

## STAKEHOLDER SUBMISSION For UPR-Kuwait

Jointly by the Center for Migrant Advocacy Philippines and the Philippine Alliance of Human Rights Advocates



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The Center for Migrant Advocacy is a migrant NGO in the Philippines that works for the rights and welfare of Filipino migrant workers and their families through policy advocacy and facilitating assistance to distressed migrants. For the effective conduct of our work, we engage in action research, information, education and communications work, trainings and capacity building for NGO partners and migrant associations and communities and networking in the country and abroad. CMA is a member of Philippine Migrants Rights Watch ([www.pmrw.org.ph](http://www.pmrw.org.ph)), the Philippine Alliance of Human Rights Advocates (PAHRA, [www.philippinehumanrights.org](http://www.philippinehumanrights.org)) and Migrant Forum in Asia ([www.mfasia.org](http://www.mfasia.org)). CMA was established on December 5, 2002.



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The **Philippine Alliance of Human Rights Advocates (PAHRA)** is a non-stock, non-profit alliance duly registered under the laws of the Philippines, with SEC No. ANO92-03505. It was established on August 9, 1986 in a Congress that was participated in by more than a hundred organizations from all over the Philippines. It was formed as an alliance of individuals, institutions and organizations committed to the promotion, protection and realization of human rights in the Philippines. PAHRA is the sole civil society representative in the Philippine Government's Presidential Human Rights Committee (PHRC), and is an affiliate of the International Federation of Human Rights Leagues (FIDH). It is also a member of regional organizations like the Asian Forum of Human Rights and Development (FORUM-ASIA), and the Asian Network for Free Elections (ANFREL).

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## **I. Summary.**

**As a State Member of the UN Human Rights Council (HRC), Kuwait must set an example in upholding the highest standards in the promotion and protection of human rights.**

**This stakeholder submission comments on the implementation of human rights in Kuwait in regards to migrant rights. It reviews the compliance with international conventions ratified by the Kuwaiti state and the voluntary pledges and commitments made thereto. This report also reviews the progress on the implementation of the recommendations of HRC State Members in first cycle of the UPR of Kuwait of 2010. HRC State Members formulated countless recommendations with respect to migrant rights. Some of these were accepted by Kuwait while others were refuted. The recommendations of the HRC State Members concerning migrant rights, which enjoyed the full support of the State can be clustered into the following recommendations:**

- improve the working and living conditions of foreign workers<sup>1</sup>**
- Strengthen, enact and implement labor legislation concerning foreign workers, particularly domestic workers, to conform to accepted international standards.<sup>2</sup>**
- Duly investigate and prosecute all allegations of abuse of domestic workers and provide victims efficient access to justice.<sup>3</sup>**

**The recommendations of the HRC State Members concerning migrant rights that did not enjoy the full support of the State, or are considered by Kuwait for later response can be clustered into the following recommendations:**

- Abandon and replace the Kafala sponsorship system in accordance with International standards.<sup>4</sup>**
- Include domestic workers in the labor law for the private sector or develop an appropriate legal framework for just and favourable conditions of work to all migrant workers and ensure comprehensive protection.<sup>5</sup>**

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**1** United Nation's Human Rights Council "Report of the Working Group on the Universal Periodic Review: Kuwait " June 16, 2010, para 79.67, 79.94

**2** Ibid, para 79.67, 79.68, 79.69, 79.70, 79.73, 79.92, 79.96

**3** Ibid, para 79.71, 79.95, 79.97, 79.98 79.99

**4** Ibid, para 82.18 82.19

**5** Ibid, para. 81.3 82.16 82.17

**Migrant workers account for two thirds of the total population of Kuwait.<sup>6</sup> The workers come predominantly from countries in South and South East Asia including India, Sri Lanka, Bangladesh and the Philippines.<sup>7</sup> The Philippines is the fourth largest migrant sending country to Kuwait, accounting for a total of 144,633 migrants as of 30 April 2012.<sup>8</sup> The majority of workers are employed in the construction sector or service industry.<sup>9</sup> Kuwait has the highest proportion of domestic workers of any country in the world. Over 90 per cent of all households have a domestic worker, who now account for nearly one fourth of the total population in Kuwait.<sup>10</sup> In recent years, the disproportionate migration of women has led to an overrepresentation of nearly one thirds of the total migration.<sup>11</sup>**

**While many Filipinos migrate to Kuwait for work, numerous problems can be attributed to the structures that govern migration in the country. This submission draws attention to the fact that from 2010 until 2012 over 10,000 distressed Filipino migrant workers ran away from their employers and were sheltered at the Filipino Workers Resource Center (FWRC).<sup>12</sup> From January 2011 to December 2012, 7,931 Filipinos in distress sought refuge at the FWRC.<sup>13</sup> While the FWRC accommodated 130 distressed migrants per month on average for the first 6 months of 2012, it has risen to 198 migrant workers for the last 6 months of 2012.<sup>14</sup> At times, the FWRC has even accommodated up to 500 workers at one**

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6 International Organization for Migration "Kuwait" May 2012 <http://www.iom.int/cms/kuwait>

7 Ibid.

8 Philippine Department of Foreign Affairs Office of the Undersecretary for Migrant Workers' Affairs" Semi-Annual Report of Foreign Service Posts on Assistance to Nationals: Kuwait" January – June 2013 p. 641

9 International Organization for Migration "Kuwait" May 2012 <http://www.iom.int/cms/kuwait>

10 John Hopkins School of Advanced International Studies "The Protection of the Rights of Migrant Domestic Workers in a Country of Origin and a Country of Destination: Case Studies of the Philippines and Kuwait" 2013 p. 10

11 International Organization for Migration "Kuwait" May 2012 <http://www.iom.int/cms/kuwait>

12 Philippine Department of Foreign Affairs Office of the Undersecretary for Migrant Workers' Affairs" Semi-Annual Report of Foreign Service Posts on Assistance to Nationals: Kuwait" January – June 2010 up to report January – June 2013

13 Philippine Department of Foreign Affairs Office of the Undersecretary for Migrant Workers' Affairs" Semi-Annual Report of Foreign Service Posts on Assistance to Nationals: Kuwait" January – June 2011 up to report January – June 2013

14 Philippine Department of Foreign Affairs Office of the Undersecretary for Migrant Workers' Affairs" Semi-Annual Report of Foreign Service Posts on Assistance to Nationals: Kuwait" January – June 2013 p. 641

time.<sup>15</sup> This indicates how many Filipino migrant workers have escaped their employers and are liable for absconding. The top complaints reported by domestic workers include, non-, late- or lower payment of wages, withholding of passports, long working hours, no sufficient rest, limited freedom of movement, confinement to the house, compulsory tasks outside the job description, physical, verbal and sexual abuse and emotional problems.<sup>16</sup> Furthermore, the majority of domestic workers in Kuwait are female. As of 20 April 2012, 85,000 out of 144,633 Filipinos in Kuwait render services as domestic workers,<sup>17</sup> and from January to December 2012, 202 cases involving rape or sexual harassment were reported to the Philippine Overseas Labour Office in Kuwait.<sup>18</sup> Moreover, from January 2011 to December 2012, 12,445 Filipinos complained to the Philippine Foreign Service Post about abuse and exploitation.<sup>19</sup> On average this is approximately 6,200 complaints per year. However in the period between January 2011 and December 2012, only 1,653 of the 12,445 complaints of Filipino migrants progressed into civil and criminal cases.<sup>20</sup> While Kuwait has claimed that it received 9,763 complaints in 2009 from all migrants from all 180 countries,<sup>21</sup> 5,466 complaints from Filipino migrants were registered by the Filipino embassy in 2012.<sup>22</sup>

**It is recommended:**

- **To abandon the Kafala Sponsorship System.**

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15 Ibid.

16 John Hopkins School of Advanced International Studies "The Protection of the Rights of Migrant Domestic Workers in a Country of Origin and a Country of Destination: Case Studies of the Philippines and Kuwait" 2013 p.32

17 Philippine Department of Foreign Affairs Office of the Undersecretary for Migrant Workers' Affairs" Semi-Annual Report of Foreign Service Posts on Assistance to Nationals" January – June 2013 p.641

18 Ibid.

19 Philippine Department of Foreign Affairs Office of the Undersecretary for Migrant Workers' Affairs" Semi-Annual Report of Foreign Service Posts on Assistance to Nationals: Kuwait" January – June 2011 up to report January – June 2013

20 Ibid.

21 United Nations Human Rights Council Working Group on UPR "National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Kuwait" May 2010 p.13

22 Philippine Department of Foreign Affairs Office of the Undersecretary for Migrant Workers' Affairs" Semi-Annual Report of Foreign Service Posts on Assistance to Nationals: Kuwait" July – December 2012 p. 682

- **To recognize domestic work and protect the rights of domestic workers under Kuwait's Private Sector Labour Law.**
- **To reduce the vulnerability and dependency of female migrant workers on their employers.**
- **To improve and augment the resources available for migrant workers seeking justice.**

## **II. The Kafala Sponsorship System**

**Under the Kafala or sponsorship system, migrant workers are legally bound to their employers who are also their kafeels (sponsors). Foreign workers are restricted from changing employers or from exiting the country without written permission from their kafeel. While migrant workers generally do not leave their employer unless they experience abuse, exploitation, or contract violations, migrants who decide to leave may be charged with absconding which is a criminal act in Kuwait. Workers who abscond are forced into an illegal status and may be punished by imprisonment and fines.<sup>23</sup> If convicted of absconding, the migrant worker is not protected by Kuwaiti labor laws and is often deported. Migrant workers can report abuse, however upon doing so the police often notify the employer of the whereabouts of the worker instead of pursuing the migrant worker's case. When police do investigate cases of abuse or exploitation, there is often no other option but to deport the migrant as a result of absconding charges. Moreover, when the employer faces allegations of abuse or exploitation they often file counter charges against the migrant worker, typically of theft, which prolongs the resolution of the cases.<sup>24</sup> This system prevents the migrant worker from filing labor or criminal charges against their employer. Often the only escape is deportation and even when migrant workers find themselves in abusive or exploitive circumstances, social and financial pressures from home often prevent the worker from leaving the situation.**

**By criminalizing absconding, Kuwait circumvents its international obligation not to imprison persons on an inability to fulfil contractual obligations and further evades their international obligation to allow the freedom of every person to leave a country.<sup>25</sup> Although**

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**23** Department of State United States of America "Trafficking in Persons Report: Kuwait" June 2013 <http://www.state.gov/documents/organization/210740.pdf> p. 226

**24** John Hopkins School of Advanced International Studies "The Protection of the Rights of Migrant Domestic Workers in a Country of Origin and a Country of Destination: Case Studies of the Philippines and Kuwait" 2013 p. 10, 37

**25** United Nations "International Covenant on Civil and Political Rights" art. 12 para 2 and art. 11

it is illegal to withhold travel documents under Kuwaiti law,<sup>26</sup> this is rarely enforced and the confiscation of passports is still widely documented.<sup>27</sup> The exploitation and abuse that occurs through the Kafala system may amount to forced labor for migrant workers. Forced labor is a grave human rights abuse and is prohibited by various international conventions of the UN and the ILO that Kuwait has ratified.<sup>28</sup>

Exploitation such as late payment, underpayment, and non-payment of wages through contract substitution occurs under the Kafala system. In addition to late payment of wages, the costs associated with the recruitment of the worker are often deducted from the migrant workers salary. In order to change employers, the migrant worker must be granted written permission from their original employer and exorbitant fees may be demanded from the new employer in order for the migrant worker to be released, thereby complicating the process. In many instances these costs are then reclaimed from the migrant worker. Moreover, the sponsorship system does not effectively protect migrants against contract substitution. The Philippine Overseas Employment Administration Governing Board Resolution No. 5 of 2006 sets the minimum wage for Filipino domestic workers at US\$400 while Kuwaiti law sets it at US\$140.<sup>29</sup> Workers are rarely paid the prescribed US\$400.<sup>30</sup> While the employer and employee are free to negotiate higher terms and conditions, the renegotiation of contracts often results in less favourable terms for the migrant worker. If the migrant worker signs a new contract with new inferior terms they cannot claim the terms of the original contract. Under the Kafala system, the refusal of the migrant to sign a contract may lead to the dismissal and deportation of the worker.

Migrant workers sometimes enter the country on a commercial visa. This is often done on behalf of the employer in an attempt to evade recruitment and foreign deployment laws in the Philippines. Usually this results in an unfavourable contract for the migrant worker and an absence of liability on behalf of the employer in regards to increases in pay,

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26 United Nations Human Rights Commission "Consideration of reports submitted by States parties under article 40 of the Covenant: Kuwait" August 17, 2011 para. 69 (b)

27 Department of State United States of America "Trafficking in Persons Report" June 2013 <http://www.state.gov/documents/organization/210740.pdf> p. 227

28 ILO C029, ratified 1968; ILO C105, ratified 1961; CCPR, ratified 1996

29 Philippine Overseas Employment Administration "Governing Board Resolution No. 05" October 24, 2006 <http://www.poea.gov.ph/hsw/hsw.pdf> ; John Hopkins School of Advanced International Studies "The Protection of the Rights of Migrant Domestic Workers in a Country of Origin and a Country of Destination: Case Studies of the Philippines and Kuwait" 2013 p.81

30 John Hopkins School of Advanced International Studies "The Protection of the Rights of Migrant Domestic Workers in a Country of Origin and a Country of Destination: Case Studies of the Philippines and Kuwait" 2013 p.32

promotions, medical care, and the shipment of remains in the case of death. Furthermore, reports indicate that trafficking largely occurs due to visa trading. Work permits are issued through fake companies which are then sold to Filipino migrant workers who entered the country on a visitor visa. When this occurs the Filipino worker cannot file charges against the Kuwaiti.<sup>31</sup>

In Kuwait's first Universal Periodic Review, various Human Rights Council Members States raised their concern about the Kafala system and called for the abolishment of the system.<sup>32</sup> Likewise, many civil society organizations advocated for the revocation of the sponsorship system.<sup>33</sup> The relevant UN committees that review Kuwait's compliance with the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination all recommended that the Kuwaiti government abandon the sponsorship system. In response to this recommendation, the Kuwaiti State asserted that the rights of employers are vulnerable to exploitation and are used as a pretext by States and human rights organizations to interfere in the internal affairs of the State.<sup>34</sup> In acknowledgement of the flawed system, the emir of Kuwait, Sabah Al-Ahmad, Al-Jaber Al-Sabah vowed to reform or abolish the system.<sup>35</sup> However, to date the Kafala system remains.

### Recommendations

- Abandon the inherently flawed Kafala sponsorship system.
- Repeal the absconding law.

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**31** Philippine Department of Foreign Affairs Office of the Undersecretary for Migrant Workers' Affairs "Semi-Annual Report of Foreign Service Posts on Assistance to Nationals" January – June 2013 p.646-647

**32** United Nation's Human Rights Council "Report of the Working Group on the Universal Periodic Review: Kuwait" June 16, 2010, para 82.18 82.19

**33** United Nations Human Rights Council "summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1: Kuwait" January 28, 2010

**34** United Nations Human Rights Committee "Report of the Special Rapporteur for follow-up on concluding observations of the Human Rights Committee" 106<sup>th</sup> session, November 13, 2012 [http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.106.2\\_en.doc](http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.106.2_en.doc) p. 24

**35** Arab Times Online "Kuwait Keen to End Sponsorship System: Residence May Transfer to Ministry" March 3, 2013 <http://www.arab-timesonline.com/NewsDetails/tabid/96/smld/414/ArticleID/193698/reftab/96/Default.aspx>

- **Enforce and monitor the legal restrictions to the withholding of travel documents by employers.**
- **Institute measures to prevent contract substitution.**
- **Release/remove criminal liabilities of workers who were “victimized” by the Kafala system.**

### **III. Domestic workers**

**Kuwait now has the highest proportion of domestic workers in the world.<sup>36</sup> Decades of massive labor migration led to the employment of 660,000 domestic workers in a population of only 3.4 million.<sup>37</sup> Over 90 per cent of Kuwaiti households have a domestic worker.<sup>38</sup>**

**Foreign domestic workers are an extremely vulnerable group in Kuwait. The dependency of migrant domestic workers on employers is exacerbated by the nature of domestic work. Apart from their residency status, domestic workers are dependent on their employer for accommodation, food, and clothing. Kuwait offers limited mechanisms for monitoring or enforcing the protection of domestic workers. Freedom of movement for domestic workers is frequently restricted and communication with employers is impaired by language barriers. Due to a traditional culture of servitude in Kuwait, domestic workers frequently experience a wide range of physical, sexual, and psychological abuse as well as poor living conditions, forced labor, long hours, and non-payment of salaries. The extremely precarious situation of domestic workers in Kuwait and the limited protection provided to the workers perpetuates abuse and exploitation.**

**The Kuwaiti State contends that the number of work-related complaints are minimal compared to the total number of migrant workers in the country.<sup>39</sup> Migrants typically distrust the Kuwaiti justice system and few complaints are actually filed with the Kuwaiti authorities. Instead, migrant workers report abuses to their foreign representatives. Thus, the number of grievances filed with Kuwaiti authorities are not an accurate representation**

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**36** John Hopkins School of Advanced International Studies “The Protection of the Rights of Migrant Domestic Workers in a Country of Origin and a Country of Destination: Case Studies of the Philippines and Kuwait” 2013 p.10

**37** United Nations Human Rights Council “National Report Submitted in Accordance with paragraph 15(a) of the annex to Human Rights Council resolution 5/1: Kuwait” February 22, 2010 p 13

**38** John Hopkins School of Advanced International Studies “The Protection of the Rights of Migrant Domestic Workers in a Country of Origin and a Country of Destination: Case Studies of the Philippines and Kuwait” 2013 p.12

**39** Ibid.



of the exploitation and abuse that domestic workers encounter. The majority of complaints of Filipino migrant workers involved physical abuse, maltreatment or mistreatment, followed by poor living and working conditions.<sup>40</sup> There are reports of employers locking up their domestic workers. In an attempt to escape, domestic workers may jump which often results in serious injury or even death. As an additional consequence, domestic workers that jump may be charged with attempted suicide.<sup>41</sup>

Kuwait has strict laws regarding immorality; amorous relationships between unwed men and women are prohibited. Filipino domestic workers who run away from their employer and stay with a boyfriend may be arrested on this basis. Domestic workers who give birth out of wedlock may also be charged with immorality. Immorality can result in prison sentences of two to three years and migrant workers have resided in jail with their children and partners. Moreover, illegitimate children born in Kuwait are denied access to social services and are deported as they have contravened Kuwaiti immigration laws.<sup>42</sup>

Instead of addressing the particularly vulnerable position of domestic workers in Kuwait by enacting and implementing legislation that protects them, Kuwait explicitly excludes domestic workers from the Labor Law.<sup>43</sup> The Kuwaiti State does not recognize domestic work as legitimate work and as an alternative to the Labor Law, Kuwait established rules and regulations governing the relationship between the employer and domestic worker by the issuance of resolutions. The authorities also created the Office of Domestic Workers Affairs (ODWA) under the Ministry of Interior. The ODWA is a quasi judicial body that was set up to deal with migrant workers cases and to expedite the resolution of cases. However, the sponsorship system deters migrant workers from reporting contract breaches to the Kuwaiti authorities and only a small proportion of actual complaints are pursued and filed. In 2009, 1,624 complaints were registered with the ODWA.<sup>44</sup> The only rules and regulations instituted to protect domestic workers have been designed to govern the recruitment of domestic workers. While standard contracts provide some protection for domestic workers, the compliance with the terms of the contract is rarely monitored or enforced. Kuwaiti privacy legislation prohibits labor inspectors from entering and

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40 Ibid.

41 Philippine Department of Foreign Affairs Office of the Undersecretary for Migrant Workers' Affairs" Semi-Annual Report of Foreign Service Posts on Assistance to Nationals" January – June 2013 p.645

42 Ibid. p.646

43 Private Sector Kuwaiti Labor Law, Section 5 <http://www.kuwaitlaborlaw.com/private-sector-kuwait-labor-law-detailed/>

44 United Nations Human Rights Council "Report of the Working Group on the Universal Periodic Review: Kuwait" June 16, 2010 para. 76

inspecting private households to monitor and enforce compliance with the terms and conditions of employment contracts.<sup>45</sup> There is no comprehensive framework that regulates the employment of domestic workers and in the absence of such a framework domestic workers remain extremely vulnerable to exploitation and abuse.

The Ministerial Decision 200 of 2011 mitigates some of the negative effects of the sponsorship system by affording migrant workers the right to change their residence permit to another employer without permission from their current employer, however this only occurs under very limited circumstances.<sup>46</sup> Domestic workers that transfer to an employer in the private sector are liable to be charged with violating the immigration laws in Kuwait. In order to legally work in the private sector, the domestic worker must change their visa 20 to a visa 18. This is extremely difficult as it requires prior permission from the Ministry of Labor and Social Affairs, as well as a working contract, along with consent from the employer. After this, the visa must be converted through the Immigration Department in Kuwait.<sup>47</sup>

Contrary to the obligations of the international conventions that have been ratified by Kuwait, domestic workers are prohibited to form, or join unions.<sup>48,49</sup> Under these conventions every worker, without distinction, has the right to form or join a union,<sup>50</sup> and no restrictions shall be placed upon the exercise of this right.<sup>51</sup> The UN Committee on Economic, Social and Cultural Rights noted that the right to form trade unions is only

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45 1962 Constitution of the State of Kuwait, Article 38 (Home) [http://www.servat.unibe.ch/icl/ku00000\\_.html](http://www.servat.unibe.ch/icl/ku00000_.html)

46 John Hopkins School of Advanced International Studies "The Protection of the Rights of Migrant Domestic Workers in a Country of Origin and a Country of Destination: Case Studies of the Philippines and Kuwait" 2013 p.63

47 **Philippine Department of Foreign Affairs Office of the Undersecretary for Migrant Workers' Affairs" Semi-Annual Report of Foreign Service Posts on Assistance to Nationals" Jauary – June 2013 p.646**

48 International Federation for Human Rights & Arab Institute for Human Rights "Freedom of Association in the Arabian Gulf: The Case of Bahrain, Kuwait and Yemen" 2009 p.35-36 <http://www.fidh.org/IMG/pdf/etude.pdf>

49 **Kuwait has ratified; CCPR, CESC, CERD, ILO C087, ILO C098**

50 United Nations Human Rights Council "International Covenant on Civil and Political Rights" Article 22.1; International Labour Organization "CO87 - Freedom of Association and Protection of the Right to Organize Convention, 1948" Article 2; International Labour Organization "CO98 - Right to Organise and Collective Bargaining Convention, 1949" Article 1

51 United Nations Human Rights Council "International Convention on the Elimination of All Forms of Racial Discrimination" Article 22.2

recognized for nationals in the Kuwaiti Labor Law.<sup>52</sup><sup>53</sup> While the majority of the population in Kuwait are migrant workers, they account for only 5 per cent of the union membership in Kuwait in 2008.<sup>54</sup> In particular, domestic workers are explicitly excluded from the Kuwaiti Labor Law, and are therefore, prohibited to join or form unions.

UN bodies, UN State Members, human rights organizations and other stakeholders, have repeatedly expressed their concern about the lack of legislation governing domestic workers in Kuwait. Various UN bodies, reviewing the compliance with the relevant ratified conventions have consistently appealed to the Kuwaiti government to include domestic workers in the Labor Law. During the first universal periodic review, recommendations by Member States of the HRC to enact legislation that protects domestic workers in Kuwait enjoyed the full support of the Kuwaiti government.<sup>55</sup> Despite Kuwait's voluntary pledges and their support for recommendations to institute a comprehensive legal framework to protect domestic workers, the limited efforts undertaken by the government attest to the false intentions of Kuwait to reform the system. The ministerial decrees and resolutions aimed at protecting domestic workers are a mere reaction to the recommendations from UN and ILO bodies and the first UPR. The protection supposedly offered by these rules and regulations is hardly ever enforced. The civil society sector has advocated for the inclusion of domestic workers in the Labor Law for decades. Draft laws have been repeatedly introduced but are never enacted.

#### **Recommendations:**

- **Ratify ILO Convention 189 on Decent Work for Domestic Workers**
- **Revoke Article 2 of Chapter 1 of the private sector labor law which excludes domestic workers from the protection offered under this law. Establish a comprehensive legal framework that protects domestic workers and addresses their specific vulnerabilities on par with international standards.**
- **Develop an appropriate legal framework for the protection of domestic workers that will expedite the resolution of claims such as; unpaid salaries, along with underpayment**

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<sup>52</sup> United Nations Committee on Economic and Social Council "Concluding observations on the second periodic report of Kuwait" 19 December 2013 para.22

<sup>53</sup> Kuwait Labor Law "The Law of Labor in the Private Sector: No.6 of 2010" Article 99, 2010 p.27 <http://www.kuwaitlaborlaw.com/wp-content/uploads/2012/01/Kuwait-Labor-Law-2010-Detailed.pdf>

<sup>54</sup> International Federation for Human Rights & Arab Institute for Human Rights "Freedom of Association in the Arabian Gulf: The Case of Bahrain, Kuwait and Yemen" 2009 p.37 <http://www.fidh.org/IMG/pdf/etude.pdf>

<sup>55</sup> United Nation's Human Rights Council "Report of the Working Group on the Universal Periodic Review" June 16, 2010, para 79.68, 79.69 79.73 79.96

**and non-payment of salaries, contract substitutions, and just compensation in cases of maltreatment and abuse, while working towards enacting legislation that covers domestic workers rights.**

- **Institute legal mechanisms that allows labor inspectors to inspect the living and working conditions of domestic workers to ensure compliance with the applicable laws and the employment agreement.**
- **Pursue inter-state dialogue and cooperation with countries of origin, at multilateral and bilateral levels, to harmonise protection policies on migrant domestic workers including the adoption of only one legally-binding employment contract**
- **Establish coordination between the Kuwaiti government and foreign embassies to develop a registry of runaway domestic workers in order to prevent charges of absconding or theft against the worker by the employer.**
- **Provide domestic workers with an orientation after arrival in Kuwait and provide them with pertinent contact and emergency information for their embassy.**
- **Recognize and ensure the right to form or join labor unions for foreign workers.**

#### **IV. Gendered migration**

**Almost all households in Kuwait employ domestic workers and the majority of Filipino domestic workers are women. Women are viewed as sex objects and many domestic workers are considered to be slaves.<sup>56</sup> Currently there is no Kuwaiti legislation that protects female domestic workers from discrimination and sexual harassment in the workplace.**

**The Philippine Embassy in Kuwait endeavours to minimize the number of female domestic workers in the country given their vulnerability to physical abuse, sexual abuse, and various forms of exploitation. The FWRC is able to accommodate approximately 60 distressed migrants at one time, however since December 2012 the need for accommodation has increased to approximately 198 migrants per month. From January to December 2012 5,466 domestic workers reported instances of physical abuse, mistreatment, sexual abuse or rape, non-payment of wages, contract violations, and poor working or living conditions among others. Primarily, 1,730 domestic workers reported cases of physical abuse, maltreatment, or mistreatment, followed by 1,435 reports of poor working and living conditions, while 767 reported non-payment of wages, and 202 cases of rape or sexual abuse were reported. In addition to this, the Assistance to Nationals Unit at the Philippine Embassy in Kuwait aided 775 Filipino nationals during this period and responded to civil and criminal cases that included death and shipment of remains, mistreated and sexually**

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**56 Philippine Department of Foreign Affairs Office of the Undersecretary for Migrant Workers' Affairs" Semi-Annual Report of Foreign Service Posts on Assistance to Nationals" January – June 2013 p.645**

abused migrant workers desiring repatriation, requests for access to health care, as well as migrant workers who had been detained.<sup>57</sup>

The Concluding Observations of the Committee on CEDAW recommended that Kuwait include legislation in the New Private Sector Labour Act that addresses discrimination in the workplace, recommending that Kuwait include a provision in the New Private Sector Labour Act similar to the ILO C111.<sup>58</sup> While this convention prohibits sexual harassment in the workplace, adding a provision such as the ILO C111 into the Kuwaiti Labour Law would protect female migrant workers in the workplace from changes in employment status that correspond with submission to sexual advances or from the rejection of such advances.<sup>59</sup>

Additionally, the CEDAW Committee noted the serious reports of sexual harassment of migrant women and the inadequate mechanisms to seek legal recourse or social security for victims of sexual abuse. In lieu of this, CEDAW recommends that incorporating such a provision should include adequate legal and social security resources for women to seek redress in the case of such harassment.<sup>60</sup> There is a clear lack of data on domestic violence, discrimination, and crimes against women. Current barriers to reporting sexual violence and rape in Kuwait include a fear of persecution due to adultery laws in Kuwait, an insufficient amount of evidence on behalf of the victim, fear of reprisal by the offender, lack of confidence in the Kuwaiti legal system, and a fear of the negative social stigma that may be attached to such allegations.<sup>61</sup> Reports indicate that victims of rape and sexual abuse that runaway from their employers are unable to assert their rights in court. The victims of sexual abuse rarely have the chance to file charges against their perpetrator as they are often charged with absconding, then detained and deported.<sup>62</sup>

Furthermore, the CEDAW Committee recommends that Kuwait review and change the sponsorship system in order to decrease the dependency and consequent vulnerability of female migrant workers on their employers. Many female migrant workers are forced to be at their employers disposal during all hours of the day, working as many as twenty

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**57** Philippine Department of Foreign Affairs Office of the Undersecretary for Migrant Workers' Affairs" Semi-Annual Report of Foreign Service Posts on Assistance to Nationals" January – June 2013 p.641-644

**58** UN Committee on the Elimination of Discrimination Against Women "Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Kuwait" 2011 p.10 para.41(a) <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-KWT-CO-3-4.pdf>

**59** Ibid.

**60** Ibid.

**61** Human Rights Watch "Walls at Every Turn: Abuse of Migrant Domestic Workers through Kuwait's Sponsorship System" 2010 p.51

**62** Philippine Department of Foreign Affairs Office of the Undersecretary for Migrant Workers' Affairs "Semi-Annual Report of Foreign Service Posts on Assistance to Nationals: Kuwait" January – June 2013 p.646

hours per day.<sup>63</sup> Currently, Filipina domestic workers in Kuwait are frequently denied access to health care by their employer or are forced to pay for their own medical services even when the employment contract stipulates otherwise.<sup>64</sup> From January to December 2012, 340 cases were filed at the Philippine Overseas Labour Office in Kuwait regarding health and medical problems.<sup>65</sup> The Committee further suggests establishing social security provisions that would protect domestic workers financially in the case of an illness.<sup>66</sup>

#### **Recommendations:**

- **Actively monitor and gather data on the incidences of all crimes against women including rape, sexual and domestic violence and discrimination.**
- **Ensure that complaints about violence against women are appropriately reported, and that all incidences are impartially investigated and offenders impartially persecuted and that the victims are provided with adequate legal, psychological and physical support.**
- **Incorporate an act against discrimination in the Kuwaiti New Private Sector Labour Act similar to the ILO C111 in order to better protect female migrant workers.**
- **Review and amend the Kuwaiti sponsorship system to reduce the vulnerability of female domestic workers and the reliance on the migrant worker's employer. This includes the development of a social insurance program for female domestic workers that ensures a minimum level of financial protection for migrants in the event of illness.**
- **Include basic health care coverage and emergency health care services on behalf of the Kuwaiti state.**

#### **V. Access to Justice**

**Theoretically, Kuwait provides equal access to judicial institutions regardless of gender or nationality. All residents of Kuwait have the right to seek recompense through the court,**

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**63** Human Rights Watch "Walls at Every Turn: Abuse of Migrant Domestic Workers through Kuwait's Sponsorship System" 2010 p.50

**64** Ibid. p.53

**65** Philippine Department of Foreign Affairs Office of the Undersecretary for Migrant Workers' Affairs "Semi-Annual Report of Foreign Service Posts on Assistance to Nationals: Kuwait" January – June 2013 p.644

**66** UN Committee on the Elimination of Discrimination Against Women "Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Kuwait" 2011 p.10 para.41(b)  
<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-KWT-CO-3-4.pdf>

however the enforcement and implementation of judicial outcomes remain weak and the judicial system deters migrant workers from pursuing justice. The language barrier, the slow progression of cases, and the perception that the judicial system favours employers are all major deterrents for workers seeking justice in Kuwait.<sup>67</sup> While contract workers in the private sector fall within the jurisdiction of the Labor Law and can seek recourse at the labor court, domestic workers are explicitly excluded from the jurisdiction of the Labor Law. Violations of the standard employment contract can be resolved through the judicial system and criminal charges can be filed in cases of physical and sexual abuse. In initial stages, the ODWA will mediate with the employer to try and resolve the case without going to court. In the case of non, or late payment of wages, a resolution can involve the payment of the agreed salary. If the case can not be resolved through mediation it will proceed to court. Under international obligations, Kuwait must provide free assistance, in the form of an interpreter, if a person cannot understand or speak the language used in court.<sup>68</sup> Moreover, although reports suggest that court cases are resolved quickly, in reality it can take many months until a verdict is reached.<sup>69</sup> Victims of rape or physical abuse often choose to return home instead of filing cases or waiting for a resolution.<sup>70</sup> The prolonged litigation process is a barrier in the pursuit for justice.

***A Miscarriage of Justice: Maria dela Cruz (not her real name) ran away on June 12, 2011 from her abusive employer and sought assistance from the Philippine embassy in Kuwait. Immediately, a legal complaint was filed against her woman employer, her mother and her daughter for sexual harassment and grave physical injuries. The case was later elevated to attempted murder and physical injuries. The case was published in the media and other concerned groups came to the aid of the distressed worker. Despite her difficult circumstance in Kuwait, she refused to be repatriated and stayed put in Kuwait, in the FWRC, to monitor the progress of the case. Almost a year later, in May 2012, the verdict of not guilty was handed down by the Court. On October 2012, the distressed migrant, through her lawyer, as she already went back to her country in July, filed a motion for reconsideration of the not guilty verdict. After a thorough examination, in November 2012, the Court was satisfied with the appeal in form and content and agreed to re-judge the case, including compensation.***

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67 Philippine Department of Foreign Affairs Office of the Undersecretary for Migrant Workers' Affairs "Semi-Annual Report of Foreign Service Posts on Assistance to Nationals: Kuwait" January – June 2013 p.647

68 United Nations Human Rights Council "International Covenant on Civil and Political Rights" Article 14, para. 3

69 John Hopkins School of Advanced International Studies "The Protection of the Rights of Migrant Domestic Workers in a Country of Origin and a Country of Destination: Case Studies of the Philippines and Kuwait" 2013 p.83

70 Philippine Department of Foreign Affairs Office of the Undersecretary for Migrant Workers' Affairs "Semi-Annual Report of Foreign Service Posts on Assistance to Nationals: Kuwait" January – June 2013 p.647

*The case took almost a year to be decided upon, unfavorably at that to the worker. The case is on appeal now, awaiting final decision, hopefully in favor of the worker. But the worker is back in her home country now and she is not sure if her seemingly good chance of winning her appeal still stands now that she is out of Kuwait<sup>71</sup>.*

The judicial and police procedures used to investigate complaints in Kuwait are questionable. If runaway workers appeal to the police for assistance, the latter often sides with the employer. By law the worker must present his or her identification, upon which the police will often report the worker to their employer.<sup>72</sup> In March 2013, the government scaled up their Kuwaitization policy. This policy aims to reduce the number of expatriate workers by 100,000 each year for the coming 10 years. The State adopted various mechanisms to facilitate quick and non-judicial deportations. As a result of these policies, major traffic infringements may lead to deportation. By September 2013, 1,258 foreign workers were deported for traffic violations without review or recourse in court.<sup>73</sup> In accordance with the ICCPR, foreign residents who lawfully reside in the country must be allowed to submit reasons against their expulsion and have their cases reviewed by the competent authority.<sup>74</sup>

The CEDAW Committee raised concern about the lack and clarity of data regarding the number of reported cases of domestic and sexual violence against women, along with their respective outcomes, prosecutions, punishments, remedies, and compensations.<sup>75</sup> The court is obliged to provide the accused with lawyers but not the victims.<sup>76</sup> It is recommended that Kuwait provides female victims of domestic and sexual violence with assistance in the reporting and investigation of the crime, along with legal assistance.<sup>77</sup> If complaints are reported with the migrant workers' respective embassy they rarely manifest into actual cases. Runaway victims of physical, sexual, and verbal abuse are placed in overcrowded

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71 Case documents on file with Center for Migrant Advocacy.

72 John Hopkins School of Advanced International Studies "The Protection of the Rights of Migrant Domestic Workers in a Country of Origin and a Country of Destination: Case Studies of the Philippines and Kuwait" 2013 p.35

73 Human Rights Watch "World Report 2014: Kuwait" 2014 <http://www.hrw.org/world-report/2014/country-chapters/kuwait?page=3>

74 United Nations Human Rights Council "International Covenant on Civil and Political Rights" Article 13

75 UN Committee on the Elimination of Discrimination Against Women "Concluding Observations of the Committee on the Elimination of Discrimination Against Women: Kuwait" 2011 p.7 para.30 <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-KWT-CO-3-4.pdf>

76 Ibid.

77 Ibid. para.31



shelters. They prefer to be repatriated rather than going through lengthy and tedious judicial procedures while enduring inhumane living conditions.

Contrary to claims of Kuwait,<sup>78</sup> human rights organizations have stated that migrants awaiting deportation can be detained for months, or even years.<sup>79</sup> Although Kuwait claimed that deportees are held for a maximum of two weeks for ongoing deportation procedures,<sup>80</sup> in reality migrant workers have been detained for many months or years due to procedural impediments such as money claims.<sup>81</sup> Before the first UPR of Kuwait, Human Rights Watch, amongst other organizations, widely reported individual cases of workers who were detained for up to 6 months.<sup>82</sup> Under international instruments ratified by Kuwait, the freedom to leave a country should not be restricted by such impediments.<sup>83</sup> Migrants who are detained in deportation centers for prolonged periods of time must endure poor conditions in the centers. Under Kuwaiti law, Filipino migrant workers that do not have proper documentation or those that have been charged with absconding must await deportation at the Shuwaik Deportation Center and at the Talha Deportation Center.<sup>84</sup> The Talha Center for deportation is overcrowded and services are stretched over numerous detainees. Security guards in deportation centers are able to submit reports against expatriate women before the women have an opportunity to file complaints

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78 United Nations International Covenant on Civil and Political Rights “Replies from the Government of Kuwait to the list of issues to be taken up in connection with the consideration of the second periodic report of Kuwait” Reply to question 12, para. 58

79 Kuwait Society for Human Rights “Shadow Report on: The Second Periodic Report of the State of Kuwait, to the concerned committee on The International Covenant on Civil and Political Rights, Session 100” August 2011 p.2

80 United Nations International Covenant on Civil and Political Rights “Replies from the Government of Kuwait to the list of issues to be taken up in connection with the consideration of the second periodic report of Kuwait” Reply to question 12, para. 58

81 Kuwait Society for Human Rights “Shadow Report on: The Second Periodic Report of the State of Kuwait, to the concerned committee on The International Covenant on Civil and Political Rights, Session 100” August 2011 p.12 KSFHR\_Kuwait1033\_en p. 12

82 Human Rights Watch “Walls at Every Turn: Abuse of Migrant Domestic Workers through Kuwait’s Sponsorship System” 2010 p.66

83 United Nations Human Rights Council “International Covenant on Civil and Political Rights” Article 12

84 Philippine Department of Foreign Affairs Office of the Undersecretary for Migrant Workers’ Affairs” Semi-Annual Report of Foreign Service Posts on Assistance to Nationals” January – June 2013 p.646

regarding the guards.<sup>85</sup> Detainees in deportation centers complain about the inadequacy of the complaint system which deprives them of the right to recourse.<sup>86</sup>

As long as the government maintains the Kafala system, there will be no access to justice for migrant workers. As aforementioned, the system deters migrant workers from filing complaints and pursuing cases. Hence, situations of abuse or exploitation of migrant workers remain largely underreported. When convicted of absconding, victims who escaped their abusive employer are arrested, imprisoned and deported before given the chance to file cases against their employers. Human Rights Watch reported that the majority of migrant workers who had fled from abusive employers were charged with absconding.<sup>87</sup> When workers do decide to seek recourse in court, counter charges by the employer are often filed.<sup>88</sup> By denying migrant workers the right to an effective remedy, Kuwait violates their ratification of international law.<sup>89</sup> Kuwaiti legislation is enacted to ensure that criminal investigations and procedures conform to the international obligations of the ICCPR. In order to comply with this, the arrested person must be informed about the charges laid upon them, brought before a judge promptly, and be permitted to have the case reviewed.<sup>90</sup>

The enforcement of legislation that protects migrant workers is largely absent. The privacy law in Kuwait prohibits authorities from entering the residences of kafeels,<sup>91</sup> thus the implementation of protection for domestic workers relies solely on complaints from migrant workers. As the Kafala system deters complaints, the monitoring of compliance with the rules and regulations governing the recruitment of domestic workers remains considerably weak. The UN Committee on Economic Social and Cultural Rights

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85 United Nations International Covenant on Civil and Political Rights “Replies from the Government of Kuwait to the list of issues to be taken up in connection with the consideration of the second periodic report of Kuwait” Reply to question 12

86 Ibid.

87 Human Rights Watch “Walls at Every Turn: Abuse of Migrant Domestic Workers through Kuwait’s Sponsorship System” 2010 p.66

88 Philippine Department of Foreign Affairs Office of the Undersecretary for Migrant Workers’ Affairs” Semi-Annual Report of Foreign Service Posts on Assistance to Nationals” January – June 2013 p.645

89 United Nations Human Rights Council “International Covenant on Civil and Political Rights” Article 2.3

90 United Nations Human Rights Council “International Covenant on Civil and Political Rights” Article 9, Article 13

91 Ibid. p.64

recommended that Kuwait establish an inspection monitoring system to oversee accommodation conditions of migrant workers.<sup>92</sup>

**Recommendations:**

- Duly investigate and prosecute incidences of abuse and exploitation of foreign workers.
- Expedite the litigation of cases involving foreign workers.
- Institute guidelines that prohibit police officers to return runaway workers to their employers.
- Ensure that migrant workers awaiting deportation are not detained for longer than 30 days, as is prescribed by law.
- Ensure that migrants who are being deported are given the right submit reasons against their expulsion and to have their case reviewed by the competent authority.
- Improve the conditions of detention centers.

**VI. Conclusion**

As member of the United Nation’s Human Rights Council and incoming chair of the 2013 Abu Dhabi Dialogue, an initiative that seeks to develop frameworks, expand capacities, share knowledge, and prevent exploitation in regards to contractual labour migration for sending and receiving countries in Asia, Kuwait is in a key position to demonstrate their commitment to human rights. Foreign workers comprise two-thirds of the total population of Kuwait, and while the Kuwaiti State has repeatedly demonstrated its intention to improve protection for migrants, the implementation of these intended changes have remained insufficient. Despite some progress that has been made for the protection of migrant workers, there remains much to be done in order to comply with the international instruments that Kuwait has ratified.

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<sup>92</sup> Committee on Economic, Social and Cultural Rights “Concluding observations on the second periodic report of Kuwait” 13 December 2013, para. 18, 25