of migrant workers into the challenges presented by the nature of the UAE's employment dispute management systems. The results have shown that the employment dispute resolution system has yielded some negative outcomes showing that the service provided by the Ministry of Human Resources and Emiratization is in need to continual review and assessment.

Although the UAE has been taking positive steps to remedy the issues migrant workers have been experiencing, it is anticipated that this research can be a positive driver for empowering that process.

# Acknowledgements

سُبْحَانَكَ لَا عِلْمَ لَنَا إِلَّا مَا عَلَّمْتَنَا إِنَّكَ أَنْتَ الْعَلِيمُ الْحَكِيمُ

Glory be to You, we have no knowledge except what You have taught us. Verily, it is You, the All-Knower, the All-Wise.

Qur'an Al-Baqara 2:32

Firstly, I would like to dedicate my work to the person that has helped, taught and raised me, the person whose name I bear so proudly, my father, Mohammed Mejren Al Ameri.

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## **List of Abbreviations**

ACHR	Arab Charter on Human Rights
ADR	Alternative methods of Dispute Resolution
AHRC	Arab Human Rights Committee
CDHRI	Cairo Declaration on Human Rights in Islam
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic Social and Cultural Rights
CFA	Committee on Freedom of Association
CMW	Committee on Migrant Workers
ECOSOC	Economic and Social Council
FDI	Foreign direct investment
GCC	Gulf Cooperation Council
GCCHRD	Human Rights Declaration for the Member States of the Cooperation Council for the Arab States of the Gulf
GDP	Gross Domestic Product
HR	Human Resources
HRC	Human Rights Committee
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ILO	International Labour Organisation
IOM	International Organisation for Migration
MENA	Middle East and North African
MESCA	Group of Mediterranean and Scandinavian countries including Finland, Greece, Italy, Portugal, Spain, Sweden and Norway
MHRE	Ministry of Human Resources & Emiratisation
MMC	Muslim majority countries
NGO	Non-governmental organisation
OHCHR	Office of the United Nations High Commissioner for Human Rights
OIC	Organisation of Islamic Cooperation
OP	Optional Protocol
UAE	United Arab Emirates
UDHR	Universal Declaration of Human Rights
UIDHR	Universal Islamic Declaration of Human Rights
UN	United Nations
UNGPs	United Nations Guiding Principles on Business and Human Rights



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# **Introduction**

## **Introduction**

The fundamental questions examined in this study are centred on the issue of the protection of migrant workers' labour rights in the UAE. Although the focus of this research concerns issues related specifically to the UAE, it also has a wider application, due to the fact that reliance on mass labour migration has been the hallmark of oil-producing economies in the Arabian Gulf over many decades.

The study focuses on research questions that call for real-life contextual understanding taking into consideration multi-level perspectives of the internationally-diverse migrant employees and their cultural influences. The aims and objectives are thus designed to measure the effectiveness of the application of domestic legislation with regard to employment dispute management systems that are pertinent to migrant workers, particularly as the UAE's labour laws do not recognise the right of workers to organise and form trade unions. Moreover, this study includes a detailed qualitative investigation into the challenges presented by the nature of the UAE's employment dispute management systems in relation to migrant workers' experiences of it. In doing so, the study will make a case advocating for legal reforms and by emphasising the role of sound domestic legislature, ensure that employment disputes related to migrant workers are managed in a fair manner that conforms to both universally recognised international and culturally relative theological standards.

# Literature Review

## Globalisation, Labour Migration & Labour Rights

Globalisation of the world economy has significantly impacted on the world of work on many intricate levels. However, in order to understand globalisation it is incumbent that it is examined in light of what it constitutes particularly as globalisation is regarded as not just a single concept, rather it encompasses, integrates, and interconnects a multitude of different disciplines. The discourse covering the phenomenon of globalisation is vast, but in terms of a simplified definition it describes a process by which national and regional economies, societies, and cultures have become interconnected through the global network of trade, communication, transportation, immigration, and labour. These factors by becoming intertwined have profoundly challenged the labour movements, labour activism and the general campaign not only to improve but also protect the most very basic of rights and conditions of work. Globalisation has accelerated not only the mobility of financial capital, it has also made labour migration a phenomenon that takes place globally on a massive scale.<sup>1</sup>

Historically business and trade orientated developments stemming from the 1970s provided the stimulus for companies to move manufacturing operations abroad in order to increase output whilst at the same time significantly reduce labour costs.<sup>2</sup> Moreover, multi-nationalisation of production activities and processes were born out of the intensification of three interrelated processes: (1) the extension of competitive markets; (2) the increased mobility of capital and the ease foreign investment; (3) and the restructuring of production on geographical, sectoral and organisational grounds.<sup>3</sup> As a result, multi-national corporations (MNCs) made informed commercial decisions to take advantage of cheap labour through sanctioning exploitative subcontracting initiatives. However in today's contemporary global society, the world of work has emerged to be progressively more and more dynamic and boundary less, compared to what was observed in the form multi-nationalisation. Therefore, contemporary globalisation has qualitatively impacted the realms of international politics and

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<sup>1</sup> Munck, Ronaldo (2002) *Globalisation and Labour* (Zed Books Ltd, London) 6-13

<sup>2</sup> Michie, Jonathan and Grieve Smith, John (1995) *Managing the Global Economy* (Oxford University Press) 111-113

<sup>3</sup> Pellerin, Hélène (1993) 'Global restructuring in the world economy and migration: the globalization of migration dynamics' *International Journal* XLVIII, 240-254

influenced social transformations, which in turn have powerfully determined how labour markets function.<sup>4</sup>

Globalisation and its dynamics have created different levels of integration in the world economy among less developed countries. Some economies (or specific sectors therein), have become closely integrated to those which are considered most developed, whereas other economies have struggled to survive in the face of global competition. Arguably such integration has only been made possible where national economies have suitably adjusted or even restructured their production, labour market and economic regulations to take advantage of the global market. These adjustments do not necessarily meet the social expectations or standards perceived from what is realised through the promotion of human rights. Thus, due to the complexities of globalisation, the behaviour of aforementioned MNCs, as well as the behaviour of certain governments seeking to attract foreign investment through various levels of market integration, there has been a deterioration of social and economic rights regulated by national/domestic law.<sup>5</sup>

Globalisation has arguably had the strongest effect on labour rights compared to any other sphere of social or economic right.<sup>6</sup> The Committee on Economic Social and Cultural Rights (CESCR)<sup>7</sup> has indeed been critical of globalisation in a consensus statement issued in 1998 on 'globalisation and its impact on social and cultural rights':

**Globalisation risks downgrading the central place accorded to human rights by the United Nations Charter in general and the International Bill of Human Rights in particular. This is especially the case in relation to economic, social and cultural rights. Thus, for example, respect for the right to work and the right to just and favorable conditions of work is threatened where there is an excessive emphasis upon competitiveness to the detriment of respect for the labour rights contained in the Covenant. The right to form and join trade unions may be threatened by restrictions upon freedom of association, restrictions claimed to be 'necessary 'in a global economy, or by the effective exclusion of possibilities for collective**

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<sup>4</sup> Johnston, William B. (1991) 'Global Work Force 2000: The New World Labor Market' Harvard Business Review March-April 1991, 115-127

<sup>5</sup> Świątkowski, Andrzej Marian (2011) 'Globalization of labour and social rights: A response of the social environment to economic globalization' *Verslo Ir Aktualijos/Issues of Law* 6(2) 185-191

<sup>6</sup> Siegel, Richard L. (2002) 'The Right to Work: Core Minimum Obligations' in *Core Obligations: Building a Framework for Economic, Social and Cultural Rights* edited by Chapman, Audrey and Russell, Sage (Intersentia, Antwerp) 1-34

<sup>7</sup> International body that monitors the ICESCR

**bargaining, or by the closing off of the right to strike for various occupational and other groups.<sup>8</sup>**

Globalisation creates greater global interdependence between states, and as a result policies have had impact beyond borders. Moreover, non-state actors such as MNCs and international organisations being significantly influential in the processes involved in globalisation. CESCR has also specified that states should be aware of and promote the right to work in the bilateral and multilateral negotiations. Furthermore, it elucidates that organisations such as the World Trade Organisation, World Bank, International Monetary Fund and other institutions should work in cooperation with human and labour rights institutions to ensure that the right to work being protected.<sup>9</sup>

Since the 1990s, there has been a clear realisation that labour would critically impacted by globalisation and as elucidated to in the discussion above, that has certainly been the case. Inevitably the impact has been made by placing economic benefits from manipulating human resource or human capital for increased profitability. Moreover, governments have played an important part in negotiating not only global trade agreements but have also been motivated by opportunities in the global labour market.<sup>10</sup> In doing so, the draw of economic development and prosperity has allowed for state policies to become tools for gaining competitive advantage through attracting human capital i.e. migration.

With international migration being high on the global agenda discourse has highlighted a number of factors influencing state development. These factors include the role of remittances, temporary/return/cyclic migration, and the formation of transnational communities.<sup>11</sup> Thus, human capital has increasingly become a fluid resource that has flowed across national borders. Consequently, labour migration has not only become an important contributor to the transformation of labour supply, it also has significant economic consequences for both the host nation of migrant workers, and their country of origin. This modern-day growth and fluidity of financial and human capital has therefore had significant

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<sup>8</sup> CESCR (1998) 'Globalization and Economic, Social and Cultural Rights' Statement by the Committee on Economic, Social and Cultural Rights, 18th session 27 April-15 May 1998, E/1999/22 Chapter VI, available at <<http://www.un.org/documents/ecosoc/docs/1999/e1999-22.htm>> accessed 18 November 2015

<sup>9</sup> CESCR (2006) UN Committee on Economic, Social and Cultural Rights, General Comment No. 18 'The Right to Work (Art. 6 of the Covenant)' 6 February 2006, E/C.12/GC/18, Para 21, 53 available at <<http://www.refworld.org/docid/4415453b4.html>> accessed 16 November 2015

<sup>10</sup> Piper, Nicola (2017) 'Migration and the Sustainable Development Goals' Global Social Policy 17(2) 231-238; Johnston, William B. (n 4)

<sup>11</sup> Piper, Nicola (n 10)

influences on individual countries. In particular tropical or subtropical countries like those in South Asia have exhibited populations that migrate in order to partake in indentured low level vocations.<sup>12</sup> Moreover, this wave of migration had in real terms resulted in a segmentation of labour conditions, particularly where levels of 'economic desperation' places a major source of pressure on people to migrate under precarious circumstances.<sup>13</sup> Furthermore, migrant workers due to their inherent flexibility lend themselves in allowing employers to manage them in such a way that they can recruit them and indeed terminate their contracts in relation to the fluctuating demands of their business operations and production strategies.<sup>14</sup>

The phenomenon of global migration has not only posed challenges to both home and host states, the migrant workers have also experienced an array of negative associations due to their movement.<sup>15</sup> These negativities form clear patterns and trends which include: (1) the abuse and exploitation of migrant workers; (2) the growth of irregular migration, including trafficking; brain drain from developing countries; (3) limited avenues for migration for low-skilled workers; (4) poor integration of migrant workers and their families in host societies and; (5) growing racism and xenophobia. All of these associations have been categorised and evidenced to exist throughout the world and indeed the Middle East region by various organisations including the United Nations (UN), International Labour Organisation (ILO) and Human Rights Watch (HRW). Generally these detrimental associations are inherently linked to a lack of credible migration policies, and poor ratification of, and compliance with, normative standards.<sup>16</sup>

In reality, basic rights and conditions of work are not fully realised nor are they fully protected despite their universal recognition through international human rights law and in relation to what is found enshrined in culturally relative theological doctrines. This alludes to the question of what is actually being done in terms of migrant works accessing effective mechanisms of justice, compensation and reparation within the states that these heinous violations occur.

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<sup>12</sup> Patnaik, Prabhat (2016) 'Globalisation, inequality and economic crisis' *Studies in People's Histories* 3(1) 71-81

<sup>13</sup> Bacon, David (2008) *Illegal People: How Globalization Creates Migration and Criminalizes Immigrants* (Beacon Press, Boston Massachusetts) Chapter 3

<sup>14</sup> Ruhs, Martin and Anderson, Bridget (2010) *Who Needs Migrant Workers?* (Oxford University Press) 1-14

<sup>15</sup> Purkayastha, Bandana (2018) 'Migration, migrants, and human security' *Current Sociology Monograph* 66(2) 167-191

<sup>16</sup> ILO (2013) Report VI 'Social dialogue Recurrent discussion under the ILO Declaration on Social Justice for a Fair Globalization' International Labour Conference, 102nd Session, ILO Geneva 2013; International Labour Conference, 92nd Session, 2004 Report VI 'Towards a fair deal for migrant workers in the global economy' Para 228 available at <<http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf>> accessed 13 January 2015

## The Human Rights Debate: Universalism & Relativism

In today's modern and globalised society human rights are not only discussed in discourse, they influence every aspect of international relations and they permeate through every aspect of contemporary international law. The protection of human rights has become 'a powerful tool of internationalism that pierces the sacred veil of state sovereignty for the sake of human dignity'.<sup>17</sup> International organisations, namely UN has become the flagbearers of human rights, campaigning for their promotion and protection on a global scale. The idea of human rights is both recognised and acknowledged by regional inter-governmental organisations, with various non-governmental organisations taking on the mantle of promoting them as well as censuring states for their violations.

Despite the popularity and widespread acceptance of what is regarded as human rights, there are however several projected opinions that differ considerably about their conceptual interpretation and scope. Therefore In order to engage in any discussion of human rights it is incumbent that the contexts of human rights are appropriately set. Although human rights have been traditionally thought of as moral rights of the highest order, they are arguably now regarded international legal rights. Despite this internationalisation of moral standards into a corpus of legal statutes, there is a very comprehensive and exhaustive dialogue that exposes an innate dichotomy in their recognition.

Taken simplistically, the universality of human rights is established on the pretext that, whether conceptual or substantive, it is about rights or entitlements that are afforded to all human beings, by virtue of being a person.<sup>18</sup> Although a great deal of early literature championed the universality of human rights, newer culturally relative perspectives that drew on cultural diversity and incorporated cultural elements have been put forward.<sup>19</sup> These perspectives recognised that different cultures and societies had their own concepts of rights. This arguably led to paving the way in taking a different approach to human rights, taking on board developments, both theoretically and politically. These arguments were largely based on that Western political philosophy upon which the UN's Universal Declaration of Human Rights (UDHR) are based provides only one specific interpretation of human rights. Moreover,

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<sup>17</sup> Baderin, Mashood A. (2003) *International Human Rights and Islamic Law* (Oxford University Press) 1

<sup>18</sup> There are numerous definitions of what is meant by universal human rights, but they all centre on the fundamental assumption that each person is a moral and rational human being who deserves to be treated with dignity.

<sup>19</sup> Pollis, Adamantia and Schwab, Peter (1979) 'Human Rights: A Western Construct with Limited Applicability' in *Human Rights: Cultural and Ideological Perspectives* (Praeger Publishers, New York)

these Western notions and indeed values may not necessarily nor successfully be applicable to other societies, which are inherently non-Western.<sup>20</sup>

Cultural Relativists typically hold that there is a fundamental link between cultural origins of a value or principle and its validity for that culture, and so if human rights are not indigenous to a particular culture, their applicability is put into doubt. In many societies basic concepts relating to their social formation, including religious beliefs and values are often 'non-translatable' and or 'non-transferable' and so as a result the liberal doctrine of human rights does not speak to different societal worldviews.<sup>21</sup> This is particularly evident where normative religious beliefs and values present themselves as what are considered the culturally relative backbone for moral authority.<sup>22</sup> This paradigm exists in regions such as the Middle East where religious/divine laws influence or even dictate the legal system.

## Islam and Human Rights

Traditional scholarship has painted a distinctly layered portrait of the struggles of religion and religious freedom throughout human history. Moreover, it has shown that it has been a source of profound controversy, disagreement and conflict.<sup>23</sup> Present day studies also highlight how religions have been relied upon to perpetuate inequalities and even promote feelings or acts discrimination, harassment and oppression to the extent forcible assimilation and genocide.<sup>24</sup> The usual trend is that vulnerable elements of society feel the brunt of these forms of intolerance and repression. Having said that, negative viewpoints and heinous behaviour is by no means the prerogative of any single religion or belief but rather born out of skewed and jilted interpretations of ideologies and philosophies irrespective of whether they are theistic, non-theistic or atheistic. It is therefore necessary to acknowledge that such paradigms are a

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<sup>20</sup> Goodhart, Michael E. (2003) 'Origins and Universality in the Human Rights Debates: Cultural Essentialism and the Challenge of Globalization' *Human Rights Quarterly* 25(4) 935-964

<sup>21</sup> Pollis, Adamantia (1996) 'Cultural Relativism Revisited: Through a State Prism' *Human Rights Quarterly* 18(2) 316-344

<sup>22</sup> Renteln, Alison Dundes (2013) *International Human Rights: Universalism Versus Relativism* (Quid Pro Books, New Orleans, Louisiana, USA) 1

<sup>23</sup> Taylor, Paul M. (2005) *Freedom of Religion: UN and European Human Rights Law and Practice* (Cambridge University Press); Boyle, Kevin (2007) 'Freedom of Religion in International Law' in *Religion, Human Rights and International Law: A Critical Examination of Islamic State Practices* edited by Javaid Rehman and Susan C. Breau (Martinus Nijhoff Publishers Leiden, The Netherlands)

<sup>24</sup> Rehman, Javaid and Breau, Susan (2007) ) *Religion, Human Rights and International Law: A Critical Examination of Islamic State Practices* (Martinus Nijhoff Publishers Leiden, The Netherlands) 3-4



reality, and so need to be paid due heed when examining international law and their cultural relativity.

Islam, and the interaction of its *Shari'ah* with international law has indeed a complex relationship. The debate, post 9/11, a particularly pertinent juncture in global history, has largely been pivotal in placing focus on the perceived incompatibility of *Shari'ah*, international law and human rights.<sup>25</sup> Furthermore, since 9/11, terrorism associated to Islam, has become the dominant topical international issue of the era. It has displaced the rhetoric based upon the Cold War, as the principal international relations paradigm.<sup>26</sup> Critics of Islam have held no restraint in equating Islam and its ideology as an aggressive, repressive and fanatic religion that promotes intolerance, violence and destruction.<sup>27</sup> Although there is some justification in having a certain level of uncertainty towards Muslims, or even phobia towards Islamic extremism *per se*, the West has unfortunately adopted certain stereotypes and shibboleths which hold damning and negative connotations for Muslim folk at large.<sup>28</sup> Legitimate grievance however needs to be separated from cultural bias and disparaging generalisations of Islam being a doctrine that encourages aggression through the glorification of military virtues.<sup>29</sup> Moreover, this labelling is a relished position of those who hold or claim starkly divergent positions between Islamic legal order and the non-Islamic world.

In taking a step back from the negativity associated with the apparent and projected views of dichotomy of religion and secular law, it is easily forgotten or at least nuanced that religion indeed has played an important and integral role in the evolution of international law. Religious texts were the first human expressions to articulate what would come to be termed 'human rights'. The world's major religions all hold texts that speak of the value and dignity of human beings, and their responsibilities towards each other both as individuals and as communities.<sup>30</sup>

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<sup>25</sup> An-Na'im, Abdullahi Ahmed (1990) *Toward An Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse University Press, Syracuse, New York); Baderin, Mashood A. (n 17); Weeramantry, Christopher Gregory (1988) *Islamic Jurisprudence: An International Perspective* (St. Martin's Press, New York)

<sup>26</sup> Altheide, David L. (2009) *Terror Post 9/11 and the Media* (Pater Lang Publishing, New York) 21-29; Rehman, Javaid (2005) *Islamic State Practices, International Law and the Threat from Terrorism: A Critique of the 'Clash of Civilizations' in the New World Order* (Hart Publishing, Portland Oregon) 51-59; Ali, Shaheen Sardar and Rehman, Javaid (2005) 'The Concept of Jihad in Islamic International Law' *Journal of Conflict & Security Law* 10(3) 321-343

<sup>27</sup> Esposito, John L. (1999) *The Islamic Threat: Myth or Reality?* (Third Edition, Oxford University Press) 1-2

<sup>28</sup> Esposito, John L. (n 27)

<sup>29</sup> Huntington, Samuel P. (1999) *The Clash of Civilizations and the Remaking of World Order* (Simon & Schuster, New York) 209-218, 263; Payne, James L. (1989) *Why nations Arm* (Blackwell Publishing) 121; Ali, Shaheen Sardar and Rehman, Javaid (n 26)

<sup>30</sup> Brackney, William H. (2013) *Human Rights and the World's Major Religions* (Praeger ABC-CLIO, LLC, Santa Barbara, USA) ix-xv

As discussed, theorists however have put forward different views regarding whether human rights are actually truly universal or not and whether they take into consideration variances in how different groups or classes of people perceive their application. This has been embodied into the debate concerning the universality and the cultural relativity of human rights. As a rugged outline, universalism refers to the notion that human rights are universal and should apply to every human being; whereas cultural relativism argues that human rights are culturally dependent, and that no moral principles can be made to apply to all cultures.

That said, there is a level of understanding that human rights (certain principles, if not all) are universal in a given context as fundamentally all states consider internationally approved and recognised human rights to be an integral part of international law and politics.<sup>31</sup> What is also pertinent is that practically all cultures, regions, and leading worldviews participate in an overlapping consensus on these universally recognised principles and rights.<sup>32</sup> However, the most valuable feature of cultural relativism is that it has the ability to challenge the presumed universality of any set or given standard, moreover, it questions conceptions of normalcy and how cultures perceive one another's differences.<sup>33</sup>

To reiterate, there are a number of traditional barriers that need to be broken down when considering the discourse of human rights from an Islamic legal perspective. Dialogical analysis shows that there is a domineering influence of the 'Western' perspective of human rights, which projects 'Western' values as the normative model in human rights development.<sup>34</sup> Although the West has indeed provided the impetus in for formulating human rights standards, this has been a relatively recent development. As already elaborated upon, ancient doctrines, exhibiting diverse ideologies and beliefs have shaped what society deems and envisages as being universal human rights, even when taking a secular perspective.<sup>35</sup> In addition to this it has been noted that:

**Religion has been completely exiled from international law, but has always been part of the international law venture.<sup>36</sup>**

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<sup>31</sup> Donnelly, Jack (2013) *Universal Human Rights in Theory and Practice* (3<sup>rd</sup> Edition, Cornell University Press) 93-97

<sup>32</sup> Donnelly (n 31 )

<sup>33</sup> Renteln, Alison Dundes (n 22) 50-53

<sup>34</sup> Baderin, Mashood A. (n 17) 10-13

<sup>35</sup> McCrudden, Christopher (2008) 'Human Dignity and Judicial Interpretation of Human Rights' *European Journal of International Law* 19(4) 655-724

<sup>36</sup> Baderin, Mashood A. (2010) 'Religion and International Law: Friends or Foes?' SOAS School of Law Legal Studies Research Paper Series, Research Paper No.4/2010

Despite such acknowledgments of the involvement of religion, there has been a particularly negative connotation and image of Islam in the West (even prior to 9/11), and often, some protagonists of these views, inter alia, cite some of the criminal punishments<sup>37</sup> under absolute Islamic law and the political cum human rights situations as evidence of the lack of provision for respect of human rights in *Shari'ah*.<sup>38</sup> This negative perception has been termed: 'Islamophobia' in the mainstream; and in the realm of academic discourse it has been referred to as 'orientalist *problematique*',<sup>39</sup> whereby Anglo-American critiques of Islamic law have represented it as an essentially defective legal system and reinforce those Western norms should be the universal normative model for international human rights.

In contrast, hard-line interpreters of *Shari'ah* hold non-relative applications of traditional Islamic jurisprudence have equally caused detriment for progressive dialogue in terms of human rights discourse. Equally, Muslim states have gone to the extent in vaguely citing *Shari'ah* as grounds for non-compliance to international norms without an exhaustive elaboration of the position of Islamic law, as an excuse for their poor human rights records.

However, the notion of incompatibility between Islamic law and international human rights is often exaggerated, which have in turn led to the assumption that Muslim states are unwilling to acknowledge international human rights and further become state parties to the various covenants. In exploration, discourse has identified five general categories of Islamic responses to international human rights: (1) Islam is compatible with international human rights; (2) human rights can only be fully realised under Islamic *Shari'ah* law; (3) international human movement is an imperialist agenda that must be rejected; (4) Islam is incompatible with international human rights; (5) international human rights movement has a hidden anti-religious agenda.<sup>40</sup> These types of oppositions are what can be described as reactions to what is often described as 'double-standards' of the countries devising and promoting international

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<sup>37</sup> Punishments referred to are executions, amputations, stoning and corporal punishments also in some cases lesser punishments were prescribed as alternatives. These must be borne in mind that when they were prescribed in the Qur'an they were unquestionable at the time of revelation, and that the rules of evidence are strict to the point of absurdity.

<sup>38</sup> Bannerman, Patrick (1988) *Islam in Perspective: A Guide to Islamic Society, Politics and Law* (Published in association with the Royal Institute of International Affairs, Routledge) 25-26

<sup>39</sup> Strawson, John (1993) 'Encountering Islamic Law' Essay presented at the Critical Legal Conference held in New College, Oxford, September 9 - 12 1993, University of East London Law Department, Research Publication Series, No. 1, available at <<http://www.iium.edu.my/deed/lawbase/jsrps.html>> accessed 20 March 2018

<sup>40</sup> Halliday, Fred (1995) 'Relativism and Universalism in Human Rights: The Case of the Islamic Middle East' *Political Studies* XLIII, 152-167; Baderin, Mashood A. (n 36)

human rights.<sup>41</sup> The responses reflect the entrapment of human rights between human welfare and international politics rather than any inherent disagreement on the principles or concepts of human rights in Islam.

It has logically been proposed that the international human rights movement ought to be strictly understood as having a universal objective for protecting individuals from the misuse of state authority and for the enhancement of human dignity.<sup>42</sup> By doing so it alleviates the idea of incompatibility of human rights with Islam. Furthermore, it essentially reconciles those who hold positions against the idea of human rights model from an Islamic perspective, as the protection and human dignity of human beings has always been a principle of Islamic political and legal theory. That said, most Muslim proponents of the incompatibility view are not opposed to the concept of human rights *per se*, but however hold their views in protest to Western hegemony, something that is also supported in relation to globalisation and evident neoliberal western literature.<sup>43</sup> While there are certain areas of clear differences in the scope and application of Islamic law and international human rights, it does not make them completely and irrevocably irreconcilable. From a logical perspective, Islamic law should be viewed not simply as a system of duties or religious obligations, but also as a legal system that provides legal remedies, which is *prima facie* an indicator that it indeed recognises rights.

Basic personal rights are formulated with certain basic violations, or threats to human dignity in mind, and thus it is inconceivably hard to image cultural arguments against their recognition.<sup>44</sup> Such rights include: right to life, liberty and security of the person; the guarantee of legal personality; and protections against slavery, servitude, arbitrary arrest, detention, or exile, and inhumane or degrading treatment, all of which are clearly connected to human dignity.

In relation to the subject matter of this study, culturally diverse migrant workers working in equally culturally diverse settings are subject to a complex set of parameters in relation to their basic human rights. Careful consideration has to be given to the dynamic relationship between international trade, labour norms, socio-political and demographic factors as well as

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<sup>41</sup> Baderin highlights that **‘in nearly all human rights communique or resolutions adopted at every Islamic conference, at least the question of Palestine is made an issue as a reference point on the double-standards of Western nations ‘in their international human rights crusade’.**

<sup>42</sup> Baderin, Mashood A. (n 36)

<sup>43</sup> Keohane, Robert O. (2005) *After Hegemony: Cooperation and Discord in the World Political Economy* (First Princeton Classic Edition, Princeton University Press); Peet, Richard (2009) *Unholy Trinity: The IMF, World Bank and WTO* (Second Edition, Zed Books London); Goodhart, Michael E. (n 20)

<sup>44</sup> Donnelly, Jack (1982) ‘Cultural Relativism and Universal Human Rights’ *Human Rights Quarterly* 4(3) 391-405

cultural and religious beliefs. These multifaceted variables can intrinsically act as drivers for facilitating labour and human rights protection as well as paradoxically hampering them, an apparent guise of globalisation.<sup>45</sup> Therefore, the presented notion where both internationally recognised human rights, religious duties including its inherent legal system should ultimately work in conjunction to ensure that the rights of migrant workers are better protected. Moreover, it would promote the universal objectives related to the protection of individuals from the misuse of state authority and for the enhancement of human dignity.

Thus an integral part of how migrant workers' employment relations are managed is how they are dealt with when conflicts or workplace disputes arise or when their rights are violated. Bearing in mind that migrant workers in the Arabian Gulf region, are under authority of the government it is necessary to examine the ideas on how such relationships are perceived. In taking this further, it is incumbent to realise and appreciate that all interpersonal relationships experience disputes or conflicts at various human interactions, including at various levels within communities, organisations, societies, nations and as discussed even between opposing ideologies.<sup>46</sup> Moreover, they exist when people or groups engage in competition to achieve goals that are perceived to be, or actually are, incompatible, which in turn can result in the compromise of human dignities and basic rights. Although conflict is not necessarily bad, abnormal, or dysfunctional but when it exceeds certain limits it can cause serious detriment and harm, and even inflict physical and/or psychological hardship.<sup>47</sup> Conflicts and disputes need not follow a destructive course; they can lead to positive outcomes and be a productive tool for growth and development. In such cases mutually acceptable and impartial procedures and mechanisms for resolving the conflicts and disputes are the best means for achieving a positive outcome.<sup>48</sup> Cooperation coupled with their capacity to lay aside distrust and animosity is integral to ensuring that the participants in the process develop solutions that satisfactorily meet their individual and common needs and interests.

The successes of such legal interventions or procedural mechanisms are dependent on a number of complex variables and are dependent on the context in which they are applied.

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<sup>45</sup> Goohart, Michael E. (n 20)

<sup>46</sup> Buchanan, David and Hucznski, Andrzej (2017) *Organizational Behaviour* (Paerson, Harlow UK, Ninth Edition) 702-703

<sup>47</sup> Omisore, Bernard O. and Abiodun, Ashimi R. (2014) 'Organizational Conflicts: Causes, Effects and Remedies' *International Journal of Academic Research in Economics and Management Sciences* 3(6) 118-137

<sup>48</sup> Fisher, Ronald J. (2001) 'Methods of Third-Party Invention' Berghof Research Center for Constructive Conflict Management, available at <[http://edoc.vifapol.de/opus/volltexte/2011/2579/pdf/fisher\\_hb.pdf](http://edoc.vifapol.de/opus/volltexte/2011/2579/pdf/fisher_hb.pdf)> accessed 22 April 2018

They can provide legitimate solutions either in the immediate issues of the situation as they offer themselves as being inherently adaptable to taking a problem-solving approach or they may be effected by deeply embedded in attitudes to governance, power and authority based on perceptions of their legitimacy and quality.<sup>49</sup> Numerous theories have been developed that relate conflict and dispute resolution practices to cultural and philosophical perspectives on authority, knowledge and power.<sup>50</sup> These concepts have a bearing on what form of conflict and dispute resolution strategies take and ultimately determine how successful they are. Likewise they influence the nature of how the authority manages the legal labour relationship within the parameters of the core normative values of the legal setting, and how it is perceived.<sup>51</sup> This is also pertinent to what is elaborated within Islam, as the governing authority is given the responsibility to manage and oversee affairs of its community particularly where there is moral case for the procedural application of law, such as when conflicts or disputes arise.

The Qur'an instructs:

**Obey Allah and obey the Messenger, and those of you (Muslims) who are in authority, (And) if you differ (quarrel) in anything amongst yourselves, refer it to Allah and His Messenger, if you believe in Allah and in the Last Day. That is better and more suitable for final determination.**<sup>52</sup>

This poignant verse of the Qur'an outlines in accordance to Islamic theory of statehood, to give authority to the leader, on the assumption that power is exercised in the best interests of the people, and with the stipulation that the supreme authority is bound primarily to Allah

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<sup>49</sup> Fisher, Ronald J. (n 48 ); Hough, Mike, Jackson, Jonathan, Bradford, Ben, Myhill, Andy and Quinton, Paul (2014) 'Procedural Justice, Trust, and Institutional Legitimacy' in *Encyclopaedia of Criminology and Criminal Justice*, edited by G. Bruinsma and D. Weisburd (Springer New York) 4011-4024

<sup>50</sup> Ridley-Duff, R. J. and Bennett, A. J. (2010), 'Mediation: developing a theoretical framework to understand alternative dispute resolution' paper to British Academy of Management, Sheffield, 14-16 September 2010; Tyler, Tom R. (2000) 'Multiculturalism and the Willingness of Citizens to Defer to Law and to Legal Authorities' *Law and Social Inquiry-Journal of the American Bar Foundation* 25, 983-1019; Schwartz, Shalom H. (1999) 'A Theory of Cultural Values and Some Implications for Work' *Applied Psychology* 48, 23-47; Schwartz, Shalom H. (2009) 'Culture Matters: National Value Cultures, Sources and Consequences' in *Understanding Culture: Theory, Research and Application* edited by C. Y. Chiu, Y. Y. Hong, S. Shavitt, and R. S. Wyer, Jr. (Psychology Press. New York) 127-150; Schwartz, Shalom H. (2006) 'A Theory of Cultural Value Orientations: Explication and Applications' *Comparative Sociology* 5, 137-82

<sup>51</sup> Petit, Jethro (2013) 'Power Analysis: A Practical Guide' (Swedish International Development Cooperation Agency, Stockholm, Sweden) available at <[https://www.sida.se/contentassets/55174801cd1e4b66804430219bab88b3/power-analysis-a-practical-guide\\_3704.pdf](https://www.sida.se/contentassets/55174801cd1e4b66804430219bab88b3/power-analysis-a-practical-guide_3704.pdf)> accessed 11 April 2018; Mehozay, Yoav and Factor, Roni (2017) 'Deeply Embedded Core Normative Values and Legitimacy of Law Enforcement Authorities' *Journal of Research in Crime and Delinquency* 54(2) 151-180

<sup>52</sup> Qur'an An-Nisa 4:59

and then to His Prophet (who acted through divine inspiration). In further clarification, the latter part of the verse instructs that if a dispute occurs, it should be referred to the principles of the religion. This indicates that obedience was virtue of those in power ruling in accordance to the dictates of the *Shari'ah* itself, meaning that there is no duty of obedience in violation of the *Shari'ah*. Therefore a group of people or a community have a right under Islamic law to appraise the authority and even expose violations, with a view to rectifying those who deviate, and alerting those who might be neglecting the duties with which they are entrusted.<sup>53</sup>

## **Discourse: Different Approach Required**

As established from the existing literature there is a basic and moral need to address the inequalities faced by migrant workers particularly due to the fact that their rights have been overlooked in light of the complexities of globalisation. Moreover, there are indeed the theoretical formations of arguments grounded on the idea that human rights as examined from both a universalist and a culturally relativist perspective, to protect the rights and dignities of migrant workers. Although there is a vast realm of rich literature and debate regarding human, labour and migrant workers' rights, including their governance and application etc. there is very little in terms of what can be regarded as proactive discourse of their application, assessment and review within the UAE and the wider region. In so far as much it can be concluded that culture of legal and procedural critique in the UAE has been confused with criticism. Historically rigorous critique, analysis, and assessment have formed an integral aspect of the *Shari'ah* in relation to the development of legal theory.<sup>54</sup> However, when it comes to the review and assessment of legislation in a contemporary context, there is seemingly less pedagogy. Rather, what is evident is that certain themes of discourse exist such as those revolving around the modernisation and development of the UAE. This is something that has been well documented by both academic and non-academic writers; however, the presentations therein are usually done from polarised perspectives:

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<sup>53</sup> Kamali, Mohammad Hashim (1997) *Freedom of Expression in Islam* (The Islamic Texts Society, Cambridge) 49-52, also citing Husayn, M.H (1925) *Naqd Kitab al-Islam wa Usul al-Hukm* at 52

<sup>54</sup> Hallaq, Wael B. (2009) *Shari'a Theory Practice Transformations* (Cambridge University Press 2009) 60-71; Philips, Abu Ammeenah Bilal (1990) *The Evolution of Fiqh: Islamic Law & The Madh-habs* (Second Edition, Tawheed Publications, Riyadh, Saudi Arabia, 1990) 63-89; Brown, Jonathan A.C. (2014) *Misquoting Muhammad: The Challenge and Choices of Interpreting the Prophet's Legacy* (Oneworld Publications, London, 2014) 40-41 and 46-52; Brown, Jonathan A.C. (2008) 'How We Know Early Ḥadīth Critics Did *Matn* Criticism and Why It's So Hard to Find' *Islamic Law and Society* 15, 143-184

1. Business and the financial press have had a fixated focus on the dynamism and triumphs of the UAE's economy and have suggested that the Arab and Islamic world would benefit from the powerful fusion of capitalism and leadership found in places like Dubai. For example, *The Economist* portrays Dubai as a 'sheikdom that has been magnificently transformed, and is now a beacon for legitimate, non-oil business in the Arab world – where shining examples of capitalism are rare indeed'.<sup>55</sup> It goes on to state that 'the key to Dubai's success is being what its neighbours are not: open-minded, openhearted and wide open for business'.<sup>56</sup> Reporting of this nature also hints that increased socio-political freedoms and liberations would eventually accompany the growing economic freedoms afforded to globalised multinationals. The lexicology used in such literature points toward certain demographics' understanding due to the readership. Terms such as 'multinationals' portray a specific connotation, one that has no tangible association with the poorly paid and illiterate migrant workers from developing countries that essentially drive the economy.
2. In addition to the global financial press, there is a 'sexed-up' genre of writing found in a variety of domestic press/publication outlets, which have a tendency to provide a specific pro-government angle of reporting. This category of work also places focus on the remarkable development of the UAE. Observationally, it presents picture-book histories that document the rise of the nation from desert-dwelling tribesmen with humble roots to affluent businessmen building skyscrapers and luxury hotels and becoming pioneers of the world. They further make reference to 'Western' interests such as business, travel, sports, and fashion in order to entice businesses and tourists to flock to the region to enjoy the lavish opulence on offer, such as seven-star hotels,

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<sup>55</sup> *The Economist* (2004) 'Arabia's Field of Dreams' 27 May 2004, 371-377 available at <<http://www.economist.com/node/2709282>> accessed 27 July 2016

<sup>56</sup> *The Economist* (2002) 'Beyond Oil' 21 March 2002, 362-265 available at <<http://www.economist.com/node/1033912>> accessed 27 July 2016



etc. Furthermore, there is an angle that is also projected, similar to the previous category of reporting, where information is nuanced to have a specific meaning or to provide a polarised perspective. For example, press outlets used the International Organisation for Migration's (IOM) 2015 World Migration Report<sup>57</sup> in stating that Dubai is the most cosmopolitan city in the world, based on its 185 nationalities.<sup>58</sup> The articles evidently mask the grim realities of a population vastly composed of unskilled and largely uneducated South Asian migrant workers (see MHRE data), rather than the trendy cosmopolitan global jet-setters it seeks to proffer to its unassuming audience.

As elaborated upon in earlier references, previous academic work on the UAE often stresses the binarism of a country split between tradition and modernity, where at one end of the spectrum it highlights the costs of modern development and at the other end it asserts that the value-rich traditional heritage and culture can be preserved along with a dynamic, market-based economy.<sup>59</sup> As discussed, external to the UAE, there is a wave of academic writing that often focuses on promoting and championing different ideas based on an approach that is 'universalist', 'relativist', or some hybrid of the two, applying it to any contentious issue that exists in Arab and indeed Islamic society. In terms of internal discourse, it can be argued that that there has been very little or no function of critical analysis academically of socio-political and legal issues, particularly where the results could predictably and essentially have a negative or even damning outlook. Therefore, due to this impediment, a distinct academic

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<sup>57</sup> IOM (2015) 'World Migration Report – Migrants and Cities: New Partnerships to Manage Mobility' (published by International Organization for Migration, Geneva and printed Imprimerie Courand et Associés, France) available at <[http://publications.iom.int/system/files/pdf/wmr2015\\_en.pdf](http://publications.iom.int/system/files/pdf/wmr2015_en.pdf)> accessed 19 July 2017

<sup>58</sup> Kapadia, Yousuf Saifuddin (2016) 'Dubai most cosmopolitan city in world; 83% foreign residents' *Khaleej Times*, January 16, 2016, available at <<http://www.khaleejtimes.com/nation/dubai/dubai-most-cosmopolitan-city-in-the-world>> accessed 21 July 2017; *Emirates* 247 (2016) Dubai most cosmopolitan city globally, 83% population is foreign-born' *Emirates* 247 Sunday, January 17, 2016, available at <<http://www.emirates247.com/news/emirates/dubai-most-cosmopolitan-city-globally-83-population-is-foreign-born-2016-01-17-1.617596>> accessed 21 July 2017

<sup>59</sup> Khalaf, Sulayman, (2002) 'Globalization and Heritage Revival in the Gulf: An Anthropological Look at Dubai Heritage Village' *Journal of Social Affairs* 19(75), 13-42

field was borne out of centring on the political economy of economic performance, rather than exploring the wider socio-political and legal issues the UAE faces. Moreover, academic work has been somewhat burdened historically by the lack of reliable data in the UAE, placing reliance on the publications of the many quasi-governmental research institutes, which clearly have a preference to present selective information rather than effective critique. The data divulged for this study, and in terms of permissions granted to carry out fieldwork of this nature, has, however, shown a more proactive albeit nascent approach by the United Arab Emirates Ministry of Human Resources and Emiratization.

## **Scope of the Research**

It is anticipated that the study will add a further dimension to existing and rather limited previous scholarly research, due to the fact that it is an internal assessment of the UAE's mechanisms of employment dispute management and resolution. This is particularly significant as the notion of internal assessment and indeed critiquing domestic law and the resulting enactment has very little, or indeed no, pedagogy within the Gulf region. Furthermore, the views that are usually portrayed of this rich complex system and society can often be polarising depending on where it is being presented from i.e. either: an outsider's perspective, which places the focus on deficiencies, or an insider's angle where there is a tendency to have an innate bias. Therefore the sanctioning and development of discourse would play an important role in the representation of those that are usually ignored, overlooked, suppressed or even oppressed. Inevitably, this would and indeed should, lead to an exponential increase in the amount of knowledge and thus would not only provide the

impetus for more research to be carried out but it would also become a reference for legitimising new knowledge.<sup>60</sup>

Due to this position, there is tremendous scope to initiate a new wave of academic thinking and thus to promote the inception of scholarly work principally within the region based around human and labour rights legislation including their domestic application, migrant worker rights within the region, and dispute resolution systems including general aspects of administering justice and redress. This approach is particularly relevant in this case as legal systems can and should be analysed as the expression of a continuous political and economic debate concerning an appropriate balance between conflicting interests.<sup>61</sup> That said, this study aims to critique the mechanisms of the manner in which employment-related disputes are managed in the UAE. Legal systems form the fundamental drivers for ensuring the protection of labour rights, and thus this study will explore their evolution, interpretation, and application in order to assess their effectiveness.

## **Key Definitions, Parameters & Limitations**

Migration is increasingly being acknowledged as a phenomenon and as an issue that needs a global approach. Due to this position, organisations, institutions and states all require commonly understood language for the coordination of migration. Therefore, in order to move forward with the investigation, it is necessary to establish a recognised set of terms and parameters related to the terminology used in this study and the entailed methodology.

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<sup>60</sup> Mertens, Donna M. (2009) *Transformative Research and Evaluation* (The Guildford Press, New York) 67

<sup>61</sup> Slater, Michael and Mason, Julie (2007) *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* (Pearson Education Ltd, Harlow, UK) 183

## Migrant Worker vs Domestic Workers

The International Organisation for Migration (IOM),<sup>62</sup> a related organisation of the UN, has developed a comprehensive set of definitions of the key terms related to migration and indeed labour migration. The fundamental term '*migrant*' is defined by the IOM as a person who is moving or has moved across an international border or within a state away from his/her habitual place of residence, regardless of: (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is. '*Labour migration*' therefore is the movement of persons from one state to another, or within their own country of residence, for the purpose of employment. Labour migration is addressed by most states in their migration laws. In addition, some states take an active role in regulating outward labour migration and seeking opportunities for their nationals abroad. Building on this '*migration management*' is a term used to encompass numerous governmental functions within a national system for the orderly and humane management for cross-border migration, particularly managing the entry and presence of foreigners within the borders of the state and the protection of refugees and others in need of protection. It refers to a planned approach to the development of policy, legislative and administrative responses to key migration issues.<sup>63</sup>

The study is primarily concerned with migrant workers in the UAE's private sector and the domestic legislation that covers them. This excludes domestic workers as they are not under the protection of the same set of laws. Moreover, an exhaustive analysis of domestic workers is outside the scope of this thesis, however it is important to give the issues they confront

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<sup>62</sup> IOM is an intergovernmental body that is committed to the principle that humane and orderly migration benefits migrants and society. It acts with its partners in the international community to: assist in meeting the operational challenges of migration, advance understanding of migration issues, encourage social and economic development through migration, and work towards effective respect of the human dignity and well-being of migrants.

<sup>63</sup> IOM (2011) 'IOM Glossary on Migration' International Migration Law Series No. 25 available at <<http://www.corteidh.or.cr/sitios/Observaciones/11/Anexo5.pdf>> accessed 02 May 2018

some context. The term '*domestic worker*' has been historically somewhat ambiguous in terms of a clear reference and a clear definition within international legislation. Surprisingly it was not until the ILO C189 - The Domestic Workers Convention, 2011 (No. 189) and R201 - Domestic Workers Recommendation, 2011 (No. 201) that a specific and formalised effort to improve domestic work laws and practices took centre stage in terms of a detailed international instrument protecting their rights.<sup>64</sup> Although all workers face problems, domestic workers have their own set of specific issues that are related to their work.<sup>65</sup>

That said, the term '*domestic work*', usually refers to work carried out performed in or for a household or households. Therefore a '*domestic worker*' generally refers to a person who performs work within an employment relationship in or for other people's private homes, whether or not residing in the household.<sup>66</sup> The tasks in which they are engaged in include general household duties such as cooking, cleaning, laundering, and caring for children, the ill and elderly.

According to ILO estimates,<sup>67</sup> there are 11.5 million migrant domestic workers in the world. Migrant domestic migrant workers represent; (1) 7.7% of a global estimate of 150.3 million migrant workers; (2) 17.2% of the total estimate of 67.1 million domestic workers globally. Domestic work in general is a highly female dominated sector, with women representing nearly 83% of the total number of domestic workers and in terms of migrant domestic workers, 73.4% of the global distribution are female.

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<sup>64</sup> ILO (2016) 'Social protection for domestic workers: Key policy trends and statistics' Social Protection Policy Papers, Paper 16 (International Labour Office, Geneva) available at <[http://www.ilo.org/public/libdoc/ilo/2016/116B09\\_14\\_engl.pdf](http://www.ilo.org/public/libdoc/ilo/2016/116B09_14_engl.pdf)> accessed 02 May 2018

<sup>65</sup> CMW (2011) General Comment No. 1, 23 February 2011 CMW/C/GC/1 Para 7 available at <[http://www2.ohchr.org/english/bodies/cmw/cmw\\_migrant\\_domestic\\_workers.htm](http://www2.ohchr.org/english/bodies/cmw/cmw_migrant_domestic_workers.htm)> accessed 27 May 2016

<sup>66</sup> ILO C189 - The Domestic Workers Convention, 2011 (No. 189) Article 1 (a)-(c)

<sup>67</sup> ILO (2015) 'ILO global estimates on migrant workers, Results and methodology: Special focus on migrant domestic workers' (International Labour Office, Geneva) available at <<http://www.ilo.org/public/libdoc/ilo/2015/489539.pdf>> accessed 02 May 2018

Generally, migrant domestic workers are at heightened risk of certain forms of exploitation and abuse compared other migrant workers, this is due to the fact that their work is regarded as invisible as they are 'hidden in private homes'.<sup>68</sup> Improving protections for migrant workers has become a key issue of public debate and reform not only within the Middle East, but at other national, regional and global levels. Despite the attention, reform has been slow and incremental, with many of them lagging far behind what is expected.

Migrant domestic workers face this increased vulnerability due to their isolation and their innate dependence, which can include the following components: the isolation of life in a foreign land and often in a foreign language, far away from family; lack of basic support systems and unfamiliarity with the culture and national labour and migration laws; and dependence on the job and employer because of migration-related debt, legal status, practices of employers restricting their freedom to leave the workplace, the simple fact that the migrants' workplace may also be their only shelter and the reliance of family members back home on remittances sent back from the domestic work.<sup>69</sup>

Women migrant domestic workers face additional risks related to their gender, including gender-based violence and including physical, psychological and sexual abuse, all of which are prevalent throughout the GCC states.<sup>70</sup> These risks and vulnerabilities are further aggravated for migrant domestic workers who are non-documented or in an irregular situation, as they often risk deportation if they contact state authorities to seek protection from an abusive employer.<sup>71</sup> As mentioned above, this thesis is primarily concerned with migrant workers in

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<sup>68</sup> HRW (2010) 'Slow Reform: Protection of Migrant Domestic Workers in Asia and the Middle East' available at <<https://www.hrw.org/sites/default/files/reports/wrd0410webwcover.pdf>> accessed 17 August 2017

<sup>69</sup> CMW (n 69) GC1

<sup>70</sup> HRW (2010) 'Walls at Every Turn: Abuse of Migrant Domestic Workers through Kuwait's Sponsorship System' available at <<https://www.hrw.org/report/2010/10/06/walls-every-turn/>> accessed 02 May; ITUC (2014) 'Facilitating Exploitation: A review of Labour Laws for Migrant Domestic Workers in Gulf Cooperation Council Countries' ITUC Legal and Policy Brief Research Methodology' available at <[https://www.ituc-csi.org/IMG/pdf/gcc\\_legal\\_and\\_policy\\_brief\\_domestic\\_workers.pdf](https://www.ituc-csi.org/IMG/pdf/gcc_legal_and_policy_brief_domestic_workers.pdf)> accessed 02 May 2018

<sup>71</sup> CMW (n 69) GC1

the UAE's private sector which excludes domestic workers as they are not under the protection of the same set of laws. It is noteworthy that domestic workers or 'domestic servants' are explicitly excluded from the protection of the UAE's Labour law.<sup>72</sup>

## Research Questions

1. What form do dispute management systems take in the UAE's private sector when dealing with employment disputes involving migrant workers?
2. How confident are private sector migrant workers in the application and fairness of the UAE's dispute management system?
3. What are the key international and regional standards on dispute management and protection of migrant workers? Does the UAE conform to these?
4. What can the UAE learn from other jurisdictions in the Gulf region and beyond?
5. What is required to make the UAE's dispute management systems fit for purpose, in order to protect the rights of migrant workers?

## Research Methodology

### Transformative Paradigm

Taking into consideration the research questions and their inherent implications, it was necessary to undertake a mixed methodological approach in order to answer them. In taking this approach it allowed for diversity when making a choice of how to investigate the subject matter both comprehensively and successfully.<sup>73</sup> This is particularly important as this type of

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<sup>72</sup> UAE Federal Law No .8 of 1980 UAE Labour Law, Article 3(c)

<sup>73</sup> Creswell, John W. (2014) *Research Design qualitative, quantitative and mixed methods approaches* (4<sup>th</sup> Edition, Sage Publications, Thousand Oaks, California) 14-18

research often bridges post-positivist and social constructivist worldviews through the application of transformative and pragmatic perspectives.<sup>74</sup> The transformative view (also known as advocacy or participatory) is relevant to addressing the research topic, as the approach inherently holds that research inquiry needs to be intertwined with politics, and indeed the reform agenda, in order to confront the issues of social inequality and indifference faced by migrants globally and within different domestic jurisdictions.<sup>75</sup>

The transformative agenda is established within the universal human rights agenda and is reflected within the UN's Universal Declaration of Human Rights, 1948 (UDHR).<sup>76</sup> The UDHR is based on a simple recognition of the inherent dignity and the equal inalienable rights of all members of human society.<sup>77</sup> Although the declaration is positioned in a multicultural context, it provides guidance in understanding a basis for transformative work domestically as well as internationally. As widely established, the UDHR contains language indicating that everyone is universally entitled to the rights within it, without discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. However, the UN recognised that its declaration has not resulted in the enjoyment of the rights contained therein for all people, particularly on the grounds of race, disability, gender, age, political standing and their status in the work force, all of which have some form of bearing to migrant workers. Consequently, the UN and other bodies approved a raft of other, more specific conventions and declarations in order to ensure that rights are better realised and enjoyed.

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<sup>74</sup> Greene, Jennifer. C. (2007) *Mixed Methods in Social Inquiry* (1<sup>st</sup> Edition, John Wiley & Sons, San Francisco) 14-17, 31-34

<sup>75</sup> Creswell, John W. (n 73) 9-11

<sup>76</sup> Mertens, Donna M. (n 60) 11-12

<sup>77</sup> These rights include the right to life, liberty, security of the person, equal protection under law, freedom of movement, education, marriage with the free and full consent of the intending spouses, ownership of property, freedom of thought and religion, freedom of opinion and expression, peaceful assembly, participation on governance and work in just and favourable conditions.



An important aspect of the transformative paradigm is the conscious inclusion of people that are excluded from mainstream society, which is clearly applicable to migrant workers. The goal being to represent their interests and their points of view and in order to challenge the status quo and furthering social justice. The transformative paradigm therefore provides a 'metaphysical umbrella'<sup>78</sup> with which to explore the basic beliefs that underlie research and evaluation processes that focus on the most vulnerable populations. It helps determine: (1) whether the authority and public policies are designed to ensure that all people enjoy their rights; (2) whether disparities are eliminated and equity enhanced and; (3) whether inclusive approaches have been adopted that include everyone in the decision-making processes that affect their interests.<sup>79</sup>

Bearing in mind the wider Middle East region's colonial history, and indeed the UAE's Trucial State background, another aspect that also needed to be considered is postcolonial theory. This relates that all culture is affected by the imperial process, something that stems from the moment of colonisation to the present.<sup>80</sup> Moreover, it explains that although colonial conquest was predicated on the power of superior arms, military organisation, political power and economic wealth, it was also based on a cultural project of control.<sup>81</sup> Western colonial nations therefore did not simply exploit colonised nations for economic gain, but depended upon the process of colonisation and colonial rule for securing the nation-state itself. By developing new technologies for state rule they essentially deepened the estrangements of a classed, patriarchal society whilst consolidating capitalist control over the states'

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<sup>78</sup> Mertens, Donna M. (n 60) 13-14

<sup>79</sup> Segone, Marco (2006) 'New Trends in Development Evaluation' UNICEF Regional Office, Geneva, available at <[https://issuu.com/docs/new\\_trends\\_dev\\_evaluation](https://issuu.com/docs/new_trends_dev_evaluation)> accessed 09 May 2018

<sup>80</sup> Ashcroft, Bill, Griffiths, Gareth and Tiffin, Helen (2002) *The Empire Writes Back: Theory and Practice in Post-Colonial Literatures* (New Accents, Second Edition, Routledge, Abingdon) 2

<sup>81</sup> McEwan, Cheryl (2009) *Postcolonialism and Development* (Routledge, Abingdon) 85-87; Dirks, Nicholas B. (2006) 'Colonialism and Culture' in *The Post-Colonial Studies Reader* edited by Bill Ashcroft, Gareth Griffiths, Helen Tiffin (Routledge, Abingdon, Second Edition) 57-61

development and even achieved international cultural hegemony.<sup>82</sup> Based in this, postcolonial theory asserts that the aftermath of the colonial past exceeds the historical moment or transition from the colonials to independence. Therefore, when research and evaluation is taking place in a country/region with a colonial past such as, it also takes place in a country/region with a postcolonial present, with all the symbolic and material remnants past down from the history of colonialism. All of which have indeed profoundly affected not only governance including governmental structures and the legal or administrative systems they are based upon, but also cultural values, religion, education and language.<sup>83</sup>

Additionally it is also important to address the issue of cultural homogenisation, principally due to the depictions of 'Third World' nations being regarded as being broadly tarnished as all being the same. Although there may be resemblances in certain things, such as a common language or some form cultural similarities however it does not mean that these traits are a means for basing broad generalisations. Moreover, there has been a calling from 'scholars of colour' for western discourse to acknowledge that there are fundamental differences between these Third World nations.<sup>84</sup> Postcolonial critics have also challenged the Western critical frameworks on the grounds that they alienate members of these different cultures from their own realities and that they in turn induce a level of 'slavish' conformity on the part of their postcolonial intellectuals. This has resulted in an intended omission by not taking input and heeding the concerns of indigenous response to not only Western critique but also in relation to their internal struggles of activism.<sup>85</sup> Additionally to the detriment of indigenous people's identities, the increasing presence of postcolonial intellectuals or native informants

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<sup>82</sup> Dirks, Nicholas B. (n 81) 57-61

<sup>83</sup> Madision, Soyini D. (2012) *Critical Ethnography: Method, Ethics and Performance* S(Second Edition, Sage, Thousand Oaks, California) 55; Mertens, Donna M. (n 60) 180

<sup>84</sup> Mertens, Donna M. (n 60) 207; Varadharajan, Asha (2000) 'The "Repressive Tolerance" of Cultural Peripheries' in *Reclaiming Indigenous Voice and Vision* edited by Marie Battiste (University of British Columbia Press, Vancouver) 142-149

<sup>85</sup> Varadharajan, Asha (n 84)

in academia has arguably led to a conflation of postcolonial interest with more multicultural ones.<sup>86</sup> Colonisation and decolonisation are both social and political processes and thus the governance over a people changes only after the people themselves have significantly changed.<sup>87</sup> That is not to say that normative frameworks need to be prescribed in a way that cultural identities are lost to change rather they should evolve by embracing them. This essentially could become an enriched model for enabling moral and ethical commitment for better governance. It may also to help produce the kind of reflexivity that encourages the better monitoring and management of power. It is fundamentally important that culture and knowledge are mobilised in a manner that reduce inequality and social privilege.

The empowerment of marginalised people is dependent on how research and evaluation addresses ways to incorporate the views of groups who are difficult to reach or relatively invisible such as migrant workers. Therefore capturing their data, namely on sensitive topics is crucial when under the specific constraints.<sup>88</sup> In addition to resource and operational based constraints (time and funding) political influences and ethical considerations are also an important factor. In a broad sense these refer not only to pressures from government agencies and politicians but also include the requirements of funding or regulatory agencies, pressures from stakeholders, and differences of opinions regarding evaluation approaches or methods.<sup>89</sup> Importantly, research as in the case of this study, is frequently conducted in contexts in which political and ethical issues affect its design and use. In addition to the inherent political and ethical constraints, there are organisational and administrative challenges that need to be faced intuitively. Certain stakeholders such as the funding agency

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<sup>86</sup> Varadharajan, Asha (n 84)

<sup>87</sup> Laenui, Poka (2000) 'Processes of Decolonization' in *Reclaiming Indigenous Voice and Vision* edited by Marie Battiste (University of British Columbia Press, Vancouver) 150-160

<sup>88</sup> Bamberger, Michael, Rugh, Jim, and Mabry, Linda (2012) *Real World Evaluation* (2<sup>nd</sup> Edition, Sage, Thousand Oaks, California) 11-12 and 101

<sup>89</sup> Bamberger, Michael, Rugh, Jim, and Mabry, Linda (n 88)

or the political authority may indeed have different goals from the evaluation and may seek to influence the methodology or approach used.<sup>90</sup> Owing to all of these complexities incumbent that a transformative approach is taken.

Taking forward the theoretical underpinning discussed, this study aims to give a level of voice to migrant workers in the UAE, while at the same time raise any concerns therein to the authorities that are meant to address the problems migrant workers face. The study places central importance on the perceptions and experiences of migrant workers, and in particular, how they are dealt with when a work-related conflict arises and ultimately how they go about finding a resolution to their issues. Hence, the paradigm, with its associated philosophical assumptions, provides a context for addressing inequality and injustice,<sup>91</sup> and where appropriate, takes an ethical stance and challenges oppressive social structures.<sup>92</sup> Subsequently, the goal of the study is essentially to encourage and enhance social justice, related to the normative and overarching notions of human rights and theological doctrines. Moreover, it will review the application of domestic laws; the state system for managing employment disputes and immigration protocols, all of which affect migrant workers significantly.

Pragmatism is another philosophical position about worldview that is also relevant to this study. It primarily concerns focussing attention on the research problem itself rather than any specific method of investigation. By having a pluralistic approach it allows for the use of all methods available in order to derive knowledge about the research problem.<sup>93</sup> This was indeed the case when moving forward with the research as developmental amendments were

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<sup>90</sup> Bamberger, Michael, Rugh, Jim, and Mabry, Linda (n 88)

<sup>91</sup> Mertens, Donna M. (2007) 'Transformative Paradigm Mixed Methods and Social Justice' *Journal of Mixed Methods Research* 1(3) 212-225

<sup>92</sup> Mertens, Donna M. (n 60) 5

<sup>93</sup> Tashakkori, Abbas and Teddlie, Charles (2010) 'Epilogue: Current Developments and Emerging Trends in Integrated Research Methodology', in *Sage Handbook of Mixed Methods in Social & Behavioural Research* edited by Tashakkori, A. and Teddlie, C. (2<sup>nd</sup> Edition Sage Publications, Thousand Oaks, California) 803-826

made to the manner in which inquiry methods, techniques, and procedures were applied, as the primary concern was to emphasise the research problem amidst the social, historical, political, and cultural context presented before attempting to make recommendations and advocating reform.<sup>94</sup> Having said that and in light of the complex scenarios presented by the research questions, it was necessary to have a degree of pragmatism in taking a mixed methodological approach. Thus, with the aim of this study being to critique employment dispute management systems relevant to migrant workers and put forward proposals on ways in which they might be improved, the research questions propose both a practical and contextual understanding of how the UAE's Ministry of Labour, newly rebranded as the Ministry of Human Resources & Emiratisation (MHRE), deals with employment disputes when they arise.

Prior to commencing the fieldwork, it was initially necessary to review the extensive available literature and also to quantitatively examine the magnitude and frequency of disputes that occur at the MHRE. That said, the nature of the paternalistic society in the UAE was something that needed to be carefully considered both practically and ethically. In relation to accessing the UAE's various government ministries and indeed conducting the fieldwork, the nationality and position of the principal researcher enabled certain privileges such as creating initial 'foot in the door' scenarios. Bearing that in mind, the principal aim was to focus on opinions and perceptions of migrant workers by capturing their opinions in the least invasive way, which was deemed to be the administration of a questionnaire. The intention was to provide an unbiased, and an unadulterated capture of the opinions of migrant workers in the UAE, without compromising any of their liberties and freedoms. Furthermore, the approach taken

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<sup>94</sup> Creswell, John W. (n 73)

by the principal researcher was to address issues that were seen first-hand whilst working in the UAE, prior to the commencement of the study.

### **Doctrinal Research**

A crucial part of the early development of any aspect of a quantitative and/or a qualitative study is that there is a thorough and extensive review of published literature and theory.<sup>95</sup> Building on from there, the data collected from applying a relevant methodology of inquiry can be then used to test or verify what has been discovered from the initial review, and hence advance theory and knowledge. In order to critically evaluate the current employment dispute management system in the UAE and the domestic labour laws by which they are governed, it is essential that the study focused initial scholarly discourse on:

1. the international perspective on human, labour and migrant rights,
2. the international guidelines for effective labour conflict and employment dispute resolution,
3. the Islamic principles related to labour rights and dispute resolution, and
4. the regional development and application of human rights law pertinent to labour and migrant rights.

This approach provided an objective benchmark when it came to assessing the manner in which the UAE has responded to normative positions founded upon international, theological, and regional standards of protecting migrant worker rights. This would then lend itself to the

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<sup>95</sup> McNabb, David E. (2004) *Research Methods for Political Sciences: Quantitative and Qualitative Methods* (M.E. Sharpe, New York) 100-103

comparative aspect of the study, where the UAE's model was further gauged against another jurisdiction.

The doctrinal aspect of the research provided a systematic analysis, exposition, and explanation of the legislation protecting migrant workers from both an international and theological perspective including their inherent influence on a regional and domestic level. It highlighted the similarities and helped explain the areas of divergence, paving the way for recommending possible areas of reform. The theoretical and fundamental aspects fostered a complete understanding of the conceptual basis of legal principles and how they affected the processes of dispute resolution and secured a deeper understanding of law as a social phenomenon including research on the historical, cultural, philosophical, linguistic, economic, social, or political implications of the law.

This inevitably involved the exploration of various forms of legislation and making statements of law that are objectively verifiable i.e. a process of selecting and weighing up significant materials related to them, as well as understanding their social context and interpretation.<sup>96</sup> This study is concerned with legal prepositions and doctrines and with the sources of legal data. Primary sources include: lawful documents, various statutes, and policies, as well as government notifications and papers etc. Secondary sources included academic articles, working papers, and the works of various experts in different books, journals, and publications. By means of taking an ongoing and interpretive approach to the available literature, a deeper understanding of the issues was established. Moreover, the central legal instruments referred to in the study were further examined through the intrinsic involvement of their respective monitoring bodies and their drafting histories where appropriate and where available. This continual examination of the discourse aided in recognising how

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<sup>96</sup> Dobinson, Ian and Johns, Francis (2007) 'Qualitative Legal Research' in *Research Methods for Law* edited by McConville, Mike and Wing, Hong Chui (Edinburgh University Press) 18-21

international opinion was formed particularly when scrutinising the nature of a culturally complex setting.<sup>97</sup>

### **Quantitative Data: MHRE Data & the Migrant Worker Questionnaire**

Quantitative methods are relevant as they allow for the explanation and analysis of available data<sup>98</sup> and in the case of this study, the first aspect of quantitative data was sourced and collated directly from the UAE's MHRE's Labour Market Studies and Information Department. Primarily, the rationale for this facet of the investigation was to gauge the types of labour disputes that occurred in the UAE's private sector and their respective frequencies. Similarly, the aim was to establish whether there are any trends or recurrent themes in relation to the types of issues migrant workers faced in the UAE. A secondary aim was then to devise a foundation to investigate how the MHRE deals with the most common types of disputes and whether or not sampled migrant workers would reflect the findings of the initial MHRE based investigation.

Bearing in mind that the study was conceived with the intention of capturing the voices of migrant workers, particularly as there are not many opportunities for them to express their opinions, it was necessary for them to do so in a safe and effective way. This was achieved by means of administering a questionnaire, where the aim was to gauge migrant workers' opinions on the fairness and effectiveness of how labour disputes are managed and to record their perceptions of how confident they were or are in navigating the process of resolving these disputes.

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<sup>97</sup> Mertens, Donna M. (n 60)

<sup>98</sup> Stenbacka, Caroline (2001) 'Qualitative research requires quality concepts of its own' *Management Decision* 39(7) 551-556



The questionnaire was formulated and administered in a number of languages<sup>99</sup> in order to ascertain a diverse range of migrant workers' opinions. It also investigated whether certain predetermined factors such as sector of employment, vocational level, or the presence of a language/communication barrier had an effect or influence on the migrant workers' perception of fairness/effectiveness of the dispute resolution process and level of confidence in engaging in the process and reaching a resolution.

It is anticipated that migrant workers with low levels of literacy and education levels, doing low-level jobs, and those from certain countries of origin (South Asia) would be more likely to experience employment-related issues of a similar nature. Furthermore, migrant workers with low levels of literacy and education, doing low-level jobs (predominantly from South Asia) are expected to be less confident in engaging with the process of dispute resolution and are expected to find the process more difficult than their more qualified counterparts.

### **Rationale for Identifying Population & Sampling**

Due to the significantly large proportion of migrants in the UAE's population, and with the categorisation of issues they face in terms of labour-related issues, it was anticipated that the sampling methods would yield sufficient responses intended for the investigation. Furthermore, due to the nature of the demographic concentrations of migrant workers in physical locations such as labour camps (designated living complexes for migrant workers) it was relatively easy to identify large cohorts of possible respondents.

Therefore, the questionnaires would essentially be stratified into two overall groups: first, migrant workers that experienced employment-related disputes with their employer and

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<sup>99</sup> Arabic, Bangla, English, Hindi, Indonesian, Tagalog, Tamil and Urdu (questionnaires are enclosed in the Appendix).

second, those that had not. The former would be subdivided into two further tiers, those that engaged the MHRE and those that did not. The cohort that would not have experienced any dispute would effectively serve as a control, as it would indicate how migrant workers would perceive the process should they ever experience a dispute.

The data yielded would therefore need to be subcategorised by ethnicity, education, and vocation. These categories were applied in order to gain more meaningful and representative sets of data. This would then prove significant in terms of explaining specific issues in situ that are related to migrant workers and ultimately answer the research questions with clear inference and conclusion.

A specific and glaring limitation is the fact that the gender balance in the data was greatly skewed as the questionnaires received were practically all from male participants. Primarily this was due to gender segregation issues. In reality, this meant the labour camps were either male or female and due to religious orthodoxy and cultural barriers, the female camps were not accessible. These inaccessible camps were not only housing female workers exclusively but are also managed by a combination of female Emirati and migrant staff. Despite expressing an interest in accessing the female camps, it was however something that was not permitted. Furthermore in order to gain the relevant permissions to access them it would have entailed engaging in a long bureaucratic process, separate from the already arduous process for engaging the male camps. It would also entail the employment female workers to do the distribution and outreach in isolation.

In addition to the distinctions made to the type of migrant workers being engaged in this study, it was elaborated that domestic workers have not been included as they are essentially excluded from the labour law that applies to other migrant workers. Addressing the diversity and inequality among women in employment in the Middle East in general a challenging, however it is an area that has had a significant level of focus internationally. It has been widely

documented that cultural factors play an integral fact in the divergences of economic participation rates in the Middle East.<sup>100</sup> Further social indicators and gender statistics (where available) reveal that women in the Arab region are also lag behind politically and socially. Although Emirati women have made significant strides into the educational arenas, this has not translated into comparable increases in employment rates.<sup>101</sup> It is not the intention of this study to delve into this arena, as it requires a significant level of effort and focus to do the subject matter justice. However, it is hoped that the intended findings within the thesis will not only present and tackle the disparity of rights and dignities afforded migrant workers, it will also add to the existing literature and discourse around gender diversity and inequality within the region.

## Data Analysis

The vast majority of the statistical data generated and used in the study was novel. Moreover it represented an innovative approach in terms of academia related to law-based social research in the UAE. The data sourced from the MHRE, despite being collected by the various labour offices, was generated from a request made on behalf of the study. Although the data was being recorded by the MHRE using their management information systems, it had not been analysed at any significant level, certainly not in the areas this study intended to cover. The MHRE was therefore grateful and forthcoming when divulging their raw data to be used

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<sup>100</sup> Al-Dajani, Haya (2010) *Diversity and Inequality among Women in Employment in the Arab Middle East Region: A New Research Agenda in Managing Gender Diversity in Asia: A Research Companion* edited by Mustafa F. Ezbilgin and Jawad Syed (Edward Elgar Press, Cheltenham, UK) 8-31; Moghadam, Valentine M. (2004) 'Towards Gender Equality in the Arab/Middle East Region: Islam, Culture and Feminist Activism' United Nations Development Programme, Human Development Report Office available at <[http://hdr.undp.org/sites/default/files/hdr2004\\_valentine\\_moghadam.pdf](http://hdr.undp.org/sites/default/files/hdr2004_valentine_moghadam.pdf)> accessed 04 May 2018

<sup>101</sup> Gallant, Monica, Pounder, James S. (2008) 'The employment of female nationals in the United Arab Emirates (UAE): An analysis of opportunities and barriers' *Education, Business and Society: Contemporary Middle Eastern Issues* 1(1) 26-33; Al-Dajani, Haya (n 100)

for the purposes of the study, as they had the foresight that any subsequent investigation and analysis would inevitably be there to benefit them in their endeavours.

The combination of quantitative and qualitative data was essentially complementary. The application of an explanatory sequential method was used, where various types of research logically led from one aspect to the next. The initial doctrinal work and the quantitative MHRE data analysis allowed for the development of a sound rationale for the fieldwork aspect of the study.

In turn, the migrant worker questionnaires were carried out prior to drawing any conclusions based on the doctrinal aspects of the study, as the results generated provided first-hand analysis on the research topic, which was then put forward for reflection and inference. Validity was also constructed progressively as the research stages ensued, and as a result, ideas were continuously developed and understanding was corroborated. Approximately 2,500 questionnaires were distributed throughout areas where migrant workers were living and working in high concentrations, however, only 489 were returned of which 177 were useable.

Bearing in mind the different methods of data collection used it was essential to verify the validity of the data throughout the process of collection and analysis. As previously discussed, it was also necessary to adapt methodologies during the various stages of both planning and collection. It was essential that the data collected was both representative and reliable as it would then facilitate a comprehensive understanding of a complex social and legal setting. The generation of ideas and the development of theory were based essentially on the engagement of various subject groups in their respective dynamic environments, with the primary focus being to fully understand the accessibility, effectiveness, and fairness of the labour dispute resolution system. The various methods were thus used to describe the phenomena being investigated in terms of attitudes, values, beliefs, and motivations in a

manner that enabled explanatory analysis, which in turn met the parameters of the research questions.

## **Ethical Considerations**

A thorough mixed methodological approach was needed as the study aimed to give voice to those who are seen as being disenfranchised based on their characteristic of being migrant workers. Although scholarly literature and discourse provided the vehicle for identifying the research questions and for taking the forward the research, it needed to engage the wider community through unbiased and unadulterated insight.

The transformative paradigm embedded in the research lent itself to addressing the central tenet of power and authority particularly with the paternalistic societal norms that exist within the UAE and the wider Middle East region.<sup>102</sup> Thus from a cultural and socio-political standpoint, it can be drawn that power is directly linked to position, and that certain facets of the community can be regarded as more privileged due to their citizenship, nationality, education, vocation etc. Due to this it was ethically necessary to allow disenfranchised groups (where accessible) to engage in a process of being accurately represented and to be treated with dignity and respect. The implicit goal was the inclusion of those who may not have the necessary power for the accurate representation of their viewpoints but also to empower the less advantaged in terms of being able to take an active agent role in social change, without being further marginalised for doing so. Moreover it was necessary to address the issues

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<sup>102</sup> Pellegrini, Ekin K. and Scandura, Terri A. (2006) 'Paternalistic Leadership: A Review and Agenda for Future Research' *Journal of Management* 34(3) 566-593; Harmsen, Egbert (2007) 'Between Empowerment & Paternalism' *ISIM Review* 20 10-11, available at <[https://openaccess.leidenuniv.nl/ISIM\\_20\\_Between\\_Empowerment\\_and\\_Paternalism.pdf](https://openaccess.leidenuniv.nl/ISIM_20_Between_Empowerment_and_Paternalism.pdf)> accessed 02 May 2018; Walters, Tim, Quinn, Stephen and Jendli, Adel (2006) 'A New Roadmap to Life: Media, Culture, and Modernity in the United Arab Emirates' *Intercultural Communication Studies* XV(2) 150-162, available at <<https://web.uri.edu/iaics/files/13-Tim-Walters-Stephen-Quinn-Adel-Jendli.pdf>> accessed 02 May 2018

centred on the debilitating and controlling nature of the outdated domestic policies and protocols that innately retard civil society structures that essentially allow for dialogue and representational voice.

Therefore ethical considerations for the study and its fieldwork were particularly important due to the vulnerability of the intended participants. Migrant workers, often being categorised as being diminished in terms of their protection from discrimination, exploitation and abuse, needed to be engaged in a manner that would not heighten any potential risk. Importantly, it was also necessary for the study and what it entails in terms of human rights to have gained various levels of consent and permissions prior to being conducted, particularly as activism can be precariously perceived as nonconformity and even dissidence regionally. The approach taken by the principal researcher was to highlight sensitive issues and to challenge traditional institutionalised attitudes. Due to this, it was necessary to gain the cooperation of the various ministries and departments while still maintaining complete ethical professional impartiality. The idea was sold on the ground that any findings would benefit and promote best practice amongst the various ministries concerned.

Professional social science and socio-legal studies have specific codes of ethics and protocols that clearly state what constitutes acceptable and unacceptable behaviour. These are concerned with issues of informed consent, privacy, confidentiality, anonymity, harm, and consequentiality.<sup>103</sup> Consequently, it was paramount that these concerns were met, adhered to, and fulfilled in accordance with Keele University research ethical guidelines. Furthermore, stringent parameters and guarantees were applied in order to ensure that the fieldwork was

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<sup>103</sup> British Educational Research Association (2011) 'Ethical Guidelines for Educational Research' available at <<http://www.bbk.ac.uk/sshp/research/sshp-ethics-committee-and-procedures/BERA-Ethical-Guidelines-2011.pdf>> accessed 02 August 2016

done bearing mind real and potential risks. This culminated in gaining ethical approval from the Ethical Research Review Panel at Keele University.

In summary, in order to uphold the professional integrity of both the study and indeed the university, the research needed to be competently explained (in lay terms and in appropriate languages) to all the participants and to all the relevant stakeholders and authorities as clearly as possible and also to safeguard the interests of the participants by guaranteeing confidentiality and anonymity while obtaining the required levels of consent.

## **Structure of the Thesis**

### **Chapter 1. International Standards: Migrant Labour Rights & Dispute Resolution**

The thesis will first establish a context by introducing the key universal international instruments and standards for labour. Moreover, it will examine the core principles relating to migrant worker rights and dispute resolution. Organisations such as the International Labour Organisation (ILO), the United Nations (UN), and Human Rights Watch (HRW), etc. will be referenced in order to highlight the international community's benchmark for protecting the rights of migrant workers.

### **Chapter 2. Islam: Labour Rights & Dispute Resolution**

The thesis will then add a further level of context by examining what is prescribed or interpreted as being the standard for employment relations and dispute resolution within Islamic theology and law. This will enable the establishment of more detailed milieu concerning the legal systems within the UAE and the wider region relevant to migrant workers.

### **Chapter 3. Regional Standards on Migrant Worker Rights**

Having established the two normative perspectives in terms of what is regarded as internationally recognised universal rights and what is portrayed as Islamic rights, the third chapter will examine the regional developments of a culturally relative system and how it impacts on migrant workers.

### **Chapter 4. UAE Case Study: Legal System, Labour Laws & the Employment Dispute Resolution System**

After the discussion of labour standards, this chapter will initially examine the legal system of the UAE including its application, and relate this legal system to international standards as set out in the previous chapter. This chapter will specifically analyse relevant UAE domestic labour laws and legislation in relation to labour and migrant rights. After assessing the actual labour laws within the UAE, it will then focus on measuring the effectiveness of the application of domestic legislation with regard to dispute management systems, mechanisms, and processes. This will be achieved by means of presenting data collected from the fieldwork aspect of this study. The aim is to put forward analysis-driven qualitative data that represents the real-life experiences of migrant workers that have had to face employment-related disputes while working with the UAE. Moreover, the analysis will assess the fairness and effectiveness of the UAE's dispute resolutions systems in relation to how confident migrant workers are in navigating labour disputes.

### **Chapter 5. Conclusion: Road Map for Reform**

The final aim of the study is to make recommendations through advocating and promoting reform and, civil society engagement, in order to improve the UAE's labour law and its dispute



management systems (i.e. to establish what is needed in order to make it fit for purpose and thus conform to the cultural and global standards set out in the study). By critiquing the UAE's employment dispute management systems and mechanisms, the intention is to further protect the rights of private sector migrant workers. The potential impact of this research is to facilitate positive change to policy and procedure in order to improve services by dealing with issues in a sensitive manner and by promoting best practice.

# **Chapter 1 – International Standards: Rights of Migrant**

## **Labour & Dispute Resolution**

### **1.1 Introduction**

The opening chapter of this study will focus on the international standards prevalent in today's globalised and interconnected society in terms of how the rights of migrant workers are protected. The chapter will not only identify, but also critically analyse the relevant international standards relating to migrant worker rights and dispute resolution.

In order to do this effectively, this study will first outline the rationale for the development of international labour standards and the ways in which these relate to migrant workers. This is particularly relevant due to employment relationships being managed not only locally or nationally, but also regionally, and indeed globally through the application of various mechanisms of dispute resolution. It will then lead on to a substantive analysis of the most pertinent international instruments and standards devised by the UN and its specialised agency, the ILO. Once the international and customary norms relating to migrant worker rights have been covered, the chapter will then explore the manner in which dispute resolution standards have been established.

The overall aim of the chapter is to provide a conceptual framework and rationale in terms of what the UAE is obligated to do, from an international perspective, in protecting its relatively large migrant worker population. This will serve as the prelude to the second and third chapter where theological and culturally relative perspectives will be taken, in terms of what Islam portrays labour and migrant rights as being, and how it relates to its notion of justice.

### 1.2.1 Globalisation, Interconnectedness & the Development of Labour Rights

Globalisation is not a single concept, rather it encompasses, integrates, and interconnects a multitude of different disciplines. It describes a process by which national and regional economies, societies, and cultures have become interconnected through the global network of trade, communication, transportation, immigration, and labour. Traditionally, it has been primarily focused on economic activity (i.e. trade, foreign direct investment, and international capital flow), but the term has now been expanded to include a broader range of activities and ideas including culture, media, and technology along with sociocultural, political, and biological factors (i.e. health issues and climate change).

**Globalisation is a process that encompasses the causes, course, and consequences of transnational and transcultural integration of human and non-human activities.<sup>1</sup>**

The idea of the interconnectedness of the world transcends that which is traditionally understood as international, as it also refers to relationships or dealings with nation-states.<sup>2</sup> It promotes a concept of the ways in which relations are dealt with across undefined borders, which inevitably includes institutions and organisations that may, or may not, be states. The rise of both multinational corporations (MNCs)<sup>3</sup> and human rights non-governmental organisations (NGOs) have begun to shape the ways in which labour norms are defined, and whether the broad embracing of a world view is founded upon idealism or realism. It can, however, be established that, in a globalised world, political, economic, cultural, and social proceedings are becoming increasingly interconnected.

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<sup>1</sup> Al-Rodhan, Nayef R.F. and Stoudmann, Gérard (2006) 'Definitions of Globalization: A Comprehensive Overview and A Proposed Definition' Program on the Geopolitical Implications of Globalization and Transnational Security, Geneva Centre for Security Policy, June 19 2006

<sup>2</sup> 'International' relates specifically to international relations or politics.

<sup>3</sup> Multi-national or sometimes referred to as transnational: companies corporations or enterprises.

This contemporary form of globalisation has inevitably had a profound impact on the ways in which labour markets function.<sup>4</sup> Furthermore, as labour migration has become an important contributor to the transformation of labour supply, economic consequences are felt for both the host nation of such workers and their country of origin. However, the nature of such consequences is dependent on the type of labour involved.<sup>5</sup> As a result (and originating from the capitalist ideology of using profit as a motive), human resources have become an important transnational tool for maximising both output and profitability.<sup>6</sup> This has also led to a focus on the ways to ensure the correct management of labour migration, the legal movement of migrants between borders, the issue of migrants' remittances and the way in which newly acquired knowledge is utilised (i.e. in terms of the development of the home country), and (most pertinent to the current study) the ways in which workers' rights are protected while serving in their respective host nations.<sup>7</sup> These factors are dependent on inter-state cooperation for both the countries of origin and destination, i.e. in the absence of any adequate protection of the rights of migrants, it is difficult to envisage the ways in which the entire process of migration (from departure, to travelling and return) can enhance development for both nations in this relationship.

Thus, a number of clear themes emerge from the discourse regarding these factors of globalisation and human rights. These address localism, statehood, and domestic jurisdiction along with ideology (albeit in differencing ways and at different levels), and all have a profound effect on the ways in which legal systems evolve, and upon the developing forms of normative perception. In a globalised society, political, sociological, philosophical, and other cultural

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<sup>4</sup> Johnston, William B. (1991) 'Global Work Force 2000: The New World Labor Market' Harvard Business Review March-April 1991, 115-127

<sup>5</sup> Elliot, Robert F. (1991) *Labour Economics: A Comparative Text* (McGraw-Hill International, Maidenhead, Berkshire) 142-145

<sup>6</sup> Johnston, William B. (n 4)

<sup>7</sup> World Bank (2006) 'Global Economic Prospects Economic Implications of Remittances and Migration 2006' The International Bank for Reconstruction and Development / The World Bank, Washington

contexts feature prominently in each established doctrine. Therefore, with public international law aiming to regulate inter-state relations, consideration needs to be given to the impact of globalisation, with its effects felt not only in reference to politics and economics, but also in connection to the more recent manifestation of issues concerning contemporary culture, society, media, technology, and other facets of modern civilisation.

The regulation of human and labour rights represents one of the most significant aspects of the contemporary international legal order because it represents a recurring issue in a globalised world, one in need of a globalised solution. Thus, contemporary states are required to deal not only with the regulation of affairs at state level, but are also engaged, or confronted, by non-state actors,<sup>8</sup> of which the UN along with its specialised agency, the ILO, are the most prominent. That said, the ILO Constitution requires that each member state is represented at the International Labour Conference by representatives of trade unions, employers, and governments, and this tripartism entitles all three actors to act independently of each other. Although the ILO offers an avenue for multilateral regulations of labour standards, ratification is paramount, as countries ratifying any given convention are subsequently expected to both incorporate that convention into national law and to ensure that it is enacted. However, due to the lack of punitive power, the ILO relies heavily on moral persuasion, leading to a portrayal of the UN's specialised labour agency lacking in the delivery of its agenda, and failing to have effective power when it comes to actual enforcement.<sup>9</sup> Moreover, it can be argued that core labour standards and their evolution from the

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<sup>8</sup> Bühring, Ferry 'Theoretical Thoughts on the Relationship of Non-State Actors and Human Rights' in *Ethics and Human Rights in a Globalized World: An Interdisciplinary and International Approach* edited by Klaus Hoffmann-Holland (Mohr Siebeck, Tübingen, Germany) 255-257

<sup>9</sup> Elliot, Kimberly Ann and Freeman, Richard B. (2003) *Can Labor Standards Improve Under Globalization?* (Institute for International Economics, Washington) 102-104; Helfer, Laurence R. (2006) 'Understanding Change in International Organizations: Globalization and Innovation in the ILO' *Vanderbilt Law Review* 59(3) 649-726; Cooney, Sean (1999) Testing Times for the ILO: Institutional Reform for the New International Political Economy, *Comparative Labor Law and Policy Journal* 20, 365-399

constitution of the ILO in 1919, were ignored for many decades as precedence was given to establishing trade.<sup>10</sup>

With the onset of the early manifestations of globalisation, labour, and particularly migrant labour, has been seen as a passive victim of the development of the economic world order. Moreover, with colonialism and its inherent obsession with economic control, it has been regarded as the precursor to what is considered global development due to both its focus being centred on exploiting raw materials and cheap labour.<sup>11</sup> Labour standards were not considered to be a stimulus for ensuring the prosperity of deregulating economies due to the active driver being seen as capital generation.<sup>12</sup> Owing to the demands of increased international competitiveness, workers and their privileges inevitably became prime cost-cutting tools. With increasing pressures from global retailers and their focus on competitively lower prices, more rapid delivery, and increased quality, manufacturers in the global south subsequently applied pressure on their employees in the form of lower wages, delayed or failed wage payments, increased job insecurity, speedups in production, compulsory overtime and long working hours, health and safety threats, abusive supervision, gender discrimination, and additional compromises in working conditions.<sup>13</sup> Labour movements did not take centre-stage until more recently, when social issues began to become a general aspect of public interest, both domestically and globally. Socially unacceptable exploitation practices of these north-based MNCs with widely recognised brand identities became part of the international

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<sup>10</sup> Elliot, Kimberly Ann (2000) 'The ILO and Enforcement of Core Labour Standards' Institute for International Economics, International Economics Policy Briefs Number 00-6, July 2000 available at <<http://www.iie.com/publications/pb/pb00-6.pdf>> accessed 10 July 2015

<sup>11</sup> Goldsmith, Edward (1997) 'Development as Colonialism' *Ecologist* 27(2) 69-77

<sup>12</sup> Lee, Eddy (1997) 'Globalization and labour standards: A review of issues' *International Labour Review* 136(2) 173-190

<sup>13</sup> Wells, Don (2009) 'Local Worker Struggles in the Global South: reconsidering Northern impacts on international standards' *Third World Quarterly* 30(3) 567-579

agenda, citing the role of sweatshops<sup>14</sup> in their outsourced production despite the presence of international law, guidelines and philosophical positions.

In light of the background just given, the benchmark for focussing on the UAE and the wider GCC (Gulf Cooperation Council) region's labour practices has always been set in line with international standards devised outside the Gulf region, which may or may not be culturally viable (a dilemma that will be evaluated in due course). Thus, it is the intention of this study to now focus on the most relevant pieces of international law pertaining to the issues within the region. A further caveat to consider consists of the fact that, historically speaking, Orientalists<sup>15</sup> have tended to consider the Arab world as primitive,<sup>16</sup> even (until the discovery and importance of oil) being considered as a peripheral aspect of the global south.

The GCC, formerly a collection of embedded southern region countries, has typically recruited workers from developed states for their expertise and from the least developed countries to undertake menial and unskilled labour. It is this unique scenario that has resulted in migration into the region, which has led to the development of a wide demographic constituent of the workforce, with unskilled workers forming the largest group of migrants in the GCC.<sup>17</sup> Initially the region lacked the relevant expertise and manpower in practically every sector, leading to a need to maximise output in terms of oil production, while infrastructure development labour was recruited transnationally. These recruitment flows were based on trade links and historical oil agreements.<sup>18</sup> The profits generated tended to be absorbed, but primarily re-

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<sup>14</sup> A sweatshop as a workplace that provides low or subsistence wages under harsh working conditions, such as long hours, unhealthy conditions, and/or an oppressive environment see Arnold, Denis G. and Hartman, Laura P. (2006) 'Worker Rights and Low Wage Industrialization: How to Avoid Sweatshops' Human Rights Quarterly 28, 676-700

<sup>15</sup> Orientalism is a term that is used by art historians (European and American), literary and cultural studies scholars for the imitation or depiction of aspects in Middle Eastern, South Asian, and East Asian cultures.

<sup>16</sup> Said, Edward (1978) *Orientalism* (Pantheon Books, New York) 341

<sup>17</sup> Kapiszewski, Andrzej (2006) 'Arab versus Asian migrant workers in the GCC countries' UN expert group meeting on international migration and development in the Arab region, Population Division, Department of Economic and Social Affairs, UN Secretariat, Beirut, 15-17 May 2006

<sup>18</sup> Errichiello, Gennaro (2012) 'Foreign Workforce in the Arab Gulf States (1930-1950): Migration Patterns and Nationality Clause', International Migration Review 46 (2) 389-413

invested, leading to the proliferation of new jobs, and thus the need for additional migrants. The oil-fuelled boom led to state subsidies for the education and training of nationals who had essentially been omitted from the workforce. National citizens, or nationals, were typically assimilated into the public sector, where in general, they have remained.<sup>19</sup> Due to this diverse makeup of society, the establishment of effective protocols for human and employment rights is particularly demanding. Nevertheless, the goal of all societies should be to endeavour for the achievement of both economic and social equity.<sup>20</sup> However, a struggle appears to have taken place for both of the above, in all walks of life and societies, regardless of spatial, economic, cultural, or ideological positioning. Due to these intrinsic and evolving characteristics, a significant variance has appeared concerning the level of engagement with international agencies addressing the issue of advocating economic and social equity on a global platform. Global agencies have continuously developed and indeed adopted model standards through international treaties that have consequently formed the backbone of the international human and labour rights regime. A pertinent and poignant aspect to reflect upon is that despite great emphasis and focus being placed on global issues such as trade, finance, or the environment, international migration lacks a coherent framework at the global level. Unlike other areas, there is a void in terms of a dedicated migration organisation in the UN.<sup>21</sup> Nevertheless, what is apparent is that there is a network of intergovernmental organisations within and outside the UN that focus on specific aspects of international migration.<sup>22</sup> It is also necessary to bear in mind that there has been an ongoing discourse that has summarised the

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<sup>19</sup> Randeree, Kasim (2009) 'Strategy, Policy and Practice in the Nationalisation of Human Capital: "Project Emiratisation"' Research and Practice in Human Resource Management 17(1) 71-91

<sup>20</sup> Ghosh, Jayati (2000) 'Rules of international economic integration and human rights' Background paper for the Human Development Report, UNDP, New York, available at <<http://hdr.undp.org/sites/default/files/ghosh2000.pdf>> accessed 17 April 2015

<sup>21</sup> Organisations such as: the International Organization for Migration (IOM) an inter-governmental organisation committed to the principle that humane and orderly migration benefits both migrants and society; Migrant Rights International (MRI) a non-governmental organization and federation of migrants' and migrants' rights organizations, trade unions and faith-based groups.

<sup>22</sup> Koser, Khalid (2010) 'Introduction: International Migration and Global Governance' Global Governance (16) 301-315



relationship between international trade, human rights, and labour norms. This dialogue has paved the way in the development of separate schools of thought when considering how best to protect the rights of humans beings, indeed including both indigenous and migrant workers by advocating positions of universalism or cultural relativism,<sup>23</sup> both of which are usually presented as opposites defined either dichotomously or as points at each end of the spectrum. Moreover, theorists have put forward different views regarding whether human rights are actually truly universal or not and whether they take into consideration variances in how different groups or classes of people perceive their application. That said, there is a level of understanding that human rights (certain principles, if not all) are universal in a given context as fundamentally all states consider internationally approved and recognised human rights to be an integral part of international law and politics.<sup>24</sup> What is also pertinent is that practically all cultures, religions, and leading worldviews participate in an overlapping consensus on these universally recognised principles and rights.<sup>25</sup> However, the most valuable feature of cultural relativism is that it has the ability to challenge the presumed universality of any set or given standard, moreover, it questions conceptions of normalcy and how cultures perceive one another's differences.<sup>26</sup>

Furthermore, the way in which societies perceive human rights practices as practical and customary norms has been significantly influenced by global politics, particularly those that incorporate economic and trade relations. This globalised relationship has undeniably compromised the human rights of workers in certain regions, creating vast differences in standards and regulation. Nevertheless, in order to effectively understand the development

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<sup>23</sup> Universalism refers to the notion that human rights are universal and should apply to every human being; cultural relativism argues that human rights are culturally dependent, and that no moral principles can be made to apply to all cultures.

<sup>24</sup> Donnelly, Jack (2013) *Universal Human Rights in Theory and Practice* (3<sup>rd</sup> Edition, Cornell University Press) 93-97

<sup>25</sup> Donnelly (n 24)

<sup>26</sup> Renteln, Alison Dundes (2013) *International Human Rights: Universalism Versus Relativism* (Quid Co Books, New Orleans, Louisiana, USA) 50-53

of international values of human rights and core labour standards, it is necessary to first explore the key pieces of international legislation that set the ideal standard of rights relevant to migrant workers in relation to their work, mobility, immigration status, and their access to justice, legal redress, and remedy.

### **1.2.2 The UN: International Instruments Related to Universal Labour Rights**

With the contextual backdrop of colonialism, the Industrial Revolution, movements relating to anti-slavery, campaigns against child labour, and trade unionism, labour rights are historically thought of as the vanguard of the modern human rights movement.<sup>27</sup> Labour rights movements thus pre-date the modern conceptualisation of human rights. That said, within the myriad of mainstream international law, there exists key UN and ILO instruments containing contextual applications that are both general and specific, in relation to their impact on workers (including those that are classed as migrants) and indeed employment dispute resolution systems. Such treaty bodies have developed into overarching international and indeed global standards over a number of decades and are arguably perceived as the customary norms particularly when considering the substantive provisions outlined within them.

When looking at the links between employment, economic, social, and cultural rights, particularly if they are taken as customary norms, rights such as the right to work, just and favourable conditions of work, social security, an adequate standard of living, medical care, access to education and training, and access to justice and redress have been universally recognised as examples of fundamental human rights. Their application in terms of enactment

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<sup>27</sup> Joseph, Sarah (2010) 'UN Covenants and Labour Rights' in *Human Rights at Work: Perspectives on Law and Regulation* edited by Fenwick, Colin and Novitz, Tonia (Hart Publishing Oxford and Portland, Oregon) 331-358

of the various international conventions and the realisation of the rights within them has however been indifferent. In the GCC region, divergences in the application of international labour standards and customary norms are evident through the manifestation of indifferent state labour legislation, particularly relating to migrant workers.<sup>28</sup> Moreover, weak labour legislation in combination with questionable *Kafala* immigration protocols such as the issuance of temporary work permits tying migrants workers to the mercy of their employer/sponsor and limited aspects to work mobility, has led to human rights abuses without access to effective legal remedies within the region.<sup>29</sup>

Therefore, international legal norms by themselves do not serve to prevent human rights infringements, rather they oblige a foundation or 'minimum core obligations'<sup>30</sup> for advocating the implementation of policies and programmes to achieve them. Although these notions of core standards, including practices, have developed over many decades, thus being exemplified into a normative school of thought, there are considerable differences between countries' legislative provisions. This is usually in respect to the extent and detail of their legislative regulation and the degree to which the various aspects of the matters concerned are left to workers, employers, and their organisations to determine by collective agreements or individual employment contract. Furthermore, the interplay between state political economic interests and the internationally recognised normative framework has a significant bearing on the rights enjoyed by both (or not) indigenous and migrant workers.

In terms of specific international human rights norms, the widely accepted three major human rights instruments are the Universal Declaration of Human Rights (UDHR), the International

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<sup>28</sup> Longva, Anh Nga (1999) 'Keeping Migrant Workers in Check: The *Kafala* System in the Gulf' Middle East Report 211, 20-22; Kapiszewski, Andrzej (n 17)

<sup>29</sup> Mahhdavi, Pardis (2011) *Gridlock: Labour Migration, and Human Trafficking in Dubai* (Stanford University Press) 30

<sup>30</sup> CESCR (1990) General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant) 14 December 1990, E/1991/23, Para 1, available at <<http://www.refworld.org/docid/4538838e10.html>> accessed 18 August 2017

Covenant on Economic, Social, and Cultural Rights, 1966 (ICESCR), and the International Covenant on Civil and Political Rights, 1966 (ICCPR), all of which identify and detail rights that implicate the workplace in terms of providing guarantees for fair labour rights, ensuring equality in all aspects of social and business activities preventing discrimination and furthermore particularly identify freedom of association as being a fundamental right. In tandem to that of the UN conventions, there is a number of ILO instruments that deal with employment rights, freedom of association, and the right to organise.<sup>31</sup> In addition to these central conventions there are various regional instruments<sup>32</sup> that do the same including the regionally accepted Arab Charter of Human Rights 2004.

### **1.2.3 International Instrument Application & Non-Discrimination**

As all core UN conventions are inherently derived from the UDHR, they are, in principle, applied to all human beings, including migrants and minority groups.<sup>33</sup> This is apparent even when taking a cursory view through the principal human rights instruments (both international and regional), as the language used is indicatively all-embracing, where phrases

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<sup>31</sup> Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); other relevant ILO instruments include: Rural Workers' Organisations Convention, 1975 (No. 141) and Recommendation No. 149; Labour Relations (Public Service) Convention, 1978 (No. 151) and Recommendation No. 159; and Workers' Representatives Convention, 1971 (No. 135) and Recommendation No. 143.

<sup>32</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms 1950; European Social Charter 1961; American Declaration of the Rights and Duties of Man 1948; American Convention on Human Rights 1969; African Charter on Human and People's Rights 1981; European Union Charter of Fundamental Rights 2000

<sup>33</sup> Migrants' related issues in the UDHR: Article 3, right to life, liberty and security; Article 4, prohibition of slavery or servitude; Article 5, prohibition of torture or inhuman or degrading treatment or punishment; Article 10, Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal; Article 11, right to be presumed innocent until proven guilty and prohibition of retroactive penal legislation; Article 12, right to respect private and family life, home and correspondence; Article 13, right to leave any country and to return to one's own country; Article 23, right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment, right to equal pay for equal work and the right to form and to join trade unions for the protection of his interests; Article 24, right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay; Article 25, right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

such as ‘everyone has the right to...’, ‘all persons...’ and in the negative, ‘no one shall be...’ are recurrent. Therefore non-discrimination norms play a central role in defining the human rights of migrants, and the widely ratified treaties are essentially of general application. However, human rights law does not prohibit all categorical distinctions between nationals and migrants as there are evidently subtle differences between certain rules being applied in relation to migrants. The UDHR is the precursor to many, if not all, human rights instruments and is phrased in an all-embracing foundational type of language.<sup>34</sup> The *travaux préparatoires* further show that the drafters paid due heed to the language where the proposed text was amended to be more general covering all grounds of distinctive characteristics that could be subject to abject grounds of discrimination.<sup>35</sup>

The UDHR does however contain some provisions that have been construed as excluding non-citizens or aliens from their protection. In explaining this, Article 13 needs to be initially commented upon, where the rights of everyone, including non-citizens and indeed migrant workers, are guaranteed the right of free movement by making reference to being able to leave and return to ‘his country’. This notion of ‘his country’ is also present Article 21, however, in this case it appears to preclude individuals from claiming political rights in a host country as the text refers to rights in ‘his country’, therefore suggesting that it refers to their country of origin or nationality.<sup>36</sup> There have been arguments made for taking on a looser and

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<sup>34</sup> Application is due on all persons under the jurisdiction of State Parties i.e. on their territory. The UDHR proclaims that all human beings are born free and equal in dignity and rights. Furthermore, it states that everyone is entitled to all the rights and freedoms therein, without distinction of any kind, namely: race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. There are some exceptions where rights are restricted to nationals however do not exclude migrants from the protections granted by UN human rights conventions. Committees monitoring the implementation of the UN conventions in the State Parties have developed ‘case-law’ explicitly or implicitly including migrant workers in many areas of protection.

<sup>35</sup> ‘Without distinction as to race...’ to ‘without distinction of any kind, such as race...’ see Skogly, Sigrun. (1999) ‘Article 2’ in *The Universal Declaration of Human Rights: A Common Standard of Achievement* edited by Alfredsson, Gudmundur and Eide, Asbjørn (Martinus Nijhoff Publishers, Kluwer Law International, The Hague, Netherlands) 75-87

<sup>36</sup> Nafziger, James A. R. and Bartel, Barry C. (1991) ‘The Migrant Workers Convention: Its Place in Human Rights Law’ *The International Migration Review* 25(4) Special Issue: U.N. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 771-799

more progressive point of view on this aspect of the UDHR where certain commentators have inferred that the statement in Article 13 and 21 referring to 'his country' could be very liberally understood as the state where the individual has the most substantial real connections whether through family ties, residence, or even economic ties, therefore covering migrant workers.<sup>37</sup> One of the most common restrictions imposed upon non-citizens, namely migrant workers, concern their right to work, the free choice of employment, just and favourable conditions, and protection from unemployment. These rights are extended universally to 'everyone' in UDHR Article 23. Furthermore Article 20 guarantees everyone the right to freedom of peaceful assembly and association.

The ICCPR is more defined than the UDHR in terms of its applicability of the provisions within it in relation to non-citizens and migrants. Article 2(1) ensures 'all individuals' the rights recognised in the convention without discrimination of any kind. The substantive equality clause in Article 26, which guarantees 'all persons' equality before the law and equal protection of the law without discrimination on the same grounds explicated in Article 2(1). The UN Human Rights Committee (HRC) further stated its position in relation to the ICCPR and its universal application by stating 'the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness'.<sup>38</sup> This was further elaborated upon by the Committee by specifying asylum seekers, refugees, and migrant workers.<sup>39</sup> The ICCPR in Article 12(1) does however specifically limit the enjoyment of the right to freedom of movement to those 'lawfully in the territory of a State Party' with

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<sup>37</sup> McKean, Warwick A. (1983) *Equality and Discrimination under International Law* (Oxford University Press) 199; Lillich, Richard B. (1984) *The Human Rights of Aliens in Contemporary International Law* (Manchester University Press) 43-44; Nowak Manfred (2005) *U.N. Covenant on Civil and Political Rights. CCPR Commentary* (NP Engel, Kehl am Rhein, Germany) 219-220

<sup>38</sup> HRC (1986) CCPR General Comment No. 15: The Position of Aliens Under the Covenant, 11 April 1986, Para 10, available at <<http://www.refworld.org/docid/45139acfc.html>> accessed 03 March 2016

<sup>39</sup> HRC (2004) General Comment No. 31: The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, available at <<http://www.refworld.org/docid/478b26ae2.html>> accessed 03 March 2016

contrast with the UDHR to some degree. However, in similitude with the UDHR, it also leaves open the possibility for certain non-nations to claim rights by virtue of Article 12(4), where it protects the right of entering 'his own country'. The term, 'his own country', can be interpreted liberally to mean where an alien can have an attachment to a given state and thus regard it as his own.<sup>40</sup> The theme of those persons residing 'lawfully' is continued in Article 13, which affords such people procedural protection or natural justice safeguards against arbitrary expulsion. In reality, this means that any expulsion decision must be taken in accordance with law and that any initial decision made must allow for it to be challenged etc.<sup>41</sup> The procedural safeguards, however, can be overridden according to Article 13 for 'compelling reasons of national security', which in essence makes such reasons very distinct. Certain other provisions of the ICCPR allow the rights in question to be restricted for a number of specified reasons such as where Article 22(1) recognises the right of everyone to 'freedom of association with others, including the right to form and join trade unions' but the following clause limits that of the one preceding it on by permitting restrictions on the exercise of the right.<sup>42</sup> Such clauses may be invoked in relation to the right to freedom of movement (Article 12), the right to freedom of expression (Article 19) and the right to peaceful assembly (Article 21). These limitation clauses therefore present themselves to states as a means of restricting or suspending the rights of non-nationals, migrant workers, and indeed the precariously positioned irregular migrants.

In comparison with the UDHR and the ICCPR, the ICESCR, despite being more substantial in its provisions in terms of labour rights, affords less direct protection to non-citizens. In explaining

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<sup>40</sup> Nowak Manfred (n 37)

<sup>41</sup> Eric Hammel v. Madagascar, Communication No. 155/1983, U.N. Doc. CCPR/C/OP/2 at 179 (1990) available at <<https://www1.umn.edu/humanrts/undocs/newscans/155-1983.html>> accessed 03 March 2016

<sup>42</sup> Article 22(2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others...

this variance, state parties to the ICCPR are required under Article 2(1) to immediately guarantee the rights recognised therein e.g. states are required under Article 8 to immediately combat slavery, servitude, and forced labour etc., whereas in Article 2(1) of the ICESCR it states that state parties are to 'take steps with a view to achieving progressively the full realisation of the rights recognised'. Thus, states are not required to immediately guarantee the ICESCR rights but instead are required to progressively increase the enjoyment thereof to the extent that resources permit. Owing to this, neither nationals nor non-nationals can always expect to benefit in full from the rights set out in the covenant.<sup>43</sup>

The Committee on Economic Social and Cultural Rights (CESCR) has, however, recognised in its General Comment 3, that states should assume, as a priority, the satisfaction of a minimum core content of the enumerated rights by making effort and applying the maximum resource available in order to do so.<sup>44</sup> In light of this, the rights in the ICESCR involve state affirmative measures and so ideally should be given the required amount of financial resources to develop them accordingly. However, when resources are limited (such as in developing countries), there is an unsurprising tendency for states taking a preference in favour of their own citizens.<sup>45</sup> This notion of preferential treatment is somewhat supported by a particular aspect of ICESCR.

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<sup>43</sup> Elles, Diana (1980) 'International Provision Protecting the Human Rights of Non-Citizens' Study prepared by the Baroness Elles Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities (UN New York 1980) E/CN.4/Sub.2/392/REV.1 available at <[https://www1.umn.edu/humanrts/International%20Provisions%20Protecting%20the%20Human%20Rights%20Of%20Non-citizens\\_Elles.pdf](https://www1.umn.edu/humanrts/International%20Provisions%20Protecting%20the%20Human%20Rights%20Of%20Non-citizens_Elles.pdf)> accessed 01 March 2016

<sup>44</sup> CESCR (n 30) GC3

<sup>45</sup> Lillich, Richard B. (n 37) 47-48; McDougal, Myres S., Chen, Lung-chu; and Lasswell, Harold D. (1976) 'Protection of Aliens from Discrimination and World Public Order: Responsibility of States Conjoined with Human Rights' Yale Law School Faculty Scholarship Series Paper 2648, available at <[http://digitalcommons.law.yale.edu/fss\\_papers/2648](http://digitalcommons.law.yale.edu/fss_papers/2648)> developing accessed 01 March 2016



**Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present Covenant to non-nationals.**

The above, Article 2(3) in relation to developing countries,<sup>46</sup> constitutes what could be described as giving them a *carte blanche* in terms of permitting developing countries to give priority to their nationals with regard to the guarantee of economic rights. The aim of this clause was to enable developing countries to address and rectify the legacy of the post-colonial era that left certain groups of non-citizens with an undue influence over their economies,<sup>47</sup> (which has been apparent in the GCC region<sup>48</sup>). Article 2(3), was not included in the original text and the amendment was first suggested by Indonesia and Burma to allow former colonies that had recently gained independence to protect the position of their nationals and to restore balance by enabling them to exercise their rights fully.<sup>49</sup>

It is important to note that Article 2(3) must be carefully and narrowly interpreted and relied upon only by developing countries when referring to economic rights. It should be noted here that there is no universal understanding of the content of 'economic rights'.<sup>50</sup> While the right to work may be seen as the clearest example of such a right, it may also be considered a social right, and so states may not treat citizens and non-citizens differently with respect to social and cultural rights. That said, differentiation of economic, social, and cultural including civil and political rights was historically born out of political and ideological differences during the

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<sup>46</sup> Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, defines them as 'those countries which have gained independence and which fall within the appropriate United Nations classifications of developing countries', Para 44, UN doc. E/CN.4/1987/17, Annex; Human Rights Quarterly 9, 122–135

<sup>47</sup> McKean, Warwick A. (n 37) 201

<sup>48</sup> This is related in the sovereignty clauses of various Islamic and Arab constitutions and regional human rights charters, which were customarily established after gaining independence from colonial rule.

<sup>49</sup> UN General Assembly, Third Committee, A/5365 (17 December 1962) 20-21

<sup>50</sup> HRC (1999), CCPR General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant), Para 2, available at <<http://www.refworld.org/docid/4538838c0.html>> accessed 03 March 2016 states that 'the right to education ... has been variously classified as an economic right, a social right and cultural right. It is all of these'

Cold War era, where simply put, market economies of the West tended to put greater emphasis on civil and political rights, while the centrally planned economies of the Eastern bloc highlighted the importance of economic, social, and cultural rights.<sup>51</sup> Another source for differentiation of rights has arisen from economy, society, and culture being seen as requiring high levels of investment, whereas civil and political rights are thought simply to require the state refraining from interfering with individual freedoms. Although many economic, social, and cultural rights sometimes require high levels of both financial and human investment to ensure their full enjoyment, they also require the state to refrain from interfering with individual freedoms such as the free choice of employment or indeed trade union freedoms. In the same way, civil and political rights, although comprising individual freedoms, also necessitate investment for their full realisation, such as civil and political rights require the inevitable infrastructures for a functioning court system, mechanisms to ensure fair and free elections, etc.

That said, Article 6(1) states that ‘everyone’ has the right to work, which is supported by the non-discrimination clause of Article 2(2), which includes grounds of nationality. However, in terms of these ‘economic rights’ there is not a clear application as the meaning can be inferred as being particularly broad as they could be defined as ‘rights that enable a person to earn a living or relate to that process’ or indeed include social rights as well.<sup>52</sup> This could be further conjectured for having a bearing on Articles 6 and 7, which recognises the right to work and just and favourable conditions of work respectively, which may also fall into the ‘economic rights’ category.<sup>53</sup> Therefore, this would also include the right to form and join trade unions

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<sup>51</sup> Donnelly, Jack (1982) ‘Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights’ *American Political Science Review* 76,303-16; Donnelly, Jack and Whelan, Daniel (2017) *International Human Rights Dilemmas in World* (5<sup>th</sup> Edition, Westview Press, Boulder, Colorado, 2017) 7

<sup>52</sup> Dankwa, Emmanuel Victor Oware (1987) ‘Working Paper on Article 2(3) of the International Covenant on Economic, Social and Cultural Rights’ *Human Rights Quarterly* 9(2) 230-249

<sup>53</sup> Dankwa, Emmanuel Victor Oware (n 52)

and to strike. However, it would be particularly difficult to justify restrictions on such rights based on that loose definition. Nevertheless, states do widely appear to grant favourable rights in terms of access to employment to nationals compared to non-nationals (as seen in the workforce nationalisation initiatives, and the disparity within the GCC's citizen-saturated public sectors).

The wording of Article 2(3) has left individual states to make judgements based on how they differentiate between citizens and non-citizens, as developing states 'may determine' the extent to which they guarantee ICESCR rights to non-nationals, which can imply that they do not necessarily have to guarantee the right to work to non-nationals.<sup>54</sup> CESCR General Comment 20, states that a measure will not be discriminatory where the 'justification for differentiation is reasonable and objective'.<sup>55</sup> Likewise, in relation to the right to work of non-citizens/migrants, general international practice provides an objective and reasonable basis for differentiating between citizens and non-citizens on the grounds that they permit states to restrict labour market access to foreigners through its border control and the issuances of specialised work permits (unless there are treaty commitments allowing access).<sup>56</sup> In explanation, there is no general, unqualified right under international law of a foreign national to seek or obtain employment in another state, and so states enjoy a sovereign discretion to control the admission, presence, and expulsion of aliens (subject to existing law or bi/multilateral agreements including international refugee law). States are also inherently

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<sup>54</sup> Craven, Matthew (2002) *The International Convention on Economic, Social and Cultural Rights: A Perspective on its Development* (Reprinted Edition, Oxford University Press) 213; Saul, Ben, Kinley, David and Mowbray, Jacqueline (2014) *The International Convention on Economic, Social and Cultural Rights: Commentary, Cases and Materials* (Oxford University Press, UK, 2014) 315; Cholewinski, Ryszard (1997) *Migrant Workers in International Human Rights Law: Their Protection in Countries of Employment* (Clarendon Press, Oxford 1997, reprinted 2003) 58-59

<sup>55</sup> CESCR (2009) UN Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), Para13 2 July 2009, E/C.12/GC/20, available at <<http://www.refworld.org/docid/4a60961f2.html>> accessed 08 January 2016> accessed 16 November 2015

<sup>56</sup> Craven, Matthew (n 54) 213-14

eager to preserve scarce employment opportunities for their own nationals and where labour shortages do exist, they are more conducive to select the most highly skilled or needed foreigner rather than to allow open access. Although singling out particular nationalities for exclusion is somewhat questionable, placing general restrictions on labour market access by any foreign nationals is evident. Moreover, according preferential access to citizens of designated states is commonly accepted, for instance amongst EU states or through the manifestation of bilateral agreements.<sup>57</sup> This practice in turn allows for a state to show both political and social solidarity to its partner states and so act as a driver for constructing the composition of its economic community.

In practice, CESCR has provided little clarification on the legal position of migrant workers, that is, on monitoring it usually comments on high levels of unemployment amongst migrants referring to them as ‘immigrants’, ‘foreigners’, or the foreign born’, but does not explain whether its concern is limited to migrants that are lawfully resident or also those of irregular status or asylum seekers.<sup>58</sup> Consequently, a further aspect to note is that distinctions can therefore be drawn between the economic and labour rights of non-citizens/migrants who are thus present lawfully in a developing state and those who entered illegally although CESCR does welcome efforts to regularise the status of migrants that are undocumented or to grant them amnesties.<sup>59</sup> Therefore, arbitrary or unreasonable discrimination in regard to the enjoyment of economic, social, and cultural rights are actionable under both the ICCPR and

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<sup>57</sup> Ibid; UK and France have made reservations in order to modify their obligations under ICESCR with regards to the employment of foreigners. UK Reservation, **‘The Government of the United Kingdom reserve the right to interpret article 6 as not precluding the imposition of restrictions, based on place of birth or residence qualifications, on the taking of employment in any particular region or territory for the purpose of safeguarding the employment opportunities of workers in that region or territory’**; France Reservation **“The Government of the Republic declares that articles 6, 9, 11 and 13 are not to be interpreted as derogating from provisions governing the access of aliens to employment or as establishing residence requirements for the allocation of certain social benefits’**.

<sup>58</sup> Ryan Bernard and Mantouvalou, Virginia (2014) ‘The Labour and Social Rights of Migrants in International Law’ in *Human Rights and Immigration :Collected Courses of the Academy of European Law* edited by Rubio-Marin, Ruth (Oxford University Press, UK 2014) 177-211

<sup>59</sup> Saul, Ben, Kinley, David and Mowbray, Jacqueline (n 54) 315

ICESCR.<sup>60</sup> Furthermore, foreign/migrant workers would also normally fall within the protected grounds of 'race, colour, descent or national or ethnic origin' under the ICESCR or, where a state has made a reservation to such grounds, their citizenship may still value their applicability within the grounds of 'other status'.<sup>61</sup>

In common with the other international human rights instruments, the International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (ICERD) is universal in coverage, applying to both citizens and non-citizens. It defines racial discrimination in its opening article as,

**Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.**

However, the most pertinent provision in the ICERD relating to foreigners, similar to ICESCR Article 2(3), is a clause concerning the restriction of rights rather than a guarantee. ICERD Article 1(2) states 'This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens'. As with the aforementioned reference to the ICESCR, the ICERD clause needs to be clearly interpreted as it does not exclude aliens from the protection of the instrument altogether, nor does it allow general discrimination on the basis of alienage.<sup>62</sup> In clarification, the Committee

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<sup>60</sup> Article 26 cases have concerning non-discrimination in relation to employment: *Bwalya v. Zambia* (314/1998) CCPR/C/WG/35/D/314/1988; *Wackenheim v. France* (854/1999) CCPR/C/75/D/854/1999; and cases concerning unemployment benefit entitlements: *Broek v. Netherlands* (172/1984) CCPR/C/29/D/172/1984; *Zwaan-de-Vries v. Netherlands* (182/1984) CCPR/C/29/D/182/1984

<sup>61</sup> *Karakurt v. Austria*, Communication No. 965/2000, U.N. Doc.CCPR/C/74/D/965/2000 (2002), Individual Opinion by Committee Members Sir Nigel Rodley and Mr. Martin Scheinin (partly dissenting) available at <<https://www1.umn.edu/humanrts/undocs/965-2000.html>> accessed 08 March 2016

<sup>62</sup> Cholewinski, Ryszard (n 54) 62-64

on the Elimination of Racial Discrimination (CERD) has stressed that the article does not absolve states parties from any obligation to report on matters relating to legislation on foreigners and that it,

**Must be construed so as to avoid undermining the basic prohibition of discrimination; hence, it should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.**<sup>63</sup>

The provisions in the ICCPR and the ICESCR offer the greatest labour rights coverage amongst the UN core human rights treaties, as they are not limited to a particular group such as those in the Convention on the Rights of the Child 1989 (CRC) or indeed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 (ICRMW), nor is discrimination a prerequisite to their activation, as in the case with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, 1965 (ICERD) and the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW).

Labour rights are protected by numerous provisions of the ICESCR. Article 6 guarantees the right to work, Article 7 recognises the right to just and favourable conditions of work (including equality in opportunity and in remuneration, work safety, decent living conditions and hours of work), Article 8 recognises the right to join effective trade unions and protects the right to strike,<sup>64</sup> which is necessary to guarantee workers' rights considering the common imbalance

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<sup>63</sup> CERD (2005) General Recommendation 30 on racial discrimination against non-citizens (Sixty-fifth session, 2005), under the section 'Responsibilities of state parties to the Convention'

<sup>64</sup> ICESCR Article 8 also adds a caveat that it does not permit states to prejudice the guarantees in the ILO Convention No. 87 concerning the Freedom of Association and the Protection of the Right to Organise 1948.

of power between workers and employers (again which is a fundamental issue that is faced by migrant workers).

The ICCPR addresses a narrower range of labour rights than that of the ICESCR, all of which are essentially applicable to migrant workers under the premise of non-discrimination, as explicated in ICCPR Article 2(1) 'to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind'. Moreover, in the same article it universally refers to instances where the rights or freedoms are infringed upon ensuring that any person has the right to effective remedy,<sup>65</sup> determined by competent judicial, administrative, or authorities.<sup>66</sup> Moreover, Article 14 refers to equality before the courts and entitlement to fair and impartial hearing and of tribunals. In terms of prohibiting discrimination in relation to the enjoyment of labour rights, both UN conventions do so.<sup>67</sup>

ICCPR Article 7 provides protection against cruel, inhumane, or degrading treatment and thus extends its protection to migrant workers living and working in exploitative situations, which is related to this Article 8 that prohibits slavery, servitude, and forced labour. The term 'servitude' in Article 8(2) refers to such instances, and in terms of labour-related contexts, it implies that the victims could be economically exploited as well as be very dependent on other individuals. Supported by the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery 1956, the ICCPR prohibits slavery-like institutions and practices, where the term 'forced or compulsory' labour is defined as '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>68</sup> This broad notion of forced or

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<sup>65</sup> ICCPR Article 2(3)(a)

<sup>66</sup> ICCPR Article 2(3)(b)

<sup>67</sup> ICESCR Articles: 2(2) and 3; ICCPR Articles 2(1), 3 and 26

<sup>68</sup> C029 - Forced Labour Convention, 1930 (No. 29) Convention concerning Forced or Compulsory Labour, Article 2

compulsory labour, as used in the ICCPR, protects everyone from unjust, oppressive, and harsh forms of labour.

Within the ICCPR Article 21 guarantees the right of peaceful assembly but does not stipulate in its substantive provision the word 'strike', and Article 22 guarantees 'everyone' freedom of association, including the right to form and join trade unions. This is unique to the covenant as it treats the freedom of assembly separately from the closely related freedom of association and that it has a specific saving clause in Article 22(3) in favour of the ILO's C087<sup>69</sup> fundamental instrument relating to the above rights. The freedom of association and trade unions was integrated into the ICCPR to underline its threefold character, that is, that it is not only an economic right protecting the freedom of trade unions but also a political and civil right too. In explanation, it grants protection against the state and private interference when an individual wants to associate with others, particularly as political interests can only be nourished in a community with others, making it indispensable for the functioning of a democratic society. This is perhaps the most pertinent reason why the provision can be found in both conventions, as it was feared that the failure to include the freedom in the ICCPR might create the impression that it was not a civil right.<sup>70</sup> There are, however, some differences between the two provisions though, the ICCPR is broader with respect to the interests that can be promoted by trade unions referring to the general interests of everyone, whereas the ICESCR limits the freedom of trade unions to organisations for the 'promotion and protection of economic and social interests'. This pays dividends to the fact that trade unions often campaign for the civil rights of their members through representation.

As elucidated upon, ICCPR does not mention the right to strike whereas Article 8 of the ICESCR does. This was an area of contention, as the HRC initially held the opinion that it was not

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<sup>69</sup> ILO C087 - The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

<sup>70</sup> Nowak, Manfred (n 37); ICCPR Article 22



covered.<sup>71</sup> However, through widespread criticism and campaigning the Committee reversed its decision and recognised the right to strike based on Article 22.<sup>72</sup> This was particularly reinforced by the safeguard clause in Article 22(3) of the ICCPR, which calls for an interpretation of said article to be in line with the ILO C087.<sup>73</sup> In addition to this clarification, the HRC on various periodic reports, it has stated that Article 22 protects not only trade union activity and strikes but also collective bargaining, although it is not textually referred to in the covenant.<sup>74</sup>

The apparent difference in language between the various instruments has undoubtedly made it more difficult to assess whether or not a state has indeed protected a right or not, in lay terms, it is making reference to endeavour, rather than to explicitly take into consideration, a clear violation. Therefore, it becomes harder to hold states accountable for the obligations if it is equally hard to determine whether they have been breached. The reasons for this have been explained through the nature of the duty that arises out of the types of rights in question. Customarily, economic, social, and cultural rights seem to give rise to positive duties that require the performance of affirmative actions for fulfilment. In contrast, civil and political rights seemingly give rise to negative duties that require the mere refraining from certain actions. The implications of that are, it is easier and more cost effective to refrain from action,

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<sup>71</sup> J.B. et al. v. Canada, Communication No. 118/1982, U.N. Doc. Supp. No. 40 (A/41/40) at 151 (1986), CCPR/C/D/R.26/118, Decision of July 18, 1986, available at <<http://www1.umn.edu/humanrts/undocs/session41/118-1982.htm>> accessed 13 June 2016

<sup>72</sup> HRC (1996) Concluding Observations Germany, CCPR/C/79/Add.73, available at <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F79%2FAdd.73&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F79%2FAdd.73&Lang=en)> accessed June 15 2016, Para 18 states **'The Committee is concerned that there is an absolute ban on strikes by public servants who are not exercising authority in the name of the State and are not engaged in essential services, which may violate article 22 of the Covenant'**

<sup>73</sup> Macklem, Patrick (2015) *The Sovereignty of Human Rights* (Oxford University Press, UK 2015) 72-73

<sup>74</sup> HRC (1999) Concluding Observations Chile, CCPR/C/79/Add.104, available at <<https://www1.umn.edu/humanrts/hrcommittee/chile1999.html>> accessed 15 June 2016, Para 25 states: **'The general prohibition imposed on the right of civil servants to organize a trade union and bargain collectively, as well as their right to strike, raises serious concerns, under article 22 of the Covenant. Therefore: The State party should review the relevant provisions of laws and decrees in order to guarantee to civil servants the rights to join trade unions and to bargain collectively, guaranteed under article 22 of the Covenant'**; Macklem, Patrick (n 87)

which in effect means to do nothing, rather than to undertake a positive action.<sup>75</sup> Taking this analogy a step further, certain civil and political rights are inherently positive, such as the right to a fair trial in Article 14 of the ICCPR, which ultimately implies the provision of the necessary legal mechanisms and judicial systems in order to ensure a remedy and fair resolution, which includes both infrastructure and appropriately trained personnel. Article 8 of the ICESCR is duly negative, as it requires states to refrain from interfering with the proper functioning of trade unions. There is an apparent dichotomy in justiciability in the two conventions, particularly with the addition of the Optional Protocol (OP) to the ICCPR, which allowed the submission of complaints against state parties to the HRC. It was not until 2009 that a similar OP to the ICESCR was adopted. The difference in language between the two conventions has been subject to conflicting critiques and as a result it is suggested that the nature of obligation under the ICESCR is so onerous that virtually no government (particularly those of developing states) will be able to comply.<sup>76</sup> It has also been argued that the relative open-endedness of the concept of progressive increase or achievement in the realisation of rights, in light of the qualification regarding the availability of resources, renders it devoid of meaningful content.<sup>77</sup> Contrarily, the intention of the UN has shown interdependence between the two categories of rights, that is, the rights within the ICCPR and that of the ICESCR. The precursor, UDHR, included both categories of rights and furthermore the preamble of both the ICCPR and the ICESCR state therein the recognition of being in 'accordance with the Universal Declaration of Human Rights' and also links together both sets of rights, that is, civil and political rights as well as economic, social, and cultural rights.

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<sup>75</sup> Scott, Craig (1989) 'Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights' *Osgoode Hall Law Journal* 27(3), 769-878

<sup>76</sup> Alston, Philp (1987) 'Out of the Abyss: The Challenges Confronting the New U.N. Committee on Economic, Social and Cultural Rights' *Human Rights Quarterly* 9(2) 332-381

<sup>77</sup> Alston, Philp and Goodman, Ryan (2013) *International Human Rights: The successor to International Human Rights in Context* (Oxford University Press, Oxford, UK) 282-285

Pertinently, this is manifested in terms of the right to form trade unions being contained in the ICESCR, while the right to freedom of association is recognised in the ICCPR. Moreover, all human rights entail certain normative obligations to ensure the enjoyment of relevant rights.<sup>78</sup> These obligations are first to 'respect' rights, which entails the state's negative obligations, whereas the obligation to 'protect' and 'fulfil' rights are deemed positive. The 'protection' obligation thus corresponds to the state to prevent and/or punish human rights violations by non-state actors. The discharge of obligations is met by the enactment and enforcement of sound legislation and the taking of reasonable steps to appropriately control the actions of private entities. These are especially relevant to the area of labour rights, given the dominance in most nations of their private sectors over the availability of work. The 'fulfilment' obligation requires that appropriate resources are allocated to ensure the enjoyment of rights, particularly for those who lack the resources to provide for themselves. Although progressive obligations may seem softer than those of obligations that have an immediate effect, they remain an obligation nonetheless that indeed have meaningful content and thus need to be realised.<sup>79</sup> Furthermore, in terms of satisfying the obligations, states should recognise the indispensable need to adopt legislative measures<sup>80</sup> and to provide judicial remedies with respect to rights that may, in accordance with the national legal system, be considered justiciable.<sup>81</sup>

In addition to the non-discrimination clauses that have been elaborated upon, the jurisprudence relating generally to the right to work is therefore relevant to migrant workers. ICESCR Article 6 confirms the right to work for all but does not guarantee the right to be

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<sup>78</sup> OHCHR (2005) UN Office of the High Commissioner for Human Rights Fact Sheet No. 15 (Rev.1), Civil and Political Rights: The Human Rights Committee, May 2005, No. 15 (Rev.1), available at <<http://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf>> accessed 10 November 2015

<sup>79</sup> CESCR (n 30) GC3 Para 9

<sup>80</sup> CESCR (n 30) GC3 Para 3

<sup>81</sup> CESCR (n 30) GC3 Para 5

employed<sup>82</sup> although states should aim to achieve full employment.<sup>83</sup> The CESCR particularly stresses the undesirability of working in the informal sector, a plight faced by migrants, due to the inevitable lack of labour right protections and furthermore those protections should also be provided to those working within domestic and agricultural environments.<sup>84</sup> States are obliged to guarantee work availability and access to that work without discrimination.<sup>85</sup> This is pertinent to GCC states where migrant workers of particular demographics are limited and/or concentrated to certain vocations (construction, trade, manual labour, and domestic work), all of which are furthermore bound to specific employers by domestic state labour and immigration laws.

States are also required to ensure that everyone is ensured just and favourable conditions of work.<sup>86</sup> These include a number of normative substantive standards as outlined and reinforced by the CESCR and are integral to the realisation of the rights for all workers including migrants without discrimination.<sup>87</sup> These standards referring to favourable conditions relate to a non-static wage that sets out both a minimum<sup>88</sup> and fair<sup>89</sup> amount of remuneration without any inherent biases or discrimination.<sup>90</sup> Furthermore, the notion of a fair wage has been derived from combining ideas of both a minimum and living wage, which ensures that a worker can sustain a decent standard of living for themselves and their family<sup>91</sup> as outlined in a 2014 ILO study entitled 'Minimum Wage Systems'. This study suggests the

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<sup>82</sup> CESCR(2006) General Comment No. 18: The Right to Work (Art. 6 of the Covenant), 6 February 2006, E/C.12/GC/18, Para 6 available at: <http://www.refworld.org/docid/4415453b4.html>> accessed 24 August 2017

CESCR (n 82) GC18 Para 6

<sup>83</sup> CESCR (n 82) GC18 Para 19

<sup>84</sup> CESCR (n 82) GC18 Para 10

<sup>85</sup> CESCR (n 82) GC18 Para 12

<sup>86</sup> ICESCR Article 7

<sup>87</sup> CESCR (2015) Right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), 20 January 2015, E/C.12/54/R.2, Para 6 available at <<http://www.refworld.org/docid/5550a0b14.html>> accessed 17 November 2015

<sup>88</sup> CESCR (n 87) Para 9-10

<sup>89</sup> CESCR (n 87) Para 11

<sup>90</sup> CESCR (n 87) Para 12

<sup>91</sup> CESCR (n 87) Para 21

notion of a fair wage combines the notion of a minimum wage and a living wage (the latter being more closely related to ICESCR Article 7(a)(ii)). There is, however, a caveat in relation to the 'minimum wage' as it could apply generally or indeed differ across sectors, regions, zones, and professional categories. Where the latter is the case, the wages cannot be applied to any form of direct or indirect discrimination and moreover the CESCR states that remuneration should not only be equal when workers perform the same or similar jobs, but also when 'their work is completely different but nonetheless of relative equal value, when assessed by objective criteria'.<sup>92</sup> Therefore, in order to assess the value of the work, evaluation factors should include the skills, responsibilities, and effort required by the worker as well as the working conditions. It could also be based on a comparison of rates of remuneration across organisations, enterprises, and professions.

Therefore, the guarantees outlined in ICESCR Article 7, are there to be systematically applied to the fullest range of workers as stipulated by CESCR, including those in vulnerable situations such as those with a disability, domestic workers, agricultural workers, foreign or migrant workers, and even those in the informal sector. The failure of not respecting the minimum wage is thus subject to penal or other sanctions. Thus state parties would need to guarantee that the necessary and appropriate measures are put into practice to ensure that any issues with regards to non-payment or under-payment of wages are dealt with. These measures should include mechanisms of effective labour inspections and promotional schemes designed to inform all workers including those who are illiterate (which is particularly true for unskilled labourers in the GCC region) on their rights.<sup>93</sup> Equal opportunity is a key aspect of any national labour policy and thus promotion through fair and transparent processes that respect human rights principles are required, with states being advised to adopt and regularly

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<sup>92</sup> CESCR (n 87) Para 13-14

<sup>93</sup> CESCR (n 87) Para 27

review special positive action measures for attaining *de facto* equality.<sup>94</sup> This is fundamentally underpinned through guarantees of non-discrimination and equality in international human rights treaties that formally mandate *de jure equality*.<sup>95</sup> Therefore, state policy should also implicate employer engagement through specific actions such as prevention, response, and monitoring/recording duties.

In terms of the environmental conditions of work, state parties should adopt national policies that are competent and thus prevent occupational accident and disease,<sup>96</sup> which also includes a provision to ensure the highest attainable level of both physical and mental health. Mental well-being has been a significant concern more recently, as HRW has documented a rise in the cases of suicide particularly amongst migrant worker in Dubai, stating that migrants were ‘distressed about their working conditions’.<sup>97</sup> As with other national policies, all aspects of economic activity should thus be covered including informal and formal sectors of work covering all categories of workers and indeed in turn all aspects of the workplace or working environment.<sup>98</sup> State parties are further required to set minimum standards that cannot be compromised in terms of rest, leisure, limitation of working hours, as well as paid periodic holiday entitlement. The CESCR promotes the realisation of the core covenant and that of other complementary covenants would aid workers to maintain an appropriate work/life balance and to avoid work-related stress, accidents, and disease.<sup>99</sup> Furthermore, the CESCR also encourages both employers and employees to understand the need for a flexible arrangement to suit both parties, and that workers should not be placed on temporary

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<sup>94</sup> CESCR (2005) General Comment No. 16 General The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant), 11 August 2005, E/C.12/2005/4, Para 15 available at <<http://www.refworld.org/docid/43f3067ae.html>> accessed 17 November 2015; CESCR (n 82) Para 33-35

<sup>95</sup> CESCR (n 94) GC16 Para 7; CESCR (n 87) Para 33-35

<sup>96</sup> ILO Occupational Safety and Health Convention 1981 (No. 155), Article 4(1)

<sup>97</sup> HRW (2006) Building Towers, Cheating Workers: Exploitation of Migrant Construction Workers in the United Arab Emirates, Volume 18 (8) November 2006

<sup>98</sup> CESCR (n 87) Para 30

<sup>99</sup> CESCR (n 87) Para 36

contracts in order to be excluded from their entitlements.<sup>100</sup> The right to work also covers freedom from unfair dismissal, which is also protected by ILO Convention No. 158 on Termination of Employment (1982) and is cross referenced by the CESC.<sup>101</sup> A case of unfair dismissal would also result in the breach of ICESCR Article 6 and furthermore allows for accessing legal mechanisms to provide redress.<sup>102</sup>

In terms of obligations related to dispute resolution, redress, and compensation the responsibilities are linked to certain provisions of the ICESCR as well as defining them in relation to general state obligations. With reference to Article 7(b): Safe and healthy working conditions, CESC mentions that state parties should not only adopt a national policy for the prevention of work-related but pertinently, the policy should also incorporate appropriate monitoring and enforcement provisions including effective investigations, and provide adequate penalties in case of violations. Additionally, CESC states that ‘workers affected by a preventable occupational accident or disease should have a right to a remedy, including access to appropriate grievance mechanisms, such as courts, to resolve disputes’. CESC also adds that in relation to Article 7(b), the national policy should cover all branches of economic activity including the formal and informal sectors and all categories of workers, which includes the protection of domestic workers as well as temporary workers, part-time workers, apprentices, self-employed persons, and migrant workers.<sup>103</sup> In relation to freedom from harassment including sexual harassment, CESC elaborated that appropriate national policies are to be applied in the workplace in both the public and private sectors, and should include processes for resolving and remedying harassment in the workplace.<sup>104</sup> Moreover there

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<sup>100</sup> CESC (n 87) Para 45

<sup>101</sup> CESC (n 82) GC18 Para 4

<sup>102</sup> CESC (n 82) GC18 Para 11

<sup>103</sup> CESC (n 87) Paras 29-30 further citing Occupational Safety and Health Convention 1981 (No. 155) Articles 1(1) and 2(1)

<sup>104</sup> CESC (n 87) Para 49(c)

should be avenues for victims for accessing justice,<sup>105</sup> focal points for assistance in relation to complaints and redress, and procedures for notification and report to a central public authority of claims of sexual harassment and resolution of such claims.<sup>106</sup>

In terms of general state obligations, CESCR states that any person that experiences a violation of their right to just and favourable conditions of work should have access to effective judicial or other appropriate remedies including adequate reparation, restitution, compensation, satisfaction, or guarantees of non-repetition.<sup>107</sup> Furthermore, courts, national human rights institutions, labour inspectorates, and other relevant mechanisms should have authority to address such violations and, where necessary, provide free legal assistance to those unable to afford legal counsel for obtaining remedies.<sup>108</sup>

The CESCR has shown its intent of realising the rights of migrants by including a specific section covering migrant workers under the heading of 'Special topics of broad application',<sup>109</sup> where it makes reference to their vulnerability of being exploited, particularly of those who are undocumented.<sup>110</sup> The section also highlights violations experienced by migrants that categorically include long working hours, unfair wages, and dangerous and unhealthy environments, all of which are blatant breaches of their right to work. It also mentions language barriers may result in migrants being inherently less aware of their rights and thus unable to access grievance mechanisms or to communicate their issues with the relevant authorities confidently. Moreover CESCR recognises that migrant workers may fear reprisals from employers and eventual expulsion if they seek to complain about unjust and unfavourable conditions at work.<sup>111</sup> All of the aforementioned are characteristic of the issues

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<sup>105</sup> CESCR (n 87) Para 49(d)

<sup>106</sup> CESCR (n 87) Para 49(g)

<sup>107</sup> CESCR(n 87) Para 56

<sup>108</sup> CESCR (n 87) Para 56

<sup>109</sup> CESCR (n 87) Para (v)

<sup>110</sup> CESCR (n 87) Para (v)

<sup>111</sup> CESCR (n 87) Para (v)



migrant workers face globally and hence CESCR draws focus onto them specifically as per its universal remit.

To reiterate, one of the most concerning areas of rights infringements related to migrant workers is centred on their status, where it is irregular. Regardless of how they acquired irregular status, irregular migrants are disproportionately exposed to human rights violations.<sup>112</sup> Irregular migrants globally face numerous violations of their fundamental rights and are subject to arbitrary arrest and prolonged detention, denial of public healthcare (due to law or administrative regulations), inadequate housing and accommodation, education, and essential social security. Irregular migrants may also be subject to exploitative situations and conditions including violence, torture, and forced labour. In such situations, irregular migrants have little recourse to remedies owing to their irregular situation. Many feel unable to inform the police or authorities when they are victims of criminal activity due to the fear of being detained and/or deported.<sup>113</sup> According to CESCR, the right to freely choose or accept work 'implies not being forced in any way whatsoever to exercise or engage in employment and the right of access to a system of protection guaranteeing each worker access to employment'.<sup>114</sup> ICESCR implicitly prohibits forced labour in Article 6, whereas ICCPR Article 8 expressly prohibits slavery, servitude, and forced labour or compulsory labour, broadly recognising the extended forms of compulsion identified in other statutes and treaty standards.

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<sup>112</sup> OHCHR (2014) UN Office of the High Commissioner for Human Rights 'The Economic, Social and Cultural Rights of Migrants in an Irregular Situation' <[http://www.ohchr.org/Documents/Publications/HR-PUB-14-1\\_en.pdf](http://www.ohchr.org/Documents/Publications/HR-PUB-14-1_en.pdf)> accessed 1 April 2016; Ryan Bernard and Mantouvalou, Virginia (n 58)

<sup>113</sup> OHCHR (n 112)

<sup>114</sup> CESCR (n 82) GC18 Para 6

### 1.2.4 State Duties in Relation to the Core International Conventions

CESCR has generally identified and imposed three duties upon states, which are to 'respect, protect and fulfil' the right to work.<sup>115</sup> In relation to this, the inclusion of the terms 'disadvantaged', 'marginalised' and 'vulnerable' have been referred to by the CESCR in General Comment 18 numerous times in a manner that encompasses and indeed refers to migrant workers in connection to 'core obligations' etc. in order to ensure their non-discrimination and equal protection. Moreover, treaty monitoring bodies and other human rights mechanisms such as the Committee on Migrant Workers, have consistently described migrants, particularly those that are deemed irregular, as a vulnerable group entitled to particular protection when states implement their treaty obligations.<sup>116</sup>

As with all rights, retrogressive measures are *prima facie* violations of the duty to 'respect'. In terms of migrant workers and their involvement with third parties (such as recruitment agencies) a failure to appropriately regulate them and thus failing to provide the required level of protection is also a breach of the duty to 'protect' the right to work.<sup>117</sup> In terms of the duty to 'fulfil', this has been subdivided into obligations of (1) provision, (2) facilitation, and (3) promotion of the right to work. Provision entails the adoption of national policies, such as providing public and private employment services at national and local levels of government in order to achieve full employment (or take proactive steps in realising it).<sup>118</sup> It also involves states making efforts in establishing dispute resolution, redress, and compensation mechanisms for all workers that experience violations of their rights (see earlier discussions). This also pertinently includes loss of employment, something that is particularly relevant to

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<sup>115</sup> CESCR (n 82) GC18 Para 21; Retrogressive measures can only be taken if they somehow enhance the enjoyment of other ICESCR after taking into consideration of all alternatives.

<sup>116</sup> CMW (2001) General Comment No. 1, 23 February 2011 CMW/C/GC/1 available at <[http://www2.ohchr.org/english/bodies/cmw/cmw\\_migrant\\_domestic\\_workers.htm](http://www2.ohchr.org/english/bodies/cmw/cmw_migrant_domestic_workers.htm)> accessed 27 May 2016

<sup>117</sup> CESCR (n 82) GC18 Para 35

<sup>118</sup> CESCR (n 82) GC18 Para 26

economic environments such as the GCC, where contracts are terminated on tenuous grounds or where migrants are held in exploitative situations at the threat of losing both their employment and immigration status.<sup>119</sup> Facilitation of the right to work includes enabling and assisting all individuals and groups to get into a position to gain employment and to implement appropriate technical and vocational education plans.<sup>120</sup> Promotion of the right to work includes the implementation of 'educational and informational programmes to instil public awareness on the right to work'<sup>121</sup> in both public and private sectors, and a failure to do so would thus violate the fulfilment obligation.

CESCR states that in order to ensure accountability, state parties should establish a 'functioning system of labour inspectorates to monitor all aspects of the right for all workers' which also extends to informal, domestic, and migrant workers.<sup>122</sup> Moreover, the CESCR mentions that the inspectorates should be:

**Independent and adequately resourced; staffed with trained professionals;  
and have the authority to enter workplaces freely and without prior notice,  
make recommendations to prevent or remedy problems and facilitate access  
to justice for victims.**

Thus, it includes taking steps to prevent, investigate, punish, and redress abuse through effective policies, legislation, regulations, and adjudication.<sup>123</sup> Additionally, the CESCR also places a duty on states to 'adopt and implement a national employment strategy and plan of action', which should target 'disadvantaged and marginalised individuals and groups' (such as

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<sup>119</sup> CESCR (n 82) GC18 Para 26; Kapiszewski, Andrzej (n 17); Anh Nga Longva (n 28)

<sup>120</sup> CESCR (n 82) GC18 Para 27; CESCR (1999) General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10, Para 16 available at <<http://www.refworld.org/docid/4538838c22.html>> accessed 18 November 2015; UNESCO Convention on Technical and Vocational Education 1989

<sup>121</sup> CESCR (n 54) GC18 Para 36

<sup>122</sup> CESCR (n 87) Para 54; CESCR has highlighted states

<sup>123</sup> CESCR (n87) Para 58

migrants)<sup>124</sup> and furthermore comprise ‘indicators and benchmarks by which progress’ can be suitably measured and reviewed.<sup>125</sup> The CDESCR also stipulates that relevant groups from the community and civil society, such as trade unions and employer groups, as well as international organisations (e.g. ILO) should be involved in the design, execution, and the monitoring of such plans.<sup>126</sup>

International standards providing rights and protection are elucidated on not only for the period of time migrants workers are in their host countries, but also for every stage of the of the labour migration process.<sup>127</sup> Such protections are intended to guide states in formulating and implementing national law and policy and are applicable to all regardless of status. Moreover, the CDESCR has encouraged various states to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) 1990 that implies that it accepts the bifurcated regime of rights applicable to documented and undocumented migrant workers.

### **1.2.5 International Convention on the Protection of the Rights of All Migrant Workers & Members of Their Families (ICRMW) 1990**

The most important and overarching human rights treaties and conventions have been widely ratified which, in turn, extends protection to all human beings including documented and undocumented migrants, as highlighted in the previous section. Despite the universality of such core conventions, both the UN and its specialised agency, the ILO developed specific

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<sup>124</sup> CDESCR (n 82) GC18 Para 44; terms such as ‘disadvantaged’, ‘marginalised’ and ‘vulnerable’ has been referred to by CDESCR in a manner which encompasses and indeed refers to migrant workers in connection to ‘core obligations’ etc. in order to ensure their non-discrimination and equal protection.

<sup>125</sup> CDESCR (n 82) GC18 Para 31

<sup>126</sup> CDESCR (n 82) GC18 Para 38,40 and 42

<sup>127</sup> (1) Pre-departure, when migrants workers leave their home countries; (2) post-departure and work, after they leave and while they work in their destination/host countries; (3) and return to their home countries.

conventions for migrant workers. Seven of the nine instruments were identified as requiring universal application at the World Conference on Human Rights, held in Vienna in 1993.<sup>128</sup> More recently, the UN has listed nine of its international human rights instruments as being core, which includes ICRMW. Therefore, it is apparent that there is clearly a number of cross-cutting themes/issues forming the basis of clusters of human rights, relating not only to all human beings, but also specifically addressing migrants.

The development of the ICRMW is rather significant as there has been a historical dialogue covering common global concerns, themes, and issues related to migrants. These concerns can be widely summarised as discrimination, trafficking, deportation, working conditions, irregular migrants, and equality in accessing the law. The development of the ICRMW thus stems back to the radical economic and social changes during the 1960s and 1970s (including the oil crises of the 1970s and the subsequent recession). During that period states became concerned with irregular (or clandestine) migration and potential associated abuses led to the UN expressing concerns for migrant workers through a number of General Assembly resolutions.<sup>129</sup> These led to the timely adoption of the various ILO migrant workers conventions. However, following their adoption of them, a campaign was undertaken for a UN convention for the protection of migrants.<sup>130</sup> Furthermore, states such as Mexico and Morocco became concerned that the ILO's tripartite nature would award a too prominent role

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<sup>128</sup> Two further universal instruments were established in 2006. Each has established a committee of experts to monitor implementation of the treaty provisions by its States parties.

<sup>129</sup> General Assembly Resolution 2920 (XXVII) 15 November 1972, Exploitation of Labour through Illicit and Clandestine Trafficking; 3224 (XXIX) 6 November 1974, Measures to Improve the Situation of Migrant Workers; 3449 (XXX) 9 December 1975, Measure to Ensure the Human Rights and Dignity of All Migrant Workers; A/RES/31/127 16 December 1976, Measure to Improve the Situation and Ensure the Human Rights and Dignity of All Migrant Workers; A/RES/32/120 16 December 1977, Measure to Improve the Situation and Ensure the Human Rights and Dignity of All Migrant Workers; A/RES/33/163 20 December 1978, Measure to Improve the Situation and Ensure the Human Rights and Dignity of All Migrant Workers

<sup>130</sup> De Guchteneire, Paul and Pécoud, Antoine (2009) 'Introduction: The UN Convention on Migrant Worker Rights' in *Migration and Human Rights* edited by De Guchteneire, Paul, Pécoud, Antoine and Cholewinski, Ryszard (UNESCO Publishing, Cambridge University Press 2009) 7

to unions.<sup>131</sup> A preference existed for a UN convention, because (unlike ILO treaties) this could be subject to variation in terms of drafting and the eventual adoption through the United Nations General Assembly, making it easier to accommodate states' concerns, as it was perceived that ILO structures gave powerful industrialised countries a greater say.<sup>132</sup> It is notable that, in 1973, the UN Economic and Social Council (ECOSOC) requested the undertaking of a study on migrant workers resulting in the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities appointing one of its members as Special Rapporteur.<sup>133</sup> The report recognised the existence of two aspects to the problem, namely illicit and clandestine trafficking operations, along with the discriminatory treatment of migrant workers in host states. As a result, a series of draft recommendations was submitted by the Special Rapporteur, which included a proposal that the UN should be involved in the elaboration of future international instruments relating to migrant workers to ensure that all humanitarian aspects of these issues were fully covered.<sup>134</sup> This led to a UN resolution establishing a working group for such a convention.<sup>135</sup>

The drafting process began shortly afterwards, initially led by Mexico and Morocco. Due to the potential ramifications of such a convention, a multitude of forces affecting the negotiation arose, leading to a sub-classification of four distinctive groups: (1) a G-77<sup>136</sup> group,

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<sup>131</sup> Böhning, W.R. (1991) 'The ILO and the New UN Convention on Migrant Workers: The Past and Future' *International Migration Review* 25(4) 698-709

<sup>132</sup> Ryan, Bernard (2013) 'In Defence of the Migrant Workers Convention: Standard Setting for Contemporary Migration' in *The Ashgate Research Companion to Migration Law, Theory and Policy* edited by Juss, Satvinder S. (Routledge Ashgate Publishing, Abingdon UK, 2013) 491-517

<sup>133</sup> Warzazi, Halima (1975) 'Exploitation of Labour through Illicit and Clandestine Trafficking', Final Report U.N. Doc. E/CN.4/Sub.2/L.629, 4 July 1975, Draft Recommendations U.N. Doc. E/CN.4/Sub.2/L.636, 9 September 1975

<sup>134</sup> Warzazi, Halima (n 133)

<sup>135</sup> General Assembly Resolution A/RES/34/172 17 Measure to Improve the Situation and Ensure the Human Rights and Dignity of All Migrant Workers, 1979 General Assembly during its Thirty-fourth Session

<sup>136</sup> G-77 or 'Group of 77' G-77 was a coalition of seventy-seven developing countries, which formed in response to the inherent hegemonistic nature of GATT, the International Monetary Fund (IMF) and the World Bank, at the founding United Nations Conference on Trade and Development (UNCTAD) in 1964, Geneva. The G-77 is the largest intergovernmental organisation (now with 134 members) of developing countries in the United Nations, which provided the means for the countries of the South to articulate and promote their collective economic interests and enhance their joint negotiating capacity on all major international economic issues within the United Nations system, and promote South-South cooperation for development.

represented by the co-sponsors of the initial draft including Mexico, Morocco, Algeria, Turkey, Egypt, Pakistan, Barbados, Yugoslavia, and India (India also pursued their own agenda by proposing their own policies), (2) an 'Eastern group' represented by the USSR and its allies, (3) a group of Mediterranean and Scandinavian countries including Finland, Greece, Italy, Portugal, Spain, Sweden, and Norway (known as the MESCA group of countries), and (4) a grouping of Western industrialised nations outside of MESCA regarded as major labour receiving countries, such as the United States, Canada, Denmark, the Netherlands, Australia, and later, Japan. The drafting process was hampered by a number of issues, with the text of the ICRMW and the *travaux préparatoires* reflecting numerous tensions and compromises.<sup>137</sup> The drafting process of the ICRMW took ten years (i.e. from 1980 to 1990), with the principal working methods of the working group being based on consensus, rather than a majority vote.<sup>138</sup> The primary disadvantage of this approach was its inevitable outcome of compromises, to the extent that certain proposals possessing strong rights at the beginning of the drafting process were, by the end, diluted to mere recommendations.<sup>139</sup> The drafting process was divided into two readings: the first was largely an exploratory exercise in which state delegates were free to express their own visions and opinions, and the second reading involved the finalisation of the text and was therefore subject to national sovereign interests.<sup>140</sup>

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<sup>137</sup> Lonroth, Juhani (1991) 'International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in the Context of International Migration Policies: An analysis of Ten Years of Negotiation' *International Migration Review* 25(4) 710-736

<sup>138</sup> Lyon, Beth (2010) 'The Unsigned United Nations Migrant Worker Rights Convention: An Overlooked Opportunity to Change the "Brown Collar" Migration Paradigm' *International Law and Politics* 42 389-500 available at <<http://nyujilp.org/wp-content/uploads/2013/02/42.2-Lyon.pdf>> accessed 16 July 2016

<sup>139</sup> Cholewinski, Ryszard (n 54) 137

<sup>140</sup> OHCHR 'Rights of All Migrant Workers (Part III of the Convention) Travaux Préparatoires' document not dated available at <<http://www2.ohchr.org/english/issues/migration/taskforce/docs/draftinghistoryrev1.doc>> accessed 10 August 2016

The official ILO involvement during the drafting process was minimal, although unofficially it was considerable, largely due to its special relationship with MECSA.<sup>141</sup> During the deliberations of the UN drafting working group, a number of countries (Australia, Germany, Japan, the United States, and the Gulf States) indicated that they were unlikely to ratify the ICRMW, signposting that national interests and impacts were their primary concern, rather than the protection of migrants' human rights.<sup>142</sup> Furthermore, in addition to a high turnover of delegates, those taking part not only represented their governments, but inherently held personal views based on their own beliefs and culture.<sup>143</sup> In such circumstances (and particularly in the presence of a homogenisation of political, economic, social, and theological views), negotiations could have been subject to the inherent psychological stresses of the personalities involved, particularly against the backdrop of post-war global ideas. This could have been exacerbated by the high turn-around of delegates during the lengthy ten-year drafting process (with Moroccan and Finish delegates remaining the only two present from the initial stage). The proposals from MESCA eventually became the basis of the final text.<sup>144</sup>

NGO and civil society engagement has been present during the life cycle of the ICRMW, although minimally during the drafting process itself, which was particularly unusual for the development of a key instrument of human rights. This was despite the fact that prior to, and during the drafting period, human rights' NGOs were limited in number, with those present being primarily focused on civil and political rights, or on combating apartheid.<sup>145</sup> During the time of the Cold War, a show of political power and trade domination was given precedence

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<sup>141</sup> Böhning, W.R. (n 131); Cholewinski, Ryszard (n 54) 145

<sup>142</sup> Cholewinski, Ryszard (n 54)

<sup>143</sup> Lonroth, Juhani (n 137)

<sup>144</sup> Lonroth, Juhani (n 137)

<sup>145</sup> Grange, Mariette and D'auchamp, Marie (2009) 'Role of civil society in campaigning for and using the ICRMW' in *Migration and Human Rights* edited by De Guchteneire, Paul, Pécoud, Antoine and Cholewinski, Ryszard (UNESCO Publishing, Cambridge University Press) 76



over any soft issue. However, there was a considerable lack of official publicity and educational material for ICRMW to raise awareness, with the UN taking six years to publish the first booklet relating the text of the convention.<sup>146</sup> Nonetheless, civil society engagement gathered steadily, but with a slow momentum directly following the adoption of the ICRMW. This included various NGOs, both at national and regional levels, trade unions, and other organisations, either faith based, or focused on women's rights. As civil society advocacy became increasingly coordinated and widespread, with international, regional, and national coalitions taking form globally, campaigns for ratification became increasingly intense. However, ratification has been poor, despite these efforts and official encouragement.<sup>147</sup>

Furthermore, there has always been a limelight spectacle in terms of international focus when issues related to migration have been considered. Historically, rather than looking directly at protecting the basic rights of migrant workers, this could be related to the humanitarian needs of refugees, with more recent focus on terrorism, child labour, and trafficking. Although these 'limelight' concerns are highly important issues that need to be continually debated and addressed, they distract states' attention from the plight of migrant workers in general. Debate has therefore been focused on these unanimously acknowledged issues while inadvertently neglecting others deemed as being less important by default. Despite this, the protection of the rights of non-citizens has always remained a complex political challenge and therefore such warranted and worthy distractions may have served as an easy manoeuvre away from the more precarious domestic legal dilemmas of ratifying the ICRMW. This is regarded as the most comprehensive body of international agreements in the field of migration and human rights, as it sets out a standard in terms of migrants' access to fundamental rights, encompassing all aspects of their labour including education, health,

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<sup>146</sup> Grange, Mariette and D'auchamp, Marie (n 145)

<sup>147</sup> Lyon, Beth (n 138); Grange, Mariette and D'auchamp, Marie (n 145) 74-79

culture, political participation, and access to justice.<sup>148</sup> It also constitutes the first comprehensive universal codification of migrants' rights.

The ICRMW builds on other international human rights instruments, however, it does not necessarily incorporate them, as the language in the preamble mentions that it 'takes into account' the principles embodied in general international human rights instruments. The preamble, in addition to referring to the various conventions and international instruments also refers to the progress made through regional and bilateral treaties that show progress in recognising migrant rights. The *raison d'être* for the ICRMW is proclaimed that it is 'convinced that the rights of migrant workers and members of their families have not been sufficiently recognised everywhere and therefore require appropriate international protection'.<sup>149</sup> The preamble links migration and the hardships faced by migrants, highlighting the extent the migration phenomenon has had in terms of its impact on them and their families. The preamble sets out the general policy *vis-à-vis* this vulnerable and exploited group. It also highlights that irregular migrant workers face even greater hardships than regular migrants, generally, as well as in the employment context and hence advocates action to prevent and eliminate illegal migration altogether.

The ICRMW is divided into nine parts,<sup>150</sup> all of which are applied to all migrant workers and their families without distinction of any kind.<sup>151</sup> Unlike the ILO C143, which permitted selective application in certain cases such as undocumented workers, state parties are prohibited by Article 88 of the ICRMW from excluding certain categories of migrants from its intended

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<sup>148</sup> The ILO approach is somewhat limited scope in its approach as it does not competently deal with such concerns as culture, education and political participation.

<sup>149</sup> ICRMW Preamble Recital 11

<sup>150</sup> Scope and definitions; non-discrimination with respect to rights; human rights of all migrants; other rights of migrants who are in a regular situation; provisions applicable to particular categories of migrants promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families; Application of the Convention (which contains control machinery; general provision; and final provisions (which contains the provision on reservations).

<sup>151</sup> ICRMW Article 1

protection. Moreover, reciprocity for certain aspects of the ICRMW was rejected during the drafting process, on the grounds that it 'was inconsistent with the universality of human rights and could lead to discrimination in the treatment by host countries of migrant workers depending on which country they came from'.<sup>152</sup>

Part I of the convention contains the most comprehensive definition of 'migrant worker' found in any international instrument pertinent to them. It includes a broad, inclusive coverage of all migrants, their families, and also states when migrants are considered to be in a regular or irregular situation.<sup>153</sup> Part II (solely Article 7) places an obligation upon state parties to guarantee the rights of all migrant workers and their families without distinction. Part III continues and indeed the rest of the convention by recognising equality in terms of equal treatment between nationals and migrants, both regular and irregular, men and women. Many of the rights enumerated therein are civil and political rights of which the majority are inherently classed as being 'fundamental' rights. The language is a textual repeat of that in the ICCPR. Part III, in terms of economic, social, and cultural rights, unambiguously provides for equal treatment between migrant workers and national counterparts in respect of remuneration and 'other conditions of work', which includes overtime, hours of work, weekly rest, holidays with pay, safety, health, and termination of the employment relationship,<sup>154</sup> while 'other terms of employment' encompass the minimum age of employment and restriction on home work.<sup>155</sup> Both of these are open in that they may be extended by national law and practice. The ICRMW, regardless of migrant legal status, prohibits derogation from the equal treatment principle in private contracts of employment, and places responsibility

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<sup>152</sup> Report of the open-ended Working Group on the Drafting of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families UN Doc A/C.3/44/1 (19 June 1989) Para 242 available at <<http://hr-travaux.law.virginia.edu/subjects/migrant-workers-families>> accessed 18 March 2016

<sup>153</sup> ICRMW Article 2-6

<sup>154</sup> ICRMW Article 25 1(a)

<sup>155</sup> ICRMW Article 25 1(b)

upon state parties to take all appropriate measures to ensure that it is upheld. This broad inclusion, however, did meet resistance during the drafting. The argument put forward was that it placed all migrants, including those who were illegally residing in a given country, on an equal footing with national workers in respect of social conditions and working life would prove to be 'impracticable'.<sup>156</sup> However, the fact that this caveat was eventually included is evident that a consensus was indeed reached highlighting the paramount position of non-discrimination within the ICRMW.

Part IV also covers work and employment conditions to regular migrants: Articles 49 and 51 contain provisions that regulates the rights of migrant workers in the event of loss of employment, Article 54(1) ensures equal treatment to nations in respect of protection against dismissal, unemployment benefits, access to public work schemes intended to combat unemployment, and access to alternative employment in the event of loss/termination of work or remunerated activity. Article 55 supplements the provision of Article 25, in that it protects the guarantee of equality with nationals. There are, however, some tensions within the ICRMW in terms of the preservation of the principle of state sovereignty and the right to free choice of employment,<sup>157</sup> evident in Articles 52 and 53, which outlines rights limited to legal migrants. This is in contrast with the comprehensive coverage of rights based on work and employment conditions, all of which is applicable to all migrant workers. Thus the right to free choice of employment is subject to a number of restrictions reflecting the interest of states to retain sovereign control over sensitive key areas, which has significant economic implications. Other restrictions may be imposed in respect of migrant workers that are under

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<sup>156</sup> Report of the open-ended Working Group on the Drafting of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families UN Doc A/C.3/42/1 (22 June 1987) Para 196

<sup>157</sup> Cholewinski, Ryszard (n 54) 161; Bosniak, Linda (1991) 'Human Rights, State Sovereignty, and the Protection of Undocumented Migrants Under The International Convention For The Protection of The Rights of All Migrant Workers and Members of Their Families' International Migration Review 25(4) 737-770 available at <<http://web.pdx.edu/~nwallace/CRHSP/HumanRightsStateSov.pdf>> accessed 01 October 2016

time constraints such as temporary work contracts.<sup>158</sup> In this situation, a host state may restrict the choice of employment for those who have been lawfully resident and employed for a period not exceeding the two years (as per the two-year restriction imposed by Article 14(a) of the C143).

In terms of trade union rights, the ICRMW introduces two provisions, Articles 26 and 46 located in Part III and IV respectively. The first provides migrants with the key following rights: to take part in meetings and activities of trade unions and of any other associations established in accordance with law, with a view to protecting their economic, social, cultural, and other interests,<sup>159</sup> to join freely any trade union and any such association,<sup>160</sup> and to seek the aid and assistance of any trade union and of any such association.<sup>161</sup> These rights, being placed under Part III of the convention, makes them applicable to all migrants, including those that are irregular. Furthermore, Article 40(1) allows migrants and their families in a regular situation to form their own association and trade unions in the host state, for the 'promotion and protection of their economic, social, cultural and other interests'. During the development of these specific rights, opposition and concern was aired by a number of states, specifically concern was shown for trade union rights being extended to illegal workers, and for allowing the establishment of unions based on national origin, which would in turn compete with existing national trade unions.<sup>162</sup>

In respect to occupational health and safety, the ICRMW only contains brief references: Article 25(1)(a) covers the equal treatment in respect of remuneration and, *inter alia*, other

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<sup>158</sup> This is related to migrant workers and those who have been admitted permanently through immigration.

<sup>159</sup> ICRMW Article 26 1(a)

<sup>160</sup> ICRMW Article 26 1(b)

<sup>161</sup> ICRMW Article 26 1(c)

<sup>162</sup> Report of the open-ended Working Group on the Drafting of an International Convention on the Protection of the Rights of All Migrant Workers and Their Families UN Doc A/C.3/37/1 Para 18 (June 1982)

conditions of work, Article 70 (only applies to migrant workers and their families) obliges states to adopt,

**Measures not less favourable than those applied to nationals to ensure that working and living conditions of migrant workers and members of their families in a regular situation are in keeping with the standards of fitness, safety, health and principles of human dignity.**

There are some references to the provision of adequate housing for regular migrants and also to prevent exploitation in respect of rents. The minimal nature of direct references in the ICRMW to housing migrant workers and their families shows that the provision is phrased to grant broad discretion to state parties in deciding whether to permit the entry of family members.

Equality between nationals and migrants in respect of access to vocational guidance and placement services, vocational training, retraining facilities, and institutions is guaranteed under Articles 43(1)(b) and (c), however, they are only applicable in relation to migrants that are of regular status (provisions found in Part IV of the ICRMW). Again, under Article 25, all migrant workers are afforded equal treatment with national workers in respect of, *inter alia*, other conditions of work. Although this provision does not mention vocational training etc., room for additional conditions of work and employment could be made in accordance with 'national law and practice' for example, if a state party considers vocational guidance and training as a necessary competent of its labour laws.

In addition to provisions protecting trade union rights (and those rights linked to associations) that essentially provide a viable means for campaigning and ensuring just and favourable conditions of work, Article 83 of the ICRMW requires that each state ensure three separate caveats relating to dispute resolution, redress, and remedy.

1. 'That any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity'.
2. That any persons seeking such a remedy shall have his or her claim reviewed and decided by competent judicial, administrative, or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.
3. That the competent authorities shall enforce such remedies when granted.

Moreover, Article 84 requires that each state party 'undertakes to adopt the legislative and other measures that are necessary to implement the provisions of the present Convention'. This affirms that the state parties need to ensure that the principles are respected through both effective domestic law and providing the means necessary for investigating and addressing any contraventions that take place.

Despite its adoption by the UN General Assembly in 1990,<sup>163</sup> entering into force on 1 July 2003,<sup>164</sup> the ICRMW has only been ratified by 48 out of 198 states.<sup>165</sup> The first country to ratify the ICRMW was Egypt in 1998, followed by Morocco in the same year, both of which are Muslim majority countries (MMCs). None of the six GCC member states has ratified the treaty, nor have any of the major immigration countries including the democracies of the USA, Great Britain, and most of Europe. This is in sharp contrast to the status of other core instruments of human rights, for which almost universal endorsement has taken place through the means of ratification. This highlights the fact that, while accepting and promoting the idea of human rights, high-income countries have failed to apply such acceptance through ratifying the

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<sup>163</sup> UN General Assembly Resolution 45/158 of 18 December 1990

<sup>164</sup> Entry in force was triggered by twenty ratifications

<sup>165</sup> Status of ratifications on 5 August 2015

ICRMW. This lack of participation demonstrates an unprecedented level of general oversight in relation to migrants being granted protection by international UN law, and (in terms of ratifications) this is also true of the migrants' countries of origin.

It can therefore be concluded that, where there has been a failure to specifically ratify the ICRMW, the application of a further core treaty acts to provide a level of protection for migrant workers. Moreover, other treaties explicitly refer to non-nationals, and hence are inclusive of migrants, particularly through the strong and clear language of the non-discriminatory clauses within them.<sup>166</sup> Other aspects relating to issues focussing on migrant workers are also strongly implied through the language employed, particularly that relating to rights (including the right to life, freedom of association, and protection of the family),<sup>167</sup> or to state the right of all to aspects including social security<sup>168</sup> or an adequate standard of living.<sup>169</sup> Aspects pertaining to eliminating general racial discrimination in all forms<sup>170</sup> are described within the ICERD, a convention comprehensively accepted by the majority of states. In addition, UN human rights conventions also cover the prohibition of slavery, forced labour, human trafficking,<sup>171</sup> sexual exploitation, and abuse.<sup>172</sup> The UN's core conventions also guarantee migrants the right to the freedom of movement, and the ability to leave and return to a country (including their country of origin),<sup>173</sup> the right to work, to enjoy favourable conditions of work,<sup>174</sup> and the right to form and join trade unions.<sup>175</sup> When it comes to

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<sup>166</sup> ICCPR Articles 2(1) and Article 26; ICESCR Article 2(1); CRC Article 2(1)

<sup>167</sup> ICCPR Articles 6, 22 and 23

<sup>168</sup> ICESCR Article 9

<sup>169</sup> ICESCR Article 11

<sup>170</sup> ICERD Article 1

<sup>171</sup> ICCPR Article 8; CRC Article 35; CEDAW Article 6

<sup>172</sup> CRC Article 34

<sup>173</sup> ICCPR Article 12

<sup>174</sup> ICESCR Article 6 and 7

<sup>175</sup> ICESCR Article 8(1)



accessing justice, a number of specific references are in place to ensure equal treatment for all in front of the law,<sup>176</sup> judicial systems, or tribunals.<sup>177</sup>

Despite the protection of migrants' human rights being a global responsibility, states and their governments are acceding parties to international human rights instruments, and will therefore remain the principal actors in (or indeed guardians of) the human rights of all individuals residing within their territories. Therefore, states are, in principle, committed to extending protection to migrants. However, for a number of reasons, they fail to do so.<sup>178</sup> Some (generally Western) states express the fact that, in light of existing international law and through the enactment of their own national legislation, they already protect migrant workers in a satisfactory manner, thus arguing the superfluity of ratifying the ICRMW.<sup>179</sup>

In reference to MMCs, only Morocco has expressed an opinion during the drafting stage in relation to Article 12, in which the delegation from Morocco expressed concern regarding apostasy: 'Morocco was an Islamic country and, according to Islam, a Muslim could not change his religion to adopt another religion'. This issue has also been raised in various situations with regard to the protection of thought, conscience, and freedom of religion.<sup>180</sup> A number of practical considerations exist that deter states from ratifying the ICRMW, including the fact that they may only have a small number of migrants on their territory and therefore do not see the need to domestically legislate, the convention is not sufficiently well known nor understood, and is therefore not high on the political agenda, and some states lack the

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<sup>176</sup> ICCPR Article 3

<sup>177</sup> ICERD Article 5(a), 6

<sup>178</sup> Mattlia, S. Keikki (2000) 'Protection of Migrants' Human Rights: Principles and Practice' International Migration 38(6) 53-71

<sup>179</sup> Oger, Hélène (2009) 'The French political refusal on Europe's behalf' in *Migration and Human Rights* edited by De Guchteneire, Paul, Pécoud, Antoine and Cholewinski, Ryszard (UNESCO Publishing, Cambridge University Press 2009) 333

<sup>180</sup> Abiad, Nisrine (2008) *Sharia, Muslim States and International Human Rights Treaty Obligations: A comparative Study* (British Institute of International and Comparative Law)

60: Saudi Arabia abstained during the development of the UDHR, objecting specifically to Article 18 on the grounds that Islam does not allow apostasy and in rejection of encouraging missionary work on the Arabian Peninsula.

necessary infrastructure to enact and apply the convention accordingly, and are therefore reluctant to ratify it.<sup>181</sup> Moreover, ratification would lead to international involvement through monitoring of its actual implementation and adherences to the ICRMW, which could, in turn, lead to embarrassing scenarios in which their shortcomings (or violations) of human rights could be highlighted at an international level. There are also broad social, economic, and political reasons for the limited number of ratifications. This is particularly evident in states that have no wish for international agreements to interfere with their domestic migration policies, which they view as issues of strict national sovereignty. In regions with economic instability, and/or high unemployment amongst nationals, states have a tendency to award preference to nationals over foreign workers.<sup>182</sup> Immigration controls effectively set the terms of a legitimised less favourable treatment of migrants, in comparison to the levels of protection granted to indigenous citizens.<sup>183</sup>

A number of states are reluctant to ratify the ICRMW due to a belief that it grants too many rights and privileges to migrants. The convention incorporates migrant workers' families, thus recommending the facilitation of family reunification. This is particularly true for states granting fixed term contracts, containing no rights to citizenship or naturalisation. State policies (as well as indigenous public perception) tends to promote the urge to control (or even reduce) the number of migrants living within their borders. Preference is consequently given to productive migrants due to an economic need, i.e. workers rather than their dependent family members.<sup>184</sup> When it comes to the ICRMW's references to

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<sup>181</sup> Taran, Patrick (2000) 'Status and Prospects for the UN Convention on Migrants' Rights' *European Journal of Migration and Law* 2(1) 85-100; De Guchteneire, Paul and Pécoud, Antoine (n 130) 14-17

<sup>182</sup> De Guchteneire, Paul, Pécoud, Antoine (2006) 'Migration, Human Rights and the United Nations: An Investigation into the Obstacles to the UN Convention on Migrant Workers' Rights' *Windsor Yearbook of Access to Justice*, 24(2) 241-266

<sup>183</sup> Anderson, Bridget (2014) 'Precarious Pasts, Precarious Futures' in *Migrants At Work: Immigration & Vulnerability in Labour Law* edited by Costello, Cathryn and Freedland, Mark (Oxford University Press, 2014) 33

<sup>184</sup> Lyon, Beth (n 138)

undocumented/irregular migrants, although not encouraged, it ensures their access to basic human rights, whereas domestic policy and perception can show a preference for the detention, and ultimate expulsion, of such migrants. Several states can also be apprehensive about granting increased rights to migrants, and this can result in ensuring their country becomes more attractive to irregular migrants. Thus, a failure to ratify the ICRMW is considered an aspect of their strategy to discourage potential migrants.<sup>185</sup>

### **1.3.1 UN Human Rights Council & Treaty Monitoring Bodies: General Comments & Observations on MMCs**

Although MMCs have a common religion, there are clear differences when considering their legal and political systems and indeed their position to international labour standards, all of which are influenced by their respective cultural, social, and economic factors. Bearing that in mind, the second chapter of this thesis will focus on Islam, in order to establish what its position is in terms of human, labour, and migrant rights and what it states in relation to the notion of dispute resolution.

Nevertheless, though there are in existence approximately fifty MMCs and a body of further countries with significant Muslim populations, there is a tendency for perceptions to rely on oversimplification (or homogenisation) of a number of issues concerning them in terms of their legal and theological influences.<sup>186</sup> Moreover, comparative research of Muslim jurisdictions highlights customary practices that are not Islamic but continue to be presented as such in local and even in regional contexts.<sup>187</sup> Consequently, in order to assess the impact

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<sup>185</sup> Oger, Hélène (n 179) 314

<sup>186</sup> Graham, William A. (1993) 'Traditionalism in Islam: An Essay in Interpretation' *Journal of Interdisciplinary History* XXIII:3, 495-522

<sup>187</sup> Kurzman, Charles (1998) *Liberal Islam: A Sourcebook* (Oxford University Press) 5-6

of the core international instruments and indeed to establish what obligations are placed on non-ratifying states such as the UAE, it is necessary to examine how the various monitoring bodies have responded in relation to Islamic and MMCs in terms of their observations, general comments and recommendations. Furthermore general these documents cover a wide range of subjects from the comprehensive interpretation of substantive provisions to general guidance on the information that should be submitted in state reports relating to specific articles of the treaties. General comments in particular also have the scope to have deal with wider cross-cutting issues, such as the role of national human rights institutions or the rights of minorities including migrant workers. In the context of universal labour and human rights this is particularly important as it provides a normative benchmark for states that have failed or refused to ratify key conventions, a practice evident in the GCC region. As will be made apparent in due course, there are clear themes to the nature of the concluding observations made and also in terms of reservations.

The initial focus in respect of what is stipulated in terms of observations, recommendations, and comments will be made in light of CESC, as ICESC is broad in its coverage and in its ratification status amongst MMCs. Furthermore, CESC has made clear and specific observations and recommendations in terms of what is expected in order to protect the rights of migrant workers. The focus of the CESC is usually around aspects of,

1. contradictions in terms of domestic application,
2. issues based around non-discrimination, and
3. trade unions and strike related rights.

Although ratification amongst GCC countries is very limited, Kuwait and Bahrain are however party states.<sup>188</sup> Their ratification can be attributed to certain reasons, specific to a particular juncture of their histories. In Bahrain, Sheikh Hamad Bin Khalifa's coming to power in 1999 saw the ratification of ICCPR and ICESCR. These were accompanied domestic political reforms under the National Action Charter in 2001, amid demands from the opposition activists, moreover, the ratification of the various human rights treaties are somewhat regarded as part of framework of concessions offered by Bahrain's the ruling elite authority to them and acts for legitimising the state to the international community.<sup>189</sup> In reference to Kuwait, the period of peak ratification began in 1991, the same year that the country had been liberated by international coalition forces after the Iraqi invasion. Therefore in connection to Kuwait's ratification of both ICCPR and ICESCR, was regarded as a gesture of gratitude towards the international community.<sup>190</sup>

Despite acceding to the ICESCR, its monitoring body has raised issues in its reports on Kuwait regarding the deficiencies in domestic laws and their justiciability,<sup>191</sup> and the presence of discrimination, namely where migrants are not afforded the same rights as citizens.<sup>192</sup> In 2004, the Committee stated that it was 'deeply concerned about the unfair terms of employment and working conditions of migrant workers'<sup>193</sup> and in its latest report in 2013, the Committee made robust remarks about the sponsorship of foreign workers and the persistent reports of violations of the labour rights of migrant workers, all of which have led to their abuse and

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<sup>188</sup> Bahrain: ICCPR 20/09/2006 and ICESCR 27/09/2007 (no reports or comments); Kuwait: ICCPR and ICESCR, both on 21/05/1996. Neither have ratified the OP's of the ICCPR and ICESCR.

<sup>189</sup> Çalı, Başak and Ghanea, Nazila (2013) 'From Ratification to Implementation: UN Human Rights Treaties and the GCC' University College London and University of Oxford, Workshop Series Report 20 June 2013 (Workshops held in Doha, Qatar in May 2013)

<sup>190</sup> Çalı, Başak and Ghanea, Nazila (n 189)

<sup>191</sup> Çalı, Başak and Ghanea, Nazila (n 189)

<sup>192</sup> CESCR (2004) Concluding observations, Kuwait E/C.12/1/Add.98 - 7 June 2004 Para 8, 17

<sup>192</sup> CESCR (2004) Concluding observations, Kuwait E/C.12/1/Add.98 - 7 June 2004 Para 13; CESCR (2013) Concluding observations, Kuwait E/C.12/KWT/CO/2 - 18 December 2013

<sup>193</sup> CESCR (2004) Concluding observations, Kuwait E/C.12/1/Add.98 - 7 June 2004 Para 16

exploitation despite the state party's legislation protecting them (very low wages, retention of salaries, and long working hours).<sup>194</sup> In terms of trade union activity, CESCR made recommendations to Kuwait to extend trade union rights to non-nationals, in line with Article 8 of the covenant, particularly, as some industries are composed primarily of migrant workers, and in terms of strike action, the CESCR did acknowledge that strikes have taken place, however, the right needs to be protected by law.<sup>195</sup>

Yemen, a neighbouring state that has ratified the ICESCR has also been the subject of concern for the CESCR. The CESCR has also made mention of 'widespread manifestations of discrimination in Yemen against disadvantaged and marginalised individuals and groups'.<sup>196</sup> In terms of union activity, the CESCR showed concern that autonomous trade unions cannot be established outside the General Federation of Trade Unions of Yemen and that the holding of a strike by local level unions requires prior authorisation by the General Federation. Moreover, it also expressed its concern about reports of retaliatory action by private sector employers against trade union members.

In looking at the wider region, the CESCR has archetypally made similar comments in terms labour rights in general and labour rights in relation to migrant workers. The CESCR has been particular in highlighting that state party domestic labour laws often fall short of what is required in terms of the standards stipulated in the international covenant. Moreover, the exclusion of certain groups from state parties' labour law has been highlighted throughout the region, which indeed has led to migrants being subjected to exploitation. Despite the wages

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<sup>194</sup> CESCR (2013) Concluding observations, Kuwait E/C.12/KWT/CO/2 - 18 December 2013 Para 17; these issues are typical to the GCC region, as documented by HRW.

<sup>195</sup> CESCR (2013) Concluding observations, Kuwait E/C.12/KWT/CO/2 - 18 December 2013 Para 21

<sup>196</sup> CESCR (2011) Concluding observations, Yemen E/C.12/YEM/CO/2 Yemen 22 June 2011

being categorically linked to decent standards of living, minimum wages throughout the region are not imposed and protected, nor do they respond to inflation.<sup>197</sup>

With regards to trade union rights amongst Arab MMCs, they are evident in Egypt, Jordan, Algeria, Iran, Iraq, and the Syrian Arab Republic. However, where trade unions are permitted, they are also subject to restrictions usually imposed by their respective labour ministries. In response, the CESCR, in accordance with ICESCR Article 8, has typically called for trade unions to be allowed to function autonomously from government control and limitations.<sup>198</sup> Moreover, strike activity is treated even more contentiously by state parties, and the CESCR has duly noted concern with respect to workers needing to gain permission (where strikes are permitted) before doing so and workers being subject to reprisals.<sup>199</sup> Despite the impediments and restrictions to trade unions and strike action, they are indeed permitted in some capacity both within the GCC and beyond, thus setting precedence amongst MMC and Islamic jurisdictions.

### **1.3.2 Committee on Migrant Workers Concluding Observations: MMCs**

The major and most comprehensive piece of international law pertinent to migrant workers has actually been ratified by a number of MMCs,<sup>200</sup> some of which contain various degrees of *Shari'ah* influence in terms of their legal systems. Although there are not any ratifications from any of the more Islamic orthodox GCC states, there are, however, a number of party states in

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<sup>197</sup> Egypt E/C.12/EGY/CO/2-4 13 December 2013 Para 11; Yemen E/C.12/YEM/CO/2 22 June 2011 Para 14; Iran E/C.12/IRN/CO/2 10 June 2013 Para 14

<sup>198</sup> Egypt E/C.12/EGY/CO/2-4 13 December 2013, Para 13; Jordan E/C.12/1/Add.46 1 September 2000 Para 35; Algeria E/C.12/DZA/CO/4 7 June 2010, Para 11; IRAN E/C.12/IRN/CO/2 10 June 2013, Para 15; Syrian Arab Republic E/C.12/1/Add.63 24 September 2001, Para 20; Iraq E/C.12/IRQ/CO/4 October 27 2015, Para 35-36

<sup>199</sup> Egypt E/C.12/EGY/CO/2-4 13 December 2013, Para 13; Algeria E/C.12/DZA/CO/4 7 June 2010, Para 11; Iran E/C.12/IRN/CO/2 10 June 2013, Para 15; Syrian Arab Republic E/C.12/1/Add.63 24 September 2001, Para 21 and 38;

<sup>200</sup> Albania, Algeria, Azerbaijan, Bangladesh, Burkina Faso, Egypt, Guinea, Indonesia, Kyrgyzstan, Libya, Mali, Morocco, Mauritania, Syrian Arab Republic, Senegal, Tajikistan, Turkey all ICMW ratified, 17 August 2015

the wider Middle East and North African (MENA) region including Algeria, the Syrian Arab Republic, Egypt, Libya, Morocco and Turkey. Looking further afield, Bangladesh and Indonesia, both of which are typical countries of origin of low-skilled migrant workers to the UAE/GCC, have ratified the ICRMW.<sup>201</sup> That said, the MENA states provide a more meaningful backdrop for comparing the UAE and the GCC, due to the largely common language and Arabian and Islamic culture.

The monitoring body of the convention, the Committee on Migrant Workers (CMW), has indeed made comments relating to MENA states. It typically makes references to their indifferent levels of application of labour rights in terms of non-discrimination, trade union activity, rights to an effective remedy, and migrant worker recruitment practices. CMW has not only highlighted the plight of migrant workers within the state parties as well as in their destination countries.<sup>202</sup> Generally, the CMW has clarified that non-discrimination is the fundamental driver for ensuring parity between the rights of citizens and non-citizens. However, it is highlighted as a recurrent issue amongst states particularly when evaluating the application of international and domestic law in relation to irregular migrants and domestic workers. This is further exacerbated in terms of the perception of particular migrants as some are seen as more valuable than others based on nationality,<sup>203</sup> which also contravenes the International Convention on the Elimination of All Forms of Racial Discrimination that has been widely ratified within the GCC and MENA regions.

In terms of the GCC and MENA states, many of them have labour laws that have been shaped (post-independence, after colonial control) by specific factors such as flows of investment,

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<sup>201</sup> Bangladesh and Indonesia are MMCs however they are constitutionally different from Islamic GCC states as *Shari'ah* is only limited to certain aspects of law.

<sup>202</sup> CMW (2011) General comment No. 1 on migrant domestic workers CMW/C/GC/1 23 February 2011 Paras 8-11

<sup>203</sup> Report of the Special Rapporteur on the human rights of migrants, Mission to Qatar 23 April 2014, Paras 69-70



international trade, and even their social contracts that include a preference for redistribution and equity in economic and social policy, a preference for states over markets in managing national economies, reliance on state planning and control in determining economic priorities, and an encompassing vision of the role of the state in the provision of social and welfare services.<sup>204</sup> As already elaborated upon, MENA and GCC countries use state mechanisms for regulating labour not only for nationals but also for migrant workers. Collective bargaining and social dialogue between the state, employers, and particularly with employees is limited. Depending on the country, trade unions are either state-controlled or independent, but rarely represent many workers effectively.<sup>205</sup> Unionised MENA countries generally have a single trade union structure, and as discussed previously, strikes remain illegal and therefore migrant workers have very little scope for challenging the state or private employers.<sup>206</sup>

In terms of trade union rights amongst those states that have ratified the ICRMW, regular migrant workers are in large, permitted to form associations, albeit with certain restrictions. In Algeria, although migrants are able to form their own associations, the CMW noted that there were not any cases of migrants involved in trade union activity.<sup>207</sup> Turkey, even though it originally expressed a reservation to ICRMW Article 40 stating that Turkish law on trade unions only allowed citizens to form trade unions, it enacted 2012 Act No. 6356: Trade Unions and Collective Bargaining, which repealed the initial objection allowing only regular migrants the right to join and form trade unions.<sup>208</sup> However, the CMW recommended that Turkey needed to take further steps by making appropriate legislative amendments to guarantee all migrant workers, including those in an irregular situations, the right to take part in trade union

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<sup>204</sup> Angel-Urdinola, Diego F., Kuddo, Arvo (2010) 'Key characteristics of employment regulation in the Middle East and North Africa' Social Protection Discussion Paper SP No.1006 (Washington, DC: World Bank) <<http://documents.worldbank.org/curated/en/2010/07/12550651/key-characteristics-employment-regulation-middle-east-north-africa>> accessed 07 December 2015

<sup>205</sup> Angel-Urdinola, Diego F., Kuddo, Arvo (n 204)

<sup>206</sup> Angel-Urdinola, Diego F., Kuddo, Arvo (n 204)

<sup>207</sup> CMW (2010) Concluding Observations, Algeria, CMW/C/DZA/CO/1 19 May 2010, Para 19

<sup>208</sup> CMW (2016) Concluding Observations, Turkey, CMW/C/TUR/CO/1 31 May 2016, Para 71-72

activities and to freely join trade unions, in accordance with Article 26 of the convention,<sup>209</sup> and to take appropriate measures to consider the establishment of procedures for regularising the situation of migrant workers in an irregular situation, applying the principle of non-discrimination, so as to ensure that such a situation does not persist.<sup>210</sup>

In terms of the right to an effective redress and remedy, CMW has repeatedly highlighted inconsistencies in its application where migrant workers are concerned, in relation to those guaranteed to citizens. This has been observed in the form of a lack of data concerning complaints made to the state parties' authorities,<sup>211</sup> and access being limited because migrants are unaware of administrative and judicial remedies that are available to them.<sup>212</sup> For example, in the case of Egypt, the CMW acknowledged that both in legislation and in practice, migrant workers and members of their families, including those in an irregular situation, have the same rights as nationals to file complaints and have access to redress mechanisms before the courts,<sup>213</sup> however, in reality they have limited access to justice due to being unaware of the dispute resolution systems available to them. Furthermore, in relation to this, the various monitoring bodies, including the CMW and the CESCR, have also indicated that the personnel administering the various machinery for judicial processes, including the labour inspectorates, need to be trained appropriately in order to safeguard that the rights of migrant workers are being protected and promoted, through accessing competent mechanisms of due process, remedy, and redress.<sup>214</sup>

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<sup>209</sup> CMW (2016) Concluding Observations, Turkey, CMW/C/TUR/CO/1 31 May 2016, Para 61-62

<sup>210</sup> CMW (2016) Concluding Observations, Turkey, CMW/C/TUR/CO/1 31 May 2016, Para 86

<sup>211</sup> CMW Concluding Observations: Algeria, CMW/C/DZA/CO/1, 19 May 2010, Para 16-17; Morocco CMW/C/MAR/CO/1 8 October 2013, Para 21; Egypt CMW/C/EGY/CO/1 25 May 2007 Para 22

<sup>212</sup> CMW Concluding Observations: Egypt CMW/C/EGY/CO/1, 25 May 2007, Para 22-23; Morocco, CMW/C/MAR/CO/1 8 October 2013, Para 2; Syria CMW/C/SYR/CO/1, 2 May 2008, Para 25

<sup>213</sup> Egypt CMW/C/EGY/CO/1 25 May 2007 Para 23(a) and (b)

<sup>214</sup> CESCR (2013) Concluding observations, Kuwait E/C.12/KWT/CO/2 - 18 December 2013, Para 16; CMW (2007) Concluding observations, Egypt CMW/C/EGY/CO/1 25 May 2007, Para 29; CMW (2008) Concluding observations, Syria CMW/C/SYR/CO/1 2 May 2008, Para 28

The 2015 Report of the Special Rapporteur on the human rights of migrants has duly shown concern about the apparent growing prevalence of ‘severe exploitation and abuse suffered by migrants at the hands of recruiters and subagents in countries of origin and destination’.<sup>215</sup> The Special Rapporteur has fittingly visited a GCC country, Qatar, and in the subsequent report, the human rights violations in connection to migrant workers have been unequivocally documented, which indeed included issues of recruitment practices, debt bondage, withholding of passports, payment of salaries, substandard living conditions, exclusion from labour laws, and ineffectiveness of labour complaint mechanisms.<sup>216</sup> In the report for Qatar, the Special Rapporteur noted that there were different mechanisms for dispute resolution available for migrants, and duly noted that migrants have difficulty in accessing them partly because of lack of information, legal aid, and interpreters and partly because they feared reparations i.e. losing their job and subsequently being detained and deported, or they fear their sponsor’s reactions. In terms of the dispute/complaint mechanism itself, the Special Rapporteur rather damningly and clearly stated the following:

**The complaint mechanisms are not very effective. Despite its good will and awareness of the issues, the National Human Rights Committee has limited means and cannot take any decisions, only transfer the complaint to the relevant ministry. The Ministry of Labour can only mediate and if the employer does not agree, the worker has to file a case with the court. Migrants find the division of competencies between the Committee and the Ministries of Labour and Interior confusing. The Special Rapporteur notes the**

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<sup>215</sup> Report of the Special Rapporteur on the human rights of migrants 11 August 2015, Para 7: François Crépeau, submitted the report in accordance with General Assembly resolution 67/172 and Human Rights Council resolution 17/12, available at <[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/70/310](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/70/310)> accessed 1 July 2016

<sup>216</sup> Report of the Special Rapporteur on the human rights of migrants: Mission to Qatar 23 April 2014, A/HRC/26/35/Add.1, Opening Summary. The visit took place between 3-10 November 2013.

**need for more effective sanctions against employers. He regrets the lack of effective investigation and prosecution measures for offences under the Labour Law and the small number of court cases against abusive employers, a situation which may be connected to the numerous non-Qatari judges without tenure. Access to the labour court is difficult: migrants have to pay a fee to file a case and getting a decision takes several months. The Labour Law provides that lawsuits filed by workers shall be exempted from judicial fees; however most migrants still have to pay 600 riyals (approximately £126 GBP) to file a case. Reportedly this covers the cost of an expert opinion. This is money migrants often do not have — in fact many of the complaints by migrants relate to non-payment of their salaries for up to several months.**<sup>217</sup>

In response to the Special Rapporteur's report, Qatar, took an archetypical GCC position,<sup>218</sup> rather than conceding that there are indeed grave concerns and issues, it highlighted the aspects of their law and the systems in place that are there to prevent human rights violations. For example:

**(1) Labour dispute and complaints mechanism:**

**The Ministry of Interior's experience in dealing with the public has never witnessed any obstacles preventing the access of complainants and applicants to the Ministry. Indeed, their cases are treated with necessary care and attention, required guidance and advice and legal assistance, as well as simultaneous translation provided by a specialized staff in the following languages (English, Urdu and Hindi).**<sup>219</sup>

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<sup>217</sup> Report of the Special Rapporteur on the human rights of migrants: Mission to Qatar 23 April 2014, opening summary, A/HRC/26/35/Add.1, Para 51-52

<sup>218</sup> HRC (2014) Comments by the Qatari Government on the report of the Special Rapporteur A/HRC/26/35/Add.2

<sup>219</sup> HRC (n 218) Section 3

The State of Qatar has developed a system with deterrent effect for companies that abuse expatriate workers or mistreat them. These companies are thus included in the list of companies banned from *overseas recruitment* and from the issuance of new visas until they adjust their positions with their workers. This system has proven to be an effective method of deterring those companies and contributed to the reduction of abuse and mistreat acts towards expatriate workers, *whatever form it takes*.

(2) *Kafala* sponsorship system:

A joint effort is made by the concerned authorities in the country, including the Ministry of Interior and the Ministry of Labour, to discuss several provisions enshrined in the law regulating the entry and exit of expatriate workers, particularly the provisions regarding the sponsorship system with a view to modifying it in a substantive and serious manner to make it more in line with international human rights standards on workers' rights.<sup>220</sup>

(3) Non-implementation of a minimum wage:

**Qatar has an open labor market and the wage is consensually determined between the employer and the expatriate worker.**<sup>221</sup>

However, in response to the criticism regarding the lack of protection for domestic workers, Qatar made a rather bold statement, 'the draft law on domestic workers is currently under review by concerned authorities in Qatar. The draft law is in line and consistent with the provisions of the recently adopted ILO Convention No. 189'.<sup>222</sup> Law No.15 on Service Workers in the Home ("Domestic Workers Law") was indeed ratified on 22 August 2017, by the Emir of

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<sup>220</sup> HRC (n 218) Section 4

<sup>221</sup> HRC (n 218) Section 2

<sup>222</sup> HRC (n 218) Point 2

Qatar, Sheikh Tamim Bin Hamad Al Thani. HRW however has stated that despite granting domestic workers labour rights it lacks an enforcement mechanism.<sup>223</sup> Nevertheless it is a welcomed progression, and as a result places pressure on other states like the UAE to follow suit to devise domestic worker legal protections through the embodiment of competent law (see section '4.1.8 Domestic Workers in the UAE').

In the wider region of MENA, labour regulation is one of the factors that introduces restrictions to employment. Some firms operating within the region perceive labour regulation as a major constraint. Labour regulation in the GCC is very flexible, which can be interpreted as being somewhat loose, and thus not perceived as an important constraint to business climate or employment creation.<sup>224</sup> Labour protection legislation thus is shaped by specific factors which includes flows of investment. Besides regulating employment relationships, labour law serves as a mechanism to establish a conducive environment for the creation of productive employment opportunities. Factors such as foreign direct investment (FDI) (and creating favourable business climates for such investment) have the potential for influencing important economic and labour market performance.<sup>225</sup> This has been evident in the nature of the labour laws in the GCC, where the primary aim of the states has been to attract investment, promote international trade, and to enhance labour mobility. Furthermore, the labour laws are seen as having a dual role in the labour market i.e. they provide social security and also determine labour market flexibility. Generally, strict regulation of labour has been found to have negative effects on employment outcomes, and there is strong advocacy amongst developing economies, especially from employers, governments,

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<sup>223</sup> HRW (2017) 'Qatar: New Law Gives Domestic Workers Labor Rights: Needs Enforcement Mechanisms' available at <<https://www.hrw.org/news/2017/08/24/qatar-new-law-gives-domestic-workers-labor-rights>> accessed 30 May 2018

<sup>224</sup> Angel-Urdinola, Diego F., Kuddo, Arvo (n 204)

<sup>225</sup> OECD (2004) 'Employment Outlook: Employment Protection and Labour Market Protection' available at <<http://www.oecd.org/employment/emp/34846856.pdf>> accessed 07 December 2015

and foreign investors for less rigid regulations, which thus implies lower levels of labour rights protection.<sup>226</sup>

Although no GCC state has actually ratified the ICRMW and with only two ratifications of the ICESCR, they have ratified various other core conventions that do outline issues relating to labour standards, particularly non-discrimination (ICERD). Generally, the Human Rights Council (HRC) and the various monitoring committees have clarified that non-discrimination is the fundamental driver for ensuring parity between the rights of citizens and non-citizens. However, it has been highlighted as a recurrent issue amongst states particularly when evaluating the application of international and domestic law in relation to irregular migrants and domestic workers. This is further exacerbated in terms of the perception of particular migrants as some are seen as more valuable than others based on nationality,<sup>227</sup> which also contravenes the ICERD, which has been widely ratified within the GCC and MENA regions, including the UAE. Moreover, the CERD has outlined its concern regarding the UAE's domestic legislation as it primarily addresses religious discrimination and does not mention racial discrimination nor discrimination based on national origin.<sup>228</sup> Furthermore, the CERD has shown its discontent with a number of Muslim states in their omissions in terms of defining racial discrimination in line with Article 1 of the ICERD within their domestic law.<sup>229</sup>

Likewise, in relation to migrant worker rights in MMCs, the CERD has echoed the remarks in terms of its observations and recommendations of other international convention monitoring bodies. In addition to the innate and intrinsic non-discrimination issues, areas ranging from

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<sup>226</sup> Angel-Urdinola, Diego F., Kuddo, Arvo (n 204)

<sup>227</sup> Report of the Special Rapporteur on the human rights of migrants, Mission to Qatar 23 April 2014 Paras 69-70

<sup>228</sup> CERD (2009) Concluding Observations UAE CERD/C/ARE/CO/17 Para 12

<sup>229</sup> CERD (2005) Concluding Observations Bahrain CERD/C/BHR/CO/714 April 2005, Para 15; CERD (2012) Concluding Observations Qatar CERD/C/QAT/CO/13-16 13 April 2012, Para 10; CERD (2011) Concluding Observations Yemen CERD/C/YEM/CO/17-18 4 April 2011, Para 7; CERD (2006) Concluding Observations Oman CERD/C/OMN/CO/1 19 October 2006, Para 12

nonconformity of domestic laws to areas relating to data/information,<sup>230</sup> disclosure are covered. Linked to this, there is a great deal of commentary and critique that the domestic laws, and indeed legislation relating to labour within the Gulf and other Islamically influenced jurisdictions are generally not compatible with international conventions. This in turn has allowed exploitative companies and recruitment agencies etc. to prosper at the expense of poor, ill-informed migrant workers.<sup>231</sup> The CERD has thus highlighted that migrants and non-citizens are ill-informed of their rights, and furthermore are unaware of the mechanisms available to them in terms of remedy and redress, even when they exist.<sup>232</sup> As a recommendation, in order to protect migrant workers more universally and comprehensively, the CERD has recommended that the state parties accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and all other core instruments.<sup>233</sup>

That said, the manner and nature of how certain states react to monitoring bodies (and to civil society and NGOs) poses a significant area of concern. It has been a standing address for GCC states with chequered human rights pasts to adopt the various core and fundamental human rights instruments. The UAE for example, as discussed, has been prompted to by various bodies to adopt international standards for protecting the rights of migrant workers, however it has continually evaded the recommendations by highlighting only what has been ratified and stating that other instruments are under 'consideration'.<sup>234</sup> Furthermore the information

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<sup>230</sup> Usually referring to specific data on the ethnic composition of the population, that is necessary to assess the practical implementation of the convention; and also in terms of actual cases of discrimination or cases where complaints (including labour) have been lodged and the outcomes of them.

<sup>231</sup> Rahman, Anisur (2010) 'Migration and Human Rights in the Gulf' Middle East Institute Viewpoints February 2010

<sup>232</sup> CERD (2005) Concluding Observations Bahrain CERD/C/BHR/CO/714 April 2005, Para 29; CERD (2012) Concluding Observations Kuwait CERD/C/KWT/CO/15-20 4 April 2012, Para 22; CERD (2012) Concluding Observations Qatar CERD/C/QAT/CO/13-16 13 April 2012, Para 19

<sup>233</sup> CERD (2017) Concluding Observations UAE CERD/C/ARE/CI/18-12 13 September 2017, Para 33, also recommending to ratify ICCPR and ICESCR; CERD (2009) Concluding Observations UAE CERD/C/ARE/CO/17 21 September 2009, Para 19

<sup>234</sup> UAE (2016) ICERD State Report UAE CERD/C/ARE/18-21 16 May 2016, Para 137-138



disclosed within the reports to which the UAE is party, lacks the appropriate level of detail required as per the 'General Guidelines' for state reports.<sup>235</sup>

Finally, another aspect to consider is the UN's procedure for complaints by individuals under the human rights treaties. This mechanism enables individuals to complain about the violation of their rights in an international arena with regards to the rights contained in the human rights treaties. Currently, eight of the human rights treaty bodies may,<sup>236</sup> under certain conditions, can receive and consider individual complaints or communications from individuals'.<sup>237</sup> The UAE has not specified any position of acceptance/non-acceptance for these procedures except that of inquiry procedure under the UN Convention against Torture (Article 20), where it has stated non-acceptance. The complaint mechanisms are specifically designed to be accessible to the layperson, and the procedure does not necessitate a lawyer or even familiar with legal and technical terms to bring a complaint under the treaties concerned. This being the case limits not only migrant workers but also UAE citizens from accessing this avenue for redress and remedy.

#### **1.4.1 International Labour Organisation: Labour & Migrant Worker Rights**

The ILO arose from concerns regarding world security, humanitarian, political, and economic issues. It was formed in 1919, as part of the Treaty of Versailles, the peace settlement following the conclusion of the First World War, and thus predates the UN. At this time, it can be inferred that an early model of globalisation played a major factor in devising the ILO's universal agenda due to the founding members' belief that an international organisation was

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<sup>235</sup> CERD (2000) General Guidelines Regarding the Form and Contents of Reports to be Submitted by States parties under Article 9, Paragraph 1, of the Convention CERD/C/70/Rev.5 December 2000

<sup>236</sup> CCPR, CERD, CAT, CEDAW, CRPD, CED, CESC and CRC

<sup>237</sup> There are also procedures for complaints which fall outside of the treaty body system, through the Special Procedures of the Human Rights Council and the Human Rights Council Complaint Procedure.

required to push for universal labour standards.<sup>238</sup> Furthermore, it alluded to the notion that the failure of a state to adopt acceptable labour standards would hinder those aiming to improve their own.<sup>239</sup> At the same time, concern was prevalent in the aftermath of the war that communist ideals (that had triumphed in Russia) could infiltrate the ranks of other societies, and so the preamble to the ILO's constitution stated that its ideology would be based upon social justice.<sup>240</sup> In 1946, the ILO was assimilated into the newly formed UN as a specialised agency.

The ILO Constitution requires that each member state is represented at the International Labour Conference by representatives of trade unions, employers, and governments, and this tripartism entitles all three actors to act independently of each other. Although the ILO offers an avenue for multilateral regulations of labour standards, ratification is paramount, as countries ratifying any given convention are subsequently expected to both incorporate that convention into national law. However, due to the lack of punitive power, the ILO relies heavily on moral persuasion, leading to a portrayal of the UN's specialised labour agency as lacking in the delivery of its agenda, and failing to have actionable power when it comes to actual enforcement.<sup>241</sup> Moreover, it can be argued that core labour standards and their evolution from the constitution of the ILO in 1919, were ignored for many decades as precedence was

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<sup>238</sup> Rodgers, Gerry, Lee, Eddy, Swepston, Lee and Van Daele, Jasmien (2009) *The International Labour Organization and the quest for social justice, 1919–2009* (ILO Geneva & Cornell University Press) 44-46 available at <[http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_104643.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_104643.pdf)> accessed 15 December 2015

<sup>239</sup> Constitution of the International Labour Organisation, available at <<http://www.ilo.org/public/english/bureau/leg/download/constitution.pdf>> accessed 30 May 2016

<sup>240</sup> This has similitude in how the GCC states perceived their nationalisation campaigns to halt the political ideas of more liberal and secular movements from Egypt.

<sup>241</sup> Elliot, Kimberly Ann and Freeman, Richard B. (2003) *Can Labor Standards Improve Under Globalization?* (Institute for International Economics, Washington, USA) 102-104; Helfer, Laurence R. (2006) 'Understanding Change in International Organizations: Globalization and Innovation in the ILO' *Vanderbilt Law Review* 59(3) 649-726; Cooney, Sean (1999) 'Testing Times for the ILO: Institutional Reform for the New International Political Economy' *Comparative Labor Law and Policy Journal* 20, 365-399

given to establishing trade.<sup>242</sup> It is significant to note that all ILO conventions and recommendations, in principle, inherently apply to migrant workers, unless otherwise stated,<sup>243</sup> therefore migrants should not receive differentially less favourable treatment or be afforded less protection based on the country in which they work. While some conventions have been developed to provide specific protection for migrant workers, other conventions that do not specifically cover migrant workers either contain provisions relating to them, or the Committee of Experts has on occasion referred to the specific situation of migrant workers in supervising their application.<sup>244</sup> Thus, conventions adopted by the ILO provide a reference point for defining what is meant by ‘internationally recognised worker rights’ as it has adopted 189 conventions establishing labour standards on a multitude of issues ranging from the most general (freedom of association) to very specific ones relating to working conditions in particular industries e.g. construction, seafaring, glass making, etc. In addition, the ILO has adopted hundreds of recommendations, codes, and guidelines that lay down and underpin

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<sup>242</sup> Elliot, Kimberly Ann (2000) ‘The ILO and Enforcement of Core Labour Standards) Institute for International Economics, International Economics Policy Briefs Number 00-6, July 2000 available at <<http://www.iie.com/publications/pb/pb00-6.pdf>> accessed 10 July 2015

<sup>243</sup> International Labour Conference, 92nd Session, 2004 Report VI ‘Towards a fair deal for migrant workers in the global economy’ Para 228 available at <<http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf>> accessed 13 January 2015: Para 228. Instruments relevant to migrant workers include the specific Conventions Nos. 97 and 143 and their accompanying Recommendations, and the ILO’s instruments on fundamental principles and rights as well as – in principle – all other ILO standards.

<sup>244</sup> This list is by no means exhaustive but such conventions include (some of which will be discussed in more detail): the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26); the Forced Labour Convention, 1930 (No. 29); the Labour Inspection Convention, 1947 (No. 81); the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); the Employment Service Convention, 1948 (No. 88); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Equal Remuneration Convention, 1951 (No. 100); the Maternity Protection Convention (Revised), 1952 (No. 103); the Abolition of Forced Labour Convention, 1957 (No. 105); the Indigenous and Tribal Populations Convention, 1957 (No. 107); the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958; the Workers’ Housing Recommendation, 1961 (No. 115); the Employment Policy Convention, 1964 (No. 122); the Minimum Age Convention, 1973 (No. 138); the Human Resources Development Recommendation, 1975 (No. 150); the Occupational Safety and Health Recommendation, 1981 (No. 164); the Termination of Employment Convention, 1982 (No. 158); the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169); the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); Indigenous and Tribal Peoples Convention, 1989 (No. 169); and the Private Employment Agencies Convention (No. 181) and Recommendation (No. 188), 1977

labour standards, and indeed how to administer systems for resolving employment disputes.

The ILO instruments applicable to migrant workers can be categorised as follows:

1. Core labour standards or fundamental conventions that apply to all persons, including migrant workers.
2. Labour standards that apply to all workers in the workplace, including migrant workers.
3. Instruments dealing specifically with migrant workers.<sup>245</sup>

The ILO placed a focus on eight conventions in four key areas in its 1998 Declaration on Fundamental Principles and Rights at Work. These eight fundamental conventions contain what are considered to be human rights at work. All Member States of the ILO have an obligation arising from the very fact of membership to comply with these regardless of whether or not they have ratified them.<sup>246</sup> Apart from the Declaration's conventions applying to migrant workers, the Declaration specifically states that 'the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers'.<sup>247</sup> The four key principles are as follows:

1. Freedom of association and the effective recognition of the right to collective bargaining.
2. The elimination of all forms of forced or compulsory labour.

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<sup>245</sup> Wickramasekara, Piyasiri (2007) 'Protection of migrant workers in an era of globalization: The role of international instruments' in *Comparative Labour Law and Industrial Relations in Industrialized Market Economies* edited by Blanpain, Roger (Dordrecht, Kluwer Law International BV, 9th Revised Edition) 239–74

<sup>246</sup> ILO 1998 Declaration on Fundamental Principles and Rights at Work available at <<http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>> accessed 6 June 2016, Para 2 'Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organisation to respect, to promote and to realise, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions'.

<sup>247</sup> Ibid

3. The effective abolition of child labour.

4. The elimination of discrimination in respect to employment and occupation.

Another aspect to bear in mind is ICESCR's relationship with ILO. The scope of its Article 6 and its inextricable connection to the specialised, subject specific ILO conventions and recommendations share a common pathology. The ILO conventions therefore, lend themselves in adding a greater level of depth and sophistication to the UN convention's much wider mandate. In terms of monitoring ICESCR Article 6, CESCR has frequently drawn upon ILO standards when states: (1) have breached their ILO treaty commitments;<sup>248</sup> (2) have breached the views of the ILO Committee of Experts;<sup>249</sup> and (3) when it has called for domestic legislative implementation of binding ILO treaties.<sup>250</sup> CESCR has also gone to the extent in criticising states for non-conformity with ILO conventions to which they are not even parties.<sup>251</sup> CESCR has called upon states to ratify specific ILO conventions related to specific issues and also pertinently encouraged states to accede to a non-related non-ILO instrument, the ICRMW.<sup>252</sup>

All of the above reinforces that the CESCR regards certain ILO conventions as the basic standards informing the scope of states' obligations under ICESCR Article 6, regardless of whether or not a state has specifically consented to the relevant ILO convention being referenced. Therefore, CESCR has taken the right to work beyond the formally binding set of

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<sup>248</sup> CESCR (2005) Concluding Observations China E/C.12/1/Add.107 May 2005, Para 23 referring to ILO C182 (No. 182) - Child Labour; CESCR (2002) Concluding Observations Estonia E/C.12/1/Add.85 December 2002, Para 35, referring to ILO C029 (No. 29) - Forced Labour; CESCR (2000) Concluding Observations Morocco E/C.12/1/Add.55 December 2000, Para 41 referring to ILO Conventions: C087 (No. 87) - Trade unions, C138 (No. 138) - Minimum Age, C169 - Indigenous and Tribal peoples and C182 (No. 182) - Child Labour

<sup>249</sup> CESCR (2009) Concluding Observations Democratic Republic of Congo E/C.12/COD/CO/4, December 2009, Para 21 referring to forced labour by detainees; CESCR (1998) Concluding Observations Germany E/C.12/1/Add.29 December 1998, Para 16 referring to discrimination in the employment of teachers; CESCR (1994) Concluding Observations Mauritius E/C.12/1994 May 1994 Para 8 referring to forced labour to discipline seaman.

<sup>250</sup> CESCR (1997) Concluding Observations Luxembourg E/C.12/1/Add.22 December 1997, Para 19

<sup>251</sup> CESCR (2000) Concluding Observations Morocco E/C.12/1/Add.55 December 2000, Para 17 referring to non-conformity to C138 (No. 138) - Minimum Age, C169 and C182 (No. 182) - Child Labour

<sup>252</sup> CESCR (2003) Concluding Observations Moldova E/C.12/1/Add.91 December 2003 Para 36; CESCR (2003) Concluding Observations Russian Federation E/C.12/1/Add.94 December 2003, Para 45

ILO norms which governs the conduct and behaviour of any particular state. Based on that, it can be further elucidated that states are obliged to respect, promote and realise the 'Fundamental Principles and Rights at Work'. ICESCR coupled with the technical standards of the ILO, brings a degree of flexibility and dynamism to the protection of labour rights, as it allows the objective of furthering human dignity from both a universal and culturally orientated perspective. It also takes into account evolving, contemporary and complementary extra-legal normative frameworks of conceptualising work, such as the ILO's 'decent work' agenda and the human development discourse which essentially views work as enabling social rights and freedoms through the development of human capabilities, opportunity and achievement.<sup>253</sup>

#### **1.4.2 General ILO Conventions**

ILO C087 - The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the ILO C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98), are the two conventions providing freedom of association. C087 guarantees the right of workers and employers to establish and join organisations of their own choosing without previous authorisation. C098 protects workers and employers who exercise the right to organise, prohibits interference in the activities of workers' and employers' organisations, and promotes voluntary collective bargaining. Trade union representation and the right to a collective voice are not only an important means by which both citizens and migrants can secure labour rights and improve their working conditions. Moreover, the Committee of

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<sup>253</sup> Mundlak, Guy (2011) 'The Right to Work – The Value of Work in *Exploring Social Rights: Between Theory and Practice* edited by Daphne Barak-Erez, Aeyal Gross (Hart Publishing, Oxford, UK) 341-368

Experts<sup>254</sup> on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA) have recurrently reaffirmed the fundamental rights of workers, including migrants and those with irregular status, to form and join trade unions to be protected against any act of discrimination on the grounds of trade union activities by citing Article 2 of C087 that recognises the right of workers,<sup>255</sup> ‘without distinction whatsoever, to shall have the right to establish and join organisations of their own choosing without previous authorisation’.<sup>256</sup>

C029 – The Forced Labour Convention, 1930 (No. 29), and C105 – Abolition of Forced Labour Convention, 1957 (No. 105), prohibits forced and compulsory labour for all persons, irrespective of the type or location of their economic activity. C029 prohibits work demanded under the threat of penalty where the individual has not offered themselves voluntarily. It prohibits forced labour for private entities and severely restricts its use by public authorities to imminent necessity, when it requires that wages be paid to workers. Furthermore, C105 in Article 2 requires states to implement ‘effective measures to secure the immediate and complete abolition of forced or compulsory labour’. In relation to migrant workers, the ILO and its supervisory bodies have defined the incidence of forced labour as a major area of concern, making reference to those subject to cross-border trafficking.<sup>257</sup> Moreover, irregular migrants are deemed to be more at risk than others of being lured into situations of forced

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<sup>254</sup> The Committee of Experts is a body of independent experts that meet annually to examine the reports of governments, as well as comments of employers’ and workers’ organisations, on the application in law and practice of ILO standards

<sup>255</sup> ILO (2010) International labour migration. A rights-based approach (International Labour Office, Geneva) available at <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_208594.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_208594.pdf)> accessed 06 May 2016

<sup>256</sup> The only permissible exception to ILO C087 is that set out in Article 9 concerning the armed forces and the police.

<sup>257</sup> ILO (2001) Report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), Report III (Part 1A), International Labour Conference, 89th Session, Geneva, 119; concerns included the increase of trafficking of men, women and children for purposes of forced labour in areas such as domestic service, agriculture, factory work and the sex industry.

labour or debt bondage.<sup>258</sup> ILO supervisory bodies have expressed concern about the lack of penal sanctions on those committing forced labour practices involving migrant workers and the inadequacy of penal protection for those subject to them. Such practices have included, for example, the use of excessive power by employers over migrant workers in irregular status, in particular domestic workers, the retention or non-payment of wages, contract substitution, withholding/retaining passports, long working hours, and physical violence.<sup>259</sup>

In terms of equality of opportunity and treatment, the ILO adopted various conventions, C111 – Discrimination (Employment and Occupation) Convention, 1958 (No. 111), requires ratifying states to declare and pursue a national policy aimed at promoting equality of opportunity and treatment eliminating all forms of discrimination in employment and occupation based on race, colour, sex, religion, political opinion, national extraction, and social origin. The Equal Remuneration Convention, 1951 (No. 100), requires states to pursue a policy of equal remuneration for work of equal value carried out by men and women workers. Furthermore, the C131 – Minimum Wage Fixing Convention, 1970 (No. 131) and other closely linked ILO instruments on conditions of work, call for the fixing of appropriate wages through either freely negotiated collective agreements or by other means based on consultation. Although the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) does not require the establishment of a minimum wage, it does, however, refer to equality of opportunity and treatment. The ILO makes a recommendation during the International Labour Conference 103<sup>rd</sup> Session in 2014, that whatever national system is chosen by a state, it needs to ensure respect for the principle of equal remuneration for work of equal value and to

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<sup>258</sup> ILO (2007) 'Eradication of forced labour' Report III (Part 1B), International Labour Conference, 96th Session, Geneva; ILO (2005) 'A global alliance against forced labour' Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 93rd Session

<sup>259</sup> ILO (2003) Report of the Committee on the Application of Standards, International Labour Conference, 88th–91st Sessions, Geneva



comply with this principle in relation to migrant workers through the realisation of the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111).<sup>260</sup>

These conventions apply to both nationals and non-nationals alike without distinction of status. Though nationality is not listed amongst the grounds of discrimination expressly prohibited by C111, ILO supervisory bodies have recurrently affirmed that migrant workers are protected by this instrument in so far as they are victims of discrimination in employment and occupation on the basis of any of the expressly prohibited grounds of discrimination.<sup>261</sup> That said, in addition to the eight fundamental conventions, other conventions are particularly relevant to migrant workers and can be related to their specific forms of engagement or sectors of work.<sup>262</sup>

### **1.4.3 ILO Conventions on Migrant Workers**

Other than the generic human and labour rights instruments of the UN and the ILO, there are two specific ILO conventions that explicitly address the rights of migrant workers: C097 – Migration for Employment Convention (Revised), 1949 (No. 97), accompanied by R086 – Migration for Employment Recommendation (Revised), 1949 (No. 86), and C143 – Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), also accompanied by R151

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<sup>260</sup> ILO (2014) 'Minimum Wage Systems' International Labour Conference, 103<sup>rd</sup> Session, 2014 ILC.103/III/1B, Conclusion Para 199

<sup>261</sup> ILO (2001) Report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), Report III (Part 1A), International Labour Conference, 89th Session, Geneva; see individual observations concerning C097 and C111, Paras 369-374 and 493-495

<sup>262</sup> ILO conventions with particular relevance to migrant workers include: C081 - Labour Inspection Convention, 1947 (No. 81); C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129); C095 - Protection of Wages Convention, 1949 (No. 95); C110 Plantations Convention, 1958 (No. 110); C155 - Occupational Safety and Health Convention, 1981 (No. 155); C161 -Occupational Health Services Convention, 1985 (No. 161); C167 - Safety and Health in Construction Convention, 1988 (No. 167); C176 - Safety and Health in Mines Convention, 1995 (No. 176); C184 - Safety and Health in Agriculture Convention, 2001 (No. 184), C172 - Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172); C019 - Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19); C149 - Nursing Personnel Convention, 1977 (No. 149); C183 - Maternity Protection Convention, 2000 (No. 183); C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), texts available at <<http://www.ilo.org/ilolex/english/convdisp1.htm>> accessed 10 February 2016

– Migrant Workers Recommendation, 1975(No. 151). Conventions C097 and C143 are amongst the first specific instruments aimed at addressing the problems faced by migrant workers and their families and also laid the basis for many of the provisions found in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), 1990. Furthermore, with respect to a wide range of international labour standards, including the fundamental conventions, those on employment policy, wages, private employment agencies, labour inspection social security, and domestic workers etc., the ILO supervisory bodies closely monitor their effective application to migrant workers (as previously elaborated upon).

C097 calls for measures aimed at regulating the conditions in which migration should occur. It applies to migrant workers in regular status and covers issues involving their departure, journey, reception,<sup>263</sup> and transfer of earnings. It also provides for measures ensuring free services of assistance and the provision of accurate information to migrant workers in order to prevent them from being misled during the process of migration.<sup>264</sup> Two annexes address recruitment, placement, and conditions of labour placing responsibility on competent authorities to supervise the process and any administrative procedures that include safeguarding migrant worker arrival, settlement, and orientation.<sup>265</sup>

A key aspect of C097 is that it requires that migrants in regular status receive treatment no less favourable than those of nationals in certain matters pertaining to employment, which also broadly applies to dispute resolution as covered by ‘legal proceeding relating to matters referred to in this Convention’.<sup>266</sup> Furthermore, the comments of the supervisory bodies have unsurprisingly been focused in particular on the provision of accommodation, payment of

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<sup>263</sup> ILO C097 Article 4: Measures shall be taken as appropriate by each Member, within its jurisdiction, to facilitate the departure, journey and reception of migrants for employment.

<sup>264</sup> ILO C097 Article 2 and 3(1)

<sup>265</sup> ILO C097 Article 4; ILO C097 Annex 1 Article 6

<sup>266</sup> ILO C097 Article 6 (1.d)

wages, and social security benefits, also paying heed to specific measures regarding women migrants.<sup>267</sup> The ILO's Committee of Experts has also emphasised (as did the various UN monitoring bodies<sup>268</sup>) the importance of the application of the principle of equal treatment, not only in law but also in practice, through effective mechanisms that should be in place to address the non-respect of rights such as accessible and effective complaint procedures, adequate labour inspections, and courts that migrants workers can access on the same terms as national workers.<sup>269</sup> That said, the ILO's Committee of Experts has highlighted that migrant workers are frequently unable to avail themselves of their rights and have limited opportunities for seeking redress and compensation, all of which is due to a lack of information and knowledge compounded by linguistic difficulties.<sup>270</sup>

Article 1 of C143 states that 'Each Member for which this Convention is in force undertakes to respect the basic human rights of all migrant workers', and lays down a general obligation to respect the basic and fundamental rights of all migrant workers irrespective of their legal status in the country of employment. However, despite the broadness of the statement, the provision is limited in scope i.e. it is restricted to basic and fundamental rights that include the right to life, protection against torture, cruel, inhumane, degrading treatment, or punishment, the right to liberty and security of the person and protection against arbitrary arrest, and the right to a fair trial.<sup>271</sup> The provision is located in Part I of C143, which focuses on labour migration under abusive conditions and encompasses all migrant workers including those in

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<sup>267</sup> Olney, Shauna and Cholewinski, Ryszard (2014) 'Migrant Workers and the Right to Non-Discrimination and Equality' in *Migrants At Work: Immigration & Vulnerability in Labour Law* edited by Costello, Cathryn and Freedland, Mark (Oxford University Press, 2014) 259-281

<sup>268</sup> For example see CESCR (n 87) Para 54

<sup>269</sup> Olney, Shauna and Cholewinski, Ryszard (n 267)

<sup>270</sup> ILO (1980) 'General Survey of the Reports relating to Conventions No 97 and 143 and Recommendations Nos. 86 and 151 concerning Migrant Workers' 66<sup>th</sup> Session, 1980, Report of the Committee of Experts on the Application of Conventions and Recommendations, (Geneva: International Labour Office) Para 285 <[http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(1980-66-4B\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(1980-66-4B).pdf)> accessed 18 Augury 2017> accessed 23 June 2016

<sup>271</sup> ILO (n270) Para 257

irregular situations, but it does not extend to the rights found in Part II of C143 that exclusively apply to regular migrant workers.

Equality of opportunity and treatment has been enshrined into the fabric of the ILO and can be found in the organisation's earliest documents, and the principles therein are at the centre of the protection of migrants' rights. This ultimately means that the objective is to ensure migrant workers and their families are afforded equal treatment to nationals, not only with respect to matters related to their employment but in all aspects of their lives too. The ILO applied this principle in Article 6(1) of C097 in respect of the, *inter alia*:

1. employment situation covering areas such as remuneration, hours of work, holiday pay, minimum age, and training,
2. trade union membership and collective bargaining,
3. accommodation,
4. social security,
5. employment taxes/dues, and
6. legal proceeding relating to matters referred in the convention.

However, under Article 6(1)(a) it only proscribes inequality of treatment in respect to the first three areas listed if these are 'regulated by law or regulations, or are subject to the control of administrative authorities'. An unfortunate deficiency in the provision is that there is no obligation or duty upon states to promote equality and eliminate discrimination in practice.<sup>272</sup>

This promotion duty was addressed in more detail in C111 – Discrimination (Employment and Occupation) Convention, 1958 (No. 111). A criticism of C111 is that arguably, discrimination based against foreigners was not clearly dealt with, as the term 'national extraction' was used instead of

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<sup>272</sup> ILO(1974) 'Report VII (1) Migrant Workers International Labour Conference 59th Session 1974, (International Labour Office Geneva 1973) 17-18; Cholewinski, Ryszard (n 54) 104; See also ICCPR Articles 6, 7, 9, and 14

‘national origin’ leaving some room for interpretation.<sup>273</sup> However, a noteworthy point to mention is that although the ratifications to C097 and C143 have not been extensive, the situation, with respect to C111, is quite different as it has been currently ratified by 173 countries. As a result, even where ILO member states have not ratified C097 and C143, it is likely that they have ratified the fundamental convention, C111, which inherently provides considerable rights and protections to migrant workers.

C143 addresses these issues and calls for further standards to,

**Promote equality of opportunity and treatment of migrant workers and, with regard to matters regulated by laws or regulations or subject to the control of administrative authorities, ensure treatment at least equal to that of nationals.**

Furthermore, the formal equality in practice and application for migrants and their families before the law was regarded as being insufficient,<sup>274</sup> and thus was addressed in Part II of C143 and its R151. Article 10<sup>275</sup> of C143 is the main equality provision in the instrument; it, however, relies on Paragraph 2 of R151 to specify that equality is to be sought on the same terms as nationals. Furthermore, the Committee of Experts has stated that in regard to the implementation of national policy, it could be formulated progressively under a coordinated programme (outlined in the following two articles) of positive measures, not necessarily that of legislation.<sup>276</sup> C143 calls upon states to take a number of measures to prevent and suppress

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<sup>273</sup> ILO (n 251) Para 364

<sup>274</sup> International Labour Conference 60<sup>th</sup> Session 1975, Report V(1) Migrant Workers, opinion of Mr Öberg, Reporter of the Committee on Migrant Workers, 35, available at <[http://staging.ilo.org/public/libdoc/conventions/Technical\\_Conventions/Convention\\_no.\\_143/143\\_English/74B09\\_432.pdf](http://staging.ilo.org/public/libdoc/conventions/Technical_Conventions/Convention_no._143/143_English/74B09_432.pdf)> accessed 09 June 2016

<sup>275</sup> ‘Each Member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory’.

<sup>276</sup> International Labour Conference, 66<sup>th</sup> Session, 1980, Report of the Committee of Experts on the Application of Conventions and Recommendations, ‘General Survey of the Reports relating to Conventions No 97 and 143

clandestine movements of migrants and their employment in irregular/illegal status by taking action against their organisers and employers.<sup>277</sup> It focusses on ensuring that all migrant workers enjoy basic human rights and certain rights arising out of past employment. Although C143 contains specific provisions referring to equality of treatment, they each have a different threshold of application,<sup>278</sup> as already elaborated with respect to the exclusivity of application of Part II of C143 to regular migrants.

That said, in accordance with Article 8, migrant workers who have ‘resided legally’ for the purpose of employment are protected under the convention in the case of loss of employment (historically an issue in the GCC, where unscrupulous employers/sponsors terminating employment contracts leave migrant worker in a state of irregularity). Moreover, as migrants in such circumstances were not to be considered in an irregular situation by the mere fact of loss of employment, and so are entitled to ‘enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment; the provision of alternative employment; relief work; and retraining’.<sup>279</sup> In the case where migrant workers have not entered the host state by conforming to the relevant laws and regulation (immigration protocols etc.) their status ‘cannot be regularised’ and so thus cannot enjoy the rights of those migrants that enter legally. In terms of irregular migrants there are, however, provisions that cater specifically to them. For example, Article 9(1) articulates the principle of equal treatment between irregular and regular migrant workers in ‘respect of rights arising out of past employment’. However, despite the presence of various labour and human rights instruments outlining minimum, core, and fundamental standards, limited progress has been made in

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and Recommendations Nos. 86 and 151 concerning Migrant Workers’ (Geneva: International Labour Office) Para 287-288, available at < [http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(1980-66-4B\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(1980-66-4B).pdf)> accessed 09 June 2016

<sup>277</sup> C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) Article 2

<sup>278</sup> Olney, Shauna and Cholewinski, Ryszard (n 248) 267

<sup>279</sup> C143 Article 8(2)

ensuring complete parity in terms of migrants' rights in relation to those enjoyed by nationals, particularly as discriminatory provision in favour of nationals might indeed be implemented to a greater extent by states with limited resources.<sup>280</sup>

In other areas, such as employment conditions, there are stark differences in the type of work carried out when comparing nationals and specific groups of migrants, therefore making it difficult to compare or measure baseline standards. This is vividly evident in the GCC region, where nationals/citizens have been predominantly assimilated into the public/federal sector, whereas menial unskilled work is exclusively done by non-nationals, usually sourced from Asia.<sup>281</sup> Although there are usually some standards of comparison amongst developed Western states in the form of legislation, judicial decisions, models of legal practice, or collective agreements, these are largely absent in areas such as the GCC and Arab Gulf region, particularly as migrant workers are often employed in industry sectors deemed not worthy of nationals.

The problem of applying equality is further hampered by Article 14(a) of C143, which places a two-year restriction on migrant workers' free choice of employment (widely practised in the GCC, where employment contracts and visas are granted under conditions that limit certain freedoms). This has been reflected in the comments of the Committee of Experts that has noted that some states find it difficult to apply a policy of equality of opportunity and treatment to migrants whose access to employment is subject to restrictions for a limited time period.<sup>282</sup> In certain states, migrant workers cannot change jobs without applying for a new work permit irrespective of the duration of their stay. This is exacerbated where there are

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<sup>280</sup> Lillich, Richard B. (n 37) 47-48; McDougal, Myres S., Chen, Lung-chu and Lasswell, Harold D. (n 45)

<sup>281</sup> Kapiszewski, Andrzej (n 17)

<sup>282</sup> International Labour Conference, 66<sup>th</sup> Session, 1980, Report of the Committee of Experts on the Application of Conventions and Recommendations, 'General Survey of the Reports relating to Conventions Nos' 97 and 143 and Recommendations Nos. 86 and 151 concerning Migrant Workers' (Geneva: International Labour Office) Para 290, 148, and 520

limitations to accessing employment services, which in turn severely restricts migrants (including their families) in terms of their mobility and free choice of employment.

Trade union activity and the associated rights have been described as being essential for migrant workers in ensuring that they have a voice in the protection of their other rights at work and in improving their terms and conditions of employment.<sup>283</sup> However, there are inherent deficiencies or an absence of labour institutions, workers' associations, or social legislation of the type found in industrialised countries,<sup>284</sup> e.g. in the GCC there are limited or no provisions for trade union activity and thus limited or no prospect collective bargaining agreements. The ILO Convention, C87 – Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) affirms the right to establish and join trade unions or associations for both 'workers and employers, without distinction whatsoever',<sup>285</sup> and thus prohibits discrimination on the basis of nationality. C097 provides for equal treatment between nationals and migrants in relation to 'membership of trade unions and enjoyment of the benefits of collective bargaining'.<sup>286</sup> Article 10 of C143 uses the term 'trade union rights' to encompass its guarantee and promotion of the fundamental right. Although this article refers to legally residing workers, Paragraph 2(g) R151, maintains that migrant workers and their families ought to receive equal treatment with nationals in respect of 'membership and the exercise of trade union rights'.

The Committee of Experts in its General Surveys has found that migrant workers are permitted to join trade unions on equal terms, for example, in some EU countries, but their eligibility for

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<sup>283</sup> Trade union rights encompass the right to freedom of association and collective bargaining, both of which are fundamental tenets of the ILO and are enshrined into its Constitution.

<sup>284</sup> Böhning, W.R. (n 265) 243

<sup>285</sup> C087 Article 2

<sup>286</sup> C097 Article 6(1)(a)(ii); the same provision is also found in Article 17(2)(a)(ii) of the Model Agreement in Annex I to Recommendation 86



trade union office is more likely to be subject to restrictions.<sup>287</sup> Furthermore, the Committee has stated that domestic legislation should be more flexible in order to allow trade union organisations to choose their office bearers and leaders, albeit after a reasonable period of employment in the host country.<sup>288</sup>

In Kuwait, where migrant workers make up the about 80 per cent of the workforce, they must have resided in the country for at least five years and furthermore must obtain a certificate of moral standing and good conduct before they are allowed to join trade unions as non-voting members.<sup>289</sup> In such circumstances, they are not permitted to run for any trade union posts altogether. In Kyrgyzstan, migrant workers are implicitly excluded from labour law.<sup>290</sup> In some countries, there are restrictions on migrant workers holding office in unions e.g. Nicaragua, Rwanda, and the Bolivarian Republic of Venezuela.<sup>291</sup>

As an outcome of the observations of the committees, some states have amended their laws accordingly. For example, following observations by the ILO Committee of Experts that their former laws did not conform with C087, Cameroon, Chad, and Niger amended their laws to permit migrant workers to hold trade union office after a certain period of residence in the country to conform with Article 3 of the convention.<sup>292</sup> Finland and Luxembourg amended

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<sup>287</sup> Cholewinski, Ryszard (n 54) 111-113; Baruah, Nilim and Cholewinski, Ryszard (2006) *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination, VII. Post-Admission Policies: Rights of Migrant Workers* (Organization for Security and Co-operation in Europe, Vienna Austria 2006) 123 and 142-144; available at <<http://www.osce.org/eea/19242?download=true>> accessed 14 October 2016; Cholewinski, Ryszard (2005) *The Legal Status of Migrants Admitted for Employment, a Comparative Study of Law and Practice in Selected European States* (Council of Europe Publishing, Strasbourg 2005) 85, making reference to a number of European countries, Austria, France, Germany, Hungary, Netherlands, Poland, Spain, Sweden, UK

<sup>288</sup> International Labour Conference, 66<sup>th</sup> Session, 1980, Report of the Committee of Experts on the Application of Conventions and Recommendations, 'General Survey of the Reports relating to Conventions Nos' 97 and 143 and Recommendations Nos. 86 and 151 concerning Migrant Workers' (Geneva: International Labour Office) Para 328-321; ILO Committee on Freedom of Association, 290<sup>th</sup> Report, Case No. 1612

<sup>289</sup> ILO (2008) 'In search of Decent Work – Migrant workers' rights: A manual for trade unionists' International Labour Office Geneva Bureau for Workers' Activities (ACTRAV) available at <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---actrav/documents/publication/wcms\\_115035.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_115035.pdf)> accessed 10 June 2016

<sup>290</sup> ILO (n 270)

<sup>291</sup> ILO (n 270)

<sup>292</sup> ILO (n 270)

their laws to remove restrictions on the maximum number of migrant workers that could be members of trade unions in order to bring their legislation into conformity with Article 2 of the convention. In Spain, a law that came into effect in 2001 that denied trade union rights to undocumented migrant workers, despite the ILO's CFA ruling contravened ILO C087. Following the ruling of the ILO's CFA, Spain's Constitutional Court acknowledged such provisions to be unconstitutional, reaffirming the right to freedom of association for all migrant workers.<sup>293</sup>

As already stated, many migrant workers are denied the right to join or form trade unions and in some situations this restriction is officially enshrined in legislation. Unions, collective bargaining, and strikes are not allowed by law although employees are allowed to organise workers' committees with the participation of the government and the employer.<sup>294</sup> In reality, migrant workers have a tendency to be relatively isolated from other workers and they also lack the opportunity to organise into unions or associations, all of which combines in them having little or no bargaining power. This is particularly exacerbated as the freedom of association and the right to collectively bargain, as they apply to migrants (even citizens in the GCC), are constrained or limited by law in some countries.<sup>295</sup>

Moreover, it is not simply a matter of the law, particularly where unscrupulous employers are attracted to employing migrant workers precisely because they can exploit them. Irregular migrant workers are further exposed as the employer can threaten to report them to the authorities and have them deported, should they not fulfil their employers' demands. As in many countries, an entry visa or work permit will depend on having a named employer or

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<sup>293</sup> ILO (n 270)

<sup>294</sup> ITUC (2012) 'Internationally recognised core labour standards in Saudi Arabia: Report of the WTO General Council Review of the Trade Policies of Saudi Arabia' (Geneva, 25 and 27 January 2012) available at <[http://www.ituc-csi.org/IMG/pdf/final\\_tpr\\_saudi\\_arabia.pdf](http://www.ituc-csi.org/IMG/pdf/final_tpr_saudi_arabia.pdf)> accessed 14 June 2016

<sup>295</sup> International Labour Conference 97th Session 2008, Report I (B) Report of the Director General 'Freedom of association in practice: Lessons learned: Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work' (Geneva: International Labour Office) 57

sponsor. By terminating the contract of employment, the employer can bring about the cancellation of the right to remain, as seen in the GCC region.

If workers are organised they inherently become harder to exploit. Therefore, broader inclusion and participation by migrant workers in associations and indeed trade unions, would give them a greater, more influential say in labour matters that directly affect them. Such participation would also play an important role in how they engage with the broader society, which ultimately could facilitate migrants gaining further rights. Moreover, the Committee of Experts has highlighted Article 10 of C143 and its guarantee of equal treatment between nationals and migrants in respect of 'individual and collective freedoms', indicating that its intention is to cover freedoms such as information, expression, and assembly 'on which the full exercise of trade union rights depends'.<sup>296</sup>

In conclusion to what is outlined as internationally recognised standards (UN and ILO) on the protection of migrant workers, there is comprehensive provision defining the obligations for all countries. Moreover, MMCs, even some in the GCC, have ratified particular treaties and allowed various forms of industrial action. Arguably most of those MMCs have governments and respective societies that have a tendency to be more liberal and have a greater degree of democratisation. Nevertheless, this can therefore set some degree of precedence amongst Muslim states, and thus highlight that international standards of human rights on the whole do not contravene Islam *per se*, or at least from their perspective. As discussed, although these wider MMCs have a common religion (subject to their cultural interpretations), there are stark differences in their legal and political composition. Their respective systems are influenced by a number of factors that include the cultural, social, and demographic makeup of society as

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<sup>296</sup> International Labour Conference, 66<sup>th</sup> Session, 1980, Report of the Committee of Experts on the Application of Conventions and Recommendations, 'General Survey of the Reports relating to Conventions Nos' 97 and 143 and Recommendations Nos. 86 and 151 concerning Migrant Workers' (Geneva: International Labour Office) Para 317

well as its economic dynamics. In addition to these factors, an instrumental aspect is the way in which each state is managed and is dependent on whether the authorities are democratic or absolute monarchies, and indeed, how rigorous their respective interpretation of Islamic *Shari'ah* is.

Bearing that in mind, national human rights institutions are the key domestic mechanisms for promoting and protecting human rights, particularly the precarious nature of migrant workers, specifically in the GCC, with respective state ministries taking responsibility of labour issues. Moreover, GCC states apply and use their respective systems to closely monitor and manage migrants for the most part due to their extraordinarily high volumes. The high density of foreign migrant presents various political dilemmas and as a result a 'numbers versus rights-trade off' exists, when examining migrant worker labour issues.<sup>297</sup> When examining the GCC countries specifically there are clear themes and tendencies when taking into consideration the ratification status of various international core conventions. As it stands (2017), there have been 33 ratifications of the core UN human rights treaties, of which only four have been ratified by all of the GCC states (CEDAW, ICERD, CRC, and Committee on the Rights of Person With Disabilities (CRPD)). Bahrain and Kuwait are the only two GCC states that have ratified the ICCPR and ICESCR.<sup>298</sup> Three treaties have received no ratifications at all (CED, CAT-OP, and ICRMW). In terms of the ILO conventions, GCC states have undertaken 32 ratifications of the ILO's Fundamental Conventions regarding the rights at work, six ratifications of the ILO Priority Governance Conventions relating to the functioning of the international labour standards systems, and 27 ratifications of non-priority ILO conventions.<sup>299</sup>

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<sup>297</sup> Non-Arab workers pose less of a political and security risk: Kapiszewski, Andrzej (n 17); Kapiszewski, Andrzej (2001) *Nationals and Expatriates: Population and Labor Dilemmas of the Gulf Cooperation Council States*, (Ithaca Press, New York, 2001) 121-168

<sup>298</sup> Bahrain nor Kuwait have ratified the OPs of the ICCPR and ICESCR

<sup>299</sup> At November 2015

The pattern within the GCC region demonstrates that states have shown a greater level of commitment in terms of facilitating ratification of certain rights such as those concerning persons with disabilities and to children compared to other conventions, for example those that relate to civil and political rights. This could be explained in terms of alignment of principles of charity and compassion towards vulnerable members of society or a community in Islam and hence sits easily in terms of similar viewpoints i.e. universally understood and accepted.<sup>300</sup> This poses the question of cultural incompatibility i.e. are those civil and political rights that are considered universal not befitting of Islamic states? This will be explored in the following chapters.

As previously mentioned, various international treaty bodies and international human rights organisations representing nationals and migrants alike have frequently called upon GCC states to make further ratifications and have highlighted their selective approach to ratification in addition to drawing concerns over human rights abuses and violations. As previously discussed, the greatest amount of pressure has been applied in connection to the ICRMW due to the level of migrant workers in the GCC,<sup>301</sup> and this has manifested officially through the Treaty Body and Universal Periodic Review Recommendations. Despite the international normative framework for migrants being apparent through the various international treaties,<sup>302</sup> very little has been achieved in terms of ratification. Generally speaking, the GCC states, with rare exceptions, have mainly responded weakly in terms of following up ratifications following on from recommendations. Moreover, rhetoric from within the GCC has historically highlighted an avoidance of the issues pertaining to

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<sup>300</sup> Qatar was actively involved in the drafting of the UN Convention on the Rights of Persons with Disabilities (CRPD).

<sup>301</sup> Çalı, Başak and Ghanea, Nazila (n 189)

<sup>302</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), 1990; The Migration of Employment Convention (Revised), 1949 (No. 97); The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); ILO multilateral framework on labour migration: Principles and guidelines for a rights-based approach to labour migration available at <<http://www.ilo.org/migrant/areas/multilateral.htm>> accessed 14 December 2014

disadvantaged migrant workers. Moreover, the region had historically even gone to the extent of annulling the status of migrant workers by not even considering them as being actual migrant workers. Although this untenable position has been seemingly rescinded in various circles, the UAE nevertheless made the following statement to HRW:

**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>303</sup>

President of the General Assembly hosted a one-day Informal Thematic Debate on International Migration and Development ('the debate') at UN Headquarters in New York on 19 May 2011, pursuant to A/RES/63/225. The debate is intended to build on the on-going dialogue on international migration and development, and to contribute to the process leading to the second High-level Dialogue on International Migration and Development to be held by the UN General Assembly in 2013.

There are differences in the perception of international norms and the manner in which they are understood as the ratification of human rights treaties in the GCC states have generally been a top-down process, with decision-making power being centralised in the ministries of

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<sup>303</sup> Al-Shamsi, Nasser Abdulaziz (2006) UAE Permanent Representative to the United Nations cited in HRW (2006) 'Building Towers, Cheating Workers: Exploitation of Migrant Construction Workers in the United Arab Emirates' Volume 18 (8) November 2006 Appendix. **'The UAE has more recently referred to its foreign labour force as indeed as migrant workers. The UAE has participated on the UN's Informal Thematic Debate on Migration and Development 19 May 2011, New York (pursuant to General Assembly Resolution A/RES/63/225, acknowledging that there is a need to improve international cooperation on migration, and indeed the rights of migrant workers, see the panel report made by His Excellency Mr. Saqr Ghobash, Minister of Labour, United Arab Emirates titled 'UN Informal Thematic Debate on Migration and Development: Improving international cooperation on migration and development' available at** [http://www.un.org/en/ga/president/65/initiatives/Migration/Mr.%20Saqr%20Ghobash%20 Eng\\_.pdf](http://www.un.org/en/ga/president/65/initiatives/Migration/Mr.%20Saqr%20Ghobash%20Eng_.pdf)> accessed 21 May 2017. Despite such references to migrant workers in internationally accessible documents, official documents and communiqués from within the UAE barely ever use the term 'migrant' in relation to its labour force, rather they are addressed as 'workers'.

foreign affairs, with input from civil society members, NGOs, and even other ministries or departments being generally very limited (although more is being done to ensure participation).<sup>304</sup> This has all manifested in the selective ratification. The proliferations of GCC reservations to international treaties during the 2000s are also ramifications of this manner of hierarchical and institutionalised management of human rights related issues.<sup>305</sup>

A common feature of GCC ratification status and indeed other MMCs is the presence of reservations to various internationally recognised instruments, both in relation to the specific provision of the texts themselves and also as general limitations that impose interpretive qualifications or broad exceptions that apply to the treaties as a whole. In terms of these reservations MMCs have taken a variety of stances on these and other human rights conventions; some countries ratifying without reservations of any kind and some making reservations that have nothing to do with Islam. That said, there are examples of where specific Islamic countries have stated the caveat that they require that respective human rights treaty provisions be interpreted in light of Islamic law.<sup>306</sup> This type of discourse has been particularly apparent in terms of women's rights where arguments are generally made on the basis of cultural particularism.<sup>307</sup> Generally, the reservations made by indicating an incompatibility with Islamic law with human rights treaties began to decline post-1996. This resulted in states using a different form of language when expressing a reservation i.e. they

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<sup>304</sup> Çalı, Başak and Ghanea, Nazila (n 189)

<sup>305</sup> Çalı, Başak and Ghanea, Nazila (n 189)

<sup>306</sup> Mayer, Ann Elizabeth (1998) Islamic Reservations to Human Rights Conventions' *Recht van de Islam* 15, 25-45;

<sup>307</sup> Mayer, Ann Elizabeth (n 306); Bydoon, Aysa (2011) 'Reservations on the "Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)" Based on Islam and its Practical Application in Jordan: Legal Perspectives' *Arab Law Quarterly* 25(1), 51-69; Countries that have expressed reservations in light of Islamic theological stances: Bahrain; Bangladesh, Egypt, Iraq, Kuwait, Libyan Arab Jamahiriya, Malaysia, Maldives, Mauritania, Morocco, Oman, Pakistan, Saudi Arabia, Syrian Arab Republic and United Arab Emirates see United Nations (2006) 'Declarations, reservations, objections and notifications of withdrawal of reservations relating to the Convention on the Elimination of All Forms of Discrimination against Women' Meeting of States Parties to the Convention on the Elimination of All Forms of Discrimination against Women Fourteenth meeting New York, 23 June 2006 CEDAW /SP/2006/2 available at

<<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/309/97/PDF/N0630997.pdf?OpenElement>> accessed 10 December 2015

presented their domestic laws to be upheld rather than mentioning the incorporation of Islamic laws into their legal systems. Thus, in today's climate, Islamic particularism as a grounds of non-acceptance is significantly reduced and perhaps may become even rarer in the future, but the underlying issue is the reluctance of states to upgrade domestic laws to conform to normative international standards. Therefore, conflicts between domestic rights policies and international law are still evident and will pose problems for harmonisation in the future, particularly in light of globalisation.<sup>308</sup>

The perception of human and labour rights, and indeed power, is influenced by the ideological perspectives the ruling authorities take as they become the autonomous authority for protecting their subjects' rights. This is apparent in how conflict and dispute is looked upon and ultimately managed. The following section will thus shift focus from international laws outlining international obligations on migrants rights to international labour standards and guidelines related to resolving employment disputes.

### **1.5.1 Labour Conflict & Dispute Resolution Theory**

In order to provide resolutions, remedy and redress to the array of employment rights violations faced by migrant workers,<sup>309</sup> state labour administration frameworks should be competently developed as per the international guidelines. The judiciary plays an integral part in a system based on the rule of law, which is often complemented by alternative methods of

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<sup>308</sup> Slaughter, Anne-Marie and Burke-Wite, William (2006) 'The Future of International Law is Domestic (or, The European Way of Law)' *Harvard International Law Journal* 47(2), 327-352 available at <[http://www.harvardilj.org/wp-content/uploads/2010/09/HILJ\\_47-2\\_Slaughter\\_Burke-White.pdf](http://www.harvardilj.org/wp-content/uploads/2010/09/HILJ_47-2_Slaughter_Burke-White.pdf)> accessed 03 October 2016

<sup>309</sup> Labour disputes generally involve violations of: (1) labour standards disputes include; non-payment or under-payment of wages and other wage related benefits; health and safety standards i.e. violations of minimum standards. (2) Labour relations disputes include employee discipline or dismissals; unfair labour practices; rights for union representation in regards to collective bargaining; strikes and lockouts; contract and personnel policy administration. (3) Welfare and social legislation disputes refer to claims where an employer has failed to comply with its social and welfare obligations categorised under an appropriate law, such as failing to pay for medical care, disability compensation or maternity pay etc.



dispute resolution (ADR). ADR covers a broad spectrum of techniques (or approaches), ranging from party-to-party negotiations (i.e. the most direct way to reach a mutually accepted resolution), to arbitration and adjudication (i.e. where such resolutions cannot be achieved, and where an external and impartial third party imposes a resolution). Somewhere along this axis lies 'mediation' and/or 'conciliation', where a third party aids the disputants to reach a mutually agreed solution.

ADR has gradually become incorporated into international legal reform projects, especially developing countries.<sup>310</sup> ADR is generally used to resolve disputes in a non-confrontational way and is an alternative to court-based litigation.<sup>311</sup> Moreover, ADR has become increasingly prevalent in civil law jurisdictions throughout Europe. It is widely employed in common law jurisdiction ADR, becoming a global mode for resolving disputes in both business and non-business activities.<sup>312</sup>

In order to understand the process of conflict and dispute resolution in the context of its administration it is necessary to apply a theoretical model. Conflict is the basis for engaging in the process of dispute resolution; however, it is framed as a product of perception — i.e. when a party perceives that it has been subjected to negative effects as a result of another party's actions. However, a considerable amount of conflict remains latent, and may be repressed by the incapability of the first party to articulate their perceptions to the second party.<sup>313</sup> It can be inferred that the process of resolving the conflict is likely to be more successful if both parties address their actions and perceptions of the actual dispute. However, as previously

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<sup>310</sup> Roberts, Simon and Palmer, Michael (2008) *Dispute Processes: ADR and the Primary Forms of Decision Making* (Cambridge University Press, UK Reprint 2008) 7

<sup>311</sup> Ryan, Erin (2000) 'ADR, The Judiciary, and Justice: Coming to Terms with the Alternatives' *Harvard Law Review* 113 (1752) 1851-1875

<sup>312</sup> Clark, Nick; Contrepois, Sylvie; and Jefferys, Steve (2012) 'Collective and individual alternative dispute resolution in France and Britain' *The International Journal of Human Resource Management* 23(3) 550-566;

<sup>313</sup> Willmott, H. (1993) 'Strength is Ignorance; Slavery is Freedom: Managing Culture in Modern Organisations' *Journal of Management Studies* 30(4) 515-552

explained, migrant workers are at a particular disadvantage as they fear reprisal in the event they articulate their views. This is due to both the perceived and practical imbalance of power. In order to establish a relevant theoretical framework for successful conflict and dispute resolution within employment, it is incumbent to examine how actions, perceptions and philosophical viewpoints are related to the process itself. Although this encompasses a sizable amount of literature, it has been summarised succinctly based on three ideological perspectives on conflict and power:<sup>314</sup>

- (1) **The unitarist perspective** — where conflict is regarded as irrational due to poor top-down communication that is typically supported by rhetorical management strategies encouraging staff to work in harmony towards common goals. Alternatively, from an employee perspective it arises out of deviant or subversive behaviour.
- (2) **The pluralist perspective** — where organisations are seen as being comprised of competing groups that have inherently different values, interests, and objectives. In industrial relations, this manifests itself in the consideration of the interests of employers and employees. Therefore, a pluralist perspective deems that conflict is both rational and inevitable, requiring employer and employee representatives (managers, unions and staff groups) to devise and utilise agreed dispute resolution processes.
- (3) **The radical perspective** — where conflict is not merely viewed as inevitable, but it is both a product and driver of change. In this case, conflict is seen as being creative and

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<sup>314</sup> Fox, Alan (1966) 'Industrial Sociology and Industrial Relations' Research Paper 3, Royal Commission on Trade Unions and Employers' Associations (HMSO, London 1966); Fox, Alan (1985) *Man Mismanagement* (Hutchinson & Co, London). Fox, outlines three perspectives on power: unitarist, pluralist and radical (refer to the summary included in the text body) all cited and explained in Ridley-Duff, R. J. and Bennett, A. J. (2010), 'Mediation: developing a theoretical framework to understand alternative dispute resolution' paper to British Academy of Management, Sheffield, 14-16 September 2010; Stoddard, Mark C.J. (2007) 'Ideology, Hegemony, Discourse: A Critical Review of Theories of Knowledge and Power' *Social Thought and Research* 28(11) 191-225

transformative as it empowers innovation when considering different solutions to a problem. It thus becomes a useful means of challenging organisational norms.

The intellectual roots of the radical view are inextricably linked to Marxist theory, where ruling elites propagate their values and beliefs in such a way that it shapes the thoughts and feelings of a population — thus setting out the concept of hegemony.<sup>315</sup> This has been further elucidated in the development of a theoretical model of power that identifies conflict on three levels: open conflict, related to the radical view; agenda setting, related to the pluralist view; and hegemonic control, related to the unitarist view.<sup>316</sup>

Hegemonic power, rooted within colonial imperialism, can be understood as the most universal form of control; it is the most difficult to challenge.<sup>317</sup> It is associated with a unitary position whereby institutions, processes and the outcomes of disputes are subject to management control, it is fundamentally where the power of the ruling class is used to convince all other classes that their interests are the interests of all. This form of power yields the capacity to control information and communication, embedding values and beliefs into governance and educational systems. Hegemonic power thus works to convince individuals and social classes to subscribe to the social values and norms of even an inherently exploitative system. It induces a form of a form of social power that relies on voluntarism and participation.<sup>318</sup>

A pluralist perspective is associated where control is incomplete and is limited to setting the agenda for dialogue. In such scenarios, challenges to the agenda may be made by giving rise

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<sup>315</sup> Gramsci, Antonio (1971) *Selections from the Prison of Antonio Gramsci* edited and translated by Quentin Hoare and Geoffrey Nowell Smith (New York International Publishers, 1971; ElecBook London 1999 transcribed from the edition published by Lawrence & Wishart, London 1971) 405-406 cited in Ridley-Duff, R. J. and Bennett, A. J. (2010), 'Mediation: developing a theoretical framework to understand alternative dispute resolution' paper to British Academy of Management, Sheffield, 14-16 September 2010

<sup>316</sup> Lukes, Steven (2005) *Power: A Radical View*, (Second Edition, Palgrave Macmillan, Basingstoke 2005) 18-29

<sup>317</sup> Ashcroft, Bill, Griffiths, Gareth and Tiffin, Helen (2007) *Post-Colonial Studies: The Key Concepts* (Routledge, Abingdon, Second Edition) 106-108

<sup>318</sup> Stoddard, Mark C.J. (n 314)

to the possibility that one can force negotiations with the ruling elite.<sup>319</sup> The radical perspective is related to the model of open conflict, whereby power relations are more equitable; this gives rise to the prospect of and capacity for sustained democratic debate, and a more conducive platform for social relations. This in turn allows for alternative agendas to be proposed, even if the chances of success are limited. Conflicts are thus viewed as ‘transformative’ due to their potential to redistribute power. Moreover, they are not regarded as a simple means for re-establishing the status quo; therefore, the radical perspective is linked to participatory democracy within the labour environment.<sup>320</sup>

Industrial and employment conflicts and disputes have consequences for both the individual as well as the collective. Notably, the outcomes of collective disputes are generally more visible as they can manifest in the form of lockouts and strikes. Individual forms of industrial action are seemingly less apparent and take the form of examples of unorganised conflict such as absenteeism and voluntary resignation<sup>321</sup> — both of which could be taken as indicators of general discontent.<sup>322</sup> Effective dispute resolution strategies, therefore, need to be able to cope with a wide range of scenarios, involving conflicts over alleged actions, perceptions, and beliefs. They also need to consider conflict that is covert or overt, and enacted through passive or active aggression. The following table provides a framework for understanding dispute resolution processes and elaborates on the spectrum of ADR methods that are used in dealing with labour disputes. It also categorises the nature and flexibilities of the approaches while giving an insight into the tendencies of the political environment of the governing entities.

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<sup>319</sup> Lukes, Steven (n 297)

<sup>320</sup> Willmott, H. (n 294); Johnson, Phil (2006) ‘Whence Democracy? A Review and Critique of the Conceptual Dimensions and Implications of the Business Case for Organizational Democracy’ *Organization* 13(2) 245-274; Pateman, Carole (1970) *Participation and Democratic Theory* (Cambridge University Press, UK)

<sup>321</sup> Blyton, Paul and Turnbull, Peter (2004) *Dynamics of Employee Relations* (Third Edition, Palgrave Macmillan Basingstoke)

<sup>322</sup> Kersley, B., Alpin, C., Forth, J., Bryson, A., Bewley, H., Dix, G. and Oxenbridge, S. (2006) ‘Inside the Workplace: Findings from the 2004 Workplace Employment Relations Survey’ (Routledge, Abingdon, UK) cited in Ridley-Duff, R. J. and Bennett, A. J. (n 315)

Table 1: A Theoretical Framework for Understanding Dispute Resolution<sup>323</sup>

Rigid Authority				Dynamic Authority Relations	
					
Unitary Approaches		Pluralist Approaches		Radical Approaches	
Litigation	Arbitration	Conciliation	Directive Mediation	Facilitative Mediation	Transformative Mediation
Authority Driven Evaluation of facts and arguments				Experience Driven Legitimation of perspectives	
Law is the highest authority Pursuit of best practice			The parties are the highest authority Discovery of appropriate practice		
Assumes Objective Reality Conformance to dominant norms			Assumes Subjective Reality Accommodation of divergent norms		
Win – Lose Promotes Hegemony		Compromise Constrains Hegemony		Win – Win Promotes Democracy	

In light of this model, an essential question that needs to be asked is related to how power should be used and distributed along the spectrum of approaches highlighted. A debate exists regarding whether mediation, and its position in the above spectrum, undermines legitimate

<sup>323</sup> Ridley-Duff, R. J. and Bennett, A. J. (n 315)

authority. Indeed, in many ways it silences social criticism by hiding the process of dispute resolution from public scrutiny; this in turn prevents one from learning from the dispute. Moreover, criticisms based on that localised dispute settlement could in reality disregard nationally agreed standards or employment laws.<sup>324</sup>

This gives rise to the question of whether public bodies, given the fact they are rigid authority driven structures based upon statutory employment laws and rules established by governments, are inherently more democratic than those that are prevalent in private entities. Indeed, contrarily, research has shown that in certain types of disputes mediation on a local level does not harm the interest of the weaker party or the status quo. In addition, research into mediation has shown that minority groups and those with low-level educational attainment (criteria which are shared by migrant workers in the GCC) were positive about their experience of mediation.<sup>325</sup> Furthermore, in dynamic authority relations parties are allowed to make their own agreements according to the rules they decide *in situ* making the process more flexible to their needs, creating the capacity to maintain and develop the relationship of the disputing parties. Thus mediation, in its transformative and facilitative forms, inherently compels the parties in the dispute need to find an outcome or resolution.

That said, a further question arises in reference to what is actually meant by the term 'mediation' and where it lies on the scale of ADR. Further, it is important to consider the degree to which the third party is able to facilitate or direct the process. Domestic ADR utilisation can take very different forms (as illustrated in the table above), often using multiple steps. The choice as to which type of ADR is most appropriate is dependent on a number of factors: (1) the category of dispute; (2) the stage of the dispute; and (3) the nature of the

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<sup>324</sup> Delgado, R., Dunn, C., Brown, P. Lee, H. and Hubbert, D. (1985) 'Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution' *Wisconsin Law Review*, 1359-1404

<sup>325</sup> Kelly, Joan B. (2004) 'Family Mediation Research: Is There Empirical Support for the Field?' *Conflict Resolution Quarterly* 22(1-2) 3-35.

resolution being sought. In mediation the onus is on the disputing parties to yield and agree an acceptable outcome, which contrasts with conciliation and arbitration. Although mediation can be used at any point, it has been acknowledged as being most effective early on in the dispute life cycle in order to avoid dispute escalation.<sup>326</sup>

ADR offers a means of bringing workplace justice to more people, particularly to those who have more restricted access to societal protections. This includes those who are poor and have some form of disadvantage such as unskilled migrant labourers, domestic workers, and those with irregular immigration status. Furthermore, ADR offers the prospect of justice to more people at a lower cost and at greater efficiency.<sup>327</sup> Employers throughout the world have relied on in-house procedures to reduce and resolve conflict with and between employees, and have utilised ADR methods to do so. These in-house systems can be described as integrated conflict management systems (ICMSs). They offer a coordinated network of options to people so that they can resolve conflicts preferably at the earliest opportunity in an easily accessible way — i.e. within the workplace.<sup>328</sup> Furthermore, private companies sometimes appoint ombudsmen to deal with individual disputes inside their workplaces. A workplace ombudsman is a neutral party operating inside an organisation that is tasked to assist employees in resolving disputes informally through confidential means. In some countries the ombudsman or specialist labour inspectors are appointed by the state to deal with work-related disputes, such as discrimination or poor working conditions.<sup>329</sup> However, although

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<sup>326</sup> Gibbons, Michael (2007) *Better Dispute Resolution: A Review of Employment Dispute Resolution in Great Britain* (Department of Trade and Industry, London, March 2007) 23-29 available at <<http://webarchive.nationalarchives.gov.uk/20090609003228/http://www.berr.gov.uk/files/file38516.pdf>> accessed 12 May 2016

<sup>327</sup> Zack, Arnold M (1997) 'Can Alternative Dispute Resolution help resolve employment disputes?' *International Labour Review* 136(1) 95-108

<sup>328</sup> Bingham, Lisa B (2004) 'Employment Dispute Resolution: The Case for Mediation' *Conflict Resolution Quarterly* 22(1-2) 145-174

<sup>329</sup> Hungary, the Netherlands, Norway and Romainia cited in: Purcell, John (2010) 'Individual disputes at the workplace: Alternative disputes resolution' Eurofound Publication, EurWORK European Observatory of Working Life available at <<http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/individual-disputes-at-the-workplace-alternative-disputes-resolution>> accessed 20 November 2015

ICMSs are applied in developed and industrialised countries, they are much less prevalent elsewhere (such as in less developed countries). In such places the responsibility to resolve workplace issues has more universally been regarded as falling within the province of government agencies and the courts; this is the case within the GCC region.<sup>330</sup> Moreover, when migrants complain against their unscrupulous employers, the dispute inevitably needs to be managed externally through applying various modes of ADR. This ensures that exploitative situations faced by migrant workers are dealt with quickly and fairly.

ADR within a given legal jurisdictional context (i.e. judicial ADR) generally entails third parties engaging in conciliation, mediation, and arbitration prior to a formal court hearing. However, some countries prefer to use governmental and/or private structures to deal with the dispute settlement processes of the individual and/or collective labour disputes, and mediation/conciliation falling both inside and outside the arbitration process.<sup>331</sup> Although seemingly detached from the judiciary, this pre-litigation action can be actioned by a legal authority (e.g. a court judge) immediately prior to a hearing in an effort to resolve the dispute before it escalates further.

Contrary to (or in addition to) this, the process can involve the appointment of publicly-funded specialists, or private experts, either once a dispute has been officially lodged with the appropriate authority (but before a court hearing is fixed), or before the claim has been made.<sup>332</sup> Mediation and conciliation thus becomes a way of applying an ad-hoc ADR at this juncture, where the third party acts as a facilitator by maintaining the two-way flow of information between the conflicting parties, encouraging reconciliation between their

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<sup>330</sup> Zack, Arnold M (n 327)

<sup>331</sup> Denmark (the Conciliation Board), Ireland (the Labour Relations Commission), South Africa (the Commission for Conciliation, Mediation and Arbitration), the United Kingdom (the Advisory, Conciliation and Arbitration Service) and the United States (the Federal Mediation and Conciliation Service)

<sup>332</sup> ILO (2015) 'Professional Conciliation in Collective Labour Disputes A Practical Guide' Kevin Foley, Maedhbh Cronin ILO Decent Work Technical Support Team and Country Office for Central and Eastern Europe, Budapest



antagonistic positions. However, the conciliator does not make a judgement or suggest a solution, but works with the applicant and the employer to find an acceptable outcome; this is then recorded prior to any escalation to the judiciary proper.<sup>333</sup> The subtle difference in mediation is that the third party aids the disputants attempt to reach a mutually acceptable agreement. Thus, based on the principles of collaborative problem-solving, mediation can also be referred to as 'relational mediation',<sup>334</sup> with the focus being on the future and the rebuilding of relationships, rather than on apportioning blame. The mediator guides the parties towards finding their own solution by getting them to explore different and new ways of thinking and acting. This approach has its origins in family mediation and is also apparent in Islamic models on dispute resolution.<sup>335</sup> Relational mediation is usually conducted without representatives or lawyers being present. As no written decision is issued it is far less formal.<sup>336</sup>

Arbitration is a quasi-judicial process that involves a third party (whether an individual, a board of arbitrators or an arbitration court). As a decision maker, the arbitrator adjudicates the dispute. This dispute resolution system usually takes the form of an adversarial hearing, allowing for broad admissibility of evidence an argument and resulting in a written award. In terms of a legal context, arbitration differs significantly from mediation, conciliation, or ombudsmen programmes, as arbitration yields a final, binding award — whereas the other forms of ADR are generally voluntary interventions that yield settlements in the form of enforceable contracts.<sup>337</sup> In many industrialised countries industrial tribunals, labour tribunals or labour courts have been established to resolve a broad range of employment disputes —

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<sup>333</sup> ILO (n 286)

<sup>334</sup> Purcell, John (n 329)

<sup>335</sup> Rashid, Syed Khalid (2004) 'Alternative Dispute Resolution in the Context of Islamic Law' *The Vindobona Journal of International Commercial Law and Arbitration* 8(1) 95-118

<sup>336</sup> Purcell, John (n 329)

<sup>337</sup> Bingham, Lisa (n 328)

including those that are individual and collective in nature.<sup>338</sup> Although there may be differences in their objectives and coverage, these jurisdictions typically have a role in providing workers and employers a mechanism by which they can resolve rights and/or interest disputes through methods of ADR — ranging from mediation and conciliation to arbitration.<sup>339</sup>

Many states often make use of either specific administrative machinery or use independent agencies that serve as gateways to the civil or employment courts. Alternatively they have pre-judicial proceedings that are organised within the labour court system. However, although their respective roles can vary, overall their purpose is to filter disputes and to use investigative procedures to ascertain the facts and sound out the options for compromise. In many instances, this stage provides for decisions or recommendations that are legally enforceable if the parties agree.

### **1.5.2 International Labour Standards & Guidelines Related to Resolving Employment Disputes**

As this study aims to critique the UAE's system in terms of its effectiveness with reference to its private sector employees (which are largely migrant workers), it is essential that the standards for dispute resolution systems and procedures are outlined. With regard to normative expectations and internationally recognised labour standards concerning dispute resolution systems, the ILO has historically been the driving force for assisting member states through (1) the promotion of international labour standards related to dispute prevention and resolution, including monitoring state implementation; (2) research and knowledge sharing;

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<sup>338</sup> United Kingdom (HM Courts & Tribunals), the United States (American Arbitration Service), Australia (Australian Employment Tribunals), France (Labour Court System)

<sup>339</sup> Zack, Arnold M (n 327)

and (3) the provision of technical advice and assistance in the establishment and strengthening of legal frameworks, and of machinery and processes for the prevention and settlement of labour disputes. Moreover, under the banner of the ILO, labour dispute prevention and resolution is regulated by various conventions and recommendations.<sup>340</sup>

### **1.5.3 Labour Administration & Its Manifestations**

The ILO is the body that has guided its member states to establish national labour legislation and procedures that assure the equality and protection of all workers. Although national systems vary in their internal systems for handling employment disputes, the ILO has developed a catalogue of conventions, recommendations and guidance tools that are recognised ‘universally’ as the appropriate paradigm for ensuring the rights of all workers.<sup>341</sup> This has reinforced the obligations the various UN monitoring bodies have placed on state parties in terms of providing mechanisms for labour inspection, dispute resolution, redress, and compensation.

As a starting point, since its founding, the ILO has considered sound labour administration and inspection systems a priority.<sup>342</sup> This was reiterated in the global financial crisis of 2007-09, which highlighted the need for appropriate systems. The Global Jobs Pact recognises labour administration and inspection as ‘an important element in inclusive action on worker protection, social security, labour market policies and social dialogue’.<sup>343</sup> It also pertinently

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<sup>340</sup> C151 - Labour Relations (Public Service) Convention No. 151 (1978); C154 - Collective Bargaining Convention No. 154 (1981); R092 - Voluntary Conciliation and Arbitration Recommendation No. 92 (1951); R130 - Examination of Grievances Recommendation No. 130 (1967); C150 - Labour Administration Convention, 1978 (No. 150); R158 - Labour Administration Recommendation No. 158 (1978)

<sup>341</sup> Zack, Arnold M. (2006) ‘Implementing ILO Labor Standards: Conciliation as a Promising Tool’ XVIII World Congress of Labour and Social Security Law, Paris September 5-8, 2006

<sup>342</sup> ILO Constitution Article 10(2)(b)

<sup>343</sup> ILO (2009) ‘Recovering from the crisis: A Global Jobs Pact’ adopted by the International Labour Conference at its Ninety-eighth Session, Geneva, 19 June 2009, Para 17 available at <[http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meetingdocument/wcms\\_115076.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_115076.pdf)> accessed 27 July 2026

ensures linkages between social progress and economic development as it involves enhancing support through sound labour administration for those described as being vulnerable, including migrant workers.<sup>344</sup> In April 2010, the G20 Labour and Employment Ministers stated that reinvigorated efforts by labour ministries, labour inspectorates, and other appropriate government bodies are needed in many countries ‘to ensure that the crisis does not lead to violations or weakening of fundamental rights at work or the national labour laws or to the exploitation of vulnerable segments of the workforce, including youth and migrants’.<sup>345</sup>

A principle objective of the ILO has been to amalgamate a body of international standards to deliver better tools for governance and to sustain the national implementation and enforcement of international labour standards. The Labour Administration Convention, 1978 (No. 150) and Labour Administration Recommendation, 1978 (No. 158), cover a set of general provisions defining the role, functions, and organisation of national systems of labour administration. Article 1 of ILO C150 defines labour administration as ‘public administration activities in the field of national labour policy’. The 1973 Meeting of Experts comprehensively clarified that the ‘concept of labour administration should be interpreted in the broadest sense’ and that it ‘should cover all activities undertaken by public administration bodies to assist governments in the elaboration, implementation, control and evaluation of labour policy’.<sup>346</sup> Furthermore, the experts’ report went on to unequivocally state that labour administration ‘should cover the whole system of ministerial departments and public agencies which have been set up by national laws and regulations to deal with labour matters, and the

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<sup>344</sup> ILO (2009) ‘Recovering from the crisis: A Global Jobs Pact’ adopted by the International Labour Conference at its Ninety-eighth Session, Geneva, 19 June 2009, Para 9(2) and Para 14(2)

<sup>345</sup> ITUC/TUAC (2010) Evaluation of the G20 Labour and Employment Ministers’ Meeting (Washington DC, 20-21 April, 2010) Para 20 available at [http://www.ituc-csi.org/IMG/pdf/22-04-10\\_Final\\_G20\\_Washington\\_Labour\\_Evaluation.pdf](http://www.ituc-csi.org/IMG/pdf/22-04-10_Final_G20_Washington_Labour_Evaluation.pdf) accessed 27 July 2016

<sup>346</sup> ILO (1976) ‘Labour administration: Roles, functions and organisation’, Report V(1), International Labour Conference, 61<sup>st</sup> Session, Geneva, 1976, pp. 18–19; cited in ILO (1997) ‘General Survey on the Labour Administration Convention (No. 150) and Recommendation (No. 158), 1978’ Report III (1B) International Labour Conference 85<sup>th</sup> Session, Geneva, 1997, available at [http://www.ilo.org/public/english/standards/relm/ilc/ilc85/r-iii1b.htm#N\\_27](http://www.ilo.org/public/english/standards/relm/ilc/ilc85/r-iii1b.htm#N_27) accessed 27 July 2016

institutional framework for the coordination of their respective activities and for consultation with and participation by employers and workers and their respective organisations in the formulation and development of labour policy'. Therefore, C150 and its accompanying R158 establish the general institutional framework for the preparation, administration, coordination, checking and review of national labour policy. In addition to these, other relevant ILO instruments focus on specific areas of labour administration, paying particular emphasis to labour inspection.<sup>347</sup>

It is important to note that the context in which labour administration functions has dramatically changed. This is particularly the case over the past few decades because of globalisation, which has led to technological, economic and political developments, and labour flows on both global and regional levels. Therefore, effective labour administration needs to take this into consideration when reviewing how to best to operate in developing business climates — especially in economies that incorporate a growingly more diverse labour force. As a result, migration and migrant workers have inevitably been impacted upon.

Labour administrators are tasked to establish labour dispute procedures in national legislation with the key objective being to manifest a mechanism to ensure that, wherever possible, the parties to the dispute are able to resolve it through a consensus-based process. This essentially entails using methods such as mediation and conciliation, before reverting to arbitration and/or formal adjudication. Labour dispute management has been customarily the responsibility of government ministries or specific departments of labour, where government officials within the labour administration handle the disputes as they are lodged. Such institutions are designed to provide a mechanism for mediation, conciliation and voluntary

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<sup>347</sup> Employment Service Convention, 1948 (No. 88), the Occupational Safety and Health Convention, 1981 (No. 155), the Private Employment Agencies Convention, 1997 (No. 181) and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), more than 46 ILO conventions and recommendations include reference to labour inspection in their texts.

arbitration, reducing the need for social partners to resort to adjudication processes. These institutions manifest through the formulation of a dedicated dispute-handling unit within the labour administration itself or by creating an independent and autonomous statutory body that assumes responsibility for dispute prevention. Although such bodies remain dependent on state funding they are meant to operate without governmental interference — independent of business, employer, or trade union influence.<sup>348</sup>

As specified in Article 1 the ILO's R092 – Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), dispute management systems must be appropriate to the national conditions. As already explained, dispute management systems vary from state to state, but an effective system needs to engender the confidence and trust of all of its users, particularly those who are most vulnerable to exploitation such migrant, domestic, and stateless worker. Bearing this in mind, there are three main categories of dispute management systems:

1. **Ministries or departments of labour** — where labour dispute prevention and resolution is the responsibility of national and state labour administrations. These operate as the part of the public service mandated to administer activities in the field of labour policies. They frequently include a range of other functions unrelated to labour dispute resolution. The processes of mediation, conciliation and arbitration are resolutely controlled by Labour Department officials, although specific national circumstances can allow for some restricted participation of private agencies in the dispute resolution process. This approach operates in many African, Asian, European, Arab, and American countries.

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<sup>348</sup> ILO (2013) 'Labour Dispute Systems: Guidelines for improved performance' available at <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---dialogue/documents/publication/wcms\\_211468.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_211468.pdf)> accessed 23 March 2015

2. **Independent statutory bodies** — where labour dispute prevention and resolution is the responsibility of independent state funded bodies. These operate with a high degree of objectivity and autonomy. Dispute prevention and resolution fall under the responsibility of an independent commission, authority, or similar body operating under its own legislature, and with its own governing council or board. Their mandate and function is established by law, as is their neutrality and independence from political parties, businesses, and trade unions. Private agency involvement in the dispute resolution processes is generally encouraged and supported by the independent body. This category might be described as modern-independent, although some such bodies have been operating for over 60 years. As independent statutory bodies, such commissions are not part of the central labour administration but are part of the wider labour administration system.

Typical examples include the Federal Mediation and Conciliation Service in the United States, established in 1947; the Advisory Conciliation and Arbitration Service in the United Kingdom, established in 1976; the Labour Relations Commission in Ireland, established in 1991; more recently, the Commission for Conciliation Mediation and Arbitration in South Africa, established in 1995; Ghana's National Labour Commission, established in 2005; and Tanzania's Commission for Mediation and Arbitration, established in 2007.

3. **Shared arrangements** — where labour dispute prevention and resolution is the shared responsibility of the labour administration and an independent body, an example of which is the Department of Labour within the Ministry of Labour and Vocational Training and the Arbitration Council in Cambodia.

Other types of shared arrangements include those where employers' organisations and trade unions are heavily involved. One such example is Spain's Intersectoral

Service of Mediation and Arbitration. It is funded by the state but managed by social partners and has jurisdiction over disputes extending beyond the boundary of an individual autonomous community. In Belgium, the social partners also share a responsibility to prevent and resolve collective disputes. If the collective conflict is not prevented by workers' and employers' representatives, it is referred to a bi-partite conciliation committee, the chairperson of which is a government official appointed by the Federal Minister of Labour, who acts as an independent and impartial mediator.

A system of dispute resolution should be consistent with the right of freedom of association and the right to strike. In terms of the legal obligation to pursue mediation and conciliation (i.e. before a strike), it is legitimate only as long as the procedures are not too complex or slow. Moreover, the requirement of compulsory arbitration is generally contrary to the principle of voluntary negotiation of collective agreements established in C098 (1949), which states in Article 4: 'measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements'. For both institutionalised or ad-hoc dispute resolution systems, dispute resolution mechanisms are intended (1) to prevent collective labour disputes escalating into strikes; and (2) to offer a swift settlement in both individual and collective rights disputes.

ADR systems exist within different legal systems, political contexts, and across a diverse range of cultures. Nevertheless, taken as a whole, they all share the same capacity to demonstrate the potency of ADR methods as an effective alternative to adversarial means of conflict resolution in employment disputes. Consequently, any analysis of dispute resolution should give careful consideration as to how well a particular method achieves and balances certain



qualitative concepts such as (1) proper deference to substantive legal norms, as a process lacking in this undermines or even causes atrophy to the intent of substantive legal norms; (2) the accuracy of the outcome, as the dispute must be dealt with justly bearing in mind that the decision needs to embrace both disputed issues of fact and unsettled questions of law; (3) the timely resolution of a dispute, as the time taken has a direct correlation to the cost of the process; and (4) objective and informed representation, which is crucial in order to ensure that the disputing parties are counselled and advised appropriately.<sup>349</sup>

From an international perspective, each country applies its own mix of domestic law and practice to channel union activity and manage employment disputes into some form of established procedure. They can then resolve them through the use of law and the regular judicial system; special labour court; or through private dispute resolution systems and quasi-judicial administrative agencies.<sup>350</sup> The ADR approach or procedure that is taken affects how the labour dispute is actually defined.<sup>351</sup> This is because the dispute may fall into a number of different categories, including individual or collective disputes that can arise from either (or

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<sup>349</sup> Brunet, Edward (1987) 'Questioning the Quality of Alternate Dispute Resolution' Tulane Law Review 1(62) 1-56

<sup>350</sup> Zack, Arnold M., (2004) 'Conciliation of Disputes Over International Labor Standards' Fifth Asian Regional Congress of the Industrial Relations Association

<sup>351</sup> (1) An individual dispute is a disagreement between a single worker and the employer, usually over existing rights. It can include situations in which a number of workers disagree with their employer over the same issue, but where each worker acts as an individual. (2) A collective dispute is a disagreement between a group of workers usually, but not necessarily, represented by a trade union, and an employer or group of employers over existing rights or future interests. (3) A rights dispute is a disagreement between a worker or workers and their employer concerning the violation of an existing entitlement embodied in the law, a collective agreement, or under a contract of employment. Such disputes usually take the form of a claim by employees that they have not been provided with their entitlements with regard to such things as wages, overtime payments, holidays, and the working environment, indeed anything which is an entitlement that already exists by law. Rights disputes can be either individual or collective. (4) An interest dispute is a disagreement between workers and their employer concerning future rights and obligations under the employment contract. In practice most interest disputes are the result of a breakdown in the bargaining process with the parties failing to reach agreement on the terms and conditions of employment that will apply in future. Interest disputes are generally collective in nature. Some jurisdictions identify various special types of rights disputes including those relating to trade union recognition, the determination of bargaining units, the interpretation and application of collective agreements, and those concerning unfair dismissals. This raises the question as to whether such 'special' disputes should be handled differently from mainstream rights disputes, involving special institutions and processes; taken and adapted from ILO (2013) 'Labour Dispute Systems: Guidelines for improved performance' available at <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---dialogue/documents/publication/wcms\\_211468.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_211468.pdf)> accessed 23 March 2015

on occasion both) contractual contracts issues (individual or collective), or from issues pertaining to statutory labour rights.<sup>352</sup>

The ILO has specifically issued two recommendations that both lay down basic principles and provide guidance for measuring the effectiveness of dispute resolution systems: R092 – Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92); and the R130 – Examination of Grievances Recommendation, 1967 (No. 130). Recommendation No. 92 is applicable to industrial disputes, while Recommendation No. 130 is applicable to both grievances and disputes concerning rights and interests, other than collective interest claims aimed at the modification of terms and conditions of employment. These form the initial basis for what is expected in terms of defining a fair system of dispute resolution.

Most importantly, both instruments call for the participation of workers and employers on an equal footing as a foundation for the effective management and governance of dispute resolution systems.<sup>353</sup> The guidelines not only deal with settling disputes but also place emphasis on their prevention, which includes finding voluntary solutions and consensus-orientated systems involving the parties to the dispute.<sup>354</sup> With a view to preventing and minimising disputes, R130 calls for the establishment and proper functioning of a sound personnel policy at the enterprise level, which should take into account and respect the rights and interests of the workers, based on regular cooperation with the workers' representatives.<sup>355</sup> The importance of a consensus-based system is that it supports the statement that 'grievance procedures should be so formulated and applied that there is a real possibility of achieving at each step provided for by the procedure a settlement of the case freely accepted by the worker and the employer'.<sup>356</sup>

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<sup>352</sup> Zack, Arnold M. (n 327)

<sup>353</sup> ILO R92 Article 2; ILO R130 article 2, 6, 13(1)

<sup>354</sup> ILO R92 Article 1; ILO R130 Article 7(2)

<sup>355</sup> ILO R130 Article 2 and 7(1)

<sup>356</sup> ILO R130 Article 11

Where such efforts do not yield a resolution, the recommendation invokes that a final settlement should involve accessing other processes/procedures, namely, '(a) procedures provided for by collective agreement, such as joint examination of the case by the employers' and workers' organisations concerned or voluntary arbitration by a person or persons designated with the agreement of the employer and worker concerned or their respective organisations; (b) conciliation or arbitration by the competent public authorities; (c) recourse to a labour court or other judicial authority; and (d) any other procedure which may be appropriate under national conditions'.<sup>357</sup> In relation to cost implications when accessing a given system, R092 indicates that voluntary conciliation procedures that assist in the prevention and settlement of industrial disputes between employers and workers should be 'free of charge and expeditious'.<sup>358</sup> Although these recommendations are general they do not take into consideration drastic changes that have taken place in the world of work since their initial adoption. For example, they do not specifically take into consideration the plight of migrant workers, in terms of the dilemmas they face such as poor recruitment practices, sponsorship related issues and the regularity/irregularity of status. Consequently the recommendations and guidelines have been brought into question by the ILO in terms of whether the principles that they embody are sufficiently comprehensive enough to develop and operate effective dispute resolution systems, and whether they are adaptive to the current complexities and diversities of the globalised labour climate.<sup>359</sup> With the intention to revise these recommendations or to supplement them with a new instrument, the ILO embarked on a on a two-year global research project (2014-2015). This initiative emerged out of discussion that took place at the 2013 Recurrent Discussion on Social Dialogue at the 102nd

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<sup>357</sup> ILO R130 Article 17

<sup>358</sup> ILO R92 Article 3(1)

<sup>359</sup> ILO (2015) 'Best Practices in Resolving Employment Disputes in International Organizations' Conference Proceedings, ILO Geneva, 15-16 September 2014 Edited by Annika Talvik

Session of the International Labour Conference,<sup>360</sup> where the ILO highlighted the need to gather and disseminate information on which dispute resolution mechanisms work best in different contexts and why. The conclusions to the Conference discussion called on the ILO to expand its assistance to strengthen and improve the performance of labour dispute prevention and resolution systems and mechanisms through research, advice, capacity building, and the exchange of experience. While recognising the diversity of mechanisms in different countries, the key objective of the research was to analyse which mechanisms and processes work best, with a view to recognising guiding principles for the effective prevention and resolution of individual labour disputes.

#### **1.5.4 ILO Guidelines on Labour Dispute Systems**

In order to assist member states in assessing their dispute resolution systems, the ILO developed a guide entitled '*Labour dispute systems: Guidelines for improved performance*'.<sup>361</sup> The guide has been used in support of technical assistance to build and improve dispute prevention and resolution systems. Related to the two ILO recommendations, the guide builds on and highlights a set of key elements and criteria for fair, well-functioning and effective dispute resolution systems. Moreover, the guide specifically covers the three main categories of dispute management systems: (1) Ministries or departments of labour; (2) independent

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<sup>360</sup> ILO (2013) Report VI 'Social dialogue Recurrent discussion under the ILO Declaration on Social Justice for a Fair Globalization' International Labour Conference, 102nd Session, ILO Geneva 2013; ILO (2016) 'Follow-up to the discussion on social dialogue at the 102nd Session of the International Labour Conference (2013): Plan of action' ILO Geneva, 11 March 2016, Para 22 available at <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_222313.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_222313.pdf)> accessed 27 July 2016

<sup>361</sup> ILO (2013) 'Labour Dispute Systems: Guidelines for improved performance' available at <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---dialogue/documents/publication/wcms\\_211468.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_211468.pdf)> accessed 23 March 2015

statutory bodies; and (3) shared arrangement systems (see earlier section). The following section highlights these key areas.<sup>362</sup>

**The importance of offering a range of services related to the needs of its clients/users:** in addition to the actual provision related to the dispute resolution process that includes the services of third parties, such as conciliation/mediation and arbitration, it should also encompass other complementary services, such as the provision of information, advice, counselling, training, facilitation, and investigation. The services should also comprehensively cover the full range of disputes including individual, collective, rights, and interests, as well as those relating to organisational rights, recognition for bargaining, interpretation of collective agreements, discrimination, unfair labour practices, retrenchments, and dismissals. Furthermore, in relation to ILO R092 Article 3(2), these services should be made available at the request of any party to a dispute.

**The accessibility, simplicity and clarity of legal frameworks, procedures and operations:** these are important areas when considering the accessibility and effectiveness of a given dispute system. When issues become evident in a given system, they can be further exacerbated by the continual and rapidly evolving nature of employment relationships. This is particularly pertinent to vulnerable groups,<sup>363</sup> such as migrant workers. In such scenarios, workers are unlikely to voice their claims or grievances for fear of reprisals.

Bearing that in mind, an effective system needs to have procedures and operations that are clear, uncomplicated, and informal, that uses user-friendly forms/documents. In accordance with ILO R092 Article 3(2), the simplicity of procedures is key to ensuring that dispute prevention and resolution services are expeditious and timely. In terms of cost, as per ILO

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<sup>362</sup> Adapted from: ILO (2013) 'Labour Dispute Systems: Guidelines for improved performance' and ILO (2015) 'Best Practices in Resolving Employment Disputes in International Organizations'

<sup>363</sup> These also include, among many others, non-unionized employees, non-standard workers, undocumented workers, domestic workers, those in small- and medium-sized firms, and in rural areas and certain sectors

R092 Article 3(1), voluntary conciliation procedures should be free of charge to the disputing parties. The central principle of R092 is that the conciliation machinery in an established system is meant to be voluntary, which means that the parties can choose a private third party as the conciliator/mediator or arbitrator, rather than engaging with the state machinery.

**Professionalism and innovation:** the competency of those who handle labour disputes is an important practical element for the effectiveness of a system. Administrators of the system need to be fairly selected and must have had adequate training to meet the requirements of the job description and of the needs of users. Furthermore, they should be subject to and regulated by a code of conduct/behaviour.

Innovation refers to the willingness to be flexible and the ability to adjust to provide the best possible services for the benefits of the clients. This manifests itself through engaging in new approaches to dispute resolution and the provision of a range of dispute prevention initiatives including facilitation, investigation, fact-finding, joint research, joint training, and relationship enhancement. Innovation also extends to the provision of services for persons that usually find it hard to access services; it could mean providing specialist support or the use of computer information technology. Data collection also plays a key role in assessing the service, as it provides user demographics and success rates of the system.

**Independence:** this is an integral element of an effective system. This means that the system neither belongs to nor is controlled by political parties, business interests, employers or trade unions, and that it operates without interference from the government. This is dependent on a number of factors and is often not easy to achieve, as a country is shaped by its historical, political, and cultural contexts. As envisaged in R092 Article 2, equal representation is a fundamental element in safeguarding the independence of a system.

**Resource support:** this is a requirement of an effective dispute resolution system. Notably, independence does not mean financial independence, as dispute management systems operating as statutory bodies will be dependent on state funding. Therefore, effective systems will have sufficient resources to meet the capital and recurrent expenditures associated to function.

**Confidence and trust of users:** an effective labour dispute system provides services valued by its users and enjoys their confidence and trust. A fair system takes the necessary steps to assess the extent to which its users are satisfied with the range and quality of services provided. Moreover, it does all within its capacity to maintain its impartiality, and delivers services justly and without discrimination to *all* who fall within its jurisdiction.

### 1.5.5 UN Guidelines on Business & Human Rights

In addition to state duties and obligations, there are issues centred on the relationship between business, business enterprises and human rights. MNCs have always evoked a certain level of concern, particularly when they do not respect the core/minimum international human rights standards.<sup>364</sup> Arguably, despite the proliferation of human rights obligations holding states accountable, insufficient attention was given to some of the most powerful non-state actors, MNCs. During the growth phases of MNCs, post 1970's, there were however a number of unsuccessful voluntary initiatives to make businesses accountable for their human rights abuses.<sup>365</sup> For example, an initiative devised by the UN in 2003 was called the

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<sup>364</sup> Implications include abuses such as: employing child labourers; discriminating against certain groups of employees; failing to provide safe, secure and healthy working conditions; repressing the right to form and join trade unions; discouraging the right to bargain collectively; dumping of toxic waste and unsafe materials etc. Some of these abuses disproportionately affect developing countries and their indigenous populations, and children, minorities, women and migrant workers, all of which have been categorised in working in unsafe and poorly paid vocations.

<sup>365</sup> Weissbrodt, David and Kruger, Muria (2003) 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights' American Journal of International Law 97, 901-922;

‘Norms on Transnational Corporations and Other Business Enterprises with Regard to Human Rights’. This proposal was drafted by an expert subsidiary body of what was then the Commission on Human Rights, which aimed to impose on companies, directly under international law, the same range of human rights duties that have accepted for themselves under treaties they have ratified. However, the proposal triggered a deeply divisive debate between the business community and human rights advocacy groups. It was further hampered by the lack support from Governments. Following the serial failures of early efforts, in 2005 Commission on Human Rights established a mandate for a Special Representative of the Secretary-General ‘on the issue of human rights and transnational corporations and other business enterprises’ to undertake a new process, and requested the Secretary-General to appoint the mandate holder.<sup>366</sup> This led to the Special Representative making a recommendation that the new framework be established, one that has an apparent authoritative focal point around which the expectations and actions of relevant stakeholders could converge on business and human rights responsibilities rather than taking a hard law approach.<sup>367</sup> The framework rested on three pillars ‘Protect, Respect and Remedy’ that were regarded as essential components in an inter-related and dynamic system of preventative and remedial measures:

1. The state duty to protect against human rights abuses by third parties, including business enterprises, through appropriate policies, regulation, and adjudication. The

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Avery, Chris. (2010) ‘The Development of Arguments for the Accountability of Corporations for Human Rights Abuse’ in *Human Rights: From Practice to Policy Proceedings of a Research Workshop Gerald R. Ford School of Public Policy University of Michigan*, edited by Carrie Booth Walling and Susan Waltz (University of Michigan Ann Arbor, Michigan) available at <<http://humanrightshistory.umich.edu/files/2012/10/Avery.pdf>> accessed 7 July 2018

<sup>366</sup> HRC (2011) Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/17/31 21 March 2011, Para 2-6

<sup>367</sup> Avery, Chris. (n 365)



state duty to protect was fundamental as it lies at the very core of the international human rights regime.

2. The corporate responsibility to respect human rights, which meant that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts with which they are involved. The corporate responsibility to respect was the basic expectation society has of business in relation to human rights.
3. The need for greater access by victims to effective remedy, both judicial and non-judicial. Access to remedy was highlighted as even the most concerted efforts to protect human rights cannot prevent all abuse from occurring and so appropriate systems and mechanisms are needed for remedy, redress and resolution.

This latest and endorsed framework culminated in the formulation of the United Nations Guiding Principles on Business and Human Rights (UNGPs),<sup>368</sup> an instrument consisting of thirty-one principles based on this issue of human rights and transnational corporations and other business enterprises.

The UNGPs provided the first global standard for preventing and addressing the risk of adverse impacts on human rights linked to business and business enterprise related activity. Moreover, as stated under its opening section titled 'General Principles', they apply to all states and to all business enterprises, both MNCs/transnational and others, regardless of their size, sector, location, ownership and structure, without limiting or undermining any legal obligations a state may have undertaken or be subject to under international law with regard to human rights.

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<sup>368</sup> The Human Rights Council endorsed the UNGPs in its resolution 17/4 of 16 June 2011

Furthermore it clarifies that they meant to be understood as a coherent whole set of principles and should be read, 'individually and collectively, in terms of their objective of enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalisation'.<sup>369</sup> Moreover, the Special Representative, John Ruggie pertinently stated that:

**The Guiding Principles' normative contribution lies not in the creation of new international law obligations but in elaborating the implications of existing standards and practices for states and businesses; integrating them within a single, logically coherent and comprehensive template; and identifying where the current regime falls short and how it could be improved.**<sup>370</sup>

Therefore, none of the contents found within the UNGPs should be read as creating new international law obligations, or as limit or undermine any legal obligations a state may have undertaken or be subject to under international law with regard to human rights.

Bearing that in mind, and the subject matter of this study, the third pillar in the framework addresses both the state's responsibility to provide access to remedy through judicial, administrative, and legislative means, and the corporate responsibility to prevent and remediate any infringement of rights that they contribute to. Moreover, having effective grievance mechanisms in place is crucial in upholding the state's duty to protect and the corporate responsibility to respect. The UNGPs dictate that non-judicial mechanisms, whether state-based or independent, should be legitimate, accessible, predictable, rights-compatible,

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<sup>369</sup> UNGPs General Principles

<sup>370</sup> Ruggie John G. (2011) Presentation of Report to United Nations Human Rights Council, Professor Special Representative of the Secretary-General for Business and Human Rights Geneva, 30 May 2011 available at <<https://www.business-humanrights.org/sites/default/files/media/documents/ruggie-statement-to-un-human-rights-council-30-may-2011.pdf>> accessed 2 July 2018

equitable, and transparent. Similarly, company-level mechanisms are encouraged to operate independently through dialogue and engagement, rather than with the company acting as the adjudicator of its own actions.<sup>371</sup>

Specifically, under Principle 27, state-based non-judicial grievance mechanisms are addressed, stating that:

**States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.**

The principles recognise that administrative, legislative and other non-judicial mechanisms play an essential role in complementing and supplementing judicial mechanisms. Additionally, states are urged to consider ways to address any imbalances between the parties to business-related human rights claims and any additional barriers to access faced by individuals from groups or populations at heightened risk of vulnerability or marginalisation, which are pertinent to migrant workers. In relation to non-state mechanisms, the supplementary commentary that gaps in the provision of remedy for business-related human rights abuses could be filled, where appropriate, by expanding the mandates of existing ADR systems, non-judicial mechanisms and/or by adding new mechanisms. These could include dispute resolution mechanisms/systems such as mediation/dialogue-based or other culturally appropriate and rights-compatible processes. These mechanisms may offer particular benefits such as speed of access and remediation, reduced costs and/or transnational reach.

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<sup>371</sup> UNGP Access to Remedy Principle 25; HRC (2010) The UN "Protect, Respect and Remedy" Framework for Business and Human Rights, Business & Human rights Centre, available at <<https://www.business-humanrights.org/sites/default/files/reports-and-materials/Ruggie-protect-respect-remedy-framework.pdf>> accessed 18 July 2018

Despite the level of support the UNGPs have had, they have been subject to criticism primarily based on the lack of accountability,<sup>372</sup> and also that they have somewhat failed to take into account the power imbalances in terms of resources and information between victims of corporate abuses and MNCs.<sup>373</sup> Likewise, an issue raised with the third pillar of the UNGPs is the challenge of providing effective remedies for victims, particularly with judicial remedy. Although the UNGPs are effective at identifying inadequate access to judicial remedy, they merely encourage states to overcome them.

Another issue that has been highlighted is in regards to home state remedies. To elucidate, it has been recognised that commentary on Principle 2 provides that home states 'are not permitted' from or 'are permitted' to take measures ensuring access to remedies. This language has been heavily criticised for being reticent where victims of abuse infringed by MNCs routinely face overwhelming obstacles to remedy in their own countries and have no other place to seek redress.<sup>374</sup> Unfortunately the guiding principles have failed to specifically provide clear guidance on how to navigate the procedural and substantive barriers to home state remedies and failed to elaborate on 'governance gaps' to assist home states to implement mechanisms ensuring their corporations do not violate human rights abroad,<sup>375</sup> a key issue when dealing with vulnerable workers, both indigenous and migrant.

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<sup>372</sup> Santoro, Michael A. (2015) 'Business and Human Rights in Historical Perspective' *Journal of Human Rights*, 14(2) 155-161; Arnold, Denis G. (2010) 'Transnational corporations and the duty to respect basic human rights' *Business Ethics Quarterly* 20(3) 371-399

<sup>373</sup> Thabane, Tebello (2014) 'Weak Extraterritorial Remedies: The Achilles Heel of Ruggie's 'Protect' Respect and Remedy' Framework and Guiding Principles *African Human Rights Law Journal* Volume 14(1) 43-60

<sup>374</sup> Thabane, Tebello (2014)

<sup>375</sup> HRW (2013) 'Without Rules: A Failed Approach to Corporate Accountability, Human Rights Watch World Report 2013' Chris Albin-Lackey, available at [https://www.hrw.org/sites/default/files/related\\_material/business.pdf](https://www.hrw.org/sites/default/files/related_material/business.pdf) accessed 18 July 2018; HRW (2011) 'UN Human Rights Council: Weak Stance on Business Standards: Global Rules Needed, Not Just Guidance' available at <https://www.hrw.org/news/2011/06/16/un-human-rights-council-weak-stance-business-standards> accessed 18 July 2018

## 1.6 Conclusion

Historically, efforts by international institutions to promote labour rights have encountered problems and criticism due to trends in relation to deregulation, deinstitutionalisation, and the voluntarisation of labour rights. Commentary has suggested that fiscal protections have driven the global substantive agenda, rather than the establishment of a ‘transnational floor of social and economic rights’.<sup>376</sup> However, it is clear from this chapter that, due to their complexities, international migration and labour cannot be left to market forces — they should inherently be subject to governance and regulation in some form, at an international level.

Despite the presence of a number of international instruments and standards that provide rights to migrant workers, there are some underlying concerns that have been raised regarding their application. Substantively, some instruments are broad and general, applying to all human beings. Others are narrower, their application might apply to various different types of people such as all workers, all migrant workers, or only to migrant workers with a regular status. However, the most appropriate and humane view to take is that migrant workers, regardless of status, are always entitled to human rights. Moreover, in terms of labour rights, the reason that they possess such international legal significance is that they strike a chord with the intrinsic features of our common humanity. Inherent universal values provide the normative justification for international protection of labour rights.

The conceptions of both labour and migrant rights are therefore underpinned in international human rights law and other recognised guidelines. However, they are subject to other factors on various localised levels in terms of their interpretation and application. Equally, universal

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<sup>376</sup> Klare, Karl (2002) ‘The Horizons of Transformative Labour and Employment Law’ in *Labour Law in an Era of Globalization: Transformative Practices and Possibilities* edited by Joanne Conaghan, Richard Michael Fischl, and Karl Klare (Oxford University Press, UK) 3-30

accounts of rights also posit an integral relationship between international and domestic forms of protection. Internationally recognised rights are, on first account, necessary to secure domestic application; however, the inverse is true where domestic protection is necessary to ensure international accountability. Normative principles provide for an international framework for cooperation between states during the migration process and for national legislation, policy, and practice. Furthermore, such standards provide guidelines for the governance of migration, the protection of migrant workers, and the safeguarding of states' interests. The regulatory systems that have developed are multi-layered, reflecting efforts to protect migrant workers' rights and to address issues related to migration at multilateral, regional, bilateral, and national levels.

Domestic procedural rights such as the right to form a union, bargain collectively and strike are necessary to secure freedom of association for all workers, including migrant workers. Domestic substantive rights, such as the right to minimum/living wage, maximum hours and holiday, are intrinsically linked to other universal norms, such as freedom, equality, and justice. This approach has the capacity to address the charges of protectionism by recasting the normative significance of international labour rights in universal terms. Universal rights are there to impose obligations on states to protect the human rights of individuals who, falling under the particular sovereignty authority of a state, are suffering from inequalities and injustices that occur within the context of work — regardless of the characteristics and the status of those who perform work.

Within the context of this chapter and study, it is evident that there are variances in how human rights, namely labour rights, are perceived and applied in relation to migrant workers. This is evident from a regional perspective, where there are limitations on the rights concerning freedom of association, trade union activity, collective bargaining, and strike action, particularly where it concerns migrant workers. Nevertheless, there is a degree of

established precedence set by many Islamic states, albeit with certain nuances, in relation to these normative labour standards. This is because they have taken substantive steps to protect those rights, or at least have engaged in some form of dialogue indicating that they recognise them as universal rights. Thus, human rights serve to protect interests thought of as essential to our common humanity; they are therefore considered to be independent of ideology, political, economic, and fiscal discipline. Although the notion of human rights stands fast under moral scrutiny from all cultures, as evident from levels of international acceptance, there are examples of widespread disregard for them that are mainly based on loose arguments of cultural incompatibility. Despite this recurring rhetoric, MMCs and GCC states have indeed ratified major pieces of international law. This consequently serves as precedence or even a mandate to other states to do the same. If more states took the initiative and responded to the calls for treaty ratification, it would ultimately emanate a message that the international human rights agenda is something that was to be taken more seriously and that the authorities would welcome the scrutiny of the international community. Moreover, this level of transparency is crucial, as when the rights outlined within international law are compromised or violated, they are meant to be addressed by a competent body for resolution, whether it be a state or an independent organisation. Therefore, where human and employment rights are infringed upon, or when conflicts of interest occur, fundamentally there needs to be a system for justice, dispute resolution and redress — as outlined within international treaties, guidelines, and expert commentary.

Civil society engagement has been a crucial aspect for the betterment of social justice. It is a recurring theme in terms of promoting participation of marginalised individuals and groups. It enables their input in a meaningful way and provides a level of balance when dealing with power imbalances particularly where decision-making and accountability is concerned. Social advocacy is reliant on organisational structures taking on the mantle of forwarding societal issues

in order to facilitate change and indeed reform. Civil society has been and will continue to be an effective way to engage local people. Likewise, representational organisations should be allowed to flourish and indeed be consulted when devising laws and systems that govern communities.

Although not exhaustive, this chapter has highlighted some of the generic nuances of ADR that are prevalent in today's industrial climate. It is important to bear in mind they are dynamic and evolving concepts. Moreover, the techniques, systems and methods used to resolve labour disputes are only one aspect of public policy that concerns the relations between employers and migrant employees. ADR methods all aim to reduce adversarial attitudes in disputing parties and to promote openness and communication.<sup>377</sup> However, without an effective state framework for labour policy, and without a state approach to ADR, the mechanisms for resolving employment disputes are inevitably weak and largely ineffective. The main objective of resolving workplace disputes is two-fold: firstly, to ensure the rights of all workers, regardless of status, are protected; and, secondly, to prevent strikes and lockouts, although these are permitted by international law. It is for this reason that a suitable, appropriate and competent settlement procedure or mechanism may be intended as a mandatory substitute for industrial action or as a voluntary alternative. As with levels of international treaty ratification, the role of government as the provider of workplace fairness varies from country to country; indeed, as seen within international coverage and discourse, they are even patchier in terms of how they relate to migrant workers.

In light of international law and the customary norms pertaining to what is perceived as universally as human rights and fairness, it has been very difficult to achieve a standardised or developed conventional dispute resolution system due to constantly changing issues

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<sup>377</sup> Bevan, Alexander (1992) *Alternate Dispute Resolution* (Sweet and Maxwell, London) 2



surrounding globalisation, free trade, the combative roles of governments, unions, employers, civil society organisation, NGOs, and migration.<sup>378</sup> Although the processes of resolving labour disputes in various countries appearing to use a diverse range of approaches, they actually share common themes.<sup>379</sup> The usual mechanisms of mediation, conciliation, arbitration, and litigation are employed by all, though in different ways and with different legal effects. These ADR mechanisms are dependent on a state's domestic position and are subject to certain regional influences.

Therefore, the focus of the next chapter is to explore these regional influences, namely those that manifest in the Arabian Gulf region. It will examine the normative Islamic perspective on labour rights including how those principles relate to migrant workers. Furthermore, it will examine how Islam upholds and promotes state accountability to ensure that rights are justly applied and enforced appropriately. Having discussed international dispute resolution guidelines in this chapter, the study will endeavour to do the same in relation to Islamic principles of dispute resolution. The overall aim is to evaluate whether international and Islamic laws possess similarities in terms of how they consider migrant workers.

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<sup>378</sup> Zack, Arnold M. (n 327)

<sup>379</sup> Brown, Ronald C. (2012) 'Comparative alternative dispute resolution for individual labor disputes in Japan, China, and the United States: Lessons from Asia?' *St John Law Review* 2(86) 543-577

## **Chapter 2 — Islam: Labour Rights & Dispute Resolution**

### **2.1 Introduction**

Having explored the internationally recognised standards and perspectives of both employment relations and dispute management, this chapter will focus on the Islamic viewpoints in relation to both topics. It will undertake a comparative analysis of the region's and UAE's labour management systems in order to see how they fare in reality against both internationally and Islamically recognised principles of labour rights.

This chapter will begin with a short introduction to Islam, *Shari'ah*, and its notion of Islamic jurisprudence. It will then explore the Islamic concept of employment, employment relations, and dispute resolution based upon what is stipulated in Islamic law. This section of the thesis will be written in a specific Islamic style where primary sources of Islamic law will be directly quoted (e.g. the sacred texts, the Qur'an, and the Hadith). This tradition of rigorous referencing affirms the Islamic manner and tradition of legal work. Therefore, it allows for any analysis to be acceptable under Islamic scholarship and scrutiny, having a greater impact within Islamic discourse and dialogue.

#### **2.2.1 System of Life: Ensuring Rights & Equality**

The diversity of civilisation is reflected in the presence of different religions and ethical systems. Throughout history, mankind has sought to understand the reasons for his existence. A clear and common theme in many of the major religions is a fundamental belief in a deity or God, who is a supreme divine authority, both omnipotent and omniscient. Moreover, the followers of such religions believe that the God they worship is the same God for all mankind.

On the contrast, movements that promote atheistic beliefs (such as Marxism) have branded religion as an illusionary fantasy towards which the poor can yearn:

**It is the ‘opium of the people’.<sup>1</sup>**

Regardless of what these non-religious movements promoted in terms of the existence of the concept of God, they all developed into belief systems themselves, often formed of a rigorous structure intertwined with laws and authoritarian models of leadership to ensure their enforcement. This has led to the fact that they promoted and preached their way of life to others, along with concepts for the maintenance of order. Thus, religions (or core belief systems) can be seen as an inherent and integral aspect of human existence.

Bearing that in mind, Islam is the monotheistic religion followed by Muslims,<sup>2</sup> in which the principle belief is the everlasting existence of one Creator and Sustainer of the universe: Allah. The meaning of the word ‘Islam’ is ‘submission’ or ‘to humble oneself’. In terms of the religion, it means to submit to Allah, obeying His commands and heeding His prohibitions without objection. It means to sincerely worship Allah alone, believing what He tells us and having faith in Him. Islam was revealed through His Prophet Muhammad (ﷺ i.e. peace and blessings be upon Him<sup>3</sup>) in the 7<sup>th</sup> century CE. However, Islam is not attributed to any specific man or nation, with its name referring to the meaning of the word Islam, i.e. to submit to Allah. Thus, ‘Islam’ indicates that the religion was not the work of one particular man, tribe,

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<sup>1</sup> Karl Marx (1844) ‘A Contribution to the Critique of Hegel’s Philosophy of Right’ (December 1843-January 1844, First published in Deutsch - *Französische Jahrbücher*, 7 & 10 February 1844 in Paris) available at <<https://www.marxists.org/archive/marx/works/1843/critique-hpr/intro.htm>> accessed 09 October 2017

<sup>2</sup> *Sunni* and *Shia* Islam are the two major denominations of Islam of which this thesis will focus of Sunni Islam is Law as it constitutes the vast majority of the Muslim population globally and also with the UAE. The demographic breakdowns of the two denominations are approximately 85-90% Sunni and 10-15% Shia. Data from: Pew Research Center (2009) ‘Mapping the Global Muslim Population: A Report on the Size and Distribution of the World’s Muslim Population’ The Pew Forum on Religion & Public Life <<http://www.pewforum.org/files/2009/10/Muslimpopulation.pdf>> accessed 10 August 2017

<sup>3</sup> Arabic text of *sallallahu alaihi wasallam* meaning peace and blessings be upon Him.

or nation, to the exclusion of all others, rather its aim is to give the attribute implied by the word 'Islam' to all of humanity.

Islam represents not only the fundamental principles of worship, but also gives a holistic and balanced approach to the core issues underpinning all aspects of a moral and upright society. These include (1) rights and responsibilities, and (2) privileges and obligations. That said, Islam delivers an ethical code for human conduct that is clarified within the Qur'an. Within this code Allah has a number of characteristics: He enjoins justice and patience; He asks that people are dutiful to Him in accordance to the ways of the Prophet Muhammad; He instructs people to be kind to kith and kin; He forbids evil deeds, indecency, and all kinds of oppression.<sup>4</sup>

Furthermore, Islam does not separate the materialistic and spiritual facets of life, but rather portrays a combined vision encompassing the spirit of equity. It does not accept any form of discrimination based on gender, race nor region of origin:

**O mankind! We have created you from a male and female, and have made you into nations and tribes, that you may know one another. Verily, the most honourable of you with Allah is that (believer) who has At-Taqua (one of the Muttaqun i.e. the pious). Verily, All is All-Knowing, All-Aware.<sup>5</sup>**

Islam has, from its inception to the modern day, provided organisation in relation to economic, political, and cultural life. It places significance on resolving issues faced by mankind in the correct manner. This idea is applied within every context, including employment matters that include fundamental notions of racial equality:

**All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab nor a non-Arab has any superiority over an Arab; also white has no**

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<sup>4</sup> Qur'an, An-Nahl 16:90

<sup>5</sup> Qur'an, Al-Hujraat 49:13

superiority over black nor does a black have any superiority over white except by piety and good action.<sup>6</sup>

### 2.2.2 Legal Structures & Their Evolution

In today's globalised market economy, the nature of labour markets has drastically changed. These changes have taken place on international, regional, and national levels. Although globalisation inherently delivers benefits, it does so at the expense of some, namely the poorer working classes. In relation to migration patterns, one of the most concerning aspects (if not the most) is how the labour rights of these migrant workers (particularly poorer and unskilled workers) are being regulated and protected.

As discussed in the previous chapter, over time the UN and ILO have developed a mandate in which 'core' labour standards have been set in order to provide a global answer to the social challenges presented in the evolving face of globalised market places. However, international organisations instructing labour rights, equality, and preserving dignity, is only a recent development, as other ancient doctrines (Abrahamic religions) have been promoting them through the ages.<sup>7</sup> Such diverse ideologies founded within history have evolved and shaped what society deems and envisages as being universal human rights, even when taking a secular perspective.

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<sup>6</sup> The Prophet's Farewell Sermon, known as '*Khutabatul Wada'*'. It is referenced in most of the books of authentic hadith: Sahih al-Bukhari, Sahih Muslim, Tirmidhi and Musnad ibn Hanbal, available at <[http://d1.islamhouse.com/data/en/ih\\_articles/single2/en\\_Prophet\\_Muhammad\\_Last\\_Sermon.pdf](http://d1.islamhouse.com/data/en/ih_articles/single2/en_Prophet_Muhammad_Last_Sermon.pdf)>; Al-Awayishah, Husayn (2002) *The Farewell Advice of the Prophet* (Al-Hidaayah Publishing & Distribution, 2002) available at <[http://www.muslim-library.com/dl/books/english\\_Farewell\\_Advice\\_of\\_the\\_prophet.pdf](http://www.muslim-library.com/dl/books/english_Farewell_Advice_of_the_prophet.pdf)> accessed 10 August 2017

<sup>7</sup> McCrudden, Christopher (2008) 'Human Dignity and Judicial Interpretation of Human Rights' *European Journal of International Law* 19(4) 655-724

Moreover, in Western societies the establishment of two legal systems has taken shape through both civil law and common law.<sup>8</sup> Alternatives to civil and common law systems are evident throughout the international community. These are not secular, but are founded upon religious doctrines. In its purest form, a country following a legal system based on religious laws views such laws as emanating from a deity, legislating through prophets and, as such, remaining eternal, and immutable. This can be seen within those Muslim countries in which Islamic *Shari'ah* law is a significant source of legislation. However, Muslim countries vary in their dependence on purely religious laws, frequently having a hybrid (or dual) system of secular and religious laws in place.

The UAE, for all its external impressions and its inherent normative theological influences, has developed a legal system that is clearly mixed in nature (i.e. dual and hybrid). Furthermore, the UAE's legal system (as with other Arab systems, and a large number of other systems prevalent throughout the developing world) is portrayed as inappropriate or inaccessible, particularly when compared to Western models. It is the intention of this study to critique the systems and mechanisms of law pertaining to employment disputes in the UAE in situ, particularly as the international opinion delivered externally is generally negative.

In Arab societies, Islam as a religion is the primary source of custom and law. It is therefore pertinent to introduce the concept of the law in light of this fact, and to engage in discourse

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<sup>8</sup> The origins of civil law can be found in Roman law, as codified in the *Corpus Iuris Civilis* of Justinian. It is through this influence that civil law has been developed in Continental Europe and in many other parts of the world. The main feature of civil law is that it is contained in civil codes. A fundamental characteristic of civil law concerns the fact that the primary task of the courts is to apply and interpret the law contained in a code, or a statute, to case facts. Civil law is a codified system. The establishment of common law began in England in the 11<sup>th</sup> century, during the reign of Henry II. It was institutionalised through the creation of a unified system of law 'common' to the country, i.e. judges followed each other's decisions, thus creating a unified common law throughout England. This doctrine of precedence developed during the 12<sup>th</sup> and 13<sup>th</sup> centuries, with common law also being later adopted in the USA, Canada and the countries of the British Commonwealth. Common law is not created by means of legislation, but is primarily based on case law, following the principle that earlier judicial decisions (usually made by the higher courts) should be followed in subsequent, similar, cases and so respecting previous precedence. See The Robbins Collection (2010) 'The Common Law and Civil Law Traditions' School of Law (Boat Hall) University of California at Berkeley available at <https://www.law.berkeley.edu/library/robbins/pdf/CommonLawCivilLawTraditions.pdf> accessed 10 August 2017

relevant to contemporary industrial relations. In order to investigate labour issues and to compare the ways in which they are dealt with in the UAE (particularly in respect to migrant workers in the private sector) it is necessary that the relevant concepts of Islamic *Shari'ah* are explored. The following section will introduce the Islamic concept of law, *Shari'ah*, and the traditional schools of thought that underpin the religion.

### **2.2.3 Islamic *Shari'ah***

There are two distinct (but overlapping) concepts to Islamic law, *Shari'ah*, and *Fiqh*.<sup>9</sup> *Shari'ah* is an Arabic word commonly translated as the 'way' or 'path to water'. The *Shari'ah* has a much broader influence compared to the secular Western concept of law (i.e. in the Western legal system the law confines itself largely to matters relating to criminal justice, finance, contracts, civil relationships and individual rights), as Islamic *Shari'ah* law deals with all aspects of daily personal life and social issues such as sexuality, hygiene, diet, prayer, fasting, and all other religious acts. Therefore, the *Shari'ah* is not simply a legal system or form of criminal justice, it entails a complete code of living covering matters that other cultures consider to be morals, etiquettes, conscience, courtesy, medicine and natural sciences (to name but a few).

*Fiqh* literally means 'understanding', but frequently refers to Islamic jurisprudence and rule-making. It is based on the Qur'an, (the Holy text of Islam) and the authentic *Sunnah* or *hadith* (which are authentically attributed records of the actions and sayings of the Prophet Mohammad or His traditions). The Qur'an has ultimate precedence within the religion as it is regarded as the immutable speech of Allah, with the *Sunnah* being what illuminates it (i.e. the proper manner in which to manifest the religion). It is the most protected divine law as the majority of rulings of *Shari'ah* law are based on the two primary sources, the Qur'an, and the

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<sup>9</sup> Foster, Nicholas H.D. (2006) 'Encounters between legal systems: recent cases concerning Islamic commercial law in secular courts' *Amicus Curiae* 68, 2-9

*Sunnah*,<sup>10</sup> while a small fraction of its rulings are based on the *Ulama* (qualified legal jurists, also known as *mufti(s)*) who used the methods of *Ijma* (consensus of opinion of scholars); *Qiyas* (analogical deduction, reasoning or precedence); *Ijtihad* (research); and *Urf* (common practice) to derive *Fatawa* (informed legal opinions).

Thus, a number of nuances exist in the ways in which Islamic laws (particularly aspects of *fiqh*) have manifested over the course of Islamic history. As a result it has been termed not only a 'sacred law' but a 'jurists' law'.<sup>11</sup> Hence, the basic materials of *Shari'ah* in the *Sunni* tradition are laid out in the extensive manuals of medieval jurists from four main recognised schools of thought<sup>12</sup> (of which there are others but they are not as widely practised), each of which is classed as a *madh-hab*:<sup>13</sup>

1. *Hanafi*: founded by Abu Hanifa al-Nu'man bin Thabit al-Taymi (Imam Abu Hanifa);
2. *Maliki*: founded by Abu Abd-Allah Malik bin Anas (Imam Mailk);
3. *Shafi'i*: founded by Muhammad bin Idris Al-Shafi'i (Imam As-Shafi'i);
4. *Hanbali*: founded by Ahmad bin Hanbal Al-Shaybani (Imam Ahmad bin Hanbal).<sup>14</sup>

The jurists themselves allude to the fact that their rules are not in any individual sense divine law, as they are capable of misapprehending or misinterpreting Allah's Will. They all acknowledge this unashamedly, and thus add a caveat that the laws should be founded upon the Qur'an as the most authentic traditions of the Prophet Muhammad, particularly where

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<sup>10</sup> Bassiouni, Mahmoud C. and Badr, Gamal M. (2002) 'The *Shari'ah*: Sources, Interpretation and Rule-making', UCLA journal of Islamic and Near Eastern Law 1, 135-269

<sup>11</sup> Schacht, Joseph (1982), *An Introduction to Islamic Law* (Oxford University Press, 1982) 3-5

<sup>12</sup> Mallat, Chibli (2011) *Introduction to Middle Eastern Law* (Oxford University Press, 2011) 39

<sup>13</sup> *Madh-hab* is referring to the position of an outstanding scholar on a particular point, his opinion, whether legal or philosophical. Later, it was used to denote, not only the scholar's opinion, but also of his students and his followers.

<sup>14</sup> Hallaq, Wael B. (2009) *Shari'a Theory Practice Transformations* (Cambridge University Press 2009) 60-71; Philips, Abu Ammeenah Bilal (1990) *The Evolution of Fiqh: Islamic Law & The Madh-habs* (Second Edition, Tawheed Publications, Riyadh, Saudi Arabia, 1990) 63-89; Mallat, Chibli (n 12)



more authentic evidence can be sourced.<sup>15</sup> This form of deduction is clearly based upon principles in the Qur'an:

**O you who believe! Obey Allah and obey the Messenger (Muhammad), and those of you (Muslims) who are in authority. (And) if you differ in anything amongst yourselves, refer it to Allah and His Messenger (pbuh), if you believe in Allah and in the Last Day. That is better and more suitable for a final determination.**<sup>16</sup>

**Follow what has been sent down unto you from your Lord (the Qur'an and Sunnah), and follow not any Auliya' (protectors and helpers), besides Him (Allah). Little do you remember!**<sup>17</sup>

Nevertheless, taken as a whole, the compilations of the orthodox schools are understood to be the corpus of the *Shari'ah*.<sup>18</sup> Commentators have taken these slight differences in the opinions of the four jurists to demonstrate that there is a lack of uniformity within the legislation.<sup>19</sup> Although all of the schools differ in a number of their interpretations and applications of individual elements of the religion, they do not alter the essence of Islam, as the fundamental and underpinning Islamic principles remain the same.<sup>20</sup> It is noteworthy to mention that a resurgence of a further school of thought, *Salafism*, is also present in mainstream Islam. This code essence applies a broad overarching methodology termed as *manhaj*,<sup>21</sup> of establishing the religion based on the doctrine of giving precedence to the textual

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<sup>15</sup> Zino, Muhammad bin Jamil (1996) *Islamic Guidelines: For Individual and Social Reform* (Darussalam Publishers & Distributors, Riyadh, Saudi Arabia, 1996) 164-166

<sup>16</sup> Qur'an An-Nisa 4:59

<sup>17</sup> Qur'an Al-Araf 7:3

<sup>18</sup> Ala Hamoudi, Haider (2010) 'The Death of Islamic Law' Georgia Journal of International and Comparative Law 38, 293-334

<sup>19</sup> Bassiouni, Mahmoud C. and Badr, Gamal M, (n 10)

<sup>20</sup> Alarefi, Abdullah Saad (2009) 'Overview of Islamic Law' International Criminal Law Review 9, 707-731

<sup>21</sup> *Manhaj* is the methodology of receiving, analysing and applying knowledge based on the *Quran* and *Sunnah* by taking the understanding of the *Quran* and *Sunnah* of which the righteous predecessors had and projected. The *Manhaj* is in the *aqeedah* (beliefs) and in the *sulook* (mannerism) and in the *akhlaaq* (morals) and in the

following the Qur'an and authentic *Sunnah*, as understood by the early generations of Muslims collectively termed *As-salaf As-saalih*.<sup>22</sup> Therefore, *Salafism* refers to a reformist doctrinal pursuit of a purist understanding of Islam. It is also essentially based on the teachings of the four major Imams themselves in which they derived their accredited juristic rulings where they gave the same primary sources the focal point in ascertaining the most correct normative view.

In all of the schools of thought, regulations and rulings in Islamic *Shari'ah* are collectively termed as types of *ahkam*,<sup>23</sup> of which there are five categories<sup>24</sup> consisting of legal and moral regulations related to the behaviour of human beings in their relationship with Allah. *Hukm* is the word and command of Allah, and is related to the manifestations of the religion in terms of actions, behaviours, and deeds. As previously discussed, Islamic *Shari'ah* is based primarily upon the Qur'an and authentic *Sunnah*, followed by the *Ijma* (i.e. the consensus of Islamic verdicts established by scholars). This notion carries an inherent obligation of application to matters involving or concerning worship; dealings with individuals or groups of people, and the treatment of animals both domestic and wild; the realms of political and economic

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*mu'amalaat* (mutual relations and business transactions) in the life of every Muslim. Thus making the term applicable to all aspects/fields of the religion in which a Muslim traverses.

<sup>22</sup> *As-salaf As-saalih* meaning or referring to the pious predecessors: **Aisha reported that a person asked Allah's Apostle as to who amongst the people were the best. He said: "Of the generation to which I belong, then of the second generation (generation adjacent to my generation), then of the third generation (generation adjacent to the second generation)"**, Sahih al-Bukhari 6429, Sahih Muslim 2536, Jami' at-Tirmidhi 3859, Musnad Ahmad 3594

<sup>23</sup> *Ahkam* (plural of *hukm*) is a reference to the Islamic commandments, derived and understood from religious jurisprudence resources otherwise known as a law or ruling of *Shari'ah*

<sup>24</sup> The five categories of *ahkam* are: (1) *Fardh* or *wajib*: obligatory and required actions, based on definitive proof within the Qur'an and *Sunnah*. These are rewarded by Allah when undertaken and punishable if neglected. There are two types of obligations: (a) *fardhu 'ayn* (an individual obligation for which the responsibility lies with every Muslim); (b) *fardhu kifaya* (a communal obligation or collective duty).

(2) *Mandoob*: recommended acts or actions also termed *mustahab*, *masnoon* and *nafl*.

(3) *Mubah*: permitted but morally indifferent, also termed *halal* or *ja'iz* (lawful).

(4) *Makrooh*: discouraged or detestable.

(5) *Haram*: forbidden or prohibited, also termed *mahdoor* all refer to an act or action prohibited explicitly within the Islamic *Shari'ah*, i.e. bound by definitive and clear evidence from the primary sources of the religion: the Qur'an and authentic *Sunnah*.

activity; or any other manifestation of societal activity, of which employment issues are certainly covered.

These legal regulations ultimately command permission and prohibition, established by a request (or demand) to undertake, or avoid, a particular action. The basic principle of Islam's *ahkams* is that the term *halal* refers to that which Allah and His Messenger have permitted/lawful, while the term *haram* refers to that which Allah and His Messenger have explicitly forbidden/unlawful. To elaborate on this point, the principle of 'natural permissibility'<sup>25</sup> applies, emphasising that everything is lawful unless otherwise outlawed.

**Al-Miqdam bin Ma'dikarib narrated that: The Messenger of Allah said: "Lo! Soon a *hadith* from me will be conveyed to a man, while he is reclining on his couch, and he says: 'Between us and you is Allah's Book. So whatever we find in it that is lawful, we consider lawful, and whatever we find in it that is unlawful, we consider it unlawful.' Indeed whatever the Messenger of Allah made unlawful, it is the same as what Allah made unlawful."**<sup>26</sup>

Consequently, this analogy of 'natural permissibility' is not limited to things and objects, but includes all human actions and behaviours that are not related to acts of worship (i.e. as acts of worship are only permissible if legislated within the Qur'an and authentic Sunnah).<sup>27</sup> Islam is the religion Allah and His Messenger have prescribed, and no individual has the right to go beyond the limits of that which has been ordained within it.<sup>28</sup> Furthermore, Allah's commands

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<sup>25</sup> Qaradawi, Yusuf (2013) *The Lawful and the Prohibited in Islam* (Islamic Book Trust Selangor, Malaysia, 2013) 5-6

<sup>26</sup> Jami' at-Tirmidhi 2664, Graded Hasan Darussalam; in a further variant of this *hadith*, Muhammad was questioned about the permissibility of specific matters, but He gave an answer that referred to the general criterion determining the *halal* and *haram* in order to broaden the scope of his answer: **Salman Al-Farisi narrated that: The Messenger of Allah was asked about ghee, cheese and wild donkeys. He said: "What is lawful is that which Allah has permitted, in His Book and what is unlawful is that which Allah has forbidden in His Book. What He remained silent about is what is pardoned."**

<sup>27</sup> See section on Newly Invented Matters: Innovation in Religion

<sup>28</sup> Sunan Al-Daraqutani 4316; Nawawi 30 and graded Sahih by Ibn Al-Qayyim

to mankind are all within both their capacity and capabilities, as He states that He does not intend to overburden a person beyond his scope.<sup>29</sup> Moreover, in order not to overburden mankind,<sup>30</sup> and to avoid harm to religion, life, honour, reason, and wealth, that which is forbidden may also become permissible in certain extraordinary situations of ‘necessity’<sup>31</sup>

Another angle that needs to be considered in this modern age is how innovation is looked upon from an Islamic perspective, particularly as globalised economies function and depend upon innovation in practice and technology. With reference to the Arabic word *bid’ah*,<sup>32</sup> literally meaning ‘a newly invented matter’, the *Shari’ah* definition has a negative connotation; however, in terms of its reference it is confined to the realm of the religion (i.e. it does not refer to worldly inventions or innovations in technology and medicine, etc.) and refers solely to the context of worship (i.e. beliefs and acts).<sup>33</sup>

Bearing in mind the above points, mechanisms of employment relations and the manner in which disputes are managed are essentially permissible under the corpus of the *Shari’ah*. Although not explicitly elaborated upon, the condition for permissibility is applicable as long as they do not involve any religious transgression or stimulate wrong doing from a moral perspective. Therefore, *Shari’ah* does not appear to block the idea that mechanisms or machinery can be created to protect the rights of workers (either for indigenous or migrant workers). Moreover as the chapter progresses, it will highlight the normative Islamic model of

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<sup>29</sup> Qur’an Al-Baqara 2:286

<sup>30</sup> Qur’an Al-Anaam 6:119

<sup>31</sup> Fatawa from Shaykh Muhammad ibn Saalih al-‘Uthaymeen *Sharh Manzumah Usool al-Fiqh wa Qawaa’idhi* 76-81 available at <<http://www.ajurri.com/vb/attachment.php?attachmentid=44823&d=1404586093>> accessed 11 August 2017 and <<http://islamqa.info/en/130815>> accessed 19 March 2015

<sup>32</sup> *Bid’ah* defined as ‘A newly invented way (beliefs or action) in the religion, in imitation of the *Shari’ah* (prescribed Law), by which nearness to Allah is sought, (but) not being supported by any authentic proof - neither in its foundations, nor in the manner in which it is performed’ definition cited in, *Al-I’tisaam of ash-Shaatibee* (1/37) cited in ‘The Perfection of the *Shari’ah* and an Exposition of the Reprehensible Innovations That Have Crept Into Islam’ available at <<http://www.sahihmuslim.com/sps/sp.cfm?secID=BDH&loadpage=displaysection.cfm>> accessed 19 March 2015

<sup>33</sup> Aishah narrated that: The Messenger of Allah said: "Whoever innovates something in this matter of ours (i.e. Islam) that is not part of it, will have it rejected" cited in Sahih al-Bukhari 2697; Sahih Muslim 1718a

protecting the rights of all workers, and will make a case for how it is relevant in today's globalised labour economy, particularly in MMCs.

In the broadest sense, Islamic judicial establishments are currently composed of *qadi's* (i.e. judges who judge in accordance with Islamic law). Historically speaking, the bulk of matters handled by Islamic courts did not involve litigation, although one function of the court was to deal with disputes. The *qadi* was forbidden to turn away claimants or disputants, being under both legal and moral obligation to hear, and adjudge, all disputes.<sup>34</sup> Moreover, from an Islamic point of view, adjudication is a process in which procedure allows for flexibility in the search for the truth, due to the fact that the foremost requirement of a *qadi* is, as prescribed by Allah, no matter what way, and through what procedure, to judge justly and equitably in order to establish the truth. Hence, the *qadi* in an Islamic court is (as in other civil law systems) inquisitorial in nature.

### **2.3.1 Dispute Resolution in Islam**

Having briefly outlined the Islamic legal system(s) and how rulings are derived, the following section will focus of the Islamic view of dispute resolution particularly as it provides a sound backdrop when analysing the context of labour relations and resolving employment disputes.

As elaborated upon in the previous chapter, various forms of dispute resolution, such as ADR systems, have been endorsed as being the most appropriate way of resolving conflict, particularly when addressing employment-related disputes. ADR, and the processes within such systems, are often seen and portrayed as a Western ideology and methodology that has been developed over the past few decades.<sup>35</sup> Contrary to this notion, the principles of

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<sup>34</sup> Wael B. Hallaq (2009) *Shari'a Theory Practice Transformations* (Cambridge University Press) 342

<sup>35</sup> Islam, Muhammad Zahidul (2012) 'Provision of Alternative Dispute Resolution Process in Islam' *Journal of Business and Management* 6(3) 31-36; Ryan, Erin (2000) 'Developments in the Law - The Paths to Civil Litigation:

amicable settlement were known to every civilisation.<sup>36</sup> Furthermore, ADR processes, such as mediation, conciliation and arbitration, are intertwined in the rich traditions found within the Middle East, in particular that of the Islamic world, where there is sound evidence and an understanding of resolving disputes outside of a judicial process. Cooperation and amicability is something that is greatly encouraged in Islam and is deemed as a virtuous act.

**The recompense for an evil as an evil like thereof, but whoever forgives and makes reconciliation, his reward is due from Allah. Verily, He likes not the Zalimun (oppressors and wrong-doers).<sup>37</sup>**

Moreover, litigation is something that is not encouraged in Islam and is only applied as a last resort, especially in disputes such as employment.<sup>38</sup>

**And if two parties or groups amongst the believers fall into fighting, then make peace between them both, but if one of them rebels against the other, then fight you (all) against the one that which rebels till it complies (...) then if it complies, then make reconciliation between them justly, and be equitable.<sup>39</sup>**

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VI. ADR, the Judiciary, and Justice: Coming to Terms with the Alternatives' Harvard Law Review 113 (7) 1851-1875

<sup>36</sup> Islam, Muhammad Zahidul (n 35)

<sup>37</sup> Al-Qu'ran, Ash-Shura 42:40

<sup>38</sup> Kamal Halili Hassan (2006) 'Employment Dispute Resolution Mechanism from the Islamic Perspective' Arab Law Quarterly 20 (2) 181-207

<sup>39</sup> Al-Qu'ran, Al-Hujraat, 49:9

The application of traditional ADR has also been developed and extended to the modern era where *Shari'ah*-compliant ADR or Islamic ADR has been used to remedy quarrels, especially in the construction industry,<sup>40</sup> and in the Islamic financing sector.<sup>41</sup>

In modern law there is a distinct difference between mediation and arbitration. However, in terms of the pre-modern era of *Shari'ah*, the boundaries sometimes overlapped.<sup>42</sup> There are at least five ADR processes in Islamic law.<sup>43</sup>

1. *Sulh* (roughly translated as negotiation, mediation/conciliation or a compromise of action).
2. *Tahkim* (roughly translated as arbitration).
3. A combination of *sulh* and *tahkim*.
4. *Hisbah institution and muhtasibeen* (the modern concept of an ombudsman).
5. *Fatawa* (informed legal opinion delivered jurists).

*Sulh* is the most basic form of dispute resolution in Islam. As noted above, it refers to an amicable settlement of disputes, and includes a mechanism that is comprised of negotiation, mediation, conciliation, or a compromise that will lead to mutual agreement in order to resolve disputes.

Islamic law allows individuals to seek the aid of third party arbitrators when they fall into various types of civil or commercial disputes and are unable to find a private resolution between themselves. In Islam, *tahkim* is the most frequently applied and takes two forms: the

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<sup>40</sup> Muhammad Ariffuddin bin Arifin and Khairuddin bin Abdul Rashid (2014) 'Mechanisms of *Shari'ah* - Compliant ADR and Their Importance in Resolving Construction and Engineering Disputes' The 2<sup>nd</sup> IIUM Kyoto University Research Colloquium *Shari'ah* Compliance Issues in Construction Kulliyah of Architecture and Environmental Design, International Islamic University Malaysia May 2014

<sup>41</sup> Ai, Kawamura (2013) 'The Dubai Approach as a New Resolution System for Islamic Finance Dispute Cases' Asian and African Area Studies 13(1) 1-23; Luttrell, Sam R. (2009) 'Commentary on the 2008 Arbitration Law of Dubai International Finance Centre' International Journal of Private Law 2(1) 31-45

<sup>42</sup> Alsheikh, Essam A. (2011) 'Distinction between the Concepts Mediation, Conciliation, *Sulh* and Arbitration in *Shari'ah* Law' Arab Law Quarterly 25, 367-400; Rashid, Syed Khalid (2004) 'Alternative Dispute Resolution in the Context of Islamic Law' The Vindobona Journal of International Commercial Law and Arbitration 8(1) 95-118

<sup>43</sup> Rashid, Syed Khalid (2004) 'Alternative Dispute Resolution in the Context of Islamic Law' The Vindobona Journal of International Commercial Law and Arbitration 8 (1) 95-118

first is conceptually closer to a form of conciliation, in which arbitrators select representatives (one from each side) of the two conflicting parties, with the aim of engaging in amiable discussions in order to reach a binding mutual resolution.<sup>44</sup>

**If you fear a breach between them twain, appoint (two) arbitrators, one from his family and the other from her's...**<sup>45</sup>

The second is where the Qur'an introduces an uneven number of independent arbitrator(s), or a single judge. The former leads to the solution of a majority vote, as in most forms of modern arbitration, while the latter adjudicates, with the decision binding on both parties.

**Verily, Allah commands that you should render back the trusts to those, to whom they are due; and that when you judge between men, you judge with justice.**<sup>46</sup>

Thus the arbitrator takes on the same jurisdiction as that of a *qadi* (formal judge) in terms of resolving the dispute and giving an award. In the West (i.e. the UK), arbitration is voluntary, and it is vital to obtain consent from both parties before resorting to arbitration.<sup>47</sup> *Sulh* yields a consensual contract, or agreement, between disputing parties, where one (or both) waives their rights; it is thus binding upon both. *Takhim* (or arbitration) is not an obligatory contract until the issuance of an award.

Dispute resolution mechanisms tend to be flexible in applying different approaches, which in turn adds to the efficacy of the endeavour. This is also the case in Islam, where there is the flexibility to have a combination of *sulh* and *tahkim* (mediation and arbitration) in order to reach a resolution. This approach allows for a compromise to be reached while the process of

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<sup>44</sup> Qur'an, Al-Hujraat, 49:9

<sup>45</sup> Qur'an, An-Nisa, 4:35; *this applies not only to marital issues but is universal*

<sup>46</sup> Qur'an, An-Nisa 4:58

<sup>47</sup> Alsheikh, Essam A. (n 42)



arbitration is taking place, forming a clear benefit to resolving disputes amicably, effectively, and efficiently.

A *muhtasib* (i.e. ombudsman or inspectorate) is a state-appointed official entrusted to see that various matters are taken into account including religious activities, community affairs, and trading standards.<sup>48</sup> They also ensure that conciliation between disputing parties takes place and that specific individuals/groups (or organisation(s)) have not violated the laws and regulations enacted by the state. It could be argued that, to a degree, a given labour administration takes on the role of labour inspection when it safeguards adherence to labour laws and regulations. In such circumstances, labour inspectors undertake site visits, in order to ensure that employers and employees are not committing bad-practice within the workplace.

*Fatawa* are informed legal rulings, based on a scholarly opinion on a matter of Islamic law. They are issued by *muftis*, or jurists. In this form of Islamic ADR, disputing parties submit their case to highly qualified expert(s) for determination. Muftis generally settle a case with reference to existing cases or, if necessary, by extending the law from prevalent Islamic principles or by formulating a new principle that will conform to the conditions laid down by the jurists.

As Islam dictates not only legal systems, but also encompasses economic, social, cultural, and linguistic doctrines, it should be noted that the literature has been written predominantly from a Western perspective, and in some cases without acknowledgement of the existence of Islamic principles, even those elements that are holistic globally.<sup>49</sup> This is highlighted by the fact that ADR systems have been prevalent in Islam for a number of centuries.

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<sup>48</sup> See section 3.3.8 Accountability, responsibility and regulation: state affairs and the institution of *Hisbah*

<sup>49</sup> Islam, Muhammad Zahidul (n 35)

### 2.3.2 The Islamic Concept of Employment Relations

In addition to the general principles of Islamic dispute resolution, it is also pertinent to the comprehensive nature of this study to explore the principles of employment relations in Islam, as outlined within the doctrine of the Qur'an and *Sunnah*. The following section of this chapter will engage in an explorative and referenced study of the meaning of 'work', along with the duties of the employer, employees, and the state in the management of relationships within a workplace environment.

As already elaborated upon, there are a number of recognised *Sunni* schools of Islamic thought; this poses the question as to whether or not different perspectives relating to employments rights and issues are portrayed within each doctrine. In examining the textual sources, both from the *Qur'an* and *Sunnah*, it can be established that all of the schools of thought adhere to the same general principles. The *Qur'an* and *Sunnah* provide an overarching code of conduct set within moralistic and ethical principles relevant to all employment issues, and so the application of them becomes universal. Furthermore, as these are general morals, ethics, and values, references within the *Qur'an* and *Sunnah* do not explicate (nor claim to do so) every specific workplace problem. Therefore, these general morals, ethics and values can be rationally applied to every type of employment relationship, which accordingly and logically includes migrants. Although the various *madh-habs* have numerous opinions about other specific issues within the religion, they apply the same reliable primary sources of Qur'anic texts and the *ahadith*, thus consolidating a normative view of employment standards and relations for all types of workers.

With reference to the modern context of local, national, regional, and globalised economies, the Islamic principles provided in the discourse that follows cover what are perceived as

fundamental labour standards that are applicable today. The following section will present these general principles by citing the relevant primary sources.

### **2.3.3 Analogy between Employment & Slavery**

When reviewing the sources of labour rights in Islam, it is important to note the context of the society in which the Qur'anic passages were revealed and the *ahadith* recorded. This was a time when the economy was based on trade and agriculture, and slavery was globally a common practice. Bearing in mind that the nature of nomadic life centred on seasonal work and trade (pre and post-Islamic Arabia), migration was a customary concept, which essentially assimilated migrant workers as part of the economy. Consequently, regulation of the economy and workers were essentially completed through the application of the *Shari'ah* by manifesting its intrinsic codes of conduct, morals, and ethics.

Islam has been credited for moderating the age-old institution of slavery, which was also accepted and endorsed by other monotheistic religions (such as Christianity and Judaism) and was a well-established custom of the pre-Islamic world.<sup>50</sup> Although slavery at that time had not been abolished, it has been argued that the condition of slaves was improved with the coming of Islam, due to its moderation and its antagonistic approach to slavery. Islam added the idea that freedom was the natural state of affairs for human beings. Due to this it intrinsically limited opportunities to enslave populations, moreover it greatly supported the emancipation of slaves.<sup>51</sup>

Muhammad encouraged manumission and proclaimed it as a great act of worship. There are number of narrations in which the Prophet also ordered the freeing of slaves at the time of

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<sup>50</sup> Jahanbakksh, Forough (2001) *Islam, Democracy and Religious Modernism in Iran, 1953-2000: From Bāzargān to Soroush* (Kononklyke Brill NV, Leiden, The Netherlands, 2001) 35-36

<sup>51</sup> Ruthven, Malise (2006) *Islam in the World* (Third Edition, Oxford University Press) 162-163

solar and lunar eclipses,<sup>52</sup> at which times he would engage in worship and enjoin His companions to do the same. There are many other examples of Muhammad encouraging the liberation of slaves, proclaiming it to be an act of virtue:

**Abu Dhar narrated: I asked the Prophet, "What is the best deed?" He replied, "To believe in Allah and to fight for His Cause." I then asked, "What is the best kind of manumission (of slaves)?" He replied, "The manumission of the most expensive slave and the most beloved by his master." I said, "If I cannot afford to do that?" He said, "Help the weak or do good for a person who cannot work for himself." I said, "If I cannot do that?" He said, "Refrain from harming others for this will be regarded as a charitable deed for your own good."**<sup>53</sup>

**Abu Huraira reported Allah's Messenger as saying: "A Muslim who emancipates a Muslim (slave). Allah will save from fire every limb of his for every limb (of the slave)". Sa'id bin Marjana said: "When I heard this *hadith* from Abu Huraira, I went away and made a mention of it to 'Ali bin Husain and he at once emancipated the slave for which Ibn Ja'far was prepared to pay ten thousand dirhams or one thousand dinars."**<sup>54</sup>

These *ahadith* demonstrate that granting freedom to slaves was a righteous deed; furthermore it was a new phenomenon at a time when cruel and barbaric treatment was common practice. From this point of time onwards, slaves faced an unprecedented prospect of being assimilated into society, particularly in the case of women and children.<sup>55</sup>

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<sup>52</sup> Sahih al-Bukhari 2520

<sup>53</sup> Sahih al-Bukhari 2518

<sup>54</sup> Sahih Muslim 1509 d

<sup>55</sup> Lovejoy, Paul E. (2012) *Transformations in Slavery: A History of Slavery in Africa* (Cambridge University Press)

Furthermore, as the *hadith* elaborates upon, slaves (along with all other labourers or workers) were regarded as being within the brotherhood of Islam:

**It was narrated that Abu Dhar said: "The Messenger of Allah said: 'Slaves are your brothers whom Allah has put under your control, so feed them with the same food that you eat, clothe them with the same clothes you wear, and do not burden them with so much that they are overwhelmed; if you do burden them, then help them.'"**<sup>56</sup>

Equality is further demonstrated by the encouragement to marry slaves, leading to the termination of their term as a slave/servant/employee, so that they might become a free individual, with rights synonymous to those of their husband.

**Narrated by Abu Musa Allah's Apostle said, "He who has a slave-girl and educates and treats her nicely and then manumits and marries her, will get a double reward."**<sup>57</sup>

Most importantly, slaves and employees were to be treated with compassion, kindness and equality, as they were regarded to be within the brotherhood of Islam. Muhammad provided an example of treating all those under his direct care with the utmost respect, preserving their dignity through patience and compassion.

**Anas narrated: I served the Prophet for ten years, and he never said to me, "Uff" (a minor reproach denoting impatience) and never blamed me by saying, "Why did you do so or why didn't you do so?"**<sup>58</sup>

**It was narrated that 'Aishah said: "The Messenger of Allah never beat any of his servants, or wives, and his hand never hit anything."**<sup>59</sup>

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<sup>56</sup> Sunan Ibn Majah 3690, Graded Sahih by Darussalam

<sup>57</sup> Sahih al-Bukhari 2544

<sup>58</sup> Sahih al-Bukhari 6038; Al-Adab Al-Mufrad 277, Graded Sahih by Al-Albani

<sup>59</sup> Sunan Ibn Majah 1984, Graded Sahih by Darussalam

Additionally, Muhammad would castigate those who treated their slaves (or workers) unjustly, or too harshly. Indeed, emancipation was obligatory where an individual had committed an unlawful misdemeanour against his or her slave. It led to the greatest form of compensation for the slave, and severe admonitions for the one who committed the offence:

**Ibn 'Umar (May Allah be pleased with them) reported: The Prophet said, "The expiation for beating or slapping a slave on the face for something he has not done is to set him free."<sup>60</sup>**

**Abu Mas'ud said, "I was beating a slave of mine when I heard a voice behind me, 'Know, Abu Mas'ud, that Allah is able to call you to account for this slave.' I turned around and there was the Messenger of Allah, may Allah bless him and grant him peace. I said, 'Messenger of Allah, he is free for the sake of Allah!' He said, 'If you had not done that, the Fire would have touched you (or the Fire [fire of hell] would have burned you).'"<sup>61</sup>**

Contextually, Islamic *Shari'ah* law accepted slavery, as did other legal systems, due to the fact that the practice formed a fundamental structure of society; arguably it was impossible to abolish in the 7<sup>th</sup> century. While current opinion abhors slavery, and discussion centres on its universal abolition, in the 7<sup>th</sup> century it would have been viewed as a noble ideal that was completely impractical.<sup>62</sup> Despite slavery being an age-old institution, *Shari'ah* aimed to limit the sources by which slaves could be acquired. It also sought to lighten the harsh realities of their existence through encouraging the revolutionary implementation of morals and codes to

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<sup>60</sup> Imam Nawai Riyad as-Salihin 1605 cited from variations found in Muslim 1657-1659; Al-Adab Al-Mufrad 177, Graded Sahih by Al-Albani

<sup>61</sup> Al-Adab Al-Mufrad 171, Graded Sahih by Al-Albani

<sup>62</sup> Neusner, Jacob and Sonn, Tamara *Comparing Religions Through Law: Judaism and Islam* (Routledge, New York) 166

promote universal freedom and human dignity to all members of society, regardless of their wealth or social status.<sup>63</sup>

Under *Shari'ah*, slavery has been lawful up to the present day. However, this is only in theory, as Islamic *Shari'ah* states that it is only an individual captured in a lawful *jihad*,<sup>64</sup> or a descendent of an unbroken chain of individuals lawfully enslaved, who could be enslaved. In practice, it appears virtually impossible that there will be a *jihad* lawfully declared according to the strict letter of the law, and there are no living descendents of lawful slaves; thus, legal enslavement is essentially implausible. Moreover, slavery is illegal under the state law of all Muslim countries, which in turn negates the permissibility of slavery in a modern context.<sup>65</sup>

Thus, from an Islamic perspective, the term 'slave' serves as a baseline (or analogy) for the fair treatment of all workers, including those who are considered foreigners or migrants. In contemporary literature, the term is frequently translated as 'servant' or 'worker'.<sup>66</sup> The argument that is put forward is that, if a slave is regarded as a brother, the free man is also regarded as the same; thus ensuring the truest form of equality. Therefore, the stipulations of work, along with the inherent rights of workers, are universal in Islam. Furthermore, the Prophet's Farewell Sermon was an address to mankind, in which he stated the universal message of equality and justice:

**All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab nor a non-Arab has any superiority over an Arab; also white has no**

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<sup>63</sup> An-Na'im, 'Abdullahi Ahmed (1998) '*Shari'a* and Basic Human Rights Concerns' in *Liberal Islam* edited by Charles Kurzman (Oxford University Press) 222-239

<sup>64</sup> *Jihad* is an Islamic term referring to a religious 'struggle' or 'resisting' i.e. idiomatic expression 'striving in the way of God'. In the case of the above context *jihad* is implied or the term '*qital*' which means fighting in terms of a 'holy war'. *Jihad* has been commented to have two meanings: an inner spiritual struggle, the 'greater *jihad*'; and an outer physical struggle against the enemies of Islam, the 'lesser *jihad*', which may take a violent or non-violent form.

<sup>65</sup> Tabandah, Sultan Husayn (1970) *Muslim Commentary on the Universal Declaration of Human Rights* (F.J. Goulding, London, 1970) 27; 'Abdullahi Ahmed An-Na'im (1998) 'Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives - A Preliminary Inquiry' *Harvard Human Rights Journal* 3, 13-52

<sup>66</sup> Hascall, Susan C. (2014) 'Islamic Commercial Law and Social Justice: *Shari'ah* compliant companies, workers' rights and the living wage' *St John's Law Review* 88(2) 291-348

**superiority over black nor does a black have any superiority over white except by piety and good action.<sup>67</sup>**

From this it can be elucidated that the Qur'anic passages, and the narrations of *ahadith* relating to the fair and just treatment of slaves, are analogous to the fair and just treatment of all workers. In essence, Islamic *Shari'ah* provides a framework for protecting the human dignity of workers. This will be discussed in more detail in the following sections.

### **2.3.4 The Notion of Work & Labour Rights in Islam**

Employment relations are influenced by a country's sociocultural, normative, and legal institutions, all of which form a complex relationship between the state, employers, and employees.<sup>68</sup> A considerable number of factors contribute to the formation and perpetuation of national culture, of which religion is the most significant for Muslim countries within the Arabian Gulf region.<sup>69</sup>

In Islam, there are two aspects involved in the correct development of human life: firstly, the resources required to maintain life and fulfil the material needs of both the individual and society; secondly, the knowledge of the principles of both individual and social behaviour, in order to allow both the self-fulfilment of the individual and the maintenance of peace and social justice.<sup>70</sup> Subsequently, Islam highlights the need for balance between the demands of this world and the demands of the *al-akhirah* (the afterlife). There are a large number of passages in the Qur'an that not only encourage, but also define, effective means of governing

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<sup>67</sup> The Prophet's Farewell Sermon (n 6)

<sup>68</sup> Black, Boyd (2001) 'National culture and industrial relations and pay structures' *Labour* 15(2) 257-277; Syed, Jawad (2008) 'A context-specific perspective of equal employment opportunity in Islamic societies' *Asia Pacific Journal of Management* 25(1) 135-151; Tayeb, Monir (1997) 'Islamic revival in Asia and human resource management' *Employee Relations* 19(4) 352-364

<sup>69</sup> Syed, Jawad (2010) 'Principles of employment relations in Islam: a normative view' *Employee Relations* 32(5) 454-469

<sup>70</sup> Khurshid, Ahmad (1971) *Islam: Basic Principles and Characteristics* (Islamic Publications Ltd, Pakistan, 1971) <[http://www.sultan.org/books/Islamic\\_Basic\\_Principles\\_and\\_Characteristics.pdf](http://www.sultan.org/books/Islamic_Basic_Principles_and_Characteristics.pdf)> accessed 10 August 2017



both trade and commerce. Indeed, the Qur'an directs to humanity a message concerning the need to contribute positively to society and to make use of that which is created for the benefit of human beings:

**And that man can have nothing but what he does (good or bad). And that his deeds will be seen, then he will be recompensed with a full and the best recompense.<sup>71</sup>**

Muslims are obligated to conduct their business activities in accordance to the requirements of the universal Islamic principles of fairness, honesty, and behaving justly towards others.<sup>72</sup> Furthermore, economic activity (i.e. commerce and manual labour) is imposed as a duty upon each individual.<sup>73</sup> Islam thus lays great emphasis on work, to the extent that it is considered a religious act if undertaken in accordance with the ethics and morals outlined within the laws of Islam:

**Al-Miqdam narrated that the Prophet said: "Nobody has ever eaten a better meal than that which one has earned by working with one's own hands. The Prophet of Allah, Dawud used to eat from the earnings of his manual labour."<sup>74</sup>**

To clarify, the first principle guiding the notion of labour in Islamic law places an emphasis on work and its importance to the individual, the family, and the community. The engagement in work, either mentally<sup>75</sup> or physically, establishes equilibrium in both individual and social life which, in turn, is equated to spiritual fulfilment and a source of honour.<sup>76</sup> Endeavour and

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<sup>71</sup> Qur'an An-Najm 53:39-41

<sup>72</sup> Lewis, Mervyn K. (2001) 'Islam and Accounting' Accounting Forum 25(2) 103–127

<sup>73</sup> Ahmad, Iftikar (2011) 'Religion and Labor: Perspective in Islam', Working USA: The Journal of Labor and Society 14, 589-620

<sup>74</sup> Sahih al-Bukhari 2072

<sup>75</sup> Qur'an Yusuf 12:54-56, refers to the intellectual labour where the Prophet Yusuf (Joseph) was made a minister in Egypt, entrusted with its finance.

<sup>76</sup> Ali, Abbas (1988) 'Scaling and Islamic Work Ethic' Journal of Social Psychology 128(5) 575-583

commitment are the key factors in achieving this level, in other words, work must be undertaken in a *halal* (Islamically lawful/legitimate) way,<sup>77</sup> and in a professional manner, and should be performed to the best of one's ability. It is on these grounds that labour is considered an act of worship. Moreover, Islam does not accommodate asceticism or parasitism, and so a believer is not excused for participating in worldly initiatives and enterprises for the purposes of complete devotion to worship. Begging is also discouraged, with Muhammad instructing His people to do whatever they are able to achieve self-reliance and not to depend on charity:

**Abu Hurairah narrated that the Prophet said, "Charity is not permissible for a rich person, or for one who is strong and healthy".<sup>78</sup>**

Furthermore, Muhammad also instructed (and indeed compelled) individuals to do whatever possible to earn a lawful living, regardless how menial:

**Az-Zubair bin Al'Awwam narrated that the Prophet said, "It is better for anyone of you to take a rope (and cut) and bring a bundle of wood (from the forest) over his back and sell it and Allah will save his face (from the Hell-Fire) because of that, rather than to ask the people who may give him or not."<sup>79</sup>**

Human beings are regarded as trustees of the Earth, and their activities (as previously discussed) form acts of worship, and thus all work undertaken, if done within Islamic precepts, is also regarded as worship. The individual is endowed with free will and is responsible for his society, and therefore, whatever task a Muslim performs, if it is done with the intention of

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<sup>77</sup> **Abu Hurairah narrated that the Prophet said, "A time will come when one will not care how one gains one's money, legally or illegally."** Sahih al-Bukhari 2059 This narration predicted a time where breaches in Islamic law and principles would become apparent in the manner in which people made a living.

<sup>78</sup> Sunan an-Nasaa'i 2597; Sunan Ibn Maajah 1839, Graded by Al-Albani

<sup>79</sup> Sahih al-Bukhari 1471

worship, he will be rewarded accordingly. This notion of intention is paramount within Islam, as it is a prerequisite for the acceptance of an action:

**'Umar bin Al-Khattab narrated that he heard Allah's Apostle saying, "The reward of deeds depends upon the intentions and every person will get the reward according to what he has intended..."<sup>80</sup>**

**Abu Umamah Al-Bahili narrated that the Messenger of Allah said "...Allah does not accept any deed except that which is done only for Him and to seek His Countenance."<sup>81</sup>**

Work ethic in Islam is generally related to seeking adequate sustenance, and striving for perfection without exerting excess effort, with the ultimate goal being to seek a reward in the afterlife.<sup>82</sup> It is important to note that, in addition to this compulsion to work virtuously and to always bear in mind the fundamental belief of judgement in the afterlife, the injunctions found within the *Qur'an* and *Sunnah* regarding labour relations relate to harmonious employer-employee relations. This ideology is consistent with the Abrahamic religions, where efforts and actions in this world will be fully rewarded or punished in the afterlife, generating a desire within believers to act morally regardless of whether or not there are legal injunctions in place. This is particularly important due to the fact that not every workplace issue is elaborated upon in any religious or secular doctrine,<sup>83</sup> rather it provides a code of conduct set within moralistic and ethical principles.

In Islam, work has moral, psychological, and social dimensions in addition to its economic aspect. The Islamic notion of work refers not only to action useful to the individual, but also

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<sup>80</sup> Sahih al-Bukhari Volume 1; Sahih Muslim 1907

<sup>81</sup> Al-Nasaa'i 3140, Graded Sahih by Darussalam and by Al-Albani in *al-Silsilah al-Saheehah*, 52

<sup>82</sup> Al-Buraey, Muhammad A. (1980) *Administrative Development: An Islamic Perspective* (Keegan Paul International and also digital Routledge, Oxford 2010) 118

<sup>83</sup> Ahmad, Iftikhar (n 73)

to others and the community at large. It serves as a source of pride and dignity, resulting in a wholesome and balanced life. Generally, these factors constitute the fundamentals of an Islamic code of conduct in relation to work that is built on four primary concepts: (1) effort; (2) competition; (3) transparency; and (4) morally responsible behaviour. Collectively, these imply that undertaking business in a spiritually fulfilling and balanced environment will result in a higher performance and widespread prosperity, with the family as the primary beneficiary.

**'Aishah narrated that the Messenger of Allah said: "Indeed the most wholesome of what you consume is from your earnings, and indeed your children are from your earnings."<sup>84</sup>**

### **2.3.5 Non-discrimination, Equality & Diversity in Islam**

In addition to the compulsion for the individual to work lawfully and to provide for his/her family, a fundamental principle of Islam concerns justice, fairness, equality and diversity,<sup>85</sup> and forbids discrimination on the basis of race, gender, colour of skin, or any other distinguishing attribute:<sup>86</sup>

**O mankind! Be dutiful to your Lord, Who created you from a single person (Adam), and from him He created his wife [Hawwa (Eve)], and from them both He created many men and women, and fear Allah through Whom you demand your mutual rights and do not cut the relations of the wombs (kinship).<sup>87</sup>**

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<sup>84</sup> Jami` at-Tirmidhi 1358; Sunan Ibn Majah 2290, both Graded Sahih by Darussalam; Sunan Abi Dawud 3528-3530 Graded Hasan Sahih Al-Albani

<sup>85</sup> Syed, Jawad (n 69)

<sup>86</sup> The Prophet's Farewell Sermon (n 6)

<sup>87</sup> Qur'an An-Nisa 4:1

There are examples within the Qur'an and *Sunnah* concerning tolerance and the promotion of coexistence with non-Muslims, in particular with the need to judge fairly without discrimination when an issue arises between them. In a particular incident reported on the authority of Abu Huraira, a quarrel arose between a Jew and a Muslim that led to them abusing each other. In this case, Muhammad judged in favour of the Jew, regarding him as being innocent and the Muslim as the transgressor.<sup>88</sup> The Qur'an motivates Muhammad to judge fairly and not to favour the wrongdoer even if he is a Muslim, promoting non-discrimination and prohibiting bias on the grounds of belief:

**Surely, we have sent down to you (O Muhammad) the Book (this Qur'an) in truth that you might judge between men by what Allah has shown you (i.e. taught through Divine Inspiration), so be not a pleader for the treacherous.<sup>89</sup>**

**Allah does not forbid you to deal justly and kindly with those who fought not against you on the account of religion and did not drive you out of your homes. Verily, Allah loves those who deal with equity.<sup>90</sup>**

There is also a narration in which Muhammad visited a sick servant, a Jewish boy. Although from an Islamic perspective visiting a sick Muslim is a communal obligation, in this case the Prophet went beyond this duty as, prior to the visit, the boy had not embraced Islam.

**Anas narrated: A young Jewish boy used to serve the Prophet and he became sick. So the Prophet went to visit him. He sat near his head and asked him to embrace Islam. The boy looked at his father, who was sitting there; the latter told him to obey Abul-Qasim and the boy embraced Islam. The Prophet came out saying: "Praises be to Allah Who saved the boy from the hell-fire."<sup>91</sup>**

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<sup>88</sup> Sahih al-Bukhari 2411 and 6517; Sahih Muslim 2373 a-d

<sup>89</sup> Qur'an An-Nisa 4:105

<sup>90</sup> Qur'an Al-Mumtahina 60:8

<sup>91</sup> Sahih al-Bukhari 1356

This is an example of Muhammad demonstrating compassion towards an employee, a Jewish boy who was clearly very dear to him, despite only being a modest servant. This particular incident (of which there are many) reveals the way in which the Prophet conducted himself with individuals of differing faiths. If this incident is explored in more depth, it can be seen as significant that he chose a Jewish boy to be his personal servant. Serving one's elders was (and still is) a customary and honourable practice in Islam. At that time, many of the Prophet's companions would have longed for the honour of such a position, or would have been overjoyed to see their sons serve the Prophet in such a manner. Nevertheless, the Prophet appointed a Jewish boy to the role, and in doing so promoted the notion of non-discrimination. Generally, Islam sets out not only etiquettes but outlines duties when dealing with non-Muslims, which intrinsically encompasses dealings with *all* employees regardless of origin or characteristic.<sup>92</sup>

In another lengthy hadith giving an account of when the Prophet was travelling to visit a sick Muslim, He came across a gathering of Muslims, Pagans and Jews to whom He decided to call to Islam. However, this was not welcomed by all and resulted in the Muslims, Pagans, and Jews beginning to quarrel (close to the point of physically harming one another). The Prophet (as was His nature) understood the sensitivity of the situation, and managed to defuse the possible fracas before moving on. He also excused an individual that directly insulted Him, rather than escalating the issue.<sup>93</sup> In other examples where a member of a family had embraced Islam, while other members had not, the Prophet continued to promote kindness despite their staunch stance and hatred towards Islam.<sup>94</sup>

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<sup>92</sup> *Kafir* is the term referring to a non-Muslim and *kuffar* refers to more than one.

<sup>93</sup> **Usama bin Zaid narrated: ...So Allah's Messenger excused him. (It was the custom of) Allah's Messenger and His companions to excuse the Pagans and the people of the scripture (Christians and Jews) as Allah ordered them, and they used to be patient when annoyed (by them).** Sahih al-Bukhari 6207

<sup>94</sup> **Asma' bint Abi Bakr said: My mother came to me seeking some act of kindness from me during the treaty of the Quraish (at Hudaibiyyah). While she hated Islam and she was a polytheist. I said "Messenger of Allah, my mother has come to me while she hates Islam and she is a disbeliever. May I do an act of kindness to her?" He**

It is an essential responsibility and duty for all Muslims to project a sound moral character to all as a means of representing the faith. Initially it is incumbent on a Muslim to give *da'wah* (to call to Allah) by explaining the reality of Islam when possible, with regard to whatever issues the caller has knowledge about. Therefore, conveying Islam to others sincerely is one way through which Muslims draw themselves close to Allah.

**Abu Huraira reported Allah's Messenger as saying: "He who called (people) to righteousness, there would be reward (assured) for him like the rewards of those who adhered to it, without their rewards being diminished in any respect."<sup>95</sup>**

Furthermore, a Muslim should not wrong non-Muslims with regard to their wealth or honour and physical well-being. Although there are certain classifications of non-Muslims, in terms of Islamic governance, rights are to be granted to them by the Islamic authority.<sup>96</sup> Each category is covered comprehensively by the terms of the *Shari'ah* with respect to protecting their rights, and also their physical, mental, and economic well-being. Muslims are also obliged to deal ethically and honestly in business (such as when buying, selling, renting, hiring and so on) with non-Muslims. It is narrated in a number of authentic reports that Muhammad had business interactions with non-Muslims, all of which were built on mutual trust despite them being idol worshippers, Christians, and Jews.<sup>97</sup>

Throughout history Muslims have lived side-by-side with non-Muslims. Therefore, another right is to be a good neighbour through showing kindness and patience despite the

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**replied "Yes, do an act of kindness to her."** Sunnah Abi Dawud 1668; variations in Sahih al Bukhari 3183/5978; Sahih Muslim 1003 b; Shaykh 'Abd al-'Azeez ibn Baaz **'If the neighbour is a kaafir (non-Muslim), he still has the rights of a neighbor; if he is both a relative and a kaafir, then he has two rights: the rights of a neighbor and the rights of a relative'.** *Fatawa Noor 'ala al-Darb* 1/289-291

<sup>95</sup> Sahih Muslim 2674

<sup>96</sup> (1) *Dhimmi*, a non-Muslim living under Muslim rule; (2) *musta'man*, one who is granted security in a Muslim land; or (3) *mu'aahid*, one with whose country the Muslims have a peace deal

<sup>97</sup> **'Aisha narrated: The Prophet purchased food grains from a Jew on credit and mortgaged his iron armour to him.** Sahih al-Bukhari 2068

possibilities of facing awkward situations. Also if a Muslim's neighbour happens to be poor, giving them gifts and being charitable<sup>98</sup> towards them is encouraged.

**Narrates Ibn `Umar: Allah Apostle said, Gabriel kept on recommending me about treating the neighbours in a kind and polite manner, so much so that I thought that he would order (me) to make them (my) heirs.<sup>99</sup>**

The above *hadith* provides an analogy of equitability. Although Muslims were not permitted to inherit from non-Muslims, and vice versa, this reference places the emphasis on treating neighbours as family members within the fold of Islam. Furthermore the following narration adds a further caveat to treating neighbours well by also being generous towards guests.

**Narrated Abu Huraira: Allah's Messenger said, "Anybody who believes in Allah and the Last Day should not harm his neighbour, and anybody who believes in Allah and the Last Day should entertain his guest generously and anybody who believes in Allah and the Last Day should talk what is good or keep quiet (i.e. abstain from all kinds of evil and filthy talk).<sup>100</sup>**

These narrations demonstrate that Islam promotes the need for a balanced, amicable, and normal attitude in dealings with people of different religions and cultures regardless of the type of association or connection they have with each other. This normative view sets a paradigm of an Islamic society where all members are respected and treated with dignity. A classical embodiment of this was the formulation of the Charter of Madinah,<sup>101</sup> in this instance the Muslims were migrants. The document was the first declaration of the area as a city-state, which outlined the rights and duties of its citizens, providing them with collective protection.

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<sup>98</sup> *Sadaqah* voluntary charity and not *Zakaah* obligatory charity can be awarded to non-Muslims.

<sup>99</sup> Sahih al-Bukhari 6015

<sup>100</sup> Sahih al-Bukhari 6018

<sup>101</sup> The Charter of Madinah (*Ṣaḥīfat al-Madīnah*; or *Mīthāq al-Madīnah*), also known as the Constitution of Madinah (*Dastūr al-Madīnah*)



It referred to Muslims and non-Muslims alike, and provided the first means of seeking justice through law and community instead of through tribal military actions, which was common Arab practice in the pre-Islamic era.

In addition to the points made above and in relation to migration, it is noteworthy to make reference to those migrations that have had special Islamic significance: (1) the migrations to Abyssinia (Ethiopia); and (2) the migration to Madinah. The first migrations occurred at a time when some of the early Muslims faced ongoing persecution in Makkah. At which time Allah, through revelation,<sup>102</sup> instructed Muhammed to counsel His companions to migrate to Abyssinia in order to seek refuge in the Christian Kingdom ruled by Negus Najashi.<sup>103</sup> Despite Najashi being of a different faith, Muhammad recognised him as a just and fair ruler, and ordered His companions to migrate to his kingdom.<sup>104</sup> Upon migration, the Muslims were allowed to enjoy their rights in security and free from persecution. This migration to Abyssinia was replicated later, where Muslims again migrated for the same reason.

Muhammad made the most significant migration, from Makkah to Madinah, commonly referred to as the *Hijrah*.<sup>105</sup> As alluded to, it was in Madinah where Muhammad established his mission fully. The society in Madinah comprised of three distinctively different categories of people with their respective issues including (1) His companions; (2) the inhabitants of Madinah, who were polytheists; and (3) the Jews.<sup>106</sup> It was over time that Muhammad established Allah's laws and legislations through His explanation, implementation and reformation. In order to do so Muhammad made a series of agreements and pacts, and social

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<sup>102</sup> Qur'an, Az-Zumar 39:10

<sup>103</sup> Also known as Ashamah

<sup>104</sup> Al-Mubarakpuri, Safi-ur-Rahman (2008) *The Sealed Nectar Biography of the Noble Prophet* (2<sup>nd</sup> Edition, Darussalam, 2008) 79-81

<sup>105</sup> *Hijrah* in an Islamic context means to migrate for the sake of Allah from a land/place where Islam is not established to a place where it is or where Muslims would be free to practise their faith. The *Hijrah* is also significant as it marks the beginning of the Islamic *Hijri* calendar.

<sup>106</sup> Al-Mubarakpuri, Safi-ur-Rahman (n 104) 220-222

and business arrangements — all of which ensured the rights of all groups of people. Islamic *Shari'ah* law is thus presented as an unbiased and fair system of justice, in which human beings are protected from discrimination, irrespective of their status, position, cultural, or national background.

Furthermore, with regard to the migration journey itself, Muhammad and His most trusted aid, Abu Bakr, appointed a Jewish man as an expert guide when they both made the risky and arduous journey from Makkah to Madinah.<sup>107</sup> This was at a time when Muhammad and His companions were under constant threat and persecution. This is an unprecedented example of how Muhammad placed His trust in people regardless of position and belief.

It is consequently the prime duty and responsibility of an employer to possess adequate knowledge and understanding with regard to such Islamic principles, and to apply them fully to their employment practices in relation to all workers — whether Muslim or not, and whether a citizen or migrant. The seeking of worldly knowledge is a commendable action and is regarded as a communal obligation. Moreover, education, training and development are all necessary to achieve the mastery of a job, and to ensure the effective running of all facets of a community's economy. Therefore, Islam places an emphasis (which is still relevant for the modern economy) on sound business conduct and the pragmatic aspects of life.<sup>108</sup>

**And these similitudes We put forward for mankind, but none will understand them except those who have knowledge.<sup>109</sup>**

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<sup>107</sup> Sahih al-Bukhari 2263, 2264 and 3905

<sup>108</sup> Ali, Abbas J., Gibbs, Manton and Camp, Robert C. (2000) 'Human resource strategy: the Ten Commandments perspective' International Journal of Sociology and Social Policy, 20(5/6) 114-132; Tayeb, Monir (n 68)

<sup>109</sup> Qur'an Al-Ankaboot 29:43

**It was narrated from Jabir that: The Messenger of Allah said: "Ask Allah for beneficial knowledge and seek refuge with Allah from knowledge that is of no benefit."<sup>110</sup>**

The Islamic approach to human resource management refers to five primary functions: (1) recruitment and selection; (2) appropriate compensation; (3) appraisal of performance; (4) training and development; and (5) career development.<sup>111</sup> These are all to be applied in accordance to guidelines prescribed in the Qur'an and *Sunnah*. Knowledge is for that reason a prerequisite to undertaking these duties in a competent manner.<sup>112</sup>

Likewise, the issue of equality of opportunity and hiring practices has generally been addressed by someone's eligibility for a job being based upon the general principle of Islamic justice, and employee selection being based on merit, competency, and honesty.

**...Hire him! Verily, the best of men for you to hire is the strong, the trustworthy.<sup>113</sup>**

Thus, emphasis is given to the qualities and competencies of workers (i.e. their suitability to undertake the duties entailed, and so to adequately fulfil their obligations). It is incumbent upon the employer to exercise discretion when recruiting new staff, so that the task can be fulfilled in a manner that ensures the worker is not overburdened, and to avoid nepotism, favouritism based on age, race, gender, wealth, and social demographics.<sup>114</sup> It is a duty of the employer to inform applicants truthfully of the conditions of any post that is offered, and not to dupe them into contracts that are not realistically achievable.

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<sup>110</sup> Sunan Ibn Majah 3843, Graded Hasan by Darussalam

<sup>111</sup> Ali, Abbas J. (2005) *Islamic Perspectives on Management* (Edward Elgar Publishing Ltd, UK) 190-203

<sup>112</sup> Hashim, Junaidah (2010) 'Human resource management practices on organisational commitment: The Islamic perspective' *Personnel Review* 39(6) 785-799; Namazie, Pari, and Frame, Philip (2007) 'Developments in human resource management in Iran' *International Journal of Human Resource Management*, 18(1) 159-171

<sup>113</sup> Qur'an Al-Qasas 28:26

<sup>114</sup> Ali, Abbas J. (2005) *Islamic Perspectives on Management* (Edward Elgar Publishing Ltd, UK) 190-193

**Abu Huraira reported that the Prophet, said, "The slave has his food and clothing. Do not burden a slave with work which he is incapable of doing."<sup>115</sup>**

Islam, both as a religion and a doctrine, does not limit women in relation to economic gain and independence, so long as the work is undertaken out of necessity in a *halal*/permissible manner, as with any act within Islam.<sup>116</sup> An early reference to this position is that of the widow Khadija, daughter of Khuwalid, who was a businesswoman of great honour and fortune, and for whom Muhammad began working as a merchant at the age of 25.<sup>117</sup> A further example is Al-Shifa, a woman of intelligence who was highly respected for her learning and wisdom, and who has been acknowledged as being the first female teacher in Islam.<sup>118</sup> Muhammad also encouraged her to teach literacy and to perform medicine:

**Ash-Shifa', daughter of Abdullah narrated that the: The Messenger of Allah entered when I was with Hafsah, and he said to me: Why do you not teach this one the spell (remedy) for skin eruptions as you taught her writing.<sup>119</sup>**

### **2.3.6 Employment, Employment Contracts & Wage Protection in Islam**

There are references in the Qur'an with regard to hiring services. These include the labour of the Prophet Moses (Musa), who entered into an employment contract with the Prophet Jethro (Shu'ayb), agreeing to work for a period of eight years in return for payment.<sup>120</sup> Furthermore, the Qur'an also mentions payment to those who are employed to collect and

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<sup>115</sup> Al-Adab Al-Mufrad 192, Graded Sahih by Al-Albani

<sup>116</sup> Fatawa from Shaykh Muhammad ibn Saalih al-'Uthaymeen *Fataawa al-Mar'ah al-Muslimah* (2/981) <<http://islamqa.info/en/106815>> accessed 13 March 2015; Syed, Jawad (n 68)

<sup>117</sup> Safi-ur-Rahman Al-Mubarakpuri (n 104)

<sup>118</sup> Muhammad ibn Sa'd and 'Aisha Bewley (1995) *The Women of Madina* (Ta-Ha Publishers Ltd, UK) 175

<sup>119</sup> Sunan Abi Dawud 3887, Graded Sahih by Al-Albani

<sup>120</sup> Qur'an Al-Qasas 28:26-27

distribute *Zakaah*<sup>121</sup> from specific funds.<sup>122</sup> The Prophet Dawud also engaged in manual labour for payment, as did Muhammad:

**Abu Hurairah narrated that the Prophet Muhammad said "The Prophet David used not to eat except from the earnings of his manual labour."<sup>123</sup>**

**Abu Hurairah narrated that the Prophet Muhammad said, "Allah did not send any prophet but shepherded sheep." His companions asked him, "Did you do the same?" The Prophet replied, "Yes, I used to shepherd the sheep of the people of Mecca for some *qirats* (measured payment)."<sup>124</sup>**

Islamically, wages (or payment for work) are regarded as a right, and not a form of benevolence from the employer; thus, they cannot be withheld under any circumstances.<sup>125</sup> *Shari'ah* is also clear when it comes to the prompt payment of fair and decent wages, and the need to not burden workers beyond their capacity. There are a considerable number of examples of this precedence within the *Sunnah* of the Prophet Muhammad, where He engaged in the hiring of services:

**Abd-Allah ibn 'Umar said: The Messenger of Allah (peace and blessings of Allah be upon him) said: "Give the worker his wages before his sweat dries."<sup>126</sup>**

**Anas narrated that the Prophet used to get cupped and would never withhold the wages of any person.<sup>127</sup>**

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<sup>121</sup> *Zakaah* meaning 'that which purifies', it a taxation on wealth which is collected and forms alms giving to the poor and to those who qualify for it.

<sup>122</sup> Qur'an At-Tawbah 9:60

<sup>123</sup> Sahih al-Bukhari 2073: variation of Sahih al-Bukhari (n 74)

<sup>124</sup> Sahih al-Bukhari 2262;

<sup>125</sup> Ahmad, Iftikhar (n 73))

<sup>126</sup> Sunan Ibn Majah 2443, Graded Sahih by Darussalam and by Al-Albani

<sup>127</sup> Sahih al-Bukhari 2280

**Abu Hurairah narrated that the Prophet said, “Allah said, ‘I will be an opponent to three types of people on the Day of Resurrection: 1. One who makes a covenant in My Name, but proves treacherous; 2. One who sells a free person and eats his price; and 3. One who employs a labourer and takes full work from him but does not pay him for his labour.’”<sup>128</sup>**

**It was narrated from 'Amr bin Ash-Shrid, from his father that the Messenger of Allah said: Delay in payment on the part of one who possesses means makes it lawful to dishonour and punish him.<sup>129</sup>**

From the above narrations it is clear that, within the Qur'an and *Sunnah*, payment for work is an obligation, and any withholding of money is punishable, regardless of how menial or complex the work. Furthermore, the principle of drawing up a contract is also a fundamental precursor to undertaking work, as the Qur'an states that all agreements whose terms and conditions are not in any way illegal under Islamic law must be fulfilled, honoured and reconciled if there is a need:

**Kathir bin 'Amr bin 'Awf Al-Muzani narrated from his father, from his grandfather, that the Messenger of Allah said: “Reconciliation is allowed amongst the Muslims, except for reconciliation that makes the lawful unlawful, or the unlawful lawful. And the Muslims will be held to their conditions, except the conditions that make the lawful unlawful, or the unlawful lawful.”<sup>130</sup>**

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<sup>128</sup> Sahih al-Bukhari 2270

<sup>129</sup> Sunan Abi Dawood 3628; Sunan an-Nasa'i 4690; Ibn Majah 2521, Graded Sahih by Darussalam and Graded Hasan by al-Albani in *Irwa' al-Ghaleel*, 1434 (Ibn al-Mubarak and Sufyan said that 'dishonour' means that he may be spoken to roughly and 'punish' means he may be imprisoned for it)

<sup>130</sup> At-Tirmidhi 1352, Graded Sahih by Darussalam

Therefore, all contracts or agreements (in whatever context) need to be set clearly and in accordance with Islamic laws, morals, and ethics. When it comes to employment contracts (or any Islamically permissible agreement whether it is commercial or not), it is the duty of both parties, employer, and employee to fulfil their agreements to the best of their abilities.

**Sulayman ibn Dawud narrated that the Messenger of Allah said: "Muslims are bound by their conditions".<sup>131</sup>**

Moreover, as with any modern employment contract, such agreements set out an employee's employment conditions, rights, responsibilities, and duties. This also includes fixing the level of salary or payment:

**It was narrated from Hammad Ibn Abi Sulaiman that he was asked about a man who hired a worker in return for food and he said: "No, not until he tells him (what his wages will be)."<sup>132</sup>**

In the Qur'an, Allah refers to making contracts and advises:

**O you who believe! When you contract a debt for a fixed period, write it down. Let a scribe write it down in justice between you... You should become weary to write it (your contract), whether it be small or big, for its fixed term, that is more just with Allah; more solid as evidence, and more convenient to prevent doubts amongst yourselves...<sup>133</sup>**

Wages and provisions are required to be sufficient for workers to be able to lead a good quality of life, pre-empting the idea of a minimum wage (or more appropriately a fair 'living wage'),

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<sup>131</sup> Abu Dawood 3594, Graded Hasan by al-Albani

<sup>132</sup> Sunan an-Nasa'i 3859, Graded Hasan by Darussalam; Other narrations to note: **It was narrated that Abu Sa'eed said: "When you hire a worker, tell him what his wages will be."** Sunan an-Nasa'i 3857; **It was narrated from Al-Hasan that he disliked to hire a man without telling him what his wages would be.** Sunan an-Nasa'i 3858, however both Graded Da'if (weak) by Darussalam

<sup>133</sup> Qur'an Al-Baqara 2:282

whose aim is to prevent poverty.<sup>134</sup> Muhammad manifested Allah's preference for mankind and sought to address inequality amongst them. He recognised that workers (slaves in particular) tended to be in a weaker position to that of their employers, and strived to ensure that they were given sufficient sustenance to survive meaningfully, preserving both their dignity and honour, as is essential for all humans:

**And indeed We have honoured the Children of Adam, and We have (...) provided them with At-Taiyibat (lawful good things), and have preferred them above many of those whom We have created with a marked preference.<sup>135</sup>**

Those who did fall below the poverty line were entitled to state benefits from funds accumulated from the compulsory giving of alms of *Zakaah*.<sup>136</sup> As a result of this provision, the state created a safety net that ensured the well-being of its population. Moreover, it had a responsibility to ensure conditions were favourable for workers through planning and developing long-term schemes to support the economy, and the society it served.<sup>137</sup> As a direct result, there are a large number of examples illustrating the fact that slaves enjoyed conditions and privileges similar to that of their employers. Muhammad ordered that slaves, servants and workers be treated equally, and be given their fair share of wealth:

**'Ubadah bin Walid bin Samit reported: Allah's Messenger said: Feed them (the servants) and clothe them (the servants) what you wear, and if I give him**

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<sup>134</sup> Kamali, Mohammad Hashim (2011) *The Right to Education, Work & Welfare in Islam* (The Islamic Texts Society, Cambridge 2011) 147-173

<sup>135</sup> Qur'an Al-Isra 17:70

<sup>136</sup> Qur'an Al-Isra 17:26 'And give to the kindred his due and to the Miskin (poor) and to the wayfarer...'; At-Taubah 9:60 'As-Sadaqat (i.e. charity referring to Zakaah) are only for the Fuqara' (poor); the Masakin (poor) and those employed to collect (the funds); and for to attract the hearts of those who have been inclined (towards Islam); and to free the captives; and those in debt; and for Allah's Cause; and for the wayfarer (a traveller who is cut off from everything; a duty imposed by All. And Allah is All-Knower, All-Wise'

<sup>137</sup> Kamali, Mohammad Hashim (n 134) 189



**the goods of the world, it is easy for me than this that he should take my virtues on the Day of Resurrection.<sup>138</sup>**

A further example of rights being Islamically granted to workers is that of being treated as an equal and regarded as brothers, even in the case of slaves. Therefore, the relationship between employer and employee must be based on equality, goodwill and the notion of Islamic brotherhood,<sup>139</sup> where everyone is considered equal and is only judged by Allah in terms of faith and piety:

**Al-Ma'rur bin Suwaid said, "We passed by Abu Dharr and he was wearing a garment and his slave had a robe on. We said, 'Why do you not take this and give this man something else instead of the robe?' He replied that the Prophet, may Allah bless and grant him peace, said, 'Allah has put your brothers under your authority. If someone has his brother under his authority, he should feed him from what he eats and clothe him from what he wears and not burden him with what will be too much for him. If he burdens him with what will be too much for him, he should help him.'"**<sup>140</sup>

There are a number of references to the fact that, during early Islamic history, the second caliph, Umar, fixed the wages of various personnel during his period of leadership.<sup>141</sup>

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<sup>138</sup> Sahih Muslim 3006-3014/ (section of a lengthy *hadith* reported by 'Ubadah bin Walid bin Samit)

<sup>139</sup> Not to be confused with the Egyptian political party Muslim Brotherhood (*al-Ikhwān al-Muslimūn*), this reference to brotherhood is meant to encourage the general meaning where a community of people are linked by a common interest, trade or religion which harbours a cordial relationship or fellowship.

<sup>140</sup> Al-Adab Al-Mufrad 194, Graded Sahih Al-Albani; Sahih al-Bukhari 2545; Muslim 1661: **Al-Ma'rur bin Suwaid (May Allah be pleased with him) reported: I saw Abu Dharr (May Allah be pleased with him) wearing a nice gown, and his slave was also wearing one similar to it. I asked him about it, and he said that he had exchanged harsh words with a person during the lifetime of the Messenger of Allah and put him to shame by making a reference to his mother. That person came to the Messenger of Allah and made mention of that to him. Thereupon the Messenger of Allah said, "You are a person who has remnants of the 'Days of Ignorance' in you. Your slaves are your brothers. Allah has placed them under your authority. He who has his brother under him, should feed him from whatever he eats, and dress him with whatever he wears, and do not burden them (assign burdensome task to them) beyond their capacity; and if you burden them then help them."** There are a number of other authentic narrations that outline the same conditions: Al-Adab Al-Mufrad 189, 192 Graded Sahih by Al-Albani; Sunan Ibn Majah 3690 Graded Sahih by Darussalam; Sahih Muslim 1661

<sup>141</sup> Ahmad, Abdul Basit (2001) *Umar bin Al Khattab - The Second Caliph of Islam* (First Edition, Maktaba Dar-us-salam, Riyadh, 2001) 28-29

Furthermore, he set a precedent by revising the contracts and salaries according to length of service, performance, and knowledge base.<sup>142</sup> This particularly highlights the progressive nature of the recognition and remuneration awarded to employees within early Islam's human resource management principles.

**Ibn al-Sa'di Maliki reported: 'Umar bin Khattab appointed me as a collector of Sadaqa (charity). When I had finished that (the task assigned to me) and I handed over that to him (to 'Umar), he commanded me to (accept) some remuneration (for the work). I said: I performed this duty for Allah and my reward is with Allah. He said: Take whatever has been given to you, for I also performed this duty during the time of the Messenger of Allah He assigned me the task of a collector and I said as you say, and the Messenger of Allah said to me: When you are given anything without your begging for it, (then accept it), eat it and give it in charity.<sup>143</sup>**

This is ultimately supported by the following statement in the Qur'an:

**And each person will be paid in full of what he did; and He is Best Aware of what they do.<sup>144</sup>**

### **2.3.7 Islamic Work Ethics & Workers' Responsibility**

As previously discussed, when it comes to socio-economic issues (i.e. the relationship between employee and employer), each party has an obligation to fulfil the requirements of their agreement (or contract) to the best of their ability and also to judge fairly when issues arise:

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<sup>142</sup> Mujahid, Abdul Malik (2014) *Golden Stories of Umar Ibn Al-Khattab* (Darussalam Publishers, Riyadh, 2014) 108-146; Nu'mani, Shibli (1939) *Al-Farooq: The Life of Omar the Great* translated by Zafar Ali Khan (Muhammad Ashraf Publishing and Ripon Printing Press, Pakistan) 110-137

<sup>143</sup> Sahih Muslim 1045 d

<sup>144</sup> Qur'an Az-Zumar 39:70

**Verily! Allah commands that you should render back the trusts to those, to whom they are due; and that when you judge between men, you judge with justice. Verily, how excellent is the teaching which He (Allah) gives you! Truly, Allah is Ever All-Hearer, All-Seer.<sup>145</sup>**

Islam intrinsically requires workers to maintain good relations with their employers, and to work sincerely, dutifully, and to the best of their abilities. Taking this into consideration (and the points made earlier concerning the way in which work could be considered as an act of worship) workers are required to strive and apply themselves fully in order to reap a reward. This, in turn, acts as an intrinsic model of motivation. This notion of patience and diligence is applied to all aspects of Islam, whereby the belief of an individual expresses itself in all aspects of their daily life. Moreover, Islam lays down expectations concerning the conduct of an individual (or a community) while at work, in particular with regard to effort, dedication, cooperation, responsibility, social relations, and creativity.<sup>146</sup>

Recent studies have also considered spirituality and its relationship to workplace practice and motivation, particularly in relation to management, leadership, and productivity.<sup>147</sup> A body of literature that discusses these issues has developed over the past 20 years, and now appears in a number of bestselling books and business textbooks.<sup>148</sup> Moreover, there has been recognition that spirituality within the workplace leads to greater organisational integrity, and

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<sup>145</sup> Qur'an An-Nisa 4:58

<sup>146</sup> Hayati, Keumala and Caniogo, Indra (2012) 'Islamic Work Ethic: The Role of Intrinsic Motivation, Job Satisfaction, Organizational Commitment and Job Performance' *Procedia Social and Behavioural Sciences* (65) 272-277

<sup>147</sup> Dent, Eric B., Higgins, Eileen M. and Wharff, Deborah M. (2005) 'Spirituality and leadership: An empirical review of definitions, distinction, and embedded assumptions' *The Leadership Quarterly* (16) 625-653

<sup>148</sup> Robbins, Stephen P. (2003) *Organizational Behaviour* (Prentice Hall, NJ, USA, 2003); Guillory, William A. (2000) *The Living Organization: Spirituality in the Workplace* (Innovations International, Utah, USA); Bouckaert, Luk and Zsolnai, Laszlo (2011) *The Palgrave Handbook of Spirituality and Business* (Palgrave Macmillan, UK, 2011); Giacalone, Robert A. and Jurkiewicz, Carole L. (2003) *Handbook of Workplace Spirituality and Organizational Performance* (M.E. Sharpe Inc, NY, USA)

increases productivity and profit by aligning personal and organisational values.<sup>149</sup> It has been argued that previous leadership theories have primarily focused only on the physical, mental, or emotional elements of human interaction in organisations, and have neglected the spiritual component.<sup>150</sup>

Although there is a need for a more robust consideration of the 'spiritual' aspects of organisational theory and leadership, through undertaking scholarly work,<sup>151</sup> there are clear indications of the essence of spirituality in an Islamic model, in which values, attitudes, and behaviours are intrinsically necessary in order to effectively motivate a community. This ultimately ensures that individuals have a sense of spiritual fulfilment, as stated by the *hadith*:

**Abu Musa narrated that the Prophet said, "The Mamluk<sup>152</sup> who worships his Lord in a perfect manner, and is dutiful, sincere and obedient to his Saiyid,<sup>153</sup> will get a double reward."<sup>154</sup>**

When an individual has a sincere relationship with Allah (or any other belief system that fosters 'goodness'), their attitudes and behaviours can (and indeed should) be consistent with the rules and stipulations of their religion. Furthermore, consultation concerning work-related duties is promoted where an employee has a vested interest in the well-being of his employer's affairs (i.e. their company or organisation).

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<sup>149</sup> Porter, Tracy H. and Norris, Sharon, E. (2013) 'Workplace Spirituality: A Best Practice Toward Organizational Integrity' in *Organization: Building the Foundations of Humanistic Management* edited by Wolfgang Amann and Agata Stachowicz-Stanush (Palgrave Macmillan, UK) 428-429

<sup>150</sup> Fry, Louis W. (2003) 'Toward a theory of spiritual leadership' *The Leadership Quarterly* (14) 693-727

<sup>151</sup> Benefiel, Margaret (2005) 'The second half of the journey: Spiritual leadership for organizational transformation' *The Leadership Quarterly* (16) 723-747

<sup>152</sup> *Mamluk* refers to slave in the classical context but also depicts an employee working for an employer

<sup>153</sup> *Saiyid* refers to master in the classical context but also depicts an employer

<sup>154</sup> Sahih al-Bukhari 2551

**'Abdullah ibn 'Umar reported that the Messenger of Allah said, "When the slave advises his master and is assiduous in the worship of his Lord, he receives a double reward."<sup>155</sup>**

The Qur'an instructs that there should be no discrimination, or enmity, towards others, and that each should be fair in their dealings:

**O you who believe! Stand out firmly for Allah and be just witnesses and let not enmity and hatred of others make you avoid justice. Be just: that is nearer to piety, and fear Allah. Verily, Allah is Well-Acquainted with what you do.<sup>156</sup>**

The general verse in the Qur'an imposes a duty to fulfil the agreements with honesty and justice:

**O you who believe! Fulfil (your) obligations.<sup>157</sup>**

This statement is universal, applying to employers, employees and all those responsible for overseeing justice (i.e. mediators, arbitrators, and inspectors). Moreover, Islam makes it compulsory for every person to uphold not only their business obligations but also any dealings they enter into in their everyday lives.

### **2.3.8 Accountability, Responsibility & Regulation: State Affairs & the Institution of *Hisbah***

In an Islamic jurisdiction, the authorities have the sole aim of ordaining what is proper and forbidding the improper.<sup>158</sup>

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<sup>155</sup> Al-Adab Al-Mufrad 202, Graded Sahih by Al-Albani

<sup>156</sup> Qur'an Al-Maeda 5:8

<sup>157</sup> Qur'an Al-Maeda 5:1

<sup>158</sup> Ibn Taymiya (1982) *Public Duties in Islam: The Institution of the Hisbah* (The Islamic Foundation, Leicester, UK)

**Narrated by Abdullah bin 'Umar I heard Allah's Apostle saying, "Every one of you is a guardian, and responsible for what is in his custody. The ruler is a guardian of his subjects and responsible for them; a husband is a guardian of his family and is responsible for it; a lady is a guardian of her husband's house and is responsible for it, and a servant is a guardian of his master's property and is responsible for it; a man is a guardian of his father's property and is responsible for it, so all of you are guardians and responsible for your wards and things under your care."**<sup>159</sup>

Islam places an obligation on every Muslim to enjoin that which is good (*al-ma'roof*) and forbid what is evil (*al-munkar*):

**You (true believers in Islamic monotheism, and real followers of Prophet Muhammad and his *Sunnah* [legal ways, etc.]) are the best of peoples ever raised up for mankind; you enjoin *Al-Ma'roof* (i.e. Islamic monotheism and all that Islam has ordained) and forbid *Al-Munkar* (polytheism, disbelief and all that Islam has forbidden), and you believe in Allah.**<sup>160</sup>

Further, Islam encourages the state to take a role in regulating and safeguarding standards within the business and work community, through the establishment of *hisbah*,<sup>161</sup> the divinely sanctioned duty of the ruler (or government) to intervene and coercively 'command right and forbid wrong' in society.<sup>162</sup> *Hisbah* forms the establishment of an ombudsmanship or inspectorate, serving to maintain public law and order through the appointment of a *muhtasib*

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<sup>159</sup> Sahih al-Bukhari 2409

<sup>160</sup> Qur'an Aal-e-Imran 3:110

<sup>161</sup> *Hisbah* is an Islamic doctrine which means 'accountability'.

<sup>162</sup> Cook, Michael (2000) *Commanding Right and Forbidding Wrong in Islamic Thought* (Cambridge University Press) 522–523

(ombudsman). Throughout history, the duty of *hisbah* and its executor, the *muhtasib*, became an important institution within the social fabric of medieval Islamic cultures.

The *hisbah* officials/inspectors, or *muhtasibeen*,<sup>163</sup> were educated jurists with a duty to uphold the values of honesty, propriety, and hygiene, functioning as representatives of the people. Their primary duty was to encourage the population to fulfil their religious duties as prescribed by Islamic law. They also held an inherent responsibility to prevent the introduction of deviation and corruption into the prescribed acts of worship, by means of averting innovation being introduced into the religion as a whole.<sup>164</sup> Furthermore, they worked to establish a righteous society by supporting and cultivating high moral standards and by combating immoral behaviour through the application of ‘enjoining good and forbidding evil’.<sup>165</sup> The *muhtasib* would encourage members of the community to become righteous believers, who would also become involved in the affairs of society and support its welfare, including supporting and strengthening positive activities, while combating and preventing those which were corrupt.

The *hisbah* provided all members of society with constant monitoring and inspection of their activities in the public domain. The *hisbah* serves as a control mechanism established by Islam to maintain the order of public social life, enabling all within society to enjoy security and the fulfilment of their basic needs. By definition, the *hisbah* is limited to offences committed ‘in the open’, and so the *muhtasib*’s sole jurisdiction is confined to public space or affairs that openly affect society. Therefore, its regulation is limited to offences committed in public.<sup>166</sup> In the marketplace, this could mean punishing those who cheated their customers through the illicit use of weights on scales. The *hisbah* acted as a governing body, monitoring the practice

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<sup>163</sup> *Muhtasibeen* plural for *muhtasib*

<sup>164</sup> Ibn Taymiya (n 158)

<sup>165</sup> Ibn Taymiya (n 158)

<sup>166</sup> Klein, Yaron (2006) ‘Between Public and Private: An Examination of *Hisbah* Literature’ *Harvard Middle Eastern and Islamic Review* 7, 41-62

of the business community, while at the same time ensuring that business malpractice did not take place in society. This principle applies from two angles:

1. All business activities and transactions are to be undertaken within the boundaries of the laws, rules, and regulations of *Shari'ah*.
2. All business activities and transactions are to be undertaken through the observation of Islamic ethics and morals.

This application has two effects: firstly, it inspires a deeper level of consciousness within the heart of the economic actor; secondly, it ensures the monitoring of the observance of legal and moral values at the level of market place relationships. The authority of the *muhtasib* lies somewhere between informed moral advice and supervision, and a legally binding action of a judiciary system.<sup>167</sup> In explanation, the *muhtasib's* authority is below that of a judge, who gives final decrees on the compliance of transactions and economic relationships with the rules of *Shari'ah*. Thus, while the *muhtasib* must protect the economic freedom of individual actors, he must also determine that no actor abuses this freedom or transgresses the ability of others to practice their own respective freedoms.<sup>168</sup>

These freedoms were protected by the *hisbah* performing several market functions:

1. *Shari'ah* regulations: supervision of the market actors, ensuring the compatibility of their contracts with the *Shari'ah*, and that no *riba*<sup>169</sup> contracts were undertaken, along with deception or fraud.

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<sup>167</sup> Kahf, Monzer (2007) 'Islamic Government and Market Regulation: A Theoretical framework' paper written for the seminar on Government in Islamic in Islamic Economics Tehran, Iran, October 2007

<sup>168</sup> Kahf, Monzer (n 167)

<sup>169</sup> *Riba* can be roughly translated as 'usury', or unjust, exploitive gains made in trade or business. It is mentioned and condemned in several different verses in the Qur'an (An-Nisa 4:161, Aal-e-Imran 3:130, Ar-Room 30:39 and most commonly in Quran 2:275-280 ...**They say: "Trading is only like *Riba* (usury)", whereas Allah has permitted trading and forbidden *Riba* (usury)**". It is also mentioned in numerous narrations of the Prophet Muhammad, and thus considered a major sin in Islamic economic jurisprudence.



2. Moral and ethical regulations: transactions were monitored to ensure that they were in accordance with the moral and ethical values of the *Shari'ah*. These include truthfulness in transactions; declaration of the characteristics of merchandise (i.e. quality issues or defects); fair treatment of apprentices; and ensuring that animals are not overburdened or underfed.
3. Dispute resolution: this involved market disputes being quickly addressed between workers and employers; sellers and buyers; and between the merchants themselves. In this sense, the *hisbah* represents an agency that provides a quick and immediate process to resolve disputes before they escalate and reach the court.
4. Quality control: products were subjected to quality checks and supervision in order to maintain high standards.
5. Environment control: ensuring that actors did not exceed their own domain of practice: (1) merchants did not exhibit goods and merchandise in the street outside their own shops, infringing on the right of purchasers and passers-by to the whole street; (2) craftsmen did not produce fumes (or other emissions) capable of hurting passers-by or neighbours; and (3) noise-producing craftsmen were located away from residential areas and other businesses.
6. Health control: ensuring that products, goods, and merchandise were made and displayed in healthy and clean environments. In the case of edible commodities, they were not to be produced with harmful or rotten ingredients. The *hisbah* also promoted (and enforced) detailed rules of health and cleanliness, and suggested methods of inspection (including surprise visits).

7. Anti-monopoly functions and pricing: ensuring that no unfair monopoly was practised in the market, and *hisbah* institutions also enforced pricing structures where appropriate.
8. Public utility regulation: supervision and maintenance of the continued provision of public utility services in the market and society, including roads, bridges, streetlights, water fountains for homes and mosques, public bathrooms, drainage, and sewage. If any of these public services became damaged (or affected by wear and tear, or natural disasters), the *hisbah* institution stepped in to supervise its repair and maintenance, including when there was a lack of sufficient financial resources in the treasury of the local government.<sup>170</sup>

This institution of *hisbah* had a heritage in all Islamic countries and major cities adhering to the principles and laws outlined above. These institutions prevailed in Muslim societies at a time when Europe was sinking into ignorance and barbarism. If revived, *hisbah* could represent a semi-governmental agency with the potential to undertake several aspects of market regulations, particularly those not covered by macro policies. Therefore, an externalised institution could encompass the social, economic, and political aspects of ensuring that the relationship between the employee, the employer and the state remains fair and equitable.<sup>171</sup> This model could present an ideology potentially acceptable to Muslim countries today.

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<sup>170</sup> Points adapted from: Kahf, Monzer (n 167); Abdullah, Amalina (2010) Harking back to Hisbah' Accountants Today, April 2010, 12-14

<sup>171</sup> Ibraheem Hussain Al-'Asal (2012) *Al-'Amal wal qadaya al-'amaleeya bayn al-Islam wal an-Dhumah al-Watheeya (translated as Work and Labour Issues between Islam and Positivism* (Majd Publications and Distribution, Beirut) 47

### 2.3.9 Trade Unions & the Freedom of Association in Islam: A Question of Legality

The concept of dispute resolution in Islam clearly supports principles of equality and justice (as discussed in previous sections). However, the discourse regarding the legitimacy of union activity in Islam is one that is contentious. In order to elaborate on this issue it is important to first briefly recap on what is meant by the terms ‘permissible’ (*halal*) and ‘impermissible’ (*haram*).

*Halal* refers to matters that are Islamically permissible or lawful, while *haram* refers to those that are not. This principle was established in Islam and has superiority over all manifestations of the religion in terms of both outwardly physical and inwardly spiritual actions, including acts of worship and those actions, and behaviours and relationships that are not regarded as worship (i.e. the affairs of daily life). As union activity does not refer to an act of worship, there is no need for a primary source from the Qur’an and *Sunnah* to constitute its lawfulness. In Islam, only a small number of prohibitions exist compared to the vast number of those that are allowed:

**See you not (O men) that Allah has subjected for you whatsoever is in the heavens and whatsoever is in the earth, and has completed and perfected His Graces upon you, (both) apparent and hidden? Yet mankind is who disputes about Allah without knowledge or guidance or a Book giving light!<sup>172</sup>**

This verse reminds mankind that whatever is found in His creation is there for humanity to use. The term ‘apparent’ in the above verse is referring to the religion itself, and the pleasures of this world which are lawful, while the ‘hidden’ refers to an individual’s faith, knowledge,

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<sup>172</sup> Qur’an Luqman 31:20; see also Al-Baqara 2:29 and Al-Jathiya 45:13

wisdom, guidance for doing righteous deeds and also encompasses the Hereafter.

Muhammad elaborated upon this in a number of authentic narrations:

**Al-Miqdam bin Ma'dikarib narrated that: the Messenger of Allah said: "Lo! Soon a hadith from me will be conveyed to a man, while he is reclining on his couch, and he says: 'Between us and you is Allah's Book. So whatever we find in it that is lawful, we consider lawful, and whatever we find in it that is unlawful, we consider it unlawful.' Indeed whatever the Messenger of Allah made unlawful, it is the same as what Allah made unlawful."**<sup>173</sup>

**Salman Al-Farisi narrated that: the Messenger of Allah said "What is lawful is that which Allah has permitted, in His Book and what is unlawful is that which Allah has forbidden in His Book. What He remained silent about is what is pardoned."**<sup>174</sup>

To clarify, if Allah or His Prophet made no mention of a thing (any aspect applicable to life), it is a concession or blessing given to us by Allah. Subsequently it permits that benefit or enjoyment can be derived from it under the principle of 'natural permissibility'.<sup>175</sup> Another aspect to note is that within the *Shari'ah* there is a principle that, if an action etc. is doubtful with regard to its permissibility, it is better to avoid it:

**An-Nu'man bin Bashir reported that the Messenger of Allah said, "What is lawful is clear and what is unlawful is clear, but between them are certain doubtful things which many people do not know. So he who guards against doubtful things keeps his religion and his honour blameless. But he who falls into doubtful things falls into that which is unlawful, just as a shepherd who**

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<sup>173</sup> Jami` at-Tirmidhi 2664, Graded Hasan by Darussalam

<sup>174</sup> Ibn Majah 3367 Graded Hasan by Darussalam

<sup>175</sup> Qaradawi, Yusuf (2013) *The Lawful and the Prohibited in Islam* (Islamic Book Trust Selangor, Malaysia) 5-6

**grazes his cattle in the vicinity of a pasture declared prohibited (by the king); he is likely to stray into the pasture. Mind you, every king has a protected pasture and Allah's involved limits is that which He has declared unlawful. Verily, there is a piece of flesh in the body, if it is healthy, the whole body is healthy, and if it is corrupt, the whole body is corrupt. Verily, it is the heart."**<sup>176</sup>

There are a number of clear examples of dispute resolution mechanisms within Islam. These include scholarly discourses covering the history of their application, although linking them with freedom of association would involve taking a novel approach.<sup>177</sup> Islam promotes the settlement of disputes mainly through conciliation and arbitration, after gaining the consent of the parties involved in the disagreement, in order to resolve issues amicably and fairly, and without confrontation.

The idea of 'the collective' is a principle within Islam that promotes homogenous activity based upon the foundation of Islamic monotheism in its inherent principles; for example, believers are encouraged and commanded to come together to pray in a congregation.<sup>178</sup> Moreover, the idea of community and brotherhood is a recurrent theme in Islamic discourse. Islam also promotes collective action in enjoying good and forbidding evil as a collective duty, where an individual has an inherent responsibility to safeguard himself, and those with whom he comes into contact, and vice versa:

**The believers, men and women, are Auliya' (helpers, supporters, friends, protectors) of one another, they enjoin (on the people) Al-Ma'ruf (i.e. Islamic**

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<sup>176</sup> Riyadus Saliheen Book 1 Hadith 588 (Sahih al-Bukhari 52 / Sahih Muslim 1599 a); also cited in Jami' at-Tirmidhi 1205, Graded Sahih by Darussalam; Sunan Abi Dawud 3329, Graded Sahih by Al-Albani

<sup>177</sup> Hassas, Kamal Halili and Seraji, Mostafa (2013) 'Addressing Workers' Freedom of Association and its Dispute Resolution in the Context of the *Shari'ah*' Human Rights Review (14) 89-105

<sup>178</sup> **Ibn 'Umar reported Allah's Apostle as saying: The prayer of a person in congregation is twenty-seven times in excess to the prayer said alone.** Sahih Muslim 650 b; and numerous other *ahadith* in the other compilations.

**Monothesism and all that Islam orders one to do), and forbid (people) Al-Munkar (i.e. polytheism and disbelief of all kinds, and all that Islam has forbidden).<sup>179</sup>**

It is incumbent for human beings, as a collective entity, to assist each other, doing good deeds and refusing to participate in any action that is bad. Moreover, Muhammad called for practical action against evil and wrongdoing:

**Abu Sa'eed narrated that he heard the Messenger of Allah say: "Whoever amongst you sees an evil, let him change it with his hand; if he cannot, then with his tongue; if he cannot, then with his heart and that is the weakest of Faith."<sup>180</sup>**

Islam also calls for consultation for the managing of the affairs of both business and the state to be undertaken by popular participation,<sup>181</sup> again highlighting the importance of the collective:

**...And who (conduct) their affairs by mutual consultation...<sup>182</sup>**

When it comes to workplace relations, a union serves as an institution with the power to speak against unfair practices, in accordance with the duty to 'enjoin good and to forbid evil'. It is therefore necessary to be united when taking action, due to a collective duty to uphold what is righteous, and to stand against an oppression of such values:

**Anas narrated that Allah's Messenger said, "Help your brother, whether he is an oppressor or he is an oppressed one. People asked, "O Allah's Messenger! It is all right to help him if he is oppressed, but how should we help him if he**

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<sup>179</sup> Qur'an At-Taubah 9:71

<sup>180</sup> Sunan an-Nasa'i 5008, Graded Sahih by Darussalam

<sup>181</sup> Ahmad, Iftikhar (n 73)

<sup>182</sup> Qur'an Ash-Shura 42:38

**is an oppressor?" The Prophet said, "By preventing him from oppressing others."<sup>183</sup>**

As previously discussed, the institution of the *hisbah*, with its band of officials/inspectors (*muhtasibeen*) undertook their work in relation to market regulations and dealt with disputes. However, this did not encompass any representation of groups of workers (as in the modern sense of a union); indeed, the *muhtasib* would mediate between groups and individuals fairly and with justice, based upon Islamic laws. This mechanism of social and economic protection, twinned with the natural justice demanded by the religion, would therefore negate (in an 'ideal world') the need for unions. This places ultimate responsibility onto the government/state to ensure that employers do not exploit their employees and, where a violation does occur, it is resolved within a pro-justice model.

Contemporary scholars have argued the case for the compatibility of unions with Islam, based solely upon the points already raised, stating that Islam and unions both demand justice; hence, unions are not only compatible, they must also be encouraged.<sup>184</sup> There are links between further Islamic guarantees of basic rights (e.g. rights to a decent life, work, basic provisions, and to live without fear and hunger) that are also in line with the aims of unions. Further discourse promotes a pro-equality model built around a conceptual framework based upon 'egalitarianism' or 'neutrality', stating that all humans are subject to the same *Shari'ah* law, along with its principles.<sup>185</sup> This notion is then universally applied to the relationship between employee and the employer. When it comes to the balance of power, the employee is subject to the conditions of employment laid down by the authority of the employer, which

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<sup>183</sup> Sahih al-Bukhari 2444

<sup>184</sup> Al-Faruqi, Isma'il R. and Al-Banna, Gamal (1984) 'Towards Islamic Labour & Unionism: Three Papers' Cairo: International Islamic Confederation of Labour

<sup>185</sup> Al-Faruqi, Isma'il R. and Al-Banna, Gamal (n 184); Belal, Abdel Rahim A. (2005) 'Islamism and trade unions' Discussion Paper The Friedrich-Ebert-Stiftung (FES) in Sudan, December 2005

is not conducive to substantive equality. Therefore, unions take on the role of a guardian to restore this balance.<sup>186</sup>

Although trade unions did not exist during the early part of Islam due to the political outlook, workers' guilds have been in existence in Islamic societies since the 6<sup>th</sup> century.<sup>187</sup> The early guilds were well-organised and held great social importance at that time. Their foundations were both religious and moral, and they strived to maintain standards of craftsmanship and to prevent dishonest working.<sup>188</sup> They worked alongside the market inspectors (i.e. the *muhtasibeen*) to regulate labour conditions and maintain a professional code of practice.

Contemporary trade unions have developed from institutions composed of employees, whose purpose was to negotiate for improved wages and conditions of employment, through to managing disputes related to workplace issues, along with a more complex engagement in wider social and political issues. The growth of labour and social movements gave rise to more organised collectives with ostensive affiliations (or allegiances) to a political party, even becoming independent political parties in their own right.<sup>189</sup>

Although it is not the intention of this study to focus on this point, it is necessary to note that the role of political activity is a determinant to which models are advocated, in other words, in terms of an affirmative pro-justice state model or one that is neutral pro-equality and which endorses union activity. It is also pertinent to note that varied Islamic perspectives exist concerning the role of political activity in an Islamic or Muslim society, along with the relevant activities of employees. Such political activity,

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<sup>186</sup> Syed, Jawad (2008) 'An Islamic perspective of industrial relations: the case of Pakistan' *Journal of Management, Spirituality and Religion*, 5(4) 417-440

<sup>187</sup> Ali, Abbas J. (2005) *Islamic Perspective on Management* (Edward Elgar Publishing Ltd) 11; Izzeddin, Nejla (1953) *The Arab World, Past, Present, and Future* (Henry Regnery Publishing) 30-31  
Izzeddin 30-31

<sup>188</sup> Izzeddin, Nejla (n 187)

<sup>189</sup> Williams, Steve and Adam-Smith, Derek (2010) *Contemporary Employment Relations: A Critical Introduction* (Oxford University Press, UK, Second Edition 2010) 19-21



**May range anywhere from being on the one hand a tool of legitimation and preservation of the status quo, to being a vehicle for protest and a spearhead for revolution on the other.<sup>190</sup>**

However, while religion can be a tool to preserve the status quo, it can also be a powerful and emotive enabler for stimulating radical change. There are a number of schools of thought promoting an Islamic way of thinking and doing, advocating the message that Islam is, in essence, already complete.<sup>191</sup> These normative schools uphold this notion of a complete way of existence, and thus uphold total adherence to religious and social harmony. Others, however, embrace political activity and avidly campaign for secularism and liberalism, calling for a modern context to Islam, and for the working masses to mobilise and endorse change.<sup>192</sup> Both take a distinct approach towards campaigning.<sup>193</sup>

These different approaches hold differences of interpretation of the same traditional Islamic laws discussed in this chapter. It can be suggested that these approaches project their own ideologies that have evolved in the light of Western norms and secular world views. This has two effects on Islamic methodology: firstly, the adoption of Western views promotes hegemony and reinforces the stereotype created by the early orientalist; secondly, they result in reactionary opposition to them. Both of these have various degrees of activism (i.e. how radical or conservative or even extreme they are perceived to be).<sup>194</sup> The rise of these schools of thought account for the different degrees of interpretations on the permissibility

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<sup>190</sup> Ayubi, Nazih (2005) *Political Islam: Religion and Politics in the Arab World* (Taylor & Francis/Routledge UK, 2005) 46

<sup>191</sup> Al-Qu'ran Al-Maeda 5:3 **...I have perfected your religion for you, completed My Favour upon you, and have chosen for you Islam as your religion...**

<sup>192</sup> Slackman, Michael (2006) 'A voice for 'new understanding' of Islam' *Africa & Middle East – International Herald Tribune*, October 2016 available at <<http://www.nytimes.com/2006/10/20/world/africa/20iht-profile.3237674.html?pagewanted=all&r=0>> accessed 11 August 2017

<sup>193</sup> Reinbold, Jenna (2010) 'Radical Islam and Human Rights Values: A "Religious-Minded" Critique of Secular Liberty, Equality, and Brotherhood' *Journal of the American Academy of Religion* 78(2) 449-476

<sup>194</sup> It is not the intention of this thesis to explore this phenomenon but it is however it is certainly noteworthy, in light of the Arab Spring revolutions, particularly as the study is focussed on employment relations in GCC states all of which are monarchical.

and promotability of trade union activity within an Islamic or Muslim context, particularly in relation to strike and lock-out action, as they conceptually take control away from the authorities. These actions have become increasingly contentious due to being considered (along with trade union activity) illegal by contemporary GCC states. It is not the intention of this thesis to explore this phenomenon, but it is certainly noteworthy, in light of the Arab Spring revolutions, particularly as the study is focused on employment relations in GCC states — all of which are monarchical. That said, various waves of migration have played a role in both the challenge to, and the consolidation of, patrimonial and monarchical rule.<sup>195</sup>

However, there remains the fact that Islam gives workers the right to strike, advocating it as an instrument for redressing injustice,<sup>196</sup> referring to the above verses of the Qur'an and the *Sunnah* of Muhammad as evidence. Islam, however, places certain limits on such activity, as it does not allow for the *Shari'ah* to be compromised, and disapproves of those who transgress its limits:

**And fight in the Way of Allah those who fight you, but transgress not the limits.**<sup>197</sup>

At the same time, the concept of 'peaceful assembly' is supported<sup>198</sup> as a means of campaigning for the rights of particularly marginalised groups/collectives:

**Allah does not like that evil should be uttered in public except by who has been wronged...**<sup>199</sup>

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<sup>195</sup> Chalcraft, John (2010) 'Monarchy, migration and hegemony in the Arabian Peninsula: Research Paper, Kuwait Programme on Development, Governance and Globalization in the Gulf States' Government Department London School of Economics and Political Science

<sup>196</sup> Ahmad, Iftikhar (n 73)

<sup>197</sup> Qur'an Al-Baqara 2:190; At-Taubah 9:36, these verses refer to *jihad*, i.e. spiritual and physical struggling

<sup>198</sup> Baderin, Mashood A. (2003) *International Human Rights and Islamic Law* (Oxford University Press) 131-132

<sup>199</sup> Qur'an An-Nisa 4:148

Islam detests mischief and disruption in society. Furthermore, it forbids the free mixing of the sexes, a position unanimously held by Islamic scholars. There is permission to assemble for a rightful cause, so long as the participants adhere to the corpus of Islamic laws and regulations, but the assembly cannot be a vehicle to incite aggression or public disorder. It is permissible to enforce the stoppage of work where contractual rights are not met,<sup>200</sup> because obligations are not being fulfilled.<sup>201</sup>

Collective bargaining is most closely related to the concept of consultation in Islam, applying to both workers and representative parties. Consultation is encouraged and (as previously discussed) widely promoted through Islam's inherent nature of having collectiveness as a core value. Moreover, Islam also has put into place tools for negotiation, mediation, conciliation and arbitration (*sulh* and *takhim*), tools principally involved in bargaining:

**Al-Hasan said, "People never seek advice without being guided to the best possibility available to them."<sup>202</sup> Then he recited, "And who (conduct) their affairs by mutual consultation..."<sup>203</sup>**

## 2.4 Conclusion

Social justice in Islam differs from other religious, legal, and philosophical positions, as it relies less on a social contract with individuals or society and more on a divine contract with Allah, where the codes of conduct and notions of justice are manifestations of Allah's will. Therefore, a notion of justice is characterised by the balance of two fundamental moral principles that

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<sup>200</sup> Fatwa of Muhammad al-Mahmood al-Najdi based on Sunan Ibn Majah 2443, in *Masaa'il wa Rasaa'il*, page 48 cited in *Islam: Questions and Answers - Jurisprudence and Islamic Rulings: Transactions - Part 7*, also available at <<http://islamqa.info/en/5230>> accessed 11 August 2017

<sup>201</sup> In the case of modern employers in the GCC they would be eligible to report the 'striking' or 'absent' worker as absconding and thus terminate the contract of employment, some precautionary measures have been taken to prevent this but it still remains a problem.

<sup>202</sup> Al-Adab Al-Mufrad 258, Graded Sahih by Al-Albani

<sup>203</sup> Qur'an Ash-Shura 42:38

govern relationships amongst human beings and Allah: *adl*, meaning judgement and fairness in the context of a legal system (procedural or formal justice); and *qist*, meaning fairness in social relations and economic transactions (substantive justice or the dispensation of justice through legal process related to an issue such as a crime or dispute). The two principles represent the overall conception of justice in Islam, where societies, comprised of communities, groups or classes, including individuals, are ensured the basic conditions for well-being.<sup>204</sup> Injustice arises when one of these principles is out of balance and either individuals or institutions engage in unfair practices or deprive people of their basic rights.

A fundamental theme of *Shari'ah* and *Fiqh* involves the protection of weaker member of society or those who face a form of disadvantage. If holistically applied to society, this principle would encompass migrant workers, even those that are undocumented as they are even more precariously positioned. The fair treatment and representation of disadvantaged members of society is thus an aspect of social justice in Islam. The basis of the employee-employer relationship is benchmarked (or standardised) to that of a relationship between brothers, with the employer obligated to demonstrate compassion and respect to his employees. This relationship is required to be reciprocated, with the employee demonstrating loyalty to his employer, working diligently and with sincerity.

Even the most cursory investigation reveals that Islamic principles demonstrate clear concepts of labour laws including non-discrimination and equality, based on justice and fairness with no differentiation based on nationality, colour, or creed.

**O you who believe! Stand out firmly for justice, as witnesses to Allah, even though it be against yourselves, or your parents, or your kin, be he rich or**

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<sup>204</sup> King, Bryn and Austin, Michael J. (2014) 'Social Justice from a Humanities Perspective: A Synthesis to Inform Practice' in *Social Justice and Social Work: Rediscovering a Core Value of the Profession* edited by Austin, Michael J. (Sage Thousand Oaks, California, USA) 86-87

**poor. Allah is a Better Protector to both (than you). So follow not the lusts (of your hearts), lest you may avoid justice, and if you distort your witness or refuse to give it, very Allah is Ever Well-Acquainted with what you do.**<sup>205</sup>

Islam places a duty on those in power, whether it be manifested in that of a monarch or a government, to oversee that society as a whole is being appropriately and justly treated.

**Ibn `Umar narrated that Messenger said: “All of you are guardians and responsible for your charges: the Ruler is a guardian and responsible for his subjects; and a man is a guardian of his family and is responsible for his charges; and a lady is a guardian in the house of her husband and is responsible for her charge; and a servant is a guardian of the property of his master and is responsible for his charge”.**<sup>206</sup>

It can be clearly inferred that, on the macro-level, the state has the responsibility to regulate and safeguard standards within the business and work community. Using the historic model, the execution of this function can be manifested through the establishment of the *hisbah*. This relates to the divinely sanctioned duty of the ruler (or government) to intervene and coercively command good practice and prevent the violations of rights. As the domain of *hisbah* deals with safeguarding the limits of Allah against violation its essential duty is to protect members of society from having their rights from being infringed. The role of the *hisbah*, even in today's globalised interconnected society, particularly with its legacy in all Islamic countries and major cities, could help MMCs (particularly in the Middle East) to execute rules and regulations that build fair and transparent labour markets. With the *hisbah* acting as a sanctioned but independent establishment it could function as an inspectorate that, in one part, could oversee the management of labour relations and the mechanisms therein. That said, the

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<sup>205</sup> An-Nisa 4:135

<sup>206</sup> Sahih al-Bukhari 2751

governments of *Shari'ah* implementing or influenced states would need to comply with the inherent principles of the *hisbah* institution while creating an enabling environment for the *muhtasibeen* to conduct its affairs independently. Much like actors in civil society, the *hisbah* could effectively represent workers and migrants in terms of advocating and protecting their rights.

In conclusion, there is a need to resist the traditional orientalist view that Islam is primitive and backward. This brand of discourse concerning Islamic societies assumes a simplistic notion that Islamic states enforce the *Shari'ah* in a regressive manner.<sup>207</sup> In order to address this discourse that centres on a 'conservative' normative view of Islam, the following should be noted:

**Islam does not restrict freedom, but it is a means of regulating and channelling it in the correct way, such that the freedom of one person does not clash with the freedom of another. This is what occurs when freedom is granted without boundaries, because any person who desires absolute freedom without any boundaries will inevitably fulfil this at the expense of other people's freedom. As a result of this, discord occurs when people's freedoms clash, chaos spreads and corruption sets in. It is for this reason that Allah named the injunctions of the religion "limits".<sup>208</sup>**

The verses within the Qur'an and *Sunnah* address mankind as a collective entity, comprised of both those who believe in Islam and those who do not. They intrinsically deliver a model on how to manage a society, including 'the believers' and those who do not, in an all-encompassing harmonious manner. Furthermore, the broad principles discussed in this

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<sup>207</sup> An-Na'im, Abdullahi A. (2013) 'Complementary, Not Competing, Claims of Law and Religion: An Islamic Perspective, *Pepperdine Law Review* 39 (5) 1230-1256

<sup>208</sup> Shaykh Muhammad ibn Saalih al-'Uthaymeen, *Min Mushkilaat ash-Shabaab* (Daarul-Manaar) cited by Haneef Oliver in *Sacred Freedom: Western Liberalist Ideologies in the Light of Islam* (Westpoint Publishing, 2006) 21-25

chapter could play a more significant role in the creation and adoption of an improved (but still culturally relative) labour codes and practices in Islamic countries. These would be more in line with international standards, fulfilling the needs of modern economies that integrate diverse workforces.<sup>209</sup>

Due to the fact that it permeates deep into society, religion has an ability to transcend borders and identities — particularly throughout the Middle East.<sup>210</sup> This characteristic has the ability to provide a platform for agreement amongst large groups of people and so it, in essence, provides a normative model for human interaction (including industrial relations). Furthermore, if these are developed and applied effectively, the general population will accept the decision of the authorities, confident that they will regulate and conduct their affairs justly and fairly.<sup>211</sup>

Taking this theological doctrine into consideration (and in particular the manner in which it influences normative standards of both thought and action in Islamic or MMCs), this platform of discourse will be transferred in the next chapter to a focus on international standards of human rights, employment relations, and dispute management systems from a regional perspective. The regional aspect is particularly important as it has evidently been developed and influenced from both a theological and secular perspective. The aim in taking this approach is to set a comprehensive barometer for benchmarking the UAE's model for employment relations, leading to an in-depth critique of the means by which the UAE protects the labour rights of migrant workers.

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<sup>209</sup> Ahmad, Iftikhar (n 73)

<sup>210</sup> Zulfiqar, Adnan A. (2007) 'Religious Sanctification of Labor Law: Islamic Labor Principles and Model Provisions' *University of Pennsylvania Journal of Labour and Employment Law* 9 (2) 421-443

<sup>211</sup> Kelidar, Abbas (1993) 'States without foundations The Political Evolution of State and Society in the Arab East' *Journal of Contemporary History* 28 (2) 315-339

## **Chapter 3 – Regional Standards on Migrant Worker Rights**

### **3.1 Introduction**

Previously, Chapter 1 outlined international standards related to human and labour rights, including what is expected in terms of employment dispute resolution systems pertinent to migrant workers. Further, Chapter 2 looked at the Islamic models for each of the above. Next, this chapter aims to focus on the regional development of human and labour rights systems.

It will explore how MMCs have organised themselves within a culturally relative framework for human rights. In light of what has been outlined in the previous chapters, the following part of the study will endeavour to analyse the development and consequent application of the major regional human rights instruments founded upon Islamic principles. In doing so, it allows for the examination of how the member states have adhered to the principles that they have developed through their own regional instruments. Moreover, it will explore how the region has been addressing the well documented issues concerning the human and labour rights of migrants, the workers that have built and continue to drive the region's economies.

#### **3.2.1 The Compatibility of the Approaches to Labour & Migrant Rights**

MMCs, and more specifically GCC states, have presented a dilemma to the international human rights community in the manner in which they have taken historical stances against international treaty ratification on the grounds of theological incompatibility.<sup>1</sup> In reality, their reservations to the various treaties have been for a number of different reasons; however, one of the aims of this work is to focus on issues that relate to religious or cultural

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<sup>1</sup> Baderin, Mashood A. (2001) 'A Macroscopic Analysis of the Practise of Muslim State Parties to International Human Rights Treaties: Conflict or Congruence?' *Human Rights Law Review* 1(2) 265-303



particularism, and whether there is a basis of applying them when considering the labour rights of migrant workers.

Previous discourse has been somewhat polarising when considering the universality or relativity of human rights. On the one hand, Western European and North American states portray Islamic law as being incompatible with ideals of international human rights; on the other hand, the Muslim world displays cynicism towards the current international human rights regime. This attitude has unfortunately obscured many commonalities that exist between the two approaches. Despite the various opposing views often projected on the incompatibility of what is perceived as human rights, on examination (in Chapter 2), the normative Islamic notions of labour and employment rights, and dispute resolution norms have an inherent parity with what is universally recognised. The Islamic principles of labour rights are grounded in human dignity and justice, both of which are universal values.

It is important to reiterate that, even though state reservations made to indicate the incompatibility of Islamic laws with human rights treaties began to decline post 1996, in turn it actually gave rise to MMCs using a different form of language when expressing a reservation. Evidently, where legal systems had incorporated Islamic law in their legal systems, they presented their reasons for submitting a reservation to the international community as simple reference for upholding principles of domestic law.<sup>2</sup> Thus, even in today's globalised climate, Islamic particularism as a ground of non-acceptance is significantly reduced. It may perhaps become even rarer in the future, but the underlying issue is the reluctance of states to upgrade domestic laws to conform to normative international standards. Therefore, conflicts between domestic rights policies and international law are still evident; they will pose problems for harmonisation in the future.

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<sup>2</sup> Mayer, Ann Elizabeth (1998) Islamic Reservations to Human Rights Conventions' *Recht van de Islam* 15, 25-45

### 3.2.2 Regional Development of Culturally Specific Human Rights Instruments

Bearing in mind the complexity and diversity of human society and despite the conceptual differences to human rights, there is a need to harmonise the noble ideals of international human rights. With Islam being a major human civilisation, and with many UN member states either partially or fully applying Islamic *Shari'ah* law, it is necessary to address any preconceived myths of complete dichotomy and incompatibility as there is universal ground. Although there are some areas of differences in the scope and application of international law and Islamic law, this does not make them irreconcilable. Moreover, if it is universally accepted that the international human rights movement is understood as a universal humanitarian objective for the protection of individuals against the misuse of state authority, and for the enhancement of human dignity, this ideal is fully compatible with Islamic ideals. Indeed, protection and the enhancement of the dignity of human beings has always been a principle of both Islamic law and political theory.<sup>3</sup> In light of this, regional systems based upon cultural and theological influences have developed.

Regional human rights charters and schemes were established in response to challenges specific to individual countries, and without relevance to other regions or parts of the world. The argument for doing this is that a common geography would take into account common cultures and traditions. As a result, a number of established regional human rights systems have been developed, including European, African, Inter-American, and Arab models.<sup>4</sup> This section will initially focus on the development and application of the Arab system, and the institutions that monitor and govern this system, particularly in connection to the employment arena. The following section will subsequently provide an insight into the ways

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<sup>3</sup> Baderin, Mashood A. (2010) 'Establishing Areas of Common Ground between Islamic Law and International Human Rights' *International Journal of Human Rights* 5(2) 72-113

<sup>4</sup> El Demery, Ahmed M. (2015) *The Arab Charter of Human Rights: A Voice for Sharia in the Modern World* (Council on International Law and Politics, Chicago, USA) 32

in which the region has developed its various schemes of protecting human rights and freedoms, in relation to the backdrop of alternative international movements.

Two primary and overarching bodies have had a significant regional influence in terms of human rights, with a third being the GCC. The first of these is the League of Arab States (now known as the Arab League),<sup>5</sup> which was established in 1945 and currently has a membership of 22 states.<sup>6</sup> Founded upon the Pact of the League of Arab States of 1945,<sup>7</sup> the aim was to strengthen the relationships and ties binding the Arab states together, while emphasising independence, sovereignty, and anti-colonialism.<sup>8</sup> The states themselves represent considerable diversity in terms of legal and constitutional structures, political systems, social and cultural identities, and levels of governance.<sup>9</sup> It is notable that, despite being an 'Arab' organisation (in which Islam overwhelms as the predominant religion and permeates geographical boundaries), the founding Charter makes no mention of Islam, or any religion, referring only to 'cultural matters'.

The Council of the Arab League is the central, and highest, executive organ of the League, and serves as the decision-making body. It is noteworthy that, unlike other regional human rights establishments, which are based on geography,<sup>10</sup> the Arab League governs countries with a common language (and largely the same religion), which has invoked the concept of 'Arab Nationalism' (although the origins of the idea of 'Arab Nationalism' are contested).<sup>11</sup> The

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<sup>5</sup> League of Arab States is termed in Arabic as the *Jami'at Ad-Duwal al-'Arabiyyah*

<sup>6</sup> States are predominantly Arabic speaking from northern African, the Levant and the Arabian Peninsula, extending from the Atlantic to the Indian Ocean.

<sup>7</sup> Also known as The Charter of the Arab League March 22, 1945, available at <<http://www.arableague.org.uk/league/charter.html>> accessed 11 August 2017

<sup>8</sup> Pact of the League of Arab States, March 22 1945 retrieved from The Avalon Project, Yale Law School available at <[http://avalon.law.yale.edu/20th\\_century/arableag.asp](http://avalon.law.yale.edu/20th_century/arableag.asp)> accessed 3 September 2016

<sup>9</sup> An-Na'im, Abdullahi A. (2001) 'Human Rights in the Arab World: A Regional Perspective' Human Rights Quarterly 23(3) 701-732

<sup>10</sup> Council of Europe, European Union, African Union etc

<sup>11</sup> Haddad, Mahmoud (1994) 'The Rise of Arab Nationalism Reconsidered' International Journal of Middle East Studies 26(2), 201-222; Dawisha, Adeed (2003) *Arab Nationalism in the Twentieth Century: From Triumph to Despair* (Princeton University Press, New Jersey) 84; Nationalism has been contested on the grounds that Islam does not differentiate between Arab and non-Arab see The Prophet's Farewell Sermon, known as '*Khutabatul*

impact of colonialism (although relatively short-lived, but recent), and post-war Western dominance, has had a significant influence upon the political, economic, and social impact of the region. Several decades of external coercive colonial rule has inevitably resulted in opposition to Western dominance, as seen in anti-colonial sentiments expressed through independence and sovereignty clauses in the various regional treaties,<sup>12</sup> (this is also evident through the inclusion of ICESCR Article 2(3), where developing countries can choose to justifiably favour their own citizens over foreigners in order to ensure that they can fully realise their rights post-independence). Moreover, various British and French applications of administrative systems during colonisation resulted in fragmentation within the region, which is not only reflected in the application of law, but in terms of national borders.<sup>13</sup> These attitudes have inevitably led to discrepancies when considering human rights within the region, particularly due to the fact that the primary concern of the Arab League has been to promote Arab sovereignty and self-determination, arguably over and above religious identity.<sup>14</sup> Therefore, sovereignty, economics, and political agendas debatably became the most significant drivers for developing regional bodies and regional laws, particularly for the natural resource rich states of the Gulf.

Secondly, the Organisation of the Islamic Conference (now known as the Organisation of Islamic Cooperation [OIC]) was established in 1969, with the objective of promoting Islamic ‘unity and solidarity amongst the 57 member states in securing their common interests at the international arena’, and ‘to promote lofty Islamic values of peace, compassion, tolerance,

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*Wada’*. It is referenced in most of the books of authentic hadith: Sahih al-Bukhari, Sahih Muslim, Tirmidhi and Musnad ibn Hanbal

<sup>12</sup> Pact of the League of Arab States Article 2; Cairo Declaration of Human Rights in Islam Article 2 and Article 13(b); Arab Charter of Human Rights 2004 Article 2

<sup>13</sup> Rogan, Eugene (2009) *The Arabs; A History* (Basic Books, Perseus Boos Group New York, USA) 1-8, 149

<sup>14</sup> Pogany, Istvan (1987) ‘Arab Attitudes Toward International Human Rights Law’ *Connecticut Journal of International Law* 2 367-374

equality, justice and human dignity'.<sup>15</sup> Unlike the Pact of the League of Arab States of 1945, it makes direct reference to the promotion of (1) human rights and fundamental freedoms;<sup>16</sup> (2) 'commitment to the principles of the UN, its Charter and International Law';<sup>17</sup> and (3) democracy.<sup>18</sup> On examining the pact, it is evident that the language employed is more in line with the international dialectal stance. This can be viewed as somewhat inconsistent in relation to the arguments projected by opposing Universalists and Relativists, due to the universal architecture of the pact and the commitments it makes to international law. This exemplifies the divergences in the legal systems of Muslim countries, many of which have secular foundations, in contrast to some of the *Shari'ah* based systems found in the Arabian Gulf. It is this constitutional diversity, along with the inherent social and cultural differences, that render the task of devising a common human rights language complex, even at a regional level.

Nevertheless, Islam places a collective duty on the wider Muslim community, the *Ummah*, to focus on a common goal of fairness and justice. Moreover, within the context of this study, Islamic principles are clear when consideration is given to migrant workers' rights and in particular their employment rights. Islam spells out that, in the case of a dispute, proactive steps need to be taken in order to find a resolution; furthermore, Islam places an obligation on the authority to oversee that the matter is dealt with fairly. This translates into a responsibility for the state, and indeed the wider 'Muslim *Ummah*' (meaning Muslim community), to provide the necessary systems and machinery to facilitate the process of dispute resolution, redress, and compensation. In terms of what is regarded as the Muslim community's responsibility. The *Ummah* it refers to the body of Muslims globally that have

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<sup>15</sup> Organisation of Islamic Cooperation Charter <<http://www.oic-oci.org/english/charter/OIC%20Charter-new-en.pdf>> accessed 3 September 2015

<sup>16</sup> Organisation of Islamic Cooperation Charter: Preamble, Article 1 (17), Article 2 (7)

<sup>17</sup> Organisation of Islamic Cooperation Charter: Preamble, Article 1(7), Article 2(1), Article 2(5)

<sup>18</sup> Organisation of Islamic Cooperation Charter: Preamble, Article 2(7)

been commanded to enjoin good and to forbid wrong doing;<sup>19</sup> to fulfil contractual obligations;<sup>20</sup> and to show justice and care for those under their responsibility.<sup>21</sup> Along with other Islamic principles linked to work and employment, this can clearly be applied to the migrant workers.

### **3.3 The 1981 Universal Islamic Declaration of Human Rights**

As a result of the opposition to 'Western' ideas, or concept of human rights (particularly during the political upheavals of the 1970s, in which various degrees of Islamic conservatism took hold), there has been a call for a more rigorous Islamic approach to formalising an Islamic body of human rights law, which is both 'universal' and 'relative' to the cultural aspirations of Muslims.<sup>22</sup> Not only has there been a revival of Islamic orthodoxy, but contemporary scholars have also become committed to reinstating the establishment of Islamic states. Their approach has been to take an orthodox approach and application of Islam to contemporary issues, advocating that Islam forms the solution to what is regarded as global turmoil.<sup>23</sup> In light of this stance, the 1981 Universal Islamic Declaration of Human Rights (UIDHR), drafted in Europe and adopted by the Islamic Council of Europe,<sup>24</sup> along with the 1990 Cairo Declaration of Human Rights in Islam, represented the most important steps in officially recognising an Islamic approach to the issue of human rights on the international stage.

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<sup>19</sup> Qur'an Aal-e-Imran 3:110; Sahih al-Bukhari 2409

<sup>20</sup> Qur'an Al-Maeda 5:1 and Qur'an Al-Maeda 5:8

<sup>21</sup> Qur'an An-Nisa 4:58

<sup>22</sup> Johnston, David L. (2014) 'A Muslim and Christian Orientation to Human Rights: Human Dignity and Solidarity' Indiana International & Comparative Law Review 24(4) 899-920

<sup>23</sup> Sayyid Qutb was an Egyptian Islamist and the leader of the Muslim Brotherhood, and later Abul Ala Maududi, a Pakistani Sufi Sunni scholar who founded Jamaat-e-Islami. Both of these have contributed to the revolt against Western ideas and promoted resistance.

<sup>24</sup> The Islamic Council was largely constituted of Islamic groups that either belonged to opposition political parties in the Middle East or had migrated to Europe.

UIHDR states that it is ‘based on the Qur’an and the *Sunnah*, and has been compiled by eminent Muslim scholars, jurists and representatives of Islamic movements and thought’.<sup>25</sup> In its preamble it places an obligation to establish an Islamic order (particularly relevant to the Islamic states within the Gulf region, founded upon *Shari’ah*) wherein all human beings should be equal and none should enjoy privilege or suffer disadvantage or discrimination by reason of race, colour, sex, origin, or language.<sup>26</sup> It states that all human beings are born free, and that slavery and forced labour are abhorred.<sup>27</sup> The preamble also assures that everyone should have the right to be assured appropriate remedy when a right(s) has been infringed upon, and that every individual has the right to bring legal action against anyone who commits a crime against society or any of its members.<sup>28</sup> Therefore, in terms of remedy and redress, the preamble acknowledges, though not explicitly, the rights of migrant workers through the non-discriminatory terminology used. Furthermore, this is reiterated as the text addresses the rights to justice<sup>29</sup> and fair trial.<sup>30</sup> The former places an obligation to protest against injustice, and also to obtain fair adjudication before an independent judicial tribunal in any dispute.

The body of the text, although it contains primarily civil and political rights, also includes a number of other social, economic, and cultural rights for ‘every person’ or ‘all persons’, thus encompassing migrant workers, which include the right to work,<sup>31</sup> and work-related rights, such as equal pay;<sup>32</sup> the prohibition of discrimination with regard to the right to work;<sup>33</sup> the right to just working conditions and prompt payment, and adequate rest and leisure;<sup>34</sup>

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<sup>25</sup> UIDHR Foreword

<sup>26</sup> UIDHR Preamble i

<sup>27</sup> UIDHR Preamble ii, iii

<sup>28</sup> UIDHR Preamble xi-xiii

<sup>29</sup> UIDHR Article IV

<sup>30</sup> UIDHR Article V

<sup>31</sup> UIDHR Article XV, b

<sup>32</sup> UIDHR Article III, b

<sup>33</sup> UIDHR Article III, c

<sup>34</sup> UIDHR Article XVII

freedom of economic activities;<sup>35</sup> protection from exploitation;<sup>36</sup> the right to food, shelter, clothing, education, and medical care;<sup>37</sup> and the right to a free choice of profession and career.<sup>38</sup>

The articles, though not exhaustive, generally make no exception as they address ‘all/every person’; however, it makes no specific mention of non-nationals/non-citizens and migrant workers but clarifies the obligation to establish an Islamic order wherein ‘all human beings shall be equal and none shall enjoy a privilege or suffer a disadvantage or discrimination by reason of race, colour, sex, origin or language’.<sup>39</sup> The general provisions of the UIDHR are relatively open-ended as the basic principles of labour rights are covered, as mentioned above, with Article XVII reiterating the Islamic mantra of treating workers with dignity and justly. It succinctly highlights rights relating to wages being paid promptly and also the entitlement to rest and leisure, aspects that have been breached in terms of migrant workers in the Gulf.

In terms of freedom of movement, the document states that ‘Muslims’ have the right to move freely in and out of any ‘Muslim country’, and that people cannot be forced out of the country of residence or be deported without recourse to due process of law;<sup>40</sup> again, both of these are greatly restricted by the *Kafala* immigration control system used to manage the migrant workers (Muslims and non-Muslims) in the Gulf region. Historically, the Agreement of the Council of Arab Economic Unity (1965) includes some specific references made to migration, as it provides freedom of movement, employment, and residence and abolishes certain restrictions upon intra-regional movement.<sup>41</sup> In 1968, the Arab Labour Organisation developed the Arab Labour Agreement, which was designed to facilitate the movement of

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<sup>35</sup> UIDHR Article XV a, b

<sup>36</sup> UIDHR Article XV f

<sup>37</sup> UIDHR Article XVIII

<sup>38</sup> UIDHR Article XXI b

<sup>39</sup> UIDHR Preamble gi

<sup>40</sup> UIDHR Article XXII

<sup>41</sup> ILO (1999) ‘Migrant Workers’ International Labour Conference, 87<sup>th</sup> Session 1999, REP31B.99, Para 68



Arab workers within the region, with an intention to ensure that indigenous peoples were given priority over non-nationals within the labour market. This continued preference was evident once again in the Arab Declaration of Principles on the Movement of Manpower (1984), which further called for the strengthening of regional bodies and intra-regional cooperation. This laid the foundation of a series of labour force nationalisation initiatives, which also exist in today's climate.<sup>42</sup>

In terms of the right to free association and to participate individually or collectively, the UIDHR's provisions are rather ambiguous,<sup>43</sup> as it makes no mention of trade unions or collective bargaining. This omission and the language used in the UIDHR are particularly distinct to what is covered within internationally recognised instruments, which explicitly make mention of protecting trade union rights and collective bargaining. The UIDHR only entitles a person to participate individually and collectively in religious, social, cultural, and political life and also guarantees the right to establish organisations to exemplify the Islamic notion and responsibility to 'enjoin good and forbid evil'. That said, depending on the perspective taken, it does mean that it provides a possibility of developing vehicles in order to lobby for rights. However, domestic policies and indeed rhetoric from within the GCC region particularly inhibit activities relating to trade union activity, thus limiting the machinery that migrants can access to challenge the strict state-controlled systems, which have been criticised by the international community.<sup>44</sup>

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<sup>42</sup> Errichiello, Gennaro (2012) 'Foreign Workforce in the Arab Gulf States (1930-1950): Migration Patterns and Nationality Clause', *International Migration Review*, 46 (2), 389-413; Randeree, Randeree, Kasim (2009) 'Strategy, Policy and Practice in the Nationalisation of Human Capital: "Project Emiratisation" Research and Practice in Human Resource Management 17 (1)

<sup>43</sup> UIDHR Article XIV

<sup>44</sup> HRW (2014) 'Gulf Countries: Increase Migrant Worker Protection Gulf, Asian Labor Ministers at 3rd Abu Dhabi Dialogue' available at <<https://www.hrw.org/news/2014/11/23/gulf-countries-increase-migrant-worker-protection>> accessed 18 August 2017; HRW (2010) 'Walls at Every Turn: Abuse of Migrant Domestic Workers through Kuwait's Sponsorship System' available at <<https://www.hrw.org/report/2010/10/06/walls-every-turn/abuse-migrant-domestic-workers-through-kuwaits-sponsorship-system>> accessed 18 August 2017; HRW (2006) 'Building Towers, Cheating Workers Exploitation of Migrant Construction Workers in the United Arab Emirates' available at

UIDHR refers to Islamic restrictions to prohibit certain practices that oppose *Shari'ah*, or which are deemed detrimental to the interests of the Islamic community.<sup>45</sup> The development of UIDHR was an initial step by the Islamic community to recognise international human rights, with the language used to formulate UIDHR being *pro* human rights, thus awarding a degree of validity to the international concept of human rights. At the same time, there was an avoidance of the contentious issues generally employed by critics to highlight the incompatibility of Islamic orthodoxy to Western norms, including the rights of women, religious freedom, and the rights of non-Muslims.<sup>46</sup> It is not the aim of this study to dwell upon these conflicts, but rather to advocate a workable solution to the categorical issues faced by migrant workers, including the named issues and freedoms.

Overall, UIDHR testifies that an Islamic approach can be put forward internationally to mobilise power behind the cause of international human rights, as long as these do not supersede, or have priority over, Islamic laws or rules. The 23 articles of the UIDHR grant a substantial place to the individual's duties, most of which are those of respecting the religious feelings of others or of using the means of production in the interest of the wider

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<<https://www.hrw.org/sites/default/files/reports/uae1106webwcover.pdf>> accessed 18 August 2017; HRW (2009) 'The Island of Happiness' Exploitation of Migrant Workers on Saadiyat Island, Abu Dhabi' available at <[https://www.hrw.org/sites/default/files/reports/uae0509webwcover\\_4.pdf](https://www.hrw.org/sites/default/files/reports/uae0509webwcover_4.pdf)> accessed 18 August 2017; HRW (2012) 'The Island of Happiness Revisited' available at <[http://www.hrw.org/sites/default/files/reports/uae0312webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/uae0312webwcover_0.pdf)> accessed 18 August 2017; HRW (2007) 'The UAE's Draft Labor Law: Human Rights Watch's Comments and Recommendations' available at <<https://www.hrw.org/legacy/backgrounder/mena/uae0307/uae0307web.pdf>> accessed 18 August 2017; HRW (2007) 'Exported and Exposed: Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates' available at <<https://www.hrw.org/sites/default/files/reports/srilanka1107webwcover.pdf>> accessed 18 August 2017; ITUC (2011) 'Hidden faces of the Gulf Miracle: Behind the gleaming cities of Doha (Qatar) and Dubai (UAE), stories of migrant workers with few rights and inhuman living conditions' Union View #21, available at <[https://www.ituc-csi.org/IMG/pdf/V5\\_QatarEN\\_final.pdf](https://www.ituc-csi.org/IMG/pdf/V5_QatarEN_final.pdf)> accessed 18 August 2017; ITUC (2014) 'Facilitating Exploitation: A review of Labour Laws for migrant domestic workers in Gulf Cooperation Council Countries' available at <[https://www.ituc-csi.org/IMG/pdf/gcc\\_legal\\_and\\_policy\\_brief\\_domestic\\_workers\\_final\\_text\\_clean\\_282\\_29.pdf](https://www.ituc-csi.org/IMG/pdf/gcc_legal_and_policy_brief_domestic_workers_final_text_clean_282_29.pdf)> accessed 18 August 2017

<sup>45</sup> UIDHR Article XV(g): All economic activities are permitted provided they are not detrimental to the interests of the community (*Ummah*) and do not violate Islamic laws and values.

<sup>46</sup> An-Na'im, Abdullahi (2000) 'Islam and the Human Rights Debate' The American Society of International Law Proceedings of the 94<sup>th</sup> Annual Meeting April 5-8, 2000 Washington DC available at <<http://aannaim.law.emory.edu/pdffiles/dwnld13.pdf>> accessed 13 July 2015

community.<sup>47</sup> This stance provides an explicit illustration of cultural relativism being applied in an Islamic context. That said the UIDHR has been destined with a fate of becoming relatively obscure, as very little literature has been written regarding it, perhaps due to the fact that it was developed by a private body of authors in Europe rather than state-recognised officials in an actual Islamic jurisdiction.

### **3.4 The 1990 Cairo Declaration of Human Rights in Islam**

In the period after the UIDHR, international deliberation concerning human rights and Islam (which inextricably included labour and migrant rights) had both evolved and intensified. Middle Eastern Islamic countries have occupied both common and specific articulating positions. In essence, they share views with other developing, non-Western countries (labour-sending states) while at the same time defining a specific position on human rights derived from their rich theology, which encompasses the fabric of their society's values and beliefs. This was manifested in the form of an alliance at the Vienna UN Conference on Human Rights in June 1993, and in the regional conferences that preceded it.<sup>48</sup> At this time, Islamic states joined with Asian states in criticising UN and Western policy for its double standards, its violation of sovereignty, its neglect of economic rights, and its imposition of 'Western' values.<sup>49</sup> They further expressed their views on historically significant common issues, including economic rights, global equity, decolonisation, and nationalisation.

Consequently, this reinvigorated the debate on Western hegemony in terms of economic globalisation, and its projected values on human rights. At Vienna, Islamic countries submitted

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<sup>47</sup> Ouguergouz, Fatsah (2003) *The African Charter of Human and People's Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa* (Martinus Nijhoff Publishers, The Hague, Netherlands) 382

<sup>48</sup> Mayer, Elizabeth Ann (2013) *Islam and Human Rights: Tradition and Politics* (Fifth Edition, Westview Press, Boulder, CO, 2013) 31-32

<sup>49</sup> Mayer, Elizabeth Ann (n 48)

the Cairo Declaration on Human Rights in Islam (CDHRI), which marks out a particular position on certain questions pertaining to the field of human rights. Similar to that of the UIDHR, literature on it is somewhat limiting particularly in terms of the drafting history; nonetheless, the text has been widely commented upon.

CDHRI was adopted in 1990 by OIC and its member states. CDHRI reaffirms its doctrine in light of Islamic law, as does UIDHR, with its preamble focussing on ensuring an Islamic contextualisation, affirming the duty of the individual, and the collective being responsible and accountable to Allah. The concept of family is also integral to the text, referring to its significance as being the foundation of society.<sup>50</sup> CDHRI thus contains a number of collective obligations referring to society, state, and their interrelationship. It guarantees equality in terms of human dignity, obligations, and responsibility, without any discrimination on a number of protected characteristics such as race, colour, language, belief, sex, religion, political affiliation, and social status, although without mention of nationality or migration status. CDHRI proclaims holistically the following individual rights: the duty to protect the right to life;<sup>51</sup> the responsibility of the husband for the support and welfare of his family;<sup>52</sup> and the duty of the worker 'to be dedicated and meticulous in his work'.<sup>53</sup> Furthermore, Article 11 makes an address to human beings being free from birth and stating that they are all protected from enslavement, humiliation, oppression, and exploitation, all of which are principles relevant and pertinent to migrant workers.

Moreover, CDHRI Article 12 grants the right for all to be able to move freely and to select a place of residence. Article 13 specifically deals with work obligating both the state and society to guarantee specific rights in terms of the following: freedom to choose work; enjoying safety

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<sup>50</sup> CDHRI Article 5 a

<sup>51</sup> CDHRI Article 2 a

<sup>52</sup> CDHRI Article 6 b

<sup>53</sup> CDHRI Article 13

and security; not to be worked beyond capacity, or subjected to compulsion or exploitation or harm; a lack of discrimination between males and females; fair (and promptly paid) wages; and holiday allowances. All of these are matters evident in the types of complaints made by migrants in the Gulf.<sup>54</sup> The nature of these complaints are also violations of *Shari'ah* as there are various verses of the Qur'an and examples of the *hadith* (as discussed in detail in the previous chapter) that explicitly outline the need to provide ample provisions for society, which undoubtedly includes those who are disadvantaged, which includes migrants workers. CDHRI Article 13 also makes a direct reference in making the state responsible for resolving employment disputes fairly:

**Should workers and employers disagree on any matter, the State shall intervene to settle the dispute and have the grievances redressed, the rights confirmed and justice enforced without bias.<sup>55</sup>**

Furthermore, it also guarantees the right to live in a clean environment;<sup>56</sup> medical and social care;<sup>57</sup> and that the state should ensure each citizen has access to a decent living, one that enables him to meet the basic requirement of both himself and his dependents, in terms of food, clothing, housing, education, and medical care,<sup>58</sup> again all of which have been

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<sup>54</sup> CDHRI Article 13 'Work is a right guaranteed by the State and the Society for each person with capability to work. Everyone shall be free to choose the work that suits him best and which serves his interests as well as those of the society. The employee shall have the right to enjoy safety and security as well as all other social guarantees. He may not be assigned work beyond his capacity nor shall he be subjected to compulsion or exploited or harmed in any way. He shall be entitled – without any discrimination between males and females – to fair wages for his work without delay, as well as to the holiday allowances and promotions which he deserves. On his part, he shall be required to be dedicated and meticulous in his work. Should workers and employers disagree on any matter, the State shall intervene to settle the dispute and have the grievances redressed, the rights confirmed and justice enforced without bias.'

<sup>55</sup> CDHRI Article 13; drafting history was unavailable from the OIC and so cannot be commented upon in relation to migrant workers.

<sup>56</sup> CDHRI Article 17 a

<sup>57</sup> CDHRI Article 17 b

<sup>58</sup> CDHRI Article 17 c

categorised as being not fulfilled in the Gulf in relation to the migrant workers, who are generally poorer and are unskilled labourers (including domestic workers).<sup>59</sup>

The right to move freely and working conditions of migrant workers of Arabic decent are usually equal to those of nationals in the Middle East,<sup>60</sup> and have been reinforced by the UIDHR and the CDHRI. The UIDHR particularly makes a reference to 'Muslims' being able to move freely in and out of 'Muslim lands',<sup>61</sup> whereas the CDHRI provides freedom of movement within the framework of *Shari'ah*.<sup>62</sup> Therefore, in terms of movement of non-Arabs (who constitute significant numbers in the GCC), it is relatively ambiguously protected, and ultimately the control lies within the manner in which the *Kafala* systems are applied domestically. It is somewhat unfortunate that the CDHRI did not pay heed to the development of the ICRMW and to the dialogue therein centred round migrant rights, particularly as the timings of both instruments coincided.

Furthermore CDHRI failed to make a clear and explicit reference to foreigners and non-citizens let alone migrant workers, despite their tremendous economic involvement within the MMCs. In addition, the CDHRI also failed to make mention of the freedoms and rights related to associations of any sort; trade unions; and collective bargaining. This omission in some regards was a regression in terms of what was stipulated in the UIDHR, where associations were permitted under Article XV in relation to the 'religious, social, cultural and political life of [the worker's] community'.

Generally, CDHRI has been received with varying responses, with criticism primarily centred round the core issue of Islamic views on apostasy and gender equality rather than labour

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<sup>59</sup> HRW and ITUC (n 44)

<sup>60</sup> Dux, Laszlo (2008) 'The Role of Regional Organizations in the Protection of Migrant Workers' Rights' in *Global Labour Market: From Globalization to Flexicurity* edited by Blanpain, Michele Tiraboschi, Pablo Arellano Ortiz (Kluwer Law International, The Netherlands) 125-126

<sup>61</sup> UIDHR Article XXIII a

<sup>62</sup> CDHRI Article 12

protections. It has been criticised as ‘the result of a coalition between states with strongly divergent religious philosophies and policies, on the basis of a shared interest in disarming international criticism of their domestic human rights’ record’.<sup>63</sup> When CDHRI was submitted to the UN Human Rights Commission in 1992, the International Commission of Jurists strongly denounced it.<sup>64</sup> This highlights the continued (and possibly irreconcilable) tensions relating to the engagement between Western scholars and those who put forward normative and orthodox Islamic schemes of human rights.

### 3.5 The 1994 Arab Charter of Human Rights

The concept of an Arab Charter originated in the late 1960s and early 1970s.<sup>65</sup> In 1968, in response to a UN recommendation,<sup>66</sup> the region established the Permanent Arab Commission on Human Rights,<sup>67</sup> resulting in the inaugural regional conference.<sup>68</sup> The Council of the Arab League issued a number of further resolutions inviting the Secretariat of the Arab League to take the necessary measures to serve and monitor the execution of their outcomes. Furthermore, on recommendation from the Permanent Arab Committee for Human Rights,

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<sup>63</sup> Ellian, A. (1997) ‘Een kritische beschouwing van de mensenrechten declaratie van Cairo’ (A critical review of the human rights declaration of Cairo) *Ars Aequi* 794; cited by Mayer, Ann Elizabeth (2007) *Islam and Human Rights* (4<sup>th</sup> Edition, Boulder, Westview) 23

<sup>64</sup> Vichniac, Isabelle (1992) *La commission internationale de juristes ddnonce un projet de “dclaration des droits de l’homme en Islam,”* *Le Monde*, February 13, 1992, at 6 cited by Mayer, Ann Elizabeth (1994) ‘Universal Versus Islamic Human Rights: A Clash Of Cultures Or A Clash with a Construct?’ *Michigan Journal of International Law* 15, 347

<sup>65</sup> El Demery, Ahmed M. (n 4) 133

<sup>66</sup> Al-Jazy, Ibrahim (1999) ‘The Arab League and Human Rights Protection’ in *Democracy, the Rule of Law and Islam* edited by Cotran, Eugene and Sherif, Adel Omar (CIMEL, Kluwer Law International, The Hague, Netherlands) 211-220

<sup>67</sup> Council of the Arab League Resolution 2486, March 16

<sup>68</sup> The conference was held in Beirut, 2-10 December, 1968. Attendees included India, Pakistan, and the Vatican. Predating this, the Arab League took involvement in human rights issues, particularly concerning issues centred on liberation and the right to self-determination for Arabs under colonial occupation. Some of the first resolutions of the League had this as a focal point. Moreover, from the beginning, the Palestine issue was and still remains a priority of the Arab League, where the human rights of Palestinians are core to any dialogue.

the Council of the Arab League issued Resolution 2605, instructing the Secretariat to organise a forum of experts to develop a proposal for an Arab Charter of Human Rights.

Following the adoption of the CDHRI by the Organisation of the Islamic Conference in 1990, the final stage of the drafting of the Charter took place and, on September 15, 1994, led to the adoption by the Council of the Arab League of the Arab Charter on Human Rights (ACHR 1994).<sup>69</sup> ACHR 1994 contains 43 articles, with the preamble putting forward a foundation of the Arab nations' belief in human dignity and the focal point for the monotheistic religions (not only Islam) based on freedom, justice, and peace. This approach clearly differed to other two previous works on human rights,<sup>70</sup> in which *Shari'ah* formed the benchmark for legal and moral standards. It stressed a total rejection of discrimination and Zionism, both of which were regarded a threat to world peace.<sup>71</sup> However, the preamble stipulated a reaffirmation of the principles of the Charter of the UN, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, as well as the Cairo Declaration of Human Rights in Islam. ACHR 1994 was made up of four parts, of which Part II comprised the main body of the articles. In terms of this current study on dispute resolution, the Charter holds all human beings as equal before the law, and guarantees the right to legal remedy.<sup>72</sup> It also places a responsibility on the state to protect everyone within its territory from

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<sup>69</sup> The first draft was submitted to the Secretariat on 10 July 1971, and was forwarded to member states for comments and observations. Only a small number of countries replied with comments and due the general political turmoil of the time (including the Egyptian-Israeli war in 1973), the charter was ignored for practically a decade. In 1981 (coinciding with the European-drafted 1981 Universal Islamic Declaration of Human Rights), the Secretariat requested that a group of experts in international law should revise the original draft. This process yielded a further draft, and after being adopted by the Permanent Arab Committee for Human Rights, the Council of the Arab League issued a resolution in 1983 for it to be re-circulated amongst the member states for a further cycle of comments and observations. However, this draft was either put on hold or rejected (depending on the literature consulted) in 1987, after a meeting of prominent Arab jurists, law professionals, lawyers, and representatives of NGOs at the International Institute of Higher Studies in Criminal Sciences in Siracusa. At this meeting, organised by Professor M. Cherif Bassiouni, a comparative approach was taken toward examining other legal documents, particularly given the precedence being set by other international and regional conventions.

<sup>70</sup> UIDHR 1981 and CDHRI 1990

<sup>71</sup> ACHR 1994 Preamble; Article 1 b

<sup>72</sup> ACHR 1994 Article 9



abuse and degrading treatment.<sup>73</sup> However, it permits only 'citizens' (excluding migrants and other minorities) the right to freedom of peaceful assembly and association,<sup>74</sup> and pursues the state to guarantee the right to form trade unions and the right to strike, which contradicts a state's responsibility to protect the rights of everyone residing in its territory.<sup>75</sup> Moreover, it continues to assert the state's guarantees of the following: the right of each 'citizen' to work to secure basic requirements for living, and comprehensive social security;<sup>76</sup> free choice of work, and prohibition of forced labour;<sup>77</sup> and equality of opportunity in work, as well as a fair wage and equal remuneration for work of equal value.<sup>78</sup>

Despite the rhetoric and international campaigning for migrant rights at the time and the lengthy drafting process, the 1994 ACHR did not make any clear reference to migrant workers in terms of labour rights. Moreover, it served as a document that aimed to provide protections for Arab nations and their citizens in a culturally insular manner despite the caveat in the preamble of reaffirmation of the core UN instruments. The Charter was criticised for failing to adequately protect a number of fundamental rights,<sup>79</sup> while it also allowed for far-reaching derogations and expansive restriction of a number of these fundamental rights, and crucially lacked any enforcement mechanism.<sup>80</sup> The issue of enforcement was particularly glaring, as other regional mechanisms possessed such systems.<sup>81</sup> Despite the lengthy bureaucratic drafting process (and the 'advantages' of failing to possess any prescribed enforcement mechanisms), which led to it taking over 20 years for the Charter to be formally adopted, it

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<sup>73</sup> ACHR 1994 Article 13 a

<sup>74</sup> ACHR 1994 Article 28

<sup>75</sup> ACHR 1994 Article 29

<sup>76</sup> ACHR 1994 Article 30

<sup>77</sup> ACHR 1994 Article 31

<sup>78</sup> ACHR 1994 Article 32

<sup>79</sup> Rishmawi, Mervat (2005) 'The Revised Arab Charter in Human Rights: A Step forward?' *Human Rights Law Review* 5(2) 361-376

<sup>80</sup> Al-Midani, Mohammed Amin and Cabanettes, Mathilde (2004) 'Arab Charter on Human Rights 2004' *Boston University International Law Journal* 24, 147-163

<sup>81</sup> See European and American Convention on Human Rights, and the African Charter on Human and Peoples' Rights.

never came into force. It was only ratified by Iraq in 1996, and was not ratified or signed by any of the League's other member states.

### **3.6 The 2004 Arab Charter of Human Rights**

ACHR 1994 was subject to increasing international criticism from legal experts, academics, and NGOs. This pressure resulted in the Arab Commission of Human Rights issuing a further series of resolutions between 2002-2003,<sup>82</sup> inviting the Arab states for further comments and observations, with the intention to improve and modernise the original 1994 Charter. The High Commissioner for Human Rights simultaneously invited a considerable number of Arab experts to a meeting in Cairo in December 2003, in order to discuss proposals aimed at improving the existing document.<sup>83</sup> This concluded with a new version of the Charter, presented to the Arab Summit in Tunisia on 23 May 2004. The redrafting process resulted in an initial version largely inconsistent with the standards of international human rights. However, with mounting pressure being exerted by NGOs and the Office of the United Nations High Commissioner for Human Rights OHCHR, a bilateral agreement was reached between the League and OHCHR to assemble an independent group of experts to reconsider the Charter.<sup>84</sup> These were drawn from existing UN human rights treaty bodies, and formed the 'Committee of Experts', who were given the task of formulating a new version of the Charter.<sup>85</sup> This Committee of Experts yielded a draft ready for consideration by the Council of the Arab League, which was adopted first by the council and subsequently by the League, without amendment.<sup>86</sup> The Arab Charter of Human Rights 2004 (ACHR 2004) borrows language

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<sup>82</sup> Council of the Ministers of the Arab League Resolutions: 6184 March 2002; 6243 September 2002; 6302/119 March 2003

<sup>83</sup> Al-Midani, Mohammed Amin and Cabanettes, Mathilde (n 80)

<sup>84</sup> Rishmawi, Mervat (n 79)

<sup>85</sup> OHCHR (2004) Arab Region: Quarterly Report Field Office, 22 September 2004;

<sup>86</sup> Council of the Ministers of the Arab League Resolutions: 6405 March 2004

contained in various other international human rights instruments, thus including civil, political, economic, social, and cultural rights, along with specific provisions relating to women, children, the disabled, and migrants. This was evidently a result of having a more independent and apt group of experts with a background in international law.

The preamble to the Charter begins by making reference to religion and its significance to the Arab region.<sup>87</sup> It also reaffirms the principles of the Charter of the UN, UDHR and the provisions of the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, demonstrating some regard towards the CDHRI. At the same time, it also rejects all forms of racism and Zionism (as in the previous Charter).<sup>88</sup> Furthermore, the preamble creates a link between human rights and international peace and security, emphasising the importance of the role of respecting, promoting, and protecting human rights with respect to the individual, the wider society, and international relations.

The Charter attempts to reconcile the issue of cultural relativism and universality by referring to a number of different international and regional conventions. Moreover, some of the Charter's language is directed unambiguously towards a position of universalism:

**To entrench the principle that all human rights are universal, indivisible, interdependent and interrelated.**<sup>89</sup>

This reference to universalism was absent from the 1994 version, and indeed any other document produced with an Arab/Islamic pretext. Furthermore, it unequivocally states that the state should pledge to take all requisite measures to guarantee equal opportunities and

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<sup>87</sup> Islam is the only religion specifically mentioned in the Charter; others are acknowledged through general references.

<sup>88</sup> ACHR 2004 Preamble 'Rejecting racism and Zionism, which constitutes a violation of human rights and pose a threat to world peace'.

<sup>89</sup> ACHR 2004 Article 1

effective equality between men and women in the enjoyment of all rights, including in relation to work<sup>90</sup> and education,<sup>91</sup> and including a partnership between men and women with a view to achieving national development goals.<sup>92</sup>

Moreover, the latest ACHR 2004 offers, for a number of rights, a level of human rights protection similar to that of the universal and regional instruments. In particular, it enshrines the principle of non-discrimination;<sup>93</sup> the right to life;<sup>94</sup> and equality before the law.<sup>95</sup> It prohibits any form of forced labour or slavery, trafficking in human beings, and the exploitation of children.<sup>96</sup> A field where significant improvements have also been achieved is administration of justice,<sup>97</sup> with the adoption of the agreed fair trial norms and principles.<sup>98</sup> The Charter includes a general statement guaranteeing the independence of the judiciary and protecting it from interference, pressure, or threat;<sup>99</sup> it furthermore enshrines the right to liberty and security of persons, prohibiting arbitrary arrest and detention;<sup>100</sup> and it prohibits torture and cruel, inhuman, or degrading treatments, including physical and psychological maltreatment,<sup>101</sup> all of which are relevant to securing the protection of foreigners and migrant workers in the Gulf region. Another aspect that is relevant to anyone 'charged with a criminal offence', which could also be applied to migrant workers, albeit not under the pretext of facing

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<sup>90</sup> ACHR 2004 Article 34 (4): There shall be no discrimination between men and women in their enjoyment of the right to effectively benefit from training, employment and job protection and the right to receive equal remuneration for equal work.

<sup>91</sup> ACHR 2004 Article 41 (2)

<sup>92</sup> ACHR 2004 Article 41 (3)

<sup>93</sup> ACHR 2004 Article 3

<sup>94</sup> ACHR 2004 Article 5

<sup>95</sup> ACHR 2004 Article 11

<sup>96</sup> ACHR 2004 Article 10; sexual exploitation and prostitution are also mentioned in this provision.

<sup>97</sup> ACHR 2004 Article 10

<sup>98</sup> ACHR 2004 Article 16 completed by other provisions.

<sup>99</sup> ACHR 2004 Article 12

<sup>100</sup> ACHR 2004 Article 14

<sup>101</sup> ACHR 2004 Article 8

criminal charges, is that everyone has the right to free legal assistance and the right to free interpretation.<sup>102</sup>

Despite the progress, there are ambiguities and deficiencies of formulation in the Charter, mainly due to different sources of legitimisation of human rights. While advances (in light of a Universalist point of view) have been made they are somewhat counterbalanced by the reference to *Shari'ah* law and perhaps more implicitly so by the implicit restrictions with reference to domestic state legislation.<sup>103</sup> Furthermore, the Charter has created (arguably maintained from previous versions and drafts) a debilitating tension between its provisions for citizens and non-citizens. These tensions are clear when examining the provisions within the ACHR 2004 in relation to the right to work;<sup>104</sup> the right to association and peaceful assembly;<sup>105</sup> the rights of persons belonging to minorities;<sup>106</sup> freedom of opinion and expression; the rights to seek asylum;<sup>107</sup> the right to form trade unions and the right to strike;<sup>108</sup> and those rights that can be related to foreign/migrant workers.

In terms of specific labour rights, work is guaranteed as a natural right for every citizen (not inclusive of foreigners/migrants), further making it a responsibility of the state to promote labour market participation.<sup>109</sup> The state is also made responsible to ensure freedom of choice of employment, and equality of opportunity without exhibiting discrimination on any grounds

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<sup>102</sup> ACHR 2004 Article 16 (1-4)

<sup>103</sup> This is apparent when looking at the nature of equality between men and women as the wording of the final paragraph of Article 3 is counterbalanced by reference to *Shari'ah* law and by implicit restrictions with reference to domestic legislation with regard to relationships in the private sphere (Article 33). From the drafting history, representatives of certain countries affirmed that Islam has granted more rights to women than modern legislation, and the experts proposed to the Commission that it should be made clear that the reference to *Shari'ah* comes within the framework of positive discrimination toward women. This is also evident with the insertion of a claw-back clause in the provision prohibiting capital punishment for those under the age of 18 at the time of committing a crime (unless provided otherwise in national law) (Article 7), or with the restrictions on the freedom of belief and religion (Article 30).

<sup>104</sup> ACHR 2004 Article 34 (1) "The right to work is a natural right of every citizen."

<sup>105</sup> ACHR 2004 Article 24 (5) "To freely form and join associations with others"; Article 24 (6) "To freedom of association and peaceful assembly."

<sup>106</sup> ACHR 2004 Article 25

<sup>107</sup> ACHR 2004 Article 32

<sup>108</sup> ACHR 2004 Article 35

<sup>109</sup> ACHR Article 34 (1)

or characteristics. In terms of favourable working conditions, the Charter refers to a decent living wage for workers and their families (which is largely in line with ILO and ICESCR principles of minimum/living wage); regulation of working hours; rest and periodic holidays with pay; safe and healthy working conditions; the protection of women, children, and people who have a disability.

The ACHR 2004, in Article 24, guarantees a number of specific rights only for citizens, including the right to freely form associations and also to peacefully assemble. However, domestic laws concerning the establishment and operation of NGOs and other associations are restrictive and often granting the government wide discretion to reject an association's or NGO's status application.<sup>110</sup> They can even dissolve NGOs and associations without judicial oversight, and prohibit them from receiving foreign funds without the approval of the competent authorities.<sup>111</sup> Evidently, there have been examples where Arab states have detained, on the ground of national security, dissidents, political activists, human rights defenders, and other campaigners for exercising their internationally recognised right to freely express their views and for association.<sup>112</sup>

This can be explained due to a historical political influence and the demographic migration phenomenon. NGOs, trade unions, and civil society in general all share the same goal of forwarding social justice through representation of people's interests and well-being, either at an individual or class level. However, due to historical revolutions, monarchical states (often portrayed as being autocratic and dictatorial) in the Middle East have taken a tendency to take an approach to restrict what can be described as emotive labour movements being viable vehicles for political empowerment and upheaval through affiliation and the promotion of

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<sup>110</sup> Mattar, Mohamed Y. (2013) 'Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards' Harvard Human Rights Journal 26, 91-147

<sup>111</sup> Mattar, Mohamed Y. (n 110)

<sup>112</sup> HRW (2015) 'EU: Seek Release of Gulf Activists' available at <[https://www.hrw.org/news/2015/05/22/eu-  
seek-release-gulf-activists](https://www.hrw.org/news/2015/05/22/eu-seek-release-gulf-activists)> accessed 12 January 2015

radical ideas.<sup>113</sup> Moreover, historically, such states have been precariously aware of movements that have been used as the machinery to promote revolution, through radicalisation and terrorism. Furthermore, this stance has manifested into security and counterterrorism legislation with broad and somewhat ill-defined definitions, all of which have mandates for severe penalties.<sup>114</sup> Ideologically, there is also an antagonism towards Western ideas promoting reform, change, and indeed democracy in their sovereign kingdoms. Bearing in mind that an integral aspect of democracy is the role of civil society within it and the fact that civil society is essentially made up of voluntary associations representing individuals and classes,<sup>115</sup> certain states have restricted them from forming or limited their autonomy.

The other explainable reason for restricting trade union activity is due to the sheer number of foreign workers in specific employment sectors. States, particularly in the Gulf, manage and maintain control of a largely foreign workforce by limiting the rights of migrant workers and indeed by restricting them from forming and joining unions; collectively bargaining; taking strike action, etc. This has thus restricted their influence on the process of making strategic decisions that effectually manage their migration, employment, residency, access to services, and eventual repatriation. Ultimately, they are limited in terms of industrial machinery and voluntary mechanisms, which would serve to ensure their campaign for labour rights.

That said, Article 35 of the 2004 Charter addresses ‘every individual’ (not exclusively citizens) to freely form trade unions; to join trade unions and pursue such activity in order to protect

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<sup>113</sup> Agathangelou, Anna M., Soguk, Nevzat (2013) *Arab Revolutions and World Transformations* (Routledge, Abingdon, UK) 1-9

<sup>114</sup> Cairo Institute for Human Rights Studies (2014) *The Arab Spring on Trial Human Rights in the Arab Region 2014* (Cairo Institute for Human Rights Studies, Cairo, Egypt)

<sup>115</sup> Individuals in relation to individualism refers to how rights are established when they enter into social relationships of their own free will. Moreover, the nature of the relationship governs the individual's connection with the state. Social groups or classes are individuals who occupy similar positions with regard to the means of production and the relations of production in society. Through their collective action they are presumed to influence strategic decision-making in society.

ones' interests. The second part of the article guarantees that no restrictions shall be placed on the exercise of such rights 'except such as prescribed by the laws in force and that are necessary for the maintenance of national security'. The final part of Article 35 requests that every State Party guarantees the right to strike provided that it is exercised in conformity with domestic law, which highlights the provision's contradictory nature, as strikes are deemed domestically illegal in a number of Arab states.

These domestic laws pose numerous areas of concern as they affect the functioning and perceived openness of the society they serve, i.e. a number of Arab states have labour laws that fail to protect domestic workers (through exclusion<sup>116</sup>), which in all likelihood are migrant workers recruited outside of the Gulf region, leaving them vulnerable to abuse and exploitation.<sup>117</sup> The ACHR does, however, have a specific and important landmark reference to migrants, in the final clause of Article 34, stating that:

**Each state party shall ensure to workers who migrate to its territory the requisite protection in accordance with the laws in force.**<sup>118</sup>

Although a reference to migrant workers exists, its details are not as explicit or nearly as comprehensive as those covered in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990. The above article, as with other sections of the Charter, relies on state domestic laws and indeed their application. However, such domestic labour laws often fall below the international standards set out in the various core conventions as stipulated earlier. As a result of the lack of protection afforded by weak domestic laws, and that coupled with dubious immigration protocols (*Kafala* system),

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<sup>116</sup> In Qatar, Oman, and the United Arab Emirates, domestic workers, including cooks, drivers, and nurses are excluded from the scope of application of the labour law.

<sup>117</sup> Murray, Heather E. (2012) 'Hope for Reform Springs Eternal: How the Sponsorship System, Domestic Laws and Traditional Customs Fail to Protect Migrant Domestic Workers in GCC Countries' *Cornell International Law Journal* 45(2) 461-485

<sup>118</sup> ACHR 2004 Article 34 (5)



migrant workers are bound in precarious positions where exploitation can occur. This has been a dilemma that has received significant attention thorough the international coverage of abuses and human rights violations experienced by vulnerable migrant workers in the Gulf region. In terms of response from the Gulf States, they have, by their own admission, acceded to the fact that their domestic labour laws are in need of serious reform.<sup>119</sup>

The language in the Charter places the interpretation of the provisions to the member states in relation to their domestic laws. As a result, Article 43 possibly (if misinterpreted) undermines the Charter's commitment to recognise international norms as it places this ownership of interpretation on member states:

**Nothing in this Charter may be construed or interpreted as impairing the rights and freedoms protected by the domestic laws of the States parties or those set forth in the international and regional human rights instruments which the states parties have adopted or ratified, including the rights of women, the rights of children and the rights of minorities.**

However, on deeper analysis, it can be inferred that states have an obligation through ongoing commitment to improve standards and rectify gaps in domestic law, as the above article should in reality be read in accordance with the principles of international treaty interpretation (and also by making reference to the international guidelines for effective labour administration). Furthermore, if Article 44 is also read in this proactive and conducive manner, it provides the terms of dispute settlement provisions outlined in the Charter (access to legal remedy and compensation;<sup>120</sup> and the guarantee of a fair trial<sup>121</sup>), thus making the

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<sup>119</sup> Human Rights Watch (2012) 'The Island of Happiness Revisited' available at <[http://www.hrw.org/sites/default/files/reports/uae0312webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/uae0312webwcover_0.pdf)> accessed 20 May 2013

<sup>120</sup> ACHR 2004 Articles 12, 14, 8 and 23

<sup>121</sup> ACHR 2004 Articles 11 and 13; This principle is included in article 10 of the Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948), amongst other core conventions.

enforcement of rights protection contingent upon a compliant judicial process, i.e. the Charter requires states to provide effective mechanisms in domestic law for the enforcement of legal rights, which indeed include migrant worker employment dispute resolution systems.

Bearing in mind that normative values have been set through international legal standards and guidelines, which are all widely acknowledged in every society including Muslim countries (through either ratification of core conventions or through ratification of other regional charters that affirm those core conventions), it is incumbent upon international and regional bodies to interpret them in such a manner that the rights enshrined within them are given proper effect, in terms of the context of domestic laws and domestic legal processes.

However, the ambiguity of certain 'saving clauses' inadvertently creates the risk of misinterpretation, which could result either from a lack of conformity between the definitions of the provisions of the Charter or be manifest in deficiencies in domestic procedures, therefore marginalising the rights of minorities and indeed migrant workers. Therefore, it is pertinent to bear in mind that the goal of uniformity amongst states and universal organisations prompting rights should not lead to the acceptance of the lowest common denominator.<sup>122</sup> Contextually, it is imperative to infer the 'savings clause' enshrined in Article 43 ensures that any conflict between domestic law and the various provisions of the Charter is resolved in accordance with the widely recognised and accepted international standards. The jurisprudence around savings clauses in other international human rights instruments<sup>123</sup> thus provides a strong basis for such an interpretive framework, and ultimately the preamble of the ACHR 2004 clearly affirms the principles enshrined in the Charter of the UN, the UDHR,

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<sup>122</sup>Meron, Theodor (1982) 'Norm Making and Supervision in International Human Rights: Reflections on Institutional Order' *The American Journal of International Law* 76(4) 754-778; Similarly, the ICCPR provides that: [t]here shall be no restriction upon or derogation from any of the fundamental human rights recognised or existing in any state party to the present covenant pursuant to law, conventions, regulations, or custom on the pretext that the present covenant does not recognise such rights or that it recognises them to a lesser extent.

<sup>123</sup> ICCPR Article 5(2), ICESCR Art 4 and 5(2)

the ICCPR, and the ICESCR.<sup>124</sup> Moreover, having this explicit reference to such international legal instruments means that an international rule has authority over a regional rule embodied in the Charter. Therefore, international standards and guidelines on favourable conditions of work, access to justice, redress, and remedy are all covered by proxy, which in turn are applicable to *all*. It must be noted, however, that the interpretation of international conventions is sometimes influenced by Islam where it is the official religion of the state and Islamic *Shari'ah* is the source of legislation.

### **3.7 The Arab Human Rights Committee on Labour & Migrant Rights**

Article 48 of the 2004 Charter created a mechanism for monitoring and implementation, whereby a Committee of 'highly experienced and competent' experts is responsible for examining the submitted state reports. The Committee is then responsible for annual reports to the Secretary General of the Arab League, with its recommendations and reports subsequently entering the public domain. The aim of the Committee's recommendation is to proscribe the necessary action to be taken by the member states to improve compliance.

However, unlike the American Convention on Human Rights,<sup>125</sup> the African Charter on Human and Peoples' Rights,<sup>126</sup> and the European Convention of Human Rights,<sup>127</sup> the Arab Human Rights Committee does not have any provision to deal with, or receive, individual or inter-state complaints. There are also no provisions to determine the subsequent procedure in case of non-compliance or infringements. Despite their historical links, there is also no provision to establish a formal relationship between the Arab Human Rights Committee and the Council of the Arab League, inadvertently leading to a failure to utilise the powers of the Council of the

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<sup>124</sup> The ILO conventions have not been referenced in the Arab Charter.

<sup>125</sup> American Convention on Human Rights: Article 44

<sup>126</sup> African Charter on Human and Peoples' Rights Article 56

<sup>127</sup> European Convention of Human Rights: Article 34

Arab League in assisting with the implementation, monitoring, and enforcement of the Committee's recommendations.<sup>128</sup> Therefore, the lack of such mechanisms as established by other regional systems, the relative isolation of the Arab Human Rights Committee, and the fact that most Arab countries have not signed up to the UN complaints systems places a major constraint on guaranteeing effective access to justice for victims.<sup>129</sup>

It could be assumed that due to the lack of international treaty ratification, and the nature of the culturally relative reservations made to them, the member states of the ACHR would be more forthcoming in adhering to the standards therein, particularly in light of their ratifications. On examination of the state reports and more importantly the comments from the Arab Human Rights Committee in response to them, it is evident that a similar outlook is portrayed (albeit less comprehensively to that of other international bodies) in relation to the lack of protection afforded to migrant workers.<sup>130</sup>

On examination, the issues concerning migrant worker rights are largely avoided or merely glossed over in the state report submissions, which is a typical trait of state submissions for other monitoring bodies (as examined in Chapter 1). For example, in the case of the UAE, the submission mentions that its state legislation stipulates provision of rules that maintain health and safety on work sites; however, the Arab Human Rights Committee responded that the

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<sup>128</sup> FIDH (2013) 'The Arab League and Human Rights: Challenges Ahead' (Regional Seminar held in Cairo 16-17 February 2013) available at <[https://www.fidh.org/IMG/pdf/rapport\\_lea\\_uk-lddouble.pdf](https://www.fidh.org/IMG/pdf/rapport_lea_uk-lddouble.pdf)> accessed 10 September 2015

<sup>129</sup> Rishmawi, Mervat (n 79)

<sup>130</sup> Arab Human Rights Committee (Charter Committee) Fifth Session (21-26)/12/2013 Comments and Recommendations of the Arab Human Rights Committee (Charter Committee) United Arab Emirates Report (translated directly from the Arabic text); AHRC Fifth Session UAE (21-26)/12/2013; Arab Human Rights Committee (Charter Committee) Tenth Session 28/5-02/06/2013 Comments and Recommendations of the Arab Human Rights Committee (Charter Committee) Saudi Arabia (translated directly from the Arabic text); AHRC Tenth Session Saudi Arabia (28/05-02)/06/2013; Arab Human Rights Committee (Charter Committee) Fourth Session (15-21)/06/2013 Comments and Recommendations of the Arab Human Rights Committee (Charter Committee) Qatar (translated directly from the Arabic text); AHRC Fourth Session Qatar (15-21)/06/2013; Arab Human Rights Committee (Charter Committee) Ninth Session (13-18)/02/2016 Comments and Recommendations of the Arab Human Rights Committee (Charter Committee) Jordan (translated directly from the Arabic text); AHRC Fourth Session Jordan (13-18)/02/2016

statistics evidencing the high frequency of work injuries indicate the ‘poor commitment of many employers’ to the provisions therein.<sup>131</sup> Furthermore, the Committee stated that the UAE’s main piece of labour legislation — the Federal Labour Law No. (8) 1980 — did not provide mandatory health insurance for workers.<sup>132</sup> The Committee acknowledges that the UAE have made attempts to improve the management of the *Kafala* system of immigration in order to protect migrant workers; however, its manifestation undermines and deprives the worker protections provided by its domestic law.<sup>133</sup> The Committee addressed that the UAE’s legislation contradicted the provisions outlined in the ACHR Article 35 in relation to forming and participating in trade union activity, mentioning that such activity would prevent all forms of workers’ exploitation and ill treatment by employers.<sup>134</sup> The Committee also highlighted the fact that the exclusion of domestic workers (mainly migrant women) from the federal labour law increases the potential of such workers being subject to economic exploitation, harsh treatment, and even physical abuse.<sup>135</sup>

In terms of other states’ reports, the types of reporting and the comments/recommendations given in response are typical of Arab states. The Committee specifically highlight the following: (1) domestic labour laws that exclude certain groups of workers;<sup>136</sup> (2) weak legal protection for migrant workers;<sup>137</sup> (3) restrictions on trade union formation, membership, and their lack of independence where they exist and/or the recommendation to pass law to allow trade unions to form and operate;<sup>138</sup> (4) the ineffectiveness of institutional frameworks for

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<sup>131</sup> Arab Human Rights Committee (Charter Committee) Fifth Session (21-26)/12/2013 Comments and Recommendations of the Arab Human Rights Committee (Charter Committee) United Arab Emirates Report (translated directly from the Arabic text), P27

<sup>132</sup> AHRC Fifth Session UAE (21-26)/12/2013 P28

<sup>133</sup> AHRC Fifth Session UAE (21-26)/12/2013 P29

<sup>134</sup> AHRC Fifth Session UAE (21-26)/12/2013 P18

<sup>135</sup> AHRC Fifth Session UAE (21-26)/12/2013 P30

<sup>136</sup> AHRC Fourth Session Jordan (13-18)/02/2016 P41; AHRC Fifth Session UAE (21-26)/12/2013 P30

<sup>137</sup> AHRC Fourth Session Jordan (13-18)/02/2016 P41; AHRC Tenth Session Saudi Arabia (28/05-02)/06/2013 P51; AHRC Fourth Session Qatar (15-21)/06/2013 P28; AHRC Fifth Session UAE (21-26)/12/2013 P29

<sup>138</sup> AHRC Fourth Session Jordan (13-18)/02/2016 P45-46; AHRC Tenth Session Saudi Arabia (28/05-02)/06/2013 P54-55; AHRC Fourth Session Qatar (15-21)/06/2013; AHRC Fifth Session UAE (21-26)/12/2013 P31

collective bargaining between workers and their employers (if they exist in the member state) and the restriction of strike action;<sup>139</sup> (5) the lack of wage protection systems and minimum wage issues;<sup>140</sup> (6) the recommendation for abolishing the *Kafala* sponsorship system as it gives rise to the potential to exploit migrant workers;<sup>141</sup> (7) lack of effective legal remedy for workers who have had their rights violated.<sup>142</sup>

This evidently highlights an innate level of disregard to both international and regional standards in terms of protecting the rights of migrant workers. Additionally, this surmounts to states falling short in terms of fulfilling their collective Islamic duties towards their indispensable workforce. It is important to note that this collective responsibility has been acknowledged within the culturally relative regionally developed instruments; for example, the CDHRI states, 'the safeguarding of those fundamental rights and freedom is an individual responsibility of every person and a collective responsibility of the entire *Ummah*'. Likewise, UIDHR 'will give a powerful impetus to the Muslim peoples to stand firm and defend resolutely and courageously the rights conferred on them by God' and the GCCDHR implores that 'the state and society shall disseminate and promote the principles of goodness, love, fraternity, tolerance and other noble principles and values'. The ACHR makes reference to principles of 'fraternity, equality and tolerance amongst human beings consecrated by the noble Islamic religion and the other divinely-revealed religions'. The ACHR, in addition to reaffirming the principles outlined within the universal International Bill of Human Rights, gave due 'regard' to the CDHRI, arguably the most orthodox Islamic human rights instrument.

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<sup>139</sup> AHRC Fourth Session Jordan (13-18)/02/2016 P46(B); AHRC Tenth Session Saudi Arabia (28/05-02)/06/2013 P48,55; AHRC Fourth Session Qatar (15-21)/06/2013 P28; AHRC Fifth Session UAE (21-26)/12/2013 P17-18,29

<sup>140</sup> AHRC Fourth Session Qatar (15-21)/06/2013 P27; AHRC Tenth Session Saudi Arabia (28/05-02)/06/2013 P53

<sup>141</sup> AHRC Fourth Session Qatar (15-21)/06/2013 P28; AHRC Fifth Session UAE (21-26)/12/2013 P16

<sup>142</sup> AHRC Fourth Session Jordan (13-18)/02/2016 P41; AHRC Fourth Session Qatar (15-21)/06/2013 P28, Fifth Session UAE (21-26)/12/2013 P4

### 3.8 The 2014 GCC Human Rights Declaration

Before concluding the chapter, it is necessary to discuss the latest attempt made by the region to develop yet another declaration on human rights. In addition to the two primary regional bodies that have had an influence on the human rights agenda,<sup>143</sup> the GCC has also made an attempt to engage. In order to contextualise the organisation, the GCC is a homogenous political structure, where the members are bound by a shared history and common interests. Additionally, there are a number of factors in the GCC's creation which stem from a combination of different political motivations. Further to the expression of the shared values and common bonds between the Gulf states, the GCC was also a response to external developments and challenges that affected the region in the 1970s and 1980s. The most significant of these external factors include: the 'Islamic revolution' in Iran and the Iran-Iraq war; the idea of regional security and the region's entanglement in the Cold War; global transformations in economic relations that saw a shift of power away from the corporations and governments of the major oil-consuming countries to those of the major oil-producing countries; divisions within the Arab world following the signing of the Egypt–Israel Peace Treaty in March 1979; and the Soviet occupation of Afghanistan and its ramifications and repercussions for the Gulf region as a whole.<sup>144</sup>

That said, human rights did not form any focal point within the motivations of the regional institution. In referring to the GCC Charter, it states that the basic objectives are to have coordination, integration, and inter-connection between Member States in all fields, strengthening ties between their peoples, formulating similar regulations in various fields such as economy, finance, trade, customs, tourism, legislation, and administration, as well as

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<sup>143</sup> League of Arab States and the Organisation of Islamic Cooperation

<sup>144</sup> Al Hassan, Omar (2015) 'The GCC's Formation: The Official Version' Al Jazeera Centre for Studies, Dossiers, 30 March 2015, available at <<http://studies.aljazeera.net/en/dossiers/2015/03/.html>> accessed 20 June 2018; Hertog, Steffen (2007) 'The GCC and the Arab Economic Integration: A New Paradigm' Middle East Policy 14(1) 52-68

fostering scientific and technical progress in industry, mining, agriculture, water and animal resources, establishing scientific research centres, setting up joint ventures, and encouraging the cooperation of the private sector.

Despite the initial lack of human rights proclamations, the GCC has become the most recent player in the human rights endeavour, particularly as political and social reform has formed a recent trend for discourse.<sup>145</sup> The GCC has taken the mantle of championing regional human rights through the adoption of the Human Rights Declaration for the Member States of the Cooperation Council for the Arab States of the Gulf (GCCHRD).<sup>146</sup> Bearing that in mind, it is incumbent to assess the new declaration which has been unanimously endorsed by all six GCC states in light of the widely acknowledged and recognised issues relating to the migrant labour force which all six members depend upon.

The opening preamble mentions that the document is 'inspired' by the noble values and principles that relate to human dignity found within Islamic *Shari'ah* law. It also 'stresses' the commitment not only to culturally relative human rights documents, namely the ACHR and CDHRI, but it also affirms the commitment to the Charter of the UN, UDHR, and other international and regional conventions and charters. Beyond this, the document has been described as being driven by a liberal interpretation of *Shari'ah*, leaving behind the ultra-religious conservatism that at least some of the GCC states adhere to.<sup>147</sup>

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<sup>145</sup> Kéchichian, Joseph A. (2004) 'Democratization in Gulf Monarchies: A New Challenge to the GCC' Middle East Policy 11(4) 35-47; Ehteshami, Anoushiravan and Wright, Steven (2007) 'Political change in the Arab oil monarchies: from liberalization to enfranchisement' International Affairs, 83(5) 913-932; Kshetri, Nir and Ajami, Riad (2008) 'Institutional reforms in the Gulf Cooperation Council economies: A conceptual framework' Journal of International Management, 14(3) 300-318; Sharekh, Alanoud Al (2011) 'Reform and Rebirth in the Middle East' Survival 53(2) 51-60; Held, David and Ulrichsen, Kristian (2012) *The Transformation of the Gulf: Politics, Economics and the Global Order* (Routledge, Abingdon)

<sup>146</sup> Adopted by the GCC Supreme Council in its Thirty-fifth Session Doha, 9 December 2014.

<sup>147</sup> Alfadhel, Khalifa A. (2017) 'The GCC Human Rights Declaration: An Instrumentation of Cultural Relativism' Arab Law Quarterly 31, 89-98



The GCCHRD contains forty-seven articles, covering some fundamental rights and freedoms for all, including *inter alia* the right to life;<sup>148</sup> equal in human dignity, in terms of rights, freedoms and before law (non-discrimination clause stipulates grounds of origin, gender religion, language, colour and any other form of grounds for distinction);<sup>149</sup> freedom from slavery, servitude and human trafficking.<sup>150</sup>

A number of important articles refer to ‘all people’, or ‘every person’, which is arguably a step forward from some of the provisions outlined in the 2004 ACHR. Owing to this use of universal language, the GCCDHR lessens the tension between citizens and non-citizens. Despite the adoption of universal terms, the provisions come with the caveat of being ‘subject to the provisions of the regulation (law)’ i.e. domestic law, which is where ironically many of the problems of lie. These clauses in the GCCDHR can be found in relation to: freedom of opinion and expression including exercising them;<sup>151</sup> freedom of movement;<sup>152</sup> freedom to form, assemblies and unions;<sup>153</sup> right to seek asylum,<sup>154</sup> all of which are particularly instrumental to migrant worker protections. Furthermore, Article 30 reintroduces the citizen and non-citizen tension by only guaranteeing political participation, and having equal access to public services to only citizens, which is also subject to the provisions of domestic law. In addition, the wording of the Article 30 does not refer to voting or electoral rights.

In reference to employment rights Article 24 states:

**Every person, who has the capacity of doing so, has the right to work and has the right to free choice of employment according to the requirements of dignity and**

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<sup>148</sup> GCCHRD Article 1

<sup>149</sup> GCCHRD Article 2

<sup>150</sup> GCCHRD Article 3

<sup>151</sup> GCCHRD Article 9

<sup>152</sup> GCCHRD Article 10

<sup>153</sup> GCCHRD Article 31

<sup>154</sup> GCCHRD Article 41

**public interest, while just and favourable employment conditions, as well as employees' and employers' rights, are ensured.**

In terms of access to justice, 'all people' are ensured the right the right: to litigate with full independence of the judiciary and be regarded with equality before the courts,<sup>155</sup> and those accused are guaranteed a fair trial. Also that no one shall be subjected to arbitrary arrest, detention or confinement,<sup>156</sup> and that torture is prohibited whether physically or psychologically as is cruel, inhuman or degrading treatment.<sup>157</sup> Unlike the CDHRI it does not make any reference to employment disagreements or any obligations of the state to intervene therein. The GCCHRD does not refer to trade unions (although unions are mentioned) and nor does it protect the right to strike, both of which were stated in the ACHR albeit for citizens. The GCCHRD does state that the state shall provide employment opportunities for its citizens, a policy which fits within the various labour force nationalisation initiatives.

The GCCHRD concludes with a reiteration that defines the interpretation of the declaration, making a statement that the declaration cannot be interpreted or modified in such a way that might limit the rights and freedoms that are ensured by the national legislations of the GCC States or the international and regional conventions of human rights which the GCC States have ratified or acceded to.

In summary, although the GGDHR's language and the religious content is less culturally specific compared to the CDHRI, it is somewhat of a gesture to reassert the GCC's economic hegemony within the wider Middle Eastern region. The GCCHRD, as the newest declaration, like the other regional ones before it attempts to be an instrument that is seen as an essential foundation for the establishment of a binding regional human rights regime, based on the development of a regional customary system. That said, the CDHRI, as previously discussed,

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<sup>155</sup> GCCHRD Article 32

<sup>156</sup> GCCHRD Article 34

<sup>157</sup> GCCHRD Article 36

places Islamic *Shari'ah* at its normative core, and due to the tensions that creates it makes it an instrument that does not easily fit within the universal human rights debate. Although the GCCHRD has tried to further reconcile *Shari'ah* values with universal human rights principles, it has done it without any substantial means of monitoring or enforcement. Moreover, in relation to the parameters of this study, the reality is that the Gulf version has not made any real effort to address the issues faced by the millions of migrant workers working within the GCC. Arguably the fact that the preamble reaffirms the CDHRI and the ACHR, rather undermines its value as a regional human rights instrument. Furthermore, coupled with the lack of any evidence of a drafting process and the fact that there is no real critique or even acknowledgement of the declaration itself, adds to its obscurity and insignificance. Therefore, despite the newness of the GCC declaration, the ACHR 2004 serves as the main regional benchmark for a culturally relative human rights document. This is particularly supported by the fact that it has had a relatively significant level of engagement from its member states.

### 3.9 Conclusion

Bearing the above Islamic duties in mind, a number of influences have been reflected in the nature of how all of the regional laws have developed, which include sociocultural and political dimensions. These also take into consideration the colonial history the region has had to endure, and which to some extent is still experiencing.

Understandably, religion has played an instrumental role societally, which has indeed had a profound impact on thought; however, the development of and the adoption of legal systems and their structures regionally has been largely imposed by European imperialism.<sup>158</sup> That

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<sup>158</sup> Brown, Nathan J. (1997) *The rule of law in the Arab world: Courts in Egypt and the Gulf* (Cambridge University Press) 2-8; Schmidhauser, John R. (1997) 'The European Origins of Legal Imperialism and Its Legacy in Legal Education in Former Colonial Regions' *International Political Science Review* 18(3) 337-351

said, there is parity and even synergy between the *Shari'ah* states regarding protecting the rights of workers, especially those who exhibit vulnerability, such as migrants, with what is established through the development of universally recognised international laws. Owing to this, arguments about, or having a dichotomous approach to, legal issues and problems around worker welfare are fundamentally flawed.

Moreover, with the region's nations predominantly based on (or significantly influenced by) *Shari'ah*, and with their claims that their adherence to Islamic principles of protecting rights and equality takes precedence over other models, the question can arise of whether they are actually fulfilling their duty from their own culturally specific perspective. This cultural aspect can therefore be an effective benchmark, particularly in terms of how these MMCs protect the rights of workers and whether they actually resolve employment-related disputes according to Islamic principles.

That said, despite caveats of giving precedence to one set of laws over another, there are fundamental problems that have not been addressed within the GCC region in terms of protecting migrant workers. This is clearly evident when analysing the frequency and nature of employment disputes relating to migrant workers' rights, and indeed the observations made by both international and regional monitoring bodies. Moreover, these indicators highlight that they cannot be defensible in reference to any doctrine of law, customary practice, or indeed the moral judgement of any person regardless of whether or not they ascribe themselves to a culture or belief. Ironically, the GCC's attempt at devising a human rights instrument neglected making any explicit reference to migrant or foreign worker rights.

Based on this, like most similar regional and international declarative instruments, the Arab laws relate to soft law, defined for the first time as a non-binding document that mirrors policy and intention rather than binding legal norms. When considering the UDHR, it was also intended for a similar nature, however, a combination of general state practice accompanied

by psychological element of *opinio juris* made it one of the most recognised and significant tools of international customary law.<sup>159</sup> In clarification, the formulation of a norm is evidence of state practice, which in turn could lead to a formation of a custom once the practice is sufficiently general and uniform. The psychological impact is based on the product of official state action, as it shows the necessary thought behind taking steps to realise and implement the provisions of an instrument.<sup>160</sup> Thus it has become commonplace to debate the proliferation of international law, and what is regarded as normative standards and practice. World politics and international relations have inevitably been influenced by the development of soft law. This realm of soft law, has had a number of effects upon the content of international law: from being an initial step in the norm-making process; to providing detailed rules and more technical standards required for the interpretation and implementation of law, particularly human rights law.<sup>161</sup> However, references to migrant workers have been sparse when considering the content of various laws, and declarations.

An aspect to bear in mind is that the impetus for soft law formulation, is that it was fundamentally linked to economic development, i.e. to construct a new international economic structure following the decolonisation process, and the emergence of so-called Third World countries.<sup>162</sup> Post-Second World War, international law recognised two core principles that relate to indigenous peoples for recognition as distinct peoples in need of specific protection due to their marginalisation. The first of which relates to the promotion and encouragement of universally respecting human rights and fundamental freedoms for all; and secondly, the right of peoples to self-determination. These two core principles served as

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<sup>159</sup> Chinkin, Christine M. (1989) 'The Challenge of Soft Law' *International and Comparative Law Quarterly* 38, 850-866

<sup>160</sup> Gruchalla-Wesierski, Tadeusz (1984) 'A Framework for Understanding "Soft Law"' *McGill Law Journal* 30, 37-88

<sup>161</sup> Lagoutte, Stéphanie, Gammeltoft-Hansen, Thomas and Cerone, John (2016) *Tracing the Roles of Soft Law in Human Rights* (Oxford University Press) Introduction 1-14

<sup>162</sup> Chinkin, Christine M. (n 159)

the theoretical frame by which indigenous people articulated their claims during the 1970s and 1980s. This led to the UN becoming a vehicle for marginalised people to mobilise themselves and be regarded as being more visible. Moreover, they could put forward their own goals and strategies, and be regarded as international legal personalities rather than being seen as passive victims in need of protection.<sup>163</sup> However, in pursuit of achieving both a political and an economic 'level playing field', certain factions of the society, such as migrant workers, have been inadvertently marginalised. This phenomenon of societal collateral damage is evident where states and the personalities within exhibit a psychological desire to exercise some form of political and economic hegemony.

Internal discourse within the Arabian Peninsula has often been related to the struggle to establish a consensus of cultural identity and values while discourse evident in Western scholarship has often highlighted incompatibly and ideological divergences. Although retrospective analyses of historical issues are important in shaping modern thought, they do not provide justification for not devising and administering suitable and competent models of laws that protect a globalised community, which inherently incorporates migrant workers. Additionally, under Islamic law, to which the region staunchly ascribes, the political authority owes a duty not only to the people but to Allah not to violate the freedom and liberties of the people under their care and rule,<sup>164</sup> which inevitably includes masses of migrant workers.

Significant past and present economic, social, and environmental differences could be utilised in adapting and amending current provisions to provide more competent framework(s) that are flexible to the cultural needs and aspirations of a region under tremendous pressure. The moral order within MMCs and those particularly in the GCC are invariably influenced by Islamic

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<sup>163</sup> Gomez Isa, Felipe (2016) 'The Role of Soft Law in the Progressive Development of Indigenous Peoples' Rights' in *Tracing the Roles of Soft Law in Human Rights* edited by Stéphanie Lagoutte, Thomas Gammeltoft-Hansen, and John Cerone

<sup>164</sup> Baderin, Mashood A. (2003) *International Human Rights and Islamic Law* (Oxford University Press) 46-47

thought and thus need to be respected; however, that also applies in terms of what is expected through international customary norms. There is a clear need within the GCC to address the issues related to migrant workers more explicitly in the internal discourse rather than to either: (1) react through refutation, when issues are highlighted by critical appraisal; (2) highlight cultural indifference, when universal values are compromised; or (3) overlook the subject, rather than acknowledging accountability.

Despite the very limited discourse and the internal rhetoric pertaining to migrant workers, the establishment of such human rights machinery is somewhat of an admission of the bigger issues *per se*. The formation, structure, and management of such bodies within the GCC's controlled environments highlight the authoritarian nature of the governments and their approach to dealing with internal issues. However, this is not necessarily a divisive model, though they do need to be significantly more receptive, flexible, and reflective of the societal and cultural demographics rather than primarily focused on political and economic outcomes or merely containing the problem. This reverses the argument for cultural relativism from a regional perspective, as the laws and mechanisms for their application need to be fit for purpose for the society that resides within, which in reality includes a culturally diverse mix of both Arabs and globally sourced migrant workers. Taking this approach would inevitably yield greater conformity with the international and customary norms outlined in this chapter, bringing about a greater and more accepted sense of universalism. In turn this would inevitably reduce the issues faced by migrant workers as their rights would be effectively protected.

Therefore, if the ACHR 2004 is to be considered a competent regional model, it needs to manifest in such a manner that rights for all, including migrants, are not compromised but, rather, are realised. State models thus need to be scrutinised and benchmarked appropriately not only to international norms but also to the Islamic principles to which member states both

constitutionally and regionally make pledges. Mechanisms and machinery for dealing with disputes need to be competent, efficient, fair, and accessible to all workers, both indigenous and migrant (regardless of immigration status). The domestic application of laws that enable micro-management of civil society actors, and indeed trade unions and workers' associations, have intrinsically prevented employees (both indigenous and migrant) and even employers from achieving their goals. The workers' representatives, where associations and trade unions are permitted, are thus faced with a difficult choice: to represent the employees faithfully and thereby endanger themselves, sometimes risking punitive charges, or to become incorporated by adhering to the demands of the government and thereby undermining their power to act independently. However, labour disputes and strikes inevitably occur in the region, and in most cases are ended through the use of emergency ministerial decrees or the involvement of security services deployed by the government.<sup>165</sup>

Nevertheless, and despite the criticism it attracts, the 2004 Arab Charter has proved to be the most progressive and supported piece of legislation within the Arab region, as it even mentions the rights of migrant workers. It is indicative of a regional acknowledgement and recognition of universal human rights and thought (albeit being limited in certain scenarios and dependant on state interpretation). This recognition has been particularly evident in the language used in comparison to that found in the UIDHR, the Cairo Declaration of Human Rights in Islam, and the 1994 version of the ACHR, and ultimately the status of its ratifications. The substantive provision related to migrant workers is a step forward in the acknowledgement of their realities. Additionally, the most evident difference of the ACHR to that of the CDHRI and the UIDHR is that it makes no real reference to *Shari'ah* in any of its substantive provisions. Instead, it places state law and state interpretation as the potential

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<sup>165</sup> Caspi, Amnon, and Kastiel, Ruth (2006) 'Industrial relations in the Middle East' in *Global Industrial Relations* edited by Morely, Michael J., Gunnigle, Patrick and Collings, David G. (Routledge, Abingdon, UK) 106-123



stumbling block to its proper realisation, this is also the issue faced within the GCCHRD despite the universal language used.

In terms of what the ACHR stipulates regarding employment dispute resolution it is limited. It covers general aspects such as stating that the judiciary should regard every person as being equal before the courts and tribunals; that it should be independent; and that it guarantees the of the right of a person to seek a legal remedy before courts of all levels. Likewise, the CDHRI, to which the ACHR gives regard, in Article 13, states 'should workers and employers disagree on any matter, the State shall intervene to settle the dispute and have the grievances redressed, the rights confirmed and justice enforced without bias'. As discussed in the main body of the chapter, ACHR also covers that every individual (thus including migrants) has the right to form trade unions and to strike, in order to actively campaign for the protection of rights.

Despite the progress shown in the instruments in terms of the language and provision, it is notable that regional frameworks generally still face a number of issues in relation to the theoretical and practical problems capable of causing concern, e.g. ways in which universal schemes for the protection of human rights can be attained at the regional level, without undermining the prescribed global standards of human and labour rights relevant to migrant workers. This concern has been further heightened by individual states simultaneously applying their own methodologies and ideas at both universal and regional levels. Therefore, the Arab League needs to take into account its diverse membership, due to the fact that arguments in cultural relativism may lead to individual states further undermining its effort to be proportionate and balanced as a human rights regime. The Arab League evidently lacks an efficient decision-making institution and supranational policy-implementing mechanism. Although the ACHR 2004 is micro-managed by the Arab Human Rights Committee, it also suffers from the lack of enforcement powers of the League and so, despite making

observations and recommendations to improve the situation of migrant workers, it has yielded very little progress.

Furthermore the stagnant nature of supportive dialogue and discourse around the ACHR is arguably at heart of why regional issues persist on a raft of issues, including that which affects migrant workers so profoundly. In comparison to what is evident with UN and ILO monitoring and commentary and indeed with reference to the clarification that is given with regard to the practical application of human rights, the Arab League has a divergent lack of pedagogy in that regard. Moreover, civil society and NGO engagement has both been limited regionally and repressed on a domestic level.<sup>166</sup> Access to information on the various bodies within the Arab League is often unavailable and when certain material is accessible through the Web portal, it usually not made so in a timely fashion.<sup>167</sup> This has a knock-on effect in relation to civil and social dialogue concerning dispute resolutions systems as it limits any sound objective critique and subjective analysis.

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<sup>166</sup> Rishmawi, Mervat and Riad, Sohair (2013) 'Civil society interaction with the League of Arab States: Synthesis and analytical report: Key insights, principles, good practices and emerging lessons' Cairo Institute for Human Rights Studies (CIHRS) available at <<http://www.cihrs.org/wp-content/uploads/2013/12/LAS-report-final.pdf>> accessed 12 August 2017

<sup>167</sup> Rishmawi, Mervat and Riad, Sohair (n 166)

# **Chapter 4 — UAE Case Study: Legal System, Labour Laws & the Employment Dispute Resolution System**

## **4.1 Introduction**

This chapter is an in-depth case study into the UAE's employment dispute management system. It will examine UAE's domestic law and how it manifests in terms of the labour rights of migrant workers and the resulting systems of employment dispute resolution. In light of the international and regional perspectives on migrant worker rights, the initial section will cover the intricate dynamics of how migration law interacts with labour on a domestic stage. This will then allow for a more pertinent and substantive analysis of the domestic laws themselves in a manner that is significant to migrant workers in the region. It will also examine how the UAE addresses the core international principles related to non-discrimination and the right to form associations. This provides a rationale for focussing on the main issues migrant workers face in the UAE in terms of the disputes they most commonly face and the mechanisms the UAE offers in terms of resolving them.

A descriptive analysis of the UAE's actual dispute system will prelude the main body of the fieldwork-orientated research. This will specifically categorise how the laws and their application directly affect migrant workers in terms of the processes relating to navigating the MHRE dispute management systems. This will also serve to add context to the nature of the questions asked in the migrant worker questionnaire.

The initial section of data analysis will present exclusive data sourced directly from the MHRE regarding the disputes it actually deals with. The data will present: the frequencies and types of disputes, cross referenced with their education/vocational level; outcomes of engaging the MHRE; and their success rates. Following this, an assessment of the dispute management

system itself will be presented by means of a quantitative questionnaire (177 responses) aimed at gauging how migrant workers actually feel about certain aspects of navigating an employment dispute. Moreover, the aim of the data analyses is to present the migrant workers' opinions on the fairness and effectiveness of how labour disputes are managed and their perception of how confident they were or are in navigating the process of resolving them.

#### **4.1.1 The Legal System of the UAE: An Introduction**

The UAE was declared as a united, independent, and sovereign state encompassing seven emirates — Abu Dhabi, Dubai, Sharjah, Ras al-Khaimah, Ajman, Um al-Quwain, and Al Fujairah — on 2 December 1971. Prior to the twentieth century, each emirate was ruled according to the model of a *Shari'ah* autocracy, with the administration of justice being enacted at local tribal level.<sup>1</sup> In response to the increase in population, immigration, and the beginnings of economic diversification in the first part of the twentieth century, *Shari'ah* courts were set up in coastal towns.<sup>2</sup> It should be noted that written law (along with the concept of a court system as understood by Western practitioners) is a recent addition to the UAE.

In the 1940s, Britain decided on the need for courts capable of handling disputes involving British citizens and other foreign nationals, leading to the Trucial States handing over jurisdiction of British subjects and all other foreign nations to the British in 1945. As previously discussed, British legal theory and common law was thus introduced to the Emirates.<sup>3</sup> The British used their experience of the region to create laws to suit their own needs. They employed the same principles created for their own legal code, modifying them to fit the UAE.

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<sup>1</sup> Al-Muhairi, Butti Sultan Butti Ali (1996) 'The Development of the UAE Legal System and Unification with the Judicial System' Arab Law Quarterly 11(2) 116-160

<sup>2</sup> Al-Muhairi, Butti Sultan Butti Ali (n 1)

<sup>3</sup> Al-Muhairi, Butti Sultan Butti Ali (n 1)

Secular British courts, with British judges, were thus established in the Emirates, alongside the *Shari'ah* courts, leading to a two-court system in the Trucial States running side-by-side — one controlled by the Emirates and the other by the British.<sup>4</sup> There was a general agreement between the two nations that, in the case of a mixed dispute involving both a foreign and a local citizen, a judge from each judicial system would hear the case and announce the decision.<sup>5</sup> These two systems continued to work informally together until 1971, when the Emirates became independent and were able to determine their own permanent legal structure constitutionally.<sup>6</sup>

Despite these diverse historical influences, a form of civil law still exists in the UAE. The French form of UAE law dominates (as a result of early deference to Egyptian constitutional law); however, there is still a faint outline of common law, particularly in Dubai and Abu Dhabi.<sup>7</sup> British influence can be seen in the adoption of the English Civil Procedure Rules as the interim rule of the courts within the Dubai International Finance Centre. Furthermore, the recent rapid increase in the number of Anglo-American law firms operating in Dubai has led to contracts influenced by common law principles. This revival of common law can thus be seen as a result of market forces.<sup>8</sup> Prior to the addition of these layers of common and civil law, each emirate was subject to *Shari'ah* Islamic law alone. A number of differences exist in the extent to which *Shari'ah* is the basis of current law in the Islamic states of the wider Arabian region, including the Gulf States. The most orthodox of these are Saudi Arabia and Oman, with the UAE, Qatar, Kuwait, and Bahrain being regarded as more progressive.<sup>9</sup> Of the UAE, Dubai has been noted as being the most progressive in a conservative environment. Nonetheless,

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<sup>4</sup> Brown, Nathan J., *The Rule of Law in the Arab World: Courts in Egypt and the Gulf* (Cambridge University Press, 1997) 4

<sup>5</sup> Brown, Nathan J. (n 4) 144

<sup>6</sup> Mallat, Chibli (2011) *Introduction to Middle Eastern Law* (Reprinted Edition 2011, Oxford University Press) 149-180

<sup>7</sup> Brown, Nathan J. (n 4) 4; Mallat, Chibli (n 6) 245-250

<sup>8</sup> Luttrell, S.R. (2009) 'The Changing *lex arbitri* of the UAE' *Arab Law Quarterly* 23(2) 139-166

<sup>9</sup> Luttrell, S.R. (n 8)

the application of *Shari'ah* takes precedence throughout the UAE, and indeed all of the Gulf States. Article 7 of the UAE Constitution of 1971 states:

**Islam is the official religion of the Union. The Islamic *Shari'ah* shall be a main source of legislation in the Union. The official language of the Union shall be Arabic.**<sup>10</sup>

Contemporary UAE possesses a three-tiered federal judicial system, of which each of emirate has its own local courts that exercise concurrent jurisdiction outside of the scope of the federal law (i.e. in matters of penal law, marriage, divorce, and property law).<sup>11</sup> Further nuances of difference can be identified when examining the systems of each emirate. However, Dubai and Ras al-Khaimah are not part of the federal court system, having their own courts of cassation, which are not under the jurisdiction of the Federal Supreme Court.<sup>12</sup> Abu Dhabi, Ajman, Fujairah, Sharjah, and Umm al-Quwain each have their own first instance federal courts, and there are federal appeal courts in Abu Dhabi and Sharjah. Appeals from the two federal appeal courts are taken to the Supreme Court of the Union in Abu Dhabi, where five judges sit in final determination. Thus, the Supreme Court serves as the court of cassation for the five fully subscribed emirates of the UAE.

The UAE's legal system is therefore founded upon civil law principles, primarily influenced by French and Egyptian law and Islamic *Shari'ah* law, with the latter constituting the guiding principle and source of law. Common law principles are generally not recognised, i.e. the adoption of previous court judgements as a legal precedent. However, judgements delivered by higher courts tend to be applied by the lower courts.<sup>13</sup> In the UAE, Islamic *Shari'ah* courts

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<sup>10</sup> Constitution of the United Arab Emirates, available at

<[https://www.constituteproject.org/constitution/United\\_Arab\\_Emirates\\_2004.pdf](https://www.constituteproject.org/constitution/United_Arab_Emirates_2004.pdf)> accessed 21 June 2017

<sup>11</sup> Section 5 of the Constitution of the UAE

<sup>12</sup> Official Portal of the UAE, Structure of the judicial system available at <<https://government.ae/en/about-the-uae/the-uae-government/the-federal-judiciary/structure-of-the-judicial-system>> accessed 24 August 2017

<sup>13</sup> Khedr, Ahmed Aly and Alnuaimi, Bassam (2010) 'A Guide to United Arab Emirates Legal System' GlobaLex June 2010 <[http://www.nyulawglobal.org/globalex/United\\_Arab\\_Emirates.htm](http://www.nyulawglobal.org/globalex/United_Arab_Emirates.htm)> accessed 8 May 2015; IBP USA

work alongside civil and criminal courts and are primarily responsible for civil matters between Muslims, with non-Muslims never being required to appear before a *Shari'ah* court on any matter. *Shari'ah* courts have an exclusive jurisdiction to hear family disputes, including matters involving divorce, inheritances, child custody, child abuse, and the guardianship of minors.<sup>14</sup>

In terms of what is prescribed in the UAE's Civil Code, issued as Federal Law No. 5 of 1985, the laws applied in court are sourced in a prescriptive manner. In practice, if a court finds no provision in relevant domestic law, judgement is passed according to the Islamic *Shari'ah*. However, the court is required to pay heed to the choice of the most appropriate solution initially from the schools (*madh-habs*) of Imam Malik and Imam Ahmad bin Hanbal, and then, if none is found, from the schools of Imam As-Shafi'i and Imam Abu Hanifa. If the court does not find a solution within any of the four *mad-habs*, then it renders judgement in accordance with custom, providing that this does not conflict with public order or Islamic morals.<sup>15</sup>

Although the core principles of law in the UAE are drawn from *Shari'ah*, most legislation as elaborated upon is comprised of a mix of Islamic and European concepts of civil law. In addition to specific legal legislation covering agencies, company law, and indeed labour law the UAE has enacted civil and commercial codes. Although the system has led to the development of comprehensive and structured legal systems, these are rigid and inflexible to some degree, and this constitutes the bureaucracy of regulation that is associated with countries in the Middle East region as a whole. The UAE has, however, made a number of amendments to its laws in response to international focus, by decreeing various ministerial

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(2013) *Dubai Business Law Handbook Volume 1 Strategic Information and Business Laws* (International Business Publications, Washington, USA 2013) 48-49

<sup>14</sup> Khedr, Ahmed Aly and Alnuaimi, Bassam (n 13)

<sup>15</sup> Federal Law No. 5 of 1985, Article 1

orders related to certain issues, such as human trafficking and child labour,<sup>16</sup> and indeed some of these are related to employment.

#### **4.1.2 Context of Domestic Labour Law**

Essentially, paid work is crucial to any market economy due to its obvious economic, social, and political significance. Labour law, with all its distinctive characteristics, is meant to address the problems encountered within such a system, and so in order to examine labour law thoroughly with all its aspects, it is essential to study the legal rules in their context.<sup>17</sup> Hence, UAE's labour law is fundamentally the starting point in assessing the labour and employment dispute management systems. However, in order to do so it is necessary to examine other important facets related to its presence, development, and manifestations.

Labour law is particularly significant because it intrinsically governs the right to work, a right that is regarded as core and fundamental whether viewed from both a socio-political or theological perspective. As described in earlier chapters, employment provides a means of income and wealth for many people, which ultimately leads to securing and realising a number of different universal human rights related to everyday life. As categorised within various international instruments, the aim of labour law is:

- To secure fair access to labour markets under conditions of equal opportunity.
- To ensure that working conditions are just, safe, healthy, and respectful of human dignity.
- To ensure that pay is fair and sufficient for leading a decent standard of living.
- To protect job security and ensure fair treatment at work.

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<sup>16</sup> The UAE's Government enacted Federal Law No. 51 of 2006, which called for strong punitive measures, including maximum penalties of life imprisonment, and covers all forms of human trafficking, not just overt enslavement, but also sexual exploitation, child labour, and commerce in human organs.

<sup>17</sup> Collins, Hugh, Ewing, K. D. and McColgan, Aileen (2012) *Labour Law* (Cambridge University Press) 5



- To permit workers to form associations and to organise themselves in order to campaign and protect their interests at work.

The main aspects of labour law also include the contract for employment between the employer and employee; defining working conditions; relations between workers; labour market accessibility; and the manner in which the economy aims to achieve full and decent employment. The ILO elaborates on this by explaining,

**Labour laws and regulations as being an important means of implementing ILO standards, promoting the ILO Declaration and the Fundamental Principles and Rights at Work, and putting the concept of decent work into practice.<sup>18</sup>**

#### **4.1.3 Interaction Between Migration Law & Labour Law**

In relation to this study and with migration in general, the interaction of migration law and labour law is inextricable, as alluded to in earlier chapters. Likewise, labour migration and its regulation has an intrinsic impact on labour law, even to the extent that it has been described as being ‘divisive’ in the sense that it operationally creates divisions within labour law.<sup>19</sup>

Migration law also affects areas such as labour supply and causes workplace segmentation. It inevitably leads to creating issues that have an impact on migrant workers by:

1. Increasing the control of employers over the supply of labour, especially through rendering them control over immigration status. As a result, the creation of an ‘immigration status’ introduces a personal rather than a relation-based set of categories into labour law, as evident with the *Kafala* system. Furthermore, by

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<sup>18</sup> ILO definition, available at <<http://ilo.org/global/topics/labour-law/lang--en/index.htm>> accessed 1 December 2016

<sup>19</sup> Freeland, Mark and Costello, Cathryn (2014) ‘Migrants at Work and the Division of Labour Law’ in *Migrants at Work: Immigration and Vulnerability in Labour Law* (Oxford University Press) 1-26

establishing distinctions based on migration status, it sets up tension with non-discrimination law particularly where forms of preferential conditions are apparent, e.g. nationals over migrants.

2. Depending on how they are regulated, it increases the role of intermediaries in the labour supply chain, and increases triangular labour relations, which opens up the realm of exploitation. Unscrupulous intermediaries and recruitment agencies have been subject to intense criticism due to the unprincipled activities they undertake.
3. In certain scenarios, migration may challenge collective worker-protective institutions, increasing tensions between groups of workers and undermining solidarity in organisations such as unions or associations.
4. Effecting the conduct and regulation of employment relations and even by defining sets of offences and sanctions through its ideas of what is considered illegal.
5. Prompting migrant workers in extenuating circumstances to make compromising choices; this could inevitably lead to changes in status, rendering them subject to criminalisation.

Migration law has a tendency to impact labour law by either enlarging or deepening some pre-existing divisions present in labour law or by introducing new divisions altogether.<sup>20</sup> These divisions become manifest in the *objectives* of labour law and divisions between the *subjects* or coverage of labour law. The objectives can be looked at from two perspectives: firstly, in terms of worker protection; and secondly, labour market regulation, which understandably includes labour supply regulation. Arguably, this has a historical basis, stemming from the systems of 'master and servant law' (which has pertinence within the region due to its colonial history), where the antecedents of labour law were primarily devoted to labour supply; however, during the twentieth century the objectives shifted towards protecting workers.

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<sup>20</sup> Freeland, Mark and Costello, Cathryn (n 19)

Latterly, as discussed in earlier chapters, this has become a contested issue due to the increases in migration levels and the consequential pervasive reinforcement of migration controls, which in turn has re-shifted the objectives of labour law. Migration law can grant employers varying degrees of control over labour supply. This is evident to the extent that certain groups of employers have manipulated migration in order to minimise wages and working conditions by showing a preference in recruiting temporary migrant workers.<sup>21</sup>

Inevitably the *subjects* of labour law, namely the workers, are also affected by the divisive tendencies of the relationship of labour migration and migration law, i.e. they do so by fragmenting the application of labour law according to the personal status of each worker. To be specific, the worker's legal/immigration status and the contract type determines the application of labour law at a personal/individual level. These defining characteristics cause the differentiation in terms of the legal application of the protections outlined by labour law in a particular jurisdiction.

On exploring the links between labour migration and economic, social, and cultural rights — such as the right to work; just and favourable conditions of work; and access to justice and redress — they are all recognised as examples of fundamental human rights from every context, universally, and also from a culturally relative viewpoint. Despite this common ground, their application in terms of enactment of the various international conventions and the realisation of the rights within them has, however, been indifferent. In the Gulf region, divergences in the application of international labour standards and customary norms are evident through the manifestation of indifferent state labour legislation, particularly relating

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<sup>21</sup> Ruhs, Martin (2015) *The Price of Rights: Regulating International Labor Migration* (Princeton University Press, New Jersey, USA) 13-23; Ruhs, Martin (2014) 'Immigration and Labour Market Protectionism: Protecting Local Workers' Preferential Access to the National Labour Market' in *Migrants at Work: Immigration and Vulnerability in Labour Law* edited by Freeland, Mark and Costello, Cathryn (Oxford University Press) 60-78

to migrant workers.<sup>22</sup> Core immigration and labour policies focus on the management of the entry and length of stay of migrant workers and their dependents. It is these policies (along with their implementation) that are currently the source of the main international criticisms concerning domestic legislation, specifically in relation to a failure to provide the necessary protection for migrant workers.

Within the Gulf region, including the UAE, the core migration policy is sponsorship, and is termed the '*Kafala* system'; this is a key instrument behind the economic development of the UAE, the GCC and most Middle East economies. The system was designed as a temporary system for the region to respond to labour shortages, and was not intended to encourage the permanent settlement of migrant labourers.<sup>23</sup>

The *Kafala* system, as it is recognised today began in the late 1960's, during the period where rapid regional development commenced. The import of labour enabled the region to transform by capitalising through harvesting the petroleum.<sup>24</sup> The system stems from three distinct but interlinked sources of the social, political and economic environment within the region.

The terms *Kafala* and *Kafeel*, which means sponsorship/sponsor, comes from the Arabic '*ka fa la*' meaning 'guardian', 'vouch for', or 'take responsibility for someone'.<sup>25</sup> From a historical context, the *Kafala* system contains a degree cultural influence which originates in the Bedouin custom of providing foreigners protection, or in some cases, affiliation for specific

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<sup>22</sup> Longva, Anh Nga (1999) 'Keeping Migrant Workers in Check: The *Kafala* System in the Gulf' Middle East Report; Kapiszewski, Andrzej (2006) 'Arab versus Asian migrant workers in the GCC countries' UN expert group meeting on international migration and development in the Arab region, Population Division, Department of Economic and Social Affairs, UN Secretariat, Beirut, 15-17 May 2006

<sup>23</sup> Lori, Noora (2001) 'National Security and the Management of Labor: A Case Study of the United Arab Emirates' Asian and Pacific Migration Journal 20(3-4) 315-337

<sup>24</sup> Kapiszewski, Andrzej (n 22)

<sup>25</sup> Kakande, Yasin (2015) *Slave states: The practice of Kafala in the Gulf Arab region* (Zero Books, UK) 9

purposes with a tribe,<sup>26</sup> or granting safe passage through a controlled territory.<sup>27</sup> These meanings and customs can be further elaborated to the Islamic tradition of extending shelter, food, and hospitality to strangers or guests.<sup>28</sup> Therefore, it can be interpreted that these traditional customs found within Bedouin culture are indeed a hallmark of their value system. In addition to this commendable trait, there is evidence to suggest that the *Kafala* system also derives from certain types of traditional bonded-labour relationships, where consensual agreements allowed individuals to pay off an incurred debt through work. In these cases, rather than receiving wages, sponsors guaranteed to meet the needs of the worker and their families.

In relation to domestic workers, prior to the influx of migrant workers into Arab households, these positions were traditionally filled by Arab women or girls.<sup>29</sup> These relationships were also built upon extending the honour of the family to include the workers, making the working women less vulnerable. Moreover, such relationship would also involve visitation from the workers' kin to ensure that they were being treated well and to ensure payment for work.<sup>30</sup>

In terms of these historical precedents of 'sponsorship', it can be seen that they were all built on trust and kindness and extending hospitality to include strangers as part of the tribe or family. However, these customs have arguably been abandoned in what is recognised as the *Kafala* system today. Rather what is evident is that the traditions of consensual labour

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<sup>26</sup> Heeg, Jennifer (2011) 'Gender, International Trafficking Norms and Gulf Migration' Paper presented at the annual meeting of the International Studies Association Annual Conference: Global Governance: Political Authority in Transition, Le Centre Sheraton Montreal Hotel, Montreal, Canada, 16 March 2011

<sup>27</sup> Nelson, Joshua (2014) 'The Ethical Implications of the *Kafala* System' Pitt Political Review 11(1) 41-44

<sup>28</sup> Kakande, Yasin (2015) *Slave states: The practice of Kafala in the Gulf Arab region* (Zero Books, UK) 9; **Abu Huraira reported Allah's Messenger as saying: "He who believes in Allah and the Last Day does not harm his neighbour, and he who believes in Allah and the Last Day shows hospitality to his guest and he who believes in Allah and the Last Day speaks good or remains silent"**. Islam encourages honouring neighbours and guests, it stipulates the obligation to remain silent unless there is something good to say, all of which are regarded as integral aspects of faith.

<sup>29</sup> Jureidini, Ray (2003) 'Migrant Workers and Xenophobia in the Middle East' United Nations Research Institute for Social Development: Identities, Conflict and Cohesion Programme Paper Number 2 December 2003, available at <<http://www.unrisd.org/80256B3C005BCCF9/jureidin.pdf>> accessed 09 June 2018

<sup>30</sup> Jureidini, Ray (n 29)

relationships were confounded through poorly devised models of labour regulation which facilitate grossly unequal power balances. The *Kafala* system was established by state engineers to explicitly serve the needs of the state in a manner that accelerated rapid development.

Bearing that in mind, the Gulf region has historically dealt with numerous patterns of labour mobility ranging from intra-Arab migration to drawing labour from the Indian subcontinent.<sup>31</sup>

This was due to the trading links that were evident and the seasonal nature of the types of occupation the indigenous Arabs were engaged in, such as pearl diving and agriculture.<sup>32</sup>

However, as discussed, the discovery of oil provided a stimulus for a new pattern of migration within the region of the Arabian Gulf. Thus, oil production inevitably changed the nature of work, leading it to become industrial and a permanent form of activity. During the initial phase, the GCC welcomed Arab workers seeking better prospects for employment from poorer neighbouring countries. Initially other Arabs were seen as being them more attractive to nationals than other immigrants due to their common language, religion and culture.<sup>33</sup>

During the initial phase of development, migrant Arabs effectively began integrating themselves in their respective host states by setting up various key services such as related to governance and administration. The migrant Arabs, particularly Egyptians developed educational facilities, health services and built the necessary infrastructure for the host state, moreover they ran the oil industries. Based on the assimilation of Egyptians and other Arabs into GCC society and infrastructure, both the rulers and the indigenous populations became worried about the supposed 'Egyptianisation' of education, language and culture.<sup>34</sup>

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<sup>31</sup> Birks, J.S. and Sinclair, C.A. (2001) 'Migration and Development: The Changing Perspective of Poor Arab Countries' *Journal of International Affairs*, 285-309; Birks, J.S. and Sinclair, C.A. (1980) *Arab Manpower* (Croom Helm Ltd, London)

<sup>32</sup> Carter, Robert A. (2005) 'The history and prehistory of Pearling in the Persian Gulf', *Journal of the Economic and Social History of the Orient* 48(2) 39-209

<sup>33</sup> Kapiszewski, Andrzej (n 22)

<sup>34</sup> Graz, Liesl (1990) *The Turbulent Gulf: People, Politics and Power* (I.B. Tauris, London) 208-209

That said, this model of importing labour from its poorer Arab neighbours was short-lived as oil-states' governments opted to recruit Asian workers. There were several specific reasons for changing the preference from Arab workers to Asian ones, which included a complex mix of socioeconomic, political and historical factors. Notably, due to colonial and neo-colonial influences, Indian and Pakistani traders and labourers already had long-standing ties with the Gulf states, which made them accessible. This was due to their countries maintaining their relationships which were developed during the British presence in the Indian subcontinent.<sup>35</sup>

Gulf authorities became troubled about migrant Arabs bringing and spreading radical social and political concepts. These included secularist and pro-Soviet ideologies, and also leftist, pan-Arab ideas which called for the abolition of the monarchies in the Gulf.<sup>36</sup> Related to this, certain factions of young Arabs regarded borders in the Middle East as artificial lines imposed by Western imperialists, and, consequently, expected them to be eradicated. Moreover, Arab workers were prosecuted, jailed, and deported due to their participation and involvement with various leftist and radical organisations. Additionally the internal stability of some of the GCC countries, including Saudi Arabia, Kuwait, Bahrain and Qatar, were also traumatised by the Arab expatriate-led labour strikes.<sup>37</sup> This perhaps yields the reason to why GCC states today make little or no provision for trade union activity, strike action and even civil society. Gulf states were keen to ensure that they removed any prospect of Arab dissidence and political unrest, something which is also particularly apparent in today's climate. Due to the reasons explained, Gulf governments actively opted to recruit Asians (and Africans) as they did not represent any obvious threat to the Gulf nationals and nationality. Asians workers fittingly offered an array of other benefits; they were and are still less expensive to employ;

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<sup>35</sup> Roper, Stephen D. and Barria, Lilian A. (2014) 'Understanding Variation in Gulf Migration and Labor Practices' Middle East law and Governance 6, 32-52

<sup>36</sup> Kapiszewski, Andrzej (n 22)

<sup>37</sup> Kapiszewski, Andrzej (n 22)

and were seen as being more efficient and manageable, for want of a better word, controllable. Ultimately certain factions of workers were thus perceived as being more 'docile' compared to the migrant Arab nationals who were assimilating themselves and making demands for naturalisation etc.<sup>38</sup> Furthermore, labour sourced from outside of the region addressed the concerns of foreigners calling for citizenship, and the equality of rights that they entail, based on the grounds that they did not share any cultural or linguistic characteristics with the indigenous population.<sup>39</sup> This arguably provided the right pretext for GCC states to preserve the *Kafala* system, as such a workforce would inevitably have less bargaining power to exercise their rights, freedoms and voice any reducing the prospect of any political encroachment.

The reasons above categorise the foundation and inception of the *Kafala* system. They also provides a necessary level of contextualisation to the manner in which certain demographic groups have been actively chosen by governments to fuel the expansion of oil-rich states. Despite the origins of the *Kafala* system being somewhat noble it has mutated into something that is used to provide the central government with a means to: (1) control labour flow into GCC states; (2) monitor worker activities to mitigate security concerns. The immigration system although acting as one of the institutions that defines identities, rights, and obligations for employers and migrant workers, it does so in a manner that employs a 'number verses rights trade-off'.<sup>40</sup> This analogy elucidates that that the 'costs associated with adequate rights protections to employers means that those states which extend more rights will tend to have smaller migrant populations'.<sup>41</sup>

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<sup>38</sup> Khan, Azfar and Harroff-Tavel, Hélène (2011) 'Reforming the *Kafala*: Challenges and Opportunities in Moving Forward' Asian and Pacific Migration Journal 209 (3-4) 293-313

<sup>39</sup> Khan, Azfar and Harroff-Tavel, Hélène (n 38); Jureidini, Ray (n 29)

<sup>40</sup> Ruhs, Martin and Martin, Philip (2008) 'Numbers vs. Rights: Trade-Offs and Guest Worker Programs' International Migration Review 42, 249–265.

<sup>41</sup> Roper, Stephen D. and Barria, Lilian A. (n 35)



The design and policies of the *Kafala* system reflect three types of objectives that are broadly shared among all GCC countries: (1) the system is designed to guarantee an on-demand supply of cheap labour for the low-cost development, provision of goods and services, including domestic work; (2) the system regulates the perceived impact of immigration on the culture and perceived national identity of the population; (3) the *Kafala* system essentially restricts workers' rights and freedoms due to security concerns potentially arising from large numbers of migrants who outnumber citizens.

The system currently not only governs labour migration and but it also governs foreign investment by assigning a native sponsor, known as a *kafeel*, to each migrant worker and foreign investor. The sponsor grants permission for foreigners to enter the country, monitoring their stay and repatriating them on the termination of their contract.<sup>42</sup> The *kafeel* is responsible for all aspects of the foreigner's stay: if the *kafeel* withdraws sponsorship, the foreigner has no legal right to remain in the country (unless the worker lodges a labour claim at the UAE's MHRE, where the plaintiff may be issued a temporary work permit, depending on the circumstances).<sup>43</sup> The sponsors thus assume full economic and legal responsibility over employees and so have significant control of these factors and can extract sizeable economic rents. The system also places considerable limitations on the mobility of labour because migrant workers can only legally remain in the country while under sponsorship for the duration stipulated in their contract of employment, and therefore their ability to change jobs depends on sponsorship transfer regulations.<sup>44</sup> Disputes over wages, accommodation, working conditions, or other work-related issues can lead to the sponsor withdrawing

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<sup>42</sup> Longva, Anh Nga (1997) *Walls Built on Sand: Migration, Exclusion, and Society in Kuwait* (Westview Press 1997) 78-89

<sup>43</sup> Ministerial Resolution No. (119) of 2007 on Regulating Temporary Work

<sup>44</sup> Shaham, Dahlia (2009) 'Foreign Labor in the Arab Gulf: Challenges to Nationalization' *Al-Nakhlah Fletcher School Online Journal for Southwest Asia and Islamic Civilization*

sponsorship. As a result, vulnerable workers experiencing issues with their employers are frequently compelled to remain in exploitative situations with little power of redress.<sup>45</sup>

This brand of sponsorship system has been brought into question (and indeed disrepute) due to transferring the responsibility of labour recruitment from government into the hands of unsupervised agencies hired by employers.<sup>46</sup> This has resulted in a number of violations including: the manner in which migrants arrive; how they work; and the manner in which they remain in their respective host countries (including the UAE). In a number of cases, workers' passports have been withheld by the companies for which they work, even after their contracts had been completed or terminated, and despite the legal obligation of the employers to repatriate them.<sup>47</sup> Many workers throughout the region are, however, awarded a degree of permanence to their employment as their contracts are renewed (usually spanning two years at a time); this is due to the goodwill of their sponsor.<sup>48</sup> As will be discussed, the labour legislation in combination with questionable *Kafala* immigration protocols, such as the issuance of temporary work permits tying migrants workers to the mercy of employer/sponsor and limited aspects to work mobility, has led to human rights abuses without access to effective legal remedy within the region.<sup>49</sup>

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<sup>45</sup> Longva, Anh Nga (n 21)

<sup>46</sup> Kapiszewski, Andrzej (n21)

<sup>47</sup> Kapiszewski, Andrzej (n 22)

<sup>48</sup> Shah, Nasra M. (2009) 'The Management of Irregular Migration and its Consequence for Development: Gulf Cooperation Council' ILO Asian Regional Programme on Governance of Labour Migration Working Paper No.19 <[http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_105105.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_105105.pdf)> accessed 3 December 2014

<sup>49</sup> Mahhdavi, Pardis (2011) *Gridlock: Labour Migration, and Human Trafficking in Dubai* Stanford University Press)

#### 4.1.4 The GCC & UAE: Demographics & Economy

Established in 1981, the GCC comprises an association or alliance based on six countries.<sup>50</sup> The discovery of petroleum wealth has resulted in the transformation of the region in terms social, political, and economic configurations.<sup>51</sup> Characteristic to all of these Gulf countries is the exceptionally high international migration for the principal purpose of sourcing labour. Archetypically, the UAE has capitalised on this new-found wealth and undergone a significant wave of development over the past few decades, much of which has been reliant on migrant labour in terms of skills and most evidently literal manpower. More recently, the UAE, in an attempt to reduce its dependence on the hydrocarbon sector, has diversified its economy by delving into commodities, manufacturing, finance, and tourism.<sup>52</sup> As elaborated upon, labour market composition of GCC economies invariably relies on foreigners/expatriates. In order to bring this into perspective, they comprise the majority of the GCC's total workforce and nearly half the total population (see table below for member state specific data).<sup>53</sup>

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<sup>50</sup> The GCC Charter states that the basic objectives are to have coordination, integration, and inter-connection between Member States in all fields, strengthening ties between their peoples, formulating similar regulations in various fields such as economy, finance, trade, customs, tourism, legislation, and administration, as well as fostering scientific and technical progress in industry, mining, agriculture, water and animal resources, establishing scientific research centres, setting up joint ventures, and encouraging the cooperation of the private sector.

<sup>51</sup> Kapiszewski, Andrzej (n 22)

<sup>52</sup> Sturm, Micahael, Strasky, Jan, Adolf, Petra, and Peschel, Dominik (2008) 'The GCC Countries – Economic structures, recent developments and role in the global economy' ECB Occasional Paper No. 92 July 2008

<sup>53</sup> UN DESA (2017) 'World Population Prospects: The 2017 Revision', POP/DB/WPP/Rev.2017/POP/F01-1, available at <<https://esa.un.org/unpd/wpp/Download/Standard/Population/>> accessed 17 August 2017; UN DESA (2015) 'Trends in International Migrant Stock: The 2015 Revision', POP/DB/MIG/Stock/Rev.2015, available at <<http://www.un.org/en/development/desa/population/migration/data/estimates2/estimates15.shtml>> accessed 17 August 2017

*Table 2 GCC Member State Populations: Migrant vs Nationals*

<b>GCC Member State</b>	<b>Total Population Estimates</b>	<b>Nationals</b>	<b>Migrant Stock</b>	<b>% Nationals</b>	<b>% Migrant</b>
<b>Bahrain</b>	1,371,855	667,718	704,137	48.7%	51.3%
<b>Kuwait</b>	3,935,794	1,069,658	2,866,136	27.2%	72.8%
<b>Oman</b>	4,199,810	2,354,832	1,844,978	56.1%	43.9%
<b>Qatar</b>	2,481,539	793,899	1,687,640	32.0%	68.0%
<b>Saudi Arabia</b>	31,557,144	21,371,199	10,185,945	67.7%	32.3%
<b>UAE</b>	9,154,302	1,059,176	8,095,126	11.6%	88.4%
<b>United Kingdom</b>	65,397,080	56,853,960	8,543,120	86.9%	13.1%

As a comparison, in 2015, over 51% of all international migrants in the world were living in just 10 countries. The largest number resided in the USA, which hosted 47 million migrants in 2015, or 19% of the world's total. Germany and the Russian Federation hosted the second and third largest numbers (12 million each), followed by Saudi Arabia (10 million), the United Kingdom (nearly 9 million), and the UAE (8 million). Furthermore, three of the top 10 bilateral migration corridors were between a country of South Asian country and an oil-producing country in the GCC: Bangladesh-UAE, India-Saudi Arabia, and India-UAE.<sup>54</sup>

The GCC, as a result of its unique demographics, has significant financial indicators that include outward remittances estimated at around \$98 billion for the GCC, with the UAE specifically sending \$19.3 billion<sup>55</sup>; UAE's GDP is \$348.743 billion, and its GDP/Capita \$37,678.<sup>56</sup> GCC states' oil/petrochemical/hydrocarbon-related industries account for a large share of their

<sup>54</sup> UN DESA (2015 n 35)

<sup>55</sup> World Bank Group (2016) Migration and Remittances Factbook 2016 International Bank for Reconstruction and Development The World Bank, Washington, available at <<https://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1199807908806/4549025-1450455807487/Factbookpart1.pdf>> accessed 17 August 2017

<sup>56</sup> IMF (2017) 'United Arab Emirates 2017 Article IV Consultation' IMF Country Report No. 17/218, International Monetary Fund, available at <<http://www.imf.org/~media/Files/Publications/CR/2017/cr17218.ashx>> accessed 17 August 2017

fiscal revenue, which is also true of the UAE, weighing in at 63.5% (36.5% non-oil fiscal revenue), and due to its economy's diversification, non-oil export share is 71.5%, the highest of any GCC member state.<sup>57</sup>

In terms of labour market information for the UAE, the relative distribution of the employees per sector is as follows: construction 32.86% (1,607,000); trade and repair services 23.15% (1,132,000); real estate, rental, and business services 11.80% (577,000); manufacturing 9.30% (455,000); transport, storage, and communication 7.57% (370,000); and hotels and restaurants 4.56% (223,000).<sup>58</sup> In relation to skills/skill level of the workforce, the representations are low/unskilled workers 48.04%; skilled 30.06%; specialist 9.14%; technical 3.29%; and professional 9.43%.

#### **4.1.5 UAE Labour Law, Federal Law No. 8 of 1980**

Employment relationships in the UAE are governed and regulated principally by its Labour Law, Federal Law No. 8 of 1980.<sup>59</sup> The law is administered and enforced by the newly branded MHRE.<sup>60</sup> The Labour Law (comprised of 12 chapters) and the regulations set forth rules that are related to a number of important facets related to employment conditions and standards, such as employment contracts including their termination; restrictions on the employment of juveniles and women; maintenance of records and files; wages; working conditions (hours, leave, health and safety); medical and social care; codes of discipline; end-of-service benefits;

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<sup>57</sup> IMF (2016) 'Economic Diversification in Oil-Exporting Arab Countries' Annual Meeting of Arab Ministers of Finance  
April 2016, Manama, Bahrain

<sup>58</sup> MHRE (2017) The data represents all labourers in the private sector who are registered with the Ministry of Human Resources and Emiratisation for 2016 under their employment sector categorisations, available at <<http://www.mohre.gov.ae/en/data-library.aspx>> accessed 17 August 2017

<sup>59</sup> Federal Law No. 5 of 1985 On the Civil Transactions Law includes a section under Chapter 2: Employment Contract, Articles 897-923

<sup>60</sup> Formerly known as the Ministry of Labour however changes to the federal government announced in February 2016 brought about the Ministry of Human Resources and Emiratisation. The National Human Resource Development and Employment Authority became formally attached to MHRE.

compensation of occupational diseases including employment-related accidents, injuries, and death; dispute resolution; labour inspection and penalties. Although the above list at first glance seems somewhat comprehensive, the labour laws in the UAE, and indeed the GCC region as a whole, have been subject to external pressure and criticism from within the international community regarding the lack of legal protections and exemptions within their respective laws.<sup>61</sup>

An important note to make is that the labour law in the UAE is further supplemented by a raft of other laws, ministerial orders, and decrees issued by the MHRE.<sup>62</sup> These are essentially amendments that are authorised through Cabinet Resolutions approved by the Council of Ministers. They are issued on an ad-hoc basis in order to attempt to quickly remedy any issues that the government could feasibly address ‘without rocking the boat’ by promising too much in terms of guarantees. Though this is not an ideal methodology, it is what the UAE has

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<sup>61</sup> HRW (2014) ‘Gulf Countries: Increase Migrant Worker Protection Gulf, Asian Labor Ministers at 3rd Abu Dhabi Dialogue’ available at <<https://www.hrw.org/news/2014/11/23/gulf-countries-increase-migrant-worker-protection>> accessed 18 August 2017; HRW (2010) ‘Walls at Every Turn: Abuse of Migrant Domestic Workers through Kuwait’s Sponsorship System’ available at <<https://www.hrw.org/report/2010/10/06/walls-every-turn/abuse-migrant-domestic-workers-through-kuwaits-sponsorship-system>> accessed 18 August 2017; HRW (2006) ‘Building Towers, Cheating Workers Exploitation of Migrant Construction Workers in the United Arab Emirates’ available at <<https://www.hrw.org/sites/default/files/reports/uae1106webwcover.pdf>> accessed 18 August 2017; HRW (2009) ‘The Island of Happiness’ Exploitation of Migrant Workers on Saadiyat Island, Abu Dhabi’ available at <[https://www.hrw.org/sites/default/files/reports/uae0509webwcover\\_4.pdf](https://www.hrw.org/sites/default/files/reports/uae0509webwcover_4.pdf)> accessed 18 August 2017; HRW (2012) ‘The Island of Happiness Revisited’ available at <[http://www.hrw.org/sites/default/files/reports/uae0312webwcover\\_0.pdf](http://www.hrw.org/sites/default/files/reports/uae0312webwcover_0.pdf)> accessed 18 August 2017; HRW (2007) ‘The UAE’s Draft Labor Law: Human Rights Watch’s Comments and Recommendations’ available at <<https://www.hrw.org/legacy/backgrounders/mena/uae0307/uae0307web.pdf>> accessed 18 August 2017; HRW (2007b) ‘Exported and Exposed: Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates’ available at <<https://www.hrw.org/sites/default/files/reports/srilanka1107webwcover.pdf>> accessed 18 August 2017; ITUC (2011) ‘Hidden faces of the Gulf Miracle: Behind the gleaming cities of Doha (Qatar) and Dubai (UAE), stories of migrant workers with few rights and inhuman living conditions’ Union View #21, available at <[https://www.ituc-csi.org/IMG/pdf/V5\\_QatarEN\\_final.pdf](https://www.ituc-csi.org/IMG/pdf/V5_QatarEN_final.pdf)> accessed 18 August 2017; ITUC (2014) ‘Facilitating Exploitation: A review of Labour Laws for migrant domestic workers in Gulf Cooperation Council Countries’ available at <[https://www.ituc-csi.org/IMG/pdf/gcc\\_legal\\_and\\_policy\\_brief\\_domestic\\_workers\\_final\\_text\\_clean\\_282\\_29.pdf](https://www.ituc-csi.org/IMG/pdf/gcc_legal_and_policy_brief_domestic_workers_final_text_clean_282_29.pdf)> accessed 18 August 2017

<sup>62</sup> Other main laws that amend the original labour law are: Federal Law No. 24/1981 dated 07/11/1981; Federal Law No. 15/1985 dated 15/12/1985; Federal Law No. 12/1986 dated 29/10/1986; Federal Law No. 14/1999 dated 17/10/1999; Federal Decree Law No. 08/2007 dated 13/11/2007; the ministerial resolutions are numerous and are issued frequently.

subscribed to and it forms a tradition of how the UAE responds to internal issues and external pressure. Due to the manner in which the UAE's labour law is managed and continually amended through its accompanying documents, the following sections will therefore examine the law itself, along with the relevant ministerial order or decree pertaining to the intended area of labour protection.

The initial chapter of the labour law provides general definitions and general provisions.<sup>63</sup> Significantly, according to Article 1 of the Labour Law, the provisions therein apply to 'any labourer' working within the UAE.<sup>64</sup> However, Article 3 makes certain exceptions for certain groups of people.<sup>65</sup> These include (1) officials and staff employed by the federal government at all levels; (2) members of the armed forces, police, and security services; (3) domestic workers; (4) agricultural workers,<sup>66</sup> and persons engaged in animal husbandry. This omission from the intended protection granted by legislation to certain groups of people contravenes international, regional, and theological principles on all fronts.

The language adopted by international law in relation to labour rights places an obligation on states to protect, recognise, and guarantee them universally by using terminology such as 'all workers', 'everyone', 'every person', and 'all persons', etc. Similarly, the same language is adopted within the various culturally relative, regional human rights instruments such as the widely ratified ACHR 2004 and the widely approved Islamically orthodox CDHRI 1994. If taken as a cultural benchmark, the CDHRI 1994 states the same principles of universality and places obligations upon the state to guarantee the rights therein for 'everyone', as Article 13 succinctly states:

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<sup>63</sup> UAE Labour Law Articles 1-8

<sup>64</sup> UAE Labour Law Article 1

<sup>65</sup> UAE Labour Law Article 72

<sup>66</sup> The agricultural worker exemption does not include persons who are employed in corporations which process agricultural products and/or those who are permanently engaged in the operation or repair of machines required for agriculture

**Work is a right guaranteed by the State and the Society for each person with capability to work. Everyone shall be free to choose the work that suits him best and which serves his interests as well as those of the society. The employee shall have the right to enjoy safety and security as well as all other social guarantees. He may not be assigned work beyond his capacity nor shall he be subjected to compulsion or exploited or harmed in any way. He shall be entitled — without any discrimination between males and females — to fair wages for his work without delay, as well as to the holidays, allowances and promotions which he deserves. On his part, he shall be required to be dedicated and meticulous in his work. Should workers and employers disagree on any matter, the State shall intervene to settle the dispute and have the grievances redressed, the rights confirmed and justice enforced without bias.**

In relation to the exceptions made within the UAE's law, a major area of concern not only regionally but internationally is related to that of the latter two groups and in particular domestic workers, where the workforce is essentially made up of migrant workers. Furthermore, the perception both regionally and even internationally is that domestic workers are not usually recognised as being 'average workers' due to the fact they work within the realms of private domestic home environments.<sup>67</sup> Thus, not only is this an issue within the GCC, it is very apparent on a global scale.

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<sup>67</sup> ILO (2013) 'Domestic workers across the world: Global and regional statistics and the extent of legal protection' (ILO, Geneva) available at <[http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_173363.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_173363.pdf)> accessed 18 August 2017; HRW (2014) 'Hidden Away: Abuses against Migrant Domestic Workers in the UK' available at <<https://www.hrw.org/report/2014/03/30/hidden-away/abuses-against-migrant-domestic-workers-uk>> accessed 10 August 2017; Boris, E., Herbst Lewis, C. (2006) 'Caregiving and wage-earning: A historical perspective on work and family' in *The work and family handbook: Multi-disciplinary perspectives and approaches* edited by Marcie Pitt-Catsoupes, Ellen Ernst Kossek and Stephen Sweet (Lawrence Erlbaum Associates, Mahwah, New Jersey) 73-97; Tomei, Manuela (2011) 'Decent work for domestic workers: Reflections on recent approaches to tackle informality' *Canadian Journal of Women and the*



The other main exception is that of staff employed by the federal government and members of the armed forces, police, and security services; however, in terms of workforce demographics, these are saturated by nationals.<sup>68</sup> Although they are not covered by the labour law, they are subject to Civil Service Law, overseen by the Federal Authority for Government Human Resources.<sup>69</sup> In terms of working conditions, there are clear differences as the relative salaries and working conditions are far superior to those of the vast majority of workers in the private sector. This equates to the ruling elites throughout Gulf showing favour to their citizens by distributing their oil wealth amongst the unsustainable, saturated public sector.<sup>70</sup> This has resulted in systemic issues by creating demographic imbalances amongst

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Law (23)1, 185-211 available at <<http://staging.ilo.org/public/libdoc/nonigo/2011/468893.pdf>> accessed 18 August 2017; Blackett, Adelle (1998) 'Making domestic work visible: The case for specific regulation' (ILO Geneva) [https://www.mcgill.ca/law/files/law/adelle\\_blackett\\_specific\\_regulation\\_98b09\\_500\\_engl.pdf](https://www.mcgill.ca/law/files/law/adelle_blackett_specific_regulation_98b09_500_engl.pdf)> accessed 18 August 2017; Budlender, Debbie (2011) 'Measuring the economic and social value of domestic work: Conceptual and methodological framework' Domestic Work Policy Brief 3 (ILO, Geneva) available at <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_156071.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_156071.pdf)> accessed 18 August 2017; Rodriguez, Encarnacion G. (2007) 'The 'hidden side' of the new economy: On transnational migration, domestic work and unprecedented intimacy' *Frontiers* (28)3, 60-83, available at < <https://caringlabor.wordpress.com/2010/11/26/encarnacion-gutierrez-rodriguez-the-hidden-side-of-the-new-economy-on-transnational-migration-domestic-work-and-unprecedented-intimacy/>> accessed 18 August 2017; Fargues, Philippe. (2006) 'International migration in the Arab region: Trends and Policies' UN expert group meeting on international migration and development in the Arab region, Population Division, Department of Economic and Social Affairs, UN Secretariat, Beirut, 15-17 May 2006, available at <[http://www.un.org/esa/population/meetings/EGM\\_Ittmig\\_Arab/P09\\_Fargues.pdf](http://www.un.org/esa/population/meetings/EGM_Ittmig_Arab/P09_Fargues.pdf)> accessed 18 August 2018; Kapiszewski, Andrzej (n 22)

<sup>68</sup> Godwin, Stewart (2006) 'Education and Emiratization: a case study of the United Arab Emirates' *The Electronic Journal of Information Systems in Developing Countries* (27)1, 1-14; Forstenlechner, Ingo (2009) 'Workforce localization in emerging Gulf economies: the need to fine-tune HRM' *Personnel Review* (39)1, 135-152; Mellahi, Kamel (2007) 'The effect of regulations on HRM: private sector firms in Saudi Arabia' *The International Journal of Human Resource Management* (18)1, 85-99

<sup>69</sup> Employees of governmental or semi-governmental organisations or government companies (termed 'public Entity' or 'Public Entities') may be subject to the UAE Labour Law or the appropriate Civil Service Law (either Federal or Emirate level). In practice the position in respect of the applicable employment law for such entities can often be unclear. However, at federal level if the law establishing a government company fails to state that the company is to be considered a public entity, then it is likely that the UAE Labour Law will apply. This is especially so where the law states that the company is to be managed on a commercial and investment basis. In the Emirate of Abu Dhabi, the law applicable for employees of Public Entities is the Civil Service Law unless (i) the founding decree of the government company defines it as public or (ii) the Executive Council issues a resolution granting an exemption. See El Tahir, Hassan (2013) 'The law is applicable to employees of government authorities & companies in the UAE' *Law Update Al Tamimi & Co*, available at <<http://www.tamimi.com/en/magazine/law-update/section-5/october-3/the-law-applicable-to-employees-of-government-authorities-companies-in-the-uae.html>> accessed 18 August 2017, See FAHR Legislation and Guides available at <<https://www.fahr.gov.ae/Portal/en/legislations-and-guides/the-law/human-resources-law.aspx>> accessed 18 August 2017

<sup>70</sup> El-Katiri, Laura, Fattouh, Bassam and Segal, Paul (2011) 'Anatomy of an oil-based welfare state: Rent distribution in Kuwait' *Kuwait Programme on Development, Governance and Globalisation in the Gulf States*, LSE Global Governance, available at <<http://www.lse.ac.uk/middleEastCentre/kuwait/documents/Fattouh.pdf>>

nationals, which has led to problems such as high youth unemployment; the private sector having negative perceptions of nationals in terms of productivity; unrealistic aspirations and expectations of nationals when entering the labour market.<sup>71</sup> It is not the intention of this thesis to explore this phenomenon but it is, however, certainly noteworthy, particularly as the study is focused on employment issues.

In the UAE, as with other regional jurisdictions, they are unable to access mainstream services at the MHRE or the mediation/conciliation mechanisms for dispute resolution like other workers due to their exemption from labour laws.<sup>72</sup> Domestic worker issues are to be referred to the Ministry of Interior as they are regulated by the sponsorship system, or, in serious cases of abuse, they should turn to the police directly (also part of the Ministry of Interior).<sup>73</sup> In summary, migrant domestic workers, who are mainly women, face many barriers in seeking justice and thus often abscond or do nothing in fear of reparations.<sup>74</sup> Furthermore, while any worker may seek redress through the courts system, this process can place an untenable financial burden on those in lower income brackets and is therefore not a viable means for justice.<sup>75</sup>

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accessed 19 August 2017; Ulrichsen, Kritian Coates (2015) *Insecure Gulf: The End of Certainty and the Transition to the Post-Oil Era* (Oxford University Press) 85-108

<sup>71</sup> Al Azri, Sultan (2010) *Unemployed Youth in the UAE: Personal Perceptions* (Diane Publishing, International Council on Seciryty and Development UAE) 13-18

<sup>72</sup> HRW (2010 n 61)

<sup>73</sup> HRW (2014) "'I Already Bought You" Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates' available at <<https://www.hrw.org/report/2014/10/22/i-already-bought-you/abuse-and-exploitation-female-migrant-domestic-workers-united>> accessed 19 August 2017; UAE Ministry of Interior currently oversees domestic worker issues however this is under review see MHRE website, available at <<https://government.ae/en/information-and-services/jobs/employment-laws-and-regulations/domestic-workers>> accessed 19 August 2017

<sup>74</sup> Vlieger, Antoinette (2012) *Domestic Workers in Saudi Arabia and the Emirates: a socio-legal study on conflicts* (Quid Pro Books, New Orleans, Louisiana, USA) Chapter 8; HRW (2007b n 61)

<sup>75</sup> McLaurin, James R. (2008) 'Labor Law in the United Arab Emirates: A review and recommendations' Allied Academies International Conference Reno 2008, Proceedings of the Academy of Legal, Ethical and Regulatory Issues 12(2)

#### 4.1.6 Non-Discrimination in the UAE

In light of what has been discussed above regarding the explicit exclusion of certain groups of workers, it is essential to analyse what is present within the UAE that is pertinent to the core human rights principle of non-discrimination. In terms of the UAE's Labour Law, there are not any anti-discrimination provisions that explicitly protect characteristics such as national origin, ethnicity, status, etc. This is a fundamental flaw both in principle and in relation to international norms. Despite the rich diversity of the UAE's workforce, the Labour Law merely makes mention to the 'worker' or 'employee', without making any distinction. However, a new piece of legislation was enacted recently, Federal Decree Law No. 2 of 2015 On Combating Discrimination and Hatred.<sup>76</sup> Primarily it is an extension to the existing Federal Law No. 3 of 1987 On the Issuance of the Penal Code, in particular the section titled 'Crimes affecting religious doctrines and rites'.<sup>77</sup> Although this particular piece of legislation aims to combat religious contempt or intolerance, and emphasises the importance of preventing religious extremism, it introduces a definition of discrimination. It defines it as 'any distinction, restriction, exclusion or preference amongst individuals or groups based on the ground of religion, creed, doctrine, sect, caste, race and colour or ethnic origin'. However, Article 20 specifically excludes from discrimination any advantage, preference, or benefit conferred on women, children, disabled persons, the elderly, or others, prescribed by any other UAE law. In terms of its application in an employment setting, the law is somewhat relevant due to the way it has been formulated. This is because of the broad language used and so, in essence, it ensures that it encompasses a relatively wide net for dealing with discriminatory conduct.<sup>78</sup>

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<sup>76</sup> Issued on 15/7/2015

<sup>77</sup> UAE Federal Law No. 3 of 1987 On the Issuance of the Penal Code, Part Five, Articles 312-326

<sup>78</sup> UAE Federal Law No. 2, Article 6 **Any person, who commits any act of discrimination of any form by any means of expression or by any other means, shall be sentenced to imprisonment for a period not less than five years, and by a fine not less than five hundred thousand dirhams and not exceeding one million dirhams or either one of these two penalties.**

Article 17 is particularly relevant to employers, as it essentially requires companies in the UAE to carry out due diligence in order to ensure that appropriate internal policies and procedures are established and that existing policies are updated accordingly. The provision places a requisite on employers to raise employees' awareness and understanding of the type of conduct that could now constitute a criminal offence. The new law will not, however, interfere or obstruct other UAE legislation that affords specific (albeit limited) protection for particular groups of society. This also means that the preferential provisions within the UAE's Labour Law that grant particular legal rights to UAE nationals will not be affected, meaning that employers are required to prioritise UAE nationals over all other nationalities when recruiting in the UAE. Accordingly, it would not be possible for an employee to bring a discrimination claim against their employer pursuant to the Labour Law in circumstances where one of the employee's colleagues receives more favourable treatment and/or specific protection in accordance with the Labour Law.

The new legislation is a significant development within the UAE as it includes a definition of discrimination and also outlines the penalties for breaches in the law: fines range between AED 250,000 (\$68,000 USD) to AED 2,000,000 (\$545,000 USD) and minimum prison sentences of five or seven years depending on the offence. In comparison, these are significantly higher than the fines related to any individual breaches of the Labour Law. Although the new law is aimed at encouraging tolerance and acceptance in UAE society irrespective of a person's religion, belief, sect, faith, creed, race, colour, or ethnic group, there is a strong emphasis on anti-extremism, granting the UAE's authorities powers to punish offences in that vein. With regard to migrant workers or indeed citizens in employment, there are no specific provisions related to them (other than Article 17), nor to any of the specific labour-related issues they experience.

In the UAE there are provisions for affirmative positive action measures, or workforce nationalisation initiatives. In seeking to encourage the employment of UAE nationals in the private sector, the government applied a general duty on employers to employ UAE citizens over other nationalities, as Article 10 of the Labour Law outlines that in the event of non-availability of national workers, preference shall be given firstly to nationals of an Arab country before workers of other nationalities. This is supported through ICESCR Article 2(3), where developing countries can in reality give priority to their nationals with regard to the guarantee of economic rights. Therefore, upon examination, the UAE's Labour Law affirms the rights of nationals over non-nationals in relation to access to work and incentivising their employment.

In summary, the Labour Law fails to explicitly protect the labour rights of individuals or groups through inclusive language that defines different characteristics such as ethnicity, national origin, and migration status, etc., as found in various international and regional laws. In terms of Islamic principles of non-discrimination, a baseline standard derived from the Qur'an and the *Sunnah* is that 'work is work' regardless of who undertakes it, the only caveat being that it is permissible work (not something that promotes evil or involves anything that opposes the *Shari'ah*). The *Shari'ah* places responsibility and accountability on the employer to fulfil contractual obligations and also makes the governing authority/state responsible and accountable for overseeing the protection, payment, and conditions of its workers.

#### **4.1.7 UAE Labour Law: Contracts of Employment**

Based on what the *Shari'ah* stipulates regarding contractual obligations and the religious obligation to fulfil them,<sup>79</sup> it is therefore logical to assess how this is addressed in the UAE. Migrant workers seeking to live and work in the UAE have two initial aspects that need to be

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<sup>79</sup> Qur'an Al Baqara 2:282; Abu Dawood 3594

completed prior to commencing their respective vocations: (1) sign an official offer letter, in a standardised form prescribed by the MHRE; (2) an official employment contract, again using a standardised format. Both documents form a key part of the sponsorship application process, i.e. for the issuance of a UAE work permit and for residency. The labour contract is the fundamental document that outlines the legal relationship between an employer and an employee, and is recognised within any doctrine of law. The UAE's Labour Law requires mention of wages or remuneration payable; date of the employment contract and the date of the commencement of contract; whether the contract is limited or unlimited; nature of the work; and the location of the employment.<sup>80</sup> Employers will also often have a supplementary contract, which tends to be more comprehensive as the standardised contracts only contain the information required by the labour law, in which case the conditions most favourable to the employee are given precedence.<sup>81</sup>

Up until recently the labour contracts were of two distinct types: limited/fixed term and unlimited term.<sup>82</sup> However, the issuance of Ministerial Decrees 764, 765, and 766 in January 2016 have made changes to the standardised employment contract in order to help bring greater transparency and tighter monitoring. This has been enacted to ensure that the relationship between an employer and employee is strictly voluntary and that there is no coercion or force involved. As a result of the ministerial decrees, the contracts are now of three prescribed types: (1) unlimited term; (2) the initial term of a of a limited term contract; (3) and for a renewed limited term. In relation to the latter two limited term contracts, the maximum duration of each limited term has been reduced from four years to two years (although a limited term contract may still be renewed for further periods). Furthermore, the

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<sup>80</sup> UAE Labour Law Articles 35-41, the new contracts contain a supplementary Annex that also contain the rights of employer and the employee.

<sup>81</sup> UAE Labour Law Article 7

<sup>82</sup> UAE Labour Law Article 38

recent changes in the employment contract have also affected the hiring procedure, namely that the employer needs to obtain an electronic standardised 'offer letter' from the MHRE (should an offer of employment be made).<sup>83</sup> This document serves to act as a preliminary reference point of the terms and conditions as it also features the same information found in the standard contract. Evidently, the changes have been made to ensure that work permit applications are able to be processed in a limited time frame and that they are drafted better. Essentially, this has an impact in terms of resolving migrant worker issues, as any complaint or error or discrepancy could be remedied more efficiently and easily.

Termination of employment is a particularly contentious issue within the UAE due to the frequency of instances and how workers have been subjected to manipulation by unscrupulous employers. In certain scenarios where migrant workers have sought to improve their situation by leaving a bad employer in order to find alternative employment, the original employer (the sponsor/*kafeel*) could essentially cancel their work permits and residency visa by filing an 'absconding' (absent) report with the Labour Office.<sup>84</sup> Another contentious issue regarding contract termination is related to severance pay and entitlements, and as a result disputes are borne thereof when they are not honoured. The UAE Labour Law sets out conditions in which contracts of employment may be terminated by either party. Article 113 outlines the circumstances in which an employment contract may be terminated; these are (1) if the parties mutually agree the termination, provided that the employee consents to this in writing; (2) if the contract term reaches an end point and where it has not been extended; (3) by one of the parties, if, where the contract is for an unspecified term, they have a valid reason for termination, provided that the provisions of the Labour Law are upheld.

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<sup>83</sup> Ministerial Decrees 764 2016

<sup>84</sup> HRW (2009 n 61)

Article 117 provides that the employer or the employee who wishes to terminate a contract should give the other party notice in writing at least 30 days prior to termination. The employment period will continue to be valid throughout the notice period and thus the employee is entitled to full pay. If an employer fails to give the employee notice of the termination, or reduces the period of notice, the employer will have to pay the employee compensation equal to the employee's remuneration in respect of the entire period of notice or the time by which it was reduced, even where no prejudice has been sustained by the employee.<sup>85</sup> Having said that, there are specific circumstances where an employee loses the entitlement to notice and to statutory severance pay under Article 120 of the Labour Law. This provision outlines specific 'causes' for justifying dismissals under such circumstances where the worker assumes false identity or forges documentation; is dismissed during the probation period or reaches the contract expiration date; causes loss or detriment to their employer; violates health and safety protocols; fails to perform basic duties outlined contractually; divulges industrial secrets of the employer; is sentenced for an offence involving honour, honesty, or public morals by a competent court; is found drunk or intoxicated at work; assaults a co-worker or colleague; is absent without valid reason.

Aside from the above reasons, and those relating to justifiable business restructuring and redundancy, an employer may end an employment contract by serving the normal notice of termination (for which there is not a definitive list of permitted reasons). However, jurists have formed the opinion that Article 106(2) of the UAE Civil Transactions Law of 1985 could be used as a guideline.<sup>86</sup> In this regard, Article 106(2) provides that 'the exercise of a right shall be unlawful: (a) if there is an intentional infringement (of another's rights); (b) if the interests

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<sup>85</sup> UAE Labour Law Article 119, it is also forbidden under the provisions of the UAE Labour Law to dismiss an employee or serve notice of termination of the employment contract while the employee is on leave.

<sup>86</sup> Maalouli, Tony (2002) 'Rights of Women at Work in the UAE' Presentation at the Dubai Quality Group, Professional Women's Subgroup 1st Anniversary February 2002



which such exercise of right is designed to bring about are contrary to the rules of the Islamic *Shari'ah*, the law, public order, or morals; (c) if the interests desired are disproportionate to the harm that will be suffered by others; or (d) if it exceeds the bounds of usage and custom'.

However, the Labour Law gives an employee the right to claim arbitrary termination upon being terminated for a reason unconnected to work,<sup>87</sup> the implication being that an employer should therefore only have grounds to terminate employment for poor performance or misconduct. An employee may terminate the contract of employment without notice, as per Article 121 in either of the following two cases: (1) if the employer fails to honour his obligations towards the worker, as provided for in the contract or in this law, for instance, if the employer does not pay the salary on time; and (2) if the employee is assaulted by the employer or the employer's legal representative. In these scenarios, it entitles the employee to the right to seek compensation through raising a complaint through the dispute resolution systems at the MHRE Labour Department (see section 5.2.1 for actual process).<sup>88</sup>

Recently, changes have also been made in relation to the rules for the termination of employment for both unlimited and limited term contracts by the employer. For unlimited term contracts, Decree 765 imposes a maximum notice period of three months, whereas termination of limited term contracts issued to new employees remains the same as per the UAE Labour Law,<sup>89</sup> which stipulates that the employee is entitled to compensation (three months' remuneration or the remaining period of contract, whichever is shorter). The duration of limited contracts for new employees has been amended by the same decree, reduced down to two years from four years.<sup>90</sup> If an employee is engaged on a renewed limited term contract that does not contain a notice period, a notice period of three months will

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<sup>87</sup> UAE Labour Law Article 122

<sup>88</sup> UAE Labour Law Article 123

<sup>89</sup> UAE Labour Law Article 115

<sup>90</sup> UAE Labour Law Article 38

automatically apply. Likewise, if no compensation has been contractually agreed, the provisions set out in the UAE Labour Law relating to early termination compensation will apply. Notably, ministerial decrees do not formally amend the UAE Labour Law so the provisions set out above relating to early termination compensation still apply. Migrant workers are required to notify a month<sup>91</sup> before their resignation to the MHRE should they intend on leaving their job and/or to change employer, both of which would entail a visa transfer. Another significant step is that for the first time migrant workers have been empowered to seek work permits independently if their employers become unable or refuse to meet their legal and contractual obligations. This has certainly increased the mobility of migrant workers, and helps them to some extent to enjoy the fundamental right to choose and safeguard their work,<sup>92</sup> rather than being rendered as undocumented workers.

Severance pay and benefits is another area where migrant workers are marginalised. This includes pay in lieu of accrued but unused holiday entitlement, and other end-of-service gratuities or other contractual sums. This is outlined in the Labour Law itself, where the methods are given for calculating the severance pay entitlement based on the last basic wage, length of work, and the type of contract. The Labour Law also requires employers to repatriate migrant workers upon the termination of their employment.<sup>93</sup> In real terms, this obligation is placed on the employer to purchase the travel ticket to return their employee to their original country (subject to any enhanced benefits or arrangements that are contractually agreed). This obligation is passed to a new employer should the migrant worker take up alternative employment. Historically, when a migrant worker sought to transfer to a new job in the UAE, upon cancellation of their work permit with their previous employer the MHRE would impose

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<sup>91</sup> UAE Labour Law Article 117

<sup>92</sup> ICESCR Article 6 'the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right'.

<sup>93</sup> UAE Labour Law Article 131

a six-month ban on the worker applying for a new work permit, unless the previous employer provided a 'No Objection Certificate'; otherwise, the employee would be required to pay a fee. This odd ruling on imposing an automatic ban was no longer applied from 1 January 2011, provided that the employment contract is terminated by mutual consent or in accordance with the terms of the contract (i.e. requisite notice is given) and the employee has a minimum level of qualifications, or has at least two years' service with his previous employer.<sup>94</sup>

#### **4.1.8 UAE Labour Law: Wage Protection**

Wages is one of the most fundamental conditions of work and forms a major subject for collective bargaining. 'Remuneration', and 'Basic Remuneration' is covered under one of the definitions outlined in Article 1 and also in a dedicated 'Section 4: Remuneration' (Articles 55-64) within the Labour Law. The provisions are general and inclusive for providing protections for the 'employee'. They place responsibility upon the 'employer' to pay their employees according to conditions outlined within the employment contract.<sup>95</sup> The language in the law does not refer to terminology used in the ICESCR<sup>96</sup> or other relevant ILO conventions,<sup>97</sup> relating to fair or equal remuneration; rather, it specifies the entitlement of a wage. The Labour Law states that the employment contract should determine remuneration no less than the minimum salary prescribed for similar work.<sup>98</sup>

Historically, international laws, standards, and guidelines set out precedents for promoting policies on salary that ensure not only a 'minimum' but a 'just' wage, sometimes termed a

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<sup>94</sup> Cabinet Resolution and one of the Ministerial Resolutions (No. 1187 of 2010)

<sup>95</sup> Provisions within the labour law and the applicable ministerial decrees related to the 'contract' will be covered in due course.

<sup>96</sup> ICESCR Article 7(a) and ILO C095 Article 4(a)

<sup>97</sup> C095 - The Protection of Wages Convention, 1949 (No. 95), entry into force on 24 September 1952; ICESCR Article 7

<sup>98</sup> UAE Labour Law Article 48

‘living’ wage.<sup>99</sup> In contrast to this promotion of the requirement of fixing a minimum wage, the UAE does not have one. Moreover, the Labour Law stipulates that it requires the Ministry of Labour (now called the MHRE) to set a minimum wage that meets an employee’s basic needs and to secure a means of living. Article 63:

**The minimum salary and the cost of living allowances payable generally or with respect to a certain area or a particular profession, shall be fixed by a Federal Decree issued pursuant to proposal made by the Minister of Labour and Social Affairs and approved by the Council of Ministers. The Minister’s proposal shall be made either for description or reconsideration of the minimum pay after consulting with the competent authorities and trade agencies if any for both employers and employees based on studies and schedules of the cost of living price fluctuations prepared by concerned authorities in the State. Such minimum pay shall in all cases be enough for the employee’s basic needs and to secure means of living.**

Despite the explicit provision for the MHRE to set a minimum wage, it has never been put into practice; rather, it has arguably been ignored. Moreover, the HRW has highlighted low wages as being one of the primary reasons for grievances, particularly amongst the UAE’s migrant construction workers.<sup>100</sup> In the UAE there are recommendations as guidelines for salary in accordance to educational level and profession. These are, however, not compulsory

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<sup>99</sup> ILO (2017) ‘The International Labour Organization and the Living Wage: A Historical Perspective / Emmanuel Reynaud; International Labour Office, Inclusive Labour Markets, Labour Relations and Working Conditions Branch’, Geneva: ILO, 2017 available at < [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/--travail/documents/publication/wcms\\_557250.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/--travail/documents/publication/wcms_557250.pdf)> accessed 14 July, 2017; The Protection of Wages Convention, 1949 (No. 95), entry in force on 24 September 1952. As at 13 December 2002, it has received: C131 - Minimum Wage Fixing Convention, 1970 (No. 131) Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries (Entry into force on 29 April 1972)

<sup>100</sup> HRW (2006 n 61); Some unofficial third party sources have suggested it is \$165USD, however this has not been officially gazetted.

measures; rather, they state that certain companies rated by the MHRE, under Cabinet Resolution No.26 of 2010, as 'First Class' organisations.<sup>101</sup> According to the resolution, these organisations must employ 20% of their workforce within the following recommended wage bands, which are based according to skill level:

- Category 1 / Skill Level 1 – University degree or higher: AED 12,000 (\$3300USD)
- Category 2 / Skill Level 2 – Post secondary education certificate or diploma: AED 7,000 (\$1900USD)
- Category 3 / Skill Level 3 – Secondary education certificate: AED 5,000 (\$1350USD)

These recommendations are designed to encourage compliance by employers to retain the status and also to promote the retention of a more educated/skilled workforce. Unfortunately, these categories overlook the most vulnerable types of migrant workers (Categories 4 and 5), i.e. those carrying out unskilled work,<sup>102</sup> and so further undermine the need to set a minimum wage as per Article 63. The classification bands are also subject to Emiratisation quotas, i.e. having UAE nationals in employment. For example, First Class organisations need to have their Emiratisation quota as 15% of the total workforce at each of the aforementioned skill levels. Furthermore, classification sub-categories exist depending on how many people they employ from a particular country, i.e. the higher the proportion of workers from a particular country, the lower the classification of the company. The enactment of this resolution places at the very least a tension on non-discrimination principles. Although it is somewhat reasonable to put into practice initiatives for promoting nationals or even under-represented or disadvantaged groups into certain sectors of employment, this penalty/classification system could, however, lead to discriminatory practices in recruitment.

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<sup>101</sup> First Class organisations are subject to reduced fees and less restrictive bank guarantee requirements. They also need to have their Emiratisation quota 15% of the total workers at each of the aforementioned skill levels.

<sup>102</sup> General labourers, housekeepers and domestic workers, construction labourers, helpers, cleaners etc.

The Labour Law does have other basic provisions whereby the employees are either to be paid at least once a month or at least every two weeks, depending on the type of contract. Article 55 states that remuneration shall be paid on a working day in the national currency. If a shortfall in wage payments to an employee occurs, the employee has the right to raise a complaint with the MHRE. Furthermore, an employer failing to pay employees for over 60 days is also liable to pay a fine of between AED 5,000 and AED 50,000, and accumulate penalty points against the business's file or registration with the MHRE.

Market practice divides remuneration into two headings: basic salary and allowances on the basis of a 60:40 ratio.<sup>103</sup> The basic allowances commonly constitute housing and transport, with senior employees also receiving allowances for their children's education and club memberships. Bearing that in mind, remuneration packages are classed as 'accompanied' or 'unaccompanied' on the basis of whether or not the employee is accompanied by a spouse and or children.<sup>104</sup>

According to Article 13, UAE employers are tasked with registering all migrant employees, including those who are potential employees with the MHRE, and the migrant worker is only permitted to work once a standard and formal contract has been signed. This in essence leads to the worker enjoying service benefits, etc. Additionally, at this initial stage the employer is required to submit a financial guarantee to the MHRE, which is meant to secure the timely payment of wages for private sector workers — particularly those who undertake manual work. Specifically, Ministerial Decree 788 of 2009 on Protection of Wages mandated that employers registered with the MHRE are to subscribe to the Wage Protection System

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<sup>103</sup> Kalsi, Mandeep (2015) 'Remuneration in the UAE' Al Tamimi & Co, Practical Law UK Articles 6-617-5566, available at < [https://uk.practicallaw.thomsonreuters.com/6-617-5566?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/6-617-5566?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1) > accessed 11 June 2017

<sup>104</sup> Kalsi, Mandeep (n 103)

(WPS).<sup>105</sup> This government coordinated system is meant to ensure that registered employers pay their employees via third party banks (specifically authorised to provide the service) instead of directly making payment to the employee. Further to this, or perhaps due to non-conformance, Ministerial Decree 739 of 2016 was issued. It reinforced the existing requirement for adhering to the WPS; however, it introduced new penalties against employers who fail to pay their employees' wages on time or employers who refuse to pay their employees' wages at all. Despite the initiatives taken by the UAE, wage/salary-related issues such as non-payment remain categorically one of the most common types of complaint in the UAE made by migrant workers.<sup>106</sup>

#### **4.1.8 Domestic Workers in the UAE**

As mentioned previously, an exhaustive analysis of domestic workers and the issues they face within the UAE is outside the scope of this thesis however in light of recent developments it worthwhile to provide some context in that regard.

In September 2017, High Highness Sheikh Khalifa bin Zayed Al Nahyan, the President of the UAE approved Federal Law No. 10 of 2017 on support service workers, more commonly referred as the Domestic Labour Law. Prior to the passing of this law, the matters of domestic workers were under the jurisdiction of the Ministry of Interior, which practically meant that issues were often dealt with by the police, however, now they are logically under the purview of the MHRE.

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<sup>105</sup> Ministerial Resolution No. (788) for 2009 on Wage Protection, available at <<http://www.mohre.gov.ae/handlers/download.ashx?YXNzZXQ9NDg5>> accessed 25 August 2017

<sup>106</sup> HRW (2015) 'UAE: A Move to Protect Migrant Workers: 'Contract Fraud' Measure Can Deter Forced Labor' available at <https://www.hrw.org/news/2015/11/01/uae-move-protect-migrant-workers> accessed 13 July 2016, within the report Joe Stork, Deputy Middle East Director said, 'A major complaint of migrant workers in the UAE is usually that they're not being paid what they were promised.'

The new law applies to nineteen service work occupations under the banner of domestic work which include housemaids, domestic labourers, housekeepers private teachers, babysitters and private healthcare nurses.<sup>107</sup> The law regulates four key areas in the protection of domestic workers: (1 )contracts; (2) rights and privileges; (3) prohibitions and; (4) recruitment agencies. The forty-one article law establishes the principle of informed consent, ensuring that workers are aware of the terms of the contract, nature of work, the workplace, the salary/remuneration and the period of daily and weekly rest as set out by the executive regulations,<sup>108</sup> which along with the enforcement mechanisms are still to be published. The law includes provisions on tariffs, recruitment and employment offices, labour contracts, employer and employee obligations, inspection, penalties, holidays, end of service indemnity, termination of contract and settlement of disputes.

As per the 'draft'<sup>109</sup> Domestic Labour Law, domestic workers are entitled to: payment of wages, as set out in the standard contract, within 10 days from the day they are due; 1 day of paid rest per week; 12 hours of rest per day, including 8 hours consecutive rest; 30 days paid vacation per year; medical insurance provided by the employer; 30 days medical leave per year; a round trip ticket home every 2 years; a decent accommodation; decent meals at the employer's expense ;attire suitable for the job to be carried out, at the employer's expense; possession of their personal identification papers such as passports, IDs, etc. The law bans any kind of sexual harassment of workers, forced labour or human trafficking.

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<sup>107</sup> The full list of occupations: housemaid, private sailor, watchman and security guard, household shepherd, family chauffeur, household horse groomer, household falcon carer and trainer, domestic labourer, housekeeper, private coach, private teacher, babysitter, household farmer, private nurse, private PRO and private agriculture engineer.

<sup>108</sup> Still to be published as of 15 November 2017, refer details of the law at Khoja, Sara and Thomas, Sarit (2017) 'New rights for domestic workers in the GCC' Clyde & Co: Insight available at <<https://www.clydeco.com/insight/article/legal-rights-for-domestic-workers-in-the-gcc>> accessed 19 December 2017

<sup>109</sup> Official Portal of the UAE Government refers to the law as a 'draft'. It contains some overall details relating to the Domestic Worker Law however the full text of the law or its governing executive regulations have not been published, see <<https://government.ae/en/information-and-services/justice-safety-and-the-law/workers-safety-and-protection#passing-the-domestic-labour-law>> accessed 12 July 2018



In terms of dispute resolution, either the employer or the worker can refer a dispute to MHRE. The ministry is obligated to attempt to resolve the dispute amicably within a period of two weeks. If it is not resolution within two weeks, then the matter will be referred to a court. Furthermore, cases filed by workers are exempt from court fees at all stages of litigation and must be heard promptly.

HRW has recognised the step forward in adopting a much needed domestic worker law in the UAE however despite the advance it has been pulled-up on the fact that'

**Without strong enforcement mechanisms to accompany the law, it will be largely ineffective.<sup>110</sup>**

The fact that the full text of the law and the executive regulations have not been published, make it impossible to fully corroborate whether the extent of the protections are in line with international human rights law, standards and guidelines.

## **4.2 The Right to Organise & to Form Associations in the UAE**

The associations existing in the UAE are bound by the regulations of Federal Law No. 2 of 2008 In Respect of The National Societies and Associations of Public Welfare. These bodies include professional associations for teachers, jurists, engineers, medical professions, and social workers; however, they are not a viable means for lobbying rights for migrant workers nor are they truly independent, as they are under strict control of the UAE's government under the pretext of national security. Moreover, for such professional associations to gain recognition they need an approved Charter; 20 founding members, all of whom are required to be UAE

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<sup>110</sup> HRW (2017) 'UAE: Domestic Workers' Rights Bill A Step Forward: Enforcement Mechanisms Needed' available at <<https://www.hrw.org/news/2017/06/07/uae-domestic-workers-rights-bill-step-forward>> accessed 19 December 2019

citizens; and they also need to submit a request outlining the association's objectives in order to gain the permission from the MHRE to form.<sup>111</sup> In terms of affiliations to other international structures, permission also needs to be sought. Furthermore, the government also holds the power to dissolve and liquidate an association should it be deemed as being engaged in unlawful activity, i.e. anything that is not agreed upon as per the original objectives submitted to the Ministry. Reasons for such interventions are centred particularly on actions related to political activism.<sup>112</sup> Although migrant/foreign workers may join such associations they do not have the right to found their own organisation, to vote, or to be elected,<sup>113</sup> thus making it practically impossible to form any type of vehicle that could lobby for the protection of their rights.

As discussed in the previous chapters, the normative international standards related to the freedom of association form an integral part of both international law and also the regionally developed Arab Charter. Moreover, even the orthodox approach of the *Shari'ah* does not per se place any prevention on forming associations; rather, it places an obligation on people to act as a collective, in order to 'enjoin good and forbid evil';<sup>114</sup> 'conduct their affairs by mutual consultation';<sup>115</sup> and help to prevent oppression.<sup>116</sup> However, the right to organise, to form trade unions, collective association, workers' councils, and the right to collectively bargain are not permitted in the UAE despite international affiliation to the ILO. The UAE's Labour Law further stipulates the criminal nature of strike action, and permits the temporary suspension

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<sup>111</sup> UAE Federal Law No. 2 of 2008 In Respect of The National Societies and Associations of Public Welfare, Articles 2-5 available at <<http://www.icnl.org/research/library/files/United%20Arab%20Emirates/AssoclawUAE.pdf>> accessed 28 February 2017

<sup>112</sup> In reference to breaches of Article 16 of the law regulating associations the Social Affairs Minister, Mariam Mohammed Khalfan Al Roumi, issued two decrees on 21 April 2011, and 2 May 2011 to dissolve the elected board of directors of the Jurists and Teachers' Associations respectively and replace it with state appointees. HRW (2011) 'UAE: Civil Society Crackdown Widens Government Takes Over a Second Group's Board' available at <<https://www.hrw.org/news/2011/05/03/uae-civil-society-crackdown-widens>> accessed 01 March 2017

<sup>113</sup> UAE Federal Law No. 2 of 2008 In Respect of The National Societies and Associations of Public Welfare, Articles 3 and 6

<sup>114</sup> Qur'an At-Taubah 9:71

<sup>115</sup> Qur'an Ash-Shura 42:38

<sup>116</sup> Sahih al-Bukhari 2444

from work without pay should anyone partake in such activity.<sup>117</sup> Despite the illegality of strike action, there is a degree of press coverage and evidence of marginalised workers engaging in strikes, which predominantly leads to criminal charges and deportation.<sup>118</sup> However, there has been certain high profile instances where strikes have led to improved conditions despite initial repressions faced, such as in the case of Arabtec, a UAE-based construction firm. In this particular case in May 2013, thousands of migrant workers staged a mass walk-out over a pay dispute. Although reports differed in the number of workers who were repatriated/deported (depending on the source), 36,000 labourers received a 20% increase in their wage.<sup>119</sup>

#### **4.2.1 Employment Dispute Resolution in the UAE**

The vast majority of labour disputes lodged by workers in the UAE are those related to labour standards, which include non/under-payment of wages and unfair dismissal or contract termination (see inclusion of statistical data). In such scenarios the first action is essentially undertaken while at work, i.e. where an attempt is made to resolve a worker's conflict directly with the employer via the grievance policies and procedures in situ. However, in a case where a conflict or dispute cannot be remedied directly with the employer, it can be referred to the authority.<sup>120</sup> This is supported under Islam, as the authority (or those in a position of authority) is responsible for safeguarding the well-being of its subjects.<sup>121</sup> Thus, enforcement of the Labour Law in the UAE is the task of the MHRE; moreover, it is the principal avenue available

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<sup>117</sup> UAE Labour Law Article 112; UAE Federal Law No. 3 of 1987 On the Issuance of the Penal Code, Article 231

<sup>118</sup> HRW (2006) 'Building Towers, Cheating Workers Exploitation of Migrant Construction Workers in the United Arab Emirates' available at <<https://www.hrw.org/sites/default/files/reports/uae1106webwcover.pdf>>; also cited therein Sunita Menon, 'Captive workers escape from housing compound' Gulf News, March 27, 2006; 'Construction worker dies – third in fortnight' 7Days (Dubai), February 14, 2006; Wael Yousef, 'Workers protest to get dues of over nine years' Khaleej Times (Dubai), February 8, 2006; Diaa Hadid, 'Abandoned workers fear their plight will be ignored' Gulf News, March 27, 2006.

<sup>119</sup> McGinley, Shane (2013) 'UAE's Arabtec raises 36,000 labourer wages by 20%' Arabian Business, 30 September 2013, available at <<http://www.arabianbusiness.com/uae-s-arabtec-raises-36-000-labourer-wages-by-20--520756.html>> accessed 19 July 2016

<sup>120</sup> UAE Labour Law Article 6

<sup>121</sup> Sahih al-Bukhari 2409

to both employees and employers for resolving labour-related disputes. In such circumstances, both parties — employees and employers — are required to access the dispute resolution mechanisms at an MHRE Labour Office in the Emirate in which the employer's establishment is located.<sup>122</sup>

The approach taken by the MHRE and its administration is clearly authority driven, where primarily the Labour Law (including the other orders and decrees) establishes the manner in which conflict and disputes are dealt with. The laws and orders themselves often refer back to the Labour Law within the provisions of the text — again exemplifying the status the Labour Law is given. The law is in practice the highest authority and thus the mechanisms of dispute resolution based at the MHRE enable a model of realising it, including its limitations.

Article 6 of the Labour Law states,

**If the employer, the worker or any beneficiary thereof disputes any of the rights provided for any of them under this Law, he shall file an application to the competent Labour Department, which shall summon both parties and take whatever action it deems necessary to settle the dispute amicably.**

In terms of the substantive provisions related to the dispute resolution within the law it is limited to basic coverage, i.e. a few brief articles related to individual disputes and collective complaints. Individual complaints are given one article (Article 6), which outlines timescales related to the mediation/conciliation process. For collective disputes the provisions are slightly more detailed and are covered in 12 articles, which mainly focus on the practical steps of lodging a dispute and the manner in which various board personnel are to be formulated.

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<sup>122</sup> For those sectors regulated by other government authorities, the Immigration Department has a complaints commission as an alternative to the MHRE's complaints section.

However, the manner in which the UAE's Labour Law manifests in relation to the dispute resolution systems and processes has evolved somewhat, particularly as effective labour administration needs to take into consideration how best to operate in developing business climates and especially on economies that incorporate an increasingly more diverse labour force. These changes have incorporated telephone helplines, online portals, and better literature outlining rights and responsibilities. This is particularly important as historic evidence suggests private sector migrant workers, particularly those who were undertaking low-level jobs, were 'afraid to demand better treatment by filing complaints to the UAE Ministry of Labour (MHRE) or to the courts: they believed that they risked being fired and deported if they did so'.<sup>123</sup>

The UAE MHRE employs ADR mechanisms for both individual and collective disputes, which incorporate electronic information data systems. ADR principles are adopted by the UAE's MHRE in order to resolve the huge number of employment-related issues that occur (see subsequent sections for the actual figures relating to the numbers of disputes, etc.). There is parity between the UAE's systems for handling and resolving employment disputes with many other prevalent systems. This leads prudently to the research questions, which relate to how successful the processes actually are in terms of real contextual opinions. Moreover, the focus is on how actual disputes are managed and whether individuals are confident in being able to navigate UAE's dispute resolution systems.

From an evolutionary perspective, the international ADR systems that have been evaluated in the previous sections have developed administratively over many years and indeed generations. The UAE has undergone tremendous development since its inception as a sovereign state in 1972, which in real terms is a relatively short space of time; thus, it has not

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<sup>123</sup> HRW (2009 n 61)

had an opportunity to take a 'trial and error' approach spanning more significant periods of time. The administrative infrastructure and expertise was parachuted in from elsewhere as the 'tribal sheikdoms' did not have the skills or the knowledge in how to establish or formalise the systems needed to function in an international market. Furthermore, the demographics in the UAE are unique and unlike any Western economy, due to the huge numbers of migrant workers. That said, the complexity of the labour force poses issues in itself due to the sheer diversity in terms of financial, educational, cultural, and language issues. These are some of the major factors that give rise to the inherent obstacles faced in the UAE's employment sphere, in particular the process and operation of resolving disputes, some of which will be explored within the fieldwork questionnaire.

In the case of individual labour disputes, the complainant/plaintiff may submit a formal complaint to the Labour Department,<sup>124</sup> which will include enclosing a copy of the labour contract; an outline the summary of the facts of the issues; and any amounts that are due using an Arabic template (translations are done by an official translator, referred to as a *Tas'heel*). This then leads to the parties to the employment relationship being summoned in order to engage in a method of ADR. At this stage an assigned legal researcher will hear their arguments over a series of mediation/conciliation sessions. This mediation/conciliation process is required by law to make a recommendation for resolving the dispute within two weeks from the date of submitting the complaint.

In any dispute with an employee, whether before the mediation/conciliation services at the MHRE or the courts, both bodies will primarily refer to the MHRE labour contract and hence the regulations requiring their submission. Additionally, Article 7 of the Labour Law states that any supplementary contract is enforceable if the terms are more favourable to the employee.

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<sup>124</sup> UAE Labour Law Article 6

This highlights the importance the MHRE places upon the contract (as discussed) being the focal point of establishing the rights and infringements outlined in the employment dispute.

Should the parties fail to reach a resolution as recommended by the MHRE's legal researcher, the matter is referred to court for litigation.<sup>125</sup> This involves the MHRE issuing a summary of the facts and a memorandum together with its recommendation (in Arabic). Subsequent to the referral, and where each party submits written representations, the process of litigation involves a series of hearings. In terms of legal support, local advocates with the rights of representation in the UAE courts are allowed to represent each party, although employees are not obliged to be represented and can represent themselves. Local advocates must also have a specific power of attorney authorising the advocate to represent and act on behalf of the employer in relation to the particular labour dispute or claim.<sup>126</sup>

In all cases no claim under the provisions of the UAE Labour Law will be heard if brought to court after the lapse of one year from the date on which such entitlement became due, and no claim will be admitted if the above provisions regarding submitting the complaint to the Labour Department are not adhered to. However, filing an action before the Ministry will suspend the time from running. If the Ministry fails to transfer the case to court within two weeks, the employee may then proceed to court without referral from the relevant labour office. In the UAE employees are exempt from paying court fees; furthermore, the exemption also applies if an appeal is filed at the Court of Appeal.<sup>127</sup> However, should a matter fail to be resolved at the MHRE through the application of ADR, an employer who opts for taking court action must pay the resulting court fees, which is normally based on a percentage of the claim amount.<sup>128</sup> The time required for a claim to be heard is approximately three to six months for

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<sup>125</sup> UAE Labour Law Article 6

<sup>126</sup> Federal Law No. (23) of 1991 On the Regulation of the Legal Profession, Article 6

<sup>127</sup> UAE Labour Law Article 5

<sup>128</sup> UAE Labour Law Article 131(4)

a decision at the Court of First Instance. Appeals on decisions can be made by either party on either law or fact, and the process could take a further three to six months. A final appeal may be possible to the Court of Cassation in certain circumstances.

#### **4.2.2 Labour Inspection in the UAE**

As a deterrent and a response to employers committing repeated offences against workers, or where there is evidence of continuous violation of the Labour Law, it is possible that the employer may be suspended from dealing with the MHRE. Further, in circumstances of ongoing or numerous complaints being lodged at the MHRE, labour inspections can be carried out, where the MHRE can impose a fine of at least AED 10,000 for breaches of the Labour Law.<sup>129</sup>

Labour inspections are carried out by specialised staff based at the MHRE, their aim being the following:

1. To ensure proper compliance with the provisions of the law, particularly those related to employment terms, wages, and protection of workers during the performance of their work, and matters related to the health and safety of workers and the employment of juveniles and women.
2. To extend to employers and workers such technical information and advice that would enable them to apply the provisions of the law in the best possible manner.
3. To alert the competent authorities to any shortcomings not adequately addressed by the existing provisions and make appropriate recommendations in this respect.
4. To record violations of the law or its executive regulations and orders.<sup>130</sup>

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<sup>129</sup> Fines may potentially be higher depending on the offence.

<sup>130</sup> UAE Labour Law Articles 167-170



The role of the inspectorate is crucial from the perspectives of both international law and an Islamic point of view. CESCR in General Comment 3<sup>131</sup> requires state parties to comply with their core obligations and take deliberate, concrete and targeted steps towards the progressive realisation of the right to just and favourable conditions of work.<sup>132</sup> Moreover, CESCR states that, in order to ensure accountability,

**States parties should establish a functioning system of labour inspectorates to monitor all aspects of the right for all workers, including workers in the informal sector and domestic workers, as well as agricultural workers; to provide advice to workers and employers; and to raise any abuses with competent authorities.**<sup>133</sup>

In addition, this guidance from CESCR serves as a 'double-edged sword' as it not only makes clear the obligation of the state to establish a system of labour inspectorates but also encompasses protections of groups of workers excluded by the UAE's Labour Law, such as domestic and agricultural workers. Islamically, the inspectorate traditionally played an integral part of society in the form of *hisbah*, where a group of highly qualified officials (*muhtasibeen*) had a duty within society to constantly monitor and inspect activities in the public domain, which integrally included market and business regulation and labour-related matters.

#### **4.2.3 Collective Complaints in the UAE**

The UAE's Labour Law stipulates different provisions regarding claims by a number of employees from the same employer. The law defines it thus:

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<sup>131</sup> CESCR (1990) General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), 14 December 1990, E/1991/23, Para 1, available at <<http://www.refworld.org/docid/4538838e10.html>> accessed 18 August 2017

<sup>132</sup> CESCR (2015) Right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), 20 January 2015, E/C.12/54/R.2, Para 6 available at <<http://www.refworld.org/docid/5550a0b14.html>> accessed 17 November 2015

<sup>133</sup> CESCR (n 132) Para 54; See ILO Convention C081 - Labour Inspection Convention, 1947 (No. 81)

**A collective labour dispute is any dispute between an employer and his workers in relation to a joint interest to all workers or a group thereof at a specific facility, profession, craft or sector.<sup>134</sup>**

In addition to the Labour Law, according to a ministerial resolution, the parties of a collective dispute are prompted to apply the following processes of ADR in sequence until a resolution is achieved: direct negotiation, then mediation, then reconciliation, and finally arbitration.<sup>135</sup>

Article 154 of the Labour Law states that where a dispute occurs, the MHRE offers a dispute resolution mechanism whereby complaints from workers are permitted to be submitted collectively in writing to the relevant labour office. A copy must also be sent to the employer, who must respond within seven days to both the workers and the MHRE. The labour administration therefore supervises the process in attempting to resolve the matter amicably through written communication. A period of one week from the date the dispute initially arose is given to settle the dispute, and during this phase work is not allowed to be halted nor is the facility allowed to be closed.<sup>136</sup>

Should direct negotiations fail to reach a resolution, the MHRE's Labour Department steps in more formally to mediate an amicable settlement between the employees and the employer.<sup>137</sup> The Director of the Labour Directorate summons the disputing parties and leads the mediation process, taking any necessary actions to facilitate a resolution. If the cause of the dispute is non-payment of due wages to workers or the violation of the employer or workers' duties as imposed by the Labour Law or its executive regulations and orders, the Director must take the necessary legal procedures to guarantee the implementation of the provisions of the Labour Law and its supplementary ministerial resolution.<sup>138</sup> This outlines the

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<sup>134</sup> UAE Labour Law Article 154

<sup>135</sup> Ministerial Resolution No. 307 of 2003 On Collective Labour Disputes (31/05/2003) Article 2

<sup>136</sup> Ministerial Resolution No. 307 of 2003 On Collective Labour Disputes (31/05/2003) Article 3

<sup>137</sup> UAE Labour Law Article 155(3)

<sup>138</sup> Ministerial Resolution No. 307 of 2003 On Collective Labour Disputes (31/05/2003) Article 5

procedure as mediation, reconciliation, and finally arbitration under the care of the Director. If the dispute was settled through mediation the Director is required to formulate a report containing the issues that were agreed upon during the mediation and it is then signed by the Director, the workers, and the employer. The agreement remains valid for the duration agreed upon by the two parties, provided that it is not less than two years. If the mediation process does not yield an amicable resolution within 10 days, the Labour Department by virtue of a decision issued by the Minister of Labour then refers the matter to a specially formed Conciliation Committee and the Director must also notify the two parties in writing regarding the escalation. The Committee is composed of (1) Director of the Labour Directorate (Director of the Labour Office) of the area or jurisdiction where the workplace is located; (2) a member of the Chamber of Commerce selected by the employer; (3) a workers' representative selected in consultation with the Chairman of the Committee; and (4) a legal researcher as a rapporteur and advisor (not having the right to vote).<sup>139</sup> The decision of the conciliation board is reached by majority vote and is binding if the parties have so provided in writing otherwise; the decision may be appealed to the Supreme Arbitration Board of the Ministry within 30 days from the date on which the decision was rendered. This board is composed of the Minister of Labour, as chairman;<sup>140</sup> a judge of the Federal Supreme Court; and a person of high integrity, knowledgeable and experienced in the relevant area. The decision of the arbitration board is final and is also reached by majority vote. The compositions of the arbitration boards are in line with both the principles of Islamic law and that of Western frameworks, i.e. tripartite, and are used to deal with collective disputes. Both the Conciliation Board and the Supreme Arbitration Board may also call upon the advice or assistance of experts in their deliberations. Both bodies have the power to order full disclosure of relevant documents and information

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<sup>139</sup> Ministerial Resolution No. 307 of 2003 On Collective Labour Disputes (31/05/2003) Article 8

<sup>140</sup> In the absence of the Minister, the Under Secretary or the Director General may deputise.

from both parties of the dispute. Witnesses may also be called from both sides to give evidence if the board deems it necessary and the board may also impose fines for the failure of providing any documentations or information requested. An important caveat to the processes outlined is a reference made in Article 164, where it states:

**The Boards referred to herein, shall apply the provisions of this Law, the laws in force and the rules of Islamic *Shari'ah* as well as any other customary rules, principles of justice, natural and comparative laws which are consistent therewith.**

This is particularly important as it puts an overarching remit in terms of legal principles as it makes mention of *Shari'ah* as well as other rules and comparable principles of justice. The ADR processes outlined cover the main modes dispute management outlined in the *Shari'ah*. Firstly, the MHRE engages in *sulh*, roughly translated as negotiation, mediation/conciliation, or a compromise of action. Once the parties are summoned, the legal researcher assigned to deal with the case essentially manages the dispute and acts as a custodian for ensuring that the rights of the worker are not compromised. As noted above, the processes for both individual and collective complaints refer to an amicable settlement of disputes through voluntary mediation and conciliation initially. From this stage onwards, the procedures for dispute resolution become somewhat more formalised. In the case of individual disputes, they are referred for litigation via the courts system. Such referrals only take place after a series of attempts to find an amicable resolution have been exhausted. For collective disputes, these are forwarded to a panel of third party conciliators/arbitrators, which follows international norms of arbitration but also synchronises with the Islamic mode of arbitration termed *tahkim*. Islamic law allows individuals and indeed groups to seek the aid of third party arbitrators when they fall into an array of civil or commercial disputes and are unable to find a private resolution between themselves. In Islam, *tahkim* is frequently applied and ultimately

aims to facilitate the engagement of amiable discussions in order to reach a binding mutual resolution.<sup>141</sup>

In relation to internationally recognised principles, labour administrators, i.e. the authority, are tasked to establish labour dispute procedures in national legislation with the key objective being to manifest a mechanism to ensure that, wherever possible, the parties to the dispute resolve it through a consensus-based process. This essentially entails using methods described above, which include mediation and conciliation, before reverting to arbitration and/or formal adjudication. Labour dispute management in the UAE is the responsibility of the MHRE, where government officials/legal researchers handle the disputes as they are lodged.

Although the MHRE is dependent on state funding it is meant to operate without governmental interference and independently of business, employer, or trade union influence,<sup>142</sup> the latter being not applicable in the UAE as they do not exist. Furthermore, as detailed in Article 1 of the ILO's R092 – Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), dispute management systems must be appropriate to the national conditions, and in the case of the UAE it needs to reflect the moralities enshrined not only in the *Shari'ah* but in other customary norms, comparative laws, and principles within international instruments. Furthermore, an effective system needs to engender the confidence and trust of all of its users, particularly those who are most vulnerable to exploitation such as migrant, domestic, and stateless workers, etc.

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<sup>141</sup> Qur'an, Al-Hujraat, 49:9

<sup>142</sup> ILO (2013) 'Labour Dispute Systems: Guidelines for improved performance' available at <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_dialogue/---dialogue/documents/publication/wcms\\_211468.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_211468.pdf)> accessed 23 March 2015

#### 4.2.4 UAE Demographic Statistics Relevant to the Rationale of the Study

The data presented in the following section was gained after submitting a number of formal requests to the Labour Market Studies and Information Department (formerly part of the Ministry of Labour, now part of the MHRE).<sup>143</sup> The table below represents the official MHRE data regarding the number of individual workers who lodged an employment dispute at the MHRE for the years 2012, 2013, and 2014.

*Table 3: Educational Level vs Vocational Level*

Education Level	Vocational Level	2012	Year %	2013	Year %	2014	Year %
Illiterate – Primary School Level	Unskilled	35,702	48.72%	33,561	45.14%	38,228	43.38%
Secondary – Further Education Level <sup>144</sup>	Skilled	29,743	40.59%	31,694	42.63%	37,882	42.98%
Graduate – Post-graduate	Professional	7,248	9.89%	8,653	11.64%	11,733	13.31%
Unknown		587	0.80%	433	0.58%	288	0.33%
Total Number Of Workers		73,280		74,341		88,131	

<sup>143</sup> The process was particularly bureaucratic and the request for such sensitive data was handled with due care by the department's officials. The data needed for the study was to be generated for the first time by the department and as a result it took a considerable length time and indeed effort to source. The engagement of the department is however to be commended as it undertook exercises that went against their normal protocol, especially as it involved divulging very sensitive data. Moreover, they had placed their trust in the study to find workable solutions to the problems faced organisationally in dealing with disputes more effectively and in terms of preventing them from taking place.

<sup>144</sup> Comparable to high school education level.

In order to provide some perspective, the table below compares data representing the number of accepted employment tribunals in the UK to the number of employment disputes dealt with at the MHRE. In order to make the statistics relative, the labour market participation figures have been included. By doing so, it makes it possible to work out the percentage rate of disputes amongst the total labour market, and thus enables a more meaningful comparison. The UK has a 1.44% rate of disputes for its total labour market, whereas the UAE has a rate of 4.82%.

*Table 4: UK vs UAE Disputes*

	UK	UAE
<b>Total Disputes – UK:2011/12, UAE:2012</b>	186,331	73,280
<b>Total Disputes – UK:2012/13, UAE:2013</b>	191,541	74,341
<b>Total Disputes – UK:2013/14, UAE:2014</b>	105,803	88,131
<b>Aggregate Total Tribunal<sup>145</sup>/Dispute Number</b>	483,675	235,752
<b>Mean Tribunal/Dispute Number</b>	161,225	78,584
<b>Total Population 2015 (UN DESA 2017)<sup>146</sup></b>	65,397,080	9,154,302
<b>Total Migrant Stock (UN DESA 2015)<sup>147</sup></b>	8,543,120	8,095,126
<b>Labour Market Total (ONS/MHRE 2016)<sup>148</sup></b>	33,682,078	4,889,853
<b>% Rate Dispute / Total Labour Market</b>	1.44%	4.82%

<sup>145</sup> UK Ministry of Justice (2015) Employment Tribunal and Employment Appeals Tribunal Annual Tables, available at <<https://www.gov.uk/government/uploads/file/459587/.xlsx>> accessed 23 August 2017

<sup>146</sup> UN DESA (2017 n 35)

<sup>147</sup> UN DESA (2015 n35)

<sup>148</sup> ONS (2016) 'The labour market characteristics of UK, EU and non-EU nationals in the UK labour market in 2016' article published by the Office for National Statistics, available at <<https://www.ons.gov.uk/migrationandthelabourmarketuk/2016/>> accessed 23 August 2017 and data available at <<https://www.ons.gov.uk/internationalimmigrationandthelabourmarketuk2016.xls>> accessed 23 August 2017; MHRE(2016) MHRE Open Data 2016, MHRE registered private sector labourers, available at <<http://www.mohre.gov.ae/assets/download/b40b5d02/احصائيات-2016.xls.aspx>> accessed 23 August 2017

The MHRE by its own admission has acknowledged the yearly increased number of submissions for its services, and has attributed it to ‘increasing access to and trust in the dispute resolution process’.<sup>149</sup> This statement, however, is somewhat unscientific, as it is masking the fact that the problem faced by the MHRE is bigger than before, and that essentially it suggests that there has been a historical lack of trust in the service.<sup>150</sup> This form of rhetoric stems from not contextualising the actual issues faced by migrant workers in the UAE. In reality, it is indicative of not taking full responsibility and ownership of the systematic problems experienced on the ground. The UAE’s migrant worker population has also been increasing year upon year, which also has a bearing on the number of disputes lodged at the MHRE.<sup>151</sup>

HRW in 2015 reported that abuses and difficulties in obtaining remedies for migrant workers were more serious than what the authorities and compliance monitors had reported. Other reports have also highlighted that migrant workers often have their passports confiscated, and that they fear reparations for complaining about the issues they are experiencing.<sup>152</sup> In such circumstances, particularly where migrant workers are vulnerable and poor, they would inevitably lack the opportunity and empowerment to pursue legal action against their sponsors, to whom they are indebted for their employment/legal status and even financially.<sup>153</sup>

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<sup>149</sup> MHRE (2016) ‘2015 Worker Welfare Report’ United Arab Emirates Ministry of Human Resources & Emiratisation Publication

<sup>150</sup> HRW (2015) ‘Migrant Workers’ Rights on Saadiyat Island in the United Arab Emirates: 2015 Progress Report’ <<https://www.hrw.org/report/2015/02/10/migrant-workers-rights-saadiyat-island-united-arab-emirates/2015-progress-report>> accessed 28 August 2017

<sup>151</sup> According to UN DESA, the UAE’s annual rate of change of migrant stock has increased at the following rates: 1990-1995 at 6.67%; 1995-2000 at 5.87%; 2000-2005 at 5.87%; 2005-2010 at 16.04%; 2010-2015 at 2.02%

<sup>152</sup> HRW (2006, 2009, 2012 and 2007a n 61)

<sup>153</sup> Keane, David and McGeehan, Nicholas (2008) ‘Enforcing Migrant Workers’ Rights in the United Arab Emirates’ International Journal on Minority and Group Rights 15, 81-115



The questionnaire also yielded a narrative where some participants mentioned that they feared facing harsh reparations from their employers, which included deportation and even physical abuse.

The above data shows that:

- The number of workers lodging disputes has increased year upon year, highlighting that the issues that migrant workers experience are not being effectively prevented from occurring. Moreover, the deterrents issued by the authority are not curbing certain employers from committing repeated offences against their workforce.
- The mean number of workers lodging disputes per year is 78,584, which represents almost 5% of the total number of labourers registered at the MHRE, categorically showing the magnitude of the problems the UAE has in terms of migrant workers facing turmoil with their employers.
- Workers who are unskilled, with very little or no education experience, lodge the most disputes.
- Unskilled/uneducated workers combined with those who have been educated up to secondary level (high school) accounted for in excess of 85% of all the disputes recorded. This elaborates the fact that certain levels of workers are subjected to poorer conditions, which ultimately means that their labour rights have been ignored or indeed violated.

The following tables represent official MHRE data regarding the number of disputes and their outcome/progress for the years 2012, 2013, and 2014 (the first table summarises the findings of all the years combined, an aggregate table). The numbers are different to the actual numbers of workers who lodge disputes as the following table represents the number of actual dispute cases. It also covers disputes that span over one recording year, i.e. a dispute

could be carried into the subsequent year and record an outcome therein. It shows the three most common types of disputes lodged at the MHRE: (1) late salary; (2) legal entitlements not honoured; (3) contract termination. These dispute categories comprised in excess of 70% of all the disputes recorded, and thus provided the rationale for the fieldwork. The combined table shows the following trends:

- Just under 50% are resolved via the MHRE, leaving a large proportion not reaching a positive outcome.
- 19% are referred to the courts, yielding a 6% resolution outcome.
- Less than 0.2% are referred for labour inspection.

*Table 5: Dispute Outcome*

Dispute Outcome	Referred for Inspection	Resolved at MoL	Preserved <sup>154</sup>	Referred to Court	Resolved at Court	Total	Dispute %
Year / dispute type	2012						
Late salary	69	9,870	5189	4,595	1,562	21,285	28.89%
Legal entitlements not honoured	34	8,929	4,594	3,942	1,177	18,676	25.35%
Contract termination	58	9,364	4,710	2,456	699	17,287	23.46%
Total of 3 highest dispute frequencies	161	28,163	14,493	10,993	3,438	57,248	77.71%
All other disputes	42	8,068	4,996	2,530	789	16,425	22.29%

<sup>154</sup> The 'preserved' outcome is much of a miscellaneous category which comprises a significant proportion of the disputes. The category is somewhat ambiguous as according to the MHRE it could relate to number of different scenarios which are unrelated such as withdrawn cases, lost/non-returning complainants, those that are in between stages etc.

<b>Total number of disputes</b>	203	36,231	19,489	13,523	4,227	73673	
<b>Outcome %</b>	0.28%	<b>49.18%</b>	26.45%	18.36%	5.74%		
<b>Year / Dispute Type</b>	<b>2013</b>						
<b>Late salary</b>	28	12,620	5,140	6,092	2,345	26,225	25.50%
<b>Legal entitlements not honoured</b>	15	13,499	4,854	5,315	1766	25449	24.74%
<b>Contract termination</b>	34	13,186	5,384	3,323	939	22866	22.23%
<b>Total of 3 highest dispute frequencies</b>	77	39,305	15,378	14,730	5050	74540	72.47%
<b>All other disputes</b>	32	15,759	6,263	4,238	2019	28311	27.53%
<b>Total number of disputes</b>	109	55,064	21,641	18,968	7069	102851	
<b>Outcome %</b>	0.11%	<b>53.54%</b>	21.04%	18.44%	6.87%		
<b>Year / Dispute Type</b>	<b>2014</b>						
<b>Late salary</b>	38	14,729	5,824	7,830	2,833	31,254	28.85%
<b>Legal entitlements not honoured</b>	36	12,504	4,634	6,033	1,535	24,742	22.84%
<b>Contract termination</b>	33	13,894	5,611	3,472	761	23,771	21.95%
<b>Total of 3 highest dispute frequencies</b>	107	41,127	16,069	17,335	5,129	79,767	73.64%

<b>All other disputes</b>	31	16,712	5,872	4,533	1,401	28,549	26.36%
<b>Total number of disputes</b>	138	57,839	21,941	21,868	6,530	108,316	
<b>Outcome %</b>	0.13%	<b>53.40%</b>	20.26%	20.19%	6.03%		
<b>Year / Dispute Type</b>	<b>2012-2014 Combined</b>						
<b>Late salary</b>	135	37,219	16,153	18,517	6,740	78,764	27.65%
<b>Legal entitlements not honoured</b>	85	34,932	14,082	15,290	4,478	68,867	24.18%
<b>Contract termination</b>	125	36,444	15,705	9,251	2,399	63,924	22.44%
<b>Total of 3 highest dispute frequencies</b>	345	108,595	45,940	43,058	13,617	211,555	74.27%
<b>All other disputes</b>	105	40,539	17,131	11,301	4,209	73,285	25.73%
<b>Total number of disputes</b>	450	149,134	63,071	54,359	17,826	284,840	
<b>Outcome %</b>	0.16%	<b>52.36%</b>	22.14%	19.08%	6.26%		

According to the data supplied by the MHRE, the success rate of the MHRE's ADR service only resolves half the disputes. This is something that needs to be addressed, particularly for the most common types of disputes.

The following tables and chart below show the data related to the dispute numbers (frequencies) for the 20 countries (D20, an abbreviation representing the countries with the

most disputes), from a total 153 recorded countries, with the highest number of disputes for the period of 2012-2015.<sup>155</sup>

The table below shows the collective data corresponding to the 20 most significant areas of economic activity recorded by the MHRE. It combines construction-related fields in order to highlight the significance of the issues in those sectors of employment (i.e. the number of disputes and the percentages for construction-related vocations).

*Table 6: Overall Total Number of Disputes for 2012-2015*

<b>Overall Total Number of Disputes for 2012-2015* = 251,289</b>					
<b>Country</b>	<b>Total number of disputes between 2012-2015* for each country</b>	<b>Country's dispute count as a % of the overall total disputes</b>	<b>Total of the 20 most common types of disputes</b>	<b>Total number of disputes for construction / trade / building-related vocations (D20)</b>	<b>Country's dispute count for construction-related vocations as a % of its total</b>
<b>Pakistan</b>	59,596	23.72%	31,927	19,745	33.13%
<b>Bangladesh</b>	50,962	20.28%	32,906	25,211	42.30%
<b>India</b>	50,927	20.27%	22,839	14,506	24.34%
<b>Philippines</b>	26,284	10.46%	10,829	1,909	3.20%
<b>Egypt</b>	16,778	6.68%	8,008	4,013	6.73%
<b>Morocco</b>	6,338	2.52%	3,474	434	0.73%
<b>Syria</b>	6,217	2.47%	2,419	922	1.55%
<b>Jordan</b>	4,365	1.74%	1,379	621	1.04%
<b>Nepal</b>	3,018	1.20%	1,493	508	0.85%
<b>Sri Lanka</b>	2,534	1.01%	977	215	0.36%
<b>Sudan</b>	2,309	0.92%	987	399	0.67%
<b>Afghanistan</b>	1,992	0.79%	971	603	1.01%
<b>Nigeria</b>	1,609	0.64%	930	261	0.44%
<b>Tunisia</b>	1,588	0.63%	660	62	0.10%
<b>Palestine</b>	1,496	0.60%	524	379	0.64%
<b>Lebanon</b>	1,362	0.54%	513	183	0.31%

<sup>155</sup> 2015 figures are only for the part of the year, and have only been included in the overall totals.

<b>Britain</b>	1,051	0.42%	182	91	0.15%
<b>Ethiopia</b>	1,004	0.40%	556	67	0.11%
<b>UAE</b>	972	0.39%	193	78	0.13%
<b>Uganda</b>	653	0.26%	378	86	0.14%
<b>Dispute Total for D20 Countries</b>	<b>241,055 disputes lodged by D20 countries</b>	<b>95.93% of disputes are lodged by D20 countries</b>	<b>122,145 are of common types of dispute</b>	<b>70,293 are construction trade-related</b>	<b>27.97% of disputes are construction trade related</b>

In summary:

- 251,289 disputes have been recorded for the period 2012-2015\*, of which 241,055 were lodged at the MHRE by the above D20 countries.
- The South Asian countries have the highest number of disputes in total, and most of them are in the construction trade-related sectors.
- The above 20 countries constitute 96% of all the disputes accounted for in the period, with South Asians<sup>156</sup> accounting for 78%.
- Pakistanis, Bangladeshis, and Indians account for 64% of all the disputes.
- 42% of Bangladeshi disputes are construction-related.

The following table shows the number of disputes for the 20 most common areas of economic activity/vocational sector.

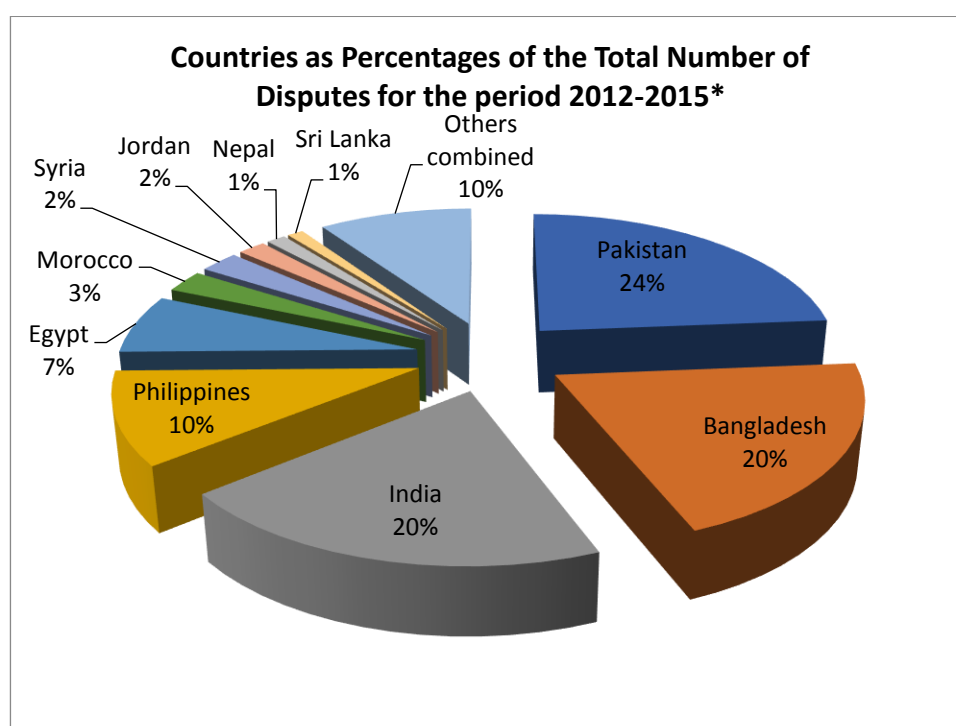
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<sup>156</sup> Pakistani, Bangladeshi, Indian, Sri Lankan, Nepalese, Filipino and Afghan (South Asian from the D20 list of countries)

Table 7: Economic Activity – Vocational Sector

Economic Activity – Vocational Sector	Totals No. of Disputes for Sector	D20 Countries' Totals For Sector	D20 Countries' % for Sector	Pakistani Disputes	Bangladeshi Disputes	Indian Disputes
Building Construction	38,042	37,525	98.64%	10,382	13,015	8,230
Catering – Restaurants	12,802	12,183	32.03%	2,161	1,096	1,751
Manual Trade – General Maintenance	7,627	7,542	19.83%	2,211	3,038	1,245
Cleaning Buildings/Houses	6,770	6,232	16.38%	852	2,284	786
General Trading	6,377	6,119	16.08%	1,100	210	1,610
Manual Trade – Painting Decorating	6,123	6,050	15.90%	1,436	3018	797
Manual Trade – Mech/Elec Maintenance	5,053	5,007	13.16%	1,565	1,428	1,360
Beauty Salon	3,544	3,348	8.80%	416	35	271
General Transport	3,403	3,325	8.74%	2,058	129	657
Manual Trade – Plumbing and Sanitation	3,383	3,320	8.73%	944	1,166	730
Trade – Design, Decorating & Installation	3,173	3,046	8.01%	528	795	858
Security Guard Buildings	3,129	3,008	7.91%	598	218	326
Manual Trade – Building Maintenance	2,983	2,960	7.78%	736	1,316	488
Supply Cleaning & General Services	2,947	2,862	7.52%	1,301	118	712
Coating Works	2,878	2,850	7.49%	803	1,434	378
Air Con Installation	2,867	2,835	7.45%	835	1,012	636
Beauty – Hair Dressing	2,861	2,596	6.82%	209	7	179

<b>Manual Trade – Flooring &amp; Tiling</b>	2,555	2,550	6.70%	1,185	944	254
<b>Ladies Tailoring</b>	2,498	2,478	6.51%	445	892	726
<b>Manual Trade – General Contracting for Civil Construction</b>	2,321	2,293	6.03%	758	491	544
<b>Catering – Cafés</b>	2,288	2,172	5.71%	105	147	99
<b>Taxi</b>	1,857	1,844	4.85%	1,299	113	202
<b>% of Country's Total Dispute Totals 3.5yrs Country Total/251,289</b>	<b>251,289</b>			<b>23.72%</b>	<b>20.28%</b>	<b>20.27%</b>



*Figure 1: Countries as Percentages of Total Number of Disputes for the Period 2012-2015*

In summary:

- Pakistanis, Bangladeshis, and Indians are countries with the three highest numbers of disputes and account for 83% of all the construction disputes (64% of all the disputes).



- Construction on its own has in excess of three times as many disputes as the second most commonly recorded dispute (catering).
- Perhaps the most talked about and publicised accolades of the UAE, its urban development and its hospitality industries, are in fact the two areas where most employment disputes occur, according to the MHRE data.

Therefore, according to the data yielded, South Asians, particularly Pakistanis, Bangladeshis, and Indians, are more likely to experience work-related issues in the construction sector. Even those manual vocations that require certain levels of skill within the wider construction sector experience high numbers of issues. According to the MHRE's latest figures, construction workers comprise the largest share of the UAE's labour market at a staggering 33%, the overwhelming majority of whom are South Asians.<sup>157</sup> Thus, through a combination of their high proportion within the sector, their lack of education and literacy, and their precarious work situation, they are in real terms quite likely to be the subject of some form of exploitation. HRW also carried out studies in which all of the participants from the construction sector were predominantly South Asians.<sup>158</sup>

Fines and penalties for the employers have not been deterring them from committing misdemeanours against their largely vulnerable employees on a repeated basis. The MHRE's inspection rate is worryingly low, and thus needs to be 'stepped-up' in order to truly enforce the labour laws and indeed protect the rights of migrant workers it promises to protect, the workforce that the Minister of MHRE, Saqr Ghobash, considers as 'our greatest asset' and 'the driver of growth that enables economic diversification and secures the future for tomorrow's

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<sup>157</sup> MHRE (2017) The data represents all labourers in the private sector who are registered with the Ministry of Human Resources and Emiratization for 2016 under their employment sector categorisations, available at <http://www.mohre.gov.ae/en/data-library.aspx> accessed 17 August 2017

<sup>158</sup> HRW (2006 n 61)

generation'.<sup>159</sup> Furthermore, there have been allegations in the past that there is even a level of complicity between government officials and construction firms, i.e. where they have been accused of protecting their interests.<sup>160</sup>

The following section will thus present the findings recorded from the questionnaire given to migrant workers in the UAE. The aim, as previously discussed, is to examine how employment disputes are managed and resolved by the MHRE, critically, from the perspective of the migrant workers themselves.

#### **4.2.5 Questionnaire Distribution & Data Collection**

The questionnaire contained a series of questions that investigated how migrant workers went about resolving their employment disputes, when and if they occurred. The aim was to measure the respondents' attitudes and opinions. It recorded demographic data such as nationality, age, and gender, and included employment sector and the level of work the respondents did. The questionnaire used a combination of Likert-scaled questions with additional space for explanatory notes.

The questions initially focused on how the respondents felt about engaging their employer when they experienced an issue at work. Moving on from that aspect, the questions revolved around the process of dispute resolution at the MHRE. It examined respondents' opinions in terms of how confident they were in navigating the dispute resolution process and how they felt with their mediator/conciliator (termed legal researcher by the MHRE). It also assessed the overall fairness and effectiveness of the system and what level of satisfaction they attained from it.

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<sup>159</sup> MHRE (n 149)

<sup>160</sup> HRW (2006 n 61)

The questionnaire was distributed throughout the UAE, in areas with high concentrations of migrant workers. The most successful avenue for distribution and indeed migrant worker contact was through the information stands and presentations at the migrant worker living complexes (commonly referred to as labour camps). Despite distributing over 2,500 questionnaires in 12 different labour camps, only 489 were returned of which 177 were useable and were essentially complete. Unfortunately, 312 of the 489 were largely incomplete or altogether incomplete. This was an issue at every labour camp; even though the project was explained using various means, and the presentations were all well attended, the response rate was limited.

The investigation was limited on a number of facets as it did not engage any female migrant workers, or highly skilled or professional people from developed countries. The reason for this is primarily due to the significantly higher proportion of males to females in the UAE; the data was also largely collected in labour camps, which predominantly house males who work in relatively low-skilled vocations.

#### **4.2.6 Data Presentation**

The completed questionnaire data was initially sorted and coded in accordance to the investigation parameters, i.e. the questionnaires were sorted and coded according to the data yielded. Following this, the raw data was inputted into a spreadsheet and meticulously checked and re-checked. The data was examined and analysed thoroughly before making the subsequent report.

The approach taken when presenting the results forms two overall categories: those who have engaged the MHRE and those who have not. This allows for the assessment of what the migrant workers thought/think about the MHRE's dispute management system from two

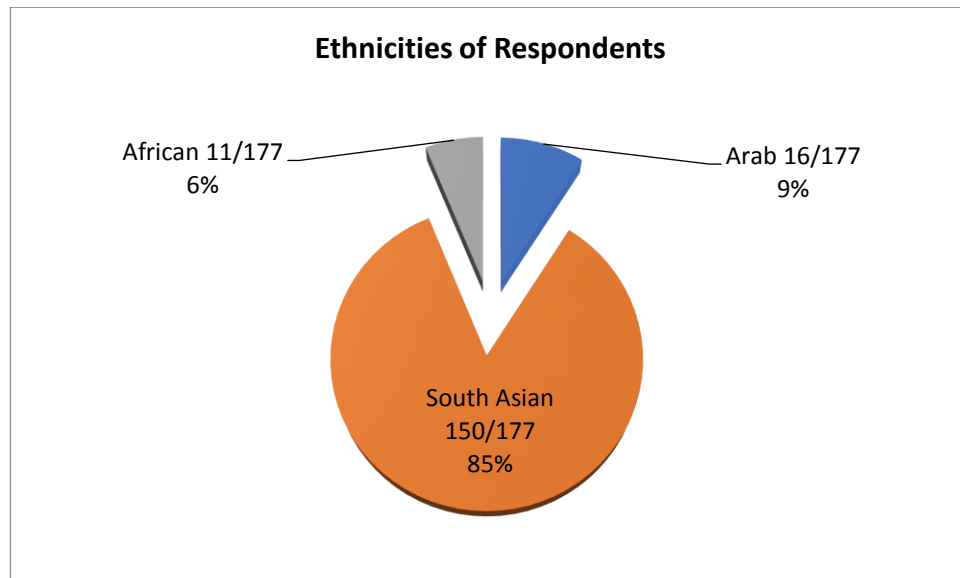
angles: firstly, from first-hand experiences of the system itself; and secondly, one based on their perception of how the MHRE would handle a dispute. The basic format of the results aligns itself with the following categories (migrant workers who completed the questionnaire are referred to as respondents):

1. Respondents who have experienced disputes and have engaged their employer.
2. Respondents who have experienced disputes and have engaged the MHRE either after engaging their employer or directly.
3. Respondents who have experienced disputes but did not engage the MHRE.
4. Respondents who have not experienced any dispute and thus have engaged neither their employer nor the MHRE (this will be termed the control group).

In the following section the results are presented both using infographics and textual summaries. Some aspects are explored by taking a comparative approach by looking at the differences, trends, and correlations between the different groups (listed above) in order to provide a more meaningful analysis.

#### 4.2.7 Demographics of the Respondents

The fieldwork yielded 177 completed questionnaires with the respondents representing 14 different nationalities, which have been grouped into three regional categories: African; Arab; and South Asian.<sup>161</sup>

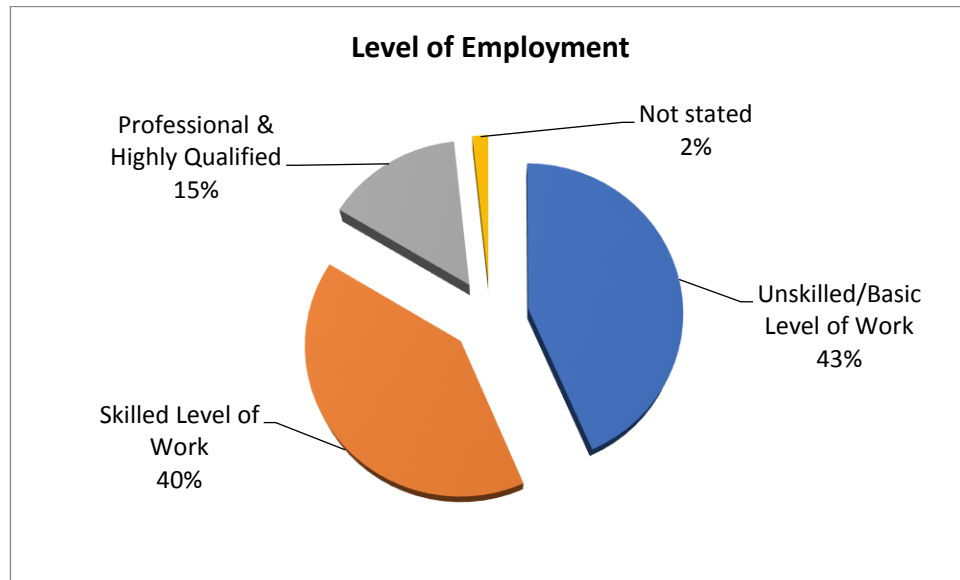


*Figure 2: Ethnicities of Respondents*

In terms of how the sample reflected actual migrant stock figures, the trends are generally similar to figures obtained from the UN's Department of Economic and Social Affairs Population Division, which record Indians (31%), Bangladeshis (12%), and Pakistanis (10%) as having the highest stock of migrant workers in the UAE, respectively.<sup>162</sup> The same data records South Asian migrants comprising 78.4% of the UAE's total migrant stock, whereas Africans represent 2.4% and the Arabs (MENA) 1.7%.

<sup>161</sup> Africans consisted of Comorians, Ethiopians, Ghanaians, Nigerians, Sudanese, Ugandans; Arabs consisted of Egyptians, Jordanians and those that made no mention of nationality but chose to complete the questionnaire in Arabic; South Asians consisted of Bangladeshis, Indians, Nepalese, Pakistanis and Sri Lankans.

<sup>162</sup> UN DESA (2015 n 35) Datasets presents estimates of: (1) international migrant stock at mid-year; (2) total population at mid-year (thousands); (3) international migrant stock as percentage. The estimates are based on official statistics on the foreign-born or the foreign population.



*Figure 3: Level of Employment*

What can be drawn from the above data is that South Asians comprise the vast majority of the sample, and that most of them do not have professional or highly qualified vocations (this will be further explored in the following sections).

It is also noteworthy to mention that:

- All of the respondents were from the global south's developing countries, i.e. not from Western or highly developed countries, as a result of engaging migrant workers in the labour camps.
- All of the respondents who disclosed their gender were males (15 not stated).
- The respondents were aged between 21 and 61 (six not stated), with a median age of 32.

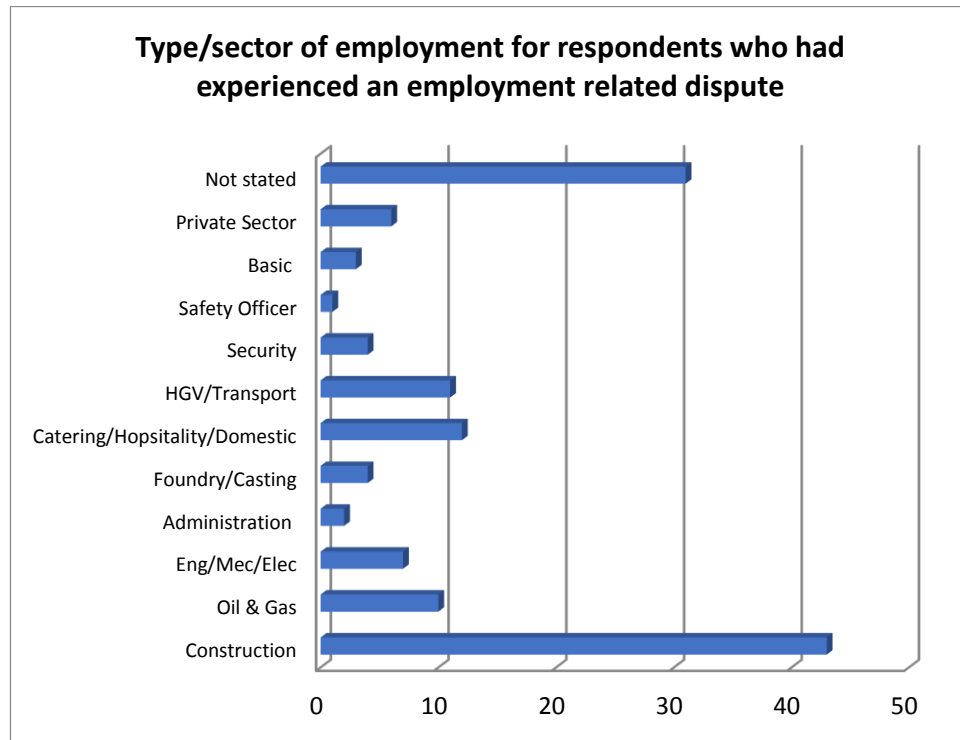
In terms of the respondents who engaged the MHRE the actual numbers are as follows:

- 134 stated that they had experienced a dispute (some stated that they have experienced more than one type of problem, e.g. non-payment of salary and housing issues).

- Of the 134 that stated a dispute(s):
  - 63 engaged the MHRE in the hope of finding a resolution through the relevant labour office's ADR provision;
  - 71 chose not to escalate their issue and thus did not engage the MHRE's ADR services.
- 43 stated that they have not experienced a dispute and have been regarded as a control group, as their opinion has been based completely upon their perception of the MHRE rather than actual experiences.

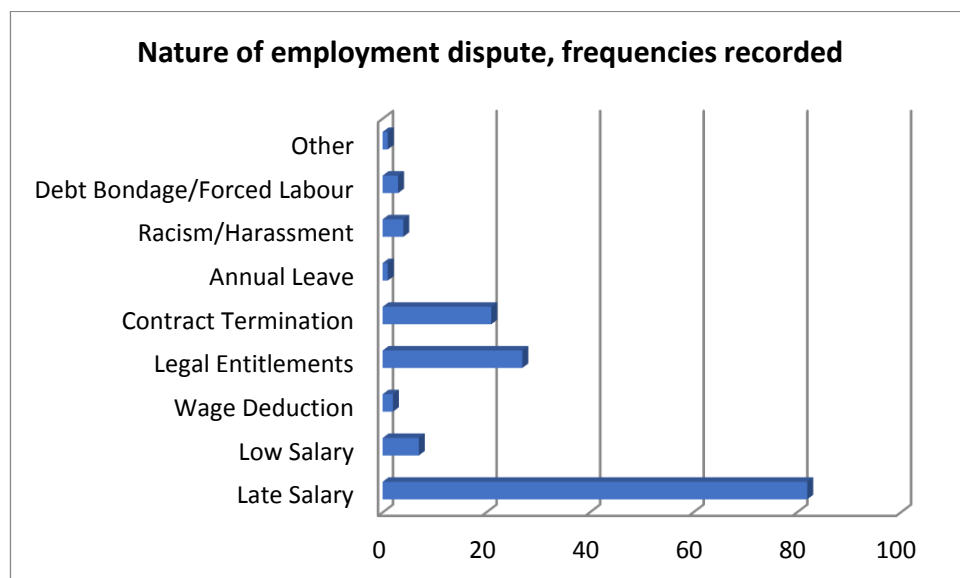
#### **4.2.8 Respondents Who Experienced Disputes**

The following chart illustrates the frequencies of disputes recorded by the respondents related to their employment sector. It shows that the construction sector (as seen in the MHRE data) had the largest number migrant workers with disputes (43 respondents, comprising 32% of the total number of disputes). The data collected also recorded that 64 (48%) of the disputants were unskilled; 53 (40%) were skilled; and 17 (13%) were highly qualified professionals.



*Figure 4: Type/sector of employment for respondents who had experienced an employment-related dispute*

The chart below lists the types of disputes stated by the 134 respondents (the number of disputes mentioned was 144, as some of the respondents recorded more than one type of issue).



*Figure 5: Nature of Employment Dispute*



The three with the highest frequencies reflect the trend shown by the official MHRE data:<sup>163</sup>

(1) late salary; (2) legal entitlements/dues not honoured; (3) contract termination/cancellation. These three observed categories — particularly the non/late payment of salary — show that despite the various initiatives taken by the MHRE to ensure timely payment of salaries, the problem is significantly widespread. Furthermore, 101 (75%) of these respondents also stated that their dispute was common to other workers in their workplace, which suggests that the employer(s) have serially committed the same misdemeanour with other employees.

Another aspect to note is that the non-payment of salary comprised 28% of the MHRE's recorded data<sup>164</sup> on lodged disputes; however, the fieldwork data represented a much larger proportion of non/late payment of salary, which was in excess of 55%. Albeit on a microcosmic level, this suggests that a significant number of disputes do not make it to the MHRE, reasons for which will be explored in due course.

#### **4.2.9 Employer Engagement**

Of the 134 respondents who experienced a workplace dispute, 125 attempted to resolve the matter directly with their employer through the grievance machinery available to them. However, the results show that an alarming 106 (85%) were not able to resolve their issue directly with their employer. Moreover, only 59 (56%) of those who did not find a resolution with their employer actually escalated the matter to the MHRE for mediation.

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<sup>163</sup> MHRE data for 2012, 2013 and 2014

<sup>164</sup> 28% (27.65%) refers to the aggregate percentage for 2012, 2013 and 2014 combined for non-payment of salary.

The remaining 47 (44%) went back to work without finding any resolution to their grievances. The respondents' statements provide further insight and context for the reasons they chose not to escalate their issues to the MHRE:

- Three took illegal strike action, none of them accessing the MHRE. One respondent stated 'after striking it was okay for two months, but [then] the issue got worse'.
- Nine were forced back to work by their employer, many of whom stated that their HR manager was responsible for doing this.
- Thirteen felt 'helpless' and two 'ignored' the issues and resumed work.
- Four were threatened by their company and had been told that their visa or work permit would be cancelled.
- A further 16 mentioned that they feared reprisals of some form from their employers, and thus returned back to work without any amicable outcome.

The narrative included within the questionnaire responses (as seen above) can be interpreted to show that there is a culture of fear and helplessness when migrant workers, firstly, experience work-related issues and, secondly, when they try to engage their employers. In terms of the respondents' experiences of engaging their employer and their perceptions of engaging them (if a dispute arose, i.e. respondents with no dispute), the quantitative feedback was particularly negative also, as seen in the following section. The following tables show the level of confidence the respondents had when engaging their employer. The first table records the number of respondents who engaged their employer with an actual dispute whereas the

second table records how the control group (respondents with no disputes) would feel in terms of confidence if they had one.<sup>165</sup>

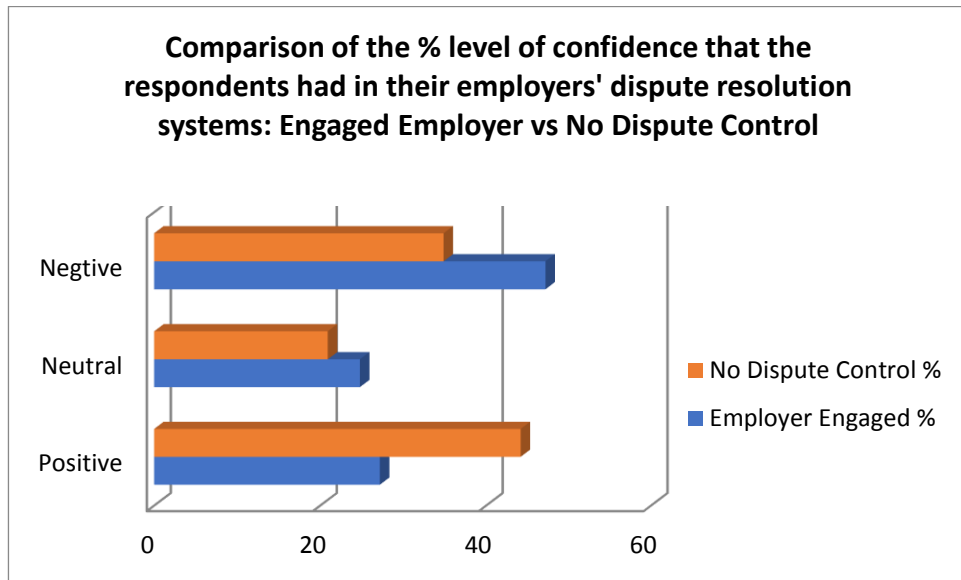
*Table 8: Confidence in Employer*

Confidence in Employer	Respondents	%	Response	%
<b>Very Confident</b>	15	12.00%	Positive	27.20%
<b>Confident</b>	19	15.20%		
<b>Neutral</b>	31	24.80%	Neutral	24.80%
<b>Unconfident</b>	36	28.80%	Negative	47.20%
<b>Very Unconfident</b>	23	18.40%		
<b>Blanks</b>	1	0.80%		
<b>Total Number who Engaged Employer</b>	125			

*Table 9: Perceived Confidence in Employer*

Perceived Confidence in Employer	Respondents	%	Response	%
<b>Very Confident</b>	1	2.33	Positive	44.19
<b>Confident</b>	18	41.86		
<b>Neutral</b>	9	20.93	Neutral	20.93
<b>Unconfident</b>	6	13.95	Negative	34.88
<b>Very Unconfident</b>	9	20.93		
<b>Blanks</b>	0	0		
<b>Total Number of Non-Disputes</b>	43			

<sup>165</sup> The response percentages have been aggregated to show a positive, neutral and negative trend. This method has been applied in other parts of the analysis as it indicates an overall view of the responses in a clear simple manner.



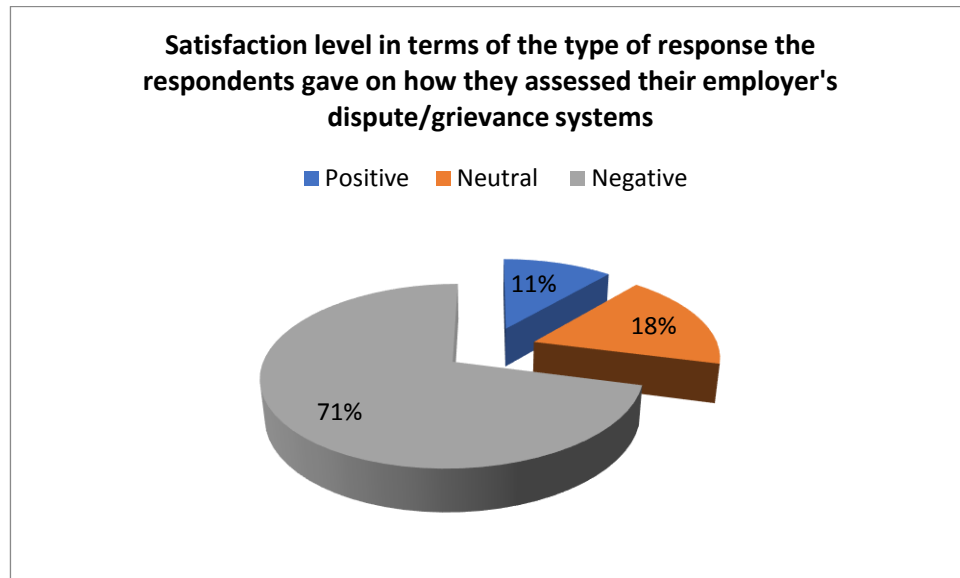
*Figure 6: Engaged Employer vs No Dispute Control*

These tabulated and graphic comparisons show that those who experienced a dispute had a lower level of confidence than those who had not experienced one. That said, the positive perception, which was observed was not particularly overwhelming, as nearly half (44%) of those who were in the control group said that they would lack confidence in engaging their employer if they had a dispute.

The following table and chart show the level of satisfaction achieved where the respondents engaged their employer.

*Table 10: Satisfaction in Employer*

Satisfaction in Employer	Respondents	%	Response	%
Very Satisfied	1	0.80%	Positive	11.20%
Satisfied	13	10.40%		
Neutral	22	17.60%	Neutral	17.60%
Unsatisfied	37	29.60%	Negative	70.40%
Very Unsatisfied	51	40.80%		
Blanks	1	0.80%		
Total Number who Engaged Employer	125			



*Figure 7: Satisfaction in Employer*

The vast majority of the respondents who had recorded a dispute and attempted to resolve their respective issues directly by engaging their employer had a significantly negative experience (as seen above). The results evidently show that 106 (85%) of those who did engage their employer did not reach an amicable resolution. As already alluded to, many respondents had no choice other than to resume work, possibly in the same restrictive circumstances or under threat of termination.

In order to illustrate the fairness of employers, the following tables and chart compare how the respondents felt about how fair their employer would be (1) if a dispute arose (43 respondents), and (2) how fair they were for those who engaged their employer (but not the MHRE) (71 respondents).

Table 11: Perceived Fairness of Employer

Perceived Fairness of Employer	Respondents	%	Response	%
Fair	23	53.49	Positive	53.49
Slightly Unfair	14	32.56	Negative	46.51
Very Unfair	6	13.95		
Total Number of Non-Disputes	43			

Table 12: Fairness of Employer

Fairness of Employer	Respondents	%	Response	%
Fair	18	23.35	Positive	23.35
Slightly Unfair	16	22.54	Negative	74.65
Very Unfair	37	52.11		
Total Number With Dispute & No MHRE Involvement	71			

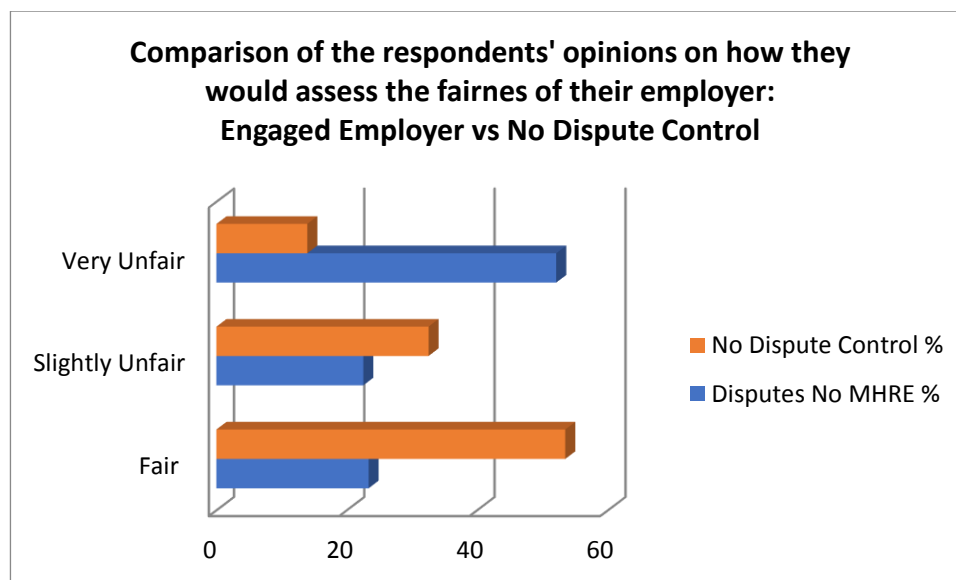


Figure 8: Fairness of Employer: Engaged Employer vs Dispute Control

Those who did not have a dispute (No Dispute Control % (ND%)) looked more favourably towards their employer's system. Their perception is such that they are more relenting towards holding a negative view of their employer's system, whereas those who did experience an issue have opted to categorise their employers with having a very unfair approach. That said, more ND% have stated that there is a tendency to suggest that in the case of a dispute, their employer would be slightly unfair.

All of the above data heavily indicates that certain respondents' employers are rather suspect in terms of their treatment of migrant workers. Moreover, migrant workers have stated that they lack confidence in engaging them, and those who did were largely unsatisfied with how they were dealt with. In numerous situations they were threatened and coerced back to work. The MHRE is not made aware of issues that go unreported, which in turn makes its role more difficult in terms of the prevention of labour-related offences.

#### **4.2.10 MHRE ADR/Dispute Resolution Service Engagement**

In terms of the 134 respondents that experienced a labour dispute, only 63 (47%) referred their complaints to the MHRE. Consequently, the following analysis is based on their first-hand experience of the labour dispute management systems at the relevant MHRE labour office.

Of the 63 respondents who engaged the MHRE's ADR system:

- 54 (86%) of them were South Asian.
- 34 (54%) were unskilled; 23 (37%) were skilled; and six (10%) were highly qualified professionals.

In addition to the cyclic ministerial decrees issued, purportedly to help migrant workers, the MHRE has recently undertaken activities to promote its ADR services through using various print and digital marketing campaigns, and introducing a revamped website and a dedicated

telephone helpline. Bearing that in mind, only 18 (29%) knew previously of the MHRE services, whereas 43 (68%) did not have any prior knowledge of the systems/service, which possibly raises a question of how effective the MHRE's outreach/marketing actually is. This indicates a lack of awareness regarding the MHRE ADR services. It suggests that when a migrant worker has an issue with their employer that cannot be resolved in situ, they would need to explore the options/facilities available for finding remedy, as they had not been made aware of any from the start of their employment. From some of the written statements, the respondents mentioned that they would turn to the police for help, which perhaps is an indication of how uninformed and indeed how aggrieved some migrant workers feel. In relation to international guidelines and state obligations, promotional schemes and awareness-raising activities would help to ensure that in practice people would better enjoy their economic, social, and cultural rights on a basis of equality. CESCR clarifies that states are thus obliged:

- To make available and accessible appropriate remedies, such as compensation, reparation, restitution, rehabilitation, guarantees of non-repetition, declarations, public apologies, educational programmes, and prevention programmes;
- To establish appropriate venues for redress such as courts and tribunals or administrative mechanisms that are accessible to all on the basis of equality, including the poorest and most disadvantaged and marginalised men and women;
- To conduct human rights education and training programmes for judges and public officials;



- To conduct awareness-raising and training programmes on equality for workers involved in the realisation of economic, social, and cultural rights at the grass-roots level.<sup>166</sup>

This supports findings that outline that some of the Gulf's poor and ill-informed migrant workers are exploited by violating companies and recruitment agencies, etc.<sup>167</sup> Moreover, CERD has highlighted that migrants are also are ill-informed of their rights, and are furthermore unaware of the mechanisms available to them in terms of remedy and redress, even when they exist.<sup>168</sup>

Another aspect investigated in the questionnaire was the level of satisfaction the complainant had in the MHRE-sanctioned *Tas'heel* centres. These centres provide specific services (through institutional partnership with the government), such as translation, transcription, and printing services. These are particularly relevant to migrant workers looking to resolve their workplace disputes as they not only provide the only documentation recognised by MHRE for formally lodging a dispute, but they translate and transcribe the complainants' issues on to the form in Arabic. Thus, the *Tas'heel* shop, although being a partner agency outside of the MHRE, provides an initial port of call in the process of engaging the MHRE's dispute resolution system.

The following table shows the level of satisfaction the respondents had in engaging the *Tas'heel* services:

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<sup>166</sup> CESCR (2005) General Comment No. 16 General The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant), 11 August 2005, E/C.12/2005/4, Para 15 available at <<http://www.refworld.org/docid/43f3067ae.html>> accessed 17 November 2015; See also CESCR (n 132)

<sup>167</sup> Rahman, Anisur (2010) 'Migration and Human Rights in the Gulf' Middle East Institute Viewpoints February 2010

<sup>168</sup> CERD (2005) Concluding Observations Bahrain CERD/C/BHR/CO/714 April 2005, Para 29; CERD (2012) Concluding Observations Kuwait CERD/C/KWT/CO/15-20 4 April 2012, Para 22; CERD (2012) Concluding Observations Qatar CERD/C/QAT/CO/13-16 13 April 2012, Para 19

Table 13: Satisfaction in *Tas'heel* services

Satisfaction in <i>Tas'heel</i> Services	Respondents	%	Response	%
Very Satisfied	5	7.94	Positive	30.16
Satisfied	14	22.22		
Neutral	23	36.51	Neutral	36.51
Unsatisfied	15	23.81	Negative	33.33
Very Unsatisfied	6	9.52		
Total Number That Engaged <i>Tas'heel</i>	63			

Based on the above results, the respondents were not particularly satisfied with the precursor step to formally lodging their complaint at the relevant labour office. As the *Tas'heel* shop is the point of translating and transcribing the complainant's issue on to the Arabic documentation in Arabic, based on the complainant's work contracts and statements, it is essentially where the dispute resolution process begins. Furthermore, based on the researcher's informal observations, the transcribers speak very little target language, and mainly resort to communicating in Arabic, very basic English, or basic Urdu. Additionally, it was observed that mistakes in transcribing/inputting information on the form occurred frequently and needed to be corrected at the relevant labour office at the point of lodging the dispute.

Therefore, it was also prudent to ask the migrant workers whether the language barrier imposed a problem when navigating systems in order to resolve their labour dispute, to which 40% mentioned that it was an issue. Another aspect to note is that many migrants have essentially been renewing their visa/work permit and so have resided within the UAE for a number of years, which in turn has made them more competent in verbally communicating in Arabic, whereas new arrivals would certainly have no understanding of Arabic.

The following table illustrates comparatively whether the Arabic language posed a barrier to the respondent. The table looks specifically at respondents who (1) did not have a dispute (No Dispute Control %); (2) had a dispute but did not engage the MHRE (Dispute No MHRE %); (3) had a dispute and engaged the MHRE (Dispute MHRE %).

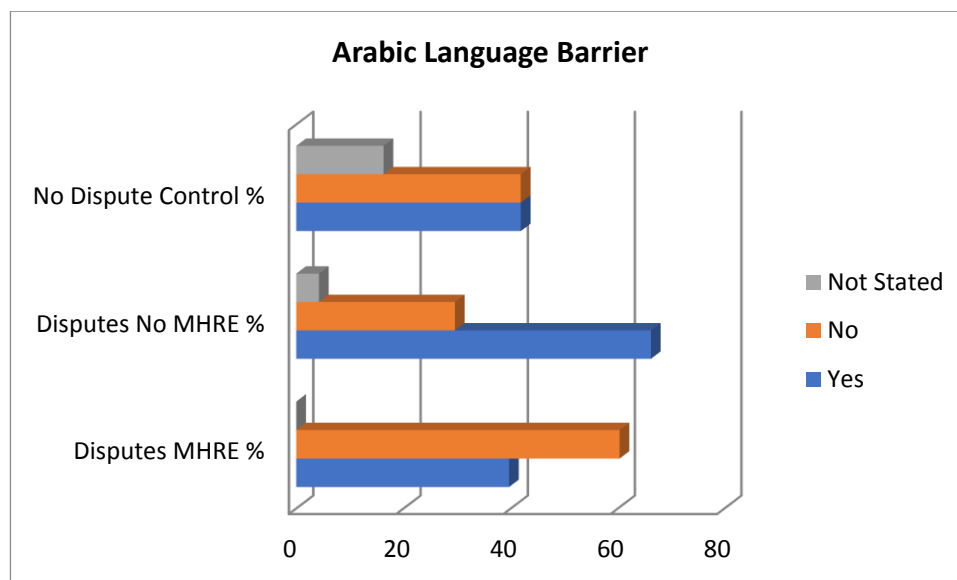


Figure 9: Arabic Language Barrier

- Those who did not have a dispute (43 in total) stated in equal measure whether Arabic would or would not pose a language barrier, i.e. 18 (42%) respondents in each category. The number of individuals who left the answer blank (not stated) was highest for those who did not have a dispute).
- Those who had a dispute but did not engage the MHRE (71 in total) clearly had issues with communicating in Arabic, as 47 (66%) had stated that Arabic would pose a barrier to them. This figure was more than double the number who were able to communicate in Arabic, i.e. 21 (30%).
- Those who engaged the Ministry (63 in total) were more able in communicating in Arabic, as 38 (60%) respondents stated that Arabic did not pose a barrier in dealing with their dispute.

An aspect to investigate could have been to explore whether the time the migrant worker spent in the UAE had an effect on their language competence and whether that had an effect on how confident they would be in engaging the MHRE.

The following section examines the level of confidence the respondents had/have in the services offered by the MHRE. This was examined in terms of those who (1) did not have a dispute (No Dispute Control %); (2) had a dispute but did not engage the MHRE; (3) had a dispute and engaged the MHRE.

*Table 14: Confidence Level: No Dispute*

Confidence Level: No Dispute	Respondents	%	Response	%
Very Confident	1	2.33	Positive	44.19
Confident	18	41.86		
Neutral	9	20.93	Neutral	20.93
Unconfident	6	13.95	Negative	34.88
Very Unconfident	9	20.93		
Total Number of Non-disputes	43			

*Table 15: Confidence Level: Dispute and No MHRE*

Confidence Level: Dispute and No MHRE	Respondents	%	Response	%
Very Confident	9	12.68%	Positive	28.17%
Confident	11	15.49%		
Neutral	8	11.27%	Neutral	11.27%
Unconfident	15	21.13%	Negative	59.15%
Very Unconfident	27	38.03%		
Blanks	1	1.41%		
Total Number of Disputes and No MHRE	71			

Table 16: Dispute and MHRE

Confidence Level: Dispute and MHRE	Respondents	%	Response	%
Very Confident	6	9.52	Positive	44.44
Confident	22	34.92		
Neutral	17	26.98	Neutral	26.98
Unconfident	12	19.05	Negative	28.57
Very Unconfident	6	9.52		
Total number who engaged MHRE	63			

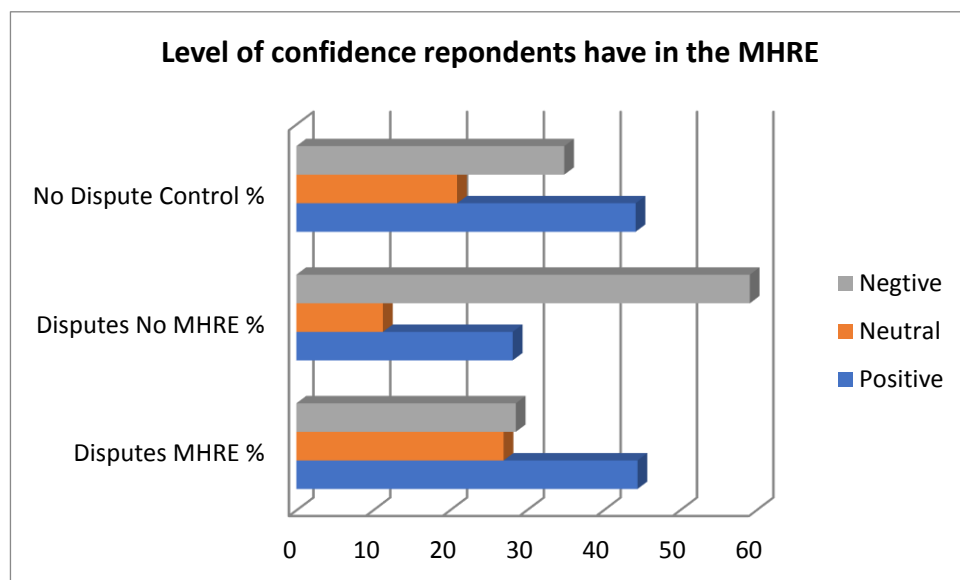


Figure 10: Level of Confidence respondents have in the MHRE

The above tables and chart shows that:

- Of those who did not have a dispute (43 in total):
  - 19 (44%) would be confident in dealing with a dispute at the MHRE;
  - 15 (35%) would be unconfident;
  - 9 (21%) were neutral in their response.

- Those who had a dispute but did not engage the MHRE (71 in total) had again clearly projected negativity, as 42 (59%) would not be confident in dealing with the MHRE. Arguably, this shows that there is an apparent link between the language barrier and the confidence level.
- Those who engaged the Ministry (63 in total) were very slightly more confident in the MHRE's services and in engaging it, i.e. 28 (44%) respondents gave positive responses. Seventeen (27%) gave a neutral response that perhaps highlights a certain degree of apprehension in engaging the MHRE.

#### 4.2.11 MHRE Performance

The following section explores how easy the processes of the MHRE were to initiate and how the MHRE's legal workers, i.e. the mediators/conciliators, performed in terms of how they managed the ADR process. The table below shows how easy the respondents found it to lodge their dispute at the MHRE via the counter service offered at the labour office.

*Table 17: Ease of Lodging Dispute at MHRE*

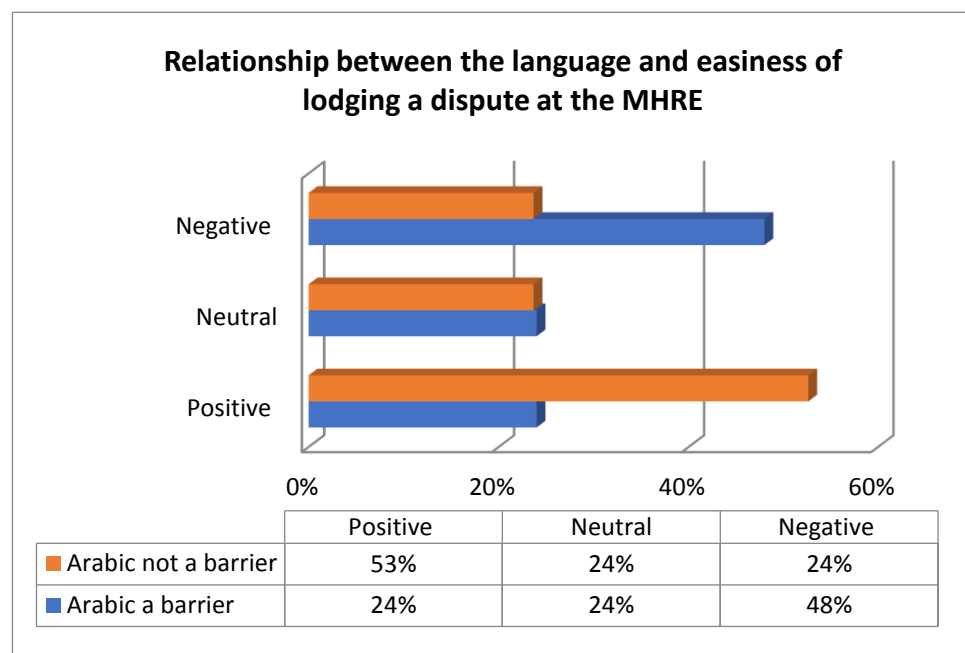
Ease of Lodging Dispute at MHRE	Respondents	%	Response	%
Very Easy	9	14.29%	Positive	41.27%
Easy	17	26.98%		
Neutral	15	23.81%	Neutral	23.81%
Difficult	12	19.05%	Negative	33.33%
Very Difficult	9	14.29%		
Blanks	1	1.59%		

When cross-examining whether language posed a barrier and whether it affected how easy or difficult it was to lodge the dispute, the results showed that 12 (48%) gave a negative

response, i.e. they stated that they had difficulties in lodging the dispute (see followin table and chart for illustrations of the results).

*Table 18: Language vs Ease of Lodging Dispute*

Language vs ease of lodging dispute	Arabic a barrier	%	Response	%	Arabic not a barrier	%	Response	%
Very Easy	4	16.00%	Positive	24.00%	5	13.16%	Positive	52.63%
Easy	2	8.00%			15	39.47%		
Neutral	6	24.00%	Neutral	24.00%	9	23.68%	Neutral	23.68%
Difficult	7	28.00%	Negative	48.00%	5	13.16%	Negative	23.68%
Very Difficult	5	20.00%			4	10.53%		
Blanks	1	4.00%			0	0.00%		
Totals	25				38			



*Figure 11: Relationship between the Language and Easiness of Lodging a Dispute at the MHRE*

The following table shows the length of time it took for the MHRE to initiate the actual process of ADR from the point of lodging the dispute (the MHRE states that it can take up to 15 days for this process). Bearing in mind that they were or had been in an ongoing dispute with their employer, the questionnaire also asked whether the respondents found their individual waiting time acceptable.

Table 19: Time Taken for MHRE Summons

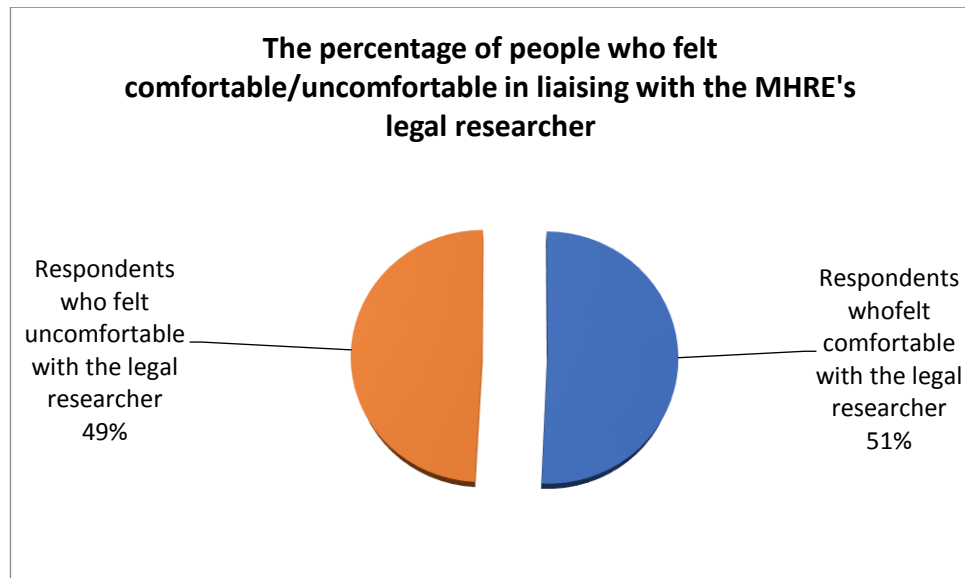
Time taken for MHRE summons	Respondents	%	Respondents who found the time acceptable		Respondents who found the time unacceptable	
			Respondents	%	Respondents	%
1-3 days	12	19.05%	11	17%	1	2%
4-7 days	13	20.63%	12	19%	1	2%
8-14 days	7	11.11%	3	5%	4	6%
15-21 days	11	17.46%	5	8%	6	10%
>21 days	20	31.75%	3	5%	17	27%
<b>Total</b>	<b>63</b>	<b>100.00%</b>	<b>34</b>	<b>54%</b>	<b>29</b>	<b>46%</b>
<b>1-21 days (MHRE expectation of 15 working days)</b>	<b>43</b>	<b>68.25%</b>	<b>31</b>	<b>72.09%</b>	<b>12</b>	<b>27.91%</b>

Of the respondents, 43 (68%) were summoned within the parameters set by the MHRE, of which 72% found that waiting time acceptable. However, 20 (32%) of the respondents had a waiting time in excess of what the MHRE deems appropriate, i.e. a wait in excess of 21 days. Overall, 31 (72%) found their waiting time acceptable even though certain respondents waited in excess of the MHRE's stipulated time.



#### 4.2.12 MHRE's ADR Mechanism Assessment

The following section assesses how the MHRE's staff performed in terms of how well legal researchers dealt with managing the ADR process, and ultimately whether or not the assigned worker managed to settle the dispute between the migrant worker and their employer.



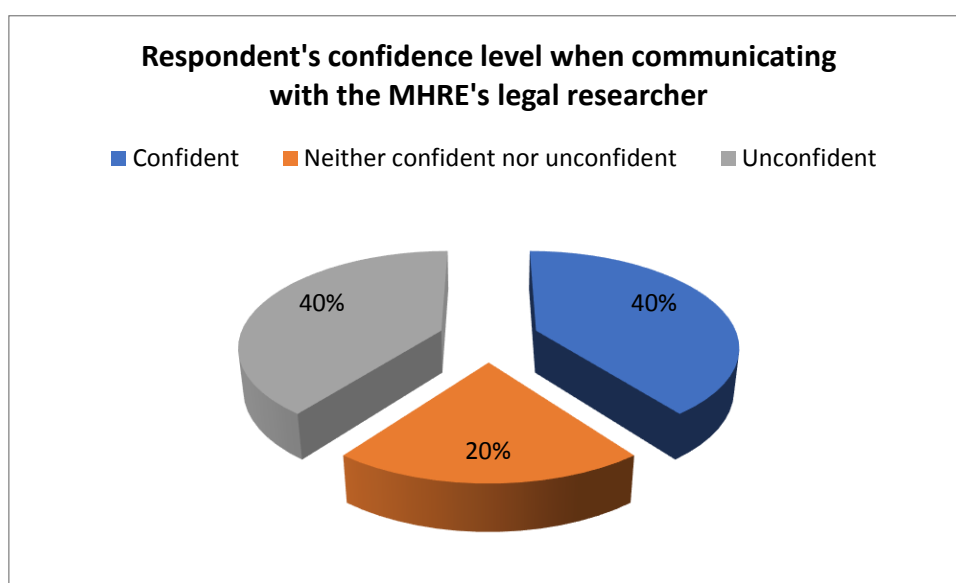
*Figure 12: The Percentage of People Who Felt Comfortable/Uncomfortable in Liaising with the MHRE's Legal Researcher*

The above chart shows that there was a relatively even split between those migrant workers who felt comfortable and those who felt uncomfortable in liaising with their legal researcher. Comfortability in liaising with the legal researcher is a particularly key sentiment as the migrant worker would have most likely been through an arduous process in trying to deal initially with their employer.

The following table and chart illustrates the respondents' confidence levels when communicating with the MHRE's legal researcher.

*Table 20: Confidence Level in Communicating with the Legal Researcher*

Confidence level in communicating with the legal researcher	Respondents	%	Response	%
Very Confident	6	9.52	Positive	39.68
Confident	19	30.16		
Neutral	13	20.63	Neutral	20.63
Unconfident	12	19.05	Negative	39.68
Very Unconfident	13	20.63		



*Figure 13: Respondent's confidence level when communicating with the MHRE's legal researcher*

The level of confidence the migrant respondents had in their legal researcher is somewhat split as 25 (40%) responded positively and 25 (40%) responded negatively.

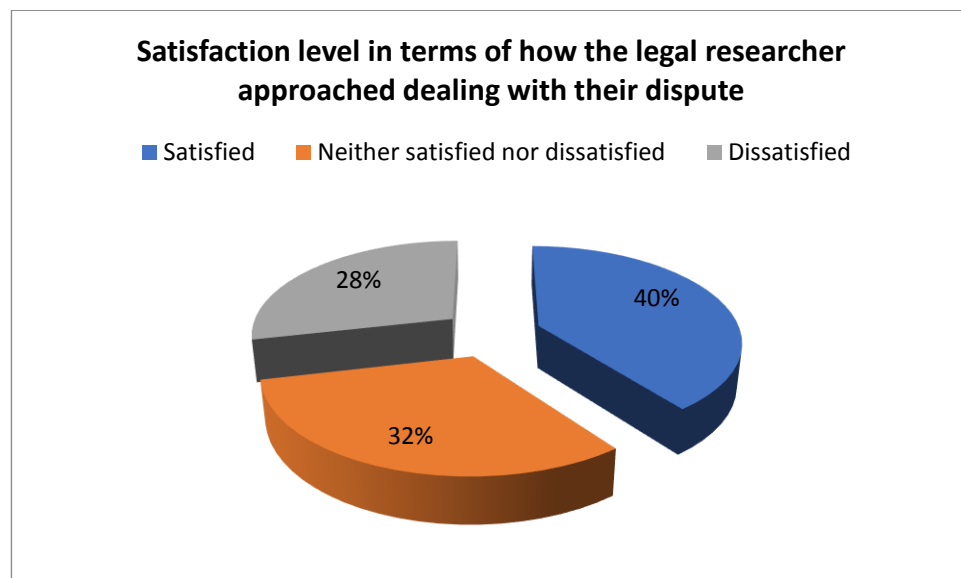
- Of those who stated that Arabic posed a language barrier (25 respondents in total), 60% of them recorded that they lacked confidence in communicating with their legal researcher, with only 20% of them feeling confident.

- Of those who stated that Arabic did not pose a language barrier (38 respondents in total), 53% of them felt confident in communicating their thoughts to the legal researcher.

The following table and chart presents the satisfaction level in terms of how the MHRE's legal researcher approached dealing with their disputes.

*Table 21: Satisfaction in the legal researcher's approach in dealing with the dispute*

Satisfaction in the legal researcher's approach in dealing with the dispute	Respondents	%	Response	%
Very Satisfied	8	12.70	Positive	39.68
Satisfied	17	26.98		
Neutral	20	31.75	Neutral	31.75
Unsatisfied	12	19.05	Negative	28.57
Very Unsatisfied	6	9.52		



*Figure 14: Satisfaction level in terms of how the legal researcher approached dealing with their dispute*

The manner in which the legal researchers approached the migrant workers' disputes has resulted in rather indifferent feedback. Although the majority of respondents (25, or 40%) felt satisfied with the legal worker assigned to manage the process, a relatively large proportion (32%) recorded that they felt neutral, i.e. neither satisfied nor dissatisfied in relation to the approach taken by the legal researcher in dealing with their dispute.

The following tables and charts presents the respondents' opinions on how the MHRE's legal researcher actually engaged the ADR process in dealing with their dispute in terms of effectiveness, negotiations, and fairness.

Table 22: Effectiveness of the legal researcher

Effectiveness of the legal researcher	Respondents	%	Response	%
Very Effective	5	7.94	Positive	39.68
Effective	20	31.75		
Neutral	16	25.40	Neutral	25.40
Ineffective	9	14.29	Negative	34.92
Very Ineffective	13	20.63		

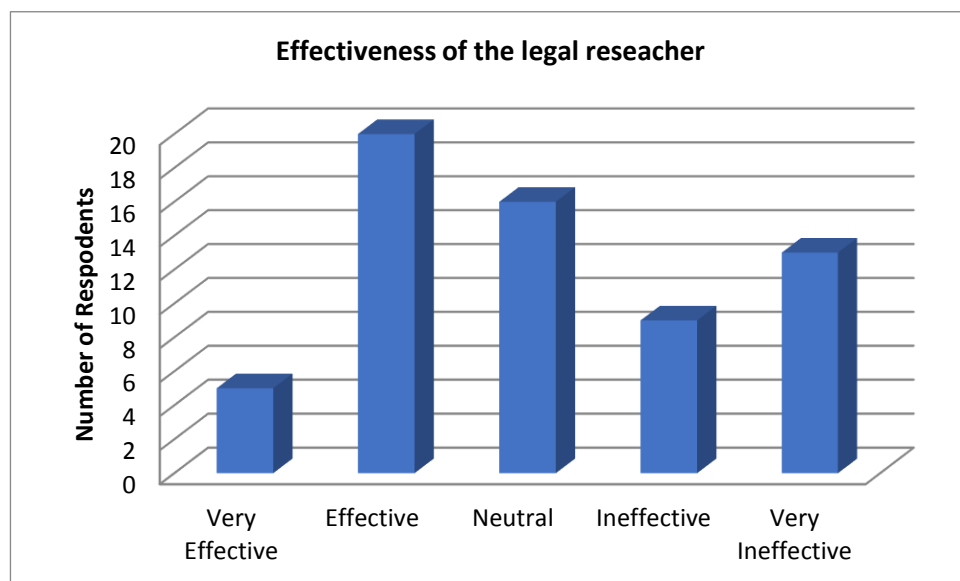
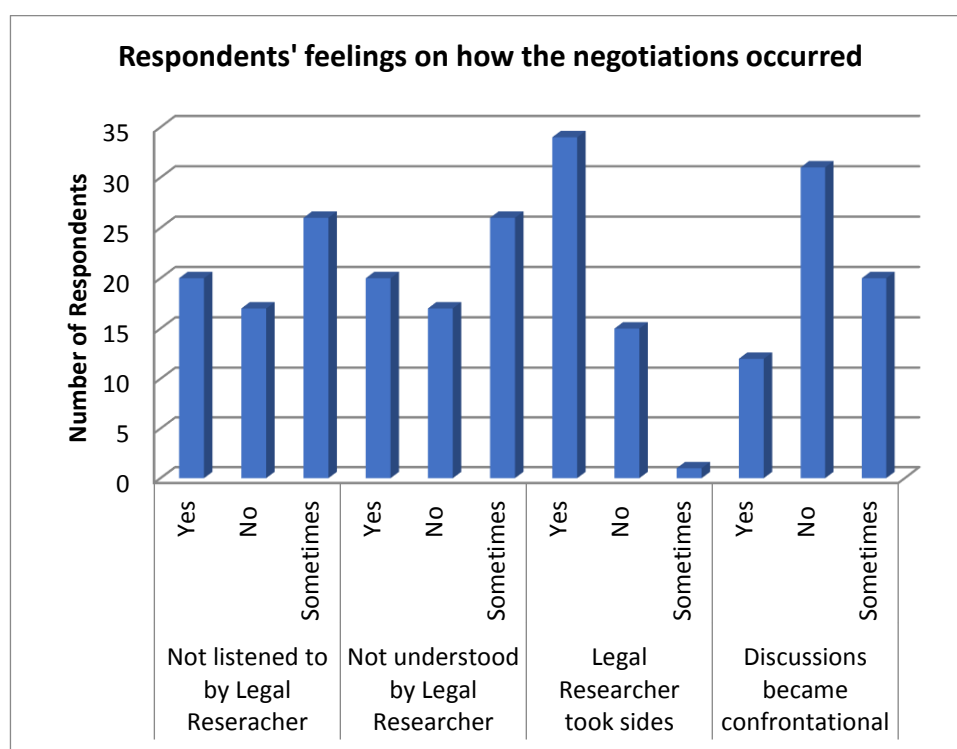


Figure 15: Effectiveness of the legal researcher

Rather than illustrating an aggregate of percentage figures (see above table for the aggregate percentages), the adjacent chart shows the actual responses (frequency) made by migrant respondents in reference to how effective they felt the legal researcher was in engaging their employer and them in relation to finding a resolution. A concerning number of respondents expressed that the legal researcher was very ineffective (13, 21%).

The chart below illustrates the frequencies of how the respondents replied in relation to a series of questions related to the actual process of dispute resolution.

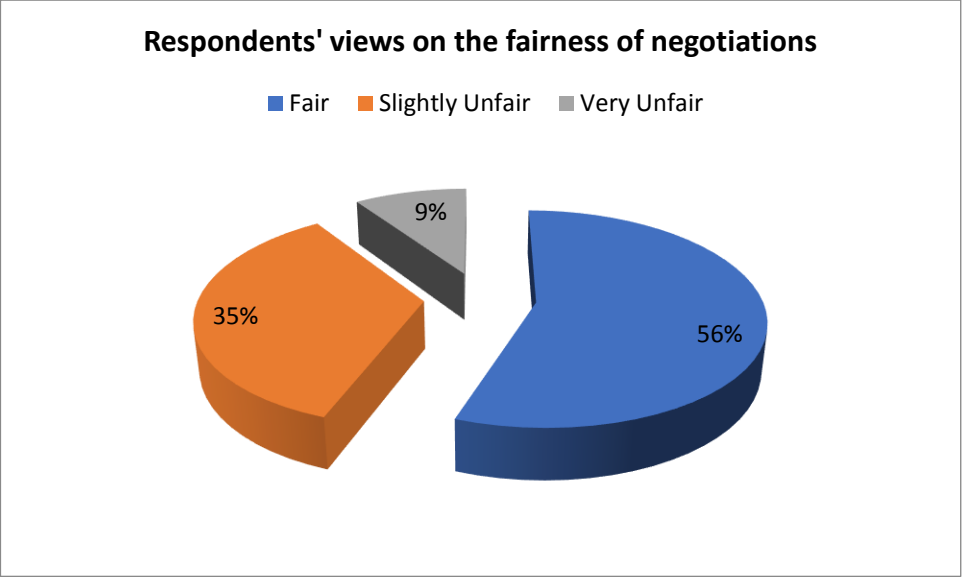


*Figure 16: Respondents' feelings on how the negotiations occurred*

In summary, the migrant workers said that (figures are aggregate percentages):

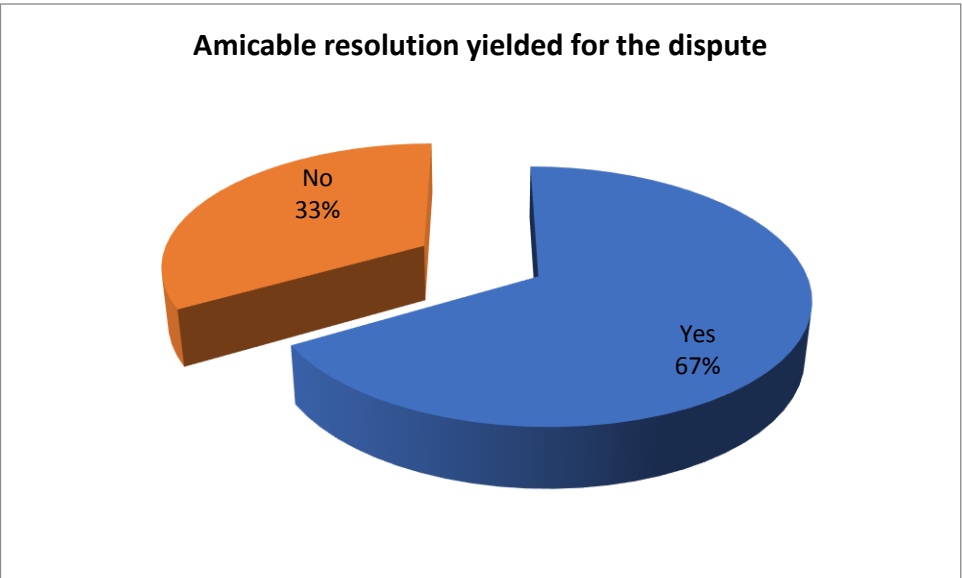
1. They were not listened to at some point (73%).
2. The researcher did not understand their problems completely (56%).
3. The legal researcher took sides at some point (44%).
4. The discussions became confrontational (51%).

The following chart explores how the respondents viewed the overall fairness of the negotiations that took place in relation to the dispute resolution process. Forty-four per cent of the respondents felt some disagree of unfairness, whereas 56% felt that the negotiations were fair.



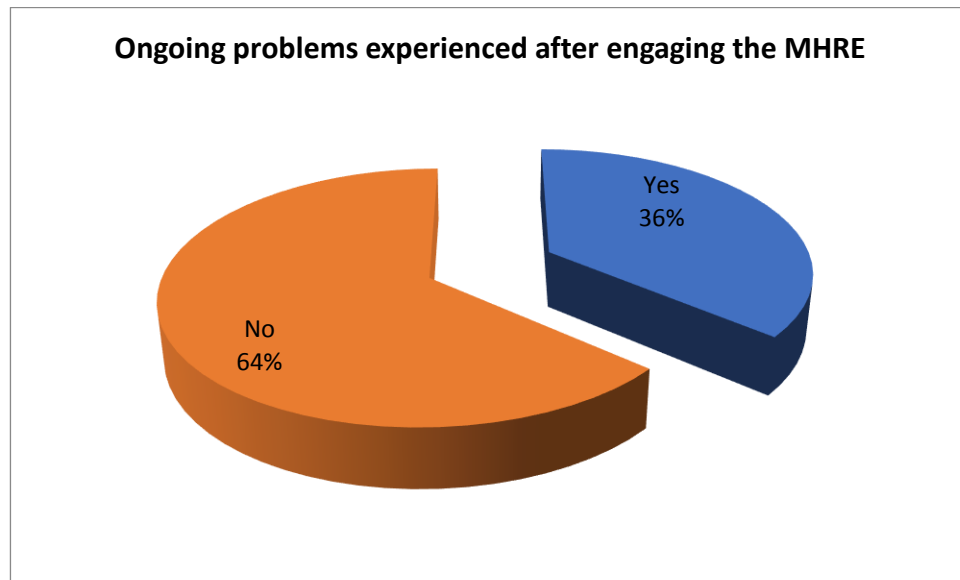
*Figure 17: Respondents' views on the fairness of negotiations*

The following section presents the MHRE’s ADR processes outcome (success rate):



*Figure 18: Amicable resolution yielded for the dispute*

- 42 (67%) of the 63 respondents who engaged the MHRE actually reached an amicable resolution, whereas 21 (33%) did not.



*Figure 19: Ongoing problems experienced after engaging the MHRE*

- Furthermore, 21 (36%) had ongoing problems of which five (8%) initially stated that their dispute had been resolved after engaging the MHRE.

In terms of who (if anyone) supported the complainant, 50 (79%) of the respondents approached the MHRE alone and did not have any form of third party support, despite many people stating that their dispute with their employer was not isolated but affected other people.

When asked if they would prefer having legal representation as support (having experienced the process), 35 (56%) affirmed that they would. In terms of comments, many of the respondents mentioned that legal help would aid them in gaining a fair outcome and that their rights would be better ensured.

In terms of gauging an overall picture of the MHRE dispute management system, enquiries were made into the effectiveness of the staff as a whole and the overall satisfaction level of the system. The two charts below show that there is an indicative correlation between what

the respondents said regarding the effectiveness of the staff and the satisfaction level attained from engaging the MHRE's dispute management services.

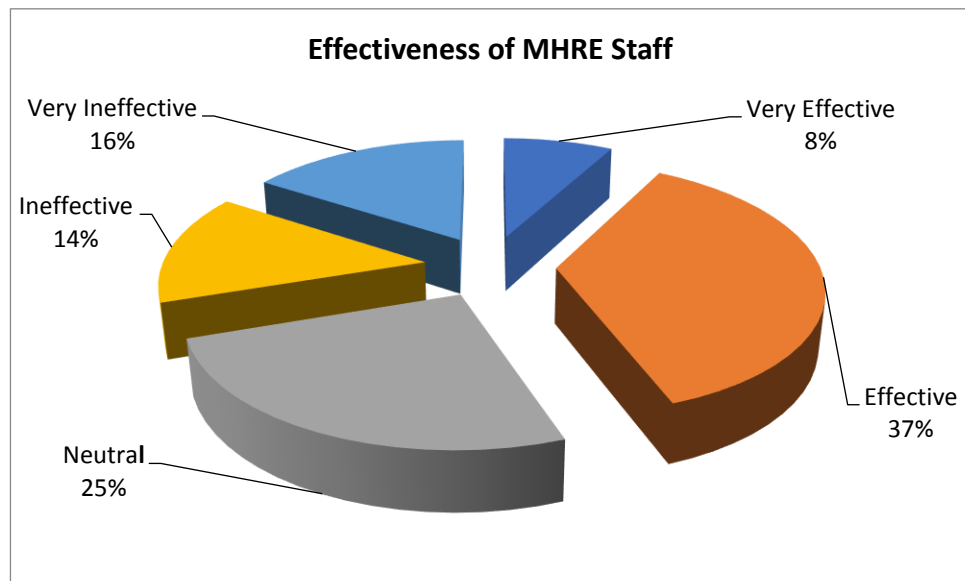


Figure 20: Effectiveness of MHRE staff

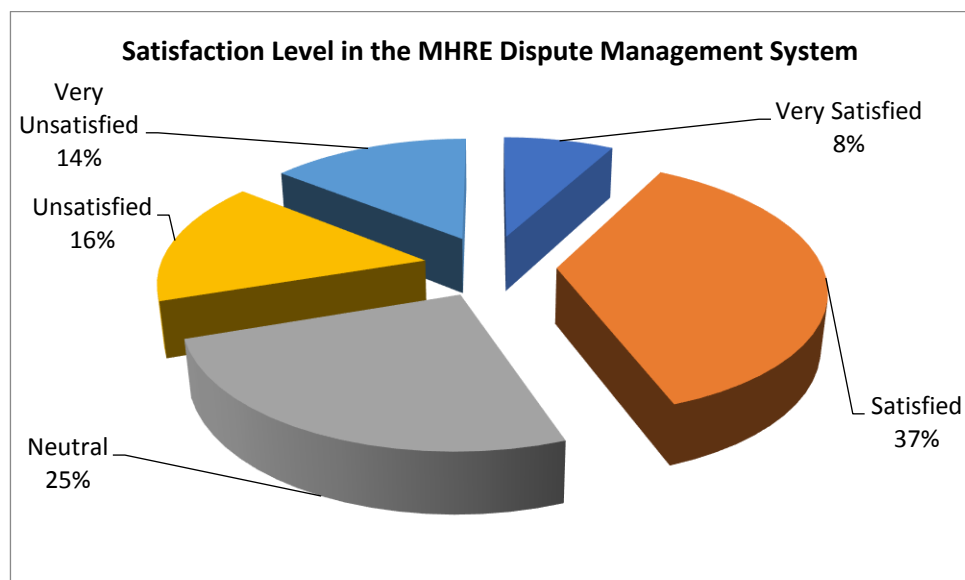


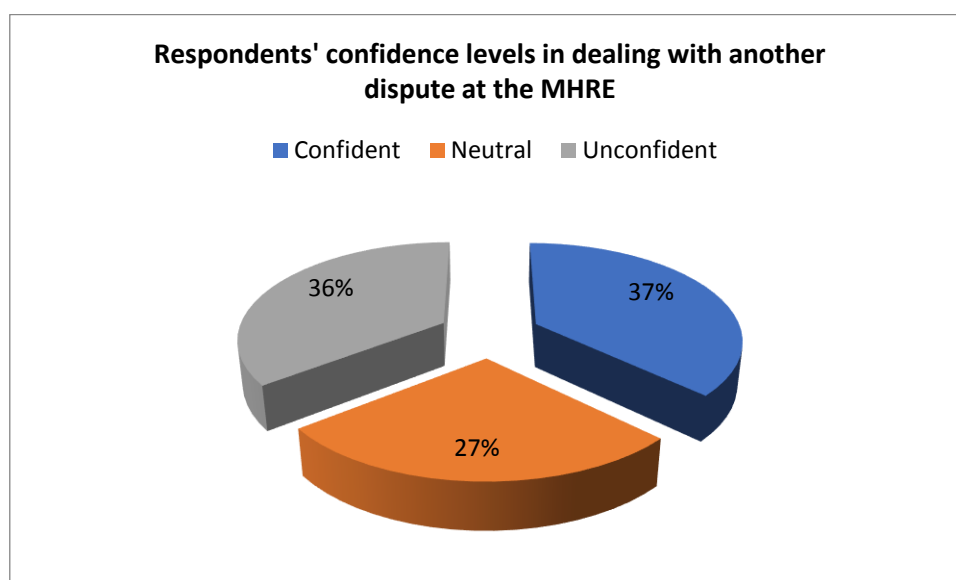
Figure 21: Satisfaction Level in the MHRE Dispute Management System

The percentages represent aggregate responses that are 45% positive, 25% neutral, and 30% negative, which highlights the degree of variance seen in the responses when it comes to the respondents' opinions of the MHRE.



In terms of the opinions projected by the respondents, they clearly had a degree of doubt to say the least in the ADR services experienced with the MHRE. Although 67% of the respondents managed to resolve their dispute, the processes of navigating the systems related: translation and transcribing the paperwork into Arabic through a third party intermediary; lodging the dispute using the MHRE counter services; the resulting time taken in initiating the mediation/conciliation process; and indeed the process itself. The main aspect of the service, namely the ADR, mediation/conciliation, and negotiations, etc., had indifferent feedback. The feedback suggests that the apparent communication barrier hindered the process, which may have had an impact on why so many respondents stated that they felt that the process was unfair to some degree; they lacked confidence in the process; and they regarded the personnel as ineffective in some cases.

The table below illustrates how confident the respondent would be in dealing with another dispute at the MHRE.



*Figure 22: Respondents' confidence levels in dealing with another dispute at the MHRE*

A telling statistic is that a large proportion of people stated that they would be broadly unconfident in terms of dealing with another dispute even after having practical experience

of the process based at the MHRE. Only 37% said that they would be confident, which is only very marginally higher than those who would be unconfident in dealing with another dispute.

#### 4.2.13 Comparative Summary

Generally speaking, migrant workers had a tendency to have a negative view on the MHRE as a service provider, as they have recorded relatively high frequencies of negative responses to questions. Thus, the following charts have been presented to draw inference between the responses gained from the groups of migrant workers engaged in the questionnaire. The aim is to see how their respective responses fared against each other by using charts that compare the responses gained.

The following table re-illustrates comparatively whether the Arabic language posed a barrier to the respondent. The table looks specifically at respondents who (1) did not have a dispute (No Dispute Control %); (2) had a dispute but did not engage the MHRE (Dispute No MHRE %); (3) that had a dispute and engaged the MHRE (Dispute MHRE %).

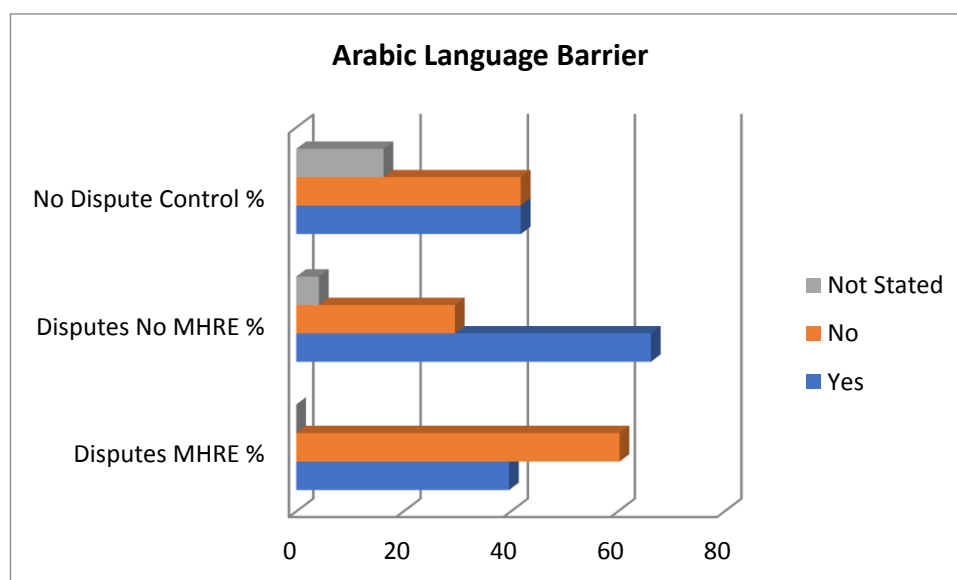


Figure 23: Arabic Language Barrier

The Arabic language posed a barrier particularly to those respondents who did not feel empowered enough to approach the MHRE's dispute management services. This may have led to them being initially unconfident in dealing with their respective employers. The fact that language was also mentioned in a number of the narratives given along with the questionnaires suggests that the MHRE needs to be more proactive in supporting the service users in relation to the language barriers the respondents talked about. This would in turn increase the confidence migrant workers have in articulating their issues and, in general, make it easier to navigate the dispute resolution process. The CESCR has acknowledged that migrant workers face barriers due to the presence of language being a barrier in realising their rights by stating that 'if they do not speak the national languages they might be less aware of their rights and unable to access grievance mechanisms'.<sup>169</sup>

The following chart compares the various groups of respondents' opinions on the MHRE staff, i.e. how effective they are, or would be.

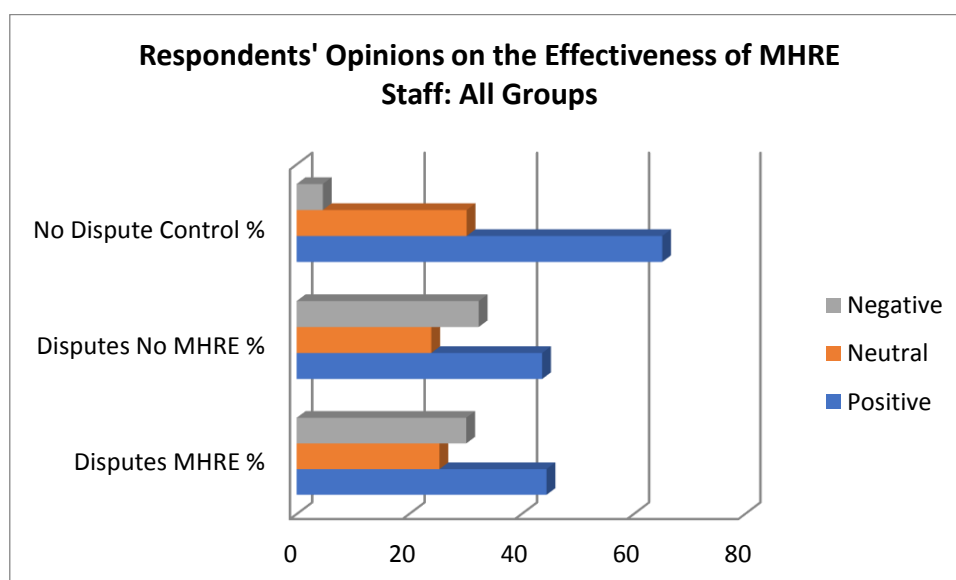
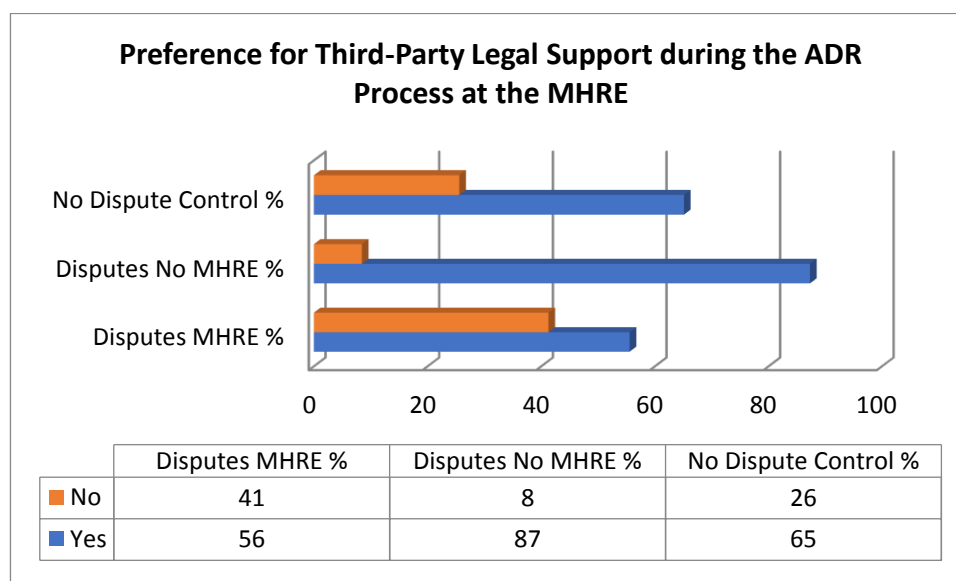


Figure 24: Respondents' Opinions on the Effectiveness of MHRE Staff: All Groups

<sup>169</sup> CESCR (2015) UN Committee on Economic, Social and Cultural Right, Right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), 20 January 2015, E/C.12/54/R.2, Para 62 available at <<http://www.refworld.org/docid/5550a0b14.html>> accessed 17 November 2015

In terms of the groups' perception of the staff based at the MHRE, those who have not experienced a dispute had a more positive outlook on them. Both the disputants who had engaged the MHRE and those who did not had similar views. In all cases, significant numbers abstained in giving a definitive response, by remaining neutral.

The following chart illustrates the difference in preference for having a third party legal advisor/supporter during the process of dispute resolution.



*Figure 25: Preference for Third-Party Legal Support during the ADR Process at the MHRE*

A telling statistic is that those respondents who did not feel empowered enough to approach the MHRE's dispute management services, of which some stated that they felt isolated and helpless, also felt that they would need legal support in dealing with the dispute, even at the MHRE. This group has indicated that their labour rights have been violated by their employer and feared that the same could reoccur at the MHRE. Furthermore, it could be assumed that the language barrier and the lack of information regarding the laws and procedures, etc., particularly for certain factions of the migrant worker population, leaves those individuals at most risk of feeling vulnerable to being further exploited. This has transpired in the chart

below, which shows how the two groups of respondents who did not engage the MHRE perceive how fair the UAE’s court system would be.

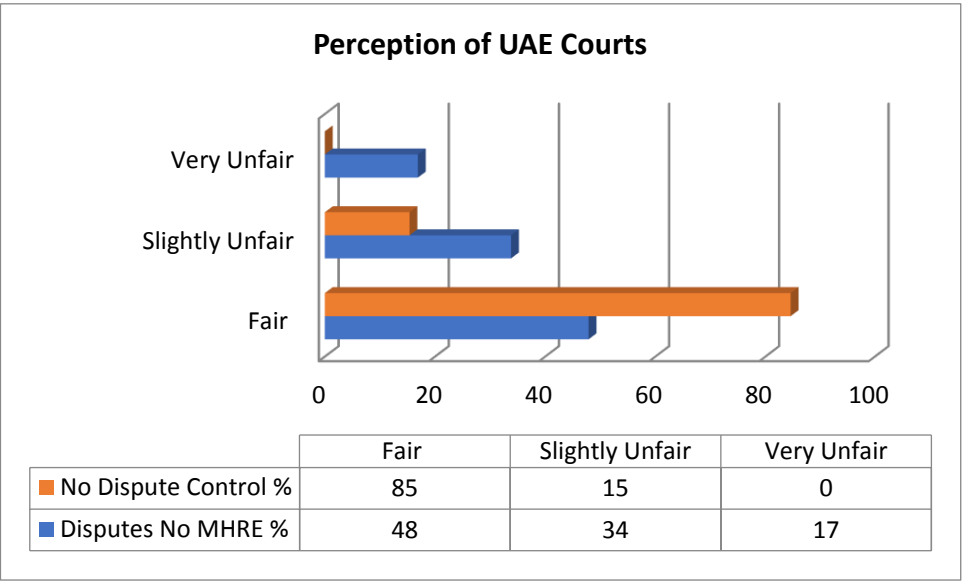


Figure 26: Perception of UAE Courts.

Those who had not experienced a dispute clearly felt that the UAE’s court system would be fair (85%), whereas those who had experienced a dispute but did not engage the MHRE felt that the court system would largely be unfair, as 52% had a negative view, with 17% having a very negative view.

#### 4.2.14 Fieldwork Summary

It is clearly apparent from the responses gained from the target group, albeit from a sample of migrant workers amongst the thousands who access the MHRE, that the opinion of the MHRE is particularly varied. Although there are some positive indicators of the services, staff, and processes at the MHRE, there is a categorical range of negative views based on the migrant workers’ experiences of the dispute management system.

Initially, the employers of many of the migrant respondents have largely failed in upholding the labour law and indeed the migrant workers’ basic rights. The culture observed from the

migrants' responses in this investigation has reflected the international watchdogs' findings, where organisations such as HRW have documented abuse and unfair treatment by unscrupulous employers who deny the rights of their low-level migrant worker populations. The nature of the disputes observed within the investigation are also in line with the paradigm set internationally and with what has transpired from analysing the MHRE's data (namely, the frequency of the types of disputes experienced and the nationalities of workers who experience them).

The ability for migrant workers to communicate effectively with the legal researchers is impeded by the language barrier, with many migrants stating that they did not understand the language, which in turn made their issues more difficult to express and ultimately find a resolution. Moreover, the perceptions observed from the investigation, particularly of those who chose not to engage the MHRE despite having a dispute, highlights how the language barrier has affected the overall level of confidence the respondents had in the MHRE. The investigation has shown that there is a correlation between language, confidence, and the ability to navigate the mechanisms of dealing with an employment dispute. A level of basic understanding between the parties concerned is necessary in order for the mediation/conciliation to work.

Although recently the MHRE has issued a number of ministerial decrees designed to support the migrant workers by having offers and contract-related documentation standardised and available in their native languages, the processes related to the MHRE are all carried out primarily in the medium of Arabic. Although the MHRE recognises the need to have the initial work documentation in the migrant workers' native languages, it does not provide an adequate level of language support either at the MHRE nor its associate service partners. Although resolutions to the migrant workers' problems were found via the MHRE's ADR

system, many of the respondents found it difficult to coherently express their views and likewise be understood by the legal workers during the process.

In addition to this, the preference shown by the respondents in wanting legal support in order to aid them realise their rights supports the notion that migrants doing unskilled work are disadvantaged on a number of different levels, including language. Some of the respondents stated that legal support would enable them to fully realise their rights, and also understand the implications of the law.

The responses gained from the migrant workers' experiences of the MHRE's ADR provision are also particularly negative, as seen in the presentation of the results. In addition to this, a significant number of respondents stated that they were neutral in terms of their opinions, which, although at first glance is not a negative, is not a position to be contented about, as it shows uncertainty and insecurity. Moreover, this abstinence in making a definite choice, including where respondents left questions blank,<sup>170</sup> shows that there is an innate culture of uncertainty and even negativity (as observed in the respondents' responses) towards the machinery that is ultimately there to support them.

Based on the analysis of the labour law (including its exclusions of certain groups of workers and the lack of civil society involvement), the impact of the *Kafala* system and migration protocol, and the MHRE's ADR systems, there are glaring gaps in terms of how the MHRE protects the rights of migrant workers. Despite the good intentions of the various departments, the issues faced by migrant workers are ongoing, hence the cycle of negative coverage from international human rights groups. Although the MHRE has continued to issue series of ministerial decrees to combat the abusive situations migrant workers endure, it has not addressed the fact that the laws and systems fall short in protection. Moreover, rather

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<sup>170</sup> This includes questions related to: feedback on an answer based on their experience; to identifying what the respondents did next after a key point during the process and; also regarding what went well at the MHRE.

than fixing the laws, most governments throughout the GCC have instead promoted standard employment contracts, suggesting that they would provide migrants workers with their basic rights. However, a standard contract is not a substitute for a proper legal framework, nor did it absolve the authority from accountability. As discussed and observed in the fieldwork, many migrant workers do not pursue legal remedies for breach of contract before the labour courts given the difficulty in accessing them, the time it takes, and the expenses associated with formal litigation. In addition to these hurdles presenting themselves, migrant workers at the same time have the fear of retaliation from their employers. Notably, when the MHRE issued a series of Ministerial Decrees in 2016,<sup>171</sup> in relation to standard contracts, it made the following statement:

**The new rules will also bring greater transparency, clarity and tighter monitoring of labour contract conditions and ensure both employer and employee enter into fully voluntary relationships.**<sup>172</sup>

Furthermore, in line with this, the Labour Minister Saqr Ghobash elaborated that the MHRE launched these new rules to:

**Enable workers to move freely between employers, as well as evaluating and reviewing every aspect of working in the Emirates from recruitment to housing and making significant reforms designed to ensure all workers are treated respectfully at all times, and able to report instances of maltreatment easily.**<sup>173</sup>

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<sup>171</sup> Ministerial Decree 764: Standard Work Contracts; Ministerial Decree 765: Termination of Limited Contract and Unlimited Contract; Ministerial Decree 766: Granting of New Work Permits

<sup>172</sup> Baldwin, Derek (2015) New UAE Labour Rules Kick in on January 1, 2016, Gulf News September 28/04/ 2015 <<http://gulfnews.com/news/uae/government/new-uae-labour-rules-kick-in-on-january-1-2016-1.1591368>> accessed 16 January 2016

<sup>173</sup> MHRE (n 149)



The changes in real terms fell short of annulling the widely criticised *Kafala* system. This system, as discussed, has allowed a certain faction of the employers in the UAE to use it to gain an unfair advantage, such as changing the terms of employment contracts (salary, hours, holidays, etc.), and coercing workers to work under the threat of invoking employment bans should they decide to change jobs. Labour Minister Saqr Ghobash also issued a statement recognising that there have been ongoing concerns with regard to how the systems in situ have been manipulated, by stating that:

**The issue isn't about the legal system itself. But it's about some of the practices that have been associated with it.<sup>174</sup>**

To some extent the statement is true; however, the MHRE not only needs to enforce harsher penalties on violating employers, it also needs to prevent violations from taking place in the first instance. Furthermore, migrant workers are also unable to count on effective inspection and enforcement mechanisms for those few rights that are currently afforded to them under law.

## 4.3 Conclusion

It can be concluded from examining the manner in which the Labour Law is applied in the UAE that the most important aspect of the legal culture relating to employment is paternalism.<sup>175</sup> The government acts through the MHRE as the guardian of the interests of employees but at the same time restricts certain rights. Although Islam places a duty on those in power for

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<sup>174</sup> Habboush, Mahmoud (2015) 'UAE Eases Some Restrictions on Millions of Foreign Workers' Bloomberg 29/09/2015 available at <<https://www.bloomberg.com/news/articles/2015-09-29/u-a-e-eases-some-restrictions-on-millions-of-foreign-workers>> accessed 06 January 2016; Fixsen, Anna (2015) 'UAE to Introduce Labor Reforms' Architectural Record 203(11) 83-96

<sup>175</sup> Paternalism being refers to, a government's policy or practice of taking responsibility for the individual affairs of its citizens (in the case of the UAE, its migrant workers too), esp. by supplying their needs or regulating their conduct in a prescriptive manner.

safeguarding the rights of society as whole, the political authority need to allow for members of its society to campaign for their rights, which fundamentally is an Islamic right as well.

The MHRE tends to interpret the Labour Law and employment contracts in a manner designed/aimed to protect the interests of employees, and often expressly proceeds from the premise that the employee is the weaker party and furthermore the application of the labour law renders it very difficult to deprive an employee of the statutory benefits it aims to provide. At the same time, a large proportion of the UAE's labour workforce originates from countries where good jobs are scarce and, as a result, they can be exceptionally reluctant to jeopardise their employment in the UAE, and therefore render themselves easily exploited by unscrupulous employers.

Despite the best intention of wanting to safeguard the labour rights of migrant workers, due to a combination of socio-economic drivers for foreign investment, political culture, unconvincing immigration protocols, outdated labour laws, a lack of enforcement, and mechanisms for promoting worker solidarity the labour issues in the UAE and the GCC region have persisted. Furthermore, these complex factors have intuitively become mechanisms for controlling the huge numbers of migrant workers in the GCC region, and thus have rendered the migrant workers less mobile and less vocal. Because of this, migrant workers have been subject to improper employment practices, and have been only afforded the necessary support and protection vis-à-vis an array of barriers in actually accessing them. The most at risk of experiencing issues are South Asians, as seen within the evidence presented from both the MHRE's data and from what has been observed within the fieldwork.

Although mechanisms/systems have been put into place, such as those sanctioned by Ministerial Decree 788 of 2009 on Protection of Wages, to ensure timely payment of salaries, the issue is still very prevalent, even in the sample of migrant workers engaged. This issue has to be taken to a new realm of action, as it is not acceptable for workers to be deprived of their

wage on any human or divine level. The MHRE, admittedly, has not only shown the magnitude of the issues the migrant workers face by disclosing their dispute data but has brought into perspective the massive task it has in addressing the relatively high number of dispute cases lodged at any given labour office. This ultimately needs to drive forward reform and it also needs to substantiate the need to resource the MHRE so that it is better equipped to deal with the issues on hand.

The level of expertise offered by ADR services has been brought into question from the data gained from the study's fieldwork, with significant proportions of respondents stating that they lacked confidence in the systems on offer and deemed that the service was not always effective. Although the MHRE states that it employs and trains 'multilingual labour law professionals',<sup>176</sup> this is an area left wanting, as the experiences of the respondents, albeit on a small scale, suggests there is an apparent discrepancy in the communicative ability of the staff.

Another facet of the service that needs to be examined is the systems for labour inspection, as the amount of actual labour inspections that are carried out represents an incredibly small number of disputants (<.02%); therefore, there is a clear need to train and employ more inspectors, as essentially the prevention of labour issues is better than finding a solution to a problem after it occurs. Some of the respondents implored the present researcher, including the MHRE, to 'come and see our condition'. In relation to inspection, enforcement and punishment of violating employers is also paramount. As observed, many of the respondents stated that their issue with their employer was not isolated, i.e. it affected other workers. Consequently, the MHRE needs to administer the law with real deterrents in order to stop companies committing serial violations of worker rights.

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<sup>176</sup> MHRE (n 149)

In the face of these complex dynamics affecting the realisation of migrant worker rights, the most contentious issue to be discussed is perhaps that which is related to worker solidarity schemes. Despite the normative international standards related to the freedom of association forming an integral part of both international law and also of the regionally developed Arab Charter, there has been little or no progress in that regard, even though the UAE has endorsed and affiliated itself with the ILO and various other bodies. The UAE's Labour Law stipulates the criminal nature of strike action, and permits the temporary suspension from work without pay should anyone partake in such activity.<sup>177</sup> Despite the illegality of strike action, there is, however, press coverage and evidence of marginalised workers engaging in strikes, which predominantly lead to criminal charges and deportation.<sup>178</sup> Notably, three of the fieldwork respondents mentioned that they had resorted to striking, although they were not deported. Regionally, and within the UAE, there is a tendency to regard activism as a precursor to civil unrest, and so any sorts of protests — and indeed labour unions, strikes, and pickets — are staunchly opposed. Even where professional associations are thought to be embedded in 'political activism' they have been renounced as being a threat to governance and society. Certain associations have resulted in being disbanded, with board members being dismissed and replaced by state appointees.<sup>179</sup> In these circumstances, where the state intervenes in professional associations, the Ministry of Social Affairs makes statements such as 'civil society organisations needed to comply with state regulations and laws governing their activities and scope of work', citing Article 16 of Federal Law No 2 of 2008, which in turn states:

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<sup>177</sup> UAE Labour Law, Article 112; UAE Federal Law No. 3 of 1987 On the Issuance of the Penal Code, Article 231

<sup>178</sup> HRW (2006 n 61) also cited therein Sunita Menon, 'Captive workers escape from housing compound' Gulf News, March 27, 2006; 'Construction worker dies – third in fortnight' 7Days (Dubai), February 14, 2006; Yousef, Wael 'Workers protest to get dues of over nine years' Khaleej Times (Dubai), February 8, 2006; Hadid, Diaa 'Abandoned workers fear their plight will be ignored' Gulf News, March 27, 2006.

<sup>179</sup> ITUC (2012) 'Internationally recognised core labour standards in the United Arab Emirates Report for the WTO General Council Review of the trade Policies of the United Arab Emirates (Geneva, 27 and 29 March, 2012) available at <[https://www.ituc-csi.org/IMG/pdf/final\\_tpr\\_uae.pdf](https://www.ituc-csi.org/IMG/pdf/final_tpr_uae.pdf)> accessed 18 July 2017

**The society may not deviate from the objectives stipulated under its articles of association. The society and its members are prohibited to interfere in politics or in the matters that impair the state security and its ruling regime, nor to arouse sectarian, racial or religious disputes.<sup>180</sup>**

The fact that certain professional associations are present is a positive; however, those that do exist in the UAE are bound by the above law and are subject to state control. In addition to those conditions, the bodies that are present are centred on highly qualified professionals rather than the typical migrant worker, and so do not facilitate a viable means for lobbying for their rights.

A final aspect to consider is that the UAE has an apparent class divide based on nationality, i.e. citizens/non-citizens. This manifests itself obviously in terms of population demographics but also in terms of the sovereign rights the UAE afforded to each group. Bearing in mind the recent level of instability within the region, the monarchical governments are eager to preserve their place both domestically and regionally, and also within the wider international hierarchy, the architecture of which was arguably created by the US hegemonic position since the Second World War. Nationals are given preferential treatment, understandably, but in doing so the state cements its authority in making broad decisions that proactively favour citizens but have less favourable ramifications for non-citizens. This reinforces the class divide, where citizens feel that the state is governing effectively, whereas certain factions of migrant workers feel less and less confident about the state's role in protecting their rights.

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<sup>180</sup> The National (2011) 'Ministry dissolves Teachers' Association board: Ministry of Social Affairs appoints interim board to one of the country's oldest civil associations' available at <<https://www.thenational.ae/uae/ministry-dissolves-teachers-association-board-1.377119>> accessed 18 July 2017; UAE Federal Law No. 2 of 2008 In Respect of The National Societies and Associations of Public Welfare, Articles 16 available at <<http://www.icnl.org/research/library/files/United%20Arab%20Emirates/AssoclawUAE.pdf>> accessed 28 February 2017

The fear of mass migrant worker movements and also any indigenous uprising also poses a threat to the capitalist paradigm that has historically developed; it is, moreover, a paradigm that rests upon the stability of the world's key oil-producing states.<sup>181</sup> In contrast to international solidarity towards protecting the rights of migrant workers globally, there is a countermovement for promoting the liberalisation of labour restrictions in order to attract foreign capital and investment flows, and to facilitate international partnerships — in a nutshell, 'globalisation'.

Having thus explored the situation 'on the ground' in the UAE, in terms of how the laws and mechanisms interact and how the migrant workers perceive the MHRE's dispute resolution system, the following and final chapter will endeavour to provide a roadmap to better protect the rights of migrant workers in the UAE. It will look at what can be specially done to achieve a better model of resolving the relatively huge number of employment disputes and also to prevent them from occurring in the first instance. It is indispensable to capitalise on the goodwill shown by the MHRE, and incumbent upon the wider government to not only recognise the issues at hand but to also address them accordingly, appropriately, and realistically.

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<sup>181</sup> Hanieh, Adam (2016) 'States of Exclusion: Migrant Work in the Gulf Arab States' in *Just Work? Migrant Workers' Struggles Today* edited by Choudry, Aziz and Hlatshwayo, Mondli (Pluto Press, London) 41-60

## Chapter 5 — Conclusion: Road Map for Reform

### 5.1 Introduction

The aim of the study has been not only to critique and assesses how the UAE deals with human and labour rights issues, experienced by its vast migrant worker population, but also to recommend reform. The final chapter aims to address what the UAE needs to do in terms of making it a better environment for migrant workers, ultimately allowing them to better realise and enjoy their rights.

### 5.2 Accountability Redefined: New Labour Laws through Affirming Divine Commitment

Islamic *Shari'ah* law and confers an array of rights and obligations through the imperative injunctions of the Qur'an and Sunnah. The Islamic regulations covering the administration of justice, the duties of ensuring public order, and the maintenance of law and international relations cannot be implemented without the power of governmental authority. The existence of rights is itself only one aspect of ensuring them, the other equally significant aspect is that of the major duty and obligation given to the state or authority to enforce their protection.<sup>1</sup> Therefore, it can be inferred that the state has a two-fold responsibility, where firstly it must itself respect human rights by for example, not abusing its powers to violate the rights of any person, and secondly to facilitate the enjoyment of human rights and dignities. Islamically it is the duty of the state to enhance human dignity and alleviate the conditions that hinder or obstruct the guarantee and realisation of human rights.<sup>2</sup> Moreover, Islam and the *Shari'ah*

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<sup>1</sup> Baderin, Mashood A. (2010) 'Establishing Areas of Common Ground between Islamic Law and International Human Rights' *International Journal of Human Rights* 5(2) 72-113

<sup>2</sup> Said, Abdul Aziz (1979) '*Precept and Practice of Human Rights in Islam*' *Universal Human Rights* 1(1) 63-79

have always recognised the institution of statehood and the importance of proper governance. Succinctly, the main purpose of the state in Islamic law is to enforce the principles of *Shari'ah* in a manner that ensures the well-being of human society. The Prophet Muhammed established the guarantee and indeed the enforcement of human rights as exhibited in the early Islamic state of Madinah. It was also reported that He appointed Rashid ibn Abdullah to adjudicate complaints against state officials. This was maintained and reaffirmed by the revered and rightfully guided Caliphates that followed Prophet, and in particular, it was reflected in the inaugural speech of the first Caliph Abu Bakr, which he stated, *inter alia*:

**O People! I have been given authority over you but I am not the best of you. If I do well, help me, and if I do wrong, then correct me. Truthfulness is in honesty and falsehood is in treachery. The weak person among you is strong in my eyes until I restore him his right if Allah wills, and the strong person among you is weak in my eyes until I take the right from him.**<sup>3</sup>

This provided the impetus for the people throughout the Caliphates to lodge petitions to or against any authority in respect of any injustice or violation of their rights. In later phases of Islamic history, certain political events led to the adoption of formal institutional control on rulers and public officers to prevent the misuse of state power to the detriment of society and the welfare of individuals.<sup>4</sup> Therefore, in order to ensure the proper management and regulation of rights, there is a moral and societal need to highlight discrepancies with the systems and indeed any personnel that are causing detriment to individuals or groups in the

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<sup>3</sup> Ibn Hisham (2000) *Sirat Ibn Hisham* abridged by Abdus-Salam M. Harun (Al-Falah Foundation: Translation, Publication & Distribution) 292, available at <<https://www.kalamullah.com/Books/SiratIbnHisham.pdf>> accessed 03 July 2018

<sup>4</sup> Baderin, Mashood A. (n 1)



society. State mechanisms are essentially meant to be embodiments of the *Shari'ah*, with the responsibility for ensuring that rights are being fully respected, honoured and enforced.

In Islam the concept of public interest not about securing the sole and personal interests of the rulers even if they consider their own personal interests to be the same as that of the public, rather it is about the benefits for the community as a whole.<sup>5</sup> Moreover, communitarism in Islamic *Shari'ah* does not aim at rendering members of society as being powerless and unprotected, rather its principles enable: (1) the removal of difficulties; (2) the realisation of welfare and; (3) the realisation of universal justice, all of which are postulates of what is regarded as international human rights. Islamic scholars and jurists furthermore recognised at an early stage that the state had an important role in the protection of rights and that the well-being of a community is very much related to the issue of political justice. Traditional Islamic postulations centre on the religious obligation of the promotion of good and the prohibition of evil,<sup>6</sup> which is all dependant a societal wide commitment to that duty. This reinforces the issue of state accountability and the right of the people to protest against the abuses and to make demands for redress. Due to the sheer complexity of the world today, in order to realise and facilitate this, there essentially needs to be a proactive approach to reform based on analysis and critique. This does not constitute an abandonment of religious values or morals, rather it reinforces the political structures, systems and mechanisms designed to ensure they are realised in a culturally relative manner. Likewise, it would grant a greater level of acceptance in the international community, enhancing the *bona fides* of the state(s) concerned, and the machinery that is in place to protect what is universally recognised and culturally accepted as human rights.

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<sup>5</sup> Baderin, Mashood A. (n 1)

<sup>6</sup> Qur'an Aal-e-Imran 3:110

In light of what has been discussed within the thesis about taking a more progressive approach to discourse and critique, there has been some movement in terms of the UAE acknowledging the legal deficits found within its labour law. At its pinnacle, this went to the extent of a published draft labour law; however, the legal reformation never took place. Moreover, UAE's Labour Law has continued to be the subject of much debate and criticism. In terms of recommendations for reform, all of the obvious indicators point toward addressing the clear deficiencies in the current Labour Law – the excluded groups of both national and migrant workers.

Essentially, there is a fundamental need to create a new labour law that not only conforms to international laws, principles, and guidelines, but also to create one that upholds the Islamic doctrine and traditions the UAE and its neighbours are founded upon culturally and constitutionally. Although at first glance this seems to project dichotomy, it has been proven within the context of this study that there are clear and obvious grounds for convergence in terms of the affording labour rights to *all* people. These rights can encompass the transcending principles of human dignity, non-discrimination, justice, and fairness.

In relation to these core, and want for a better word, universal principles, including the array of rights they entail, the UAE has been subject to an ongoing barrage of damning criticism. As already discussed in detail, commentary on the UAE's positions in relation to migrant workers has been covered from organisations such as the UN, ILO, ITUC, HRW and civil society (outside of the UAE) etc. The aim of these organisations has been to highlight the serial human and labour rights violations that occur in the hope that the UAE (and other states globally) become obligated to better protect its populations. Despite receiving these directives, the traditional response has been to counteract any negativity by placing a 'spin' on the issues being deliberated. The responses emanating from the UAE, and indeed other GCC states have masked and overlooked the issues faced by migrant workers. Until recently, the coverage has

been insular and frankly disappointing. Publications, which include global business and financial press, and indeed sources from within the UAE such as governmental periodicals and local press have merely focused on longwinded coverage of the advancements made since the discovery of oil and the conception of the UAE i.e. in relation to infrastructure, business, finance and tourism. Where there has been a specific issue related to migrant workers, the response has been rhetoric that has deflected the problem by focussing on what measures the UAE has taken to support migrant workers, rather than focussing on the problem.

As it stands, the UAE has had a tradition of addressing the problems faced by migrant workers by issuing ad-hoc decrees after the serial violations have taken place. However, there comes a point where a change needs to become manifest, as the model of the issuance of cyclical decrees to patch any gaps in the migrant worker protections to which the UAE subscribes is unrealistic in the long term. Additionally, this methodology attracts widespread criticism and alienates the state in human rights circles. These posturing attempts to provide a 'quick-fix' in reality may provide some relief to certain migrant workers, however they are not curtailing the huge numbers of labour violations that take place. Rather, by formulating a new law it would not only address the gaps in the existing law's coverage, but would amalgamate the progress made in the various ministerial decrees and amendments.

The contention lies with the nature of the new substantive provisions contained within a reformed labour law. Before discussing these specific provisions, it is important to reiterate what the UAE is founded upon and to what the UAE voluntarily, and without compulsion, has already ascribed in legal commitments. As explained in the earlier chapters, labour relations are founded by a country's socio-cultural, normative, and legal institutions, all of which form a complex relationship between the state/authority, employers, and employees.<sup>7</sup>

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<sup>7</sup> Black, Boyd (2001) 'National culture and industrial relations and pay structures' Labour 15(2) 257-277; Syed, Jawad (2008) 'A context-specific perspective of equal employment opportunity in Islamic societies' Asia Pacific

Furthermore, a considerable number of factors contribute to the formation and perpetuation of national culture and the laws of that country.<sup>8</sup>

The UAE, and indeed the wider Arabian Gulf region, bases its society on values that place Islam at the heart. This puts the doctrine of *Shari'ah* above any measure of worldly sovereignty, as Allah is the source of legislative power and authority:

**Know you not that it is Allah to Whom belongs the dominion of the heavens and the earth? And besides Allah you have neither any Wali [protector or guardian] nor any helper.**<sup>9</sup>

**Whosoever desires honour, [power and glory], then to Allah belong all honour, power and glory [and one can get honour, power and glory only by obeying and worshipping Allah (Alone)]...**<sup>10</sup>

Based on this the concept of sovereignty in Islam is wholly different from the modern or popular concept of sovereignty, as understood in light of international law.<sup>11</sup> Although it is not the intention of this study to focus on social contract theory, there is, nevertheless, a level of similarity between the nature of a voluntary agreement among individuals or a group of people in an organised society coming together to secure mutual protection, welfare, and benefit by surrendering some or all personal liberties,<sup>12</sup> to that of the contract of wilful submission to Allah. The essence of Islam is this defining covenant where believers submit to

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Journal of Management 25(1) 135-151; Tayeb, Monir (1997) 'Islamic revival in Asia and human resource management' *Employee Relations* 19(4) 352-364

<sup>8</sup> Syed, Jawad (2010) 'Principles of employment relations in Islam: a normative view' *Employee Relations* 32(5) 454-469

<sup>9</sup> Qur'an Al-Baqara 2:107; also At-Taubah 9:116; Al-Maeda 5:40; Al-Furqan 25:2

<sup>10</sup> Qur'an Fatir 35:10; also Ash-Shura 42:49; Az-Zukhruf 43:84-85

<sup>11</sup> Popular sovereignty is a doctrine in political theory that government is created by and subject to the will of the people; it regards sovereignty as the supreme dominion or political authority of an independent state.

<sup>12</sup> See the works of: John Locke, his concept of empiricism in the *Essay Concerning Human Understanding* (1690). Locke influenced political thought in France and America, with the *Two Treatises on Government* (1690), in which he sanctioned the right to revolt. Thomas Hobbes in *Leviathan* (1651) contains a defence of absolute sovereignty; and Jean Jacques Rousseau strongly influenced the theories of the French Revolution and the romantics. Rousseau's work put forward that the natural goodness of man was warped by society.

His will, authority, and dominion. This applies to those in authority or positions of power, to administer the principles of Islam in the same manner. In the context of this study, Islam therefore directs to humanity, and those in authority, a message concerning the need to contribute positively to society and to make use of that which is created for the benefit of human beings. It obligates Muslims to conduct all of their activities in accordance with the requirements of the universal Islamic principles of fairness, honesty, and behaving justly toward others.<sup>13</sup> Moreover, it obligates humanity to adhere to principles that are fundamentally applicable to migrant workers, as it stipulates: the promulgation of fair dealings with subordinates; respecting and protecting vulnerable members of society; overseeing and regulating the business environment; honouring contractual obligations; granting access to remedy; and being just when delivering judgement without discrimination.

From another angle, the culturally relative laws to which the UAE and its neighbour states ascribe (more comfortably than compared to the various international instruments, as evident from the ratification statuses) not only champion the tenets of Islam but essentially recognise and promote what can be clearly considered universal labour rights. Having discussed the two normative angles contextualised in this study, the final angle of accountability is borne out on domestic level as the UAE specifically makes mention of 'Islamic *Shari'ah* being the principal source of legislation' before stating in Article 20:

**Society shall esteem work as a fundamental basis of its development. It shall strive to ensure that work is available for citizens and to ensure that they are prepared for it. It shall take such steps as are necessary to ensure this by providing legislation to protect the rights of the employees and to protect the**

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<sup>13</sup> Lewis, Mervyn K. (2001) 'Islam and Accounting' Accounting Forum 25(2) 103–127; Ahmad, Iftikar (2011) 'Religion and Labor: Perspective in Islam' Working USA: The Journal of Labor and Society 14, 589-620

**interests of the employers, bearing in mind developing international labour legislation.**

It can therefore be concluded that the UAE is foremost bound by the covenant with Allah, and its subsequent affirmations of commitment to constitutional, international, and regional instruments to protect the rights of migrant workers. Through this inferred reasoning, the UAE cannot compromise the dignities, rights, and protections of migrant workers, who are deemed vulnerable members of society. As observed, the UAE and other GCC countries have all been pulled up on non-conformity of international standards by all levels of human rights monitoring bodies. The Universal Periodic Reviews have highlighted the reluctance of states to take any landmark steps to reform national policy or to even clearly document the issues they face. The UAE reported in a similar vein, as described in the initial part of this chapter, where hard issues were avoided.<sup>14</sup> The trade-offs involved between extending the labour rights, domestic policy, and financial indicators thus need to be reassessed not only in light of international standards<sup>15</sup> but also in light of the adherence to Islamic standards. The latter is the innovation proposed by this study, i.e. that the UAE should be held accountable before the Greatest of Authority.

As for a practical recommendation, the UAE's labour law should at the very least reflect what the 2004 Arab Charter of Human Rights stipulates in terms of labour rights. The labour law should be re-drafted by not only retaining the universal language used in the Charter but also the normative standards and substantive provisions it promotes. Whilst protecting its 'sovereign' rights, it crucially needs to be inclusive, overarching through non-discrimination

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<sup>14</sup> HRC (2013) UAE National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21\* United Arab Emirates Working Group on the Universal Periodic Review Fifteenth session Geneva, 21 January–1 February 2013 A/HRC/WG.6/15/ARE/1

<sup>15</sup> Ruhs, Martin (2015) *The Price of Rights: Regulating International Labor Migration* (Princeton University Press, New Jersey, USA) 13-23

clauses. The UAE's current Labour Law manages the dynamic relationship between employers and employees, both nationals and migrant. This would need to continue but without glaring exclusions. The labour law should thus effectively apply to all arenas of employment, encompassing protections not only for citizens but also non-citizens. It should also go as far as recognising the plight of those who are undocumented and provide avenues for their protection, rather than to simply reject their claim of rights. As discussed, the 2004 ACHR does uncannily introduce tensions between citizens and non-citizens but the UAE needs to look beyond those caveats by taking a real and proactive step in recognising the migrant workers who work in the country. In doing so it would project the UAE into a different realm of statehood, promoting an ideal that values every vulnerable member of its society.

Currently, as it stands, migrant workers face issues on a raft of aspects related to the basics, such as: just and favourable conditions of work; the right to choose work; social security; an adequate standard of living; medical care; access to education and training; and access to justice, redress, and dispute resolution. Unquestionably, the biggest infringement faced by workers in the UAE is related to their salary, which is, ironically, the most explicitly related protection covered in *Shari'ah*. Despite certain positive efforts made by the UAE, more needs to be done to protect workers' wages .

In order to take this issue further into account, the UAE's outdated legislation has not gone beyond making an empty offer of having a minimum wage. Rather, rhetoric from within the UAE has focused on the positive measures it has taken, such as how it has added extra levels of protection to its labour law through schemes to protect payment, etc.; however, in reality it has not afforded the most basic and fundamental right it proclaims. Having a minimum wage, one that is well-publicised and officially declared, would guarantee a person's awareness of what they can expect in terms of financial reward in exchange for

physical/mental toil. Such a provision would inevitably establish a fundamental baseline for establishing contractual obligations.

### 5.3 Civil Society Engagement: What, Where and Why?

Social theorists have campaigned for the establishment and the protection of civil society organisations, maintaining that role of the civil society is crucial in raising awareness and informing the people of their rights and defending them. Likewise, they also sustain that they are a vehicle for holding governments accountable for their actions. That said the term 'civil society' has succinctly been defined as:

**A group of political, social, economic and cultural organisations working in different fields with a relative independence from the state and the profits of companies in the private sector.<sup>16</sup>**

Trade unions, political parties, and more recently, human rights organisations have become critical elements of civil society. They have been prominent models of non-profit associations that aim at promoting, defending and protecting their own rights and those of others. Organisations that are actively engaged in activities of public or private interest share a common characteristic in that they are non-profit. Thus civil society members and non-governmental organisations play a significant role in creating an environment that facilitates the promotion, defence and protection of human rights and indeed labour rights. The right to freedom of association is enshrined in the principle of both universal and culturally relative human rights law. The right itself is also connected to a number of other freedoms such as

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<sup>16</sup> Karajah, Sa'ed (2007) 'Civil Society in the Arab World: The Missing Concept' International Center for Not-for-Profit Law, International Journal of Not-for-Profit Law (9)2 available at [http://www.icnl.org/knowledge/ijnl/vol9iss2/special\\_1.htm](http://www.icnl.org/knowledge/ijnl/vol9iss2/special_1.htm) accessed 07 July 2018



that of expression and opinion, peaceful assembly and movement. Associations, regardless of what framework they are underpinned by or what structure they take generally provides a capacity to individuals to join in order to attain certain standards or collective goals.

The UN's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms states under Article 1:

**Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.<sup>17</sup>**

Furthermore, in Article 2 it states:

**Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.**

In order to labour the point, international human rights laws and principles places an obligation on a state to avoid, prevent and remedy human rights violations and abuses. It also places the obligation on a state to do its utmost to advance awareness and acceptance of what is enshrined in universal and culturally relative human rights law. Moreover, human rights promotion and education is an integral part of the duties of human rights themselves. This

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<sup>17</sup> UN General Assembly (2018) Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the General Assembly, 8 March 1999, A/RES/53/144, available at <<http://www.refworld.org/docid/3b00f54c14.html>> accessed 10 July 2018

duty of promoting and delivering human rights education applies to all members of society, not merely keeping the government those in positions of authority informed on them but rather it includes the creating an awareness amongst the general populace. Ignorance about contemporary human rights principles and lack of human rights education creates an environment that ultimately hampers the enhancement of human rights in any country.

Although Islamically the onus is on the state/governing authority to oversee its divine obligation to protect the nation or community it is responsible for, even the most orthodox approach of the *Shari'ah* does not per se place any prevention on forming associations. Rather, it places an obligation on people to act as a collective, in order to 'enjoin good and forbid evil';<sup>18</sup> 'conduct their affairs by mutual consultation';<sup>19</sup> and help to prevent oppression.<sup>20</sup>

Bearing in mind the aims and objectives civil society, the HRC has stated that there is an obligation for the state not to impede or hamper civil society but rather respect and promote their role as a being essential players even on sub-regional, regional and international organisations.<sup>21</sup> The HRC further asserted that civil society facilitated the achievement of the purposes and principles of the United Nations and therefore not according civil society space is not an option. In terms of the civil society contributes to the work of regional and international organisations, the HRC stated:

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<sup>18</sup> Qur'an At-Taubah 9:71

<sup>19</sup> Qur'an Ash-Shura 42:38

<sup>20</sup> Sahih al-Bukhari 2444

<sup>21</sup> HRC (2018) Procedures and practices in respect of civil society engagement with international and regional organizations, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development General Assembly A/HRC/38/18 18 June-6 July 2018, Para II(6), available at <<https://undoc/gen/g18/107/48/pdf/g1810748.pdf>> accessed 10 July 2018

**Civil society organisations brought local and national concerns to the attention of the international community and advocate for change, thus connecting the international stage with local levels. Civil society had been instrumental in raising awareness... [e]mpowering and giving voice to those in the most severe situations of marginalization and vulnerability. It had also contributed to challenging social norms and the organisational culture of regional and international organisations.<sup>22</sup>**

In terms of civil society in the Arab region, civil society organisations have taken a higher profile by engaging within public spheres through the television, social media, public rallies and private meetings. However, since the Arab Spring (and a considerable period before), certain regimes including the GCC governments have increasingly scrutinized official and unofficial civil society groups and their institutional affiliations in the region. One of the main obstacles faced by civil society and NGOs in disseminating universal ideas of human rights is that the surrounding environment tends to reject such ideas as foreign.<sup>23</sup> Evidence has suggested that these actual and perceived fears stem from the governments' experience with certain civil society groups using human rights to assert personal interests or extend Western political agendas into the GCC and MENA region.<sup>24</sup>

Furthermore a number of GCC governments contend that international civil society actors fail to take into consideration the regional and indeed localised cultural values. Moreover, such states have reinforced the cultural relativism argument by highlighting the civil society critiques have homogenised the GCC region as a monolithic entity and that the individual identities have not been respected. From the governments' perspectives, it is somewhat

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<sup>22</sup> Human Rights Council (n 21)

<sup>23</sup> Rishmawi, Mervat and Riad, Sohair (2013) 'Civil society interaction with the League of Arab States: Synthesis and analytical report: Key insights, principles, good practices and emerging lessons' Cairo Institute for Human Rights Studies (CIHRS) available at <<http://www.cihrs.org/wp-content/uploads/2013/12/LAS-report-final.pdf>> accessed 12 August 2017

<sup>24</sup> Froilan T. Malit, Jr. and Ali Al Youha (2014) Global Civil Society in Qatar and the Gulf Cooperation Council: Emerging Dilemmas and Opportunities' Migration Policy Institute, Feature 9 April 2014

viewed that international civil society groups are more interested in using a combative approach over cooperation, that often hold deeply biased and politicised views about the region which lack understanding about the many nuances in areas such as of labour migration.<sup>25</sup> Based on this assertion the demographic imbalance caused by the large numbers of migrant workers poses precarious challenges to the GCC governments, as migrant populations potentially could be seen to mobilise against them causing political and economic instability. Due to this type of approach and perspective, GCC governments in particular have detrimentally limited their partnerships with international civil society.

Due to these hurdles, civil society organisations and NGOs have turned elsewhere to achieve reform by increasingly exerting pressure on relevant partners which include human rights organisations, foreign governments, international associations and unions, to create the relevant momentum for GCC governments to come closer toward international human rights benchmarks, labour standards and protections for migrant workers. Monitoring bodies have also engaged directly with state parties to raise the not only the importance of honouring the rights and duties enshrined within human rights documents, but also in terms of civil society engagement. For example, CERD in its concluding observations made mandate in respect to consultations with civil society stating that:

**The Committee wishes to underscore the importance that it attaches to reports that are submitted by non-governmental organizations, which enrich the dialogue between the Committee and the State party delegation during the consideration of State parties' reports. The State party should develop its dialogue with civil society organisations working in the area of human rights protection, in particular those**

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<sup>25</sup> Froilan T. Malit, Jr. and Ali Al Youha (n 24)

**working to combat racial discrimination, in connection with the preparation of the next periodic report.<sup>26</sup>**

This has led to civil society, NGO's and human rights organisations to engage GCC states by fundamentally calling greater compliance with international labour standards. It has led to some GCC governments in recognising that structural and legal reforms to the *Kafala* Sponsorship System are imperative for improved labour protection, albeit not going as far as abolishing it altogether.

Generally, over the past decade, Arab governments have been announcing a raft of reforms targeting freedoms and good governance. However, there are differences in the perception of international norms and the manner in which they are understood, as the dialogue and ratification of human rights treaties in the GCC states have generally been a top-down process, with decision-making power being centralised in the ministries of foreign affairs, with input from civil society members and NGOs being generally very limited. The proliferations of GCC reservations to international treaties during the 2000s are also ramifications of this manner of hierarchical and institutionalised management of human rights related issues,<sup>27</sup> all of which manifested in the selective ratification. That said, despite not being fully aligned to all of the stipulations of customary international law, the Arab League in particular has taken important steps in the context of human rights. Through the AHRC and its review of state reports, the committee has been able to highlight member states' progress as well as shortcomings in respect of internationally recognised human rights law and practice. Some regimes tightly limited the scope of reforms they introduced while others continued to violate human and

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<sup>26</sup> CERD (2017) Concluding observations UAE, CERD/C/ARE/CO/18-21 13 September 2017 Para 36; see also CERD (2017) Concluding observations Kuwait, CERD/C/KWT/CO/21-24 19 September 2017 Para 38; CERD (2017) Concluding observations Saudi Arabia, CERD/C/SAU/CO/4-9 11 May 2018 Para 42

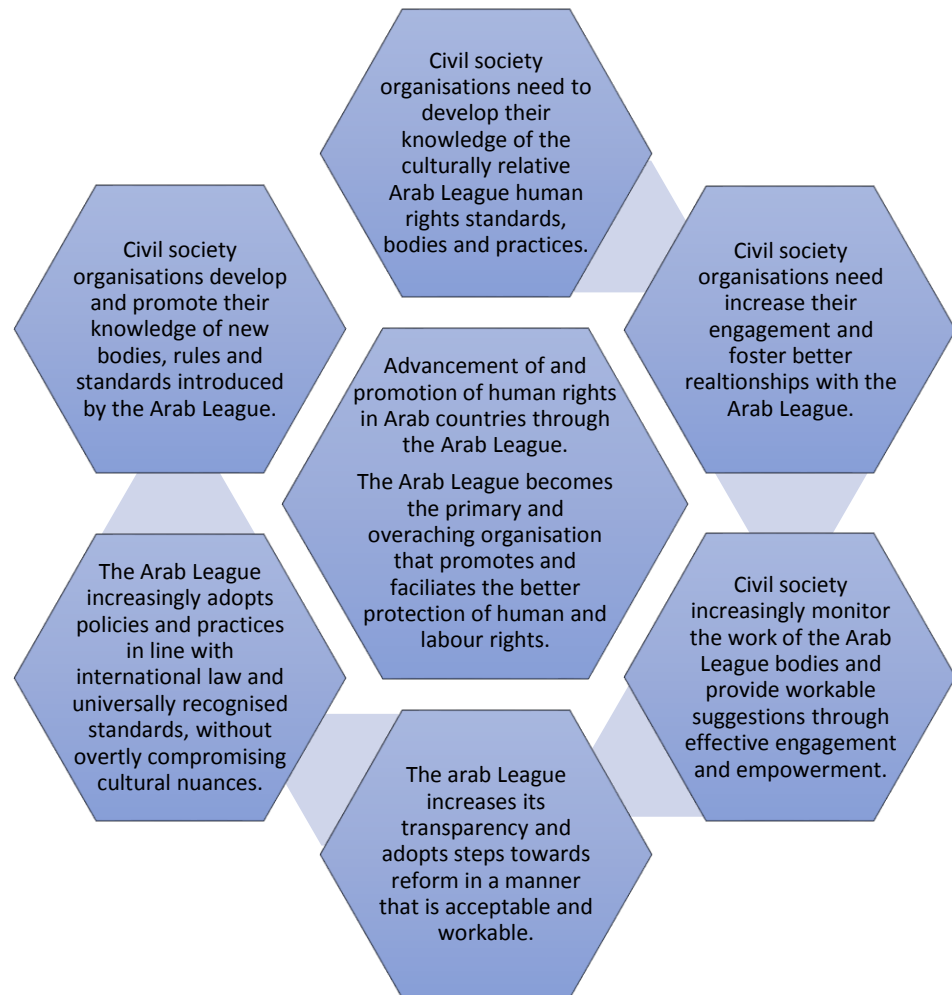
<sup>27</sup> Çalı, Başak and Ghanea, Nazila (2013) 'From Ratification to Implementation: UN Human Rights Treaties and the GCC' University College London and University of Oxford, Workshop Series Report 20 June 2013 (Workshops held in Doha, Qatar in May 2013)

political rights while purporting to adopt enlightened changes. From observation, it can be seen that reforms often seem like empty gestures to mask the continuation of an oppressive status quo. That said there is a degree of positive movement nonetheless.

Another aspect to consider is that the civil society organisations themselves also need to develop their analyses and strategies of engagement with the Arab League in order to influence its reform and help shape its role. Both the Arab League and the civil society movement need to face the challenges and create opportunities in order to strengthen the work within the human and labour rights field. This will inevitably improve the standards, structures and mechanism the Arab League adheres to and promotes. Civil society can also essentially act as the intermediary between international and regional bodies and mechanisms. This will as a result allow civil society organisations to pursue their goals of promotion and protection of human rights through the avenue of the Arab League as a regional intergovernmental organisation, which will in turn support the *bona fides* of the organisation itself and the state parties it represents. The Arab League essentially could be the vehicle the region needs to bridge and monitor universal human rights with the cultural relativity the region ascribes to through effectively engaging with civil society. Moreover, wider community engagement is paramount in the design, execution and monitoring of favourable conditions of work, regionally and at a strategic national level.<sup>28</sup>

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<sup>28</sup> CESCR(2006) General Comment No. 18: The Right to Work (Art. 6 of the Covenant), 6 February 2006, E/C.12/GC/18, Para 6 available at <<http://www.refworld.org/docid/4415453b4.html>> accessed 24 August 2017



*Figure 27: Cycle of how Civil Society should engage with the Arab League.*

Civil society, NGOs and pertinently trade unions, in general all share the same goal of forwarding social justice through representation of people's interests and well-being, either at an individual or class level. However, due to historical revolutions, monarchical states (often portrayed as being autocratic and dictatorial) throughout the Middle East have taken a tendency to take an approach to restrict what can be described as emotive labour movements being viable vehicles for political empowerment and upheaval through affiliation and the promotion of radical ideas.<sup>29</sup> Moreover, historically, such states have been precariously aware of movements that have been used as the machinery to promote revolution, through radicalisation and terrorism. Furthermore, this stance has manifested into security and

<sup>29</sup> Agathangelou, Anna M., Soguk, Nevzat (2013) *Arab Revolutions and World Transformations* (Routledge, Abingdon, UK, 2013) 1-9

counterterrorism legislation with broad and somewhat ill-defined definitions, all of which have mandates for severe penalties.<sup>30</sup> As discussed, ideologically, there is also an antagonism towards Western ideas promoting reform, change, and indeed democracy in their sovereign kingdoms. Bearing in mind that an integral aspect of democracy is the role of civil society within it and the fact that civil society is essentially made up of voluntary associations representing individuals and classes,<sup>31</sup> certain states have restricted them from forming or limited their autonomy.

Civil society should therefore not be regarded as hostile entities that threaten to regional stability, rather it should be seen a vehicle to facilitate the education of human and labour rights principles and be a means for positive reform. By allowing the civil society organisations to form and function within the region it will enhance the human rights protections for citizens and migrants alike and be a viable means for human and labour rights education

The Arab League has the potential to play a pivotal role in the protection of human and labour rights throughout the region. By building on successes of particularly the drafting process of the ACHR,<sup>32</sup> the international community and the Arab League need to move forward in a conducive manner to facilitate not only the human rights agenda but also to ensure that the Islamic obligations of protecting workers are being realised.

Gaining understanding of the Arab League's diverse and culturally rich context, including its standards and mechanisms, is paramount for civil society organisations. In doing so, it will

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<sup>30</sup> Cairo Institute for Human Rights Studies (2014) *The Arab Spring on Trial Human Rights in the Arab Region 2014* (Cairo Institute for Human Rights Studies, Cairo, Egypt)

<sup>31</sup> Individuals in relation to individualism refers to how rights are established when they enter into social relationships of their own free will. Moreover, the nature of the relationship governs the individual's connection with the state. Social groups or classes are individuals who occupy similar positions with regard to the means of production and the relations of production in society. Through their collective action they are presumed to influence strategic decision-making in society.

<sup>32</sup> A number of organisations made specific proposals during the drafting process of the ACHR, some of which were adopted by the drafting committee and are now reflected in the revised and ratified charter.



enable the international community and indeed civil society to identify future opportunities to work alongside it and influence it. Bearing in mind the complexities of migrant labour, this essentially requires a coherent and strategic approach. Furthermore, patience is key attribute that needs to be exercised as there is a tendency of slow change regionally, however, persistence and informed vision will enable positive reform of the Arab League. The Arab League, being the organisation that it is i.e. one that is widely endorsed and respected regionally, should thus become the driving force for the protection and promotion of human rights in the Arab Peninsula. If change manifests from within, it has more of a chance of being accepted.

## **5.4 Freedom of Association, Trade Union Activity, Collective Bargaining and Striking**

As explored within the study, a number of Muslim majority countries (MMCs) that are members of the ILO have permitted freedom of association, and have labour-related legal systems that are not always fully Islamic; however, their systems are not against Islamic principles. A methodology for justifying modern practices in Islam that are not explicitly covered in the *Shari'ah*, such as those understood as freedom of association, trade union activity, collective bargaining, and striking, fit into the principle of 'natural permissibility'. Furthermore, linked to that is the notion of *Maqasid al-Shari'ah*, which means the goals or objectives of Islamic law related to people's interests or welfare.<sup>33</sup> The findings of the study

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<sup>33</sup> Auda, Jasser (2008) *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought, Herndon, USA, 2008) 2-3; Hallaq, Wael B. (2009) *Shari'a Theory Practice Transformations* (Cambridge University Press) 507

therefore put forward this notion and methodology in relation to vehicles that aim to protect the welfare of migrant workers.

According to Article 35 of the ACHR 2004, the UAE, along with the other GCC states, ascribed to guaranteeing that 'every individual has the right to freely form trade unions or to join trade unions and to freely pursue trade union activity for the protection of his interests'. Islam promotes the notion of 'the collective' and principles of mutual consultation. Islam places a duty upon the community to come together in order to 'enjoin good and forbid evil'; moreover, it is necessary to support a righteous cause.

Although associations and trade union activity within the region are very limited, such things do exist.<sup>34</sup> Where worker collectives are permitted they are usually within a single trade union system that, in some cases, allows migrant workers to participate. As discussed, civil society is also hampered within the region due to state concerns over alleged antagonistic political activity. As a result, rights and pro-democracy groups have been equated to concerns about national security. However, the UAE and other Islamic countries need to acknowledge that associations that campaign for the protection of labour rights, particularly as violations are widespread and well-documented, cannot be linked to civil unrest and discord either *de facto* or in certain cases *de jure*. Where acute civil unrest has existed, it has manifested through 'radical Arabs' and nationals who have staunchly opposed the oil monarchies.<sup>35</sup> It was due to this security concern (including other factors) that the migration pattern was changed, which ultimately showed a preference toward Asian migrants, as they were categorised as being

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<sup>34</sup> Kuwait, Bahrain, Oman and Qatar

<sup>35</sup> Kapiszewski, Andrzej (2001) *Nationals and Expatriates: Population and Labour Dilemmas of the Gulf Cooperation Council States* (Ithaca Press, Garnet Publishing Ltd, Reading UK) 121-124

politically inactive and for having amenable demeanours, particularly to compromised working conditions.<sup>36</sup>

The UAE therefore needs to initiate an arrangement whereby it promotes the Islamic principle of 'the collective' for promoting the welfare and dignity of *all* workers. This would entail making legal provisions to allow for trade unions to function solely to ensure that workers' rights are being protected and also for the collective campaigning of better conditions. As it stands, unscrupulous employers have had too much control in managing the affairs of vulnerable migrant workers. Despite all the measures taken, companies have continued to violate the most basic of all migrant worker rights such as wage, living conditions, and access to justice. The research and the fieldwork have shown that migrant workers are disempowered by their employers and thus lack the capability to pursue justice. Trade unions would therefore provide an accessible avenue for securing and bargaining for such rights.

In addition to outlining the basic rights relevant for accessing mechanisms for enabling justice, legal redress, dispute resolution, and compensation in a manner that is inclusive and free from discrimination for individuals, a reformed UAE labour law needs also to provide a viable means for handling collective labour disputes that is impartial and expeditious. The process should be flexible enough to allow workers to be able to participate in determining the process and also allow them to participate in the selection of an appropriate workers' representative on any conciliation or arbitration committee. Despite the prohibitions of strike action within the UAE, such action does occur, even on large scales. Islam permits that workers can refrain from working if their employer violates their contractual agreements. Thus, the UAE's labour law

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<sup>36</sup> Kapiszewski, Andrzej (n 36) Kapiszewski, Andrzej (2006) 'Arab versus Asian migrant workers in the GCC countries' UN expert group meeting on international migration and development in the Arab region, Population Division, Department of Economic and Social Affairs, UN Secretariat, Beirut, 15-17 May 2006; Shah, Nasra M. (2004) 'Arab Migration Patterns in the Gulf' in *Arab Migration in a Globalized World* IOM International Organization for Migration; Azhar, Muhammad (2016) 'Indian migrant workers in GCC countries' *Diaspora Studies* 9(2) 100-111

needs to guarantee workers' right to strike. In doing so it would need to establish explicit procedures for workers to exercise that right, which would include a strike voting requirement and strike notification rules. Authorities clearly and understandably fear mass public discord; however, if the authority did more to protect and enforce the rights of migrant workers, issues would be less apparent altogether, reducing the need to exercise that right. Whether the UAE fulfils its obligations of what it has in actual act endorsed by its ratification of the ACHR, and through its membership of the UN and ILO, it cannot continue to threaten with deportation those who lawfully resort to striking.<sup>37</sup>

## **5.5 *Kafala* System and Migration Protocol**

It is incumbent to bear in mind that there has been a lack of impetus to reform, transform and let alone abolish the *Kafala* system, especially in the GCC. Trade unions, where they exist Trade such as Bahrain, Kuwait and Oman, migrant workers are restricted from engaging them. A key aspect already elaborated upon is the gross lack of independent human rights and civil society organisations within the Gulf region that are able or willing to inform on or migrant workers' human and labour rights. Due to this lack of representation, there is next to no avenue for internal lobbying for migrant worker rights and due to this, governments are not under any real internal pressure to make the necessary changes to the current labour migration governance systems.

A secondary reason for not reforming the *Kafala* system could perhaps be related to some of the apparent prejudices amongst the indigenous populations against migrant workers, coming primarily South Asia and Africa which makes nationals less inclined to speak out for individuals

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<sup>37</sup> International law permits certain restrictions on the right to strike for essential services during extenuating circumstances such as severe national crises, or for certain high-level public servants.

considered as second-class citizens that do the jobs they deem beneath them. Furthermore, this is exacerbated by the citizens being given preferential treatment in terms of access and benefits in certain labour markets over foreigners i.e. the public sector and security services.

Finally, it would also be naive to ignore the economic interests at play in both migrant worker origin and destination and countries. The relationship between them clearly revolve around significant economic interests, all of which have been covered in the main body of the study.

As it stands the system utilised by the GCC and the UAE for managing migration essentially facilitates modern day servitude and results in the perpetual exploitation of migrant workers in certain circumstances. Due to this, the work/visa sponsorship system needs to be completely overhauled. It needs to be replaced or at the very least, significantly transformed and rebranded by a system that not only protects the state's control of its borders but also protects the rights of those it allows to enter. The links between migration policy and domestic labour law work in tandem, which means that they need to be complimentary. Whilst they need offer rigorous control of employers and employees, they critically need to ensure that there is a coherent balance of power between them.

Moreover, there is a need to ensure that responsibility is shared equitably between labour-sending and labour-receiving countries for the whole process of migration, i.e. pre-departure, arrival and stay, and return. The GCC, the Arab League, and the countries of migrant worker origin must engage in bilateral and multilateral dialogue and cooperation amongst themselves in order to set standards and protocols for combating human rights infringements. The Gulf region, especially, could take heed from the progress made by the Association of Southeast Asian Nations (ASEAN) Declaration on the Protection and Promotion of the Rights of Migrant Workers.<sup>38</sup> The Declaration calls on countries of origin and destination to ensure the dignity

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<sup>38</sup> Adopted by the ASEAN heads of state in Cebu, Philippines in 2007 available at <http://www.ilo.org/dyn/migpractice/docs/117/Declaration.pdf> accessed 28 August 2017

of migrant workers by outlining their obligations in the areas of: (1) protection from exploitation, discrimination, and violence; (2) labour migration governance; and (3) the fight against trafficking in persons. Alongside this they developed the ASEAN Forum on Migrant Labour (AFML), which aims to: engage civil society organisations in order to bring resources such as technical expertise and funding; share stakeholder experiences; and engage in a process of review and recommendation in order to advance the implementation of the ASEAN Declaration.

The GCC and the Arab League should follow suit by formalising a relationship amongst its state parties to seriously engage in protecting migrant workers. The Arab Human Rights Committee (AHRC) needs to develop tangible relationships with both the GCC and the Council of the Arab League. Together, they should sanction the formation of a special task force in order deliver to a similar model of bilateral and multilateral agreements that would then allow for a specific mechanism to deal with migrant worker issues. A coherent system is completely necessary and could easily be made viable considering the number of migrant workers deployed in the GCC region. There is also a critical need to engage civil society actors in order to ensure that there is representative participation at all levels. In practice, it is organisations that work at a grass-roots level that have the best insight into what members of society, both nationals and non-nationals experience, and face the good aspects well as the bad.

Although preferential treatment in relation to accessing work opportunities can help to address national underrepresentation, it does accommodate discriminative practices. Both legislation and market regulation need to ensure equal opportunity and equal treatment between migrant workers and national workers in the workplace. Mobility is essential and undue restrictions on migrant workers being bound legally to a single sponsor/employer should be removed. This will inevitable grant a certain degree of power and control back to migrant workers in vulnerable situations.

In terms of service provision, recruitment companies need to be stringently regulated through effective systems of supervision and licencing. Educational programmes at specific points of orientation need to be delivered in order to ensure that migrant workers (inbound/outbound) are aware of their labour rights. Moreover, they should be given accessible guidance on what to do if an issue arises, and how to access the appropriate systems to find remedy, resolution, and compensation. If coordinated coherently, knowledge and information could be disseminated in appropriate languages by making use of literature, technology, and social media. Such avenues would ultimately lead to a better informed, diverse workforce.

Therefore an alternative to the current system embodied in the *Kafala* in destination countries, would consist in realising a number of vital policy objectives, which include:

1. Formalising the recruitment process, which would ensure that unscrupulous agencies do not operate in an unregulated and deceptive manner.
2. Allowing workers the right to orderly labour mobility; in other words, to allow workers to change employers for justifiable reasons whilst at the same time preserving the interests of employers and the efficiency of the labour market;
3. Increasing the safeguards against abuse and exploitation by improving the terms of employment and working conditions of temporary contractual workers.
4. Strengthening the implementation of labour laws, monitoring and dispute settlement.

This would also involve policing businesses of all scales to ensure that rights are being ensured, furthermore, when rights are infringed, the employers/businesses are initially dealing with complaints fairly by means of effective grievance machinery and that where appropriate the state provides an accessible means for dispute resolution, remedy and redress without workers fearing reparation from their employers.

5. Allow civil society organisations, trade unions and associations to operate in order to ensure that migrant workers have an independent resource for seeking out and realising their rights.

## 5.6 Dispute Resolution System: What Next?

The system that exists in the UAE is built upon sound principles of ADR. Studies have suggested that a host of different factors, including procedural considerations, are likely to affect the use of ADR technique(s), which in turn will have a bearing on dispute resolution rates and participant satisfaction.<sup>39</sup> Moreover, the use and effectiveness of a given technique or procedure is also dependant on the timing of the intervention and the degree of voluntarism granted by the procedure. The processes an organisation like the MHRE applies, and the manner in which it applies them, will ultimately have significant implications for the service users' perception of justice.<sup>40</sup>

Therefore, in relation to effectively managing employment disputes, clear standards need to be established. Comprehensive codes of practice and conduct need to be formulated in relation to the range of services that the MHRE and its partners offer. These must not be exclusive to those who manage and facilitate the dispute resolution processes through conciliation, mediation, and arbitration, but crucially need to include various other complementary services, such as the *Tasheel* translation services. Furthermore, where necessary, the MHRE needs to facilitate the inception of services related to providing information, advice, guidance, and counselling in appropriate languages. The MHRE needs to

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<sup>39</sup> Lipsky, David P. and Avgar, Ariel C. (2004) Commentary: Research on Employment Dispute Resolution: Toward a New Paradigm' Conflict Resolution Quarterly 22(1-2) 175-189; Karambayya, Rekha, Brett, Jeanne M. and Lytle, Anne (1992) 'Effects of Formal Authority and Experience on Third-Party Roles, Outcomes, and Perceptions of Fairness' The Academy of Management Journal 35(2) 426-438

<sup>40</sup> Rekha Karambayya, Jeanne M. Brett and Anne Lytle (n 39)



instil confidence in the services it provides amongst its vast pool of potentially vulnerable service users. In doing so it would essentially ensure the effectiveness and accessibility of dispute resolution mechanisms and processes.

The fieldwork posited that the Arabic language posed a significant barrier to the quality of service that migrant workers received. Significant proportions of respondents commented that language essentially disempowered the negotiation process as they felt it led to communication problems between themselves and the legal researcher. Although the MHRE in its Worker Welfare Report made references to employing multilingual staff, the level of their proficiency/competency in a given language needs to be to a set standard to ensure accuracy and quality control. In addition to the multilingual staff, additional translators should assist in the dispute resolution process so that the disputants do not feel disenfranchised or excluded from the process.

In terms of the system itself, the model needs to be flexible, responsive, and adaptive in order to benefit the diverse nature of its service user base. Rather than imposing a rigid authoritarian approach, the MHRE should be able to deal with new situations and questions, and also respond to the needs of the stakeholders. The various legal workers, judges including the conciliation and arbitration boards need to be properly qualified, independent, impartial, and representative. An inevitable consequence of human rights education and civil society engagement would be invaluable in this regard, as both of which, essentially promote and best practice and accountability.

In terms of managing the services, constant monitoring and assessment of the effectiveness and performance of the dispute resolution system is paramount. In order to promote and maintain good practice (even when addressing poor performance), as a course of action for those who are tasked to carry out the process of mediation, conciliation, and arbitration,

sustained training and continued professional development is indispensable. Conflict prevention and resolution training needs to form an integral part of the service, as employment disputes often get convoluted and involve sensitive personal issues. Moreover, the ILO has found that where there is a lack of consistent training (even when it is provided on an ad-hoc basis) it has negative implications for the development for the capacity of labour administration staff.<sup>41</sup> Civil society if appropriately sanctioned could also serve to independently assess and advise on what is needed in terms of providing an effective service that meets the expectation of migrant workers.

The relevant members of staff need to have the right level of knowledge of the relevant laws and legislation and also be able to show dexterity when it comes to assessing the best possible way to resolve a dispute. The mediation/conciliation process, when effective, offers many advantages to the UAE, its employers, and its employees, as it assists all of the parties to efficiently find remedy and resolution. It also supports constructive dialogue rather than causing destructive relationships through providing collaborative solutions, and it ultimately saves cost for all of the parties concerned. For unresolved disputes, escalation to the formal court system in itself delays the process of finding an amicable resolution and involves cost.

The Labour Inspectorate ensures the proper application of labour legislation as it practically examines how the labour standards are applied in the workplace. Relative to the number of employment disputes the MHRE deals with, a qualified and competent mass of inspectors need to be deployed in order to not only investigate any concerns the MHRE has over a violating employer, but also to carry out routine inspections.<sup>42</sup> Under-staffed and under-resourced departments lead to disparities in the services offered. Furthermore, inspectors have to

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<sup>41</sup> ILO (2011) 'Labour administration and labour inspection' International Labour Conference, 100th Session, 2011, Para 65, available at <[http://www.ilo.org/public/libdoc/ilo/2011/111B09\\_45\\_engl.pdf](http://www.ilo.org/public/libdoc/ilo/2011/111B09_45_engl.pdf)> accessed 13 July 2017

<sup>42</sup> ILO (n 41) Para 60-61

contend with the challenge of ensuring labour law compliance in workplaces that are deliberately hidden from sight and tough to detect. Inspectors need to constantly develop new skills and strategies in light of the increasing complexity of industrial processes, which include complex global recruitment chains. Inspectors are in a unique position to enforce the law. As discussed, the deterrents for rights violations need to be stricter and they need to be enforced robustly and applied equally to all employers and workers. The Labour Inspectorate in the UAE should also place a special focus on the informal sector, as that in itself poses challenges in relation to migrant worker protections. This aspect is related to trafficking offences and child labour.

The ILO has recognised that when labour administration is properly regulated, supervised, and coordinated by a labour ministry, it can contribute to a 'more efficient and higher quality service'.<sup>43</sup> Enforcement is the function of the MHRE, and thus when carried out correctly it will ensure effective labour law compliance and its promotion. The use of operational technology has been vastly improved at the MHRE, which is apparent from the data sourced for this study. The use and review of ICT and technology can further improve the manner in which the labour administration team handle the systems related to the services the MHRE provides.

There is a fundamental need to gain feedback from both the service delivery personnel and the service users. This study's objective has been to give voice to the migrant workers on their experiences, and it has resulted in gaining valuable insight into their perception of not only the MHRE but other aspects relating to their vocations, employers, living arrangements, and various other aspects of their personal lives. Here lies an opportunity to develop a feedback mechanism to engage migrant workers. Such a system, when developed competently, would

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<sup>43</sup> ILO (n 41) Para 36-42

provide an indispensable tool for assessing and reviewing the experience and perceptions of the groups of people to whom the MHRE is responsible. Likewise, the MHRE needs to empower its staff and other stakeholders to engage in a continual cycle of review and assessment. By gathering this sort of information it will undoubtedly define the various expectations of all of those who have contact with the service and will help fulfil them. Moreover, it will provide avenues for sharing best practices between labour offices, will highlight areas for development, and will ultimately aid in developing a sound workable strategy for success.

As discussed in the main body of the thesis, there is not a single prescribed way to administer a dispute resolution system.<sup>44</sup> What is required is that the system is fit for purpose. This is dependent on both the political and legal environment. The UAE therefore needs to realise and affirm its commitment to both its theological and moral duties as well as its international legal obligations. The migration policies, labour law and the systems that manage them need to be consistent and need to work collaboratively. The legal environment needs to be interactive, as it is required to facilitate effective exchanges between multitudes of different stakeholders, ranging from foreign consulates of labour-sending countries to multinational companies to civic and social organisations. The balance of power needs to be adjusted accordingly without compromising input from employers and employees. All of this would result in better governance and a better dispute resolution system. Civil society therefore serves a niche as it could independently facilitate a better understating of what is required to make the system fit for purpose as well as providing a means for impartial representation and advocacy from all angles.

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<sup>44</sup> ILO (2013) 'Labour Dispute Systems: Guidelines for improved performance' available at <[http://www.ilo.org/wcmsp5/groups/pub/ed\\_dialogue/dialogue/documents/publication/wcms\\_211468.pdf](http://www.ilo.org/wcmsp5/groups/pub/ed_dialogue/dialogue/documents/publication/wcms_211468.pdf)> accessed 23 March 2015

Evidently, the UAE's MHRE functions in a manner that has certain synergies with the Islamic principle of *hisbah*. However, through its proper embodiment, the model of the *hisbah* could essentially be a tool for promoting and educating the populace in terms of rights and obligations. Moreover, civil society and the *hisbah* could in fact work in partnership to influence better practices in terms of regulating business and commercial affairs, even in terms of emphasising MNC's corporate social responsibilities. Such a collaboration would inevitably work to reinforce not only international, regional and domestic legal obligations but also reinforce cultural doctrines. The MHRE, in an evolved form therefore needs to ground itself in recognition of:

1. States' existing obligations to protect, respect, fulfil the normative values enshrined in international human rights law and fundamental freedoms.
2. The role of business enterprises as specialised organs of society performing specialised functions, required to be responsible, accountable and comply with all applicable laws and to respect human rights properly at a transnational and domestic level.
3. The need for rights and obligations to be harmonised to appropriate, accessible and competent systems to ensure dispute resolution, remedy and redress, when and if rights are breached. Notably, ADR essentially is not only regarded as a modern tool for facilitating dispute resolution rather it is grounded upon culturally recognised principles.

All of the above create a synergy between, universally recognised human rights; culturally relative practices and; business orientated corporate responsibilities embodied in the UNGPs and ILO guidelines. Moreover, there is a critical need to ensure the all of the above are robustly monitored and met on a domestic and regional level.

Companies need to be regulated by the labour inspectorate, and indeed by civil society as there is a dire need for corporate compliance in terms of not only domestic legislation but also

in terms of UNGPs, which places the requirement for companies and enterprises to be compliant to the mandates of international human rights and also to provide effective mechanisms for dispute resolution.

Furthermore, in support of this, the MHRE needs to engage migrant workers to act as advisers and facilitators to the process of improving the dispute management system, particularly due to the frequency of actual labour disputes. Long-standing members of the migrant workforce, lend themselves as ideal candidates to support fellow migrant workers as their knowledge and practical experience serves as significant resource. Consultations, focus groups and community engagement are all forms of outreach that need to be employed in order for the MHRE to become better informed about the migrant service users. All of the above will not only yield a better labour administration system, it will also empower vulnerable groups of migrant workers to voice their concerns without any fear of reparation.

As it stands the UAE's government, by conferring its power to the MHRE, makes it responsible for regulating employment relationships in accordance to *Shari'ah* law. Islamically, this duty is sacred due to the fact that it is obligated to safeguard the proper standards of religious morality, fairness, and justice. In order to fulfil that duty there has to be a shift from maintaining the historical stances of ideological incompatibility, rather the region has to look forward at the prospect of engaging different stakeholders to ensure that it is doing the utmost to honour its universal and cultural obligations.

The UAE has masked its issues by projecting a spectacular image of its affluence; however, with the steps it has taken recently, the political environment is better now than ever before for the necessary reforms to be undertaken, to ensure that the UAE better protects the rights of its indispensable migrant workforce. On countless occasions, through an array of reviews, recommendations, and publications, the UAE has been called to sign the appropriate

instruments that support the rights to freedom of association and collective bargaining; this has never happened. However, it has an opportunity to move forward by further acknowledging the issues it has, and secondly, with the assistance of the ILO and indeed civil society to formulate a workable plan for compliancy and development on all fronts.

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UAE Federal Law No. 23 of 1991 On the Regulation of the Legal Profession

UAE Federal Law No. 3 of 1987 On the Issuance of the Penal Code

UAE Federal Law No. 51 of 2006 Combating Human Trafficking Crimes

UAE Federal Law No. 2 of 2008 In Respect of The National Societies and Associations of Public Welfare

UAE Federal Law No. 10 of 2017 On support service workers, more commonly referred as the Domestic Labour Law

UAE Ministerial Resolution No. 307 of 2003 On Collective Labour Disputes (31/05/2003) Article 2

UAE Ministerial Resolution No. 788 for 2009 on Wage Protection

UAE Ministerial Resolution No. 119 of 2007 on Regulating Temporary Work

UAE Ministerial Decree 764: Standard Work Contracts

UAE Ministerial Decree 765: Termination of Limited Contract and Unlimited Contract;

UAE Ministerial Decree 766: Granting of New Work Permits

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### *Sunan Al-Daraqutani*

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# Appendices

## Appendix 1: Approval Letter



Ref: ERP1252

18<sup>th</sup> December 2015

Hamad Al Ameri  
Flat 2 Alpha House  
Queens Road  
Cheltenham  
Gloucestershire  
GL50 2NH

Dear Hamad

**Re: Migrant workers in the UAE's private sector: a critical analysis of employment dispute management and resolution**

Thank you for submitting your revised application for review. The panel would like to commend you for your full and comprehensive response and amendments.

I am pleased to inform you that your application has been approved by the Ethics Review Panel. The following documents have been reviewed and approved by the panel as follows:

Document(s)	Version Number	Date
Summary Document	5	02/12/2015
Invitation and Information Sheet – Officials	5	02/12/2015
Interview Screening and Contact Details Form – Officials	5	02/12/2015
Consent Form and Consent Form for the use of quotes – Officials	5	02/12/2015
Migrant Questionnaire Information Sheet	5	02/12/2015
Draft Questionnaire	N/A	19/10/2015
Migrant Worker Questionnaire	N/A	October 2015

If the fieldwork goes beyond the date stated in your application (30<sup>th</sup> April 2016), you must notify the Ethical Review Panel via the ERP administrator at [uso.erps@keele.ac.uk](mailto:uso.erps@keele.ac.uk) stating ERP1 in the subject line of the e-mail.

Directorate of Engagement & Partnerships  
T: +44(0)1782 734467

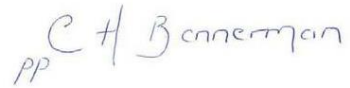
Keele University, Staffordshire ST5 5BG, UK  
[www.keele.ac.uk](http://www.keele.ac.uk) +44 (0)1782 732000



If there are any other amendments to your study you must submit an 'application to amend study' form to the ERP administrator stating ERP1 in the subject line of the e-mail. This form is available via <http://www.keele.ac.uk/researchsupport/researchethics/>.

If you have any queries, please do not hesitate to contact me via the ERP administrator on [uso.erps@keele.ac.uk](mailto:uso.erps@keele.ac.uk) stating ERP1 in the subject line of the e-mail.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'C. H. Bonnerman'. The initials 'PP' are written below the signature.

**Dr Andrew Rutherford**  
**Vice Chair – Ethical Review Panel**

CC     RI Manager  
         Supervisor

## Appendix 2: English Questionnaire



### QUESTIONNAIRE INFORMATION SHEET FOR MIGRANTS WORKERS

#### Study Title

Migrant workers in the UAE's private sector: a critical analysis of employment dispute management and resolution

#### Aims of the Research

This research aims to critique the UAE's employment related dispute management systems and mechanisms with the intention of advocating positive reform in order to further protect the rights of private sector migrant workers. The potential impact of this research is to be a driver to facilitate positive change to policy and procedure in order to improve services by dealing with issues with sensitivity and by promoting best-practise

#### Who is organising the research?

The principal researcher is organising and conducting the research as part of a PhD. The study is funded by Abu Dhabi Police Education Department, as it is their intention to improve the services provided for migrant workers in the UAE. The researcher is currently enrolled at Keele University, United Kingdom. You are welcome to ask to see any credentials or identification. If you have a concern about any aspect of this study, you may wish to speak to the principal researcher who will do their best to answer your questions.

#### Invitation

You are being invited to consider taking part in the research study 'Migrant workers in the UAE's private sector: a critical analysis of employment dispute management and resolution'. This project is being undertaken by Hamad Al Ameri. Before you decide to complete the questionnaire, it is important for you to understand why this research is being done and what it will involve. Please take time to read this information carefully and discuss it with friends and relatives if you wish.

#### Why have I been invited?

You have been chosen to take part in this study as I feel that your knowledge, experience and most importantly your opinion will be of great significance in doing this study successfully, as it will help other workers in the future resolve their work place problems more quickly and easily, hopefully preventing them from occurring at all.

#### What will happen if I take part?

Should you choose to take part, you will be invited to complete a simple questionnaire where you will be asked questions regarding your work and whether or not you have experienced a work place dispute. Furthermore, you will be asked about how you feel about how work place disputes are managed and the process of resolving them. The questionnaire should take no longer than 10-15 minutes to complete and the completed questionnaire can be posted into the secure collection boxes (see map / addresses of their locations). They can be handed back to the research team or posted – for specific details see questionnaire.

#### Do I have to take part?

You are free to decide whether you wish to take part or not. If you do decide to take part you will be asked to complete this questionnaire.

### **What are the benefits of taking part?**

By taking part, you will have an opportunity to anonymously express your views about your perception and opinions of how work place disputes are being dealt with. Furthermore you will be welcomed to add further information at the end of the questionnaire, in your own words, what positives there are of the dispute management system and also to express your views on which ways the relevant systems can be improved in order to ensure that the rights of migrant workers are better protected.

### **What are the risks (if any) of taking part?**

There are no risks to you in taking part. You are being invited to express your opinions by completing an anonymous questionnaire. **Your personal details or contact information will not be required.**

### **How will information about me be used?**

The data from your questionnaire will be recorded and analysed as part of my PhD, where I will present my findings about what actual workers think in reality of the UAE's employment dispute management systems.

- **Your personal details or contact information will not be required.**
- All data will only be used in this study and will not be retained for any further study.
- The data will be stored securely on a password protected computer.
- Any hardcopies of information will be stored in a secure lockable filing cabinet, in accordance with Keele University guidelines.
- The data will coded and only used by the research team.
- The data will be retained by the principal researcher for at least five years and after which it will be securely disposed of.

### **What if there is a problem?**

You are welcome to ask to see any credentials or identification. If you have a concern about any aspect of this study you may ask to speak to the principal researcher or the team at Keele University, who will do their best to answer your questions.

You should contact the principal researcher Hamad Al Ameri

E-mail: [h.m.alameri@keele.ac.uk](mailto:h.m.alameri@keele.ac.uk)

Tel UAE: +971564244487 (dedicated research information/enquiry line)

Tel UK: +44(0)1782733148

Alternatively, if you do not wish to contact the principal researcher you may contact, the lead supervisor

Professor Tomoya Obokata

Professor of International Law and Human Rights

E-mail: [t.obokata@keele.ac.uk](mailto:t.obokata@keele.ac.uk)

Tel UK: +44(0)1782733148

If you remain unhappy about the research and/or wish to raise a complaint about any aspect of the way that you have been approached or treated during the course of the study please write to Nicola Leighton who is the University's contact for complaints regarding research at the following address:

Nicola Leighton

Research Governance Officer

IC2 Building

Keele University

UNITED KINGDOM

ST5 5NH

E-mail: [n.leighton@keele.ac.uk](mailto:n.leighton@keele.ac.uk)

Tel UK: +44(0)1782 733306

**QUESTIONNAIRE FOR MIGRANT WORKERS  
(see attached questionnaire)**

- Completed questionnaires can be handed directly back to one of the research team.
- Completed questionnaires can be posted into the secure collection boxes – see map / addresses of their locations.
- Completed questionnaires can be posted to: Hamad Al Ameri

c/o Professor Tom Obokata  
CBC 2.025  
School of Law  
Keele University  
UNITED KINGDOM  
ST5 5BG

## Migrant Worker Questionnaire

Nationality: \_\_\_\_\_ Age: \_\_\_\_\_ Gender: \_\_\_\_\_

Q1 - Which employment sector do you work within? Please state: \_\_\_\_\_

Q2 - Which of the following levels of employment best suits the type of work you do?

- Unskilled or basic level work ☐  
Skilled level of work ☐  
Professional and highly qualified ☐

Q3 - Have you experienced a work place dispute whilst working in the UAE?

YES ☐ please continue with the questions below

NO ☐ please go to Question 35 on Page 5

If you have experienced a work place dispute does it fall into any of the following categories?

- Late payment of wages/salary ☐  
Contract termination ☐  
Legal entitlements not honoured ☐  
Other dispute – please state: \_\_\_\_\_

Q4 - Does your dispute apply to any other workers at your workplace i.e. is it a collective or group dispute?

YES ☐ NO ☐

Q5 - Did you try to resolve the above dispute with your employer directly?

YES ☐ please continue with the questions below

NO ☐ please go to Question 9

Q6 - On a scale of 1 – 5, did you feel confident in engaging your employer?

- 1: Very unconfident ☐  
2: Unconfident ☐  
3: Neutral ☐  
4: Confident ☐  
5: Very Confident ☐

Q7 - On a scale of 1 – 5, how satisfied were you with your employer's systems of dealing with your dispute?

- 1: Strongly Dissatisfied ☐  
2: Dissatisfied ☐  
3: Neutral ☐  
4: Satisfied ☐  
5: Strongly Satisfied ☐

Q8 - Was your dispute resolved amicably by your employer?

YES ☐ NO ☐

If not, what did you do next – please state? \_\_\_\_\_

Q9 - Have you engaged the Ministry of Labour / Labour Office's dispute resolution system?

YES ☐ please continue on Page 2

NO ☐ please go to Question 35 on Page 5

Q10 - Did you initially know how to go about lodging your dispute through the Ministry of Labour?

YES ☐ NO ☐

Q11 - On a scale of 1 – 5, how confident did you feel about engaging the Ministry of Labour in the beginning?

- 1: Very unconfident ☐
- 2: Unconfident ☐
- 3: Neutral ☐
- 4: Confident ☐
- 5: Very Confident ☐

Q12 - On a scale of 1 – 5, how satisfied were you with the service the *Tasheel* Shop provided you with?

- 1: Strongly Dissatisfied ☐
- 2: Dissatisfied ☐
- 3: Neutral ☐
- 4: Satisfied ☐
- 5: Strongly Satisfied ☐

Q13 - Did you find that the Arabic language posed a barrier to you lodging or dealing with your dispute?

YES ☐ NO ☐

Q14 - On a scale of 1 – 5, how easy was initially it to lodge your complaint at the Ministry of Labour using the counter services?

- 1: Very difficult ☐
- 2: Difficult ☐
- 3: Neutral ☐
- 4: Easy ☐
- 5: Very Easy ☐

If you found it difficult to lodge your complaint, what made it so – please explain?

\_\_\_\_\_

Q15 - How soon after lodging the dispute at the Labour Office did the formal process of dispute resolution commence?

- 1: 1 – 3 days ☐
- 2: 4 – 7 days ☐
- 3: 7 – 14 days ☐
- 4: 15 – 21 days ☐
- 5: More than 21 days ☐

Q16 - Was the length of time taken for the Labour Office to summon both the parties acceptable?

YES ☐ NO ☐

Q17 - Did you feel comfortable in liaising with the Ministry of Labour's Legal Researcher at the Labour Office?

YES ☐ NO ☐

Please explain your answer in a few words?

\_\_\_\_\_

Q18 - On a scale of 1 – 5, how confident were you in communicating your thoughts and opinions with the Legal Researcher?

- 1: Very unconfident ☐
- 2: Unconfident ☐
- 3: Neutral ☐
- 4: Confident ☐
- 5: Very Confident ☐

If you found it difficult to talk to your Legal Researcher, what was the reason – please explain?

\_\_\_\_\_

Q19 - On a scale of 1 – 5, how satisfied were you the Legal Researcher's approach to dealing with your dispute?

- |                          |                          |
|--------------------------|--------------------------|
| 1: Strongly Dissatisfied | <input type="checkbox"/> |
| 2: Dissatisfied          | <input type="checkbox"/> |
| 3: Neutral               | <input type="checkbox"/> |
| 4: Satisfied             | <input type="checkbox"/> |
| 5: Strongly Satisfied    | <input type="checkbox"/> |
- 

Q20 - On a scale of 1 – 5, how effective was the manner in which the Legal Researcher engaged you and your employer in relation to finding a solution?

- |                     |                          |
|---------------------|--------------------------|
| 1: Very ineffective | <input type="checkbox"/> |
| 2: Ineffective      | <input type="checkbox"/> |
| 3: Neutral          | <input type="checkbox"/> |
| 4: Effective        | <input type="checkbox"/> |
| 5: Very Effective   | <input type="checkbox"/> |
- 

Q21 - On a scale of 1 – 5, how fair was the negotiations that took place?

- |                    |                          |
|--------------------|--------------------------|
| 1: Very unfair     | <input type="checkbox"/> |
| 2: Slightly unfair | <input type="checkbox"/> |
| 3: Fair            | <input type="checkbox"/> |
- 

Q22 - Did you feel at any point that you were not being listened to?

YES ☐ NO ☐ SOMETIMES ☐

If you felt that you were not being listened to, why do you think that happened – please explain?

---

---

Q23 - Did you find the Legal Researcher understood your problems?

YES ☐ NO ☐ SOMETIMES ☐

If you felt that you were not understood by the Legal Researcher, why do you think this was so – please explain?

---

---

Q24 - Did you feel at any point that the Legal Researcher was taking sides?

YES ☐ NO ☐ SOMETIMES ☐

If you felt that the Legal Researcher took sides in the negotiations, why do you think this was so – please explain?

---

---

Q25 - Did you find that the discussions became confrontational?

YES ☐ NO ☐ SOMETIMES ☐

If so, please explain?

---

---

Q26 - Was your dispute resolved amicably with the help of the Legal Researcher?

YES ☐ NO ☐

If not, what happened next – please state?

---

---

---

Q27 - On a scale of 1 – 5, overall how satisfied were you with the Labour Office's systems of dealing with your dispute?

- 1: Strongly Dissatisfied ☐
  - 2: Dissatisfied ☐
  - 3: Neutral ☐
  - 4: Satisfied ☐
  - 5: Strongly Satisfied ☐
- 

Q28 - On a scale of 1 – 5, how effective did you find the staff at Labour Office?

- 1: Very ineffective ☐
  - 2: Ineffective ☐
  - 3: Neutral ☐
  - 4: Effective ☐
  - 5: Very Effective ☐
- 

Q29 - Have you had any ongoing problems after the Labour Office's provided a resolution?

YES ☐ NO ☐

If so, please state what kinds of problems you are still experiencing?

---

---

---

Q30 - On a scale of 1 – 5, how confident would you be in dealing with another dispute at the Ministry of Labour?

- 1: Very unconfident ☐
- 2: Unconfident ☐
- 3: Neutral ☐
- 4: Confident ☐
- 5: Very Confident ☐

Please explain your answer:

---

---

Q31 - In your opinion what was done well by the Ministry of Labour?

---

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Q32 - In your opinion what could be done to improve the services at the Ministry of Labour?

---

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Q33 - Did you have any support from a third party when dealing with your dispute?

YES ☐ NO ☐

If so, in what capacity did the third party help?

---

---

Q34 - Would you have preferred to have had some form of legal representation during the process?

YES ☐ NO ☐

If so, how do you think this would have helped?

---

---

**Thank you for completing this questionnaire**



**Complete this section if you answered NO to question 3 – if you have not experienced a work place dispute or if you have not been to the Ministry of Labour's Labour Office to lodge a labour complaint.**

Q35 - Would you know what to do if you had a work place dispute?

YES ☐

NO ☐

If so what would you do?

---

---

Q36 - On a scale of 1 – 5, how confident would you be if you had to deal with a work place dispute directly with your employer?

- |                     |                          |
|---------------------|--------------------------|
| 1: Very unconfident | <input type="checkbox"/> |
| 2: Unconfident      | <input type="checkbox"/> |
| 3: Neutral          | <input type="checkbox"/> |
| 4: Confident        | <input type="checkbox"/> |
| 5: Very Confident   | <input type="checkbox"/> |

Q37 - How fair do you think your employer would be towards you if you had a work place dispute?

- |                    |                          |
|--------------------|--------------------------|
| 1: Very unfair     | <input type="checkbox"/> |
| 2: Slightly unfair | <input type="checkbox"/> |
| 3: Fair            | <input type="checkbox"/> |

Q38 - Would you find that the Arabic language would pose a barrier to you lodging/dealing with your dispute?

YES ☐

NO ☐

Q39 - On a scale of 1 – 5, how confident would you be if you had to deal with a work place dispute with the Ministry of Labour?

- |                     |                          |
|---------------------|--------------------------|
| 1: Very unconfident | <input type="checkbox"/> |
| 2: Unconfident      | <input type="checkbox"/> |
| 3: Neutral          | <input type="checkbox"/> |
| 4: Confident        | <input type="checkbox"/> |
| 5: Very Confident   | <input type="checkbox"/> |

Q40 - How fair do you think the Ministry of Labour would be towards you if they were dealing with your work place dispute?

- |                    |                          |
|--------------------|--------------------------|
| 1: Very unfair     | <input type="checkbox"/> |
| 2: Slightly unfair | <input type="checkbox"/> |
| 3: Fair            | <input type="checkbox"/> |

Q41 - On a scale of 1 – 5, how effective do you think the staff at Ministry of Labour would be in dealing with a work place dispute?

- |                     |                          |
|---------------------|--------------------------|
| 1: Very ineffective | <input type="checkbox"/> |
| 2: Ineffective      | <input type="checkbox"/> |
| 3: Neutral          | <input type="checkbox"/> |
| 4: Effective        | <input type="checkbox"/> |
| 5: Very Effective   | <input type="checkbox"/> |

Q42 - Would you welcome the support of having your own form of legal representation during the mediation process at the Ministry of Labour?

YES ☐

NO ☐

If so, how do you think this would help?

---

---

Q43 - If you had to go to court to resolve your workplace dispute do you think you would be treated fairly?

- |                    |                          |
|--------------------|--------------------------|
| 1: Very unfair     | <input type="checkbox"/> |
| 2: Slightly unfair | <input type="checkbox"/> |
| 3: Fair            | <input type="checkbox"/> |

**Thank you for completing this questionnaire**

## Appendix 3: Arabic Questionnaire



### صفحة معلومات الاستبيان للعمال الوافدين

#### عنوان الدراسة

العمال الوافدون في القطاع الخاص في الإمارات العربية المتحدة (UAE): تحليل مهم لإدارة نزاعات التوظيف وحلها

#### أهداف البحث

يهدف هذا البحث إلى نقد نظم إدارة النزاعات المتعلقة بالعمل وآلياتها في الإمارات العربية المتحدة بهدف تعزيز الإصلاح الإيجابي من أجل توفير المزيد من الحماية لحقوق العمال الوافدين في القطاع الخاص. الأثر المحتمل لهذا البحث هو أن يكون دافعاً لتيسير التغيير الإيجابي في السياسات والإجراءات لتحسين الخدمات عن طريق التعامل مع المشاكل ذات الحساسية وعن طريق تعزيز الممارسات المثلى

#### من ينظم البحث؟

ينظم الباحث الرئيسي البحث وينفذه في إطار رسالة دكتوراه (PhD). تتلقى الدراسة التمويل من إدارة التعليم بشرطة أبوظبي، لأنهم يهدفون إلى تحسين الخدمات التي يتلقاها العمال الوافدون في الإمارات العربية المتحدة. الباحث ملتحق حالياً بجامعة كيلي في المملكة المتحدة (Keele University) (United Kingdom). نرحب بأن تطلب الاطلاع على أية اعتمادات أو بطاقة هوية. إذا كانت لديك مخاوف بشأن أي جانب في هذه الدراسة، يمكنك طلب التحدث إلى الباحث الرئيسي الذي سيبدل قصارى جهده للرد على أسئلتك.

#### الدعوة

أنت مدعو للتفكير في المشاركة في الدراسة البحثية 'العمال الوافدون في القطاع الخاص في الإمارات العربية المتحدة: تحليل مهم لإدارة نزاعات التوظيف وحلها'. ينفذ هذا المشروع حمد العامري (Hamad Al Ameri). قبل أن تقرر استكمال الاستبيان، من المهم بالنسبة لك أن تفهم السبب في إجراء هذا البحث وما سيتضمنه. يرجى أن تستغرق بعض الوقت في قراءة هذه المعلومات بعناية ومناقشتها مع الأصدقاء والأقارب إذا كنت ترغب.

#### لماذا تلقت دعوة؟

لقد تم اختيارك للمشاركة في هذه الدراسة لأنني أشعر أن معرفتك وخبرتك ورأيك، وهو الأهم، ستكون لهم أهمية كبيرة في إجراء هذه الدراسة بنجاح لأن هذا سيساعد عمالاً آخرين في المستقبل على حل مشاكلهم في مكان العمل بقدر أكبر من السرعة والسهولة أو تجنب حدوثها من الأساس كما نأمل.

#### ماذا سيحدث إذا شاركت؟

إذا اخترت أن تشارك، فستتلقى دعوة لاستكمال استبيان بسيط حيث ستجد أسئلة تتعلق بعملك وبما إذا كنت قد تعرضت لنزاع في مكان العمل. كما ستجد أسئلة حول شعورك حيال إدارة النزاعات في مكان العمل وعملية حلها. ينبغي ألا يستغرق الاستبيان أكثر من 10-15 دقيقة ليكمل ويمكن إرسال الاستبيان المكتمل عبر صناديق الجمع الآمنة (انظر خريطة / عناوين مواقعها). يمكن إعادتها إلى الفريق البحثي أو إرسالها - للاطلاع على التفاصيل المحددة انظر الاستبيان.

#### هل يجب أن أشارك؟

أنت حر في قرارك بالرغبة في المشاركة من عدمه. إذا قررت أن تشارك، فسيكون مطلوباً منك أن تكمل هذا الاستبيان.

#### ما مزايا المشاركة؟

عندما تشارك ستحصل على فرصة التعبير عن رأيك في طريقة التعامل مع النزاعات في مكان العمل من وجهة نظرك بدون تحديد هويتك. كما أننا نرحب بأن تضيف المزيد من المعلومات في نهاية الاستبيان بعبارتك الخاصة عن الإيجابيات الموجودة في نظام إدارة النزاعات وأن تعبر أيضاً عن وجهات نظرك فيما يخص الطريق التي يمكن من خلالها تحسين الأنظمة المعنية لضمان توفير حماية أفضل لحقوق العمال الوافدين.

#### ما مخاطر المشاركة (إذا كانت هناك مخاطر)؟

لا توجد مخاطر عليك من المشاركة. لقد تلقت دعوة للتعبير عن آرائك عن طريق استكمال استبيان بدون تحديد هويتك. لن تكون بياناتك الشخصية أو معلومات الاتصال بك مطلوبة.

### كيف سيتم استخدام المعلومات المتعلقة بي؟

سيتم تسجيل البيانات المأخوذة من استبيانك وتحليلها في إطار رسالتي للدكتوراه والتي سأعرض فيها ما توصلت إليه عن آراء العمل الفعلية في واقع نظم إدارة نزاعات التوظيف في الإمارات العربية المتحدة.

- لن تكون بياناتك الشخصية أو معلومات الاتصال بك مطلوبة.
- لن يتم استخدام كل البيانات إلا في هذه الدراسة ولن يتم الاحتفاظ بها لإجراء أية دراسة أخرى.
- سيتم تخزين البيانات بشكل آمن على كمبيوتر عليه حماية بكلمة سر.
- سيتم تخزين أية نسخ مطبوعة من المعلومات في خزانة ملفات بقل آمن وفقاً لإرشادات جماعة كلي.
- سيتم تشفير البيانات ولن يستخدمها إلا الفريق البحثي.
- سيحتفظ الباحث الرئيسي بالبيانات لمدة خمس سنوات على الأقل وبعدها سيتم التخلص منها بشكل آمن.

### ماذا لو وقعت مشكلة؟

نرحب بأن تطلب الاطلاع على أية اعتمادات أو بطاقة هوية. إذا كانت لديك مخاوف بشأن أي جانب في هذه الدراسة، يمكنك طلب التحدث إلى الباحث الرئيسي أو إلى الفريق في جامعة كلي والذي سيبدل قصارى جهده للرد على أسئلتك.

ينبغي أن تتصل بالباحث الرئيسي (principal researcher) حمد العامري (Hamad Al Ameri) البريد الإلكتروني: [h.m.alameri@keele.ac.uk](mailto:h.m.alameri@keele.ac.uk) هاتف الإمارات العربية المتحدة: +971564244487 (الخط المخصص للمعلومات/الاستفسارات البحثية) هاتف المملكة المتحدة: +44(0)1782733148

أو إذا كنت لا ترغب في الاتصال بالباحث الرئيسي، يمكنك الاتصال بالمشرف الرئيسي البروفيسور تومويا أوبوكاتا (Tomoya Obokata) أستاذ القانون الدولي وحقوق الإنسان (Professor of International Law and Human Rights) البريد الإلكتروني: [t.obokata@keele.ac.uk](mailto:t.obokata@keele.ac.uk) هاتف المملكة المتحدة: +44(0)1782733148

إذا كنت لا تزال تشعر بعدم الرضاء حيال البحث و/أو ترغب في تقديم شكوى حول أي جانب في طريقة التواصل أو التعامل معك في إطار الدراسة، يرجى الكتابة إلى نيكولا ليتون (Nicola Leighton) المختصة بشكاوى الأبحاث في الجامعة على العنوان التالي:

Nicola Leighton (نيكولا ليتون)  
Research Governance Officer (مسؤول حوكمة الأبحاث)  
IC2 Building  
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هاتف المملكة المتحدة: +44(0)1782 733306

**استبيان للعمال الوافدين  
(انظر المرفقة)**

- يمكن تسليم الاستبيانات المكتملة إلى أحد أفراد الفريق البحثي مباشرة.
- يمكن إرسال الاستبيانات المكتملة عبر صناديق الجمع الآمنة - انظر خريطة / عناوين مواقعها.
- يمكن إرسال الاستبيانات المكتملة عبر البريد إلى: Hamad Al Ameri (حمد العامري)  
الأستاذ المساعد Tom Obokata (تومويا أوبوكاتا)

CBC 2.025  
School of Law  
Keele University  
United Kingdom  
ST5 5BG

## استبيان العمال الوافدين

الجنسية: \_\_\_\_\_ العمر: \_\_\_\_\_ الجنس: \_\_\_\_\_

س1 - ما قطاع التوظيف الذي تعمل به؟ يرجى التحديد: \_\_\_\_\_

س2 - أي من مستويات التوظيف التالية تلائم بالشكل الأمثل نوع العمل الذي تقوم به؟  
☐ عمل من مستوى لا يتطلب مهارة أو أساسي  
☐ عمل من مستوى يتطلب مهارة  
☐ مهني و عالي التأهيل

س3 - هل دخلت من قبل في نزاع في مكان العمل أثناء العمل في الإمارات العربية المتحدة (UAE)؟  
 نعم ☐ يرجى متابعة الإجابة على الأسئلة بالأدنى لا ☐ يرجى الانتقال إلى السؤال 35 في الصفحة 6

إذا كنت قد دخلت في أي نزاع في مكان العمل، فهل يندرج تحت أي من الفئات التالية؟  
☐ تأخر دفع الأجور/الراتب  
☐ إنهاء العقد  
☐ استحقاقات قانونية لم يتم تقديمها  
 نزاع آخر - يرجى التحديد: \_\_\_\_\_

س4 - هل يسري نزاعك على أي من العمال الآخرين في مكان عملك، بمعنى أن يكون نزاعاً شاملاً أو جماعياً؟  
 نعم ☐ لا ☐

س5 - هل حاولت أن تحل النزاع مع جهة عملك مباشرة؟  
 نعم ☐ يرجى متابعة الإجابة على الأسئلة بالأدنى لا ☐ يرجى الانتقال إلى السؤال 9

س6 - على مقياس من 1 إلى 5، هل شعرت بالثقة في التعامل مع جهة عملك؟  
☐ 1 غير واثق بشدة  
☐ 2 غير واثق  
☐ 3 محايد  
☐ 4 واثق  
☐ 5 واثق بشدة

س7 - على مقياس من 1 إلى 5، ما مقدار رضائك عن نظم التعامل مع نزاعك في جهة عملك؟  
☐ 1 غير راضٍ بشدة  
☐ 2 غير راضٍ  
☐ 3 محايد  
☐ 4 راضٍ  
☐ 5 راضٍ بشدة

س8 - هل حلت جهة عملك نزاعك بشكل ودي؟  
 نعم ☐ لا ☐

إذا كان ذلك لم يحدث، فما الذي فعلته بعد ذلك - يرجى التحديد: \_\_\_\_\_

س9 - هل تعاملت مع نظام حل النزاعات في وزارة العمل / مكتب العمل؟  
 نعم ☐ يرجى المتابعة إلى الصفحة 2 لا ☐ يرجى الانتقال إلى السؤال 35 في الصفحة 6

س10 - هل علمت البداية كيف تتعامل مع تسجيل نزاعك عبر وزارة العمل؟  
☐ نعم ☐ لا

س11 - على مقياس من 1 إلى 5، ما مقدار شعورك بالثقة حيال التعامل مع وزارة العمل في البداية؟

- ☐ 1 غير واثق بشدة  
☐ 2 غير واثق  
☐ 3 محايد  
☐ 4 واثق  
☐ 5 واثق بشدة

س12 - على مقياس من 1 إلى 5، ما مقدار رضاك عن الخدمة التي قدمها لك متجر تسهيل (Tasheel)؟

- ☐ 1 غير راضٍ بشدة  
☐ 2 غير راضٍ  
☐ 3 محايد  
☐ 4 راضٍ  
☐ 5 راضٍ بشدة

س13 - هل وجدت أن اللغة العربية كانت تمثل عائقًا أمام تسجيلك لنزاعك أو تعاملك معه؟  
☐ نعم ☐ لا

س14 - على مقياس من 1 إلى 5، ما مدى السهولة التي سارت بها عملية تسجيل شكواك في وزارة العمل باستخدام خدمات الشباك؟

- ☐ 1 صعبة جدًا  
☐ 2 صعبة  
☐ 3 محايد  
☐ 4 سهلة  
☐ 5 سهلة جدًا

إذا كنت قد وجدت صعوبة في تسجيل شكواك، فما الذي جعلها كذلك - يرجى التوضيح؟

\_\_\_\_\_

\_\_\_\_\_

س15 - ما مدى سرعة بدء العملية الرسمية لحل النزاع بعد تسجيله في مكتب العمل؟

- ☐ 1: 3 - 1 أيام  
☐ 2: 4 - 7 أيام  
☐ 3: 7 - 14 أيام  
☐ 4: 15 - 21 أيام  
☐ 5: أكثر من 21 يومًا

س16 - هل كانت المدة التي استغرقها مكتب العمل ليستدعي كلا الطرفين مقبولة؟  
☐ نعم ☐ لا

س17 - هل شعرت بالراحة في التنسيق مع الباحث القانوني من وزارة العمل في مكتب العمل؟  
☐ نعم ☐ لا

يرجى توضيح إجابتك بكلمات قليلة؟

\_\_\_\_\_

\_\_\_\_\_

س18 - على مقياس من 1 إلى 5، كم كان مقدار ثقتك حيال التعبير عن أفكارك وآرائك أمام الباحث القانوني؟

- ☐ 1 غير واثق بشدة  
☐ 2 غير واثق  
☐ 3 محايد  
☐ 4 واثق  
☐ 5 واثق بشدة

إذا كنت قد وجدت صعوبة في التحدث مع باحثك القانوني، فلماذا كان السبب - يرجى التوضيح؟

---

س19 - على مقياس من 1 إلى 5، ما مقدار رضاك عن أسلوب الباحث القانوني في التعامل مع نزاعك؟

- ☐ 1 غير راضٍ بشدة  
☐ 2 غير راضٍ  
☐ 3 محايد  
☐ 4 راضٍ  
☐ 5 راضٍ بشدة

س20 - على مقياس من 1 إلى 5، كيف كانت فعالية أسلوب تعامل الباحث القانوني معك ومع جهة عملك فيما يخص التوصل إلى حل؟

- ☐ 1 غير فعال بشدة  
☐ 2 غير فعال  
☐ 3 محايد  
☐ 4 فعال  
☐ 5 فعال بشدة

س21 - على مقياس من 1 إلى 5، كيف كانت عدالة المفاوضات التي جرت؟

- ☐ 1 غير عادلة بشدة  
☐ 2 غير عادلة قليلاً  
☐ 3 عادلة

س22 - هل شعرت في أية لحظة بذلك لم تكن تلتقي اهتماماً؟

- ☐ نعم ☐ لا ☐ أحياناً

إذا كنت قد شعرت بذلك لا تلتقي اهتماماً، لماذا في رأيك حدث هذا - يرجى التوضيح؟

---

س23 - هل وجدت أن الباحث القانوني فهم مشاكلك؟

- ☐ نعم ☐ لا ☐ أحياناً

إذا كنت قد شعرت بأن الباحث القانوني لم يفهمك، لماذا في رأيك حدث هذا - يرجى التوضيح؟

---

س24 - هل شعرت في أي وقت أن الباحث القانوني كان متحيزاً؟

- ☐ نعم ☐ لا ☐ أحياناً

إذا كنت قد شعرت بأن الباحث القانوني متحيز في المفاوضات، لماذا في رأيك حدث هذا - يرجى التوضيح؟

---

س25 - هل وجدت أن المناقشات تحولت إلى مواجهة؟

أحيانًا ☐

لا ☐

نعم ☐

إذا كان الأمر كذلك - يرجى التوضيح؟

---

---

س26 - هل تم حل نزاعك بشكل ودي بمساعدة الباحث القلوني؟

لا ☐

نعم ☐

إذا كان ذلك لم يحدث، فما الذي حدث بعد ذلك - يرجى التوضيح؟

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---

---

س27 - على مقياس من 1 إلى 5، ما مقدار رضاك العام عن نظم مكتب العمل في التعامل مع نزاعك؟

☐

1 غير راض بشدة

☐

2 غير راض

☐

3 محايد

☐

4 راض

☐

5 راض بشدة

س28 - على مقياس من 1 إلى 5، كيف كانت الفعالية التي وجدتتها لدى فريق عمل مكتب العمل؟

☐

1 غير فعال بشدة

☐

2 غير فعال

☐

3 محايد

☐

4 فعال

☐

5 فعال بشدة

س29 - هل تعرضت لأي مشاكل مستمرة حتى الآن بعد أن أصدر مكتب العمل قرارًا؟

لا ☐

نعم ☐

إذا كان الأمر كذلك، يرجى تحديد أنواع المشاكل التي ما زلت تتعرض لها؟

---

---

---

س30 - على مقياس من 1 إلى 5، كيف ستكون ثقافتك في التعامل مع نزاع آخر في وزارة العمل؟

☐

1 غير واثق بشدة

☐

2 غير واثق

☐

3 محايد

☐

4 واثق

☐

5 واثق بشدة

يرجى توضيح إجابتك:

---

---

س31 - ما الذي فعلته وزارة العمل بشكل جيد في رأيك؟

---

---



س32 - ما الذي يمكن عمله في رأيك لتحسين الخدمات في وزارة العمل؟

---

---

س33 - هل تلقيت أي دعم من طرف خارجي عند التعامل مع نزاعك؟  
☐ نعم ☐ لا

إذا كنت قد تلقيت دعماً، فبإيئة صفة مساعدك الطرف الخارجي؟

---

---

س34 - هل كنت تفضل أن يكون لديك شكل من التمثيل القانوني أثناء العملية؟  
☐ نعم ☐ لا

إذا كان الأمر كذلك، فكيف كان ذلك سيساعدك في رأيك؟

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شكراً لك على استكمال هذا الاستبيان

استكمل هذا القسم إذا كنت قد أجبت بلا على السؤال 3 - إذا لم تكن قد دخلت في نزاع في مكان العمل أو إذا كنت لم تذهب إلى مكتب العمل في وزارة العمل لتسجيل شكوى عمل.

س35 - هل تعلم ما ستفعله إذا دخلت في نزاع في مكان العمل؟  
☐ نعم ☐ لا

إذا كان الأمر كذلك، فما الذي ستفعله؟

\_\_\_\_\_

\_\_\_\_\_

س36 - على مقياس من 1 إلى 5، كيف ستكون ثقّك إذا كان عليك أن تتعامل مع نزاع في مكان العمل مع جهة عملك مباشرة؟

- |                          |                 |
|--------------------------|-----------------|
| <input type="checkbox"/> | 1 غير واثق بشدة |
| <input type="checkbox"/> | 2 غير واثق      |
| <input type="checkbox"/> | 3 محايد         |
| <input type="checkbox"/> | 4 واثق          |
| <input type="checkbox"/> | 5 واثق بشدة     |

س37 - كيف ستكون عدالة جهة عملك معك في رأيك إذا دخلت في نزاع في مكان العمل؟

- |                          |                    |
|--------------------------|--------------------|
| <input type="checkbox"/> | 1 غير عادلة بشدة   |
| <input type="checkbox"/> | 2 غير عادلة قليلاً |
| <input type="checkbox"/> | 3 عادلة            |

س38 - هل ستجد أن اللغة العربية ستمثل عائقاً أمام تسجيلك لنزاعك/تعاملك معه؟  
☐ نعم ☐ لا

س39 - على مقياس من 1 إلى 5، كيف ستكون ثقّك إذا كان عليك أن تتعامل مع نزاع في مكان العمل مع وزارة العمل؟

- |                          |                 |
|--------------------------|-----------------|
| <input type="checkbox"/> | 1 غير واثق بشدة |
| <input type="checkbox"/> | 2 غير واثق      |
| <input type="checkbox"/> | 3 محايد         |
| <input type="checkbox"/> | 4 واثق          |
| <input type="checkbox"/> | 5 واثق بشدة     |

س40 - كيف في رأيك ستكون عدالة وزارة العمل تجاهك إذا تعاملوا مع نزاع لك في مكان العمل؟

- |                          |                    |
|--------------------------|--------------------|
| <input type="checkbox"/> | 1 غير عادلة بشدة   |
| <input type="checkbox"/> | 2 غير عادلة قليلاً |
| <input type="checkbox"/> | 3 عادلة            |

س41 - على مقياس من 1 إلى 5، كيف في رأيك ستكون فعالية فريق العمل في وزارة العمل عند التعامل مع نزاع في مكان العمل؟

- |                          |                 |
|--------------------------|-----------------|
| <input type="checkbox"/> | 1 غير فعال بشدة |
| <input type="checkbox"/> | 2 غير فعال      |
| <input type="checkbox"/> | 3 محايد         |
| <input type="checkbox"/> | 4 فعال          |
| <input type="checkbox"/> | 5 فعال بشدة     |

س42 - هل سترحب بدعم الحصول على شكل من التمثيل القانوني لك أثناء عملية الوساطة في وزارة العمل؟  
☐ نعم ☐ لا

إذا كان الأمر كذلك، فكيف سيساعدك ذلك في رأيك؟

\_\_\_\_\_

\_\_\_\_\_

س43 - إذا كان عليك أن تذهب إلى المحكمة لحل النزاع في مكان عملك، فهل تعتقد أنك ستلقى معاملة عادلة؟

☐  
☐  
☐

1 غير عادلة بشدة  
2 غير عادلة قليلاً  
3 عادلة

---

شكراً لك على استكمال هذا الاستبيان

## Appendix 4: Hindi Questionnaire



### अप्रवासी कामगारों के लिए प्रश्नावली सूचना पत्रक

#### अध्ययन का शीर्षक

संयुक्त अरब अमीरात के प्राइवेट सेक्टर में अप्रवासी कामगार: रोजगार विवाद प्रबंधन और समाधान का महत्वपूर्ण विश्लेषण

#### शोध के उद्देश्य

इस शोध का उद्देश्य संयुक्त अरब अमीरात के रोजगार संबंधी विवाद प्रबंधन प्रणालियों और तंत्रों की प्राइवेट सेक्टर में अप्रवासी कामगारों के अधिकारों की और सुरक्षा करने के प्रयोजन से सकारात्मक सुधारों की पैरवी करने के इरादे से समीक्षा करना है। इस शोध का संभावित प्रभाव मुद्दों से संवेदनशीलता से निपटते हुए और सर्वश्रेष्ठ-प्रथाओं को बढ़ावा देते हुए सेवाओं में सुधार करने के प्रयोजन से नीति तथा प्रक्रिया में सकारात्मक परिवर्तन को सुविधाजनक बनाने के लिए चालक का काम करना है।

#### शोध का आयोजन कौन कर रहा है?

मुख्य शोधकर्ता PhD के भाग के रूप में शोध का आयोजन और संचालन कर रहा है। इस अध्ययन के लिए आबूधाबी पुलिस शिक्षा विभाग द्वारा धन प्रदान किया गया है क्योंकि संयुक्त अरब अमीरात में अप्रवासी कामगारों के लिए प्रदान की जा रही सेवाओं में सुधार करना उनका ध्येय है। शोधकर्ता फिलहाल कील विश्वविद्यालय, यूनाइटेड किंगडम में नामांकित है। किसी भी प्रामाणपत्र या पहचान को देखने के लिए खुशी से पूछ सकते हैं। यदि इस अध्ययन के किसी भी पहलू को लेकर आपकी कोई चिंता है तो मुख्य शोधकर्ता से बात करें जो आपके प्रश्नों का उत्तर देने का भरसक प्रयास करेंगे।

#### निमंत्रण

आपको 'संयुक्त अरब अमीरात के प्राइवेट सेक्टर में अप्रवासी कामगार: रोजगार विवाद प्रबंधन और समाधान का महत्वपूर्ण विश्लेषण' में भाग लेने पर विचार करने के लिए आमंत्रित किया जा रहा है। इस प्रोजेक्ट को हमद अल अमेरी (Hamad Al Ameri) द्वारा किया जा रहा है। आपके द्वारा इस प्रश्नावली को पूरा करने का निर्णय किए जाने से पूर्व, आपके लिए यह समझना महत्वपूर्ण है कि यह शोध क्यों किया जा रहा है और इसमें क्या कुछ शामिल होगा। कृपया इस सूचना को सावधानीपूर्वक पढ़ने के लिए समय निकालें और यदि आपकी इच्छा हो तो इसके बारे में अपने दोस्तों और संबंधियों से चर्चा करें।

### **मुझे आमंत्रित क्यों किया गया है?**

आपको इस अध्ययन में भाग लेने के लिए चुना गया है क्योंकि मुझे लगता है कि आपका ज्ञान, अनुभव और सर्वाधिक महत्वपूर्ण आपकी राय इस अध्ययन को सफलतापूर्वक करने में अत्यधिक उल्लेखनीय होगी, क्योंकि इससे अन्य कामगारों को भविष्य में कार्यस्थल संबंधी अपनी समस्याओं का तीव्रता तथा आसानी से समाधान करने और आशापूर्वक उनके फिर से होने को रोकने में सहायता मिलेगी।

### **अगर मैं भाग लेता हूँ तो क्या होगा?**

यदि आप भाग लेने का चुनाव करते हैं तो आपको एक साधारण प्रश्नावली पूर्ण करने के लिए आमंत्रित किया जाएगा जिसमें आपके काम तथा आपके कार्यस्थल पर विवाद का अनुभव किया है या नहीं, के बारे में प्रश्न पूछे जाएंगे। इसके अतिरिक्त, आपसे पूछा जाएगा कि कार्यस्थल पर विवाद के प्रबंधन तथा उनके समाधान की प्रक्रिया को लेकर आप कैसे महसूस करते हैं। प्रश्नावली को पूरा करने में 10-15 मिनट से ज्यादा समय नहीं लगेगा और भरी हुई प्रश्नावली को सुरक्षित संग्रहण पेटियों (उनकी लोकेशन का नक्शा/पता देखें) में डाला जा सकता है। उन्हें शोध करने वाली टीम को भेज या सौंप दिया जाएगा – विशिष्ट विवरण के लिए प्रश्नावली देखें।

### **क्या मुझे भाग लेना है?**

आप यह निर्णय करने के लिए स्वतंत्र हैं कि आप भाग लेना चाहते हैं या नहीं। यदि आप भाग लेने का निर्णय करते हैं तो आपसे इस प्रश्नावली को पूरा करने के लिए कहा जाएगा।

### **भाग लेने के क्या लाभ हैं?**

भाग लेकर, आपको इस संबंध में अपने बोध और राय के बारे में अपने विचार गुमनाम तरीके से व्यक्त करने का अवसर प्राप्त होगा कि कार्यस्थल के विवादों से कैसे निपटा जाता है। इसके अतिरिक्त आपसे प्रश्नावली के अंत में, अपने खुद के शब्दों में, अतिरिक्त जानकारी जोड़ने के लिए कहा जाएगा कि विवाद प्रबंधन प्रणाली में क्या कुछ सकारात्मक है और इस संबंध में भी आप अपने विचार व्यक्त कर सकते हैं कि प्रासंगिक प्रणालियों में किस तरह से सुधार किया जा सकता है जिससे अप्रवासी कामगारों के अधिकारों को ज्यादा बेहतर ढंग से सुरक्षित किया जा सके।

### **भाग लेने के क्या जोखिम हैं (यदि कोई हों)?**

आपके लिए भाग लेने का कोई जोखिम नहीं है। आपसे गुमनाम प्रश्नावली को पूरा करके अपनी राय व्यक्त करने के लिए कहा जा रहा है। आपकी निजी जानकारी या संपर्क सूचना की अपेक्षा नहीं होगी।

## मेरी जानकारी का कैसे उपयोग किया जाएगा?

आपकी प्रश्नावली के डेटा को मेरी PhD के भाग के रूप में दर्ज किया एवं विश्लेषित किया जाएगा, जहां मैं अपने निष्कर्ष प्रस्तुत करूंगा कि संयुक्त अरब अमीरात की रोजगार विवाद प्रबंधन प्रणालियों के बारे में असल में वास्तविक कामगार क्या सोचते हैं।

- आपकी निजी जानकारी या संपर्क सूचना की अपेक्षा नहीं होगी।
- सारे डेटा का उपयोग केवल इस अध्ययन में किया जाएगा और किसी अन्य अध्ययन के लिए इसे रखा नहीं जाएगा।
- डेटा को पासवर्ड से सुरक्षित कंप्यूटर में स्टोर किया जाएगा।
- सूचना की सभी कागजी प्रतियां कील विश्वविद्यालय के दिशानिर्देशों के अनुसार तालाबंद फाइलिंग कैबिनेट में सुरक्षित रखी जाएंगी।
- डेटा कूटबद्ध होगा और इसका उपयोग केवल शोध दल द्वारा किया जाएगा।
- डेटा को मुख्य शोधकर्ता द्वारा कम से कम पांच साल तक रखा जाएगा जिसके बाद इसे सुरक्षित ढंग से निपटा दिया जाएगा।

## अगर कोई समस्या होती है तो क्या होगा?

किसी भी प्रामाण्य या पहचान को देखने के लिए खुशी से पूछ सकते हैं। यदि इस अध्ययन के किसी पहलू को लेकर आपको कोई चिंता है तो आप कील विश्वविद्यालय के मुख्य शोधकर्ता या दल से बात करने के लिए कह सकते हैं तो आपके प्रश्नों का उत्तर देने का भरसक प्रयास करेंगे।

आपको मुख्य शोधकर्ता (principal researcher) हमद अल अमेरी (Hamad Al Ameri) से संपर्क करना चाहिए

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विकल्पतः, यदि आप मुख्य शोधकर्ता से संपर्क करना नहीं चाहते हैं तो आप प्रमुख पर्यवेक्षक प्रोफेसर तोमोया ओबोकाता (Tomoya Obokata) से संपर्क कर सकते हैं

प्रोफेसर, अंतरराष्ट्रीय कानून और मानवाधिकार (Professor of International Law and Human Rights)

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यदि आप शोध को लेकर नाखुश हैं और/या जिस तरह से आपसे संपर्क किया गया है या अध्ययन के दौरान आप से जिस तरह का व्यवहार किया गया है, और आप इस संबंध में कोई शिकायत करना चाहते हैं तो निकोला लीहटन (Nicola Leighton) को निम्न पते पर लिखें जो शोध संबंधी शिकायतों के लिए विश्वविद्यालय के संपर्क अधिकारी हैं:

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संस्करण सं: 5/तारीख: 02 दिसंबर 2015  
भागीदार के लिए 1

पृष्ठ 5 का 4

ERP02122015

अप्रवासी कामगारों के लिए प्रश्नावली  
(संलग्न देखें)

- भरी हुई प्रश्नावलियां सीधे शोध टीम के किसी भी सदस्य को सौंपी जा सकती हैं।
- भरी हुई प्रश्नावलियां सुरक्षित संग्रहण पेटियों में डाली जा सकती हैं- उनकी लोकेशन के लिए नक्शा/पते देखें।
- भरी हुई प्रश्नावलियां निम्न पते पर भेजी जा सकती हैं:

Hamad Al Ameri (हमद अल अमेरी)

सी/ओ प्रोफसर Tom Obokata (टोम ओबोकाता)

CBC 2.025

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## अप्रवासी कामगार प्रश्नावली

राष्ट्रियता: \_\_\_\_\_ आयु: \_\_\_\_\_ लिंग: \_\_\_\_\_

प्र1 – आप किस रोजगार क्षेत्र में काम करते हैं? कृपया बताएं: \_\_\_\_\_

प्र2 – आप जिस तरह का काम करते हैं उसके लिए रोजगार का निम्न में से कौन सा स्तर सर्वाधिक उपयुक्त है?

- |                         |                          |
|-------------------------|--------------------------|
| अकुशल या बुनियादी काम   | <input type="checkbox"/> |
| काम का कुशल स्तर        | <input type="checkbox"/> |
| पेशेवर और अत्यधिक योग्य | <input type="checkbox"/> |

प्र3 – क्या आपने संयुक्त अरब अमीरात में काम करने के दौरान कार्यस्थल पर विवाद का अनुभव किया है?

हां ☐ कृपया नीचे दिए प्रश्नों के साथ जारी रखें नहीं ☐ कृपया पृष्ठ 6 पर दिए प्रश्न 35 पर जाएं

यदि आपने कार्यस्थल पर विवाद का अनुभव किया है तो क्या यह निम्न में से किसी श्रेणी में आता है?

- |                                 |                          |
|---------------------------------|--------------------------|
| मजदूरी/वेतन का देरी से भुगतान   | <input type="checkbox"/> |
| अनुबंध समाप्त करना              | <input type="checkbox"/> |
| कानूनी हक प्रदान न करना         | <input type="checkbox"/> |
| अन्य विवाद – कृपया बताएं: _____ |                          |

प्र4 – क्या आपका विवाद आपके कार्यस्थल पर किसी अन्य कामगार पर लागू होता है यानी क्या यह सामूहिक या समूह से जुड़ा विवाद है?

हां ☐ नहीं ☐

प्र5 – क्या आपने इस विवाद को सीधे अपने नियोक्ता के साथ सुलझाने का प्रयास किया?

हां ☐ कृपया नीचे दिए प्रश्नों के साथ जारी रखें नहीं ☐ कृपया प्रश्न 9 पर जाएं

प्र6 – 1-5 के पैमाने पर, क्या नियोक्ता को शामिल करने को लेकर आपको आत्मविश्वास महसूस हुआ?

- |                                |                          |
|--------------------------------|--------------------------|
| 1. बिल्कुल आत्मविश्वास नहीं था | <input type="checkbox"/> |
| 2. आत्मविश्वास नहीं था         | <input type="checkbox"/> |
| 3. तटस्थ                       | <input type="checkbox"/> |
| 4. आत्मविश्वास था              | <input type="checkbox"/> |
| 5. बहुत आत्मविश्वास था         | <input type="checkbox"/> |

प्र7 – 1-5 के पैमाने पर, आपके विवाद से निपटने की आपकी नियोक्ता की प्रणाली को लेकर आप कितने संतुष्ट थे?

- |                    |                          |
|--------------------|--------------------------|
| 1. पुरजोर असंतुष्ट | <input type="checkbox"/> |
| 2. असंतुष्ट        | <input type="checkbox"/> |
| 3. तटस्थ           | <input type="checkbox"/> |
| 4. संतुष्ट         | <input type="checkbox"/> |
| 5. पुरजोर संतुष्ट  | <input type="checkbox"/> |

प्र8 – क्या आपके नियोक्ता के साथ आपका विवाद आपसी सहमति से सुलझ गया था?

हां ☐ नहीं ☐

यदि नहीं, तो आपका अगला कदम क्या था – कृपया बताएं? \_\_\_\_\_

प्र9 - क्या आपने श्रम मंत्रालय/श्रम कार्यालय की विवाद समाधान प्रणाली को शामिल किया था?

हां ☐ कृपया नीचे दिए प्रश्नों के साथ जारी रखें

नहीं ☐ कृपया पृष्ठ 6 पर दिए प्रश्न 35 पर जाएं

प्र10 - क्या आपको आरंभ में जानकारी थी कि श्रम मंत्रालय के माध्यम से अपने विवाद की रिपोर्ट कैसे करनी है?

हां ☐

नहीं ☐

प्र11 - 1-5 के पैमाने पर, श्रम मंत्रालय को आरंभ में शामिल करने को लेकर आपमें कितना आत्मविश्वास था?

- |                                |                          |
|--------------------------------|--------------------------|
| 1. बिल्कुल आत्मविश्वास नहीं था | <input type="checkbox"/> |
| 2. आत्मविश्वास नहीं था         | <input type="checkbox"/> |
| 3. तटस्थ                       | <input type="checkbox"/> |
| 4. आत्मविश्वास था              | <input type="checkbox"/> |
| 5. बहुत आत्मविश्वास था         | <input type="checkbox"/> |

प्र12 - 1-5 के पैमाने पर, आपको तशील दुकान द्वारा प्रदान की गई सेवा को लेकर आप कितने संतुष्ट थे?

- |                    |                          |
|--------------------|--------------------------|
| 1. पुरजोर असंतुष्ट | <input type="checkbox"/> |
| 2. असंतुष्ट        | <input type="checkbox"/> |
| 3. तटस्थ           | <input type="checkbox"/> |
| 4. संतुष्ट         | <input type="checkbox"/> |
| 5. पुरजोर संतुष्ट  | <input type="checkbox"/> |

प्र13 - क्या आपको महसूस हुआ कि अपने विवाद के बारे में रिपोर्ट करने या निपटने के दौरान अरबी भाषा की वजह से बाधा उत्पन्न की थी?

हां ☐

नहीं ☐

प्र14 - 1-5 के पैमाने पर, श्रम मंत्रालय में काउंटर सेवाओं का प्रयोग करते हुए अपनी शिकायत दर्ज कराना आरंभ में कितना आसान था?

- |              |                          |
|--------------|--------------------------|
| 1. बहुत कठिन | <input type="checkbox"/> |
| 2. कठिन      | <input type="checkbox"/> |
| 3. तटस्थ     | <input type="checkbox"/> |
| 4. आसान      | <input type="checkbox"/> |
| 5. बहुत आसान | <input type="checkbox"/> |

यदि आपको शिकायत दर्ज कराने में कठिनाई हुई तो किस कारण ऐसा हुआ - कृपया विस्तार से बताएं?

\_\_\_\_\_

प्र15 - श्रम कार्यालय में विवाद की रिपोर्ट करने के बाद कितना शीघ्र विवाद सुलझाने की औपचारिक प्रक्रिया आरंभ हो गई थी?

- |                     |                          |
|---------------------|--------------------------|
| 1. 1 - 3 दिन        | <input type="checkbox"/> |
| 2. 4 - 7 दिन        | <input type="checkbox"/> |
| 3. 7 - 14 दिन       | <input type="checkbox"/> |
| 4. 15 - 21 दिन      | <input type="checkbox"/> |
| 5. 21 दिन से ज्यादा | <input type="checkbox"/> |

प्र16 - क्या श्रम कार्यालय द्वारा दोनों पक्षों को बुलाने में लिया गया समय स्वीकार्य था?

हां ☐

नहीं ☐

प्र17 - क्या श्रम कार्यालय में श्रम मंत्रालय के कानूनी शोधकर्ता के साथ संपर्क करना सुविधाजनक महसूस हुआ?

हां ☐ नहीं ☐

कृपया अपने उत्तर को कुछ शब्दों में विस्तार से बताएं?

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प्र18 - 1 - 5 के पैमाने पर, कानूनी शोधकर्ता के साथ अपने विचार और राय साझा करने में आप कितने आत्मविश्वास से भरपूर थे?

- |                                |                          |
|--------------------------------|--------------------------|
| 1. बिल्कुल आत्मविश्वास नहीं था | <input type="checkbox"/> |
| 2. आत्मविश्वास नहीं था         | <input type="checkbox"/> |
| 3. तटस्थ                       | <input type="checkbox"/> |
| 4. आत्मविश्वास था              | <input type="checkbox"/> |
| 5. बहुत आत्मविश्वास था         | <input type="checkbox"/> |

यदि आपको अपने कानूनी शोधकर्ता के साथ बात करने में कठिनाई महसूस हुई तो इसका क्या कारण था - कृपया विस्तार से बताएं?

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प्र19 - 1 - 5 के पैमाने पर, आपके विवाद के निपटारे को लेकर आपके कानूनी शोधकर्ता के दृष्टिकोण से आप कितने संतुष्ट थे?

- |                    |                          |
|--------------------|--------------------------|
| 1. पुरजोर असंतुष्ट | <input type="checkbox"/> |
| 2. असंतुष्ट        | <input type="checkbox"/> |
| 3. तटस्थ           | <input type="checkbox"/> |
| 4. संतुष्ट         | <input type="checkbox"/> |
| 5. पुरजोर संतुष्ट  | <input type="checkbox"/> |

प्र20 1 - 5 के पैमाने पर, कानूनी शोधकर्ता ने समाधान ढूंढने के लिए जिस ढंग से आपको तथा आपके नियोक्ता को शामिल किया वह कितना प्रभावी था?

- |                  |                          |
|------------------|--------------------------|
| 1. बहुत अप्रभावी | <input type="checkbox"/> |
| 2. अप्रभावी      | <input type="checkbox"/> |
| 3. तटस्थ         | <input type="checkbox"/> |
| 4. प्रभावी       | <input type="checkbox"/> |
| 5. बहुत प्रभावी  | <input type="checkbox"/> |

प्र21 - 1 - 5 के पैमाने पर, जो बातचीत हुई वो कितनी उचित थी?

- |                 |                          |
|-----------------|--------------------------|
| 1. बहुत अनुचित  | <input type="checkbox"/> |
| 2. थोड़ा अनुचित | <input type="checkbox"/> |
| 3. उचित         | <input type="checkbox"/> |

प्र22 - क्या किसी भी समय आपको ऐसा महसूस हुआ कि आपकी बात नहीं सुनी जा रही थी?

हां ☐ नहीं ☐ कभी-कभी ☐

यदि आपको महसूस हुआ कि आपकी बात नहीं सुनी जा रही थी तो आपके विचार में वैसा क्यों हुआ था - कृपया बताएं?

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प्र23 – क्या आपको लगता है कि कानूनी शोधकर्ता ने आपकी समस्याओं को समझा था?

हां ☐ नहीं ☐ कभी-कभी ☐

यदि आपको महसूस हुआ कि कानूनी शोधकर्ता आपकी बात नहीं समझ रहा है तो आपके विचार में वैसा क्यों हुआ था – कृपया बताएं?

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प्र24 – क्या किसी भी समय आपको ऐसा लगा कि कानूनी शोधकर्ता पक्षपात कर रहा है?

हां ☐ नहीं ☐ कभी-कभी ☐

यदि आपको महसूस हुआ कि बातचीत के दौरान कानूनी शोधकर्ता पक्षपात कर रहा था तो आपके विचार में वैसा क्यों हुआ था – कृपया बताएं?

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प्र25 – क्या आपको ऐसा लगा कि चर्चा में झगड़े की स्थिति आ गई थी?

हां ☐ नहीं ☐ कभी-कभी ☐

यदि हां – कृपया विस्तार से बताएं?

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प्र26 – क्या कानूनी शोधकर्ता की सहायता से आपका विवाद आपसी सहमति से सुलझ गया था?

हां ☐ नहीं ☐

यदि नहीं, तो आगे क्या हुआ – कृपया बताएं?

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प्र27 - 1 -5 के पैमाने पर, आपके विवाद का निपटारा करने के लिए श्रम कार्यालय की प्रणाली से आप समग्रतः कितने संतुष्ट थे?

- |                    |                          |
|--------------------|--------------------------|
| 1. पुरजोर असंतुष्ट | <input type="checkbox"/> |
| 2. असंतुष्ट        | <input type="checkbox"/> |
| 3. तटस्थ           | <input type="checkbox"/> |
| 4. संतुष्ट         | <input type="checkbox"/> |
| 5. पुरजोर संतुष्ट  | <input type="checkbox"/> |

प्र28 - 1 -5 के पैमाने पर, आपको श्रम कार्यालय का स्टाफ कितना प्रभावी प्रतीत हुआ?

- |                  |                          |
|------------------|--------------------------|
| 1. बहुत अप्रभावी | <input type="checkbox"/> |
| 2. अप्रभावी      | <input type="checkbox"/> |
| 3. तटस्थ         | <input type="checkbox"/> |
| 4. प्रभावी       | <input type="checkbox"/> |
| 5. बहुत प्रभावी  | <input type="checkbox"/> |

प्र29- क्या श्रम कार्यालय द्वारा समाधान प्रदान किए जाने के बाद भी आपकी कोई समस्याएं जारी हैं?

हां ☐

नहीं ☐

यदि हां तो बताएं कि आपको अभी भी किस तरह की समस्याओं का अनुभव हो रहा है?

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प्र30 - 1-5 के पैमाने पर, श्रम मंत्रालय में किसी अन्य विवाद से निपटने को लेकर आप कितने आत्मविश्वासी हैं?

- |                                |                          |
|--------------------------------|--------------------------|
| 1. बिल्कुल आत्मविश्वास नहीं था | <input type="checkbox"/> |
| 2. आत्मविश्वास नहीं था         | <input type="checkbox"/> |
| 3. तटस्थ                       | <input type="checkbox"/> |
| 4. आत्मविश्वास था              | <input type="checkbox"/> |
| 5. बहुत आत्मविश्वास था         | <input type="checkbox"/> |

कृपया अपना उत्तर विस्तार से दें:

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प्र31- आपकी राय में श्रम मंत्रालय द्वारा क्या सही काम किया गया था?

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प्र32- आपकी राय में श्रम मंत्रालय की सेवाओं में सुधार करने के लिए क्या कुछ किया जा सकता है?

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प्र33- क्या अपने विवाद का निपटारा करते समय किसी तृतीय पक्ष ने आपका समर्थन किया था?

हां ☐

नहीं ☐

यदि हां, तो तृतीय पक्ष ने किस हैसियत से सहायता की थी?

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प्र34- क्या प्रक्रिया के दौरान आप किसी तरह के कानूनी प्रतिनिधित्व को पसंद करेंगे?

हां ☐

नहीं ☐

यदि हां तो आपके विचार में इससे किस तरह की मदद होगी?

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**इस प्रश्नावली को पूरा करने के लिए धन्यवाद**

यदि आपने प्रश्न 3 का उत्तर नहीं में दिया था तो इस खंड को पूरा करें – यदि आपने कार्यस्थल में किसी विवाद का अनुभव नहीं किया है या यदि आप श्रम शिकायत दर्ज करने के लिए श्रम मंत्रालय के कार्यालय नहीं गए हैं।

प्र35 – क्या आपको जानकारी है कि यदि कार्यस्थल पर आपके साथ कोई विवाद होता है तो आपको क्या करना है?

हां ☐ नहीं ☐

यदि हां तो आपको क्या करना होगा?

\_\_\_\_\_

प्र36 – 1-5 के पैमाने पर, यदि आपको अपने नियोक्ता के साथ कार्यस्थल संबंधी किसी विवाद का निपटारा करना पड़े तो आपको खुद पर कितना विश्वास होगा?

- |                                |                          |
|--------------------------------|--------------------------|
| 1. बिल्कुल आत्मविश्वास नहीं था | <input type="checkbox"/> |
| 2. आत्मविश्वास नहीं था         | <input type="checkbox"/> |
| 3. तटस्थ                       | <input type="checkbox"/> |
| 4. आत्मविश्वास था              | <input type="checkbox"/> |
| 5. बहुत आत्मविश्वास था         | <input type="checkbox"/> |

प्र37 – यदि आपका कार्यस्थल पर कोई विवाद होता है तो आपके विचार में आपका नियोक्ता आपके साथ कितना उचित व्यवहार करेगा?

- |                 |                          |
|-----------------|--------------------------|
| 1. बहुत अनुचित  | <input type="checkbox"/> |
| 2. थोड़ा अनुचित | <input type="checkbox"/> |
| 3. उचित         | <input type="checkbox"/> |

प्र38 – क्या आपको लगता है कि अपने विवाद की रिपोर्ट करते समय/निपटते समय अरबी भाषा बाधा उत्पन्न करेगी?

हां ☐ नहीं ☐

प्र39 – 1-5 के पैमाने पर, यदि आपको कार्यस्थल विवाद के संबंध में श्रम मंत्रालय से निपटना पड़े तो आपमें कितना आत्मविश्वास होगा?

- |                                |                          |
|--------------------------------|--------------------------|
| 1. बिल्कुल आत्मविश्वास नहीं था | <input type="checkbox"/> |
| 2. आत्मविश्वास नहीं था         | <input type="checkbox"/> |
| 3. तटस्थ                       | <input type="checkbox"/> |
| 4. आत्मविश्वास था              | <input type="checkbox"/> |
| 5. बहुत आत्मविश्वास था         | <input type="checkbox"/> |

प्र40 – यदि आप अपने कार्यस्थल विवाद का निपटारा कर रहे हैं तो आपके विचार में श्रम मंत्रालय आपके प्रति कितना उचित व्यवहार करेगा?

- |                 |                          |
|-----------------|--------------------------|
| 1. बहुत अनुचित  | <input type="checkbox"/> |
| 2. थोड़ा अनुचित | <input type="checkbox"/> |
| 3. उचित         | <input type="checkbox"/> |

प्र41 – 1-5 के पैमाने पर, आपके विचार में कार्यस्थल विवाद से निपटने को लेकर श्रम मंत्रालय कितना प्रभावी होगा?

- |                  |                          |
|------------------|--------------------------|
| 1. बहुत अप्रभावी | <input type="checkbox"/> |
| 2. अप्रभावी      | <input type="checkbox"/> |
| 3. तटस्थ         | <input type="checkbox"/> |
| 4. प्रभावी       | <input type="checkbox"/> |
| 5. बहुत प्रभावी  | <input type="checkbox"/> |

प्र42- क्या श्रम मंत्रालय में मध्यस्थता की प्रक्रिया के दौरान आपके अपने कानूनी प्रतिनिधि का समर्थन प्राप्त होने का स्वागत करेंगे?  
हां ☐ नहीं ☐

यदि हां तो आपके विचार में इससे कैसे मदद होगी?

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प्र43- यदि आपको अपने कार्यस्थल संबंधी विवाद को सुलझाने के लिए न्यायालय जाना पड़ता तो क्या आपके विचार में आपके साथ उचित व्यवहार किया जाता?

- |                 |                          |
|-----------------|--------------------------|
| 1. बहुत अनुचित  | <input type="checkbox"/> |
| 2. थोड़ा अनुचित | <input type="checkbox"/> |
| 3. उचित         | <input type="checkbox"/> |

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**इस प्रश्नावली को पूरा करने के लिए धन्यवाद**

## Appendix 5: Urdu Questionnaire



Keele  
University

### سوالنامہ کا معلوماتی صفحہ برائے تارکین وطن کارکنان

#### مطالعہ کا موضوع

متحدہ عرب امارات (UAE) کے نجی شعبے میں تارکین وطن کارکنان: ملازمتی تنازعہ کے انتظام اور حل کا ایک تنقیدی تجزیہ

#### تحقیق کے مقاصد

اس تحقیق کا مقصد نجی شعبے میں تارکین وطن ملازمین کے حقوق کے مزید تحفظ کے حوالے سے مثبت اصلاحات کی نیت سے متحدہ عرب امارات کے ملازمت سے متعلق تنازعہ کی انتظام کاری کے نظام اور میکانزم کا تجزیہ ہے۔ اس تحقیق کے ممکنہ اثرات مسائل کو سنجیدگی سے نمٹانے بہترین طرح عمل کو فروغ دینے کے ذریعہ خدمات میں بہتری کے لیے پالیسی اور طریقہ کار میں مثبت تبدیلی کے محرکات کے لیے سہولت کی فراہمی کی صورت میں ہوں گے

#### تحقیق کا انعقاد کون کر رہا ہے؟

صدر محقق پی ایچ ڈی کے (PhD) ایک حصے کے طور پر تحقیق کا انعقاد کر رہا ہے۔ مطالعہ کو، ابوظہبی محکمہ پولیس تعلیم کی طرف سے فنڈز فراہم کیا گیا ہے، جس کا مقصد متحدہ عرب امارات میں تارکین وطن کارکنوں کو فراہم کی جانے والی خدمات میں بہتر لانا ہے۔ محقق کبیل یونیورسٹی (Keele University)، برطانیہ میں (United Kingdom) زیر تعلیم ہے۔ آپ کے ذریعہ کسی بھی شناخت یا دستاویزات کو دیکھنے کی خواہش کا خیر مقدم کیا جائے گا۔ آپ کو اس تحقیق کے کسی پہلو کے بارے میں تشویش ہے تو، آپ صدر محقق سے بات کرنے کی خواہش کر سکتے ہیں جو آپ کے سوالوں کے جواب دینے کی پوری کوشش کریں گے۔

#### دعوت

آپ کو تحقیقی مطالعہ 'متحدہ عرب امارات کے نجی شعبے میں تارکین وطن کارکنان: ملازمتی تنازعہ کے انتظام اور حل کا ایک تنقیدی تجزیہ' میں حصہ لینے پر غور کرنے کی دعوت دی جا رہی ہے۔ یہ منصوبہ حمد العامری (Hamad Al Ameri) کے ذریعہ کیا جا رہا ہے۔ اس سے قبل کہ آپ سوالنامہ مکمل کرنے کا فیصلہ کریں، آپ کا یہ سمجھنا ضروری ہے کہ یہ تحقیق کیوں کی جا رہی ہے اور اس میں کیا شامل ہے۔ برائے مہربانی اس جانکاری کو توجہ کے ساتھ پڑھنے کا وقت نکالیں اور اگر آپ پسند کریں تو اپنے دوستوں اور رشتہ داروں سے گفتگو کریں۔

#### مجھے دعوت کیوں دی گئی ہے؟

آپ کو اس مطالعہ میں حصہ لینے کی دعوت دی گئی ہے کیونکہ مجھے لگتا ہے کہ آپ کی معلومات، تجربہ اور سب سے اہم آپ کی رائے اس مطالعہ کو کامیابی کے ساتھ مکمل کرنے کے حوالے سے بہت اہم ہے، کیونکہ اس سے مستقبل میں دوسرے کارکنوں کے کام کی جگہ کے تنازعہ کو زیادہ تیزی اور آسانی سے حل کرنے میں مدد ملے گی، اور امید ہے کہ اس طرح کی صورت حال کو پیدا ہونے ہی نہیں دیا جائے گا۔

#### کیا ہوگا اگر میں حصہ لیتا ہوں؟

آپ کے ذریعہ شرکت کے انتخاب پر، آپ کو ایک آسان سوالنامہ مکمل کرنے کی دعوت دی جائے گی جس میں آپ سے آپ کے کام اور کام کی جگہ پر تنازعہ کا سامنا ہونے یا نہ ہونے سے متعلق سوالات پوچھے جائیں گے۔ اس کے علاوہ، آپ سے پوچھا جائے گا کہ آپ کام کی جگہ تنازعہ کے انتظام اور حل کے طریقہ کار سے متعلق کیا محسوس کرتے ہیں۔ سوالنامہ کی تکمیل میں 10-15 سے زیادہ نہیں لگیں گے اور مکمل کیے گئے سوالنامے کو وصولی کے محفوظ ڈبے (دیکھیں نقشہ / محل وقوع کے پتے) میں ارسال کیا جا سکتا ہے۔ انہیں تحقیقی ٹیم کے حوالے کیا جا سکتا ہے یا ارسال کیا جا سکتا ہے۔ خاص تفصیلات کے لیے سوالنامہ دیکھیں۔

#### کیا مجھے حصہ لینا ہے؟

آپ کو حصہ لینا ہے یا نہیں اس بات کے فیصلے کے لیے آپ آزاد ہیں۔ اگر آپ حصہ لینے کا فیصلہ کرتے ہیں تو آپ کو یہ سوالنامہ مکمل کرنے کو کہا جائے گا۔



### حصہ لینے کے فائدے کیا ہیں؟

حصہ لینے کے ذریعہ، آپ کے پاس گمنام رہتے ہوئے اس بارے میں اپنی رائے اور نقطہ نظر کے اظہار کا موقع ملے گا کہ کس طرح کام کی جگہ کے تنازعات کو کس طرح نمٹایا جا رہا ہے۔ اس کے علاوہ سوالنامہ کے آخر میں، آپ کے اپنے الفاظ میں مزید معلومات شامل کرنے کے لیے آپ کا خیر مقدم کیا جائے گا۔ تنازعہ کے انتظامی نظام میں کیا مثبت ہے، اور اپنے نقطہ نظر کے اظہار کے لیے بھی کہ کسی طرح متعلقہ نظام کو تارکین وطن کارکنان کے حقوق کی بہتر حفاظت کے لیے بہتر بنایا جا سکتا ہے۔

### حصہ لینے میں کیا خطرات (اگر کوئی ہے) ہیں۔

حصہ لینے میں آپ کو کوئی خطرہ نہیں ہے۔ آپ کو ایک گمنام سوالنامہ مکمل کرنے کے ذریعہ اپنے رائے کے اظہار کی دعوت دی جا رہی ہے۔ آپ کی ذاتی تفصیلات یا رابطے کی معلومات کی ضرورت نہیں ہوگی۔

### میں متعلق معلومات کا استعمال کس طرح ہوگا؟

آپ کے سوالنامہ کی معلومات ریکارڈ میں رکھی جائیں گی اور ان کا تجزیہ میری پی ایچ ڈی کے حصے کے طور پر کیا جائے گا، جس میں نتائج پیش کروں گا کہ اصل کارکن دراصل متحدہ عرب امارات کے ملازمین کے تنازعے کے انتظامی نظام سے متعلق کیا سوچتے ہیں۔

- آپ کی ذاتی تفصیلات یا رابطے کی معلومات کی ضرورت نہیں ہوگی۔
- تمام کوائف اسی مطالعے میں استعمال ہوں گے اور انہیں مزید کسی مطالعہ کے لیے محفوظ نہیں رکھا جائے گا۔
- کوائف پاس ورڈ کے ذریعہ محفوظ کیے گئے ایک کمپیوٹر پر بحفاظت ذخیرہ کیے جائیں گے۔
- کاغذی شکل میں کوئی بھی معلومات، کیل یونیورسٹی کی ہدایات کے مطابق، ایک محفوظ لاک کیے جانے کے قابل فائلنگ کیپیٹھ میں ذخیرہ کی جائیگی۔
- کوائف کوڈ کی شکل میں ہوں گے اور صرف تحقیقی ٹیم کے ذریعہ استعمال کیے جائیں گے۔
- کوائف صدر محقق کے پاس رکھے جائیں گے کم از کم پانچ برسوں کے لیے جس کے بعد اسے بحفاظت ضائع کر دیا جائے گا۔

### کیا ہوگا اگر کوئی مسئلہ درپیش ہو؟

آپ کے ذریعہ کسی بھی شناخت یا دستاویزات کو دیکھنے کی خواہش کا خیر مقدم کیا جائے گا۔ آپ کو اس تحقیق کے کسی پہلو کے بارے میں تشویش ہے تو، آپ صدر محقق یا کیل یونیورسٹی کی ٹیم سے بات کرنے کو کہہ سکتے ہیں جو آپ کے سوالوں کے جواب دینے کی پوری کوشش کریں گے۔

آپ کو صدر محقق (Principal Researcher) حمد العامری (Hamad Al Ameri) سے رابطہ کرنا چاہیے

ای میل: [h.m.alameri@keele.ac.uk](mailto:h.m.alameri@keele.ac.uk)

ٹیلیفون متحدہ عرب امارات: +971564244487 (خصوصی تحقیقی معلومات / انکوائری لائن)

ٹیلیفون برطانیہ: +44(0)1782733148

متبادل طور پر، اگر آپ صدر محقق سے رابطہ کرنا نہیں چاہتے ہیں تو آپ صدر نگران پروفیسر ٹومویا اوبوکاتا (Tomoya Obokata) سے رابطہ کر سکتے ہیں

پروفیسر بین الاقوامی قانون اور انسانی حقوق (Professor of International Law and Human Rights) سے رابطہ کر سکتے ہیں

ای میل: [t.obokata@keele.ac.uk](mailto:t.obokata@keele.ac.uk)

ٹیلیفون برطانیہ: +44(0)1782733148

اگر آپ تحقیق کے حوالے سے خوش نہیں ہیں اور / یا مطالعہ کے دوران آپ سے رابطہ کیے جانے یا رویے کے حوالے سے کوئی شکایت کرنا چاہتے ہیں تو برائے مہربانی نکولا لیٹن کولکھیں جو تحقیق کے حوالے شکایت کے لیے یونیورسٹی کے متعلقہ شخص ہیں، ان سے درج ذیل پتہ پر رابطہ کریں:

Nicola Leighton (نکولا لیٹن)

Research Governance Officer (ریسرچ گورننس آفیسر)

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Keele  
University

تارکین وطن کارکنوں کے لیے سوالنامہ  
(منسلک دیکھیں)

- مکمل کیے ہوئے سوالنامے واپس کسی ایک تحقیقی ٹیم کے حوالے کیے جا سکتے ہیں۔
- مکمل کیے ہوئے سوالنامے وصولی کے محفوظ باکسز میں ارسال کیے جا سکتے ہیں۔ دیکھیں نقشہ / محل وقوع کے پتے۔
- مکمل کردہ سوالنامہ ارسال کیا جا سکتا ہے: Hamad Al Ameri (حمد العامری)  
برائے پروفیسر Tom Obokata (ٹام اوبوکاتا)

CBC 2.025  
School of Law  
Keele University  
UNITED KINGDOM  
ST5 5BG

## تاریکین وطن کارکن کا سوالنامہ

قومیت: \_\_\_\_\_ عمر: \_\_\_\_\_ جنس: \_\_\_\_\_

سوال 1 - آپ کس ملازمتی شعبے کے اندر کام کرتے ہیں؟ برائے مہربانی بیان کریں: \_\_\_\_\_

سوال 2 - جس قسم کا کام آپ کرتے ہیں وہ درج ذیل کی کن ملازمتی سطحوں سے سب سے زیادہ مطابقت رکھتا ہے؟

- ☐ کام کی غیر مہارتی یا بنیادی سطح  
☐ کام کی مہارتی سطح  
☐ پشم ورائہ اور اعلیٰ تعلیم یافتہ

سوال 3 - متحدہ عرب امارات (UAE) میں کام کرتے ہوئے کیا آپ ک کام کی جگہ کے تنازعہ کا تجربہ ہوا ہے؟  
 ہاں ☐ برائے مہربانی ذیل کے سوال کے ساتھ جاری رکھیں  
 نہیں ☐ برائے مہربانی صفحہ 6 کے سوال 35 پر جائیں

اگر آپ کو کام کی جگہ کے تنازعہ کا تجربہ ہوا ہے تو کیا اس کم تعلق درج ذیل زمروں میں سے کسی سے ہے؟

- ☐ اجرت/ تنخواہ کی ادائیگی میں تاخیر  
☐ معاہدہ ختم کیا جانا  
☐ قانونی استحقاق کا پورا نہ کیا جانا

دیگر تنازعہ - برائے مہربانی بیان کریں: \_\_\_\_\_

سوال 4 - کیا آپ کے تنازعے کا اطلاق کام کی جگہ پر دوسرے کارکنوں پر بھی ہوتا ہے، جیسے کیا یہ اجتماعی یا گروہی تنازعہ ہے؟  
 ہاں ☐ نہیں ☐

سوال 5 - کیا آپ نے درج بالا تنازعہ کو براہ راست آجر کے ساتھ حل کرنے کی کوشش کی؟  
 ہاں ☐ برائے مہربانی ذیل کے سوال کے ساتھ جاری رکھیں  
 نہیں ☐ برائے مہربانی سوال 9 پر جائیں

سوال 6 - 1 - 5 کے پیمانے پر، کیا آپ نے آجر کے ساتھ بات چیت میں پر اعتماد محسوس کیا؟

- ☐ 1: بہت زیادہ اعتماد کی کمی  
☐ 2: اعتماد نہیں تھا  
☐ 3: معتدل  
☐ 4: پر اعتماد  
☐ 5: بہت زیادہ پر اعتماد

سوال 7 - 1 - 5 کے پیمانے پر، اپنے آجر کے تنازعہ سے نمٹنے کے نظام سے آپ کتنے مطمئن تھے؟

- ☐ 1: انتہائی غیر مطمئن  
☐ 2: غیر مطمئن  
☐ 3: معتدل  
☐ 4: مطمئن  
☐ 5: انتہائی مطمئن

سوال 8 - کیا آپ کے تنازعہ آپ کے آجر کی جانب سے خوش اسلوبی سے حل کیا گیا تھا؟  
 ہاں ☐ نہیں ☐

اگر نہیں، آپ کا اگلا قدم کیا تھا - برائے مہربانی بیان کریں: \_\_\_\_\_

سوال 9 - کیا آپ نے وزارت محن / لیبر آفس کے تنازعہ کے حل کے نظام سے بات کی؟  
 ہاں ☐ برائے مہربانی صفحہ 2 پر جاری رکھیں  
 نہیں ☐ برائے مہربانی صفحہ 6 کے سوال 35 پر جائیں

سوال 10 - کیا آپ کو ابتدا میں وزارت محن کے ذریعہ اپنا تنازعہ درج کرانے کا طریقہ معلوم تھا؟  
 ہاں ☐ نہیں ☐

سوال 11 - 1 - 5 کے پیمانے پر، ابتدا میں آپ نے وزارت محن سے گھگھو کرنے میں آپ کس حد تک پر اعتماد تھے؟

- ☐ 1: بہت زیادہ اعتماد کی کمی  
☐ 2: اعتماد نہیں تھا  
☐ 3: معتدل  
☐ 4: پر اعتماد  
☐ 5: بہت زیادہ پر اعتماد

سوال 12 - 5 کے پیمانے پر، تشیل دکان کے ذریعہ فراہم کردہ خدمات سے کسی حد تک مطمئن تھے؟

- ☐ 1: انتہائی غیر مطمئن  
☐ 2: غیر مطمئن  
☐ 3: معتدل  
☐ 4: مطمئن  
☐ 5: انتہائی مطمئن

سوال 13 - کیا آپ پاتے ہیں کہ ایسے تنازعہ کو درج کرانے یا اس سے نمٹنے میں عربی زبان کی وجہ سے رکاوٹ پیدا ہوئی؟

- ☐ ہاں ☐ نہیں

سوال 14 - 5 کے پیمانے پر، ابتدا میں وزارت محن کی کاؤنٹر سروس کے استعمال کے ذریعہ اپنی شکایت درج کرنا آسان تھا؟

- ☐ 1: بہت مشکل  
☐ 2: مشکل  
☐ 3: معتدل  
☐ 4: آسان  
☐ 5: بہت آسان

اگر آپ کو اپنی شکایت درج کرانی مشکل معلوم ہوئی، تو اس کی وجہ کیا تھی۔ برائے مہربانی تفصیل بتائیں؟

سوال 15 - تنازعہ کے حل کا باقاعدہ عمل لیبر آفس میں تنازعہ درج کرانے کے بعد کتنی دیر بعد شروع ہوا؟

- ☐ 1: 1 - 3 دن  
☐ 2: 4 - 7 دن  
☐ 3: 7 - 14 دن  
☐ 4: 15 - 21 دن  
☐ 5: 21 دنوں سے زیادہ

سوال 16 - کیا لیبر آفس کی طرف سے یہ مدت دونوں قابل قبول جماعتوں کی طلبی کے لیے لی گئی تھی؟

- ☐ ہاں ☐ نہیں

سوال 17 - کیا آپ نے لیبر آفس میں وزارت محن کے قانونی محقق کے ساتھ رابطہ آرام دہ محسوس کیا؟

- ☐ ہاں ☐ نہیں

برائے مہربانی کچھ الفاظ میں اپنے جواب کی تفصیل دیں۔

سوال 18 - 1 - 5 کے پیمانے پر، قانونی محقق کے ساتھ آپ اپنے خیالات و افکار کے اظہار میں کس حد تک پر اعتماد تھے؟

- ☐ 1: بہت زیادہ اعتماد کی کمی  
☐ 2: اعتماد نہیں تھا  
☐ 3: معتدل  
☐ 4: پر اعتماد  
☐ 5: بہت زیادہ پر اعتماد

اگر آپ کو اپنے قانونی محقق سے بات کرنی مشکل معلوم ہوئی، تو اس کی وجہ کیا تھی۔ برائے مہربانی تفصیل بتائیں؟

سوال 19 - 1 - 5 کے پیمانے پر، آپ کے تنازعہ کو حل کرنے کے حوالے سے قانونی محقق کے طریقہ کار سے آپ کس حد تک مطمئن تھے؟

- ☐ 1: انتہائی غیر مطمئن  
☐ 2: غیر مطمئن  
☐ 3: معتدل  
☐ 4: مطمئن  
☐ 5: انتہائی مطمئن

سوال 20 - 1 - 5 کے پیمانے پر، حل کی تلاش کے لیے قانونی محقق نے آپ سے اور آپ کے آجر سے گفت و شنید کا جو طریقہ اپنایا وہ کتنا موثر تھا؟

- ☐ 1: انتہائی غیر موثر  
☐ 2: غیر موثر  
☐ 3: معتدل  
☐ 4: موثر  
☐ 5: انتہائی موثر

سوال 21 - 1 - 5 کے پیمانے پر، اس سلسلے میں ہونے والے مذاکرات کس حد تک منصفانہ تھے؟

- ☐ 1: انتہائی غیر منصفانہ  
☐ 2: غیر منصفانہ  
☐ 3: منصفانہ

سوال 22 - کیا آپ کو کسی موقع پر ایسا لگا کہ آپ کی بات نہیں سنی جا رہی ہے؟

- ☐ ہاں ☐ نہیں ☐ کچھ موقعوں پر

اگر آپ کو لگتا ہے کہ آپ کی بات نہیں سنی گئی تھی، تو آپ کے مطابق ایسا کیوں ہوا تھا۔ برائے مہربانی تفصیل بتائیں؟

سوال 23 - کیا آپ کو لگا کہ قانونی محقق نے آپ کی بات سمجھی ہے؟

- ☐ ہاں ☐ نہیں ☐ کچھ موقعوں پر

اگر آپ کو لگتا ہے کہ قانونی محقق کے ذریعہ آپ کو نہیں سمجھا گیا ہے، تو آپ کے ایسا سوچنے کی کیا وجہ ہے۔ برائے مہربانی تفصیل بتائیں؟

سوال 24 - کیا آپ کو کسی موقع پر ایسا لگا کہ قانونی محقق جانبداری برت رہے ہیں؟

- ☐ ہاں ☐ نہیں ☐ کچھ موقعوں پر

اگر آپ کو لگا کہ قانونی محقق کے ذریعہ مذاکرات میں جانب داری برتی گئی تھی، تو آپ کے ایسا سوچنے کی کیا وجہ ہے۔ برائے مہربانی تفصیل بتائیں؟

سوال 25 - کیا آپ نے پایا کہ بات چیت محاذ آرائی میں تبدیل ہو گئی؟

- ☐ ہاں ☐ نہیں ☐ کچھ موقعوں پر

اگر ایسا ہے۔ تو برائے مہربانی تفصیل بتائیں۔

سوال 26 - آپ کا تنازع قانونی محقق کی مدد کے ذریعہ خوش اسلوبی سے حل کیا گیا تھا؟  
ہاں ☐ نہیں ☐

اگر نہیں، تو آگے کیا ہوا۔ برائے مہربانی بیان کریں؟

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سوال 27 - 1 - 5 کے پیمانے پر، مجموعی طور پر آپ کا تنازع حل کرنے کے لیبر آفس کے نظام سے آپ کس حد تک مطمئن تھے؟  
1: انتہائی غیر مطمئن ☐  
2: غیر مطمئن ☐  
3: معتدل ☐  
4: مطمئن ☐  
5: انتہائی مطمئن ☐

سوال 28 - 1 - 5 کے پیمانے پر، لیبر آفس کے عطیے کو آپ نے کتنا موثر پایا؟  
1: انتہائی غیر موثر ☐  
2: غیر موثر ☐  
3: معتدل ☐  
4: موثر ☐  
5: انتہائی موثر ☐

سوال 29 - کیا لیبر آفس کے ذریعہ حل فراہم کیے جانے کے بعد آپ کو کوئی لگاتار مسئلہ رہا ہے؟  
ہاں ☐ نہیں ☐

اگر ایسا ہے، تو برائے مہربانی بیان کریں کہ وہ کس قسم کے مسائل ہیں جو ابھی تک آپ کو درپیش ہیں؟

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سوال 30 - 1 - 5 کے پیمانے پر، وزارت محن میں کسی دوسرے تنازعہ کو حل کرنے کے حوالے سے آپ کس قدر پر اعتماد ہوں گے؟  
1: بہت زیادہ اعتماد کی کمی ☐  
2: اعتماد نہیں تھا ☐  
3: معتدل ☐  
4: پر اعتماد ☐  
5: بہت زیادہ پر اعتماد ☐

برائے مہربانی اپنے جواب کی تفصیل فراہم کریں:

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سوال 31 - آپ کی رائے میں وزارت محن کی جانب سے کیا چیز احسن طریقے سے کی گئی؟

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سوال 32 - آپ کی رائے میں وزارت محن میں خدمات میں بہتری کے لیے کیا کچھ کیا جانا چاہیے؟

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سوال 33 - اپنے مسئلے سے نمٹنے کے دوران آپ کو کسی تیسرے فریق کی حمایت حاصل تھی؟

ہاں ☐ نہیں ☐

اگر ہاں، تو تیسرے فریق نے کس حیثیت سے مدد کی؟

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سوال 34 - کیا آپ اس عمل کے دوران کسی قسم کی قانونی نمائندگی کو ترجیح دیتے؟

ہاں ☐ نہیں ☐

اگر ایسا ہے، تو آپ کے خیال سے ہم کس طرح مدد گار ہوتا؟

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اس سوالنامہ کو مکمل کرنے کا شکریہ

کا جواب نہیں میں دیا ہے تو اس حصے کو مکمل کریں۔ اگر آپ کو کام کی 3 اگر آپ نے سوال نمبر جگہ پر تنازعہ کا سامنا نہیں ہوا ہے یا آپ شکایت درج کرانے کے لیے وزارت محن کے لیبر آفس میں نہیں گئے ہیں۔

سوال 35 - کیا آپ کو معلوم تھا کہ کام کی جگہ تنازعہ کی صورت میں کیا کرنا ہے؟  
☐ ہاں ☐ نہیں

اگر ہاں تو آپ کیا کریں گے؟

سوال 36 - 1 - 5 کے پیمانے پر، اگر آپ کو براہ راست اپنے آجر کے ساتھ کام کی جگہ کا تنازعہ در پیش ہوا تو آپ کس قدر پر اعتماد ہوں گے؟  
☐ 1: بہت زیادہ اعتماد کی کمی  
☐ 2: اعتماد نہیں تھا  
☐ 3: معتدل  
☐ 4: پر اعتماد  
☐ 5: بہت زیادہ پر اعتماد

سوال 37 - آپ کے خیال سے اگر آپ کا کام کی جگہ کا تنازعہ ہوا تو آپ کا آجر آپ کسے ساتھ کتنا منصفانہ رویہ رکھے گا؟  
☐ 1: انتہائی غیر منصفانہ  
☐ 2: غیر منصفانہ  
☐ 3: منصفانہ

سوال 38 - کیا آپ کو لگتا ہے کہ اپنے تنازعہ کو درج کرانے یا اس سے نمٹنے میں عربی زبان کی وجہ سے رکاوٹ پیدا ہوگی؟  
☐ ہاں ☐ نہیں

سوال 39 - 1 - 5 کے پیمانے پر، اگر آپ کو وزارت محن کے ساتھ کام کی جگہ کا تنازعہ در پیش ہوا تو آپ کس قدر پر اعتماد ہوں گے؟  
☐ 1: بہت زیادہ اعتماد کی کمی  
☐ 2: اعتماد نہیں تھا  
☐ 3: معتدل  
☐ 4: پر اعتماد  
☐ 5: بہت زیادہ پر اعتماد

سوال 40 - آپ کے خیال سے اگر آپ کا کام کی جگہ کا تنازعہ ہوا تو وزارت محن آپ کے ساتھ کتنا منصفانہ رویہ رکھے گی؟  
☐ 1: انتہائی غیر منصفانہ  
☐ 2: غیر منصفانہ  
☐ 3: منصفانہ

سوال 41 - 1 - 5 کے پیمانے پر، آپ کے خیال سے تنازعہ کے حل کے لیے وزارت محن کا عمل کس حد تک موثر ہوگا؟  
☐ 1: انتہائی غیر موثر  
☐ 2: غیر موثر  
☐ 3: معتدل  
☐ 4: موثر  
☐ 5: انتہائی موثر



سوال 42 - کیا آپ وزارت محن میں ٹائٹی عمل کے دوران اپنی قسم کی قانونی نمائندگی کی مدد کے حصول کا خیر مقدم کریں گے؟  
ہاں ☐ نہیں ☐

اگر ایسا ہے، تو آپ کے خیال سے ہم کس طرح مدد گار ہوگا؟

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سوال 43 - اگر آپ کے کام کی جگہ کے تنازعہ کے حل کی خاطر عدالت میں جانا ہوتا تو آپ کے خیال میں آپ کے ساتھ منصفانہ سلوک کیا جاتا؟  
1: اتنی ہی غیر منصفانہ ☐  
2: غیر منصفانہ ☐  
3: منصفانہ ☐

اس سوالنامہ کو مکمل کرنے کا شکریہ

## Appendix 6: Tagalog Questionnaire



### INFORMATION SHEET NG KWESTIYONARYO PARA SA MGA MIGRANTENG MANGGAGAWA

#### **Pamagat ng Pag-aaral**

Pribadong sektor ng mga migranteng manggagawa sa UAE: isang malalimang pag-aaral sa pangangasiwa sa pagtatalo sa patrabaho at resolusyon

#### **Mga Hangarin ng Pananaliksik**

Hangarin ng pananaliksik na ito na bigyang-puna ang mga sistema sa pamamahala at mekanismo ng UAE sa pagharap sa mga pagtatalong may kaugnayan sa patrabaho, na may layuning mamagitan para sa positibong reporma upang lalo pang maprotektahan ang mga karapatan ng mga migranteng manggagawa ng pribadong sektor. Ang posibleng epekto ng pananaliksik na ito ay maging tagasulong ng positibong pagbabago sa patakaran at pamamaraan upang mapahusay ang pagharap sa mga problema nang may kaselanan at nagtataguyod sa pinakamahusay na kagawian

#### **Sino ang nag-oorganisa ng pananaliksik?**

Inoorganisa at isinasagawa ng pangunahing tagapanaliksik ang pananaliksik bilang bahagi ng isang PhD. Ang pag-aaral ay pinondohan ng Abu Dhabi Police Education Department, dahil layunin nila na mapahusay ang serbisyon ibinigay sa mga migranteng manggagawa na nasa UAE. Kasalukuyang naka-enrol ang tagasaliksik sa Keele University, United Kingdom. Malaya kayong makahihingi ng anumang kredensyal o pagkakakilanlan. Kung may alalahanin ka tungkol sa anumang aspeto ng pag-aaral na ito, marahil ay nanaisin mong makausap ang pangunahing tagasaliksik na sisikaping masagot ang mga tanong mo.

#### **Imbitasyon**

Iniiimbita kang pag-isipang maging bahagi ng pananaliksik na pag-aaral na 'Pribadong sektor ng mga migranteng manggagawa sa UAE: isang malalimang pag-aaral sa pangangasiwa sa pagtatalo sa patrabaho at resolusyon'. Ang proyektong ito ay isinasagawa ni Hamad Al Ameri. Bago ka magpasiya na sagutin ang kwestiyonaryo, importanteng maunawaan mo kung bakit isinasagawa ang pananaliksik na ito at kung ano ang kasama nito. Maglaan ng panahon para basahin nang mabuti ang impormasyon na ito at talakayin ito sa mga kamag-anak at kaibigan mo kung nais mo.

#### **Bakit ako inimbita?**

Napili kang maging bahagi sa pag-aaral na ito dahil nadarama kong malaking bagay ang kaalaman, karanasan at higit sa lahat ang opinyon mo sa magiging tagumpay ng pag-aaral na ito, dahil makatutulong ito sa iba pang manggagawa sa hinaharap na maresolba ang mga problema nila sa lugar ng trabaho nang mas mabilis at madali, at maaaring maiwasan pa na mangyari ang mga ito.

#### **Ano'ng mangyayari kung makibahagi ako?**

Sakaling piliin mong makiisa, iimbitahan kang sagutan ang isang simpleng kwestiyonaryo kung saan tatanungin ka tungkol sa trabaho mo at kung nakaranas ka o hindi ng pagtatalo sa lugar ng trabaho. Higit pa rito, itatanong sa iyo kung ano ang nadarama mo sa paraan ng pamamahala sa mga pagtatalo at proseso ng pagresolba sa mga ito. Hindi tatagal nang 10-15 minuto para sagutin ang kwestiyonaryo at maaaring ipakoreo ang mga nasagutang kwestiyonaryo sa mga ligtas na collection box (tingnan ang mapa / address ng mga lokasyon nito). Maaari itong personal na ibigay o ipadala sa koreo – para sa mga partikular na detalye, basahin ang kwestiyonaryo.

### **Kailangan ko bang makibahagi?**

Malaya kang magpasiya kung makikibahagi ka o hindi. Kung magpasiya kang makibahagi, hiingin sa iyo na sagutan ang kwestiyonaryong ito.

### **Anu-ano ang mga benepisyo ng pakikibahagi?**

Sa pakikibahagi, magkakaroon ka ng pagkakataon na ipahayag ang mga pananaw mo tungkol sa pagkakaunawa at opinyon mo sa paraan ng pagharap sa mga pagtatalo sa lugar ng trabaho nang hindi nagpapakilala. Dagdag pa rito, malaya kang makakapagdagdag ng impormasyon sa dulo ng kwestiyonaryo, gamit ang sarili mong mga salita, anu-anong positibo ang mayroon sa sistema ng pamamahala sa pagtatalo at ipahayag ang mga pananaw mo sa kung sa anu-anong paraan mapapahusay ang mga kaugnay na sistema upang matiyak na mas nagiging protektado ang mga karapatan ng mga migranteng manggagawa.

### **Anu-ano ang mga panganib (kung mayroon man) ng pakikibahagi?**

Walang panganib sa pakikibahagi mo. Iniimbata ka para ipahayag ang mga opinyon mo sa pamamagitan ng pagsagot sa isang kwestiyonaryo nang hindi nagpapakilala. **Hindi kakailanganin ang mga personal na detalye mo o impormasyon ng pagkontak.**

### **Paano gaganitin ang impormasyon tungkol sa akin?**

Itatala at aanalisahin ang data mula sa kwestiyonaryo mo bilang bahagi ng PhD ko, kung saan ipapakita ko ang mga natuklasan ko tungkol sa saloobin ng mga aktuwal na manggagawa sa mga sistema ng UAE sa paamahala ng mga pagtatalo sa trabaho.

- **Hindi kakailanganin ang mga personal na detalye mo o impormasyon ng pagkontak.**
- Lahat ng data ay gagamitin lang sa pag-aaral na ito at hindi gagamitin sa anumang iba pang dagdag na pag-aaral.
- Itatago ang data nang ligtas sa computer na protektado ng password.
- Ang anumang naka-print na kopya ng impormasyon ay iimbak sa ligtas na filing cabinet na naikakandado, alinsunod sa mga pamatnubay ng Keele University.
- Iko-code ang data at research team lang ang gagamit dito.
- Mananatili ang data sa pag-iingat ng pagunahing tagasaliksik nang hindi bababa sa limang taon at pagkalipas nito ay ligtas na itatapon.

### **Paano kung may problema?**

Malaya kayong makahihingi ng anumang kredensyal o pagkakakilanlan. Kung may alalahanin ka tungkol sa anumang aspeto ng pag-aaral na ito, mahihiling mo na makausap ang pangunahing tagasaliksik o ang team sa Keele University, na sisikaping masagot ang mga tanong mo.

Dapat mong kontakin ang pangunahing tagasaliksik (principal researcher) na si Hamad Al Ameri

E-mail: [h.m.alameri@keele.ac.uk](mailto:h.m.alameri@keele.ac.uk)

Tel UAE: +971564244487 (dedicated na linya para sa impormasyon/mga tanong sa pananaliksik)

Tel UK: +44(0)1782733148

Bilang alternatibo, kung hindi mo nais na kontakin ang pangunahing tagasaliksik, maaari mong kontakin ang pangunahing supervisor Professor Tomoya Obokata

Professor of International Law and Human Rights

E-mail: [t.obokata@keele.ac.uk](mailto:t.obokata@keele.ac.uk)

Tel UK: +44(0)1782733148

Kung nananatili kang hindi masaya tungkol sa pananaliksik at/o nais mong maghain ng reklamo tungkol sa anumang aspeto ng paraan ng paglapit sa iyo o pakikitungo sa itinagal ng pag-aaral, mangyaring lumihap

kay Nicola Leighton na siyang contact ng Unibersidad para sa mga reklamo kaugnay ng pananaliksik sa sumusunod na address:

Nicola Leighton  
Research Governance Officer  
IC2 Building  
Keele University  
UNITED KINGDOM  
ST5 5NH  
E-mail: [n.leighton@keele.ac.uk](mailto:n.leighton@keele.ac.uk)  
Tel UK: +44(0)1782 733306



**Keele  
University**

**KWESTIYONARYO PARA SA MGA MIGRANTENG MANGGAGAWA  
(tingnan ang nakalakip na)**

- Ang mga nasagutang kwestiyonaryo ay maaaring direktang ibigay sa isang miyembro ng research team.
- Ang mga nasagutang kwestiyonaryo ay maaaring ipakoreo sa mga ligtas na collection box – tingnan ang mapa / address ng mga lokasyon nito.
- Ang mga nasagutang kwestiyonaryo ay maaaring ipakoreo kay:

Hamad Al Ameri  
c/o Professor Tom Obokata  
CBC 2.025  
School of Law  
Keele University  
UNITED KINGDOM  
ST5 5BG

## Kwestiyonaryo ng Migranteng Manggagawa

Nasyonalidad: \_\_\_\_\_ Edad: \_\_\_\_\_ Kasarian: \_\_\_\_\_

Q1 – Sa aling sektor ng trabaho ka nabibilang? Pakihayag: \_\_\_\_\_

Q2 – Alin sa mga sumusunod na antas ng trabaho ang pinaka-naaangkop sa uri ng trabahong ginagawa mo?

- |   |                          |
|---|--------------------------|
| Unskilled o basic level na trabaho      | <input type="checkbox"/> |
| Skilled level na trabaho                | <input type="checkbox"/> |
| Propesyonal at mataas ang kwalipikasyon | <input type="checkbox"/> |

Q3 – Nakaranas ka ba ng pagtatalo sa lugar ng trabaho habang nagtatrabaho sa UAE?

OO ☐ **pakituloy sa tanong sa ibaba** HINDI ☐ **lumukso sa Tanong 35 sa Pahina 5**

Kung nakaranas ka ng pagtatalo sa lugar ng trabaho, maaari ba itong ikategorya sa mga sumusunod?

- |   |                          |
|---|--------------------------|
| Atrasadong ayad ng sahod/sweldo                         | <input type="checkbox"/> |
| Pag-terminate sa kontrata                               | <input type="checkbox"/> |
| Hindi ibinigay ang mga legal na karapat-dapat matanggap | <input type="checkbox"/> |
| Iba pang pagtatalo – pakihayag: _____                   |                          |

Q4 – Mailalapat ba sa iba pang manggagawa sa lugar ng trabaho mo iyon ay, isa ba itong pinagsama-sama o pagtatalo ng grupo?

OO ☐ HINDI ☐

Q5 – Sinubukan mo bang resobahin nang direkta ang nabanggit na pagtatalo sa employer mo?

OO ☐ **pakituloy sa tanong sa ibaba** HINDI ☐ **lumukso sa Tanong 9**

Q6 – Sa iskalang 1-5, naging malakas ba ang loob mo sa pakikipag-usap sa employer mo?

- |                        |                          |
|------------------------|--------------------------|
| 1: Napakahina ng loob  | <input type="checkbox"/> |
| 2: Mahina ang loob     | <input type="checkbox"/> |
| 3: Walang pagkiling    | <input type="checkbox"/> |
| 4: Malakas ang loob    | <input type="checkbox"/> |
| 5: Napakalakas ng loob | <input type="checkbox"/> |

Q7- Sa iskalang 1 – 5, gaano ka nasiyahan sa mga sistema ng employer mo sa pagharap sa mga pagtatalo?

- |                          |                          |
|--------------------------|--------------------------|
| 1: Lubos na Di-nasiyahan | <input type="checkbox"/> |
| 2: Di-nasiyahan          | <input type="checkbox"/> |
| 3: Walang pagkiling      | <input type="checkbox"/> |
| 4: Nasiyahan             | <input type="checkbox"/> |
| 5: Lubos na Nasiyahan    | <input type="checkbox"/> |

Q8 – Naresolba ba nang patas ng employer mo ang pagtatalo?

OO ☐ HINDI ☐

Kung hindi, ano'ng sunod mong ginawa – pakihayag? \_\_\_\_\_

Q9 – Nakipag-usap ka ba sa Ministry of Labour / sistema ng pagresolba sa pagtatalo ng Labour Office?

OO ☐ **pakituloy sa tanong sa ibaba** HINDI ☐ **lumukso sa Tanong 35 sa Pahina 5**

Q10 – Noong simula ba'y aalm mo ang gagawin para maihain ang pinagtatalunan ninyo sa Ministry of Labour?

OO ☐ HINDI ☐

Q11 – Sa iskalang 1 -5, gaano kalakas ang loob mo na makipag-usap sa Ministry of Labour noong simula?

- |                        |                          |
|------------------------|--------------------------|
| 1: Napakahina ng loob  | <input type="checkbox"/> |
| 2: Mahina ang loob     | <input type="checkbox"/> |
| 3: Walang pagkiling    | <input type="checkbox"/> |
| 4: Malakas ang loob    | <input type="checkbox"/> |
| 5: Napakalakas ng loob | <input type="checkbox"/> |

Q12 – Sa iskalang 1 – 5, gaano ka nasiyahan sa serbisyong ibinigay ng *Tasheel* Shop?

- |                          |                          |
|--------------------------|--------------------------|
| 1: Lubos na Di-nasiyahan | <input type="checkbox"/> |
| 2: Di-nasiyahan          | <input type="checkbox"/> |
| 3: Walang pagkiling      | <input type="checkbox"/> |
| 4: Nasiyahan             | <input type="checkbox"/> |
| 5: Lubos na Nasiyahan    | <input type="checkbox"/> |

Q13 – Naging balakid ba ang wikang Arabic sa paghahain mo ng reklamo o pagharap mo sa pinagtatalunan?

OO ☐ HINDI ☐

Q14 – Sa iskalang 1 -5, gaano kadali sa simula ang paghain mo ng reklamo sa Ministry of Labour gamit ang mga serbisyo sa counter?

- |                     |                          |
|---------------------|--------------------------|
| 1: Napakahirap      | <input type="checkbox"/> |
| 2: Mahirap          | <input type="checkbox"/> |
| 3: Walang pagkiling | <input type="checkbox"/> |
| 4: Madali           | <input type="checkbox"/> |
| 5: Napakadali       | <input type="checkbox"/> |

Kung nahirapan ka sa paghain ng reklamo mo, ano ang dahilan nito – pakipaliwanag?

\_\_\_\_\_

\_\_\_\_\_

Q15 – Gaano kabilis pagkatapos mong maghain ng reklamo na pormal na sinimulan ng Labour Office ang pagresolba sa pinagtatalunan?

- |                     |                          |
|---------------------|--------------------------|
| 1: 1 – 3 araw       | <input type="checkbox"/> |
| 2: 4 – 7 araw       | <input type="checkbox"/> |
| 3: 7 – 14 araw      | <input type="checkbox"/> |
| 4: 15 – 21 araw     | <input type="checkbox"/> |
| 5: Higit sa 21 araw | <input type="checkbox"/> |

Q16 – Katanggap-tanggap ba ang haba ng panahon na inabot ang Labour Office para ipatawag ang magkabilang partido?

OO ☐ HINDI ☐

Q17 – Naging komportable ka ba sa pakikipag-usap sa Legal Researcher ng Ministry of Labour sa Labour Office?

OO ☐ HINDI ☐

Pakipaliwanag ang sagot mo sa ilang salita lang?

\_\_\_\_\_

\_\_\_\_\_

Q18 – Sa iskalang 1 – 5, gaano kalakas ang loob mo sa pagpaparating ng mga saloobin at opinyon mo sa Legal Researcher?

- |                        |                          |
|------------------------|--------------------------|
| 1: Napakahina ng loob  | <input type="checkbox"/> |
| 2: Mahina ang loob     | <input type="checkbox"/> |
| 3: Walang pagkiling    | <input type="checkbox"/> |
| 4: Malakas ang loob    | <input type="checkbox"/> |
| 5: Napakalakas ng loob | <input type="checkbox"/> |

Kung nahirapan ka sa pakikipag-usap sa Legal Researcher mo, ano ang naging dahilan – pakipaliwanag?

\_\_\_\_\_

\_\_\_\_\_

Q19- Sa iskalang 1 – 5, gaano ka nasiyahan sa mga paraan ng Legal Researcher sa pagharap sa mga pagtatalo?

- |                          |                          |
|--------------------------|--------------------------|
| 1: Lubos na Di-nasiyahan | <input type="checkbox"/> |
| 2: Di-nasiyahan          | <input type="checkbox"/> |
| 3: Walang pagkiling      | <input type="checkbox"/> |
| 4: Nasiyahan             | <input type="checkbox"/> |
| 5: Lubos na Nasiyahan    | <input type="checkbox"/> |

Q20 – Sa iskalang 1 -5, gaano kabisa ang paraan ng pakikipag-usap ng Legal Researcher sa iyo at sa iyong employer kaugnay ng paghahanap ng solusyon?

- |                            |                          |
|----------------------------|--------------------------|
| 1: Lubos na hindi epektibo | <input type="checkbox"/> |
| 2: Hindi epektibo          | <input type="checkbox"/> |
| 3: Walang pagkiling        | <input type="checkbox"/> |
| 4: Epektibo                | <input type="checkbox"/> |
| 5: Lubos na epektibo       | <input type="checkbox"/> |

Q21 – Sa iskalang 1 -5, naging makatuwiran ba ang negosasyong naganap?

- |                               |                          |
|-------------------------------|--------------------------|
| 1: Labis na hindi makatuwiran | <input type="checkbox"/> |
| 2: Medyo hindi makatuwiran    | <input type="checkbox"/> |
| 3: Makatuwiran                | <input type="checkbox"/> |

Q22 – Nadama mo ba sa anumang yugto na hindi ka pinakikinggan?

OO ☐ HINDI ☐ KUNG MINSAN ☐

Kung nadama mo na hindi ka pinakinggan, bakit ito nangyari sa iyong palagay – pakipaliwanag?

\_\_\_\_\_  
\_\_\_\_\_

Q23 – Sa palagay mo ba’y naunawaan ng Legal Researcher ang mga problema mo?

OO ☐ HINDI ☐ KUNG MINSAN ☐

Kung nadama mong hindi ka naunawaan ng Legal Researcher, bakit ito nangyari sa iyong palagay – pakipaliwanag?

\_\_\_\_\_  
\_\_\_\_\_

Q24 – Nadama mo ba sa anumang yugto na may kinikilingan ang Legal Researcher?

OO ☐ HINDI ☐ KUNG MINSAN ☐

Kung nadama mo na may kinilingan ang Legal Researcher sa negosasyon, bakit ito nangyari sa iyong palagay – pakipaliwanag?

\_\_\_\_\_  
\_\_\_\_\_

Q25 – Sa palagay mo ba’y naging mapang-atake ang naging mga talakayan?

OO ☐ HINDI ☐ KUNG MINSAN ☐

Kung oo – Pakipaliwanag?

\_\_\_\_\_  
\_\_\_\_\_

Q26 – Naresolba ba nang patas ang pagtatalo ninyo sa tulong ng Legal Researcher?

OO ☐ HINDI ☐

Kung hindi, ano’ng sunod na nangyari – pakihayag?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Q27- Sa iskalang 1 – 5, sa kabuuan gaano ka nasiyahan sa mga sistema ng Labour Office sa pagharap sa mga pagtatalo?

- |                          |                          |
|--------------------------|--------------------------|
| 1: Lubos na Di-nasiyahan | <input type="checkbox"/> |
| 2: Di-nasiyahan          | <input type="checkbox"/> |
| 3: Walang pagkiling      | <input type="checkbox"/> |
| 4: Nasiyahan             | <input type="checkbox"/> |
| 5: Lubos na Nasiyahan    | <input type="checkbox"/> |

Q28 – Sa iskalang 1 – 5, gaano kahusay ang mga kawani ng Labour Office para sa iyo?

- |                            |                          |
|----------------------------|--------------------------|
| 1: Lubos na hindi epektibo | <input type="checkbox"/> |
| 2: Hindi epektibo          | <input type="checkbox"/> |
| 3: Walang pagkiling        | <input type="checkbox"/> |
| 4: Epektibo                | <input type="checkbox"/> |
| 5: Lubos na epektibo       | <input type="checkbox"/> |

Q29 – Nagkaroon ka ba ng anumang nagpapatuloy na problema pagkatapos na magbigay ng solusyon ang Labour Office?

OO ☐ HINDI ☐

Kung oo, pakihayag kung anu-anong uri ng problema ang patuloy mong dinaranas?

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Q30 – Sa iskalang 1 – 5, gaano kalakas sa palagay mo ang loob mo sa paghain ng panibagong pagtatalo sa Ministry of Labour?

- |                        |                          |
|------------------------|--------------------------|
| 1: Napakahina ng loob  | <input type="checkbox"/> |
| 2: Mahina ang loob     | <input type="checkbox"/> |
| 3: Walang pagkiling    | <input type="checkbox"/> |
| 4: Malakas ang loob    | <input type="checkbox"/> |
| 5: Napakalakas ng loob | <input type="checkbox"/> |

Pakipaliwanag ang sagot mo:

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Q31 – Sa opinyon mo, ano ang mahusay na nagawa ng Ministry of Labour?

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Q32 – Sa opinyon mo, anu-ano ang maaaring gawin para mapahusay ang mga serbisyo sa Ministry of Labour?

---

---

Q33 – Nagkaroon ka ba ng suporta mula sa isang ikatlong partido sa pagharap mo sa pagtatalo?

OO ☐ HINDI ☐

Kung oo, ano ang naitulong ng ikatlong partido?

---

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Q34 –Mas gugustuhin mo ba na nagkaroon ka ng legal na kinatawan habang isinasagawa ang proseso?

OO ☐ HINDI ☐

Kung oo, sa paanong paraan ito makakatulong?

---

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**Salamat sa pagsagot sa kwestiyonaryong ito**

**Sagutan ang seksiyon na ito kung sumagot ka ng HINDI sa tanong 3 – kung hindi ka nakaranas ng pagtatalo sa lugar ng trabaho o kung hindi ka pa nakapunta sa Labour Office ng Ministry of Labour para maghain ng reklamo.**

Q35 – Alam mo ba ang gagawin mo sakaling may pagtatalo sa lugar ng trabaho mo?  
 OO ☐ HINDI ☐

Kung oo, ano ang gagawin mo?

\_\_\_\_\_

Q36 – Sa iskalang 1 – 5, gaano kalakas ang loob mo kung kinakailangan mong harapin ang pagtatalo sa lugar ng trabaho nang direkta sa employer mo?

- |                        |                          |
|------------------------|--------------------------|
| 1: Napakahina ng loob  | <input type="checkbox"/> |
| 2: Mahina ang loob     | <input type="checkbox"/> |
| 3: Walang pagkiling    | <input type="checkbox"/> |
| 4: Malakas ang loob    | <input type="checkbox"/> |
| 5: Napakalakas ng loob | <input type="checkbox"/> |

Q37 – Gaano sa palagay mo magiging makatuwiran ang employer mo kung mayroon kayong pagtatalo sa lugar ng trabaho?

- |                               |                          |
|-------------------------------|--------------------------|
| 1: Labis na hindi makatuwiran | <input type="checkbox"/> |
| 2: Medyo hindi makatuwiran    | <input type="checkbox"/> |
| 3: Makatuwiran                | <input type="checkbox"/> |

Q38 – Magiging balakid ba ang wikang Arabic sa paghahain mo ng reklamo/pagharap mo sa pinagtatalunan?

OO ☐ HINDI ☐

Q39 – Sa iskalang 1 – 5, gaano kalakas ang loob mo kung kinakailangan mong harapin ang pagtatalo sa lugar ng trabaho sa Ministry of Labour?

- |                        |                          |
|------------------------|--------------------------|
| 1: Napakahina ng loob  | <input type="checkbox"/> |
| 2: Mahina ang loob     | <input type="checkbox"/> |
| 3: Walang pagkiling    | <input type="checkbox"/> |
| 4: Malakas ang loob    | <input type="checkbox"/> |
| 5: Napakalakas ng loob | <input type="checkbox"/> |

Q40 – Gaano sa palagay mo magiging makatuwiran ang Ministry of Labour sa iyo kung haharapin nila ang pagtatalo sa lugar ng trabaho mo?

- |                               |                          |
|-------------------------------|--------------------------|
| 1: Labis na hindi makatuwiran | <input type="checkbox"/> |
| 2: Medyo hindi makatuwiran    | <input type="checkbox"/> |
| 3: Makatuwiran                | <input type="checkbox"/> |

Q 41 – Sa iskalang 1 – 5, gaano kabisa sa palagay mo ang ikikilos ng mga kawani ng Ministry of Labour sa pagharap sa pagtatalo sa lugar ng trabaho?

- |                            |                          |
|----------------------------|--------------------------|
| 1: Lubos na hindi epektibo | <input type="checkbox"/> |
| 2: Hindi epektibo          | <input type="checkbox"/> |
| 3: Walang pagkiling        | <input type="checkbox"/> |
| 4: Epektibo                | <input type="checkbox"/> |
| 5: Lubos na epektibo       | <input type="checkbox"/> |

Q42 – Tatanggapin mo ba ang tulong na sarili mong legal na kinatawan sa proseso ng pamamagitan sa Ministry of Labour?

OO ☐ HINDI ☐

Kung oo, sa paanong paraan ito makakatulong?

\_\_\_\_\_

Q 43 – Kung kailangan mong pumunta sa korte para maresolba ang pagtatalo sa lugar ng trabaho, sa palagay mo ba'y magiging makatuwiran ang pakitungo sa iyo?

- |                               |                          |
|-------------------------------|--------------------------|
| 1: Labis na hindi makatuwiran | <input type="checkbox"/> |
| 2: Medyo hindi makatuwiran    | <input type="checkbox"/> |
| 3: Makatuwiran                | <input type="checkbox"/> |

**Salamat sa pagsagot sa kwestiyonaryong ito**

## Appendix 7: Indonesian Questionnaire



### LEMBAR INFORMASI KUESIONER UNTUK PEKERJA MIGRAN

#### Judul Studi

Pekerja migran di sektor privat UAE: sebuah analisis krisis terhadap manajemen dan penyelesaian perselisihan ketenagakerjaan

#### Tujuan Penelitian

Penelitian ini bertujuan untuk mengkritik sistem dan mekanisme manajemen perselisihan terkait tenaga kerja UAE dengan maksud mendukung reformasi positif untuk lebih melindungi hak pekerja migran sektor privat. Pengaruh potensial penelitian ini adalah menjadi penggerak dalam memfasilitasi perubahan positif pada kebijakan dan prosedur untuk meningkatkan layanan dengan menangani masalah-masalah sensitif dan dengan meningkatkan best practice (pengalaman terbaik)

#### Siapa yang menyelenggarakan penelitian?

Peneliti utama menyelenggarakan dan menjalankan penelitian sebagai bagian dari program PhD. Penelitian ini dibiayai oleh Departemen Pendidikan Kepolisian Abu Dhabi, karena tujuan mereka adalah meningkatkan layanan bagi para pekerja migran di UAE. Peneliti saat ini terdaftar di Universitas Keele (Keele University), Inggris (United Kingdom). Anda dipersilakan bertanya untuk mengetahui kredensial atau identifikasi. Jika Anda mempunyai pertanyaan tentang aspek apa pun penelitian ini, Anda bisa berbicara dengan peneliti utama yang akan menjawab pertanyaan Anda sebaik mungkin.

#### Undangan

Anda diundang untuk berpartisipasi dalam studi penelitian 'Pekerja migran di sektor privat UAE: sebuah analisis krisis terhadap manajemen dan penyelesaian perselisihan ketenagakerjaan'. Proyek ini dilaksanakan oleh Hamad Al Ameri. Sebelum memutuskan untuk mengisi kuesioner, Anda perlu memahami mengapa penelitian ini dilakukan dan apa cakupannya. Mohon luangkan waktu untuk membaca informasi ini dengan hati-hati dan mendiskusikannya dengan teman dan kerabat Anda, jika Anda menginginkan.

#### Mengapa saya diundang?

Anda terpilih untuk mengikuti studi ini karena saya rasa pengetahuan, pengalaman, dan yang paling penting, opini Anda akan sangat berperan dalam melaksanakan studi ini dengan sukses. Penelitian ini akan membantu pekerja lain di masa mendatang untuk menyelesaikan masalah di tempat kerja mereka lebih cepat dan mudah, dengan harapan mencegah masalah tersebut terulang lagi.

#### Bagaimana jika saya ikut serta?

Jika Anda memutuskan untuk ikut serta, Anda akan diundang untuk mengisi kuesioner sederhana yang memberi Anda pertanyaan-pertanyaan mengenai pekerjaan Anda dan apakah Anda pernah mengalami perselisihan di tempat kerja. Selanjutnya, Anda akan ditanya mengenai apa yang Anda rasakan tentang bagaimana manajemen perselisihan di tempat kerja dan proses penyelesaiannya. Pengisian kuesioner membutuhkan waktu kurang dari 10-15 menit dan kuesioner yang telah diisi dapat dimasukkan ke dalam kotak pengumpulan dengan pengaman (lihat peta/alamat lokasinya). Kuesioner dapat diserahkan kembali kepada tim peneliti atau dikirimkan – untuk detail selengkapnya, lihat kuesioner.

### **Apakah saya harus ikut serta?**

Anda bebas memutuskan apakah bersedia ikut serta atau tidak. Jika Anda memutuskan untuk ikut serta, Anda akan diminta mengisi kuesioner ini.

### **Apa manfaat dari keikutsertaan?**

Dengan ikut serta, Anda akan mempunyai kesempatan untuk secara anonim mengungkapkan pandangan Anda mengenai persepsi dan opini Anda tentang cara penanganan perselisihan di tempat kerja. Selanjutnya, Anda akan dipersilakan untuk menambahkan informasi lebih lanjut di akhir kuesioner, dengan kata-kata Anda sendiri, sisi positif sistem manajemen perselisihan dan juga mengungkapkan pandangan Anda pada hal apa sistem tersebut dapat diperbaiki untuk menjamin hak-hak pekerja migran dilindungi dengan lebih baik.

### **Apa risiko (jika ada) dari keikutsertaan?**

Tidak ada risiko untuk Anda jika ikut serta. Anda diundang untuk mengungkapkan opini Anda dengan mengisi kuesioner secara anonim. **Detail pribadi atau informasi kontak tidak diperlukan.**

### **Bagaimana informasi tentang diri saya akan digunakan?**

Data dari kuesioner Anda akan dicatat dan dianalisis sebagai bagian program PhD saya. Saya akan mengungkapkan temuan-temuan saya mengenai pemikiran para pekerja dalam realitas sistem manajemen perselisihan ketenagakerjaan UAE.

- **Detail pribadi atau informasi kontak tidak diperlukan.**
- Semua data hanya akan digunakan dalam studi ini dan tidak akan ditahan untuk studi lanjutan.
- Data akan disimpan dengan aman dalam komputer yang dilindungi kata sandi.
- Setiap salinan cetak informasi akan disimpan dalam lemari arsip berkunci, sesuai dengan panduan Universitas Keele.
- Data akan disandi dan hanya digunakan oleh tim peneliti.
- Data akan disimpan oleh peneliti utama selama paling sedikit lima tahun dan setelahnya akan dibuang dengan cara yang aman.

### **Bagaimana jika ada masalah?**

Anda dipersilakan bertanya untuk mengetahui kredensial atau identifikasi. Jika Anda mempunyai pertanyaan tentang aspek apa pun penelitian ini, Anda bisa berbicara dengan peneliti utama atau tim Universitas Keele, yang akan menjawab pertanyaan Anda sebaik mungkin.

Anda bisa menghubungi peneliti utama (principal researcher) Hamad Al Ameri

E-mail: [h.m.alameri@keele.ac.uk](mailto:h.m.alameri@keele.ac.uk)

Tel UAE: +971564244487 (telepon khusus informasi/pertanyaan penelitian)

Tel Inggris: +44(0)1782733148

Atau, jika Anda tidak ingin menghubungi peneliti utama, Anda bisa menghubungi supervisor kepala Profesor Tomoya Obokata

Profesor dari Hukum Internasional dan Hak Asasi Manusia (Professor of International Law and Human Rights)

E-mail: [t.obokata@keele.ac.uk](mailto:t.obokata@keele.ac.uk)

Tel Inggris: +44(0)1782733148

Jika Anda tidak senang dengan penelitian dan/atau mempunyai keluhan mengenai aspek apa pun dari cara pendekatan atau perlakuan yang Anda dapatkan selama pelaksanaan studi, silakan sampaikan kepada Nicola Leighton, yang merupakan wakil dari Universitas untuk keluhan terkait penelitian, pada alamat berikut:

Nicola Leighton  
Research Governance Officer (Ketua Tim Peneliti)  
IC2 Building  
Keele University  
UNITED KINGDOM  
ST5 5NH  
E-mail: [n.leighton@keele.ac.uk](mailto:n.leighton@keele.ac.uk)  
Tel Inggris: +44(0)1782 733306



**KUESIONER UNTUK PEKERJA MIGRAN  
(lihat terlampir)**

- Kuesioner yang telah diisi dapat diserahkan langsung kepada salah satu tim peneliti.
- Kuesioner yang telah diisi dapat dimasukkan dalam kotak pengumpulan dengan pengaman – lihat peta/alamat lokasinya.
- Kuesioner yang telah diisi dapat dikirimkan ke: Hamad Al Ameri

u.p Profesor Tom Obokata  
CBC 2.025  
School of Law  
Keele University  
UNITED KINGDOM  
ST5 5BG

## Kuesioner Pekerja Migran

Kewarganegaraan: \_\_\_\_\_ Umur: \_\_\_\_\_ Jenis Kelamin: \_\_\_\_\_

P1 – Apa sektor pekerjaan Anda? Sebutkan: \_\_\_\_\_

P2 – Manakah level pekerjaan berikut yang paling sesuai dengan tipe pekerjaan Anda?

- Pekerjaan level dasar atau tidak terdidik ☐  
Pekerjaan level terdidik ☐  
Profesional dan kualifikasi tinggi ☐

P3 – Pernahkah Anda mengalami perselisihan di tempat kerja saat bekerja di Uni Emirat Arab (UAE)?

YA ☐ silakan lanjut dengan pertanyaan di bawah TIDAK ☐ silakan lanjut ke Pertanyaan 35 pada Halaman 5

Jika Anda pernah mengalami perselisihan di tempat kerja, apakah hal itu termasuk dalam salah satu kategori berikut?

- Keterlambatan pembayaran upah/gaji ☐  
Pemberhentian kontrak ☐  
Hak hukum tidak dihormati ☐  
Perselisihan lain – sebutkan: \_\_\_\_\_

P4 – Apakah perselisihan Anda juga dialami pekerja lain di tempat kerja Anda, dengan kata lain apakah itu perselisihan kolektif atau kelompok?

YA ☐ TIDAK ☐

P5 – Apakah Anda mencoba menyelesaikan perselisihan di atas dengan majikan Anda secara langsung?

YA ☐ silakan lanjut dengan pertanyaan di bawah TIDAK ☐ silakan lanjut ke Pertanyaan 9

P6 – Pada skala 1 -5, apakah Anda merasa percaya diri dalam menghadapi majikan Anda?

- 1: Sangat tidak percaya diri ☐  
2: Tidak Percaya Diri ☐  
3: Netral ☐  
4: Percaya Diri ☐  
5: Sangat Percaya Diri ☐

P7 – Pada skala 1 – 5, seberapa puas Anda dengan sistem majikan Anda menangani perselisihan Anda?

- 1: Sangat Tidak Puas ☐  
2: Tidak Puas ☐  
3: Netral ☐  
4: Puas ☐  
5: Sangat Puas ☐

P8 – Apakah perselisihan Anda diselesaikan dengan cara damai oleh majikan Anda?

YA ☐ TIDAK ☐

Jika tidak, apa yang Anda lakukan kemudian – sebutkan? \_\_\_\_\_

P9 – Pernahkah Anda menggunakan sistem penyelesaian perselisihan Kementerian Tenaga Kerja/Dinas Tenaga Kerja?

YA ☐ silakan lanjut dengan pertanyaan di bawah TIDAK ☐ silakan lanjut ke Pertanyaan 35 pada halaman 5

P10 – Apakah Anda sebelumnya mengetahui cara melaporkan perselisihan Anda melalui Kementerian Tenaga Kerja?

YA ☐ TIDAK ☐

P11 – Pada skala 1 -5, seberapa percaya diri Anda dalam menghadapi Kementerian Tenaga Kerja pada awalnya?

- |                              |                          |
|------------------------------|--------------------------|
| 1: Sangat tidak percaya diri | <input type="checkbox"/> |
| 2: Tidak Percaya Diri        | <input type="checkbox"/> |
| 3: Netral                    | <input type="checkbox"/> |
| 4: Percaya Diri              | <input type="checkbox"/> |
| 5: Sangat Percaya Diri       | <input type="checkbox"/> |

P12 – Pada skala 1 – 5, seberapa puasah Anda dengan layanan *Tasheel/ Shop* yang disediakan untuk Anda?

- |                      |                          |
|----------------------|--------------------------|
| 1: Sangat Tidak Puas | <input type="checkbox"/> |
| 2: Tidak Puas        | <input type="checkbox"/> |
| 3: Netral            | <input type="checkbox"/> |
| 4: Puas              | <input type="checkbox"/> |
| 5: Sangat Puas       | <input type="checkbox"/> |

P13 – Apakah Anda merasa bahasa Arab menjadi hambatan dalam melaporkan atau mengatasi perselisihan Anda?

YA ☐ TIDAK ☐

P14 – Pada skala 1 -5, seberapa mudah pada awalnya untuk melaporkan keluhan Anda kepada Kementerian Tenaga Kerja menggunakan layanan gerai?

- |                 |                          |
|-----------------|--------------------------|
| 1: Sangat sulit | <input type="checkbox"/> |
| 2: Sulit        | <input type="checkbox"/> |
| 3: Netral       | <input type="checkbox"/> |
| 4: Mudah        | <input type="checkbox"/> |
| 5: Sangat Mudah | <input type="checkbox"/> |

Jika Anda merasa sulit untuk melaporkan keluhan Anda, apa yang menyebabkan – mohon jelaskan?

\_\_\_\_\_  
\_\_\_\_\_

P15 – Seberapa cepat setelah laporan perselisihan di Dinas Tenaga Kerja proses formal penyelesaian perselisihan dimulai?

- |                       |                          |
|-----------------------|--------------------------|
| 1: 1 – 3 hari         | <input type="checkbox"/> |
| 2: 4 – 7 hari         | <input type="checkbox"/> |
| 3: 7 – 14 hari        | <input type="checkbox"/> |
| 4: 15 – 21 hari       | <input type="checkbox"/> |
| 5: Lebih dari 21 hari | <input type="checkbox"/> |

P16 – Apakah waktu yang diperlukan Dinas Tenaga Kerja untuk memanggil kedua belah pihak dapat diterima?

YA ☐ TIDAK ☐

P17 – Apakah Anda merasa nyaman dalam berhubungan dengan Paralegal Kementerian Tenaga Kerja di Dinas Tenaga Kerja?

YA ☐ TIDAK ☐

Jelaskan jawaban Anda dalam beberapa kata!

\_\_\_\_\_  
\_\_\_\_\_

P18 – Pada skala 1 – 5, seberapa percaya diri Anda dalam mengomunikasikan pemikiran dan pendapat Anda dengan Paralegal?

- |                              |                          |
|------------------------------|--------------------------|
| 1: Sangat tidak percaya diri | <input type="checkbox"/> |
| 2: Tidak Percaya Diri        | <input type="checkbox"/> |
| 3: Netral                    | <input type="checkbox"/> |
| 4: Percaya Diri              | <input type="checkbox"/> |
| 5: Sangat Percaya Diri       | <input type="checkbox"/> |

Jika Anda merasa sulit untuk bicara dengan Paralegal Anda, apa alasannya – mohon jelaskan?

\_\_\_\_\_  
\_\_\_\_\_



P19 – Pada skala 1 – 5, seberapa puas Anda dengan pendekatan Paralegal dalam menangani perselisihan Anda?

- |                      |                          |
|----------------------|--------------------------|
| 1: Sangat Tidak Puas | <input type="checkbox"/> |
| 2: Tidak Puas        | <input type="checkbox"/> |
| 3: Netral            | <input type="checkbox"/> |
| 4: Puas              | <input type="checkbox"/> |
| 5: Sangat Puas       | <input type="checkbox"/> |

P20 – Pada skala 1 -5, seberapa efektif cara Paralegal menghadapi Anda dan majikan Anda terkait pencarian solusi?

- |                         |                          |
|-------------------------|--------------------------|
| 1: Sangat Tidak Efektif | <input type="checkbox"/> |
| 2: Tidak Efektif        | <input type="checkbox"/> |
| 3: Netral               | <input type="checkbox"/> |
| 4: Efektif              | <input type="checkbox"/> |
| 5: Sangat Efektif       | <input type="checkbox"/> |

P21 – Pada skala 1 -5, seberapa adil negosiasi berlangsung?

- |                       |                          |
|-----------------------|--------------------------|
| 1: Sangat Tidak Adil  | <input type="checkbox"/> |
| 2: Sedikit Tidak Adil | <input type="checkbox"/> |
| 3: Adil               | <input type="checkbox"/> |

P22 – Apakah Anda merasa Anda tidak didengarkan?

YA ☐ TIDAK ☐ KADANG ☐

Jika Anda merasa tidak didengarkan, menurut Anda apa penyebabnya – mohon jelaskan?

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P23 – Apakah menurut Anda Paralegal memahami masalah Anda?

YA ☐ TIDAK ☐ KADANG ☐

Jika menurut Anda Paralegal tidak memahami Anda, menurut Anda apa penyebabnya – mohon jelaskan?

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P24 – Apakah Anda merasa Paralegal memihak salah satu pihak?

YA ☐ TIDAK ☐ KADANG ☐

Jika Anda merasa Paralegal memihak salah satu pihak dalam negosiasi, menurut Anda apa penyebabnya – mohon jelaskan?

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P25 – Apakah Anda merasa diskusi berubah menjadi konfrontasi?

YA ☐ TIDAK ☐ KADANG ☐

Jika iya – mohon jelaskan!

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P26 – Apakah perselisihan Anda diselesaikan secara damai dengan bantuan Paralegal?

YA ☐ TIDAK ☐

Jika tidak, apa yang terjadi selanjutnya – sebutkan?

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P27 – Pada skala 1 – 5, secara keseluruhan seberapa puas Anda dengan sistem Dinas Tenaga Kerja menangani perselisihan Anda?

- |                      |                          |
|----------------------|--------------------------|
| 1: Sangat Tidak Puas | <input type="checkbox"/> |
| 2: Tidak Puas        | <input type="checkbox"/> |
| 3: Netral            | <input type="checkbox"/> |
| 4: Puas              | <input type="checkbox"/> |
| 5: Sangat Puas       | <input type="checkbox"/> |

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P28 – Pada skala 1 – 5, seberapa efektif menurut Anda para staf di Dinas Tenaga Kerja?

- |                         |                          |
|-------------------------|--------------------------|
| 1: Sangat Tidak Efektif | <input type="checkbox"/> |
| 2: Tidak Efektif        | <input type="checkbox"/> |
| 3: Netral               | <input type="checkbox"/> |
| 4: Efektif              | <input type="checkbox"/> |
| 5: Sangat Efektif       | <input type="checkbox"/> |

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P29 – Apakah Anda masih mendapat masalah setelah ada solusi dari Dinas Tenaga Kerja?

YA ☐ TIDAK ☐

Jika iya, mohon sebutkan masalah apa yang masih Anda alami!

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P30 – Pada skala 1 – 5, akan seberapa percaya diri Anda menangani perselisihan lain di Kementerian Tenaga Kerja?

- |                              |                          |
|------------------------------|--------------------------|
| 1: Sangat tidak percaya diri | <input type="checkbox"/> |
| 2: Tidak Percaya Diri        | <input type="checkbox"/> |
| 3: Netral                    | <input type="checkbox"/> |
| 4: Percaya Diri              | <input type="checkbox"/> |
| 5: Sangat Percaya Diri       | <input type="checkbox"/> |

Mohon jelaskan jawaban Anda:

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P31 – Menurut Anda apa yang dilakukan dengan baik oleh Kementerian Tenaga Kerja?

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P32 – Menurut Anda apa yang dapat dilakukan untuk memperbaiki layanan di Kementerian Tenaga Kerja?

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P33 – Apakah Anda mendapat dukungan dari pihak ke tiga saat menangani perselisihan Anda?

YA ☐ TIDAK ☐

Jika iya, dalam kapasitas apa pihak ke tiga memberikan bantuan?

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P34 – Apakah Anda lebih senang jika mempunyai kuasa hukum selama proses tersebut?

YA ☐ TIDAK ☐

Jika iya, menurut Anda bagaimana hal ini akan membantu?

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**Terima kasih sudah mengisi kuesioner**

**Akhiri bagian ini jika menjawab TIDAK untuk pertanyaan 3 – jika Anda belum pernah mengalami perselisihan di tempat kerja atau jika Anda belum pernah ke Dinas Tenaga Kerja Kementerian Tenaga Kerja untuk melaporkan keluhan ketenagakerjaan.**

P35 – Apakah Anda tahu apa yang harus dilakukan jika mengalami perselisihan di tempat kerja?

YA ☐

TIDAK ☐

Jika iya, apa yang akan Anda lakukan?

\_\_\_\_\_

\_\_\_\_\_

P36 – Pada skala 1 – 5, akan seberapa percaya diri Anda jika harus menangani perselisihan di tempat kerja langsung dengan majikan Anda?

- |                              |                          |
|------------------------------|--------------------------|
| 1: Sangat tidak percaya diri | <input type="checkbox"/> |
| 2: Tidak Percaya Diri        | <input type="checkbox"/> |
| 3: Netral                    | <input type="checkbox"/> |
| 4: Percaya Diri              | <input type="checkbox"/> |
| 5: Sangat Percaya Diri       | <input type="checkbox"/> |

P37 – Menurut Anda, akan seberapa adil majikan terhadap Anda jika ada perselisihan di tempat kerja?

- |                       |                          |
|-----------------------|--------------------------|
| 1: Sangat Tidak Adil  | <input type="checkbox"/> |
| 2: Sedikit Tidak Adil | <input type="checkbox"/> |
| 3: Adil               | <input type="checkbox"/> |

P38 – Apakah Bahasa Arab akan menjadi halangan bagi Anda dalam melaporkan/menangani perselisihan Anda?

YA ☐

TIDAK ☐

P39 – Pada skala 1 – 5, akan seberapa percaya diri Anda jika harus menangani perselisihan di tempat kerja dengan Kementerian Tenaga Kerja?

- |                              |                          |
|------------------------------|--------------------------|
| 1: Sangat tidak percaya diri | <input type="checkbox"/> |
| 2: Tidak Percaya Diri        | <input type="checkbox"/> |
| 3: Netral                    | <input type="checkbox"/> |
| 4: Percaya Diri              | <input type="checkbox"/> |
| 5: Sangat Percaya Diri       | <input type="checkbox"/> |

P40 – Menurut Anda, akan seberapa adil Kementerian Tenaga Kerja terhadap Anda jika menangani perselisihan Anda di tempat kerja?

- |                       |                          |
|-----------------------|--------------------------|
| 1: Sangat Tidak Adil  | <input type="checkbox"/> |
| 2: Sedikit Tidak Adil | <input type="checkbox"/> |
| 3: Adil               | <input type="checkbox"/> |

P41 – Pada skala 1 – 5, menurut Anda akan seberapa efektif para staf di Kementerian Tenaga Kerja menangani perselisihan di tempat kerja?

- |                         |                          |
|-------------------------|--------------------------|
| 1: Sangat Tidak Efektif | <input type="checkbox"/> |
| 2: Tidak Efektif        | <input type="checkbox"/> |
| 3: Netral               | <input type="checkbox"/> |
| 4: Efektif              | <input type="checkbox"/> |
| 5: Sangat Efektif       | <input type="checkbox"/> |

P42 – Akankah Anda menerima dukungan paralegal sendiri selama proses mediasi di Kementerian Tenaga Kerja?

YA ☐

TIDAK ☐

Jika iya, menurut Anda bagaimana ini akan membantu?

\_\_\_\_\_

\_\_\_\_\_

P43 – Jika harus ke pengadilan untuk menyelesaikan perselisihan Anda di tempat kerja, apakah menurut Anda akan diperlakukan dengan adil?

- |                       |                          |
|-----------------------|--------------------------|
| 1: Sangat Tidak Adil  | <input type="checkbox"/> |
| 2: Sedikit Tidak Adil | <input type="checkbox"/> |
| 3: Adil               | <input type="checkbox"/> |

**Terima kasih sudah mengisi kuesioner**

## Appendix 8: Bengali Questionnaire



### অভিবাসী কর্মীদের প্রশ্নাবলীর তথ্য শীট

#### গবেষণার শিরোনাম

ইউএই (UAE)-এর বেসরকারি ক্ষেত্রের অভিবাসী কর্মীবৃন্দ: নিয়োগ সংক্রান্ত সমস্যার ব্যবস্থাপনা ও মিমাংসার একটি সমালোচনামূলক বিশ্লেষণ

#### গবেষণার লক্ষ্য

এই গবেষণার লক্ষ্য হল ইউএই-এর নিয়োগ সংক্রান্ত সমস্যার মিমাংসা করার ব্যবস্থা ও পদ্ধতি, যার উদ্দেশ্য বেসরকারি ক্ষেত্রের অভিবাসী কর্মীবৃন্দের অধিকার আরও ভালোভাবে রক্ষা করতে ইতিবাচক সংস্কারের সমর্থন করা। এই গবেষণার সম্ভাব্য ফল হল বিভিন্ন সমস্যা সংবেদনশীলতার সঙ্গে নাড়াচাড়া করে পরিষেবা উন্নত করতে নীতি ও পদ্ধতিতে ইতিবাচক পরিবর্তনের চালিকা শক্তি হয়ে ওঠা এবং সর্বোত্তম কার্যরীতির প্রচার করা।

#### এই গবেষণার উদ্যোক্তা কে?

প্রধান গবেষক পিএইচডি (PhD)-এর অংশ হিসেবে এই গবেষণার উদ্যোগ নিচ্ছেন ও পরিচালনা করছেন। আবু ধাবি পুলিশ প্রশিক্ষণ বিভাগ এই গবেষণায় আর্থিক সহায়তা করছেন ইউএই-তে অভিবাসী কর্মীদের আরও উন্নত পরিষেবা দেওয়ার উদ্দেশ্য নিয়ে। গবেষক বর্তমানে কীল ইউনিভার্সিটি, ইউনাইটেড কিংডম-এ নথিভুক্ত। যে কোন ধরনের পরিচয়পত্রাদি দেখতে চাওয়ার ব্যাপারে আপনাকে স্বাগত। এই গবেষণার বিষয়ে কোন ধরনের জিজ্ঞাস্য থাকলে আপনি প্রধান গবেষকের সঙ্গে কথা বলতে পারেন, যিনি আপনার যাবতীয় প্রশ্নের উত্তর দেবেন।

#### আমন্ত্রণ

‘ইউএই-এর বেসরকারি ক্ষেত্রের অভিবাসী কর্মীবৃন্দ: নিয়োগ সংক্রান্ত সমস্যার ব্যবস্থাপনা ও মিমাংসার একটি সমালোচনামূলক বিশ্লেষণ’ – এই গবেষণায় অংশ নেওয়ার কথা বিবেচনা করতে আপনাকে আমন্ত্রণ জানানো হচ্ছে। এই প্রোজেক্টটি গ্রহণ করেছেন হামাদ আল আমেরী (Hamad Al Ameri)। এই প্রশ্নাবলী পূরণ করার আগে আপনার এটা জেনে নেওয়া দরকার যে কেন এই গবেষণা করা হচ্ছে এবং এর মধ্যে কী কী আছে। অনুগ্রহ করে সময় নিয়ে এই তথ্যগুলি পড়ুন এবং চাইলে আপনার আত্মীয়স্বজন ও বন্ধুবান্ধবদের সঙ্গে আলোচনা করে নিন।

#### কেন আমাকে আমন্ত্রণ জানানো হয়েছে?

এই গবেষণায় আপনাকে বেছে নেওয়ার কারণ, আমার মনে হয় আপনার জ্ঞান, অভিজ্ঞতা এবং সর্বোপরি আপনার মতামত এই গবেষণার সাফল্যের জন্য গুরুত্বপূর্ণ, যার ফলে ভবিষ্যতে অন্য কর্মীরা দ্রুত ও সহজে নিজের নিজের কর্মস্থলের সমস্যা সমাধান করতে পারবেন, এবং আশা করি সেক্ষেত্রে সমস্যা দেখা দেবেই না।

#### আমি অংশ নিলে কী হবে?

আপনি অংশ নিলে আপনাকে একটি সহজ প্রশ্নাবলী পূরণ করতে আমন্ত্রণ জানানো হবে যেখানে আপনাকে আপনার কাজ ও তাতে কোন কর্মস্থলের ঝামেলা হয়েছে কি না সেই বিষয়ে কিছু প্রশ্ন করা হবে। অধিকন্তু, আপনাকে জিজ্ঞাসা করা হবে যে আপনি কর্মস্থলের ঝামেলা মেটানো নিয়ে এবং তার প্রক্রিয়া নিয়ে কী ভাবেন। এই প্রশ্নোত্তর পর্ব 10-15 মিনিটের মধ্যেই সম্পূর্ণ হয়ে যাবে এবং পূরণ করা প্রশ্নোত্তর নিরাপদ সংগ্রহ বাস্তবে জমা করা যাবে (অবস্থানের মানচিত্র/ ঠিকানা দেখে নিন)। এগুলিকে গবেষণা গোষ্ঠীর হাতে দিয়ে দেওয়া যাবে বা জমাও করা যাবে – সুনির্দিষ্ট বিবরণের জন্য প্রশ্নাবলী দেখুন।

### আমাকে কি অংশ নিতেই হবে?

আপনি অংশ নেওয়া বা না নেওয়ার ব্যাপারে স্বাধীনভাবে সিদ্ধান্ত নিতে পারেন। আপনি অংশ নেওয়ার সিদ্ধান্ত নিলে আপনাকে এই প্রস্তাবলী পূরণ করতে হবে।

### এতে অংশ নিলে কী কী সুবিধা পাওয়া যেতে পারে?

অংশ নিলে আপনি আপনার পরিচয় না জানিয়েও কর্মস্থলের সমস্যা নিয়ে কী করা হচ্ছে, সেই বিষয়ে আপনার ধারণা ও মতামত প্রকাশের সুযোগ পাবেন। অধিকন্তু, আপনি এই প্রস্তাবলীর শেষে নিজের ভাষায় যোগ করতে পারবেন যে, বর্তমান বিরোধ নিষ্পত্তি ব্যবস্থায় ভালো কী আছে এবং কীভাবে এই ব্যবস্থাকে আরও উন্নত করা যায়, যাতে অভিবাসী কর্মীদের অধিকার রক্ষিত হয়।

### অংশ নেওয়ায় কী ঝুঁকি (যদি থাকে) আছে?

এই অংশ নেওয়ায় আপনার কোন ঝুঁকি নেই। আপনাকে একটি পরিচয়বিহীন প্রস্তাবলী পূরণের মাধ্যমে আপনার মতামত জানাতে আমন্ত্রণ জানানো হচ্ছে। এতে আপনার বিস্তারিত ব্যক্তিগত তথ্য বা যোগাযোগের তথ্যের কোন প্রয়োজন নেই।

### আমার বিষয়ে দেওয়া তথ্য কীভাবে ব্যবহার করা হবে?

আপনার প্রস্তাবের থেকে পাওয়া তথ্য আমার পিএইচডি-এর অংশ হিসেবে বিশ্লেষণ করা হবে, যেখানে আমি ইউএই-এর কর্মসংস্থান বিরোধ নিষ্পত্তি ব্যবস্থা নিয়ে প্রকৃত কর্মীরা কী ভাবছেন, তাই নিয়ে আমি যা তথ্য পাচ্ছি, তা দেখাবো।

- এতে আপনার বিস্তারিত ব্যক্তিগত তথ্য বা যোগাযোগের তথ্যের কোন প্রয়োজন নেই।
- যাবতীয় তথ্য শুধুমাত্র এই গবেষণাতেই ব্যবহৃত হবে এবং অন্য কোন গবেষণার জন্য রেখে দেওয়া হবে না।
- এই তথ্য কম্পিউটারে পাসওয়ার্ড দ্বারা সুরক্ষিত করে রেখে দেওয়া হবে।
- কীল ইউনিভার্সিটির মূলনীতি অনুসারে, কোন মুদ্রিত সংস্করণ থাকলে তা তালাবদ্ধ ফাইল ক্যাবিনেটে রেখে দেওয়া হবে।
- এই তথ্য সঙ্কেতাকারে পরিণত করা হবে এবং তা শুধুমাত্র গবেষণা গোষ্ঠীর দ্বারাই ব্যবহৃত হবে।
- প্রধান গবেষকের কাছে এই তথ্য রেখে দেওয়া হবে অন্তত পাঁচ বছরের জন্য এবং তারপর সাবধানে নষ্ট করে ফেলা হবে।

### যদি কোন সমস্যা হয়?

যে কোন ধরনের পরিচয়পত্রাদি দেখতে চাওয়ার ব্যাপারে আপনাকে স্বাগত। আপনার এই গবেষণার বিষয়ে যদি কোন দৃষ্টিভঙ্গি থাকে তবে আপনি প্রধান গবেষক অথবা কীল ইউনিভার্সিটির গোষ্ঠীর সঙ্গে কথা বললে তাঁরা আপনার প্রশ্নের উত্তর দিতে পারবেন।

আপনাকে প্রধান গবেষক (principal researcher) হামাদ আল আমেরীর (Hamad Al Ameri) সঙ্গে যোগাযোগ করতে হবে

ই-মেইল: [h.m.alameri@keele.ac.uk](mailto:h.m.alameri@keele.ac.uk)

ইউএই-এর টেলিফোন: +971564244487 (গবেষণার তথ্য/ অনুসন্ধানের নিজস্ব নম্বর)

ইউকে-এর টেলিফোন: +44(0)1782733148

অন্যথায়, আপনি প্রধান গবেষকের সঙ্গে যোগাযোগ করতে না চাইলে আপনি প্রধান অধীক্ষক প্রফেসর টোমোয়া ওবকাটার (Tomoya Obokata) সঙ্গে যোগাযোগ করতে পারেন।

আন্তর্জাতিক আইন ও মানবাধিকার –এর প্রফেসর (Professor of International Law and Human Rights)

ই-মেইল: [t.obokata@keele.ac.uk](mailto:t.obokata@keele.ac.uk)

ইউকে-এর টেলিফোন: +44(0)1782733148

গবেষণার সময়, আপনি যদি গবেষণার বিষয়ে এবং/ অথবা আপনাকে যেভাবে বলা হয়েছে বা আপনার সঙ্গে যে ব্যবহার করা হয়েছে, সেই বিষয়ে কোন অভিযোগ করতে চান, তবে ইউনিভার্সিটির গবেষণা বিষয়ক অভিযোগের যোগাযোগ নিকোলা লেইটন (Nicola Leighton)-কে নীচের ঠিকানায় লিখতে পারেন:

Nicola Leighton (নিকোলা লেইটন)  
Research Governance Officer (গবেষণা নিয়ন্ত্রণ আধিকারিক)  
IC2 Building  
Keele University  
UNITED KINGDOM  
ST5 5NH  
ই-মেইল: [n.leighton@keele.ac.uk](mailto:n.leighton@keele.ac.uk)  
ইউকে-এর টেলিফোন: +44(0)1782 733306

**অভিবাসী কর্মীদের প্রশ্নাবলী  
(সংযুক্ত দেখুন)**

- পূরণ করা প্রশ্নোত্তর কোন একটি গবেষণা গোষ্ঠীর কাছে জমা দেওয়া যাবে।
- পূরণ করা প্রশ্নোত্তর নিরাপদ সংগ্রহ ব্যাক্সেও জমা করা যাবে – এদের অবস্থানের জন্য মানচিত্র/ ঠিকানা দেখে নিন।
- পূরণ করা প্রশ্নোত্তর জমা করা যাবে:

Hamad Al Ameri (হামাদ আল আমেরী)

প্রযুক্তি প্রফেসর Tom Obokata

(প্রফেসর টম ওবোকাটা)

CBC 2.025

School of Law

Keele University

UNITED KINGDOM

ST5 5BG

## অভিবাসী কর্মীদের প্রশ্নাবলী

জাতীয়তা: \_\_\_\_\_ বয়স: \_\_\_\_\_ লিঙ্গ: \_\_\_\_\_

প্র 1 – আপনি কোন্ ধরনের কর্মসংস্থান ক্ষেত্রে কাজ করেন? অনুগ্রহ করে বলুন: \_\_\_\_\_

প্র 2 – আপনি যে ধরনের কাজ করেন তাতে আপনার পক্ষে নীচে দেওয়া কোন্ স্তরের কর্মসংস্থান সবচেয়ে উপযুক্ত?

- |                                |                          |
|--------------------------------|--------------------------|
| অদক্ষ বা প্রাথমিক স্তরের কাজ   | <input type="checkbox"/> |
| দক্ষ স্তরের কাজ                | <input type="checkbox"/> |
| পেশাদারী ও উচ্চ যোগ্যতাসম্পন্ন | <input type="checkbox"/> |

প্র 3 – ইউএই (UAE)-তে কাজ করার সময় আপনার কি কোন কর্মস্থলের ঝামেলার অভিজ্ঞতা হয়েছে?

হ্যাঁ ☐ অনুগ্রহ করে নীচের প্রশ্নগুলি চালিয়ে যান না ☐ অনুগ্রহ করে 6 পৃষ্ঠার প্রশ্ন 35-এ যান

আপনার যদি কোন কর্মস্থলের ঝামেলার অভিজ্ঞতা হয়ে থাকে তবে তা নিম্নলিখিত কোন শ্রেণীতে পড়ে কি?

- |   |                          |
|---|--------------------------|
| পারিশ্রমিক/ বেতন দেরীতে প্রদান            | <input type="checkbox"/> |
| চুক্তি সমাপ্ত করে দেওয়া                  | <input type="checkbox"/> |
| আইনি অধিকারের মান্যতা না দেওয়া           | <input type="checkbox"/> |
| অন্যান্য ঝামেলা – অনুগ্রহ করে বলুন: _____ |                          |

প্র 4 আপনার কর্মস্থলে আপনার মতো ঝামেলা কি অন্য কোন কর্মীর সঙ্গেও ঘটেছে, অর্থাৎ, এটি কি যৌথ বা সমষ্টিগত ঝামেলা?

হ্যাঁ ☐ না ☐

প্র 5 – আপনি কি আপনার নিয়োগকর্তার সঙ্গে সরাসরি কথা বলে ঝামেলা মেটানোর চেষ্টা করেছেন?

হ্যাঁ ☐ অনুগ্রহ করে নীচের প্রশ্নগুলি চালিয়ে যান না ☐ অনুগ্রহ করে প্রশ্ন 9-এ যান

প্র 6 – আপনি আপনার নিয়োগকর্তার সঙ্গে কথাবার্তা বলতে, 1-5 এর মানদণ্ডে, আপনি কতটা আত্মবিশ্বাসী?

- |                              |                          |
|------------------------------|--------------------------|
| 1: একেবারেই আত্মবিশ্বাসী নয় | <input type="checkbox"/> |
| 2: আত্মবিশ্বাসী নয়          | <input type="checkbox"/> |
| 3: নিরপেক্ষ                  | <input type="checkbox"/> |
| 4: আত্মবিশ্বাসী              | <input type="checkbox"/> |
| 5: খুবই আত্মবিশ্বাসী         | <input type="checkbox"/> |

প্র 7 – আপনার ঝামেলা মেটানোর ব্যাপারে আপনার নিয়োগকর্তা যে পথ নিয়েছেন তাতে, 1-5 এর মানদণ্ডে, আপনি কতটা সন্তুষ্ট?

- |                       |                          |
|-----------------------|--------------------------|
| 1: দুটোভাবে অসন্তুষ্ট | <input type="checkbox"/> |
| 2: অসন্তুষ্ট          | <input type="checkbox"/> |
| 3: নিরপেক্ষ           | <input type="checkbox"/> |
| 4: সন্তুষ্ট           | <input type="checkbox"/> |
| 5: অতিশয় সন্তুষ্ট    | <input type="checkbox"/> |

প্র 8 – আপনার ঝামেলা কি আপনার নিয়োগকর্তা আপোষে মিটিয়েছিলেন?

হ্যাঁ ☐ না ☐

যদি না হয়ে থাকে, তবে এর পর আপনি কী করলেন – অনুগ্রহ করে বলুন: \_\_\_\_\_

প্র 9 – আপনি কি শ্রম মন্ত্রক / শ্রম দপ্তরের বিরোধ নিষ্পত্তি ব্যবস্থায় গিয়েছিলেন?

হ্যাঁ ☐ অনুগ্রহ করে পৃষ্ঠা 2 চালিয়ে যান না ☐ অনুগ্রহ করে পৃষ্ঠা 6 প্রশ্ন 35-এ যান



প্র 10 - আপনি কি শুরু থেকেই শ্রম মন্ত্রকের মাধ্যমে বামেলার অভিযোগ কী করে জানতে হয় তা জানতেন?  
হ্যাঁ ☐ না ☐

প্র 11 - আপনি শ্রম মন্ত্রকের সঙ্গে কথাবার্তা বলতে, 1-5 এর মানদণ্ডে, আপনি শুরুতে কতটা আত্মবিশ্বাসী ছিলেন?  
1: একেবারেই আত্মবিশ্বাসী নয় ☐  
2: আত্মবিশ্বাসী নয় ☐  
3: নিরপেক্ষ ☐  
4: আত্মবিশ্বাসী ☐  
5: খুবই আত্মবিশ্বাসী ☐

প্র 12-1-5 এর মানদণ্ডে, আপনি কি সেই পরিষেবায় সন্তুষ্ট ছিলেন যা *ex-xy* কেন্দ্র (*Tasheel Shop*) আপনাকে প্রদান করেছিল?  
1: দুটোভাবে অসন্তুষ্ট ☐  
2: অসন্তুষ্ট ☐  
3: নিরপেক্ষ ☐  
4: সন্তুষ্ট ☐  
5: অতিশয় সন্তুষ্ট ☐

প্র 13 - আপনার ক্ষেত্রে কি অভিযোগ জানানো বা বামেলা সামলানোর ব্যাপারে আরবী ভাষা বাধা হয়ে দাঁড়িয়েছিল?  
হ্যাঁ ☐ না ☐

প্র 14-1-5 এর মানদণ্ডে, শুরুতে কাউন্টার পরিষেবা ব্যবহার করে শ্রম মন্ত্রকের কাছে অভিযোগ জানানো কতটা সহজ ছিল?  
1: খুবই কঠিন ☐  
2: কঠিন ☐  
3: নিরপেক্ষ ☐  
4: সহজ ☐  
5: খুবই সহজ ☐

আপনার যদি অভিযোগ জানাতে অসুবিধে হয়ে থাকে, তা কিসের জন্য - অনুগ্রহ করে ব্যাখ্যা করুন?  
\_\_\_\_\_  
\_\_\_\_\_

প্র 15 - শ্রম দপ্তরে অভিযোগ জানানোর পর কত দ্রুত আনুষ্ঠানিক বিরোধ নিষ্পত্তি প্রক্রিয়া শুরু হয়েছিল?  
1: 1-3 দিনের মধ্যে ☐  
2: 4-7 দিনের মধ্যে ☐  
3: 7-14 দিনের মধ্যে ☐  
4: 15-21 দিনের মধ্যে ☐  
5: 21 দিনেরও বেশি পরে ☐

প্র 16 - শ্রম দপ্তর উভয়পক্ষকে ডাকতে যে সময় নিয়েছিল তা গ্রহণযোগ্য ছিল কি?  
হ্যাঁ ☐ না ☐

প্র 17- আপনি কি শ্রম দপ্তরে শ্রম মন্ত্রকের আইনি গবেষকের সঙ্গে যোগাযোগের ব্যাপারে স্বচ্ছন্দ ছিলেন?  
হ্যাঁ ☐ না ☐

অল্প কিছু শব্দে আপনার উত্তর ব্যাখ্যা করুন?  
\_\_\_\_\_  
\_\_\_\_\_

প্র 18-1-5-এর মানদণ্ডে, আপনার চিন্তাভাবনা আইনি গবেষককে বলার ব্যাপারে আপনি কতটা আত্মবিশ্বাসী ছিলেন?

- |                              |                          |
|------------------------------|--------------------------|
| 1: একেবারেই আত্মবিশ্বাসী নয় | <input type="checkbox"/> |
| 2: আত্মবিশ্বাসী নয়          | <input type="checkbox"/> |
| 3: নিরপেক্ষ                  | <input type="checkbox"/> |
| 4: আত্মবিশ্বাসী              | <input type="checkbox"/> |
| 5: খুবই আত্মবিশ্বাসী         | <input type="checkbox"/> |

আইনি গবেষকের সঙ্গে কথা বলা যদি আপনার পক্ষে কঠিন হয়ে থাকে, তার কারণ কী ছিল – অনুগ্রহ করে ব্যাখ্যা করুন?

\_\_\_\_\_

প্র 19-1-5-এর মানদণ্ডে, আপনার বামেনা আইনি গবেষক যেভাবে নাড়াচাড়া করছিলেন তাতে কি আপনি সন্তুষ্ট?

- |                       |                          |
|-----------------------|--------------------------|
| 1: দুটোভাবে অসন্তুষ্ট | <input type="checkbox"/> |
| 2: অসন্তুষ্ট          | <input type="checkbox"/> |
| 3: নিরপেক্ষ           | <input type="checkbox"/> |
| 4: সন্তুষ্ট           | <input type="checkbox"/> |
| 5: অতিশয় সন্তুষ্ট    | <input type="checkbox"/> |

প্র 20-1-5-এর মানদণ্ডে, আপনার ও আপনার নিয়োগকর্তার মধ্যে একটি সমাধানসূত্র বের করার ব্যাপারে আইনি গবেষক যেভাবে নিয়োজিত ছিলেন তা কতটা কার্যকর ছিল?

- |                            |                          |
|----------------------------|--------------------------|
| 1: একেবারেই কার্যকর ছিল না | <input type="checkbox"/> |
| 2: কার্যকর ছিল না          | <input type="checkbox"/> |
| 3: নিরপেক্ষ                | <input type="checkbox"/> |
| 4: কার্যকর ছিল             | <input type="checkbox"/> |
| 5: খুবই কার্যকর ছিল        | <input type="checkbox"/> |

প্র 21-1-5-এর মানদণ্ডে, এই আলাপ-আলোচনা কতটা ন্যায্য ছিল?

- |                        |                          |
|------------------------|--------------------------|
| 1: খুবই অন্যায় ছিল    | <input type="checkbox"/> |
| 2: সামান্য অন্যায় ছিল | <input type="checkbox"/> |
| 3: ন্যায্য ছিল         | <input type="checkbox"/> |

প্র 22- আপনার কি কোন সময় মনে হয়েছিল যে আপনার কথা শোনা হচ্ছে না?

হ্যাঁ ☐ না ☐ কোন কোন সময় ☐

আপনার যদি মনে হয়ে থাকে যে আপনার কথা শোনা হচ্ছে না, সেটা কেন বলে আপনার মনে হয় – অনুগ্রহ করে ব্যাখ্যা করুন?

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প্র 23 - আপনার কি মনে হয়েছিল যে আইনি গবেষক আপনার সমস্যাটি বুঝতে পেরেছেন?

হ্যাঁ ☐ না ☐ কোন কোন সময় ☐

আপনার যদি মনে হয়ে থাকে যে আইনি গবেষক আপনার কথা বুঝতে পারেননি, তা কেন বলে আপনার মনে হয় – অনুগ্রহ করে ব্যাখ্যা করুন?

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প্র 24 - আপনার কি কোন সময় মনে হয়েছে যে আইনি গবেষক কোন পক্ষ নিচ্ছেন?

হ্যাঁ ☐ না ☐ কোন কোন সময় ☐

আপনার যদি কোন সময় মনে হয়ে থাকে যে আইনি গবেষক কোন পক্ষ নিচ্ছেন, তা কেন বলে আপনার মনে হয় – অনুগ্রহ করে ব্যাখ্যা করুন?

\_\_\_\_\_

প্র 25- আপনার কি মনে হয় যে এই আলোচনা বগড়াবার্টির পর্যায়ে চলে গিয়েছিল?  
হ্যাঁ ☐ না ☐ কোন কোন সময় ☐

যদি তাই হয় - অনুগ্রহ করে ব্যাখ্যা করুন?

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প্র 26 - আপনার ঝামেলার কি আইনি গবেষকের সাহায্যে আপোষে মিমাংসা হয়েছিল?  
হ্যাঁ ☐ না ☐

যদি না হয়ে থাকে, তবে এর পরে কী ঘটল - অনুগ্রহ করে বলুন?

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\_\_\_\_\_  
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প্র 27-1-5-এর মানদণ্ডে, সার্বিকভাবে আপনার ঝামেলাটি শ্রম দপ্তর যেভাবে নাড়াচাড়া করেছিলেন, সেই ব্যবস্থায় আপনি কতটা সন্তুষ্ট?  
1: দৃঢ়ভাবে অসন্তুষ্ট ☐  
2: অসন্তুষ্ট ☐  
3: নিরপেক্ষ ☐  
4: সন্তুষ্ট ☐  
5: অতিশয় সন্তুষ্ট ☐

প্র 28-1-5-এর মানদণ্ডে, শ্রম দপ্তরের কর্মীদের কাজ আপনার কতটা কার্যকর বলে মনে হয়েছিল?  
1: একেবারেই কার্যকর ছিল না ☐  
2: কার্যকর ছিল না ☐  
3: নিরপেক্ষ ☐  
4: কার্যকর ছিল ☐  
5: খুবই কার্যকর ছিল ☐

প্র 29 - শ্রম দপ্তরের দেওয়া সমাধানের পরেও আপনার কোন চালু সমস্যা ছিল কি?  
হ্যাঁ ☐ না ☐

যদি তাই হয় তবে আপনার বর্তমান সমস্যা কী ধরনের?

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\_\_\_\_\_

প্র 30-1-5-এর মানদণ্ডে, শ্রম মন্ত্রকে আর একটি ঝামেলা নিয়ে নাড়াচাড়ার ব্যাপারে আপনি কতটা আত্মবিশ্বাসী?  
1: একেবারেই আত্মবিশ্বাসী নয় ☐  
2: আত্মবিশ্বাসী নয় ☐  
3: নিরপেক্ষ ☐  
4: আত্মবিশ্বাসী ☐  
5: খুবই আত্মবিশ্বাসী ☐

অনুগ্রহ করে আপনার উত্তর ব্যাখ্যা করুন:

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\_\_\_\_\_

প্র 31- আপনার মতে শ্রম মন্ত্রক ভালো কাজ কী করেছিল?

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প্র 32- আপনার মতে শ্রম মন্ত্রকের পরিষেবা আরও উন্নত করতে কী কী করা দরকার?

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প্র 33- আপনার ঝামেলা নিয়ে নাড়াচাড়া করার সময় আপনি কোন তৃতীয় পক্ষের সমর্থন পেয়েছিলেন কি?  
হ্যাঁ ☐ না ☐

যদি পেয়ে থাকেন তবে সেই তৃতীয় পক্ষ কী হিসেবে আপনাকে সাহায্য করেছিল?

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প্র 34- এই প্রক্রিয়ায় আপনার কি কোন আইনি প্রতিনিধির সাহায্য পেলে ভালো হতো?  
হ্যাঁ ☐ না ☐

যদি তাই হয় তবে তা কীভাবে আপনার কাজে আসত বলে আপনার মনে হয়?

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**এই প্রস্তাবলী পূরণ করার জন্য আপনাকে ধন্যবাদ**

**আপনি প্রশ্ন 3-এর উত্তর না দিয়ে থাকলে এই অংশটি পূরণ করুন - আপনি যদি কর্মস্থলে ঝামেলায় না পড়ে থাকেন বা আপনাকে যদি শ্রম মন্ত্রকের শ্রম দপ্তরে অভিযোগ জানাতে যেতে না হয়ে থাকে।**

প্র 35 - আপনি কি জানেন কর্মস্থলে কোন ঝামেলা হলে কী করতে হয়?  
হ্যাঁ ☐ না ☐

যদি জানেন, সেক্ষেত্রে কী করবেন?

\_\_\_\_\_

প্র 36-1-5-এর মানদণ্ডে, আপনাকে কর্মস্থলে ঝামেলায় আপনার নিয়োগকর্তার সঙ্গে সরাসরি জড়তে হলে আপনি কতটা আত্মবিশ্বাসী থাকতেন?

- |                              |                          |
|------------------------------|--------------------------|
| 1: একেবারেই আত্মবিশ্বাসী নয় | <input type="checkbox"/> |
| 2: আত্মবিশ্বাসী নয়          | <input type="checkbox"/> |
| 3: নিরপেক্ষ                  | <input type="checkbox"/> |
| 4: আত্মবিশ্বাসী              | <input type="checkbox"/> |
| 5: খুবই আত্মবিশ্বাসী         | <input type="checkbox"/> |

প্র 37 - আপনাকে কর্মস্থলে ঝামেলায় জড়তে হলে তাতে আপনার নিয়োগকর্তা আপনার প্রতি কতটা ন্যায্য ব্যবহার করতেন বলে আপনার মনে হয়?

- |                        |                          |
|------------------------|--------------------------|
| 1: খুবই অন্যায় ছিল    | <input type="checkbox"/> |
| 2: সামান্য অন্যায় ছিল | <input type="checkbox"/> |
| 3: ন্যায্য ছিল         | <input type="checkbox"/> |

প্র 38- আপনার কি মনে হয় যে আপনার সমস্যার ব্যাপারে অভিযোগ জানাতে / নাড়াচাড়া করতে আরবী ভাষা একটি বাধা হয়ে দাঁড়াতো?

হ্যাঁ ☐ না ☐

প্র 39-1-5-এর মানদণ্ডে, আপনাকে কর্মস্থলে ঝামেলায় নিয়ে শ্রম মন্ত্রকে গিয়ে কথাবার্তা বলতে হলে আপনি কতটা আত্মবিশ্বাসী থাকতেন?

- |                              |                          |
|------------------------------|--------------------------|
| 1: একেবারেই আত্মবিশ্বাসী নয় | <input type="checkbox"/> |
| 2: আত্মবিশ্বাসী নয়          | <input type="checkbox"/> |
| 3: নিরপেক্ষ                  | <input type="checkbox"/> |
| 4: আত্মবিশ্বাসী              | <input type="checkbox"/> |
| 5: খুবই আত্মবিশ্বাসী         | <input type="checkbox"/> |

প্র 40 - আপনাকে কর্মস্থলে ঝামেলায় জড়তে হলে তাতে শ্রম মন্ত্রক আপনার প্রতি কতটা ন্যায্য ব্যবহার করতেন বলে আপনার মনে হয়?

- |                        |                          |
|------------------------|--------------------------|
| 1: খুবই অন্যায় ছিল    | <input type="checkbox"/> |
| 2: সামান্য অন্যায় ছিল | <input type="checkbox"/> |
| 3: ন্যায্য ছিল         | <input type="checkbox"/> |

প্র 41-1-5-এর মানদণ্ডে, শ্রম মন্ত্রকের কর্মীরা কর্মস্থলে সমস্যা কতটা কার্যকরভাবে নাড়াচাড়া করতেন বলে আপনার মনে হয়?

- |                            |                          |
|----------------------------|--------------------------|
| 1: একেবারেই কার্যকর ছিল না | <input type="checkbox"/> |
| 2: কার্যকর ছিল না          | <input type="checkbox"/> |
| 3: নিরপেক্ষ                | <input type="checkbox"/> |
| 4: কার্যকর ছিল             | <input type="checkbox"/> |
| 5: খুবই কার্যকর ছিল        | <input type="checkbox"/> |

প্র 42 - শ্রম মন্ত্রকে মধ্যস্থতার সময় আপনি কি কোন নিজস্ব আইনি প্রতিনিধির সহায়তাকে স্বাগত জানাতেন?  
হ্যাঁ ☐ না ☐

যদি তাই হয়, তবে তা কীভাবে কাজে আসত বলে আপনার মনে হয়?

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প্র 43 - আপনাকে যদি আপনার কর্মস্থলের সমস্যা মেটাতে আদালতে যেতে হতো, সেক্ষেত্রে কী আপনার সঙ্গে ন্যায় ব্যবহার করা হতো বলে আপনার মনে হয়?

- |                        |                          |
|------------------------|--------------------------|
| 1: খুবই অন্যায় ছিল    | <input type="checkbox"/> |
| 2: সামান্য অন্যায় ছিল | <input type="checkbox"/> |
| 3: ন্যায় ছিল          | <input type="checkbox"/> |

**এই প্রস্তাবলী পূরণ করার জন্য আপনাকে ধন্যবাদ**

## Appendix 9: Tamil Questionnaire



### இடம்பெயர்ந்த பணியாளர்களுக்கான கேள்விப்பட்டியல் தகவல்தாள்

#### ஆய்வு தலைப்பு

யு.ஏ.ஈ (UAE) யின் தனியார் துறையில் உள்ள இடம்பெயர்ந்த பணியாளர்கள்: பணி சர்ச்சை மேலாண்மை மற்றும் தீர்மானம் குறித்த விமர்சன ஆய்வு.

#### ஆய்வின் நோக்கங்கள்

இந்த ஆய்வானது தனியார் துறை இடம்பெயர்ந்த பணியாளர்களின் உரிமைகளை பாதுகாக்கும் வகையில் நேர்மறையான சீர்திருத்தத்தை பரிந்துரை செய்யும் நோக்கத்துடன் யு.ஏ.ஈ-யின் ஊழியர் தொடர்பான சர்ச்சை மேலாண்மை திட்டங்கள் மற்றும் வழிமுறைகளை விமர்சிப்பதை இலக்காக கொண்டுள்ளது. இந்த ஆய்வின் சாத்தியமான தாக்கமானது உணர்திறன் தொடர்புடைய பிரச்சனைகளை சமாளிப்பதற்கும், சிறந்த செயல்முறையை ஊக்குவிக்கும் சேவைகளை மேம்படுத்தும் நோக்கத்துடன் கொள்கை மற்றும் செயல்முறையில் நேர்மையான மாற்றத்தை கொண்டுவருவதாகவே இருக்கும்.

#### இந்த ஆய்வை யார் நடத்துகின்றார்கள்?

பி.எச்.டி (PhD) யின் ஒரு பகுதியாக, முதன்மை ஆய்வாளர் இந்த ஆய்வை நடத்துகின்றார். யு.ஏ.ஈ-யில் இருக்கும் இடம்பெயர்ந்த பணியாளர்களுக்கு வழங்கப்படும் சேவைகளை மேம்படுத்துவதே அவர்களின் நோக்கமாக இருப்பதால், இந்த ஆய்வுக்கு அபு தாபி போலிஸ் கல்வி துறை நிதி அளித்து வருகிறது. ஆய்வாளர் தற்போது யுனைடெட் கிங்டம் (United Kingdom), கீலே பல்கலைக்கழகத்தில் (Keele University) பதிவு செய்யப்பட்டுள்ளார். எந்த சான்றுகளையும் அல்லது அடையாளங்களையும் நீங்கள் பார்ப்பதற்கும் கேட்பதற்கும் வரவேற்கப்படுவீர்கள். இந்த ஆய்வு குறித்து ஏதேனும் கூற்று குறித்து உங்களுக்கு கேள்வி இருந்தால், நீங்கள் முதன்மை ஆய்வாளரிடம் பேசலாம், அவர் உங்கள் கேள்விகளுக்கு தங்களால் முடிந்த சிறந்தவற்றை செய்வார்.

#### அழைப்பு

‘யு.ஏ.ஈ-யின் தனியார் துறையில் உள்ள இடம்பெயர்ந்த பணியாளர்கள்: பணி சர்ச்சை மேலாண்மை மற்றும் தீர்மானம் குறித்த விமர்சன ஆய்வு’ என்னும் ஆராய்ச்சி ஆய்வில் பங்கேற்பதற்காக உங்களை வரவேற்கிறோம். இந்த ஆய்வானது ஹமத் அல் அமெரி (Hamad Al Ameri)-யால் மேற்கொள்ளப்படுகிறது. நீங்கள் கேள்விப்பட்டியலை முடிவடைக்க தீர்மானிப்பதற்கு முன், இந்த ஆய்வு எதற்காக நடத்தப்படுகிறது மற்றும் இதில் என்ன நடக்கும் என்பதை நீங்கள் புரிந்துகொள்வது முக்கியமானதாகும். இந்த தகவலை கவனமாக படிப்பதற்கு போதுமான நேரத்தை எடுத்து, நீங்கள் விரும்பினால் உங்கள் நண்பர்கள் மற்றும் உறவினர்களுடன் இதனை விவாதிக்கவும்.

#### நான் எதற்காக அழைக்கப்பட்டுள்ளேன்?

உங்களின் பொதுஅறிவு, அனுபவம் மற்றும் மிக முக்கியமாக உங்கள் கருத்தானது இந்த ஆய்வை வெற்றிகரமாக நடத்துவதில் பெரும் பங்கு வகிக்கும் என்பதாலும், எதிர்காலத்தில் இதர ஊழியர்கள் தங்களின் பணியிட பிரச்சனைகளை அதி விரைவாகவும், எளிதாகவும் தீர்த்து, இவை அனைத்தும் நிகழாமல் தடுப்பதற்காகவும் உதவும் என்பதாலும் இந்த ஆய்வில் பங்கேற்பதற்காக நீங்கள் தேர்வு செய்யப்பட்டுள்ளீர்கள்.

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### நான் இதில் பங்கேற்றால் என்ன நிகழும்?

நீங்கள் இதில் பங்கேற்பதற்கு தேர்வு செய்யப்பட்டால், நீங்கள் ஒரு எளிதான கேள்விப்பட்டியலை முடிவடைப்பதற்கு அழைக்கப்படுவீர்கள். இதில் உங்கள் பணி மற்றும் நீங்கள் பணியிட பிரச்சனை ஏதேனும் சந்தித்துள்ளீர்களா இல்லையா என்பதும் குறித்து கேள்விகள் கேட்கப்படும். மேலும், பணியிட பிரச்சனைகள் எவ்வாறு சமாளிக்கப்படுகிறது மற்றும் அவற்றை தீர்க்கும் முறை குறித்தும் நீங்கள் எவ்வாறு உணர்கின்றீர்கள் என்பது குறித்தும் கேட்கப்படும். இந்த கேள்விப்பட்டியலை முடிவடைப்பதற்கு 10-15 நிமிடங்களுக்கு மேல் எடுக்காது மற்றும் முடிவடைக்கப்பட்ட கேள்விப்பட்டியல்கள் பாதுகாக்கப்பட்ட சேகரிப்பு பெட்டிகளில் வைக்கப்படவேண்டும் (இடங்களுக்கான வரைபடம்/முகவரிகளை பார்க்கவும்). இவை ஆய்வு குழுவினரிடம் திருப்பி அளிக்கப்படும் அல்லது வெளியிடப்படும் -குறிப்பிட்ட விவரங்களுக்கு கேள்விப்பட்டியலை பார்க்கவும்.

### நான் இதில் பங்கேற்கவேண்டுமா?

நீங்கள் இதில் பங்கேற்கவேண்டுமா இல்லையா என்பதை நீங்களே தீர்மானம் செய்யலாம். நீங்கள் இதில் பங்கேற்க தீர்மானம் செய்தால், இந்த கேள்விப்பட்டியலை முடிவடைக்குமாறு கேட்டுக்கொள்ளப்படுவீர்கள்.

### இதில் பங்கேற்பதன் பலன்கள் யாவை?

இதில் பங்கேற்பதன்மூலம், நீங்கள் பணியிட பிரச்சனைகளை எவ்வாறு கையாளுவது குறித்து உங்கள் கருத்துக்கள் மற்றும் எண்ணங்களை அடையாளம் மறைக்கப்பட்ட முறையில் வெளிப்படுத்தும் ஒரு வாய்ப்பை பெறுவீர்கள். மேலும், இந்த கேள்விப்பட்டியலின் முடிவில், உங்கள் சொந்த எழுத்துக்களில், பிரச்சனை மேலாண்மை அமைப்பில் உள்ள பயன்கள் மற்றும் இடம்பெயர்ந்த பணியாளர்களின் உரிமைகள் சிறப்பாக பாதுகாக்கப்படுவதை உறுதி செய்யும்பொருட்டு எந்தெந்த வழிகளில் அதற்குடைய அமைப்புகள் மேம்படுத்தலாம் என்பதன் மீதான உங்கள் கருத்துக்களையும் வெளிப்படுத்தும் தகவல்களை வழங்குவதற்கும் உங்களை வரவேற்கிறோம்.

### இதில் பங்கேற்பதில் உள்ள ஆபத்துகள் (ஏதேனும் இருந்தால்) என்ன?

நீங்கள் இதில் பங்கேற்பதால் எந்த ஆபத்துகளும் இல்லை. இந்த அடையாளம் காண இயலாத கேள்விப்பட்டியலை முடிவடைப்பதன் மூலம் உங்கள் கருத்துக்களை வெளிப்படுத்துவதற்காக வரவேற்கப்படுகின்றீர்கள். உங்கள் தனிப்பட்ட விவரங்கள் அல்லது தொடர்பு தகவல்கள் தேவைப்படாது.

### என்னைப் பற்றிய தகவல்கள் எவ்வாறு பயன்படுத்தப்படும்?

உங்கள் கேள்விப்பட்டியலில் உள்ள தகவல்கள் எனது பி.எச்.டி-யின் ஒரு பகுதிக்காக, பதிவு செய்யப்பட்டு, ஆராய்வு செய்யப்படும். இதில் யு.ஏ.ஈ-யின் ஊழியர்கள் பிரச்சனை நிர்வாக அமைப்பு பற்றி உண்மையில் ஊழியர்கள் என்ன நினைகின்றார்கள் என்பது பற்றிய எனது கண்டறிதல்களை நான் முன்னிலைப்படுத்துவேன்.

- உங்கள் தனிப்பட்ட விவரங்கள் அல்லது தொடர்பு தகவல்கள் தேவைப்படாது.
- அனைத்து தரவுகளும் இந்த ஆய்வுக்காக மட்டுமே பயன்படுத்தப்படும் மற்றும் வேறு இதர ஆய்வுக்காக சேமிக்கப்படமாட்டாது.
- தரவானது கடவுச்சொல் பாதுகாக்கப்பட்ட கணினியில் பாதுகாப்பாக சேமிக்கப்படும்.
- தகவலின் ஆவணபிரதிகள் பாதுகாப்பான பூட்டுபோட்ட கேபினெட்டில் கீலே பல்கலைக்கழகத்தின் அறிவுறுத்தலுக்கு இணங்க சேமிக்கப்படவேண்டும்.
- தரவானது குறியிடப்பட்டு, ஆராய்வு குழுவால் மட்டுமே பயன்படுத்தப்படவேண்டும்.

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- தரவனாது குறைந்தது ஐந்து வருடங்களுக்கு முதன்மை ஆய்வாளரால் பாதுகாக்கப்படவேண்டும் மற்றும் அதன் பிறகு அதனை பாதுகாப்பாக அகற்றப்படவேண்டும்.

### ஏதேனும் பிரச்சனை என்றால் என்ன செய்வது?

எந்த சான்றுகளையும் அல்லது அடையாளங்களையும் நீங்கள் பார்ப்பதற்கும் கேட்பதற்கும் வரவேற்கப்படுவீர்கள். இந்த ஆய்வு குறித்து ஏதேனும் கூற்று குறித்து உங்களுக்கு கேள்வி இருந்தால், நீங்கள் முதன்மை ஆய்வாளரிடம் அல்லது கீலே பல்கலைக்கழகத்தின் குழுவிடம் பேசலாம், அவர் உங்கள் கேள்விகளுக்கு தங்களால் முடிந்த சிறந்தவற்றை செய்வார்.

நீங்கள் முதன்மை ஆய்வாளர் (principal researcher) ஹமாத் ஆல் அமெரி (Hamad Al Ameri) -யை தொடர்பு கொள்ள வேண்டும்.

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மாறாக, நீங்கள் முதன்மை ஆய்வாளரை தொடர்பு கொள்ள விரும்பவில்லையென்றால், நீங்கள் முதன்மை மேற்பார்வை பேராசிரியர் டோமோயா ஒபோகடா (Tomoya Obokata) அவர்களை தொடர்புகொள்ளலாம்.

சர்வதேச சட்ட மற்றும் மனித உரிமைகளின் பேராசிரியர்

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ஆய்வு குறித்து நீங்கள் மகிழ்ச்சியாக இல்லை என்றாலோ மற்றும்/அல்லது ஆய்வுகாலத்தின்போது உங்களை அணுகிய முறையில் அல்லது நடத்தப்பட்ட விதத்தில் உள்ள ஏதேனும் கூற்றில் ஒரு புகாரை எழுப்ப விரும்பினாலோ, ஆய்வு குறித்து புகார்களுக்கான பல்கலைக்கழகத்தின் தொடர்பு நபரான நிகோலா லெயிக்டன் (Nicola Leighton) அவர்களுக்கு பின்வரும் முகவரிக்கு கடிதம் எழுதவும்:

Nicola Leighton (நிகோலா லெயிக்டன்)

Research Governance Officer (ஆய்வு கட்டுப்பாட்டு அதிகாரி)

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**இடம்பெயர்ந்த பணியாளர்களுக்கான கேள்விப்பட்டியல்  
(இணைக்கப்பட்டதைப் பார்க்கவும்)**

- முடிவடைக்கப்பட்ட கேள்விப்பட்டியல்கள் ஆய்வு குழுவின் ஒன்றிடம் நேரடியாக திருப்பி அளிக்கப்படவேண்டும்.
- முடிவடைக்கப்பட்ட கேள்விப்பட்டியல்கள் பாதுகாக்கப்பட்ட சேகரிப்பு பெட்டிகளில் வைக்கப்படவேண்டும்- இடங்களுக்கான வரைபடம்/முகவரிகளை பார்க்கவும்.
- முடிவடைக்கப்பட்ட கேள்விப்பட்டியல்கள் இந்த முகவரிக்கு தபாலில் அனுப்பி வைக்கப்படவேண்டும்:

Hamad Al Ameri (ஹமாத் அலி அமெரி)

காப்பாளர் பேராசிரியர் Tom Obokata (டோம் ஒபோகாடா)

CBC 2.025

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## இடம்பெயர்ந்த பணியாளர் கேள்விப்பட்டியல்

குடியுரிமை: \_\_\_\_\_ வயது: \_\_\_\_\_ பாலினம்: \_\_\_\_\_

கே 1 - நீங்கள் எந்த பணித்துறையின் கீழ் பணிபுரிகின்றீர்கள்? தயவு செய்து குறிப்பிடவும்: \_\_\_\_\_

கே 2 - பின்வரும் எந்த பணியாளர் அளவுகள் நீங்கள் பணிபுரியும் வகையுடன் மிக சிறந்தவையாக பொருந்தும்?

- |                                      |                          |
|--------------------------------------|--------------------------|
| திறன்ற அல்லது அடிப்படை அளவு பணி      | <input type="checkbox"/> |
| திறனுள்ள பணி அளவு                    | <input type="checkbox"/> |
| தொழில்சார் மற்றும் அதிக தகுதிவாய்ந்த | <input type="checkbox"/> |

கே 3 - யு.ஏ.ஈ (UAE) யில் பணிபுரியும்போது உங்கள் பணியிடத்தில் நீங்கள் ஏதேனும் சர்ச்சைகளை அனுபவித்துள்ளீர்களா?

- |     |   |       |  |
|-----|---|-------|--|
| ஆம் | <input type="checkbox"/> தயவு செய்து பின்வரும் கேள்விகளைத் தொடரவும் | இல்லை | <input type="checkbox"/> பக்கம் 7-யில் உள்ள கேள்வி 35-க்குச் செல்லவும் |
|-----|---|-------|--|

நீங்கள் பணியிடத்தில் ஏதேனும் சர்ச்சைகளை அனுபவித்திருந்தால், அது பின்வரும் வகைகள் ஏதேனும் ஒன்றில் கீழ் வருமா?

- |   |                          |
|---|--------------------------|
| ஊதியம்/சம்பளம் தாமதமாக அளித்தல்                 | <input type="checkbox"/> |
| ஒப்பந்தம் முடிவடைவு                             | <input type="checkbox"/> |
| சட்ட உரிமங்கள் மதிக்கப்படவில்லை                 | <input type="checkbox"/> |
| இதர பிரச்சனை - தயவு செய்து குறிப்பிடவும்: _____ |                          |

கே 4 - உங்கள் பிரச்சனையானது உங்கள் பணியிடத்தில் உள்ள இதர பணியாளர்கள் எவருக்கேனும் பொருந்துமா அதாவது அது ஒரு தொகுப்பு அல்லது குழு பிரச்சனையா?

- |     |                          |       |                          |
|-----|--------------------------|-------|--------------------------|
| ஆம் | <input type="checkbox"/> | இல்லை | <input type="checkbox"/> |
|-----|--------------------------|-------|--------------------------|

கே 5 - நீங்கள் மேலே கூறிய பிரச்சனையை நேரடியாக உங்கள் முதலாளியிடம் கூறி தீர்ப்பதற்கு முயற்சித்துள்ளீர்களா?

- |     |   |       |  |
|-----|---|-------|--|
| ஆம் | <input type="checkbox"/> தயவு செய்து பின்வரும் கேள்விகளைத் தொடரவும் | இல்லை | <input type="checkbox"/> கேள்வி 9-க்குச் செல்லவும் |
|-----|---|-------|--|

கே 6 - 1-5 மதிப்பீட்டளவில், உங்கள் முதலாளியுடன் பணியில் ஈடுபடுவது குறித்து நீங்கள் உறுதியாக உணர்கின்றீர்களா?

- |                           |                          |
|---------------------------|--------------------------|
| 1: மிகவும் உறுதியற்ற நிலை | <input type="checkbox"/> |
| 2: உறுதியற்ற நிலை         | <input type="checkbox"/> |
| 3: நடுநிலை                | <input type="checkbox"/> |
| 4: உறுதியான நிலை          | <input type="checkbox"/> |
| 5: மிகவும் உறுதியான நிலை  | <input type="checkbox"/> |

கே 7 - 1-5 மதிப்பீட்டளவில், உங்கள் பிரச்சனையை கையாளுவதில் முதலாளியின் அமைப்புகளுடன் நீங்கள் எந்த அளவிற்கு திருப்திகரமாக உள்ளீர்கள்?

- |                     |                          |
|---------------------|--------------------------|
| 1: வலுவாக அதிருப்தி | <input type="checkbox"/> |
| 2: அதிருப்தி        | <input type="checkbox"/> |
| 3: நடுநிலை          | <input type="checkbox"/> |
| 4: திருப்தி         | <input type="checkbox"/> |
| 5: வலுவாக திருப்தி  | <input type="checkbox"/> |

கே 8 - உங்கள் பிரச்சனையானது உங்கள் முதலாளியால் இணக்கமாக தீர்க்கப்பட்டதா?

ஆம் ☐ இல்லை ☐

இல்லையென்றால், நீங்கள் அடுத்து என்ன செய்தீர்கள் - தயவு செய்து குறிப்பிடவும்? \_\_\_\_\_

கே 9 - நீங்கள் தொழிலாளர் அமைச்சகம்/தொழிலாளர் அலுவலகத்தின் பிரச்சனை தீர்ப்பு அமைப்பை தொடர்பு கொண்டீர்களா?

ஆம்	<input type="checkbox"/>	தயவுசெய்து பின்வரும் கேள்விகளைத் தொடரவும்	இல்லை	<input type="checkbox"/>	தயவுசெய்து பக்கம் 7-யில் உள்ள கேள்வி 35-க்குச் செல்லவும்
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கே 10 - தொழிலாளர் அமைச்சகத்தின் மூலமாக உங்கள் பிரச்சனையை எவ்வாறு பதிவு செய்வது என்பது குறித்து உங்களுக்கு முன்னதாகவே தெரியுமா?

ஆம் ☐ இல்லை ☐

கே 11 - 1-5 மதிப்பீட்டளவில், தொடக்கத்தில் தொழிலாளர் அமைச்சகத்துடன் தொடர்பு கொள்வது குறித்து நீங்கள் எவ்வளவு உறுதிப்பாட்டுடன் உணர்ந்தீர்கள்?

- |                           |                          |
|---------------------------|--------------------------|
| 1: மிகவும் உறுதியற்ற நிலை | <input type="checkbox"/> |
| 2: உறுதியற்ற நிலை         | <input type="checkbox"/> |
| 3: நடுநிலை                | <input type="checkbox"/> |
| 4: உறுதியான நிலை          | <input type="checkbox"/> |
| 5: மிகவும் உறுதியான நிலை  | <input type="checkbox"/> |

கே 12 - 1-5 மதிப்பீட்டளவில், தஷீல் ஷாப் (Tasheel Shop) உங்களுக்கு அளித்த சேவை குறித்து எவ்வளவு திருப்திகரமாக உணர்ந்தீர்கள்?

- |                     |                          |
|---------------------|--------------------------|
| 1: வலுவாக அதிருப்தி | <input type="checkbox"/> |
| 2: அதிருப்தி        | <input type="checkbox"/> |
| 3: நடுநிலை          | <input type="checkbox"/> |
| 4: திருப்தி         | <input type="checkbox"/> |
| 5: வலுவாக திருப்தி  | <input type="checkbox"/> |

கே 13 - உங்கள் பிரச்சனையை பதிவு செய்யும்போது அல்லது கையாளுமபோதோ அரபிக் மொழி உங்களுக்கு ஒரு தடையாக இருந்துள்ளதா?

ஆம் ☐ இல்லை ☐

கே 14 - 1-5 மதிப்பீட்டளவில், தொடக்க நிலையில் கவுண்டர் சேவைகளை கொண்டு தொழிலாளர் அமைச்சகத்தில் உங்கள் புகாரை பதிவு செய்தல் உங்களுக்கு எவ்வளவு எளிதாக இருந்தது?

- |                   |                          |
|-------------------|--------------------------|
| 1: மிகவும் சிரமம் | <input type="checkbox"/> |
| 2: சிரமம்         | <input type="checkbox"/> |
| 3: நடுநிலை        | <input type="checkbox"/> |
| 4: எளிது          | <input type="checkbox"/> |
| 5: மிகவும் எளிது  | <input type="checkbox"/> |

உங்கள் புகாரை பதிவு செய்வது கடினமாக இருந்திருந்தால், ஏன் அவ்வாறு என்பதை -தயவு செய்து விளக்கவும்?

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கே 15 - தொழிலாளர் அலுவலகத்தில் நீங்கள் பிரச்சனையை பதிவு செய்தவுடன் பிரச்சனை தீர்வு தொடக்க அதிகாரப்பூர்வ செயல்முறையானது எவ்வளவு விரைவாக நடைபெற்றது?

- |                           |                          |
|---------------------------|--------------------------|
| 1: 1-3 நாட்கள்            | <input type="checkbox"/> |
| 2: 4-7 நாட்கள்            | <input type="checkbox"/> |
| 3: 7-14 நாட்கள்           | <input type="checkbox"/> |
| 4: 15-21 நாட்கள்          | <input type="checkbox"/> |
| 5: 21 நாட்களுக்கும் மேலாக | <input type="checkbox"/> |

கே 16 - இரண்டு கட்சிகளையும் வரவழைக்க தொழிலாளர் அலுவலகம் எடுத்துக்கொண்ட காலநேரம் ஒப்புக்கொள்வதாக இருந்ததா?

ஆம் ☐ இல்லை ☐

கே 17 - தொழிலாளர் அலுவலகத்தில் தொழிலாளர் அமைச்சகத்தின் சட்ட ஆய்வாளரை தொடர்புகொள்வதில் நீங்கள் வசதியாக உணர்ந்தீர்களா?

ஆம் ☐ இல்லை ☐

தயவு செய்து உங்கள் பதிலை சில சொற்களில் விளக்கவும்?

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கே 18 - 1-5 மதிப்பீட்டளவில், சட்ட ஆய்வாளருடன் உங்கள் எண்ணங்கள் மற்றும் கருத்துக்களை வெளிப்படுத்துவதில் நீங்கள் எந்த அளவிற்கு உறுதிப்பாட்டுடன் இருந்தீர்கள்?

- |                           |                          |
|---------------------------|--------------------------|
| 1: மிகவும் உறுதியற்ற நிலை | <input type="checkbox"/> |
| 2: உறுதியற்ற நிலை         | <input type="checkbox"/> |
| 3: நடுநிலை                | <input type="checkbox"/> |
| 4: உறுதியான நிலை          | <input type="checkbox"/> |
| 5: மிகவும் உறுதியான நிலை  | <input type="checkbox"/> |

உங்கள் சட்ட ஆய்வாளருடன் பேசுவதில் சிரமம் இருந்தால், அதற்கான காரணம் என்ன -தயவு செய்து விளக்கவும்?

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கே 19 - 1-5 மதிப்பீட்டளவில், உங்கள் பிரச்சனையை கையாளும்போது சட்ட ஆய்வாளரின் அணுகுமுறை உங்களுக்கு எந்த அளவிற்கு திருப்திகரமாக இருந்தது?

- |                     |                          |
|---------------------|--------------------------|
| 1: வலுவாக அதிருப்தி | <input type="checkbox"/> |
| 2: அதிருப்தி        | <input type="checkbox"/> |
| 3: நடுநிலை          | <input type="checkbox"/> |
| 4: திருப்தி         | <input type="checkbox"/> |
| 5: வலுவாக திருப்தி  | <input type="checkbox"/> |

கே 20 - 1-5 மதிப்பீட்டளவில், ஒரு தீர்வை பெறுவது தொடர்பாக சட்ட ஆய்வாளர் உங்களுடனும் உங்கள் முதலாளியுடனும் அணுகும் முறையானது எந்த அளவிற்கு பயனுள்ளதாக இருந்தது?

- |                      |                          |
|----------------------|--------------------------|
| 1: மிகவும் பயனற்றது  | <input type="checkbox"/> |
| 2: பயனற்றது          | <input type="checkbox"/> |
| 3: நடுநிலை           | <input type="checkbox"/> |
| 4: பயனுள்ளது         | <input type="checkbox"/> |
| 5: மிகவும் பயனுள்ளது | <input type="checkbox"/> |

கே 21 - 1-5 மதிப்பீட்டளவில், நடைபெற்ற பேச்சுவார்த்தைகள் எந்த அளவிற்கு நியாயமானதாக இருந்தது?

- |                         |                          |
|-------------------------|--------------------------|
| 1: மிகவும் நியாயமற்றதாக | <input type="checkbox"/> |
| 2: சற்றே நியாயமற்றதாக   | <input type="checkbox"/> |
| 3: நியாயமாக             | <input type="checkbox"/> |

கே 22 - எந்த நேரத்திலாவது நீங்கள் கூறுவதை அவர்கள் கேட்காமல் இருப்பதை உணர்ந்தீர்களா?

ஆம் ☐ இல்லை ☐ சிலநேரங்களில் ☐

நீங்கள் கூறுவது கேட்கப்படவில்லை என்று நீங்கள் உணர்ந்தால், ஏன் அவ்வாறு ஏற்பட்டது என்று நீங்கள் நினைக்கின்றீர்கள் -தயவு செய்து விளக்கவும்?

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கே 23 - சட்ட ஆய்வாளர் உங்கள் பிரச்சனைகளை புரிந்துகொண்டார் என்று நீங்கள் நினைக்கின்றீர்களா?

ஆம் ☐ இல்லை ☐ சிலநேரங்களில் ☐

உங்களை சட்ட ஆய்வாளர் புரிந்துகொள்ளவில்லை என்று நீங்கள் நினைத்தால், அதற்கு காரணம் என்னவாக இருக்கும் என்று நீங்கள் நினைக்கின்றீர்கள் -தயவு செய்து விளக்கவும்?

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கே 24 - எந்த நேரத்திலாவது சட்ட ஆய்வாளர் ஒருபுறமாக பேசுவதாக நீங்கள் எண்ணினீர்களா?

ஆம் ☐ இல்லை ☐ சிலநேரங்களில் ☐

பேச்சுவார்த்தைகளின்போது சட்ட ஆய்வாளர் ஒருபுறமாக பேசுவதாக நீங்கள் எண்ணினால், அதற்கு காரணம் என்னவாக இருக்கும் என்று நீங்கள் நினைக்கின்றீர்கள் -தயவு செய்து விளக்கவும்?

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கே 25 - விவாதங்களின்போது மோதல்கள் ஏற்பட்டதா?

ஆம் ☐ இல்லை ☐ சிலநேரங்களில் ☐

ஆம் என்றால்-தயவு செய்து விளக்கவும்?

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கே 26 - சட்ட ஆய்வாளரின் உதவியுடன் உங்கள் பிரச்சனை சுமுகமாக தீர்க்கப்பட்டதா?

ஆம் ☐ இல்லை ☐

இல்லையென்றால், அடுத்து என்ன நிகழ்ந்தது -தயவு செய்து குறிப்பிடவும்?

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கே 27 - 1-5 மதிப்பீட்டளவில், ஒட்டுமொத்தமாக உங்கள் பிரச்சனையை கையாளுவதில் தொழிலாளர் அலுவலக அமைப்புகள் உங்களுக்கு எந்த அளவிற்கு திருப்திகரமாக இருந்தது?

- |                     |                          |
|---------------------|--------------------------|
| 1: வலுவாக அதிருப்தி | <input type="checkbox"/> |
| 2: அதிருப்தி        | <input type="checkbox"/> |
| 3: நடுநிலை          | <input type="checkbox"/> |
| 4: திருப்தி         | <input type="checkbox"/> |
| 5: வலுவாக திருப்தி  | <input type="checkbox"/> |

கே 28 - 1-5 மதிப்பீட்டளவில், தொழிலாளர் அலுவலகத்தில் உள்ள ஊழியர் எந்த அளவிற்கு பயனுள்ளதாக இருந்தார்?

- |                       |                          |
|-----------------------|--------------------------|
| 1: மிகவும் பயனற்றவர்  | <input type="checkbox"/> |
| 2: பயனற்றவர்          | <input type="checkbox"/> |
| 3: நடுநிலை            | <input type="checkbox"/> |
| 4: பயனுள்ளவர்         | <input type="checkbox"/> |
| 5: மிகவும் பயனுள்ளவர் | <input type="checkbox"/> |

கே 29 - தொழிலாளர் அலுவலகத்தில் தீர்வு அளிக்கப்பட்ட பிறகு நீங்கள் ஏதேனும் பிரச்சனைகளை சந்தித்தீர்களா?

ஆம் ☐ இல்லை ☐

ஆம் என்றால், எந்த வகையான பிரச்சனைகளை நீங்கள் இன்னமும் சந்தித்து வருகின்றீர்கள் என்று தயவு செய்து குறிப்பிடவும்?

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கே 30 - 1-5 மதிப்பீட்டளவில், தொழில்துறை அமைச்சகத்துடன் வேறு இதர பிரச்சனையை கையாளுவீர்கள் என்பதில் எவ்வளவு உறுதிப்பாட்டுடன் உள்ளீர்கள்?

- |                           |                          |
|---------------------------|--------------------------|
| 1: மிகவும் உறுதியற்ற நிலை | <input type="checkbox"/> |
| 2: உறுதியற்ற நிலை         | <input type="checkbox"/> |
| 3: நடுநிலை                | <input type="checkbox"/> |
| 4: உறுதியான நிலை          | <input type="checkbox"/> |
| 5: மிகவும் உறுதியான நிலை  | <input type="checkbox"/> |

தயவு செய்து உங்கள் பதிலை விளக்கவும்:

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கே 31 - உங்களது கருத்தின்படி தொழில்துறை அமைச்சகம் எதனை சிறப்பாக செய்தது?

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கே 32 - உங்களது கருத்தின்படி தொழில்துறை அமைச்சகத்தில் சேவைகளை மேம்படுத்த என்ன செய்யவேண்டும்?

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கே 33 - உங்கள் பிரச்சனையை கையாளுமபோது நீங்கள் மூன்றாம் தரப்பினரிடம் இருந்து ஏதேனும் ஆதரவை பெற்றீர்களா?

ஆம் ☐ இல்லை ☐

ஆம் என்றால், எந்த அளவிற்கு மூன்றாம் தரப்பினரின் உதவியை பெற்றீர்கள்?

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கே 34 - இந்த செயல்முறையின்போது நீங்கள் சட்ட முன்னிலைப்படுத்தலின் வடிவில் ஏதேனும் பெற்றீர்களா?

ஆம் ☐ இல்லை ☐

ஆம் என்றால், அது எந்த அளவிற்கு உதவி புரிந்தது என்று நீங்கள் நினைக்கின்றீர்கள்?

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**இந்த கேள்விப்பட்டியலை முடிவடைத்ததற்கு மிக்க நன்றி**



**நீங்கள் கேள்வி 3-க்கு இல்லை என்று பதிலளித்திருந்தால், இந்த பகுதியை முடிவடைக்கவும்- நீங்கள் பணியிட பிரச்சனை எதையும் சந்திக்காவிட்டால் அல்லது ஒரு தொழிலாளர் புகாரை பதிவு செய்ய தொழிலாளர் அமைச்சகத்தின் தொழிலாளர் அலுவலகத்திற்கு செல்லவில்லையென்றால்.**

கே 35 - உங்களுக்கு பணியிட பிரச்சனை ஏதும் ஏற்பட்டால் என்ன செய்யவேண்டும் என்று உங்களுக்குத் தெரியுமா?

ஆம் ☐ இல்லை ☐

ஆம் என்றால், என்ன செய்யவேண்டும்?

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கே 36 - 1-5 மதிப்பீட்டளவில், நீங்கள் ஒரு பணியிட பிரச்சனை குறித்து உங்கள் முதலாளியுடன் நேரடியாக கையாளவேண்டுமென்றால், நீங்கள் எந்த அளவிற்கு உறுதிப்பாட்டுடன் உள்ளீர்கள்?

- |                           |                          |
|---------------------------|--------------------------|
| 1: மிகவும் உறுதியற்ற நிலை | <input type="checkbox"/> |
| 2: உறுதியற்ற நிலை         | <input type="checkbox"/> |
| 3: நடுநிலை                | <input type="checkbox"/> |
| 4: உறுதியான நிலை          | <input type="checkbox"/> |
| 5: மிகவும் உறுதியான நிலை  | <input type="checkbox"/> |

கே 37 - உங்களுக்கு ஏதேனும் பணியிட பிரச்சனை ஏற்பட்டால், அது குறித்து உங்கள் முதலாளி உங்களிடம் எந்த அளவிற்கு நியாயமாக நடந்துகொள்வார் என்று நீங்கள் நினைக்கின்றீர்கள்?

- |                         |                          |
|-------------------------|--------------------------|
| 1: மிகவும் நியாயமற்றதாக | <input type="checkbox"/> |
| 2: சற்றே நியாயமற்றதாக   | <input type="checkbox"/> |
| 3: நியாயமாக             | <input type="checkbox"/> |

கே 38 - உங்கள் பிரச்சனையை பதிவு செய்யும்போது அல்லது கையாளும்போதோ அரபிக் மொழி உங்களுக்கு ஒரு தடையாக இருந்துள்ளதா?

ஆம் ☐ இல்லை ☐

கே 39 - 1-5 மதிப்பீட்டளவில், தொழிலாளர் அமைச்சகத்துடன் ஒரு பணியிட பிரச்சனையை நீங்கள் கையாளவேண்டுமென்றால், நீங்கள் எந்த அளவிற்கு உறுதிப்பாட்டுடன் இருப்பீர்கள்?

- |                           |                          |
|---------------------------|--------------------------|
| 1: மிகவும் உறுதியற்ற நிலை | <input type="checkbox"/> |
| 2: உறுதியற்ற நிலை         | <input type="checkbox"/> |
| 3: நடுநிலை                | <input type="checkbox"/> |
| 4: உறுதியான நிலை          | <input type="checkbox"/> |
| 5: மிகவும் உறுதியான நிலை  | <input type="checkbox"/> |

கே 40 - தொழிலாளர் அமைச்சகமானது உங்கள் பணியிட பிரச்சனையை கையாள வேண்டுமென்றால், அது குறித்து அவர்கள் எந்த அளவிற்கு நியாயமாக இருப்பார்கள் என்று நீங்கள் நினைக்கின்றீர்கள்?

- |                         |                          |
|-------------------------|--------------------------|
| 1: மிகவும் நியாயமற்றதாக | <input type="checkbox"/> |
| 2: சற்றே நியாயமற்றதாக   | <input type="checkbox"/> |
| 3: நியாயமாக             | <input type="checkbox"/> |

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கே 41 - 1-5 மதிப்பீட்டளவில், ஒரு பணியிட பிரச்சனையை கையாளுவதில் தொழிலாளர் அமைச்சகத்தில் உள்ள ஊழியர் எந்த அளவிற்கு பயனுள்ளவர் என்று நீங்கள் நினைக்கின்றீர்கள்?

- |                      |                          |
|----------------------|--------------------------|
| 1: மிகவும் பயனற்றவர் | <input type="checkbox"/> |
| 2: பயனற்றவர்         | <input type="checkbox"/> |
| 3: நடுநிலை           | <input type="checkbox"/> |
| 4: பயனுவர்           | <input type="checkbox"/> |
| 5: மிகவும் பயனுவர்   | <input type="checkbox"/> |

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கே 42 - தொழிலாளர் அமைச்சகத்தில் மத்தியஸ்த முறையின்போது உங்களுக்கு ஆதரவு அளிப்பதற்காக உங்கள் சொந்த வடிவ சட்ட முன்னிலைப்படுத்தலை வரவேற்பீர்களா?

ஆம் ☐ இல்லை ☐

ஆம் என்றால், இது எவ்வாறு உதவும் என்று நீங்கள் நினைக்கின்றீர்கள்?

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கே 43 - நீங்கள் பணியிட பிரச்சனையை தீர்ப்பதற்காக நீதிமன்றத்திற்கு செல்லவேண்டுமென்றால், அங்கு உங்களை நியாயமாக நடத்துவார்கள் என்று நீங்கள் நினைக்கின்றீர்களா?

- |                         |                          |
|-------------------------|--------------------------|
| 1: மிகவும் நியாயமற்றதாக | <input type="checkbox"/> |
| 2: சற்றே நியாயமற்றதாக   | <input type="checkbox"/> |
| 3: நியாயமாக             | <input type="checkbox"/> |

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**இந்த கேள்விப்பட்டியலை முடிவடைத்ததற்கு மிக்க நன்றி**