

## **HOW FAR DOES THE UAE COMPLY WITH INTERNATIONAL HUMAN RIGHTS LAW ON HUMAN TRAFFICKING?**

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### **Abstract**

*The UAE is a unique country in terms of its economic growth, development and demographic make-up. The dynamic interplay of these three elements has made it a competitive player on the global landscape. Nevertheless, there is a considerable body of literature which suggests that the rapid expansion and prosperity enjoyed by the UAE has come at the expense of the exploitation of vulnerable migrants who also live there. A vast array of human rights abuses have been brought to the attention of the international community, including a rising number of fatalities, causing many to conclude that the UAE is a key destination and transit country for human trafficking. In response, the UAE government has taken decisive steps to quell these allegations; it has ratified international instruments, formed new committees and opened its doors for inspection to three UN Special Rapporteurs. Yet, do these actions suggest that the UAE is fully compliant with international law on human trafficking? This is a critical question, as there are over 8 million migrants in the UAE and mechanisms in law which are specifically designed to oppress and/or deliberately exclude them, such as the kafala-sponsorship system. International human rights law states that governments are obligated to fulfill, respect and protect the human rights and freedoms of all human beings, irrespective of their nationality or ethnic origin. Hence, this article provides both a comprehensive and timely analysis of the UAE's relationship with international human rights law and migration to ascertain if it is indeed meeting its obligations.*

*Keywords: Human trafficking, international human rights law, UAE, migrant workers, domestic migrant workers, kafala, globalisation*

## INTRODUCTION

In recent years, the UAE has come under intense international scrutiny and has received severe criticism for the treatment of its large population of migrant workers. It is accused of being a key destination and transit country for human trafficking. Evidence given for this allegation is the oppressive kafala-sponsorship system and its overall mistreatment of migrant workers. The kafala-sponsorship system hands complete control of a migrant's immigration status, mobility, employment, living conditions and income to their employer. This oppressive regulatory framework, that migrants find themselves in upon entering the UAE, has underpinned a plethora of human rights abuses which have been compared to indentured labour, debt bondage and modern-day slavery. Up until September 2017, domestic migrant workers, the majority of whom are women and girls, were afforded no legal protections in the country. Additionally, there are laws and restrictions prohibiting trade unions or organising, and all of the non-governmental organisations (NGOs) who have advocated for change of this exploitative situation have been ejected from the country.

Simply put, these actions run counter to the obligations of a government who is a member of the international community. Member states assume obligations and duties under international law and customary international law to promote and protect the inalienable human rights and freedoms of individuals or groups. In response to international outrage, the UAE government has begun to work with the international community and turned its focus onto human trafficking on its territory. To this end, it has formulated national legislation against human trafficking and has ratified a number of key international legal instruments. It has also invited three UN Special Rapporteurs to investigate and report on its efforts in this area. This article will explore to what extent the UAE government is complying with international human rights law on human trafficking to determine whether its actions are only in fact designed to appease the international community, and in the context of a globalised world where humans are commodities, if the international community can by contrast be rendered blameless in this complex sphere.

To contextualise the issue, the opening section 'Human Trafficking in the Context of Globalisation and Migration' examines the scourge of human trafficking to ascertain why and how humans are trafficked for profit. 'International Legislation on (and Applicable to) Human Trafficking' looks at some of the ways that international human rights law has tried to address this global criminal enterprise. 'The UAE: Hub of Economic Growth, Development and Migration' presents an overview of the UAE's unique economic history and how this precipitated a need for an influx of migrant labour. Next is an interrogation of the kafala-sponsorship system, the plight of construction and domestic migrant workers, and the ways that these interface with human

trafficking in the UAE. These particular realms have been selected as they are habitually overlooked in an international and national discourse – embedded in a globalised economy - that benefits from foregrounding human trafficking in the sex industry, and not migrant labour. ‘How Far Does the UAE Comply with International Human Rights Law on Human Trafficking?’ appraises the efforts made by the UAE government. Utilising two reports submitted to the United Nations and interspersing these with research on human trafficking and migrant workers in the UAE, the section considers how effective, meaningful and credible the work of the UAE government has been in this area that powerfully intersects with international human rights law. ‘Some Limitations of International Human Rights Law on Human Trafficking’ widens the debate to critique international human rights law and the international community. The final section reflects upon why the UAE should consider steering a different course where its treatment of migrant workers is concerned and the potentially disturbing consequences if it does not.

### **Human Trafficking in the Context of Globalisation and Migration**

Globalisation has allowed every continent in the world access to an unprecedented flow of capital, products, services and labour.<sup>12</sup> The global supply and demand of an abundance of transportable commodities has been facilitated by the transfer of capital, opening up of borders, trade deregulation, cheap transportation and global communications.<sup>34</sup> This global culture has been accompanied by a mass movement of people seeking intangible goods, namely: a better quality of life and the promise of work.<sup>5</sup> The International Organisation for Migration (IOM) estimates that in 2015 over 1 billion people in the world were migrants.<sup>6</sup> The IOM estimate, which is comprised of both internal and international migrants, represents 1 in 7 people worldwide.<sup>7</sup> It is a phenomenal development that has brought to the fore an epic tragedy of globalisation. International migrants are very rarely afforded the same legal protections and human rights as citizens of their host countries.<sup>8</sup> Migrants are habitually regarded and treated as outsiders, a precarious status leaving them open to exploitation and vulnerable to a plethora of violations of their basic human rights.<sup>9</sup> When transposed onto a globalised context, with

<sup>1</sup>Luz Estella Nagle, ‘Selling Souls: the effect of globalization on human trafficking and forced servitude’ *Wis. Int’l LJ* (2008) 26 131.

<sup>2</sup>Loring Jones et al., ‘Human Trafficking between Thailand and Japan: lessons in recruitment, transit and control’ *International Journal of Social Welfare* (2011) 20.2: 203-211.

<sup>3</sup>Nagle (n 3).

<sup>4</sup>Ann Jordan, *Human Trafficking and Globalization* (Center for American Progress: 2004).

<sup>5</sup>Nagle (n 3).

<sup>6</sup>‘Global Migration Trends Factsheet 2015’, International Organisation of Migration, [https://publications.iom.int/system/files/global\\_migration\\_trends\\_2015\\_factsheet.pdf](https://publications.iom.int/system/files/global_migration_trends_2015_factsheet.pdf) [accessed 6 March 2018]

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

<sup>8</sup>Jones et al. (n 3).

<sup>9</sup>*Ibid.*

competing economic markets and a population boom, these are the perfect conditions for a supply and demand chain of human exploitation where migrants are the supply in the criminal industry of human trafficking.<sup>10111213</sup>

Human trafficking is a complex illegal enterprise which supplies human beings for the purpose of labour exploitation and servitude.<sup>1415</sup> The sale of human beings operates in a worldwide market in response to a demand for people in domestic, agricultural and construction work, commercial sex work, sex tourism, the slave trade and as labour slaves, street begging, 'sweatshop' labour, the trafficking of human organs and tissue, and for the use of children in armed conflicts and as camel jockeys.<sup>16171819</sup> What has been termed the economic 'push' and 'pull' factors of migration help to contextualise and explain why and how people are trafficked for profit.<sup>2021</sup> 'Push' factors have been identified as aspirations for an improved economic and personal life from people living in countries engulfed in civil wars, with a dearth of economic opportunities resulting in high unemployment levels, in poverty, with inadequate health and education systems, or people who wish to escape from the devastation of natural disasters, their experiences of discrimination, physical, psychological and domestic violence, or familial abuse.<sup>22232425</sup> These are all examples of circumstances that 'push' or propel people from many parts of the world to seek better working and living conditions in richer sections of the globe.<sup>2627</sup> Economic 'pull' factors describe the dynamics in destination countries which contribute towards the illicit industry of trafficking in humans,<sup>28</sup> cited by Nagle<sup>29</sup> as follows:

- A high demand for cheap or uncompensated labour
- Weak or no laws against various forms of forced servitude

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<sup>10</sup>Ibid.

<sup>11</sup>Nagle (n 3).

<sup>12</sup>Jordan (n 3).

<sup>13</sup>John Winterdyk and Philip Reichel, 'Introduction to Special Issue: human trafficking: issues and perspectives' *European Journal of Criminology* (2010) 7:1 5-10.

<sup>14</sup>Jones et al. (n 3).

<sup>15</sup>Jordan (n 3).

<sup>16</sup>Jones et al. (n 3).

<sup>17</sup>Stephan Parmentier, 'Epilogue: human trafficking seen from the future' *European Journal of Criminology*(2010) 795-100.

<sup>18</sup>Winterdyk and Reichel (n 3).

<sup>19</sup>UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children : Addendum : Mission to the United Arab Emirates*, 22 February 2013, A/HRC/23/48.

<sup>20</sup>Parmentier (n 4).

<sup>21</sup>Winterdyk and Reichel (n 3).

<sup>22</sup>Nagle (n 3).

<sup>23</sup>Jordan (n 3).

<sup>24</sup>Jones et al. (n 3).

<sup>25</sup>Parmentier (n 4).

<sup>26</sup>Nagle (n 3).

<sup>27</sup>Parmentier (n 4).

<sup>28</sup>Jordan (n 3).

<sup>29</sup>Nagle (n 3).

- A demand for commercial sex and bondage arrangements
- An indifference to social conditions and morality
- A lack of public awareness
- Corruption
- Weak law enforcement
- Inconsistent application of public policy
- Entrenched organized crime networks

Human trafficking is a lucrative business that generates enormous profits for both exit and destination countries. The impact of a fast-paced global economy, the opening of trade barriers and the globalisation of markets has meant that for businesses to stay competitive within a precarious and fluctuating global economy they need to assemble and retain a workforce for the least amount of investment.<sup>30</sup> Many exit countries rely heavily on money from migrant workers, regardless of the circumstances that their citizens might be experiencing.<sup>31,32</sup> Governments and embassies have even been known to refuse their citizens facing abusive and exploitative situations abroad any help and assistance.<sup>33</sup> This is owing to their profitability, as can be seen in the case of Nepal and Sri Lanka. It has been calculated that Nepalese migrant workers send \$4 billion to Nepal annually which comprises 28% of its domestic product,<sup>34</sup> and Sri Lanka, a country that has been ravaged by war and violence, utilises the money sent home by its citizens to keep its economy afloat and maintain social and political stability.<sup>35</sup> Many Asian and African governments actively pursue labour immigration policies viewed as a means to: generate foreign exchange, relieve domestic unemployment and reduce the need for the state to resource social welfare policies.<sup>36</sup> Correspondingly, India even made changes to its legislation (the Foreign Exchange Regulation Act, 1973) to allow money made by Indian migrant workers to flow more easily from the Gulf onto its shores.<sup>37</sup>

### International Legislation on (and Applicable to) Human Trafficking

<sup>30</sup> Ibid.

<sup>31</sup> Nirmal Aryal et al., 'Injury and mortality in young Nepalese migrant workers: a call for public health action' *Asia Pacific Journal of Public Health* (2016) 28.8: 703-705.

<sup>32</sup> Hera Syed, 'The Many Costs of Kafala' *The Review and Debates at NYU* (November 2016) <http://www.thereviewatnyu.com/all/2016/11/27/the-many-costs-of-kafala> [accessed 18 March 2018]

<sup>33</sup> Syed (n 5).

<sup>34</sup> Aryal et al. (n 5).

<sup>35</sup> Syed (n 5).

<sup>36</sup> Bina Fernandez, 'Essential yet invisible: migrant domestic workers in the GCC' *Gulf Labour Markets and Migration: 2014*.

<sup>37</sup> Syed (n 5).

International human rights exist to promote and protect the fundamental human rights and freedoms of all human beings regardless of their nationality, place of residence, and national or ethnic origin.<sup>38</sup> International treaties and customary law form the backbone of international human rights law.<sup>39</sup> International human rights law compels governments to assume certain obligations that respect and fulfil human rights to individuals or groups, and that protect them from human rights abuses.<sup>40</sup> As has already been described, human trafficking is a multifaceted and complex phenomenon. It interfaces and intersects with (but cannot be unproblematically reduced to, or conflated with) slavery, torture, debt bondage, forced labour, sexual exploitation, commercial sexual exploitation, violence, racism, sexism, child labour, child abuse, poverty, xenophobia, cyber-crime and more. Since these behaviours and practices contravene the human rights of others, inevitably human trafficking is categorically prohibited in international human rights law.<sup>41</sup> Moreover, a number of human rights representing the expectations and claims of substantial segments of humanity have now entered into the category of customary international law, such as the prohibition of torture and slavery, these interdictions are equally binding on all states and determine the appropriate international response to trafficking.<sup>424344</sup>

There are a number of core international human rights declarations, treaties and conventions that intersect with and therefore apply to human trafficking. They are an important reflection on human rights and have formed the basis for specific mechanisms and protections.<sup>45</sup> They are comprised of the Universal Declaration of Human Rights,<sup>46</sup> UN conventions and protocols and ILO conventions and supplementary provisions, as will be considered next.

### The Universal Declaration of Human Rights (UDHR)

On 10 December 1948 the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR).<sup>47</sup> It was drafted to delineate the basic civil, political, economic, social

<sup>38</sup> 'What are Human Rights?' *United Nations Human Rights Office of the High Commissioner* <http://www.ohchr.org/EN/Issues/Pages/WhatAreHumanRights.aspx> [25 March 2018]

<sup>39</sup> 'International Human Rights Law', *United Nations Human Rights Office of the High Commissioner* <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx> [25 March 2018]

<sup>40</sup> Ibid.

<sup>41</sup> Youla Haddadin and Ilona Klímová-Alexander, 'Human rights-based approach to trafficking: the work of the United Nations Office of the High Commissioner for Human Rights' *Judges Journal* (2013) 52:1 22-27.

<sup>42</sup> Ibid.

<sup>43</sup> Malcolm N. Shaw, *International Law* (Cambridge University Press 2008) 7.

<sup>44</sup> Ralph Zacklin, Assistant Secretary-General, United Nations, 'A Personal Perspective on International Law' *International Law* (ed.) Malcolm D Evans (Oxford University Press 2003) 22.

<sup>45</sup> 'International Human Rights Law', *United Nations Human Rights Office of the High Commissioner* <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx> [25 March 2018]

<sup>46</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III)

<sup>47</sup> 'The Universal Declaration of Human Rights', *United Nations Human Rights Office of the High Commissioner*

and cultural rights that all humans everywhere are entitled to enjoy, and it has over time become the benchmark for human rights that are to be respected and protected.<sup>48</sup> Although not a legally enforceable instrument the UDHR has arguably become legally binding via custom, general principles of law and interpretation of the UN charter in state practice.<sup>49</sup> A milestone in the history of human rights, it has had a profound influence on the constitutions of many states, and on the formulation of a large number of human rights treaties and laws. Articles 3 to 6 of the UDHR states:

Everyone has the right to life, liberty and security (Article 3).

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms (Article 4).

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5).

Everyone has the right to recognition everywhere as a person before the law (Article 6).

In the context of these Articles human trafficking can unambiguously be understood as severely impinging upon a person's human rights and freedoms, therefore it is a practice which is at variance with international human rights law.

### The ILO Conventions

Since 1919, the International Labour Organisation (ILO) has developed labour standards which promote 'decent and productive work, in conditions of freedom, equity, security and dignity...ensuring that the growth of the global economy provides benefits to all'.<sup>50</sup> Its eight core conventions which are comprised of principles and rights that are due to a person in their place of work include the five listed below:

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)<sup>51</sup>

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)<sup>52</sup>

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<http://www.ohchr.org/EN/UDHR/Pages/UDHRIndex.aspx> [25 March 2018]

<sup>48</sup> 'International Human Rights Law', *United Nations Human Rights Office of the High Commissioner*

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx> [25 March 2018]

<sup>49</sup> Shaw (n 6).

<sup>50</sup> 'Introduction to International Labour Standards', *International Labour Organisation*

<http://www.ilo.org/global/standards/introduction-to-international-labour-standards/lang--en/index.htm> [accessed 15 March 2018]

<sup>51</sup> International Labour Organization (ILO), *Freedom of Association and Protection of the Right to Organise Convention*, C87, 9 July 1948.

<sup>52</sup> International Labour Organization (ILO), *Right to Organise and Collective Bargaining Convention*, C98, 1 July 1949.



Forced Labour Convention, 1930 (No. 29)<sup>53</sup>

Abolition of Forced Labour Convention, 1957 (No. 105)<sup>54</sup>

Worst Forms of Child Labour Convention, 1999 (No. 182)<sup>55</sup>

In addition to its core principles, the ILO has formulated international policies to promote basic human rights, improve livelihoods and living conditions ‘for people everywhere’,<sup>56</sup> and its coverage has extended to the incorporate the following areas:

Migration for Employment Convention (Revised), 1949(No. 97)<sup>57</sup>

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)<sup>58</sup>

Safety and Health in Construction, 1988 (No. 167)<sup>59</sup>

Private Employment Agencies Convention, 1997 (No. 181)<sup>60</sup>

Domestic Workers Convention, 2011 (No. 189)<sup>61</sup>

Thus, the ILO has formulated international legal instruments to ensure fair terms of employment and working conditions to invisible, unregulated and vulnerable workers, recognising that they are habitually (and increasingly) migrants.<sup>62</sup> Together with the more general international human rights treaties, these legal instruments lay out a comprehensive set of civil, political, economic and social rights for migrant workers and their families, irrespective of whether they are living and working abroad illegally.<sup>63</sup>

### **The UN Protocol to Prevent, Suppress and Punish Trafficking Persons, especially Women and Children (The Palermo Protocol)**

<sup>53</sup>International Labour Organization (ILO), *Forced Labour Convention*, C29, 28 June 1930.

<sup>54</sup> International Labour Organization (ILO), *Abolition of Forced Labour Convention*, C105, 25 June 1957.

<sup>55</sup>International Labour Organization (ILO), *Worst Forms of Child Labour Convention*, C182, 17 June 1999.

<sup>56</sup> ‘Mission and impact of the ILO’, *International Labour Organisation*

<http://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.htm> [accessed 15 March 2018]

<sup>57</sup> International Labour Organization (ILO), *Migration for Employment Convention (Revised)*, C97, 1 July 1949.

<sup>58</sup> International Labour Organization (ILO), *Migrant Workers (Supplementary Provisions) Convention*, C143, 24 June 1975.

<sup>59</sup> International Labour Organization (ILO), *Safety and Health in Construction*, C167, 20 June 1988.

<sup>60</sup> International Labour Organization (ILO), *Private Employment Agencies Convention*, C181 19 June 1997.

<sup>61</sup> International Labour Organization (ILO), *Domestic Workers Convention*, C189 16 June 2011.

<sup>62</sup>Fernandez (n 5).

<sup>63</sup>Martin Ruhs, ‘Rethinking International Legal Standards for the Protection of Migrant Workers: The Case for a “Core Rights” Approach’

*AJIL Unbound* (2017) 111 172-176.



The major international instrument explicitly and unequivocally tasked with addressing the crime of human trafficking is the UN Protocol to Prevent, Suppress and Punish Trafficking Persons, especially Women and Children (also referred to as the Palermo Protocol) which was adopted 15 November 2000 and entered into force 25 December 2003.<sup>64</sup> It is one out of a total of three protocols that supplemented the UN Convention against Transnational Organized Crime (also referred to as the Palermo Accord), adopted 15 November 2000 and which entered into force 29 September 2003.<sup>65</sup> The overriding aim of the convention with its accompanying protocols was to 'target specific areas and manifestations of organized crime'.<sup>66</sup> UN Secretary General Kofi Annan (1997-2006) called the convention a 'watershed event' for the international community's fight against organized crime and defence of human rights.<sup>67</sup> Commenting on human trafficking specifically Annan stated:

I believe the trafficking of persons, particularly women and children, for forced and exploitative labour, including for sexual exploitation, is one of the most egregious violations of human rights that the United Nations now confronts. It is widespread and growing...facilitated by practices that discriminate against women and driven by cruel indifference to human suffering on the part of those who exploit the services that the victims are forced to provide. The fate of these most vulnerable people in our world is an affront to human dignity and a challenge to every State, every people and every community...Criminal groups have wasted no time in embracing today's globalized economy and the sophisticated technology that goes with it...The Convention gives us a new tool to address the scourge of crime as a global problem.<sup>68</sup>

In the above remarks, Annan depicts human trafficking as a global, human rights issue. It is not simply a public order crime to be dealt with by national criminal laws or an immigration issue necessitating criminal justice mechanisms of nation-states.<sup>6970</sup> Significantly, Annan foregrounds human trafficking as a serious violation of human rights which has emerged from out of the context of a technologically sophisticated world and globalized economy. It exploits

<sup>64</sup>UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000.

<sup>65</sup> UN General Assembly, *United Nations Convention against Transnational Organized Crime: resolution / adopted by the General Assembly*, 8 January 2001, A/RES/55/25.

<sup>66</sup>'United Nations Convention against Transnational Organized Crime and the Protocols Thereto', *United Nations Office on Drugs and Crime (UNODC)*<https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html> [accessed 15 March 2018]

<sup>67</sup>'United Nations Convention against Transnational Organized Crime and the Protocols Thereto', *United Nations Office on Drugs and Crime (UNODC)*<https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> [accessed 15 March 2018]

<sup>68</sup>'United Nations Convention against Transnational Organized Crime and the Protocols Thereto', *United Nations Office on Drugs and Crime (UNODC)*<https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf> (p. 4) [accessed 15 March 2018]

<sup>69</sup>Parmentier (n 4).

<sup>70</sup>Haddadin and Klímová-Alexander (n 5).

people by forcing them to supply their services to this demanding economy with a cruel indifference for any suffering this may cause them. Centering human rights in this way provides a conceptual framework for dealing with human trafficking and an operational directive focused on the protection and promotion of human rights.<sup>71</sup> It calls forth states who are subject to international human rights law to mobilise all of their resources in dealing with this 'scourge of crime' which violates human rights treaties and other international legal instruments.<sup>72</sup>

The Palermo Protocol is hailed by the UN as 'the first global legally binding instrument with an agreed definition on trafficking in persons'.<sup>73</sup> Notably, the provision of a uniform definition of trafficking is expressly intended 'to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation' in the investigation and prosecution of human trafficking cases.<sup>74</sup> The Palermo Protocol defines human trafficking as: *[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.* (Article 3)

Exploitation is incorporated in the definition it provides of trafficking within the same article as follows: *[T]he exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.* Hence, the Palermo Protocol instituted an international standard by which to define human trafficking. An international consensus which recognised the gravity of human trafficking as both a heinous crime and gross abuse of a person's fundamental human rights and freedoms.<sup>75</sup> It also underscores the wide scope of trafficking; anyone can be trafficked and it incorporates forced labour and services.<sup>76</sup> An additional objective of the Protocol is the protection and assistance of victims of human trafficking by ensuring that their human rights are fully respected and that they are not treated as criminals.<sup>7778</sup>

## The Recommended Principles and Guidelines on Human Rights and Human Trafficking

<sup>71</sup>Ibid.

<sup>72</sup>Parmentier (n 4).

<sup>73</sup>'United Nations Convention against Transnational Organized Crime and the Protocols Thereto', *United Nations Office on Drugs and Crime (UNODC)* <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html> [accessed 15 March 2018]

<sup>74</sup>Ibid.

<sup>75</sup>Winterdyk and Reichel (n 3).

<sup>76</sup>Joan Fitzpatrick, 'Trafficking and a human rights violation: The complex intersection of legal frameworks for conceptualizing and combating trafficking' *Mich. J. Int'l L.* (2002) 24 1143.

<sup>77</sup><https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>

<sup>78</sup>Winterdyk and Reichel (n 3).

In May 2002, Mary Robinson, the UN High Commissioner for Human Rights (1990-1997), submitted the Recommended Principles and Guidelines on Human Rights and Human Trafficking<sup>79</sup> devised by a collaborative trafficking program to the UN Economic and Social Council.<sup>80</sup> The Recommended Principles and Guidelines were formulated to address some of the shortcomings of the UN Protocol, which had received criticism for its *obligatory* criminal law responses, law enforcement and information-sharing, whilst allowing victim protections and provisions to be *optional*.<sup>81</sup> In light of this, Fitzpatrick writes of the tendency 'to target the least resistant and influential cohort' who are the victims of trafficking and criminalise them, instead of the perpetrators (who may be dangerous and wealthy), or the beneficiaries (who may be citizens of the host country).<sup>82</sup> It was felt that a victim-centred approach, recognising the multifarious ways that trafficking victims are victimized by virtue of their legal status, poverty, language barriers, age and trauma, should always inform and guide the development of laws and policies on human trafficking.<sup>8384</sup>

The Recommended Principles and Guidelines were primarily developed to fill the need for a practical, human rights-based policy guidance so that states and intergovernmental organisations could integrate them into their national, regional and international laws, policies and interventions aimed at preventing trafficking and protecting victims of it. Even though it is not a legally binding document, it is a human rights instrument which establishes the specific actions governments must take to protect the rights of trafficked persons.<sup>85</sup> The Palermo Protocol and the Recommended Principles and Guidelines combined supply the foundation for 'a truly comprehensive human-rights based law or treaty' on human trafficking.<sup>86</sup>

### The UAE: Hub of Economic Growth, Development and Migration

Human trafficking cannot be separated from significant changes that have occurred in societies over the last few decades at the domestic level.<sup>87</sup> In under fifty years, the UAE has achieved an economic and social transformation which the majority of developed, Western countries

<sup>79</sup> UN Office of the High Commissioner for Human Rights (OHCHR), *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 20 May 2002, E/2002/68/Add.1.

<sup>80</sup> Fitzpatrick (n 10).

<sup>81</sup> Ann Jordan, 'Initiative Against Trafficking in Persons, Global Rights, USA Human Rights for Trafficked Persons in Countries of Destination – International standards or serendipity?', *Ensuring Human Rights Protection in Countries of Destination: Breaking the Cycle of Trafficking*, Conference Report, Helsinki, (24 September 2004) Office for Democratic Institutions and Human Rights (ODIHR).

<sup>82</sup> Fitzpatrick (n 10).

<sup>83</sup> Fitzpatrick (n 10).

<sup>84</sup> Jordan (n 10).

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Parmentier (n 4).

experienced in multiple 'lengthy and difficult' stages over two centuries.<sup>88</sup> The early 1970s ushered in an epoch of tremendous economic growth and urban development to the region now recognised as the United Arab Emirates.<sup>89</sup> The formation of the Federation on 2 December 1971, with Sheikh Zayed bin Sultan Al Nahyan as its first president, saw the unification of six emirates after the withdrawal of British forces, with the seventh joining in 1972.<sup>90</sup> The seven emirates in order of their size are Abu Dhabi; Dubai; Sharjah; Umm al Qaywayn; Ajman; Al Fajayrah and Ras al Khaymah.<sup>91</sup> A massive increase in oil production and exports, and the explosive rise in the price of oil in 1973, allowed for the distribution of considerable oil revenues into the social and economic infrastructure, substantial salary increases, and a high standard of social services, in areas such as health and education.<sup>92</sup>

Skilled and unskilled foreign workers are credited with both initiating and sustaining the economic development of the UAE since the early 1970s.<sup>93</sup> The discovery of oil and rapid financial prosperity necessitated a large workforce, which significantly altered migration patterns and sources.<sup>94</sup> The socio-economic opportunities created by the oil boom attracted many people to the UAE and is represented in its demographic trend. The demographic split between nationals and migrant workers in the UAE has had profound social, political and legal implications.<sup>95</sup> The massive influx of migrants – a response to some of the 'push' and 'pull' factors already outlined - now outnumber the indigenous population, producing a two-tier labour market.<sup>96</sup> At the top are the indigenous population who comprise only 10% of the total work force, and beneath them are the migrant workers who make up 90% of its working population and constitute 'an unlimited supply of foreign labour'.<sup>97</sup>

Low and semi-skilled workers from all over the world are attracted to this fast growing country, comprised of cities like Dubai, which they see as carrying enormous prospects and opportunities for employment.<sup>98</sup> In 2015 the IOM recorded the immigrant population of the UAE

<sup>88</sup>Mohamed Shihab, 'Economic development in the UAE' *United Arab Emirates: a new perspective* (2001): 249-259.

<sup>89</sup>Rima Sabban, 'United Arab Emirates: Migrant women in the United Arab Emirates. The case of female domestic workers' *Gender Promotion Program* (2002).

<sup>90</sup>Martin Fullard, 'How the UAE was born', *Gulf News* (November 2015)  
<http://gulfnews.com/guides/life/community/how-the-uae-was-born-1.1610731>

<sup>91</sup> Ibid.

<sup>92</sup>Shihab (n 11).

<sup>93</sup>Shihab (n 11).

<sup>94</sup>Pardis Mahdavi and Christine Sargent, 'Questioning the discursive construction of trafficking and forced labor in the United Arab Emirates' *Journal of Middle East Women's Studies* (2011) 7.3 6-35.

<sup>95</sup>Sabban (n 11).

<sup>96</sup>Shihab (n 11).

<sup>97</sup>Ibid.

<sup>98</sup>'The UN Special Rapporteur in Trafficking in Persons, especially Women and Children concludes her country visit to the United Arab Emirates', United Nations Human Rights Office of the High Commissioner (17 April 2012)  
<http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12062&LangID=E> [accessed 25 March 2018]

to be 8, 095, 126 people, a figure which constitutes 88.40% of the total resident population.<sup>99</sup>  
The top ten countries represented are listed in Table 1. on page 13.<sup>100</sup>

Table 1. A Top Ten Country Breakdown of the Immigrant Population in the UAE in 2015<sup>101</sup>

Rank	Country of origin	Number of people in the UAE
1	India	3, 499, 337
2	Egypt	935, 308
3	Bangladesh	906, 483
4	Pakistan	863, 858
5	Philippines	555, 704
6	Indonesia	260, 312
7	Yemen	173, 480
8	Jordan	167, 585
9	Sri Lanka	113, 788
10	Sudan	86, 981

However, these migrant workers are not recognised as migrants in any traditional sense of the term.<sup>102</sup> By contrast, there exists a damaging discourse that reduces them to ‘temporary contractual workers’.<sup>103</sup> They are conceived of as a ‘rotational workforce’ sourced from overseas to meet the labour needs and requirements of a booming economy.<sup>104</sup> It is this conception which has served to obscure some of the pervasive practices which are in reality human trafficking - with some Emirati authorities even insisting that labour issues should be treated separately from human trafficking - and has helped to make the UAE a key destination and transit country for the trafficking in persons.<sup>105</sup>

## The Exploitation of Migrant Labour in the UAE

<sup>99</sup>‘World Migration’, *International Organisation for Migration*, The UN Migration Agency <https://www.iom.int/world-migration> [accessed 23 March 2018]

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

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

<sup>102</sup>Zahra Babar, ‘The “Humane Economy”: Migrant Labour and Islam in Qatar and the UAE’ *Sociology of Islam* (2017) 5.2-3 204.

<sup>103</sup>UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children: Addendum: Mission to the United Arab Emirates*, 22 February 2013, A/HRC/23/48/Add.1, available at:

<http://www.refworld.org/docid/51aefc064.html>  
[accessed 29 March 2018]

<sup>104</sup>Babar (n 13).

<sup>105</sup>UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children: Addendum: Mission to the United Arab Emirates*, 22 February 2013, A/HRC/23/48/Add.1.

Migrant workers, who account for over 170 different nationalities in the UAE, are governed, controlled, policed and surveilled by the kafala system.<sup>106107</sup> Much continues to be written about the kafala-sponsorship system.<sup>108109110111112113</sup> It is a government policy which requires all migrants to have an official in-country sponsor who is responsible for their immigration visa and status, residence papers (termed iqama), permits, and the completion of labour and interior ministry documentation.<sup>114115116</sup> It effectively hinders the economic activities and limits any long-term social integration of the migrant population.<sup>117118</sup> It creates large power disparities with the kafeel-sponsor who signs a government document assenting to legal and financial responsibility of the migrant worker for the duration of their time in the country.<sup>119120121</sup> The migrant is wholly dependent on the kafala system for their admission, mobility, legal status, employment security, income and residency which the kafeel has full autonomy to control.<sup>122123124</sup>

The kafala-sponsorship system makes the abuse and exploitation of migrant labour both easy and pervasive.<sup>125126127</sup> The migrant's legal status is conditional on the continuous sponsorship of the kafeel who is legally required to report to immigration authorities if the migrant leaves their employ.<sup>128</sup> Only a national is authorised to be a kafeel.<sup>129</sup> Legally the migrant cannot seek alternative employment without the permission of their kafeel, or they risk

<sup>106</sup>The UN Special Rapporteur in Trafficking in Persons, especially Women and Children concludes her country visit to the United Arab Emirates', *United Nations Human Rights Office of the High Commissioner* (17 April 2012) <http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12062&LangID=E> [accessed 25 March 2018]

<sup>107</sup>Fernandez (n 5).

<sup>108</sup>Mahdavi and Sargent (n 12).

<sup>109</sup>Froilan T Malit and George Naufal, 'Asymmetric information under the Kafala sponsorship system: Impacts on foreign domestic workers' income and employment status in the GCC countries' *International Migration* (2016) 54.5 76-90.

<sup>110</sup>Rhacel Salazar Parreñas and Rachel Silvey 'Domestic Workers Refusing Neo-Slavery in the UAE.' *Contexts* (2016) 15.3: 36-41.

<sup>111</sup>Syed (n 5).

<sup>112</sup><http://www.thereviewatnyu.com/all/2016/11/27/the-many-costs-of-kafala> [accessed 18 March 2018]

<sup>113</sup>Samentha Goethals et al., 'Business Human Rights Responsibility for Refugees and Migrant Workers: Turning Policies into Practice

in the Middle East' *Business and Human Rights Journal* (2017) 2.2 335-342.

<sup>114</sup>Sally C Moyce and Marc Schenker, 'Migrant Workers and Their Occupational Health and Safety' *Annual review of public health* 0 (2018) 13.1-13.15

<sup>115</sup>Fernandez (n 5).

<sup>116</sup>Malit and Naufal (n 14).

<sup>117</sup>Moyce and Schenker (n 14).

<sup>118</sup>Mahdavi and Sargent (n 12).

<sup>119</sup>Malit and Naufal (n 14).

<sup>120</sup>Mahdavi and Sargent (n 12).

<sup>121</sup>Malit and Naufal (n 14).

<sup>122</sup>Syed (n 5).

<sup>123</sup>Malit and Naufal (n 14).

<sup>124</sup>Goethals et al. (n 14).

<sup>125</sup>Moyce and Schenker (n 14).

<sup>126</sup>Fernandez (n 5).

<sup>127</sup>Syed (n 5).

<sup>128</sup>Malit and Naufal (n 14).

<sup>129</sup>Parreñas and Silvey (n 14).

<sup>130</sup>Syed (n 5).

detention and/or deportation, the latter at their own expense.<sup>130131132133</sup> Overall, the kafala system has been roundly criticised for creating unique forms of legal vulnerability by conflating employment with legal presence, with workers seeing no form of recourse for disputes with their employer which can potentially compromise their legal residence, employment and deny them redress.<sup>134</sup> Instead, they are compelled to remain in abusive work situations and poor living conditions, increasing their risk of work related injuries and even fatalities.<sup>135</sup> The kafala system has been accused of trapping migrant construction workers in the following exploitative situations:<sup>136</sup>

- Excessive debt incurred through high recruitment fees
- Unequal, late, or non-payment of wages
- Illegal deductions
- Treacherous working conditions
- Denial of freedom of movement
- Denial of freedom of association and assembly
- Minimal enforcement of the labour law
- Limited or no access to legal and judicial remedies

It is for all of the above reasons that the migrant worker has been described as a victim of modern-day slavery.<sup>137</sup>

### **The Plight of Domestic Migrant Workers in the UAE**

The structural and systemic disadvantages legitimised by the continued application of the kafala system consign over 750,000 foreign domestic workers in the UAE to 'indentured servitude, bound labour, and permanent exclusion from citizenship rights'.<sup>138139</sup> Until very recently, the legal system in the UAE did not recognise foreign domestic workers - termed bishkar (as applied to males) or bishkara (as applied to females) - as part of the labour force. Bishkaras are to be found in the mansions of the rich, welfare houses of the poor and even in desert areas occupied by the Bedouin milking goats to make yoghurt and cheese; they are easy to acquire,

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<sup>130</sup> Mahdavi and Sargent (n 12).

<sup>131</sup> Syed (n 5).

<sup>132</sup> Malit and Naufal (n 14).

<sup>133</sup> Goethals et al. (n 14).

<sup>134</sup> Mahdavi and Sargent (n 12).

<sup>135</sup> Moyce and Schenker (n 14).

<sup>136</sup> Goethals et al. (n 14).

<sup>137</sup> Parreñas and Silvey (n 14).

<sup>138</sup> Ibid.

<sup>139</sup> Moyce and Schenker (n 14).



change and exchange.<sup>140</sup> They are an integral part of the social fabric of the UAE, forming 20% of the emirates workforce.<sup>141</sup> Nevertheless, the long-term refusal to protect foreign domestic workers by affording them legal rights, effectively constituted many women and girls - who comprise the majority of their number - as disposable and enslaved to their employers, raising pointed questions about sex and gender discrimination. Excluded from national labour laws<sup>142143144145</sup> until September 2017<sup>146</sup> bishkaras were routinely subjected to:

- Physical, sexual and psychological abuse
- A lack of food and poor living conditions
- Under or non-payment of wages
- Overwork
- No time off and no overtime pay
- Limited to no freedom of mobility
- No freedom of communication via mobile phone or the internet

It is without surprise that many domestic workers abscond from their employers, preferring to take their chances working illegally underground as part of the informal economy.<sup>147148149</sup> Very few renew their contracts after the legal requirement of two years and many leave the UAE completely in under a decade.<sup>150</sup>

Domestic migrant workers in the UAE have been predominantly framed by immigration laws, suggesting a State control perspective, and not a developmental or human one requiring a legal duty of care and protection.<sup>151</sup> This has given rise to an unregulated industry of unlicensed agents and unscrupulous brokers who clandestinely recruit domestic workers in the knowledge that they have no legal guarantees and are confined to the homes of their kafeel.<sup>152</sup> These

<sup>140</sup>Sabban (n 11).

<sup>141</sup> 'UAE Approves Law on Domestic Workers', Migrants Rights. Org  
<https://www.migrant-rights.org/2017/09/uae-approves-law-on-domestic-workers/> [accessed March 2018]

<sup>142</sup> Ibid

<sup>143</sup>David Keane and Nicholas McGeehan, 'Enforcing migrant workers' rights in the United Arab Emirates' *International Journal on Minority and Group Rights* (2008) 15.1: 81-115.

<sup>144</sup>Parreñas and Silvey (n 14).

<sup>145</sup>UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children: Addendum: Mission to the United Arab Emirates*, 22 February 2013, A/HRC/23/48/Add.1

<sup>146</sup> 'UAE Approves Law on Domestic Workers', Migrants Rights. Org  
<https://www.migrant-rights.org/2017/09/uae-approves-law-on-domestic-workers/> [accessed March 2018]

<sup>147</sup>Sabban (n 11).

<sup>148</sup>Mahdavi and Sargent (n 12).

<sup>149</sup>Parreñas and Silvey (n 14).

<sup>150</sup>Ibid.

<sup>151</sup>Sabban (n 11).

<sup>152</sup>UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children : Addendum : Mission to the United Arab Emirates*, 22 February 2013, A/HRC/23/48/Add.1

illegal 'placement agencies'<sup>153</sup> charge extortionate recruitment fees to migrant domestic workers promising them good working and living conditions, yet when they are placed with their employers many are exploited and mistreated.<sup>154</sup> Rather than employing workers who have legal rights under the labour laws, there are reports of domestic workers being forced to undertake agricultural work, work for a pool of their employer's relatives, as waitresses in the evening, and used to provide catering services for social functions.<sup>155156</sup> Agencies regularly withhold their contracts and falsify contractual information, leaving domestic migrant workers unaware of their three-month probationary period which stipulates that they are allowed to contact the agency to resolve any problems or even to change their employer.<sup>157</sup> In one case, a Filipina woman recruited as a tutor and then subsequently forced to also work as a housemaid and cook, was subjected to mistreatment and sexual harassment in the home of her employer, when she complained to the recruitment agency she was locked up in a small room for two months with twenty-nine other girls.<sup>158</sup> These abusive acts are disciplinary tactics inflicted by agents to elicit obedience.<sup>159</sup> The situation that domestic migrant workers endure suggest that '[f]rom a human rights standpoint they are living under conditions of "neo-slavery"'.<sup>160161</sup>

### **The UAE's National and International Anti-trafficking Legislative Efforts**

As part of its legislative framework, the UAE has a number of national laws that are applicable to the prevention of human trafficking. The Federal Law No. 8 of 1980 contains legal guidelines for the worker/employer relationship by delineating minimum labour standards such as working hours, paid holiday, overtime pay and it prohibits the employment of children under 15 years of age. Federal Law No. 15 of 2005 prohibits the employment of children under 18 years of age as camel jockeys, and the Federal Law No. 2 of 2006 prohibits the creation of a website for the purpose of human trafficking. Additionally, a ministerial decision was adopted in 2010 to implement Federal Law 15 of 1993 to prohibit the trafficking in human organs. However, it was the Federal Law No. 51 of 2006 which marked a pivotal moment in the UAE's efforts to combat human trafficking. Article 1 of this Federal Law, which was amended in 2015 to align with

<sup>153</sup>Fernandez (n 5).

<sup>154</sup>UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children : Addendum : Mission to the United Arab Emirates*, 22 February 2013, A/HRC/23/48/Add.1

<sup>155</sup>Ibid.

<sup>156</sup> Fernandez (n 5).

<sup>157</sup>Sabban (n 11).

<sup>158</sup>UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children : Addendum : Mission to the United Arab Emirates*, 22 February 2013, A/HRC/23/48/Add.1

<sup>159</sup>Ibid.

<sup>160</sup>Sabban (n 11).

<sup>161</sup>Parreñas and Silvey (n 14).

international efforts to end this criminal activity, clearly defines a human trafficker as someone who engages in:

- a. Selling persons, offering persons for selling or buying, or promising the same.
- b. Soliciting persons, employing, recruiting, transferring, deporting, harbouring, receiving, receiving or sending the same whether within the country or across the national borders thereof, by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability the person for the purpose of exploitation.
- c. Giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation of the latter

Article 3 comprehensively describes the many forms that human trafficking can take, recognising them all as part of this criminal enterprise: Under this Article, exploitation includes all forms of sexual exploitation, engaging others in prostitution, servitude, forced labor, organ-trafficking, coerced service, enslavement, mendicancy, and quasi-slavery practices

In conjunction with this law, shelters for victims of human trafficking called Ewa's shelters were created. Other initiatives included the creation of a National Committee for Combatting Human Trafficking Crimes (NCCHT) established in 2007 to promote and enforce Federal Law No. 51 throughout the Emirates. The NCCHT is a government body which serves as the UAE's official representative in matters related to human trafficking.<sup>162</sup> The Committee publishes an annual report which presents the country's achievements and initiatives in this area.

More recently, Ministerial Decision No. 739/2016 was issued to supplement Ministerial Decree No. 708/2009 to protect the wages of migrant workers.<sup>163</sup> An electronic Wage Protection System through which wages are to be promptly paid to employees was implemented in order to prevent the many instances of late payment, under payment or non-payment by employers.<sup>164</sup> On 1 January 2016, the UAE introduced some reforms to the kafala system designed to release migrant workers in construction, retail, hospitality and transport from its 'most draconian aspects'.<sup>165</sup> They included permission to seek alternative employment on completion of their contract (without penalty) and the authorisation of early termination of

<sup>162</sup> Annual Report of the Committee to Combat Human Trafficking, *National Committee for Combatting Human Trafficking Crimes* (2016)

[http://lib.ohchr.org/HRBodies/UPR/Documents/Session29/AE/A\\_HRC\\_WG.6\\_29\\_ARE\\_1\\_UAE\\_Annex%201\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session29/AE/A_HRC_WG.6_29_ARE_1_UAE_Annex%201_E.pdf) [accessed 20 February 2018]

<sup>163</sup> Ibid.

<sup>164</sup> Ibid.

<sup>165</sup> Parreñas and Silvey (n 14).

contract by the migrant worker in accord with legal requirements, such as the notice period of one month. What is more, on 26 September 2017 the very first labour law for foreign domestic workers was approved; Federal Law No.10 of 2017 covers prompt payment of wages, one paid rest day per week, the termination of contracts by employees and plans to reform and replace the role of recruitment agencies with Tadbeer centres.<sup>166</sup>

On the international level, in April 2005 the UAE ratified the UN Convention against Transnational Organised Crime and in September 2008 it ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.<sup>167</sup> It has also ratified the Convention on the Elimination of All Forms of Racial Discrimination, 1965,<sup>168</sup> the Convention on the Rights of the Child<sup>169</sup> and International Labour Organisations Conventions, namely Nos. 29 and 105 relating to forced labour and No. 100 on equal remuneration.<sup>170</sup> As part of its ongoing commitment the UAE government extended invitations to the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2009; the UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography in 2010 and the UN Special Rapporteur on Trafficking in Persons, especially Women and Children in 2012 to conduct official visits to the UAE.

### **How Far Does the UAE Comply with International Human Rights Law on Human Trafficking?**

In her report dated 22 February 2013, UN Special Rapporteur on trafficking in persons, Joy Ngozi Ezeilo, shared the key findings of her official visit to the UAE.<sup>171</sup> The visit, which took place 11 - 17 April 2012, included trips to Abu Dhabi, Dubai and Sharjah, meetings with government officials, and victims of trafficking in labour camps and Ewa'a shelters.<sup>172</sup> In the report, Ngozi Ezeilo notes that the UAE has not ratified several important international human rights conventions, such as:

<sup>166</sup>UAE Approves Law on Domestic Workers', Migrants Rights. Org  
<https://www.migrant-rights.org/2017/09/uae-approves-law-on-domestic-workers/> [accessed March 2018]

<sup>167</sup>Parreñas and Silvey (n 14).

<sup>168</sup>UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195

<sup>169</sup>UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3

<sup>170</sup>UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children : Addendum : Mission to the United Arab Emirates*, 22 February 2013, A/HRC/23/48/Add.1

<sup>171</sup>Ibid.

<sup>172</sup>Ibid.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families<sup>173</sup>

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>174</sup>

The International Covenant on Economic, Social and Cultural Rights<sup>175</sup>

Moreover, the Special Rapporteur recorded that although signing ILO Convention No. 189 which relates to decent work for domestic workers, the UAE has not ratified it.<sup>176</sup>

The Special Rapporteur raised concerns surrounding the identification of victims of trafficking in the UAE.<sup>177</sup> The situation is exacerbated due to the existence of only 420 inspectors tasked with conducting labour inspections in over 240,000 companies, plus due to a lack of training the inspectors are ill-equipped to identify persons trafficked for labour exploitation.<sup>178</sup> Most trafficked victims outside the sex industry in the UAE remain unidentified as a result of an overwhelming focus on sexual exploitation.<sup>179</sup> Subsequently, the true scale of the problem— which in reality incorporates forced labour and domestic servitude - is incomplete, underestimated and significantly under-reported.<sup>180</sup> Official figures record that 51 people were identified as trafficked in the UAE the previous year (2011) which the Special Rapporteur believed to be ‘a small fraction of the total number’.<sup>181</sup> The refusal to identify the large number of trafficked victims within the spheres of forced labour and domestic servitude is illustrated by the kafala reforms. These reforms have been roundly criticised for, 1) only addressing worker’s mobility and not the full spectrum of structural exploitation and abuse, and 2) only being applicable for migrant workers in construction, retail, hospitality and transportation, thereby continuing to ignore the situation of domestic migrant workers.<sup>182</sup> In short, they did not remove ‘all the practices that were associated with kafala’ as promised by Labour Minister Saqr

<sup>173</sup> UN General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, 18 December 1990, A/RES/45/158

<sup>174</sup> UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85

<sup>175</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3

<sup>176</sup> Ibid.

<sup>177</sup> Ibid.

<sup>178</sup> Ibid.

<sup>179</sup> ‘The UN Special Rapporteur in Trafficking in Persons, especially Women and Children concludes her country visit to the United Arab Emirates’, United Nations Human Rights Office of the High Commissioner (17 April 2012) <http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12062&LangID=E> [accessed 25 March 2018]

<sup>180</sup> Ibid.

<sup>181</sup> UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children: Addendum : Mission to the United Arab Emirates*, 22 February 2013, A/HRC/23/48/Add.1 (p. 12).

<sup>182</sup> Parreñas and Silvey (n 14).

Ghobash in 2015.<sup>183</sup> Finally, another impediment to effective victim identification is institutional problem. The Special Rapporteur related receiving information during her mission that police officers and immigration officials – who are primarily tasked with identifying trafficked victims - were either implicated in cases of trafficking or chose to ignore it.<sup>184</sup>

Five years after UN Special Rapporteur Joy Ngozi Ezeilo's mission in the UAE, the International Centre for Justice and Human Rights (ICJHR) submitted their report to the UN Committee on the Elimination of Racial Discrimination (CERD). The objective of the report, dated July 2017, was to examine the UAE's implementation of the International Convention on the Elimination of All Forms of Racial Discrimination which it has ratified.<sup>185</sup> Referring to Article 5 of the Convention they cite its directive as follows: State Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law

Based on the above, the ICJHR raised their concerns on the rights to dignity and equality for migrants and their families in the UAE.<sup>186</sup> This incorporates the issue of migrant workers being prohibited from establishing associations and organising trade unions to defend their economic and social rights with their employers.<sup>187</sup> The right to dignity and equality is severely impeded by the continuance of the kafala system and the limited protection in law for domestic workers.<sup>188</sup> An area that they define as crucial is 'open collective negotiations' with employers and link this to the absence of civil society organisations who can monitor violations of worker's rights and provide advisory services to migrant workers who are victimised.<sup>189</sup>

The ICJHR note the 'extremely dangerous environment[s]' that migrant workers are forced to work in, the lack of occupational health and safety provisions and medical care, and the 'high death rates' among these workers.<sup>190</sup> This is in line with research that shows the number of fatal and non-fatal workplace injuries among the immigrant workforce is rising as they are often engaged in the most hazardous or '3D jobs', namely dirty, dangerous and demanding

<sup>183</sup> 'UAE says reforms will better protect workers', *Reuters* (Sept 2015)

<https://www.reuters.com/article/emirates-labour-rights/uae-says-reforms-will-better-protect-foreign-workers-idUSL5N11Y2BL20150929>

[accessed 20 March 2018]

<sup>184</sup> UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children: Addendum : Mission to the United Arab Emirates*, 22 February 2013, A/HRC/23/48/Add.1.

<sup>185</sup> Alternative report on United Arab Emirates' implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, International Centre for Justice and Human Rights (ICJHR) [http://www.ic4jhr.org/images/UAE\\_CERD\\_session93\\_Report\\_icjhr\\_06.07.2017.pdf](http://www.ic4jhr.org/images/UAE_CERD_session93_Report_icjhr_06.07.2017.pdf) [accessed 25 March 2018]

<sup>186</sup> *Ibid.*

<sup>187</sup> *Ibid.* p. 9.

<sup>188</sup> Alternative report on United Arab Emirates' implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, International Centre for Justice and Human Rights (ICJHR) [http://www.ic4jhr.org/images/UAE\\_CERD\\_session93\\_Report\\_icjhr\\_06.07.2017.pdf](http://www.ic4jhr.org/images/UAE_CERD_session93_Report_icjhr_06.07.2017.pdf) [accessed 25 March 2018]

<sup>189</sup> *Ibid.* p. 9.

<sup>190</sup> *Ibid.* pp. 8, 9.



(as well as degrading and demeaning).<sup>191</sup> Major causes of death are due to environmental hazards inherent to the occupational setting, such as construction and maintenance work outside which subjects workers to extreme weather conditions increasing the risk of sun exposure and heat-related illness and death.<sup>192</sup> One study urgently calling for public health action for Nepalese migrant workers, reveals that every year 1000 Nepalese migrants die in host countries (the Gulf Cooperation Council countries<sup>193</sup> and Malaysia), and hundreds more are sent home with serious injuries, such as paraplegia.<sup>194</sup> It is very likely that the number of deaths is far higher and undocumented as the figure only represents those whose family members applied for formal compensation.<sup>195</sup> In one year over a quarter Nepalese migrant workers in the UAE, Qatar and Saudi Arabia experienced work-related injuries and accidents.<sup>196</sup> Many migrant workers work more than 50 hours per week without a day off or holiday, and so are exposed to prolonged working hours in extreme heat.<sup>197</sup> Nevertheless, the cause of death for a quarter of the fatalities reported to the Government of Nepal are recorded as 'unknown' since post-mortem examinations of migrant workers are only conducted if the death is linked to a criminal case.<sup>198</sup> The absence of this critical information on deaths on construction sites and its relation to heat exposure makes it very difficult to ascertain the true extent of the problem, and to design and implement effective prevention.<sup>199</sup>

The ICJHR document condemned the closure of institutions and organisations in the UAE that could expose violations of human rights such as negligence in occupational health and safety that put migrant workers at risk of injury or death every day.<sup>200</sup> It reminded the UAE of its pledge during the Human Rights Periodic Review in 2013 to establish national human rights institutions who work independently to fight racial discrimination in accordance with the Paris Principles.<sup>201</sup> Correspondingly, UN Special Rapporteur Joy Ngozi Ezeilo observed during her 2012 visit that apart from the Emirates Human Rights Association she could not find any other registered NGO working on human rights in the country, and discovered that they were

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<sup>191</sup> Moyce and Schenker (n 14).

<sup>192</sup> Ibid.

<sup>193</sup> Saudi Arabia, Kuwait, the United Arab Emirates, Qatar, Bahrain, and Oman.

<sup>194</sup> Aryal et al. (n 5).

<sup>195</sup> Ibid.

<sup>196</sup> Ibid.

<sup>197</sup> Ibid.

<sup>198</sup> Ibid.

<sup>199</sup> Ibid.

<sup>200</sup> Alternative report on United Arab Emirates' implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, International Centre for Justice and Human Rights (ICJHR)

[http://www.ic4jhr.org/images/UAE\\_CERD\\_session93\\_Report\\_icjhr\\_06.07.2017.pdf](http://www.ic4jhr.org/images/UAE_CERD_session93_Report_icjhr_06.07.2017.pdf) [accessed 25 March 2018]

<sup>201</sup> Ibid.



'frequently harassed and faced censorship'.<sup>202</sup> This is corroborated by the ICJHR who reveal that organisations such as Amnesty International and Human Rights Watch have been prevented from establishing branches in the UAE and any persons advocating on behalf of human rights organisations do so at great risk to their safety and freedom.<sup>203</sup> This restrictive behaviour is in contravention of Article 2 of the Convention, ratified by the UAE, which encourages civil society organisations.<sup>204</sup>

### Some Limitations of International Human Rights Law on Human Trafficking

Having analysed some of the critical issues that need to be addressed by the UAE government, it is equally appropriate to take a closer look at international human rights law and the community that surrounds it, to shed light on areas that it may also be failing as an effective mechanism for fighting human trafficking. On this matter, theorists have noted the way that global and local discourses on human trafficking are gendered, racialised and overly preoccupied with the sex industry which has had major implications for law and policy.<sup>205</sup> For instance, it has been argued that women and children dominate the discourse which collapses them into a single category of 'vulnerable innocents' and excludes men from the frame.<sup>206</sup> This is inaccurate, unethical and dangerous. Emphasis on women and children in the sex industry eclipses the plight of all migrant workers subject to the kafala system and the problem of forced labour and domestic servitude that this creates. In the global migratory landscape both women and men are made vulnerable because they are not in their country of citizenship and therefore face bodily and psychological violence as migrant workers who are not afforded the rights and protections of citizens.<sup>207208</sup> Moreover, it denigrates the experiences of male migrants with the rhetoric that they are stronger, consent to and can handle abuse, and therefore have no pressing need for protection in law.<sup>209</sup>

It is possible to see how this discourse has permeated international legal instruments. The Trafficking In Persons report (TIP) has been criticised for disproportionately casting the

<sup>202</sup> UN Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children: Addendum: Mission to the United Arab Emirates*, 22 February 2013, A/HRC/23/48/Add.1. p. 17.

<sup>203</sup> Alternative report on United Arab Emirates' implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, International Centre for Justice and Human Rights (ICJHR) [http://www.ic4jhr.org/images/UAE\\_CERD\\_session93\\_Report\\_icjhr\\_06.07.2017.pdf](http://www.ic4jhr.org/images/UAE_CERD_session93_Report_icjhr_06.07.2017.pdf) [accessed 25 March 2018]

<sup>204</sup> Alternative report on United Arab Emirates' implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, International Centre for Justice and Human Rights (ICJHR) [http://www.ic4jhr.org/images/UAE\\_CERD\\_session93\\_Report\\_icjhr\\_06.07.2017.pdf](http://www.ic4jhr.org/images/UAE_CERD_session93_Report_icjhr_06.07.2017.pdf) [accessed 25 March 2018]

<sup>205</sup> Mahdavi and Sargent (n 12).

<sup>206</sup> Ibid.

<sup>207</sup> Ibid.

<sup>208</sup> Babar (n 13).

<sup>209</sup> Mahdavi and Sargent (n 12).

UAE as a major site of sex trafficking, but not giving equal ground to the labour violations faced by men who are working as taxi drivers, cooks, gardeners, security guards, in hospitality venues and other service industries, or to the sex workers (male and female) who choose Dubai for economic 'pull' reasons and then suffer serious human rights violations.<sup>210211</sup> The TIP report, issued by the US State Department Office, has also been charged with racialising the discourse on trafficking by implying that it is a phenomenon that only occurs outside of Euro-America.<sup>212</sup> Although human trafficking is a global phenomenon, for a decade the US chose to omit itself from the report, and its rankings of Tier 1 to 3 - where 1 is the highest and represents effective anti-trafficking laws and programs, and 3 is inadequate - has been accused of racial and religious prejudice, and of being a political mechanism for diplomatic leverage.<sup>213</sup> Ranking the United Kingdom, Italy and Sweden as Tier 1, and Qatar, Saudi Arabia and Syria as Tier 3 constructs trafficking as a problem for the Muslim world inhabited within the borders of the Eastern Other.<sup>214</sup>

A counterargument for this problematic construction can be found in the fact that three international legal instruments specifically formulated to protect the human rights of migrant workers have met with strong resistance in the West.<sup>215216</sup> They are the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990, and the ILOs Migration for Employment 1949 (ILO No. 97) and Migrant Workers (Supplementary Provisions) 1975 (ILO No. 143). Effectively, these have failed or have had limited success in protecting migrants because the majority of high income states either refuse to ratify and/or implement them.<sup>217</sup> Western 'labour-receiving states', such as North America, Australia and most of Europe, have failed to sign the Convention on Migrant Workers and nearly all of the 47 countries who have ratified it are 'labour-sending states', indicating that the rights of migrants is a universal politicised issue and not just peculiar to the East.<sup>218</sup>

It would appear that all governments prefer policies that suit their national interests, and with respect to migrant workers this translates to policy frameworks that support the inflow of - what has come to be viewed as - temporary labour migrants for short periods of time and imposes restrictions on their access to social and cultural human rights, including education,

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<sup>210</sup> Mahdavi and Sargent (n 12).

<sup>211</sup> Fernandez (n 5).

<sup>212</sup> Mahdavi and Sargent (n 12).

<sup>213</sup> Ibid.

<sup>214</sup> Ibid.

<sup>215</sup> Ruhs (n 8).

<sup>216</sup> Babar (n 13).

<sup>217</sup> Ruhs (n 8).

<sup>218</sup> Babar (n 13).

health and citizen-ship.<sup>219</sup> These practices by governments conflate and reduce the rights of migrants to national immigration policy, and in so doing removes the need for their integration into host states.<sup>220</sup> It is a position that problematically reinforces the low cost exploitability of migrant workers<sup>221</sup> obscuring their vulnerability to human trafficking and need for protection in law from the multiple forms that this insidious criminal activity can take.<sup>222</sup> The point of issue is that implementation of ILO and UN Conventions would demand higher standards, improved conditions and better rights for all migrant workers which raises the cost of their labour, something that all 'labour-receiving' states operating in a competitive global economy are loathe to endorse.<sup>223</sup><sup>224</sup> The IOM reports that an estimated 21 million individuals are victims of forced labour globally, and that the illegal profits generated by this exploitation of human beings annually is \$150 billion.<sup>225</sup> It has been called the fastest growing criminal industry in the world, ranked second behind drug dealing and tied with the illegal arms industry, but unlike drugs and arms the raw materials are people.<sup>226</sup>

Given the analysis presented it is clear that no country is in fact immune from the scourge of human trafficking. Virtually every country in the world is implicated in its network as either a country of exit, transit or destination.<sup>227</sup> The economies of both 'labour-sending' and 'labour-receiving' states benefit from the mass influx of informal and unregulated labour of migrants.<sup>228</sup> Capital makes no distinction between whether these workers are legal, illegal or trafficked.<sup>229</sup> An undue focus on sex, race and gender in the discourse of trafficking obscures the diverse forms that it can take, and the macro structural elements that are forging the current surges in human mobility worldwide.<sup>230</sup> Official legislative instruments and policies need to incorporate this complexity and contextuality.<sup>231</sup> Many of the behaviours and practices involved in human trafficking contravene international custom law, therefore states have an obligation *erga omnes* to be active participants in the fight against them.<sup>232</sup> 'Positive obligations' are an

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<sup>219</sup> Ibid.

<sup>220</sup> Ibid.

<sup>221</sup> Fernandez (n 5).

<sup>222</sup> Babar (n 13).

<sup>223</sup> Ibid.

<sup>224</sup> Fernandez (n 5).

<sup>225</sup> 2015 Global Migration Trends Factsheet, International Organisation of Migration, [https://publications.iom.int/system/files/global\\_migration\\_trends\\_2015\\_factsheet.pdf](https://publications.iom.int/system/files/global_migration_trends_2015_factsheet.pdf) [accessed 6 March 2018]

<sup>226</sup> Parmentier (n 4).

<sup>227</sup> Winterdyk and Reichel (n 3).

<sup>228</sup> Mahdavi and Sargent (n 12).

<sup>229</sup> Ibid.

<sup>230</sup> Ibid.

<sup>231</sup> Ibid.

<sup>232</sup> Keane and McGeehan (n 16).

emerging principle of international law whereby states have a responsibility to other states, international organisations and individuals who are subject to international law.<sup>233</sup>

## Conclusion

Human rights are non-discriminatory and inalienable.<sup>234</sup> Migrant workers have made a tremendous contribution to the economic prosperity and growth of the UAE, yet they have not been treated as partners in the very economic growth and development that they have been an integral part of.<sup>235</sup> Despite the UAE's formulation of domestic legislation to combat human trafficking and ratifying several key international instruments applicable to this issue, for the most part these legislative acts have been 'symbolic': visible to the outside world, but doing very little to change the systemic *modus operandi*.<sup>236</sup> The kafala system vividly exemplifies this point. It is a system that enables the trafficking of people *en masse* into labour exploitation and domestic servitude, by disregarding their labour rights and human rights - as defined in international human rights law and international custom law – and instead enslaving them to their employers. It is a situation which encourages the pervasive financial, physical, mental, sexual and psychological abuse, exploitation and death of these vulnerable migrant people, who are denied even the basic rights afforded to UAE citizens. Access to legal mechanisms or social protections for these people is severely impeded, and instead they are viewed and treated as a burden on the local infrastructure that they helped to build. All of this has been corroborated in the reports by UN Special Rapporteur Joy Ngozi Ezeilo and the ICJHR who have catalogued the many ways in which the UAE does not comply with international human rights regulations. International human rights law obligates states to take positive action to facilitate the enjoyment of basic human rights and fundamental freedoms of individuals and groups.<sup>237</sup> It is for all of these reasons that the UAE can be charged with offering 'a smokescreen of legal regulation to cover the abuse of migrant workers taking place in its territory'.<sup>238</sup>

## At What Price is a Lack of Compliance to the UAE?

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<sup>233</sup> Ibid.

<sup>234</sup> 'What are Human Rights?' United Nations Human Rights Office of the High Commissioner <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx> [accessed 25 March 2018] [25 March 2018]

<sup>235</sup> Aryal et al. (n 5).

<sup>236</sup> Parmentier (n 4).

<sup>237</sup> 'International Human Rights Law', *United Nations Human Rights Office of the High Commissioner* <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx> [accessed 25 March 2018]

<sup>238</sup> Keane and McGeehan (n 16).

It is true that international human rights law and its implementation mechanisms require modifications and amendments to succeed in providing comprehensive assistance to the most vulnerable in the world. However, the UAE's continued failure to comply with legislation that will benefit a large portion of its inhabitants serves to legitimise the abuse of them. Furthermore, it could bring some serious and unintended consequences to the region. Given the high estimates of people trafficked in the world and the sheer number of migrant workers in the UAE, it would be unwise to assume that this criminal activity is not occurring without the knowledge and/or assistance of government officials or people working in the legal sphere who have connections with domestic and/or international organised criminal networks.<sup>239</sup> Consequently, the macro consequences of this illegal activity is strengthening the hand of organised crime. The enormous profits reaped from human trafficking can, and are, used to fuel other illegal activities such as drug trafficking, money laundering, arms dealing and forgery. Organised crime has been known to weaken governments, undermine the rule of law and affect the social fabric and ordering of countries. This is a sobering thought as it could potentially put the whole of UAE society - and not just its migrant workers - at risk.

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<sup>239</sup>Parmentier (n 4).

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