



Building of the dome of Le Louvre Museum in Abu Dhabi

IMPROVING ACCESS TO JUSTICE FOR WORKERS: THE CASE OF THE UAE



GENEVA CENTRE FOR HUMAN RIGHTS ADVANCEMENT AND GLOBAL DIALOGUE
مركز جنيف لحقوق الإنسان والحوار العالمي
CENTRE DE GENÈVE POUR LA PROMOTION DES DROITS DE L'HOMME ET LE DIALOGUE GLOBAL

In Special Consultative Status with the United Nations

ذو مركز استشاري خاص لدى الأمم المتحدة

Doté du statut consultatif auprès des Nations Unies

© 2019 The Geneva Centre for Human Rights Advancement and Global Dialogue
Published in 2019

Edited by Ambassador Idriss Jazairy, Executive Director of the Geneva Centre for
Human Rights Advancement and Global Dialogue

Rue de Vermont, 37-39 CP186
1211 Geneva 20, Switzerland

Email: info@gchragd.org

ISBN: 978-2-940639-05-2



The Geneva Centre for Human Rights
Advancement and Global Dialogue

IMPROVING ACCESS TO JUSTICE FOR WORKERS: THE CASE OF THE UAE

GENEVA, JUNE 2019

LIST OF ABBREVIATIONS

ADJD = Abu Dhabi Judicial Department

EPLO = European Public Law Organization

EU = European Union

GCC = Gulf Cooperation Council

HE = His Excellency

HH = His Highness

ILO = International Labour Organization

IOM = International Organization for Migration

MGI = McKinsey Global Institute

MOHRE = Ministry of Human Resources & Emiratisation

SDGs = Sustainable Development Goals

UAE = United Arab Emirates

UK = United Kingdom

UN = United Nations

UNOG = United Nations Office in Geneva

UPR = Universal Periodic Review

US = United States

WB = World Bank

WPS = Wage Protection System

Table of Contents

FOREWORD	7
SUMMARY RECORD OF THE PANEL MEETING	11
DRAWING LESSONS FROM THE PANEL MEETING	27
ANNEX I: FULL STATEMENTS AND TALKING POINTS OF PANEL LISTS	41
ANNEX II: MOST IMPORTANT SERVICES PROVIDED BY THE JUDICIAL DEPARTMENT IN ORDER TO FACILITATE ACCESS TO JUSTICE - PREPARED BY THE GENEVA CENTRE	75
ANNEX III: OVERVIEW OF PUBLICATIONS OF THE GENEVA CENTRE DURING THE PERIOD OF 2014-2019	83
ANNEX IV: BOOK ORDER FORM	87

FOREWORD

The 21st century will be remembered as the decade of migration and population movements. It is estimated that there are approximately 1 billion people on the move worldwide, encompassing 244 million international migrants and 740 million internal or domestic migrants.¹ This is equivalent to 1/7 of the Earth's population. According to recent statistics from the World Bank (WB), global remittances in 2018 reached USD 689 billion thanks to migration.² With respect to remittances to low- and middle-income countries, remittances from migrants - estimated at USD 462 billion - are significantly higher than foreign direct investment flows that currently stand at USD 344 billion.³ A joint study initiated in 2018 by the International Organization for Migration (IOM) and the McKinsey Global Institute (MGI) likewise concluded that migrants produce nearly 10% of the global wealth measured in GDP terms.⁴ There is therefore no doubt that labour migration generates substantial benefits for both countries of origin and destination, and that migrants are agents of economic growth and development.

Nevertheless, migrant workers often experience abuse and exploitation, notably within the country of destination which violates their fundamental work-related rights and freedoms. They may face poor working and living conditions, low wages, unsafe working environments, absence of social protection as well as racial discrimination and xenophobia. When violations of these rights occur, migrant workers are often not in a position to seek and obtain a remedy for grievances owing to judicial and administrative barriers. Challenges impeding the enjoyment of access to justice among migrant workers must hence be given due consideration by decision-makers.

The present publication entitled *“Improving access to justice for workers: The case of the UAE”* is the fruit of a panel debate held on the same theme on 20 March 2018 at the United Nations Office in Geneva (UNOG). The aim of the panel debate was to review the progress achieved in the United Arab Emirates (UAE) to enhance access to justice for workers and to identify areas of possible improvement. The review was intended to assess the most innovative features of labour reforms and their possible replication in Gulf Cooperation Council (GCC) countries. UAE was chosen as a case

1. See link https://www.iom.int/sites/default/files/country/docs/china/r5_world_migration_report_2018_en.pdf

2. See link <https://www.worldbank.org/en/news/press-release/2019/04/08/record-high-remittances-sent-globally-in-2018>

3. Ibid

4. See link <https://www.mckinsey.com/featured-insights/employment-and-growth/global-migrations-impact-and-opportunity>

study for this review in view of the fact that the country has the highest proportion of international migrants (88.4%)⁵ in the world and that the country has recently implemented numerous innovative measures to promote and enhance access to justice for migrant workers.

The first part of the publication summarizes the panel proceedings of the statements provided by labour migration specialists. The meeting was graced with the presence of high-level experts representing the International Labour Organization (ILO), Human Rights Watch (HRW) and the Abu Dhabi Judicial Department (ADJD) who shared their thoughtful analyses on the solutions required to enhance access to justice for foreign workers in the UAE. The interactive debate that followed contributed to an open and constructive interface with the audience, which included the Ambassadors and other representatives from the Permanent Missions of Bahrain, India, Kuwait, Egypt, Saudi-Arabia, Morocco, Libya, Algeria, the Maldives and Canada to the UN in Geneva. In this regard, I would like to extend my deepest appreciation to the panelists and the participants for their valuable contributions.

During the discussion, we were reminded that the interaction between the migrants, the UAE and the countries of origin of the migrants is a win-win game. It was highlighted that migrant workers bring a substantial contribution to the host economy as the UAE is dependent on access to labour to maintain economic growth and development, since domestic labour supply is insufficient to meet national demand. The speakers also offered constructive recommendations to the UAE regarding the adoption of policies and measures aimed at ameliorating access to justice for foreign workers. In this regard, it was recommended that the UAE authorities take necessary steps to ensure that labour laws are aligned with ILO's Domestic Workers Convention and other relevant international legal instruments to address judicial and administrative barriers impeding migrant workers from accessing legal remedies.

The second part of the publication includes an intellectual think piece on the process of reform in the UAE with respect to foreign labour. In this connection, it was argued that the UAE has made remarkable efforts to improve the overall labour conditions of foreign labour and to enhance legal avenues to settle labour-related disputes. For instance, the UAE government has established a mobile court system, the first of its kind worldwide, to address lawsuits related to labour laws and to provide legal services.⁶ In 2017, the UAE created a One-Day Court System to settle labour disputes for litigation claims amounting to up to USD 5,500 or AED 20,000.⁷ These initiatives are telling examples of recent action taken by UAE authorities to improve access to

5. See link https://www.iom.int/sites/default/files/country/docs/china/r5_world_migration_report_2018_en.pdf

6. See link <https://gulfnews.com/uae/government/mansour-bin-zayed-inaugurates-model-mobile-court-1.1324509>

7. See link <http://gulfnews.com/news/uae/courts/one-day-court-in-dubai-from-today-to-ensure-swifter-justice-1.1990006>

justice and enhance access to legal avenues in order to address labour-related issues for migrant workers residing in the country. The Geneva Centre is grateful for the expertise of panel members which has made this work possible and in particular that of Mr Benjamin George Burgher, Legal Consultant at ADJD and of Mr Ryszard Cholewinski, Senior Migration Specialist at ILO Regional Office for Arab States.

Together with our partners and through joint endeavours, the Geneva Centre for Human Rights Advancement and Global Dialogue (“*The Geneva Centre*”) will continue to promote a value-driven human rights system. The 20 March 2018 conference has laid the ground for a series of panel discussions, which will be organized by the Geneva Centre in the near future, to advance the process of reform initiated in the Gulf region with respect to foreign labour. With the cooperation of other interested countries, the review will contribute to placing the GCC countries in the vanguard of labour-related migration and as a source of inspiration for other countries experiencing large-scale migration.

By Ambassador Idriss Jazairy

Executive Director of the Geneva Centre

SUMMARY RECORD OF THE PANEL MEETING⁸

8. The present report provides a summary record drawn up by the Geneva Centre on the discussions, which took place during the panel meeting at UNOG. It does not commit the authors of the remarks themselves whose statements, which were recorded, are reproduced in full in Annex I to the report.

Introduction

Both being committed to promoting human rights worldwide, the Geneva Centre and the European Public Law Organization (“EPLO”) jointly convened, in collaboration with the Permanent Mission of the UAE to the United Nations Office and other International Organizations in Geneva, a panel discussion on *“Improving access to justice for workers: the case of the UAE”*. The event, which was held at the side-lines of the 37th Regular Session of the UN Human Rights Council, took place on 20 March 2018, from 15:30 to 17:30, at UNOG.

The aim of the panel was to address opportunities and challenges ahead for the enhancement of equal access to justice for foreign workers within the UAE. The debate aspired to shed light on the legal status of foreign workers in legal proceedings, on the available means to bring relevant cases before domestic courts, as well as on the innovative methods introduced by the UAE authorities to enhance the legal empowerment of foreign workers and other relevant parties. The debate focused on areas where progress is needed and feasible, for the purpose of bolstering a consensus around the adoption of policies and measures aimed at ameliorating access to justice for foreign workers in the UAE.

The panel included a moderator and five panellists, and was opened by the then Chairman of the Geneva Centre, HE Dr Hanif Hassan Ali Al Qassim. Opening remarks were also delivered by the distinguished representatives of the organizing institutions. Following the panellists’ interventions, the moderator engaged in an interactive discussion with the panellists, by raising questions and making comments related to their statements. Thereafter, the moderator opened the floor for a Q&A session with the audience.

I. OPENING REMARKS

Chairman of the Geneva Centre: Justice cannot be for one side alone, but must be for both

In his opening remarks, **Dr Al Qassim** thanked the Centre’s partners for co-hosting this event and reiterated the important role of this panel debate in raising awareness on access to justice for foreign workers in the UAE. According to Dr Al Qassim, the UAE is a major destination country in the Gulf region for foreign workers, who make up a significant number of the population of the UAE and play a central role in building the country’s prosperous economy. He stated that labour migration therefore

brings benefits for both countries of destination and origin, and that the economic benefits of sustained remittances by foreign workers were playing a major role in alleviating poverty and inequality, and in driving economic growth in developing countries, mainly in South Asia.



The Geneva Centre's Chairman also touched upon the initiatives undertaken by the UAE to promote the rights and welfare of workers, including the introduction of new labour standards providing for the consensual nature of all contractual relationships. In addition, he mentioned that the UAE had introduced in 2017 a new law for domestic workers, guaranteeing

minimum hours of daily rest, access to dispute resolution and annual paid leave, while in March 2018 a prosecution unit to deal with cases of abuse against domestic workers was established.

Finally, Dr Al Qassim highlighted that the UAE had also been introducing other initiatives to enhance access to justice for foreign workers, particularly online dispute resolution mechanisms, such as, *inter alia*, e-trials, video conferencing and real-time translations accessible through online technologies. These were considered, in his opinion, as the fruit of the UAE Vision 2021, launched for the purpose of building a fair, just and inclusive society. He then concluded his remarks by sharing a quote from Eleanor Roosevelt: "*Justice cannot be for one side alone, but must be for both*".

HE Ambassador Al Zaabi: UAE government committed to finding durable solutions to enhance access to justice for foreign workers

HE Obaid Salem Saeed Al Zaabi, Ambassador and Permanent Representative of the UAE to the United Nations in Geneva, also delivered opening remarks. He started by stating that the UAE is founded up on the core principles of tolerance and open-mindedness towards people and cultures, and that these principles stem from a desire to build constructive



economic and social relationships with all nationals and residents. He stressed that the UAE has a well-established track record of coexistence among more than 200 nationalities and that all are governed by a legal system protecting their beliefs and respecting their customs and traditions.

HE Al Zaabi then highlighted the key elements of the UAE national policy in the field

of labour, including access to justice for foreign workers. He informed the audience that, in full compliance with international labour standards, and in the framework of a strong collaboration with ILO, employment matters in the UAE are governed by Federal Law No. 8 of 1980 and its amendments. He also asserted that the UAE had adopted multiple measures, decrees and resolutions and had taken all the necessary steps to implement these laws for the purpose of increasing workers' protections. Among the concrete achievements in this field, the Permanent Representative of the UAE provided the audience with the following examples:

1. The Wage Protection System (WPS);
2. The reduction of working hours, especially during the holy month of Ramadan or, for construction and industrial workers, during the hottest hours of the day in summer;
3. The protection against occupational accidents;
4. Medical check-ups at least once every six months;
5. The provision of specific services for work in remote areas (such as suitable transportation, accommodation, drinking water, food, first aid services, as well as means of entertainment and sports activities);
6. Compulsory insurance coverage for all employees, both nationals and expatriate residents; and
7. The regulation of contracts, governing the terms and conditions of employment.

Finally, he stressed that, while recognizing that the large number of foreign workers in the UAE had created new challenges for the country, the government was working hard to find durable solutions on all aspects including legal and juridical matters.

Ambassador Papadatos: Panel debate serves as a timely opportunity to dismiss misconceptions regarding access to justice



In his opening remarks, **Ambassador George Papadatos**, Head of EPLO's delegation in Geneva, expressed his hope that the panel deliberations would trigger an exchange of viewpoints concerning the legislative frameworks as well as the government policy to improve the rights of migrant workers in the UAE.

He then asserted that the following interactive dialogue with the audience would serve as a source for the public to dismiss misconceptions and possibly come up with suggestions aimed at improving access to justice for foreign workers in the UAE.

Executive Director of the Geneva Centre: Labour reforms must benefit host and source societies alike

Ambassador Idriss Jazairy, Executive Director of the Geneva Centre and moderator of the event, addressed the audience by expressing the Centre's gratitude to its partners for their support and collaboration, as well as to the distinguished panellists. He noted the topicality of the subject, and stated that promoting an exchange between European industrialized



Western countries, on the one hand, and the Gulf countries, on the other, would be of benefit for both due to the migration problems Europe had been facing.

In this context, he underscored that migration is not only a challenge, but also an opportunity, and that the Gulf region was demonstrating that receiving a high percentage of migrants from abroad had contributed to their prosperity. He then expressed his gratitude to the UAE for being the first country to discuss with the Geneva Centre this sensitive and delicate subject, and wished to establish a similar dialogue with other Gulf countries. The ultimate goal would be to draw up a synthesis of all these diverse experiences, bring out the best practice and probably assist the region itself in further moving forward to become, perhaps, a leader in terms of the best use of these key human resources.

Ambassador Jazairy highlighted the importance of the topic under discussion, acknowledging that access to justice is more than just improving an individual's access to courts or guaranteeing legal representation. He then continued by explaining that access the justice consists in the ability of people to seek and obtain a remedy for grievances through formal or informal institutions of justice, in compliance with human rights standards, in order to offer the population a more attractive alternative to conflict in resolving disputes.

Ambassador Jazairy noted that, regrettably, migrant workers may be denied their fundamental rights at work within the country of destination, and that the capacity to seek remedy may be a challenge in the context of the kafala system. Against this backdrop, he stressed that the kafala system had been questioned by the international community for its possible incompatibility with international labour standards, in particular relating to employment laws, to the right to freedom of movement as well as to the right to equal access to justice. He highlighted that, for this reason, reforms of the kafala system had been considered by GCC countries and that the UAE, in particular, had adopted a series of initiatives in order to improve the rights of migrant workers and their capacity to access both formal and informal judicial institutions. Among these, the moderator mentioned the creation of a legal aid department for

destitute persons, including migrant workers, and the establishment of a One-Day Labour Court System as well as of mobile courts.

Finally, Ambassador Jazaïry reminded the audience of the rationale behind the panel meeting, namely the need to address opportunities and challenges ahead for improving equal access to justice for workers within the UAE. The hope was that the discussions would move towards a consensus around the adoption of policies and measures aimed at enhancing the legal empowerment of foreign labour and other relevant parties in the UAE. He then concluded his introductory remarks by expressing his confidence in the fact that the outcome of the panel discussion would serve as an opportunity for both source and host countries to engage on further far-reaching discussions on this important issue in the future.

II PANELLISTS' PRESENTATIONS

Mr Liddington: Administrative barriers impeding access to justice for foreign workers must be eliminated



The first panellist to take the floor was **Mr Jamie Liddington**, Head of Employment at Hadeef & Partners LLC, in Dubai. Mr Liddington stated that the scale of development required in order to achieve the aspiration of becoming a leading nation from the economic standpoint would not have been possible for the local indigenous population alone. *“Today, Emiratis*

comprise around 15% of the total population with the largest demographic groups being nationals from the Indian sub-continent,” Mr Liddington said. He added that, nevertheless, throughout the process of growth and development, concern had grown regarding the preservation of the country’s culture and values. The main challenge that the UAE authorities had been facing, therefore, was the need to find a way to provide a system of law and access to justice that was equal and fair to all residents, while, at the same time, preserving the identity of a rapidly evolving country.

As an employment and immigration lawyer, who is employed by a private practice law firm in the UAE, Mr Liddington mainly touched upon two main issues: (1) the protections afforded by applicable employment legislation; and (2) the administration of justice. With regard to employment and immigration laws, he acknowledged the existence of misconceptions concerning the alleged limitation or deficiency of legal protections afforded, in the UAE, to foreign workers as compared to leading industrialised nations. Albeit he recognized the need to improve the scope of the current legal protections, he also asserted that the Labour Law (Federal Law No.8 of 1980 (as amended)) in the UAE is a comprehensive part of legislation affording core rights, such as: maximum working hours and overtime, rest breaks, health and safety

in the workplace, annual leave, sick leave and maternity leave, protection from unfair or arbitrary termination of employment as well as gratuity/severance payments.

Moreover, he stated that, more recently, secondary legislation had expanded protections even further to include, *inter alia*, protection from discrimination, protection of wages (including timely payment in full), prohibition on retention of passports, and summer working breaks. He then added that, in 2017, the UAE government had introduced new legislation aimed at providing entitlements and protections to domestic workers, broadly in line with the Labour Law (Federal Law No.10 of 2017), and at bringing the regulation and implementation of domestic workers' employment under the umbrella of the UAE Ministry of Human Resources and Emiratization (MOHRE). Despite these reforms, he observed that the main challenges associated with the legislative protections afforded to migrant workers remained in the area of implementation and application of existing legislation.

Concerning the administration of justice, he explained that this is administered, in the context of foreign labour, mainly by Emirate level courts of first instance and, in particular, should there be one, by their own specialist labour division. He stated that, although there are no barriers in theory to initiate legal proceedings, practical difficulties (such as the need to independently travel to Court, pay a fee in some cases and then return on numerous occasions for hearing dates) may constitute, in fact, significant barriers to justice for blue collar workers.

Nonetheless, he stated that the UAE government was to be commended for several recent initiatives that had had a positive effect in resolving less complicated workers' disputes relating primarily to wages or leave payments. In this context, he acknowledged that the introduction of domestic worker legislation bringing domestic workers under the regulation and protection of the UAE MOHRE, together with the establishment of a special prosecution for crimes committed against domestic workers, was a telling example of the government's intention to make advancements in these crucial areas. Last but not least, he mentioned that court fees had been removed for labour claims in some Emirate courts (for example, Abu Dhabi) and that a waiver of fees is available (subject to means testing) in others (for example, Dubai). Finally, in order to improve the rights of migrant workers' in the UAE and, in particular, their access to justice, Mr Liddington suggested, *inter alia*, the following recommendations:

1. Updating existing labour legislation preferably with input from knowledgeable and experienced key stakeholder groups;
2. Effectively implementing key labour laws (for example, minimum wage and the WPS);
3. Allocating greater resources to implementation and education;
4. Enhancing the applicable sanction regimes whereby sponsoring employers face meaningful punishment;

5. Continuing to undertake measures aimed at making the Courts more accessible to the large number of workers.

Mr Burgher: Abu Dhabi remains committed to enhance access to justice for foreign workers

Mr Benjimin Burgher, Legal Consultant at ADJD, explained to the participants the pivotal role played by the ADJD in ensuring access to justice for migrant workers. In particular, he said that the Labour Court delivers justice to workers, *inter alia*, by interpreting necessary laws and enforcing them. However, he stated that collaboration with other



ministries making appropriate laws or monitoring compliance with these laws is as important in achieving justice for workers. In particular, he mentioned, as an example of collaboration between ministries in this context, the close collaboration between the ADJD and MOHRE, which aims at ensuring that access to justice be delivered to all workers.

Throughout his statement, Mr Burgher mainly focussed on two important aspects of the judicial system: 1) accessibility; and 2) efficiency. In terms of accessibility of justice, Mr Burgher declared that a series of positive measures had been taken in this direction, such as:

1. The creation of a mobile court, consisting in a converted bus that is able to go to labour camps and carry out court procedures in an accessible and effective manner;
2. The organization of weekly awareness campaigns delivered by the ADJD and designed, in particular, for workers based in labour camps.
3. The provision of brochures in relevant languages containing all relevant information about making claims;
4. The provision of legal aid officers in order to give advice to workers about their entitlements, claims and necessary procedures before a complaint is made.

He then added that educating workers about their rights is an essential step to enhance the empowerment of workers and reduce the potential for abuse by employers. For this purpose, he stated that this kind of education should commence at an early stage in home countries and be reiterated to workers at every stage of the recruitment process. He asserted that this was one of the main points of the collaboration agreements between the Ministry of Foreign Affairs and the governments of workers' home countries for the purpose of promoting cooperation in protecting the rights of workers

in the UAE. Against this backdrop, he also mentioned that the MOHRE had launched Tawjeh Centres aimed at advising workers of their rights and obligations at an early stage of the recruitment procedure.

With regards to efficiency, Mr Burgher highlighted that significant developments had occurred, especially in Abu Dhabi. In particular, he stated, *inter alia*, that:

1. A One-Day Labour Court had been established, in close collaboration with the MOHRE, to deal with simple claims valued at less than 20'000 UAE dirhams;
2. The Labour Court was then considering an increased number of matters related to the return of passport, provision of certificates and medical insurance, seeking to ensure that exploitation by unscrupulous employers be prevented;
3. There had been an unprecedented increase in the number of claims brought to the labour court during 2017, which were being addressed by allocating additional judicial resources;
4. Legislative changes allowing for remote hearings would reduce the time and cost of workers needing to attend court.

He finally concluded his remarks by saying that bringing the law to the attention of workers and demonstrating its enforcement, mainly by liaising with the media, would be likely to build workers' confidence in the role of the justice system in enforcing their entitlements in an effective and timely manner.

Dr Wells: Late payment of wages remains a major source of concern in GCC countries



Dr Jill Wells, Senior Policy Advisor at Engineers against Poverty, in London, gave an insight into the protection of wages of migrant construction workers. She addressed the audience by saying that late payment of wages is one of the major risks faced by migrant construction workers in all GCC countries, as well as a major source of disputes between workers

and employers in the region. Against this backdrop, she stated that the UAE had been the first country in the region and beyond to establish, in 2009, a WPS in an effort to reduce labour disputes relating to wages and ensure that employers pay wages on time. The WPS was considered by Dr Wells as an excellent step forward in order to resolve the issue of late payment of wages, but, at the same time, it was described as a reaction to the problem rather than a measure to address the fundamental causes of late payment.

In order to understand the causes of delayed wages, she deemed it necessary to provide a brief overview of the employment structure in the construction sector. Dr Wells recognized the difficulty in attaining flexibility in labour supply in the Gulf, where the kafala system for the recruitment and employment of foreign workers dictates employment contracts for fixed periods of two years and does not allow workers to move easily between employers. She added that the situation had become even more difficult due to the significant changes that had taken place in the previous few decades, mainly concerning the development of manpower companies based in Dubai that specialise in providing temporary building trade labour.

In this framework, Dr Wells said that employers in the UAE were trying to increase flexibility in the labour supply chain either by externalizing/outourcing labour supply to intermediaries or by sub-contracting workforce. She stated that these new developments led to a situation where construction workers and their employers are increasingly distanced from principal contractors and clients by long subcontracting chains, resulting in direct implications for payment. She explained that, in fact, if clients do not pay on time, principal contractors may hold back payment to their subcontractors, who may in turn also fail to pass the money on to those further down the chain, including the employers of the workforce and, at the furthest points of the chain, the workers.

Dr Wells noted that the aforementioned situation is not unique to the Gulf countries and that, on the contrary, we could find in Europe far more flexibility in terms of labour supply. In order to speed the flow of funds and protect payments to subcontractors and workers, Dr Wells presented, among others, the following recommendations, many of which had been already adopted by Western countries and that could be implemented by the UAE as well:

1. Introducing prompt payment legislation requiring all public-sector clients to pay ‘tier one’ contractors within 30 days of the valuation date and charging automatic interests on late payment;
2. Protecting payment to subcontractors so that they can pay wages on time and stay solvent, by banning “*pay when paid*” clauses in contracts;
3. Speeding payment and protecting against insolvency by setting up Project Bank Accounts (ring-fenced accounts where funds are held in trust for the whole supply chain and payments are made directly from the client to the main subcontractors);
4. Offering further protection against insolvency in the subcontracting chain by developing joint liability schemes whereby principal contractors share responsibility for protecting subcontractors and workers against late or non-payments;
5. Restricting subcontracting to two tiers and banning labour supply companies.

ILO senior migration specialist: Migrants workers must enjoy the right to access

justice and judicial remedies against abusive conditions

Mr Ryszard Cholewinski, Senior Migration Specialist at the ILO Regional Office for Arab States in Beirut, described access to justice for all workers as an integral component of the rule of law and of sustainable development, also underscored by a series of Sustainable Development Goals. Mr Cholewinski stated that, as a universal principle, all workers,



including foreign/migrant workers, should have access to justice in order to enjoy decent work and secure their labour rights. In its General Survey on the ILO migrant workers instruments, presented at the International Labour Conference in 2016, the ILO Committee of Experts underscored that *“migrant workers, like all other workers, should enjoy the right to access justice and judicial remedies against abusive conditions, by having complaints considered by independent mechanisms.”* He added that, in light of the same survey, migrant workers, and particularly low-wage workers, were experiencing difficulty in accessing justice without specific assistance to remedy a series of practical challenges, such as limited language skills, inability to meet legal fees and lack of understanding of the country’s legal system.

With regards to the specific case study, Mr Cholewinski noted that, over the previous two years, the ILO and the UAE MOHRE had been working together on a project to improve labour market governance. *Inter alia*, the project also provided for ILO technical assistance in order to help the UAE develop effective individual labour dispute prevention and settlement mechanisms, along with improved access to justice for migrant workers. He highlighted that, as part of this objective, in December 2016, ILO had carried out an analytical study of the factors contributing to labour disputes in the UAE, which observed a substantial increase in individual labour complaints, notably in the building and construction sector. *“A significant number of complaints related to salaries, with late payment of wages being the main issue, despite the introduction in the UAE of the pioneering Wage Protection System in 2009. Other issues are termination of work permit claims as well as a range of labour entitlements’ claims.”* – he stated. He then indicated that a follow-up workshop had been organized in October 2017 to discuss the findings of the study with MOHRE, as well as with other Ministries and the judiciary, and to draw on the experiences of other labour dispute resolution systems, particularly those in Australia and South Africa.

For the purpose of improving access to justice for migrant workers in the UAE, he made a series of key recommendations. Among others, he mentioned the following points:

1. The need to focus more on prevention, in order to help maintain ongoing labour relationships, reduce the cost of expensive legal proceedings, and

contribute to economic productivity;

2. The requirement for early interventions, such as outreach activities and information services, periodic review of the labour law and related decrees, the institution of collective mechanisms ensuring workers' voice in the workplace, the establishment of grievance processes within enterprises, and the strengthening of labour inspection services;
3. The need to increase the MOHRE's role in supporting the private sector to provide labour conciliation/mediation services through proper government oversight of these services in order to ensure fair, efficient, and consistent mediation.

HRW expert: Challenges impeding the enjoyment of access to justice must be given due consideration



Ms Rothna Begum, Women's Rights Researcher on the Middle East and North Africa at HRW, was the last panellist to take the floor. She stated that HRW had documented abuses of migrant workers, including migrant domestic workers, in the UAE, along with several barriers to justice. Ms Begum stated that, recently, the UAE had taken a number of steps for the

protection of domestic workers. Despite these formal improvements, nevertheless, she had met many domestic workers who complained of abuse and harsh working conditions, including unpaid wages, confiscation of passports, confinement to the house and physical or sexual assault by employers.

Ms Begum stressed that, until 2017, the UAE's labour law had excluded domestic workers from its protections. It was only in 2017 that the UAE passed a law on domestic workers providing legal protections for domestic workers rights for the first time, such as 30 days annual paid leave, a weekly rest day, a 12-hour working day, sick leave, and compensation for work-related injuries or illnesses. She described these provisions as a significant advance, but considered them still weaker than the ones provided for by the UAE labour law for all other workers. She thus recommended that the UAE align its labour law with the ILO Domestic Workers Convention, in light of which domestic workers should have protections equivalent to those of other workers.

The panellist highlighted that, while the 2017 law advanced domestic workers' labour rights, the kafala system continues to remain the most significant barrier for workers attempting to claim their rights. She said that, because of the kafala system, migrant domestic workers' visas are tied to their employers and that they are prohibited from leaving or changing jobs before the end of their contract without their initial employers' consent. If they do so, they may be punished with fines, imprisonment,

deportation, and bans upon return for “*absconding*”. For these reasons, she said that many workers were also dropping cases against employers because they did not have work authorization and could not afford to wait months for a resolution of their cases without an income. “*The 2017 UAE law on domestic workers*” – she stated – “*also reinforces the kafala system’s absconding provisions. It requires employers to inform the Ministry of Human Resources and Emiratisation within five days if a worker leaves them without a ‘legitimate reason’ and it requires the worker to report to the ministry within 48 hours if they leave their employer without informing them*”.

Ms Begum highlighted that the new law on domestic workers allows both employers and domestic workers to terminate employment if they fail to meet their contractual obligations. She added that the legislation also provides that, in all situations following the termination of employment, the authorities may grant the worker a new work permit in order to work for a new employer. She also stated, nevertheless, that it was unclear whether the current requirement that workers must obtain former employers’ consent to shift to a new employer would continue to apply. In addition, she stressed that the UAE’s 2017 law on domestic workers not only did not tackle this issue, but even reinforced it. For example, she stressed that the law provides that workers — not just employers — who terminated employment without a breach of contractual obligations must provide compensation of one month’s salary and pay for their own return flight tickets home.

Nonetheless, Ms Begum also asserted that the UAE was considering ways to mitigate problems arising under the kafala system without adopting full reforms. For instance, the UAE in March 2017, announced that it would replace recruitment agencies by the end of 2017 with Tadbeer Centres (procurement centres), privately operated but publicly regulated.



These centres would provide pre-arrival interviews with domestic workers on their contractual rights, provide training to new workers, resolve disputes between workers and employers, and check on workers’ accommodation. They would also “*sponsor*” domestic workers with the potential advantage that employers would no longer wield additional power over workers as their immigration sponsor. However, she said that effective oversight over such agencies would be crucial in order to protect workers’ rights. She also recommended that the UAE abolish the kafala system as well as “*absconding*” charges, and allow domestic workers to change employers without their employer’s consent.

Furthermore, Ms Begum stressed the importance of enforcing the rights prescribed by the new domestic workers law. She mentioned that the UAE legislation provides

for a very positive important mechanism - the first in the GCC States - allowing for inspections of not just recruitment agency offices, but also workplaces and workers' residences. Nevertheless, she noted that, although the UAE authorities had prosecuted some employers for murder or extreme physical abuse, workers were still facing both practical and financial barriers to accessing justice. She then stated that, in March 2018, the UAE reported that it had been establishing a prosecution unit in Abu Dhabi focusing on crimes against domestic workers.

Ms Begum concluded her presentation by stating that, while the UAE had been undertaking several measures aimed at protecting domestic workers, there were still a number of gaps and a long way to go for domestic workers to realize their rights and to obtain redress. She thus recognized the need for adequate monitoring, including from international observers, in order to help the UAE to meet its international obligations.

III INTERACTIVE DIALOGUE

Enhanced cooperation between source and destination countries key to prevent abuse of migrant workers' human rights

In order to give rise to a more lively and interactive dialogue, **Ambassador Jazairy** asked a few selected questions to the panellists. First, he asked Mr Burgher to provide the audience with an overview of the kafala system. **Mr Burgher** stated that Ms Begum had provided the audience with a very comprehensive analysis of "*her view of the law*", but that the misuse of terms such as sponsorship could give rise to misconceptions. He stressed that sponsorship as such is a necessary and unobjectionable part of managing migration, as well as a reasonable guarantee for employers investing in human capital and bearing the related costs. He said that what is unacceptable, in the UAE and beyond, is not the sponsorship system itself, but the abuse of such a system. That is why he highlighted the importance of workers' confidence in a legal and justice system capable of protecting workers from abuse.

Ambassador Papadatos asked to what extent workers' unions could strengthen the rights of workers, and wondered whether ILO had a view on that. Ambassador Jazairy gave the floor to **Mr Burgher**, who answered that unions were not the only entity capable of balancing bargaining power. The panellist mentioned that the creation of an independent outlet where workers can have their voice, as provided for by Article 165 of the UAE labour law, could be implemented in order to balance, in some ways, this bargaining power. He stated that unions are neither a panacea to address imbalance nor the only way to ensure an equal bargaining power. In his view, in the particular context of the UAE, attention should be given to the grievance procedures already provided for by the labour law.

Ambassador Jazairy extended a special welcome to **HE Rajiv Kumar Chander**, Ambassador and Permanent Representative of India to the United Nations in Geneva, whose presence was considered of a symbolic value as the issue under the discussion

concerned both source and destination countries. The moderator emphasized that many of the problems arising in the destination countries could also be better addressed in the source countries, by means of a more accurate preparation and training of the future migrant workforce. He then asked the Permanent Representative of India to provide an example of better cooperation between source and destination country, which could be followed in other parts of the world.



HE Kumar Chander answered that India has a major stake in what is happening in the UAE, a very friendly country, as far as the labour law situation was concerned. He stated that in the country there are 4 million expatriate workers, 2.8 million of whom are Indians coming from an array of different backgrounds. He underlined that, in terms of bilateral

relationships, there was a great amount of political will on both sides and that the Prime Minister of India had been to the UAE a month earlier. On that occasion, the two countries had signed an MoU on manpower cooperation, and the Prime Minister had specifically thanked the UAE leadership for the continuing labour reforms, which had been resulting in a significant improvement of the conditions on the ground. He also underscored that, despite the ongoing mutually beneficial cooperation, an important role should also be played by prevention, in order for migrant workers to be well prepared in advance in terms of documentation, expectations and knowledge of the labour laws of the country of destination, as well as of their rights and responsibilities.

In his concluding remarks, **Ambassador Jazairy** stated that one of the recommendations that could be drawn from the discussion was the possibility that the general labour law and the new law on domestic workers, introduced in 2017, merge into one comprehensive legislation governing all categories of migrant workers. He then commended a series of measures that had been introduced by the UAE authorities and had been referred to by several panellists, such as the 2009 WPS. He stressed that these practices could serve as an example to be replicated in other countries and/or parts of the world. Furthermore, the moderator noted the remarkable ability of the UAE to preserve its traditions and cultural identity against a backdrop of profound transformations that had been taken place in the past decades. Finally, the moderator described the country as a “*laboratory of international harmony*” by virtue of the remarkable amount of nationalities present there, and extended his warmest thanks to all the participants, particularly to the members of the panel, for having contributed to the constructive discussion on the topic.

DRAWING LESSONS FROM THE PANEL MEETING

I EXECUTIVE SUMMARY

1. The UAE was identified as an appropriate country to consider access to justice by workers in view of its significant reliance on foreign workers. Indeed, according to several independent sources, the proportion of foreign workers in the private sector in the UAE amounts to nearly 90% of the total population.⁹ There is an acute need to ensure that such workers are protected and have recourse to justice if matters go awry.
2. The following key issues were identified as matters that could adversely affect the access to justice in the UAE.
 - 2.1. Application of kafala (sponsorship) system, as defined;
 - 2.2. Gaps in legislation;
 - 2.3. Inadequate and/or inconsistent enforcement of legislation, which can result in
 - 2.4. workers having irregular and unprotected status and more liable to be abused;
 - 2.5. Passport retention;
 - 2.6. Confinement of workers and poor working conditions;
 - 2.7. Excessive working hours;
 - 2.8. Delays in payments of wages;
 - 2.9. Accessibility of and speed of courts;Inadequate information and support in pursuing entitlements, including language issues and inability to read or speak Arabic.
3. The following important matters were identified as solutions to the issues outlined.
 - 3.1. Existence of effective and relevant legislation;
 - 3.2. Implementation and enforcement of legislation;
 - 3.3. Communication, information and knowledge building, including robust interpretation, translation and legal aid services;
 - 3.4. Cooperation and coordination between relevant government departments;
 - 3.5. Independent and consistent monitoring, review and accountability of activities.
4. The issues and solutions outlined above apply in varying degrees to all GCC countries and as such practices across GCC countries can be compared with a

9. See link: <https://www.globalmediainsight.com/blog/uae-population-statistics>

view to securing best practice.

5. A continuous process of reviewing and assessing the parameters of access to justice across all GCC countries is suggested and a conceptual framework is provided to facilitate this.

II BARRIERS TO ACCESS TO JUSTICE IN UAE

6. In the UAE, as in many GCC countries, the issue of the kafala system as defined was identified as a possible hindrance to justice.
7. The kafala system has been questioned by the international community and human rights organisations for its possible incompatibility with international labour standards, specifically relating to employment laws, to the right to freedom of movement and to the right to equal access to justice.
8. The kafala system was cited by some foreign workers as being responsible for a state of affairs where a foreign worker may be denied rights at work within the country of destination, without being able to seek an effectively accessible remedy.
9. There was, however, some dispute about what was meant by a kafala system. There are varying degrees of concerns relating to the kafala system that have been subject to studies and possible solutions aimed at enhancing internal labour market mobility and fair migration.¹⁰ Sponsorship systems are not necessarily abusive in themselves, but it has been suggested that some specific features of the kafala system are inherently problematic because of the excessive power exerted by the employer over the foreign worker in the employment relationship and beyond.
10. The UAE is a major destination country in the Gulf region for foreign workers, who make up a significant proportion of the population of the UAE and play a central role in building the country's prosperous economy. According to several independent sources and as noted above, the proportion of foreign workers in the private sector in the UAE amounts to nearly 90% of the total population.¹¹
11. Labour migration can bring benefits for both countries of destination and of origin, and for foreign workers and their families as the economic benefits of sustained remittances by foreign workers play a major role in alleviating poverty and inequality. Remittances to countries of origin in particular are driving economic growth in developing countries, mainly in South Asia. The UAE plays host to migrants from all countries of the world. All are governed by a legal system designed to protect their beliefs and respect their customs and traditions.
12. In the UAE, Emiratis comprise less than 15% of the total population with the largest demographic groups being nationals from the Indian sub-continent. The

10. See for example https://www.ilo.org/beirut/publications/WCMS_552697/lang--en/index.htm

11. See <https://www.globalmediainsight.com/blog/uae-population-statistics>

following estimates for expatriates in UAE for 2019 are illustrative:¹²

12.1	India	2.62 million
12.1	Pakistan	1.21 million
12.1	Bangladesh	0.71 million
12.1	Philippines	0.53 million
12.1	Iran	0.45 million
12.1	Egypt	0.40 million
12.1	Nepal	0.30 million
12.1	Sri Lanka	0.30 million
12.1	China	0.20 million
12.1	All other countries	1.71 million

13. The point was made that it would be unworkable, impracticable and uneconomic to have a system of such large-scale migration, as is evident in the UAE, without a formal sponsorship system. In fact, it is the latter, which has made immigration possible without the manifestation of xenophobia which was triggered in Europe where immigrants constitute only 0.2% of the region's population.¹³ Consequently, it was suggested that a sponsorship system in itself was unobjectionable and that although many abuses may arise from a "*sponsorship system*", such abuses should be considered as separate and distinct from the sponsorship system in and of itself, which can be itself a system with a human/e face with abuses addressed whenever they occur.
14. Notwithstanding the above discord regarding the definition of the kafala system and the need for a sponsorship system to properly govern large-scale migration, it was accepted that measures needed to be taken to ensure that foreign workers have access to an efficient mechanism to enforce their rights that produce an effective remedy.
15. The following matters were identified as seemingly undermining access to justice:
 - 15.1 Confiscation and retention of passports by employers that have the effect of limiting the freedom movement of their workers;
 - 15.2 Unmanageable debt assigned to workers caused by recruitment agents and employer fees. It was said that a by-product of the kafala system allows employers' to demand reimbursement of recruitment costs from domestic workers when they wish to leave, even in cases of abuse. This can run into thousands of dollars and more money than the worker has actually earned. Some domestic workers reported how their employers

12. See <https://www.globalmediainsight.com/blog/uae-population-statistics>

13. See <https://www.monde-diplomatique.fr/2017/05/MATRINGUE/57483>

told them they had “*bought*” them, believing they did so when they paid such recruitment costs;

15.3 Abusive working conditions and working hours;

15.4 Restrictions on movement from employer/ sponsor, prohibiting workers from leaving or changing jobs before the end of their contract without their initial employers’ consent. It was observed that if workers did so they could be in some cases punished with fines, imprisonment, deportation, and bans upon return for ‘*absconding*’;

15.5 Unpaid wages or delays in payment of wages. This can result in workers being forced to continue working unpaid or having to return home without pay or become destitute;

15.6 Absence of trade union rights, namely the right to freedom of association and collective bargaining;

15.7 Limited domestic worker rights;

15.8 Lack of information provided to workers as to their rights and entitlements;

15.9 Lack of accessibility to court due to language and literacy issues.

16. An example was provided, dating from 2013, which concerned a 22-year-old Indonesian domestic worker in Abu Dhabi, who was said to be working in abusive and forced labour conditions. She alleged that she was raped by her employer. The worker fled from her employer several days later and filed criminal charges against him. In the initial court session, her employer was called but she was not asked to provide testimony and instead she was told to wait until medical reports were examined. Four months then elapsed and she had not heard anything. She decided to leave because it was too costly to remain in the country without an income and she was not able to pursue her case in the courts.

17. This example was important in highlighting the need for legislation to be more expeditiously implemented and enforced. It was acknowledged that since 2013 the legislative environment in the UAE has developed to address abuses. However, it was stated that there are still existing gaps in legislation, enforcement and information which have the effect of inhibiting access to justice.

18. Recommendations in this regard are advanced in the conceptual framework below.

III CURRENT LEGISLATIVE DEVELOPMENTS WITHIN THE UAE

19. It was acknowledged that the legislative environment regarding protection of workers’ rights in the UAE has developed exponentially in recent years. As such, a number of the barriers to access to justice in the UAE identified above have been subject to specific legislation aimed at removing the impediment. In particular:

- 19.1 Many kafala system concerns regarding freedom of movement and working hours and conditions have been addressed in specific legislative protections under UAE Federal Labour Law No 8 of 1980. This provides for core worker rights such as:
- Maximum working hours and overtime;
 - Rest breaks;
 - Health and safety in the workplace;
 - Annual leave;
 - Sick leave;
 - Maternity leave;
 - Protection from unfair or arbitrary termination of employment;
 - Gratuity/severance payments;
 - Passport and document return.
- 19.2 There is a prohibition on retention of passports by employers in the UAE that can be immediately enforced. Retention of passports is contrary to UAE Federal Labour law Article 125. Further, Federal Circular 776 of 2003 requires delivery of passports to workers. Finally, the Abu Dhabi Labour Courts have increased the summary enforcement relating to the return of passports with cooperation of the police.
- 19.3 An employer is required to pay the recruitment fees, visa, bank guarantee, and medical insurance for workers up front pursuant to Article 6 Ministerial Labour Decree 52 of 1989. Such fees cannot be reclaimed from the employee.
- 19.4 As far as abusive working conditions are concerned, MOHRE have in place a system for inspection, which can be precipitated by a confidential and anonymous complaint to a telephone hotline 800600, by WhatsApp or by text message. In addition to this, MOHRE are able to undertake random inspections. A greater use of inspections has now been sanctioned.
- 19.5 Under Ministerial Resolution 766 of 2015, workers are free to change employers, without former employer consent after the first two years of their contract. Standard approved written contracts are now mandatory, under Ministerial Resolutions 764 and 765 of 2015. Such contracts must be registered with MOHRE and an initial contract cannot be longer than two years. Further, the contract can be terminated, which entitles the worker to freely leave and seek new employment in circumstances where the employer has failed to pay for two consecutive months and/or acted unreasonably.
- 19.6 The wage protection system has been developed under Ministerial Resolution No 739 of 2016 that ensures that employers must be registered

with the Ministry and make timely and full payments to workers registered through the wage protection system at least once a month. In addition to this, the employer 3000 AED bank guarantee is now being phased out and replaced with mandatory insurance which will ensure that the first 20,000 AED of entitlements are covered. The cost to employers is therefore reduced and the benefit of higher guaranteed payment to vulnerable workers is increased.

- 19.7 Whilst there is no collective bargaining, Ministerial Decrees 749/2018 and 750/2018 implement a collective grievance procedure where MOHRE provide a defined process for resolving collective complaints, in cases where 100 or more workers are involved.
- 19.8 Domestic worker legislation, Federal Law number 10 of 2017, was adopted and implemented to protect domestic workers. The payment of recruitment and visa fees by the worker is prohibited. The Domestic Worker law allows for MOHRE inspections of recruitment agencies' offices as well as workplaces and workers' residences. In addition to this, in March 2018, the UAE established a prosecution unit in Abu Dhabi focusing on crimes against domestic workers. An assessment needs to be undertaken of how far the new Domestic Worker legislation implements the 2030 UN Agenda for Sustainable Development Goal 8 in promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. In the statement made by HRW's Rotna Begum, she said *"The UAE should seek to ensure its law is aligned with the ILO Domestic Workers Convention—the global treaty on domestic workers—which maintains that domestic workers should have protections equivalent to those of other workers."*
- 19.9 As far as the provision of necessary information is concerned in 2016 MOHRE established a network of Tadbeer and Tawjeh Centres that provide a range of information services to domestic and other workers. Importantly, on arrival to the UAE all grade 3 and below workers now receive an induction into UAE labour and/or domestic worker rights in their mother tongue. This includes housemaids, nannies, security guards, blue collar workers, construction workers and manual labour workers. These make up the large majority of the expatriate workforce. Visual aids are provided and full explanations given before contracts are signed and registered with the Ministry. This information provision applies to all new workers and all workers who are having their contracts renewed. These centres provide pre-arrival interviews with workers on their contractual rights, provide training to new workers, resolve disputes between workers and employers, and check on workers' accommodation. They also sponsor domestic workers with the potential advantage that employers no longer

have additional power over workers as their immigration sponsor.

19.10 Accessibility to the court system has been improved by:

- Extensive information and weekly awareness campaigns by the Abu Dhabi Labour Court to workers in labour camps;
- The creation of a mobile court, which is a bus converted into a court which can drive to the location of a number of workers involved in a dispute so timely resolution can be achieved;
- The creation of a One-Day Labour Court to deal swiftly with simple claims;
- The provision of legal aid in order to give advice to workers in need about their entitlements, claims and necessary procedures before a complaint is made;
- The provision of sufficient translators and translated documents. For example, more recently in the Abu Dhabi courts claims have been able to be made in English and Hindi, as well as Arabic;
- Waiving fees when necessary;
- Greater dialogue with media to promulgate information more widely;
- Providing information brochures in several languages and updating websites with relevant important information;
- Greater use of technology, including remote translation and online services to speed up the court hearing time;
- Changes to civil procedure law to make the court process more intuitive and user friendly for workers.

IV ONGOING CHALLENGES

20. Whilst the above legislative developments in UAE are laudable, there remain on going challenges regarding whether the law is being consistently and effectively implemented. Anecdotal discussions suggest that employers are still withholding passports and there remain numerous cases where workers have not been paid for several months.
21. There is also a concern that the domestic workers legislation does not afford the full protection to which ordinary workers in the UAE are entitled. A review is suggested for this. It was suggested that the law on domestic workers was unclear as to whether the workers must obtain the former employer's consent to transfer to a new employer. This needs to be clarified as the law could lead to unreasonable pressure on domestic workers given that it provides that workers, not just employers, who terminated employment in breach of contractual obligations must provide compensation of one month's salary and pay for their own return flight tickets home. This would be prohibitive for many domestic workers.

22. There also needs to be a system of effective oversight over the Tadbeer and Tawjeh Centres in order to ensure that the protections of workers' rights are properly communicated and that there is a mechanism to ensure actual enforcement of the rights prescribed by the labour law and new domestic workers law.
23. The UAE anti-discrimination legislation does not provide a financial remedy in the Labour Court for race, nationality, religious or sex discrimination at work. Federal Law No 2 of 2015 on Preventing Discrimination and Hatred aims to prevent religious contempt or intolerance. Discrimination is prohibited both in the context of the incitement, facilitation or act of religious contempt or other intolerance, but also as a stand-alone punishment. A number of criminal offences relating to religious contempt, discrimination, hatred, and the incitement or facilitation of these acts have been created. Notwithstanding this laudable development, it is evident that some employers pay workers of different nationalities different amounts for the same work. As such, it could be said that without an existing financial remedy, the discrimination legislation is ineffective in the labour context.
24. A key objective of a labour disputes system is to keep people out of court, which helps to maintain on going labour relationships, reduces the cost of expensive legal proceedings, and contributes to economic productivity.
25. MOHRE occupies an essential role in being able to identify, inspect and resolve disputes and if necessary to institute penal proceedings against abusive and non-compliant employers. It is suggested that MOHRE should be more proactive and articulate regarding its powers. In particular, publicising prosecutions against errant employers could provide the foundation for a culture change from one of simply paying if caught not complying to actually being fearful of the consequences of not complying in the first instance.
26. It is also suggested that MOHRE should focus more on prevention of disputes. In respect of settlement, the number of cases referred to court by MOHRE could, perhaps, be reduced if there was more time and resources allocated to do this. Claims such as withholding passports should not be referred to court at all and perhaps should be enforced directly by MOHRE with the assistance of the police.
27. MOHRE is facilitating labour conciliation and mediation services. It is important to ensure that fair, efficient and consistent mediation is provided. In order to assess this, reliable information is required relating to the operation and performance of mediation services. As such, these services need to be effectively monitored and evaluated for determination of the quality and the efficiency of individual labour dispute resolution and access to justice for workers in the UAE.
28. MOHRE monitors employers where there has been non-payment of wages for more than one month. It is suggested that a more assertive approach should be taken to ensure payment of wages is maintained and that more assertive steps are taken against employers who have not paid, such as applying to the court for a

travel ban against the employer or freezing of their bank account or confiscation of employer property. An alternative would be for a compensation window funded by MOHRE which would pay the employee his due while separately suing the employer for reimbursement.

29. MOHRE has established Tadbeer, Tawjeh and Twa Rouq Centres to provide outreach activities and information and reconciliation services. It is positive that these services extend to educating employers about their responsibilities and duties to workers. Further, conducting a periodic review of the labour law and related decrees, the extent to which they have been implemented and a review of the effect of the newly instituted collective grievance mechanism could provide a useful and helpful barometer of the progress that is being made in the UAE and the extent to which the reforms have contributed to an increase in access to justice for workers in the UAE.
30. Consistent training for relevant Judges, officers and staff is necessary to ensure a cohesive and seamless approach to the application of the legal provisions.
31. Given the above, it is suggested that an independent periodic review of the effectiveness of UAE legislation in enhancing access to justice would assist in monitoring and assessing accountability of activities.

V EDUCATION: COLLABORATION BETWEEN GOVERNMENT DEPARTMENTS

32. Collaboration between the courts and ministries making appropriate laws or monitoring the compliance with these laws is as important in achieving justice for workers. Where there is close collaboration, the objectives can be achieved and a consistent strategy formulated.
33. The collaboration should extend to the relevant Justice Ministry, Labour Ministry, Immigration and Visa Ministry, Foreign Ministry and Economic Development Ministry to ensure the provision of consistent information and awareness enhancing messages.
34. Educating workers about their rights is an essential measure to enhance the empowerment of workers and reduce the potential for abuse by employers. This education should commence at an early stage in home countries before workers incur the time, expense or debt of migrating to the UAE.
35. The UAE Foreign Ministry and the governments of workers' home countries should cooperate in protecting the rights of workers in the UAE. The MoU between India and UAE is an example of this.¹⁴
36. The education process should be reiterated to workers at every stage of the recruitment process. This is the purpose of the Tadbeer and Tawjeh Centres

14 See <http://wam.ae/en/details/1395302669803>

aimed at advising workers of their rights and obligations at an early stage of the recruitment procedure.

VI CONCLUSION

37. The situation in the UAE was submitted to an international analysis and discussion under a panel meeting called by the Geneva Centre. Its purpose was to assess the situation relating to ensuring access to justice for all workers. Whilst the UAE is very developed in respect of the existence of necessary protective legislation for workers, the following observations are put forward:

37.1. Consider merging the UAE Labour Law and Domestic Worker Law into one legislative provision to avoid critical differences and ensure that all workers have consistent rights, as well as compliance with relevant international labour standards, including the ILO Domestic Workers Convention, 2011 (No. 189);

37.2. Consider whether the existing discrimination legislation provides an effective remedy or redress;

37.3. Take a more proactive approach to inspection and avoiding, through prevention, disputes from developing;

37.4. Enhance the mediation and conciliation services and monitor effectiveness;

37.5. Ensure that labour law legislation is complied with and enforced by a greater use of penal prosecutions;

37.6. Continually review court and civil procedures to ensure cases, including enforcement of awards, can be dealt with in the most accessible and efficient manner;

37.7. Continue the intergovernmental cooperation and coordination between relevant government departments and governments of other countries;

37.8. Emphasise worker and employer education at every stage of the recruitment process and continue to provide information and conduct awareness campaigns to workers and assess and develop their effectiveness;

37.9. Undertake a comprehensive training program for Judges, officers and staff to ensure a consistent approach to the application of relevant legislative provision;

37.10. Institute an effective and independent monitoring regime to review and assess the effectiveness of the developments that have been made.

VII RECOMMENDATION FOR A CONCEPTUAL FRAMEWORK

38. As a result of the discussion and in order to seek to achieve best practice, the framework table below is suggested for GCC countries to assess and complete in order to identify the extent of access to justice provided to its workers.

Issue of concern	Relevant legislation or process in existence	No relevant legislation or process in existence	Whether the process or legislation is enforced or is effective (any gaps or areas for development and improvement)	Whether the process or legislation is independently reviewed, monitored and assessed. If so, the frequency of monitoring or assessment
Collaboration between government departments and governments				
Collaboration and cooperation between governments of GCC countries of origin				
Education and information provision prior to contract				
Requirement for mandatory written contract				
Existence of a wage protection system for prompt payment				
Passport retention legislation				
Legislation permitting a worker to transfer to another employer/sponsor without the current sponsor's permission				
Domestic worker legislation				
Legislation to implement core worker rights (e.g. maximum working hours and overtime, rest breaks, health and safety in the workplace, annual leave, sick leave, maternity leave, protection from unfair or arbitrary termination of employment, gratuity/severance payments, non-discrimination in employment)				

Issue of concern	Relevant legislation or process in existence	No relevant legislation or process in existence	Whether the process or legislation is enforced or is effective (any gaps or areas for development and improvement)	Whether the process or legislation is independently reviewed, monitored and assessed. If so, the frequency of monitoring or assessment
Minimum insurance or bank guarantee on insolvency of sponsor				
Availability of conciliation/ mediation process				
Availability of individual grievance/ complaint process				
Availability of collective grievance/ complaint process				
Ability to make anonymous complaints				
Existence and extent of inspection authorities				
Penal prosecutions recommended by Inspection authorities				
Information provision relating to enforcement of rights				
Provision for speedy resolution of claims				

ANNEX I
FULL STATEMENTS AND TALKING POINTS
OF PANELLISTS

Opening remarks

HE Dr Hanif Hassan Ali Al Qassim

Chairman of the Geneva Centre's Board of Management

Excellencies, Distinguished Panellists, Honourable Guests,

I thank HE Ambassador Obaid Salem Saeed Al Zaabi, the Permanent Representative of the Permanent Mission of the UAE to UN Geneva, and Ambassador George Papadatos, the Head of EPLO's Delegation in Geneva, for co-hosting today's panel debate on "*Improving access to justice for workers: the case of the UAE*" with the Geneva Centre. Today's panel debate is an important occasion to raise awareness on access to justice for foreign workers in the UAE.

The UAE is a major destination country in the Gulf region for foreign workers primarily from Asia, but also from developed parts of the world. Foreign workers make up a significant number of the population of the UAE. They have played a central role in building up the country's thriving, open and prosperous economy.

The combination of wise leadership and open policies towards labour migration have enabled the UAE to become one of the most prosperous and developed countries in the world. It is to no small extent thanks to the hard work of foreign workers that UAE's economic miracle has become a reality. They are securing the future for tomorrow's generation.

Labour migration has also brought benefits for countries of origin. Remittances by foreign workers to major destination countries from South Asia reached about USD 20 billion last year. The economic benefits of sustained remittances play a major role in alleviating poverty, inequality and drive economic growth in developing countries. In other words, foreign workers are agents of change whose contributions have greatly benefited the economies of both host and source countries.

In order to strengthen the protection of foreign workers, numerous initiatives have been implemented to promote the rights and welfare of workers. According to the recent "*Worker Welfare Report*" issued by MOHRE, new labour standards have been introduced in which inter alia all contracts must be of consensual nature.

In other words, migrant workers cannot be forced to work against their will or under degrading labour conditions. UAE's new law for domestic workers introduced in 2017 guarantees minimum hours of daily rest, access to dispute resolution and annual

paid leave.

The UAE government is also introducing other initiatives to enhance access to justice for foreign workers. In October 2017, the UAE became one of the very few countries in the world to offer online dispute resolution mechanisms. E-trials, video conferencing, conciliation, real-time translations, mediation and court hearings are accessible through online technologies. In March 2018, HH Sheikh Mansour bin Zayed Al Nahyan Deputy Prime Minister, Minister of Presidential Affairs and Head of the Abu Dhabi Judicial Department established a prosecution unit to prosecute cases of abuse against domestic workers.

These are the fruit of the UAE Vision 2021, launched by the leadership of the UAE, to build a fair, just and inclusive society.

I would like to end my statement by sharing a quote from Eleanor Roosevelt who said that “*Justice cannot be for one side alone, but must be for both.*” I hope today’s event will become the starting-point of a debate to explore adequate methods to further enhance access to justice for foreign workers through a free and frank exchange of views between all parties concerned.

I wish you success in your deliberations and thank you all for being here with us today.

Opening remarks

HE Obaid Salem Al Zaabi

Ambassador and Permanent Observer of the UAE to the United Nations Office and other international organizations in Geneva

Excellencies,
Distinguished Panellists,
Ladies and Gentlemen,

The Permanent Mission of the UAE to UN in Geneva is honoured to co-host today's panel debate on "*Improving access to justice for workers: the case of the UAE*" in partnership with the Geneva Centre and EPLO.

At the outset, I would like to seize this opportunity to highlight the key elements of our national policy in the field of work including access to justice for foreign workers.

The UAE was founded on the core principles of tolerance and open-mindedness towards people and cultures. These principles stem from a desire to build constructive economic and social relationships with all nationals and residents.

We consider that contractual workers generate substantial benefits for both countries of origin and destination. Expatriates in the UAE continue to send more of their earnings back to their home countries, with remittances in the last quarter alone reaching more than USD 12 billion. The rise in remittances is a reflection of the growing economy in UAE, which continues to be a preferred destination for expats who are looking for better job opportunities and good quality of life.

It is very important to mention that the UAE has a well-established track record of coexistence, as more than 200 nationalities are currently living and working in the country. All are governed by a legal system that protects their beliefs, respects their customs and traditions and their way of life.

In a full compliance with the International labour law supervised by ILO, with which we have built a strong relationship, employment matters in the UAE are governed by Federal Law No. 8 of 1980. All amendments to the Law have been incorporated into official publications which include:

- Federal Law No. 24 of 1981;
- Federal Law No. 15 of 1985;

- Federal Law No. 14 of 1999.

However, the UAE has adopted multiple measures, decrees, and resolutions and has taken all the necessary steps to implement these laws and increase workers protections.

I would like also to provide you with some concrete achievements in the field of the protection of employees in my country:

- 1. Wage Protection System (WPS):** The WPS is an important step to ensure and protecting the rights of workers, and to establish trust between organisations and their employees. Under this system, salaries of employees are transferred to their accounts in banks or financial institutions, which are authorised by the Central Bank of the UAE to provide such services. For any concerns or complaints regarding the salary, employees can contact MOHRE or lodge a complaint through eNet wasal. As per Ministerial Decree No. 739 of 2016 Concerning the Protection of Wages, all establishments registered in the Ministry shall pay the wages of their employees on the due date through the WPS.
- 2. Reduction in working hours:** Construction and industrial workers are not permitted to work during the hottest hours of the day during the summer. Any firm which breaches this provision is liable to pay a fine of AED 5,000 per worker up to a maximum of AED 50,000. Also, employees are entitled to work 2 hours less every day during the holy month of Ramadan.
- 3. Protection against injuries:** Employers should provide their employees with suitable means of protection against injuries and dangers such as a fire, which may result from the use of machinery and other work equipment and against occupational diseases which may be contacted during work. According to Article 149 of the Labour Law, in case of an injury or death at workplace, the compensation for death at work is equal to the basic wage of the worker for 24 months, provided that the amount of compensation is not less than AED 18,000 or more than AED 35,000.
- 4. Medical check-up:** At least once every six months, employers have to assign at least one physician to examine thoroughly the employees who are exposed to the possibility of contracting one of the occupational diseases. The results of such examination should be recorded on the employees' files.
- 5. Working in remote areas:** Every employer who employs staff in remote areas that are not served by public means of transportation must provide his employees with the following services:
 - i. suitable transportation;
 - ii. suitable accommodation;
 - iii. suitable drinking water;
 - iv. suitable food;
 - v. first aid services;

vi. means of entertainment and sports activities.

All the above services apart from food material will be on the employer's account.

7. **Insurance:** Mainly Abu Dhabi and Dubai apply compulsory insurance coverage for all employees: nationals and expatriate residents.
8. **Regulation of contracts :** The recruitment agency must present a copy of the job offer to the worker prior to the worker's departure from his country of origin. A standard contract accredited by MOHRE will govern the terms and conditions of employment.
9. **Service workers:** In September 2017, HH Sheikh Khalifa bin Zayed Al Nahyan, the President of the UAE approved Federal Law No. 10 of 2017 on support service workers.

Last but not least, we created the UAE Labour Law website, where all parties can find information pertaining to the UAE Labour Law both in the public and private sector as promulgated by MOHRE. The aim of this tool is to inform citizens and expatriates alike of their rights and privileges as employees in the UAE and to ensure that they are able to maintain a congruous workplace environment.

Finally, it goes without saying that this large number of workers in the UAE creates new challenges for which we are working hard to find durable solutions on all aspects including legal and juridical matters.

I wish you a very fruitful debate.

Opening remarks

Ambassador George Papadatos

Head of EPLO's Delegation in Geneva

I hope that the panel deliberations will trigger an exchange of viewpoints regarding the legislative framework, government policy and private initiatives to improve the rights of workers. The discussions hopefully will invite an on the spot fruitful interaction with the audience, serve as a resource for the public understanding of the issues, dismiss misconceptions and possibly come up with suggestions for improving access to justice of foreign workers in the UAE.

These are the reasons Ambassador Jazairy and I decided to bring together a diverse collection of individuals to discuss and tackle problem areas related to foreign workers in the UAE. Ambassador Jazairy is our moderator for today. I do not envy his job which is much harder than being a panellist but he is very good in producing at the end an integrated view of what has been said.

Moderator's remarks

Ambassador Idriss Jazairy

Executive Director of the Geneva Centre

Excellencies,
Distinguished Panellists,
Honourable Participants,

It is my pleasure to welcome you, today, to this panel discussion on “*Improving Access to Justice for Workers: The Case of the UAE*”. This debate, which is taking place as a side-event to the 37th session of the UN Human Rights Council, has been organized in cooperation with the Permanent Mission of the UAE to the United Nations in Geneva and EPLO.

We wish to express our gratitude to our partners for their support and collaboration, to our distinguished panellists for accepting to join us on this occasion, as well as to the audience for attending this event.

Access to justice is more than just improving an individual's access to courts or guaranteeing legal representation. It is the ability of people to seek and obtain a remedy for grievances through formal or informal institutions of justice, in compliance with human rights standards. The ultimate goal is to offer the population a more attractive alternative to conflict in resolving disputes, thereby supporting sustainable peace.

In the absence of access to justice, people are unable to have their voice heard, exercise their rights, or challenge discrimination. Within countries of destination, migrant workers may be denied their fundamental rights at work, including freedom of association and the right to collective bargaining. The capacity to seek remedy may be a challenge in the context of the kafala system, which is widespread in the GCC countries, as well as in Jordan and Lebanon.

The kafala system has been questioned by the international community for its possible incompatibility with international labour standards, in particular relating to employment laws, to the right to freedom of movement as well as to the right to equal access to justice.

For this reason, reforms of the kafala system have been considered by GCC countries,

including the UAE authorities, and we welcome this opportunity to assess the initiatives that the UAE may undertake on this matter, which is central to the Decent Work Agenda, especially as it concerns domestic workers.

GCC countries have made efforts to improve the rights of migrant workers and, in particular, their capacity to access both formal and informal judicial institutions. The UAE has recently adopted a series of reforms in this direction, such as, *inter alia*, the creation of a legal aid department for destitute persons, including migrant workers, and the establishment of a One-Day Court System as well as of mobile courts.

The rationale behind today's gathering is to address opportunities and challenges ahead for improving equal access to justice for workers within UAE. The debate will focus on areas where progress has been made and will assess their human rights impact. It will then focus on areas where future progress is needed and feasible. This will help to move towards a consensus around the adoption of policies and measures aiming at enhancing the legal empowerment of foreign labour and other relevant parties in the UAE.

During today's discussion, each speaker will have an allocated time of no more than 5 minutes. After all presentations will have been delivered, an interactive Q&A session with the public will follow, if time allows it.

I am confident the outcome of this panel discussion will serve as an opportunity for both source and host countries to engage on further far-reaching discussions on this important issue in the future.

Panellist statement

Mr Jamie Liddington

Head of Employment at Hadeef & Partners LLC, Dubai

I am a Partner and Head of Employment at Hadeef & Partners - a leading independent law firm with offices in Dubai and Abu Dhabi. I have lived and worked in the UAE since August 2013 as a lawyer specializing in employment and immigration law.

Past

In relative terms, the UAE remains a very young nation. Since its unification in 1971, the country experienced unparalleled growth and development over the three decades which followed. That growth has slowed since the turn of the 21st century but continues at a rapid pace.

Ambitious visionary rulers at both the national and Emirate level – with vast natural resources at their disposal – have identified the need to recruit foreign nationals in order to gain the benefit of skills and experience which had not, up to that point, been cultivated within the local population to the extent required in order to satisfy levels of demand.

In order to achieve the aspiration of becoming a leading nation in economic terms, huge upgrades were required nowhere more so than the national infrastructure relating to the transit of goods and people.

The scale of development which was required – and which has materialized – would not have been possible for the local indigenous population alone. Today, Emiratis comprise around 15% of the total population with the largest demographic groups being nationals from the Indian sub-continent. Given the UAE's close proximity to nations such as India, Pakistan, Nepal, Bangladesh and the Philippines (where large populations of blue collar workers and high rates of unemployment exist) and its vast natural resources coupled with its ambitious development plans, it should come as no surprise that the UAE has become a prime destination for migrant workers over the last 45 years.

Present

Today, the UAE is a melting pot of nationalities and cultures with reportedly over 200 nationalities and a total of almost 4 million foreign residents.

But as the UAE has grown and developed, concern has grown regarding the preservation of the country's culture and values. Like every nation, the UAE has every right to protect and preserve its own national identity. This national identity manifests itself in the form of religion, language, culture and system of law.

So, how to provide a system of law and access to justice which is equal and fair to all residents while at the same time preserving the identity of a rapidly evolving country where the indigenous population is outnumbered five to one. That is the challenge, which this forum has been convened to address.

As an employment and immigration lawyer who is employed by a private practice law firm in the UAE, it is apparent that my most valuable contribution to this distinguished panel is to offer insight on two main issues: (1) the protections afforded by applicable employment legislation and (2) the administration of justice.

Employment and Immigration Laws

It is often perceived – wrongly in my view – that the legal protections afforded to foreign workers are severely limited and deficient as compared to leading industrialised nations.

While there is no doubt that there is scope for improvement, the reality is that the Labour Law¹⁵ is a comprehensive piece of legislation affording core rights such as:

- (1) Maximum working hours and overtime;
- (2) Rest breaks;
- (3) Health and safety in the workplace;
- (4) Annual leave, sick leave and maternity leave;
- (5) Protection from unfair or arbitrary termination of employment;
- (6) Gratuity / severance payments.

More recently, secondary legislation has expanded protections even further to include protection from discrimination, protection of wages (including timely payment in full), prohibition on retention of passports, summer working breaks and more.

In 2017, the UAE government introduced new legislation¹⁶ to provide entitlements and protections to domestic workers¹⁷ broadly in line with the Labour Law and bringing the regulation and implementation of domestic workers' employment under the umbrella of MOHRE.

Further initiatives were introduced such as the Tawjeeh and Tadbeer Centres, which are expected to provide education and training to resident employees and domestic workers respectively.

15. Federal Law No.8 of 1980 (as amended)

16. Federal Law No.10 of 2017

17. including drivers, gardeners, maids, nannies, security guards, valet parkers, private trainers and sailors

But the main challenges associated with the legislative protections afforded to migrant workers remain in the area of implementation of legislation.

It is a commonly held view that while the applicable law is clear, the position adopted and applied at the Ministry level is in some way different or inconsistent with the legislation. One such example of this is the WPS where the applicable legislation¹⁸ makes no provision for employers to benefit from any margin of error or non-compliance but where, in reality, a practice exists where no action is taken unless an employer is in default by failing to pay more than 15% of its workforce's wages on time in full. Another example is minimum wage where Article 63 of the Labour Law provides that there will be a determination by Federal Decree to account for inflation/cost of living. To date, no such Decree has been issued.

Administration of Justice

In the context of foreign labour, justice is administered primarily by Emirate level courts of first instance (some of which have their own specialist Labour division).

The Federal Ministry of Human Resources and Emiratization as well as the General Directorate for Residency and Foreigner Affairs also play a key role in enforcing laws (for example via inspection and sanction regimes) and mediating workplace disputes.

But until relatively recently, courts have largely been accessible to those with independent means to travel to and be present at the applicable court. While no barrier exists in theory so as to restrict any nationality of worker to initiate or further any legal proceedings, the practical difficulties posed by having to; independently travel to court, pay a fee (in some cases) and then return on numerous occasions for hearing dates (which are at the discretion of the court dependent on availability and not convenience or election of the parties) means that, in a practical sense, there are significant barriers to justice for blue collar workers.

The UAE government is to be commended on several recent initiatives which – as my distinguished fellow panelist Mr Benjimin Burgher will explain – have had a dramatic effect in resolving less complicated worker disputes relating primarily to wages or leave payments.

A suite of Ministerial Resolutions introduced at the start of 2016¹⁹ have shown that the UAE government is attuned to the issue of exploitative recruitment of vulnerable workers and also further limiting the application of labour bans. These initiatives show that the government is prioritising change, which prevents the exploitation, rather than over focusing on solutions to cure the harm.

The introduction of domestic worker legislation bringing domestic workers under the regulation and protection of MOHRE together with the establishment of a special prosecution for crimes committed against domestic workers is further testament to

18. Ministerial Decree No. 788 of 2009 (as amended)

19. Ministerial Resolutions Nos. 764, 765 and 766 of 2015

the government's desire to make advancements in these crucial areas.

The recent unveiling of both the Tadbeer and Tawjeeh initiatives whereby foreign workers will receive education on their rights and entitlements during the process of obtaining a residence visa should also result in a more informed workforce. In turn, it is hoped that this will force employers to adapt and modify their own behaviours.

Court fees have been removed for labour claims in some Emirate courts (for example, Abu Dhabi) and a waiver of fees is available (subject to means testing) in others (for example, Dubai).

Future

As evidenced by the Universal Periodic Review (UPR) process in 2013 where the UAE accepted over 100 recommendations, there is no denying that there is room for improvement. The key challenges facing the UAE as regards to foreign workers rights and access to justice are:

- (1) The need to update the Labour Law preferably with input from knowledgeable and experienced key stakeholder groups;
- (2) Effective implementation of key labour laws (for example, minimum wage and WPS);
- (3) Greater allocation of resources to implementation (for example, MOHRE funding to engage more inspectors and to conduct more thorough monitoring programs) and education (for example, Tadbeer and Tawjeeh initiatives to produce measureable results);
- (4) Enhancements to the applicable sanction regimes whereby sponsoring employers face meaningful punishment which cannot be absorbed by being passed onto workers but instead involve increased monitoring and oversight and, in extreme or repeat instances, prosecution and potential criminal actions against the owners or managers of the employing entity;
- (5) Continuation of measures to make the courts more accessible to the large number of workers who do not have easy access to a mode of transport and/or funds from which to cover travel and court costs. It is imperative that online options be explored and/or the creation of mobile/satellite courts.

Panellist statement

Dr Jill Wells

Senior Policy Advisor at Engineers against Poverty, London

Late payment of wages is one of the major risks facing migrant construction workers in the GCC and a major cause of disputes between workers and employers which governments have to resolve.

Problems with late payment of wages have been reported from all GCC countries. In Qatar 93% of the complaints handled by the Ministry of Labour in 2010 were about wage delay and two thirds of the complainants were construction workers. The Ministry of Manpower in Oman reported in 2010 that employee wage complaints had increased from 10% to 20% yearly and most are from vulnerable groups of blue-collar labourers. The problem heads the list of workers grievances in Bahrain even though non-payment of wages is a criminal as well as a civil offence in that country. In February 2016, a slump in the construction industry left thousands of workers unpaid in Saudi Arabia.

Prompt payment of wages is critical for migrant workers everywhere, many of whom have paid recruitment fees and/or other costs associated with migration and arrive in the destination country in debt. Failure to receive their wages on time means that the workers cannot transfer money back to their home country to support their families and to meet the debt repayment schedule so interest mounts up causing serious stress.

Late payment is an especially serious problem for migrant workers in the countries of the GCC. When workers have not been paid their wages, they have few possibilities of redress. Due to the restrictions of the sponsorship system (known as kafala) workers may be limited in their freedom to legally leave their employer and seek work elsewhere. In some countries, they cannot leave the country without an exit permit, which may result in being unable to return to their country of origin for months, with no income. The system for processing and adjudicating workers' grievances is difficult for migrants to access and to navigate. Many give up and seek to return home, or they seek work that is 'illegal' under the structures of the sponsorship system, making workers vulnerable to detention and deportation.

To understand the reasons for late payment of wages it is necessary to look at the changes that have taken place in the past few decades around the world towards more

flexible forms of employment. There are two main forms of flexible arrangements for the supply of labour: casualisation and externalisation. Casualisation involves an increase in the number of temporary or part time employees who can be taken on and dismissed as required but does not change their status as employees in any other way: they are engaged through a contract of employment with the contractor. Externalisation is more radical and occurs through the outsourcing of labour supply to intermediaries. Workers are engaged through a commercial contract between the contractor and the labour supplier who in turn has a contract of employment with the workers. Hence, there is no direct contractual link between the contractors and the worker.

Attaining flexibility in labour supply is difficult in the countries in the Gulf where the *kafala* system for the recruitment and employment of foreign workers dictates employment contracts for fixed periods of 2 years and does not allow workers to move easily between employers. Research by the author in the mid-1990s found international contractors working in Dubai to be employing most of their workers directly, with some companies managing a workforce in the thousands. This may still be the case on some projects, but significant changes have taken place in the past few decades with the development of manpower companies based in Dubai which specialise in providing temporary building trade labour. Acting contractually as the employer, these temporary labour agencies are able to sidestep the restrictions imposed by *kafala* laws and move workers among contractors as needed. Many of these agencies are owned by expatriates, including Indian nationals from Kerala who are often former migrant workers themselves. They operate as labour suppliers and/or labour contractors and most are small with limited financial capacity. There are also a few large Temporary Employment Agencies, which also hire out workers to contractors.

Labour supply companies may operate entirely within the law, obtaining visas legitimately, but some may employ workers who have '*absconded*' from their previous employer and are thus in an irregular situation. Others may exploit the sponsorship system by obtaining residence permits for migrant workers for a fee (paid by the migrant worker) while not necessarily being able to provide them with jobs (known as '*trading in visas*'). If the labour supply companies are unable to find opportunities to keep their workers constantly employed, it can lead to periods when the workers have no work and no pay. If on the other hand the companies continue to pay the workers' wages during gaps in contracts in order to keep their team together, it can lead to insolvency for the company and redundancy for the workers. These small companies are in fact bearing the cost of flexibility of labour supply in the industry. It is particularly hard for governments to regulate in this area despite significant efforts.

These changes in employment relationships have been accompanied by a dramatic increase in the practice of subcontracting. The combination of subcontracting and outsourcing of labour has led to a situation where construction workers and their

employers are increasingly distanced from principal contractors and clients, by long subcontracting chains. This has implications for payment. The normal payment practice is for the client to make periodic ‘*interim*’ payments to the principal contractor for the value of the work done and certified during the previous period. The principal contractor is then responsible for passing on appropriate sums to all participants along the subcontracting chain. Applications for payment travel up the chain while payment travels down. In the best possible scenario, when there are no disagreements, it may take months for the payment to reach the workers.

However, clients do not pay on time and principal contractors in turn may hold back payment to their subcontractors. In many situations, contractors are not legally obliged to pay their subcontractors until they have received payment from the client, a practice known as ‘*pay when paid*’, which is widely considered unethical but is still commonly incorporated into contracts. Subcontractors in turn may also fail to pass the money on to those further down the chain. Last to be paid, at the furthest points of the chain, are the employers of the workforce, which are often small firms already heavily in debt. When the flow of cash comes to a halt, the only option for these firms is to borrow further from the bank or renege on their debt to the workers.

The particularly precarious situation of subcontractors and labour suppliers becomes very apparent when the flow of money dries up dramatically because a client or principal contractor is over-leveraged and cannot pay its debts. This happened in Dubai in 2009 when a major property developer defaulted on an estimated USD 4 billion of short-term debt with devastating impact on the local property market. Payment stoppages to principal contractors translated directly into wage repression and project cancellations that had a particularly significant impact on workers employed at the bottom of the subcontracting chain. An estimated 150,000 Indian nationals lost their jobs in 2009 and returned to India often without receiving the payment due to them.²⁰

Even a slowdown in the economy and in payment from the client can cause problems for contractors and the workers they employ. In early 2016 low oil prices led to reduced investment in building projects in a number of GCC countries and several contractors reported feeling an impact on their working capital and their ability to repay debt. These developments have exposed the extent of indebtedness in the industry. While indebtedness leads to late payment it can also led to bankruptcy in which case the workers may never be paid as there are no compensation funds available in the GCC countries.

20 Buckley, M.: “From Kerala to Dubai and back again: Construction migrants and the global economic crisis”, in *Geoforum* (2012, Vol. 43, No. 2), pp. 250-259.

Recommendations to speed the flow of funds and protect payments to subcontractors and workers

Countries around the globe have been facing similar challenges to the UAE and have adopted some innovative ideas to help prevent late or non-payment of wages. Below is a summary of the kind of steps that could be taken in the UAE:

- (1) For faster payment by government clients: follow the EU, US, UK by introducing prompt payment legislation requiring all public-sector clients to pay ‘*tier one*’ contractors within 30 days of the valuation date and charging automatic interest on late payment;
- (2) To protect payment to subcontractors so that they can pay wages on time and stay solvent: follow the UK, New Zealand, Singapore, Malaysia - by banning ‘*pay when paid*’ clauses in contracts with the right of contractors and subcontractors to suspend performance for non-payment;
- (3) To resolve disputed items in claims and facilitate the faster payment of non-disputed items: follow UK Singapore, Malaysia, New Zealand etc. by introducing a procedure for Statutory Adjudication which can resolve payment disputes in as little as 14 days;
- (4) To speed payment and protect against insolvency: follow UK, South Korea etc. in setting up Project Bank Accounts, which are ring-fenced accounts where funds are held in trust for the whole supply chain and payments made directly from the client to the main subcontractors;
- (5) To offer further protection against insolvency in the subcontracting chain: follow many EU countries in developing joint liability schemes whereby principal contractors (and possibly clients) share responsibility for protecting subcontractors and workers against late or non-payment of money owing to them;
- (6) To avoid exploitation of workers at the bottom of the subcontracting chain: follow many EU countries by restricting subcontracting to two tiers and banning labour supply companies.

Could WPS benefit from any of the above?

In an effort to reduce labour disputes relating to wages and ensure that employers pay wages on time, the UAE introduced the WPS by Ministerial Decree in 2009, updated in 2016. This was a significant innovation – a first in the world – and an important step forward in resolving the issue of late payment of wages. If working as planned it should be possible for interested parties to detect when wages are delayed, while also creating an incentive to pay on time by imposing sanctions on employers who pay late. However, fining the immediate employers will not resolve the problem if they are genuinely unable to pay when wages are due because of delay in receiving payment for the work already done.

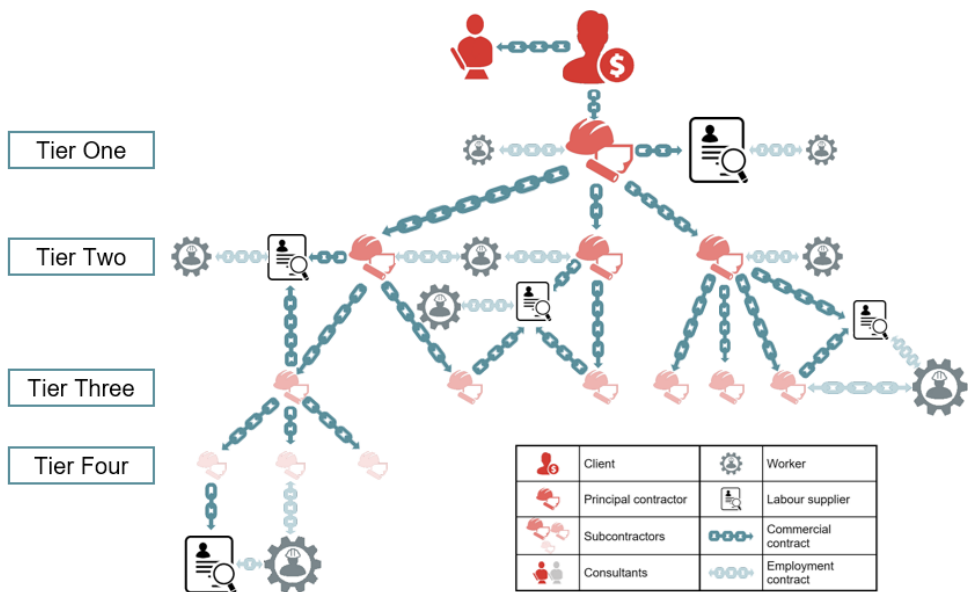
To address this dilemma, MOHRE revealed in its first Worker Welfare Report (UAE

2015) that bank guarantees have been set aside and are being used to pay workers’ wages when employers default. From 2001 all companies employing migrant workers in the UAE have had to pay AED 3,000 for every worker they hire. The report revealed that AED 22 billion has been accumulated in the form of bank guarantees to date. A total of 371 companies are reported to have defaulted on obligations to workers since 2009 with the Ministry able to recover some AED 41 million from the guarantees, which has been distributed in wages to 16,497 workers. The 2015 report also revealed that a much greater sum (AED 290 million) had been recovered from employers and distributed to 42,510 workers.

This information is very welcome. However, the WPS is a reaction to the problem rather than a measure to address the fundamental causes of late payment. It would be interesting to learn how long it took to recover the money from the employers and compensate the workers? If the employers could not be traced how quickly were workers compensated from the bank guarantee fund? How many people were involved in this task and at what cost to the government?

Would any of the recommendations outlined above to speed payment down the subcontracting chain and protect against insolvency help to lessen the task and improve project delivery?

Figure 1: A schematic subcontracting chain



Source: Engineers Against Poverty 2016

Panellist statement

Mr Ryszard Cholewinski

Senior Migration Specialist at ILO, Regional Office for Arab States, Beirut

Access to justice is an integral component of the rule of law and of sustainable development. In SDG 16 on promoting just, peaceful and inclusive societies, and SDG target 16.3 in particular, UN member States have committed to “*promote the rule of law at the national and international levels and ensure equal access to justice for all*”.²¹ Further, SDG 8 on decent work and economic growth in target 8.8 urges States to “protect labor rights and promote safe and secure working environments of all workers, including migrant workers, particularly women migrants, and those in precarious employment”.

As a universal principle, all workers, including foreign/migrant workers, should have access to justice so that they can enjoy decent work and secure their labour rights. In its General Survey on the ILO migrant workers instruments, the ILO Committee of Experts²² underscored that “migrant workers, like all other workers, should enjoy the right to access justice and judicial remedies against abusive conditions, by having complaints considered by independent mechanisms”.²³

Moreover, it would be unreasonable to expect migrant workers, and particularly low-wage workers, to access justice without specific assistance as they often face many practical challenges such as limited language skills, inability to meet legal fees and lack of understanding of the country’s legal system.²⁴ And if migrant workers find themselves in an irregular situation, these challenges become even more acute given

21. Access to justice for all persons is also strongly reflected in international and regional human rights instruments, and in such fundamental principles as legal protection and equality before the law, the right of everyone to recognition everywhere as a person before the law, the prohibition of discrimination, equality of treatment with regard to legal proceedings, the right to an independent, impartial and competent tribunal, with due process guarantees and a hearing within a reasonable time, the right to present a case before a competent authority, and the right to an effective remedy and effective enforcement of that remedy.

22. ILO Committee of Experts on the Application of Conventions and Recommendations.

23. ILO, *Promoting fair migration*, International Labour Conference, 105th Session, Report III (Part 1B), General Survey concerning the migrant workers instruments, Report of the Committee of Experts on the Application of Conventions and Recommendations, Geneva, International Labour Office, para. 488.

24. *Ibid.*, para. 489.

the difficulty of proving an employment relationship (exacerbated by the absence of a written employment contract), the fear of detection by enforcement agencies, and expulsion from the country.²⁵

While access to justice for migrants is also captured in objectives 6 and 17 of the zero draft of the Global Compact for Safe, Orderly and Regular Migration, it needs to feature more explicitly.²⁶

In the UAE, over the past two years, the ILO and MOHRE, have worked together on a project to improve labour market governance. The UAE faces several challenges in the governance of its labour market: a low employment rate of nationals (hence the current MOHRE priority of Emiratisation); a segmented labour market (with non-nationals working almost exclusively in the private sector); and deficits in the availability of reliable and comprehensive labour market data. One of the project's objectives, among others, was the provision of ILO technical assistance to help develop effective individual labour dispute prevention and settlement mechanisms, along with improved access to justice for migrant workers.

As part of this objective, in December 2016, ILO carried out an analytical study of the factors contributing to labour disputes in the UAE. The study observed a substantial increase in individual labour complaints, almost doubling from 133,516 in 2015 to 242,219 in October 2016. Such an increase is not unique to the UAE and is in line with global trends. In a 2016 comparative study on “*Resolving Individual Labour Disputes*” examining the position in selected OECD countries, the ILO discussed some of the complex causes for this increase, which include an improved range of individual rights protections; a decrease in trade union density and/or collective bargaining coverage; higher risks of termination of employment and unemployment; reduced job quality and security due to greater use of various contractual arrangements for employment and other forms of work; and increased inequality as a result of segmented labour markets.²⁷

The majority of the labour complaints in the UAE were in the building and construction sector, which employs a large number of migrant workers. 1/5 of the total number of complaints related to salaries, with late payment of wages being the main issue (despite the introduction in the UAE of the pioneering WPS in 2009). Termination of work permit claims amounted to 15% of the total and a range of labour entitlements' claims (other than salary claims) to 30% of the total.

25. Ibid., para. 493.

26. For example, the GCM calls upon UN member States to ensure that migrant workers have, amongst other matters, “*access to complaint and redress mechanisms*” in the recruitment process (Objective 6) and contains a commitment to “*reduce legal and practical barriers for migrants to access national and regional redress mechanisms with a view to promoting accountability and addressing governmental actions related to discriminatory acts*” against migrants and their families (Objective 17).

27. M. Ebisui, S. Cooney and C. Fenwick, (eds), *Resolving Individual Labour Disputes: A comparative overview*, Geneva, International Labour Office, 2016, p. 1.

A follow-up workshop was organized in October 2017 to discuss the findings of the study with MOHRE and other officials as well as the judiciary, and to draw also on the experiences of other labour dispute resolution systems, particularly those in Australia and South Africa.

With regard to improving access to justice for migrant workers in the UAE, a number of key points are worth noting:

- (1) There is a need to focus more on prevention. One of the key aspects of a labour disputes system is to keep people out of court, which helps to maintain ongoing labour relationships, reduces the cost of expensive legal proceedings, and contributes to economic productivity;
- (2) This requires early interventions such as outreach activities and information services, periodic review of the labour law and related decrees, institution of collective mechanisms which ensure workers' voice at the workplace, establishment of grievance processes within enterprises, and strengthening labour inspection services;
- (3) With regard to outreach activities, training employers to set up dispute-handling processes within enterprises would be an important step. On information services, much has been done in the UAE to provide reliable and accurate information to workers. For example, in 2016 responsibility for domestic workers was transferred from the Ministry of Interior to MOHRE, which is establishing a network of Tadbeer Centres that provide a range of services to domestic workers²⁸;
- (4) With regard to review of labour law and related decrees, it would be useful to examine the extent to which important ministerial decrees adopted in recent years²⁹ have contributed to any reduction of labour complaints and/or disputes;
- (5) MOHRE is also supporting the private sector to provide labour conciliation/mediation services. But it would be important to have proper government oversight of these services to ensure that they provide fair, efficient, and consistent mediation.³⁰ This also requires good statistical and case management systems so that the accreditation, operation and performance of these services can be effectively monitored and evaluated, which is essential for assessing the quality (and not just the efficiency) of individual labour dispute resolution and access to justice for workers in the UAE.

28. E.g., post-arrival interviews to ensure domestic workers understand their contractual rights, training and education, resolution of disputes between employers and workers, and checks on worker accommodation.

29. Ministerial decrees 764 of 2015 on using approved standard employment contracts; 765 of 2015 on the rules and conditions for the termination of employment relations; 766 of 2015 on the rules and conditions for granting a permit to a worker for employment by a new employer; 401 of 2015 on the determination of afternoon working hours; 591 of 2016 on requiring employers to provide employees with free accommodation; 739 of 2016 on wages protection.

30. This requires enhancing the capacity of the department responsible, including capacity building tools such as a code of conduct/ethics, structured training and a certification system for mediators.

Panellist statement

Mr Benjamin George Burgher

Legal Consultant at ADJD, Abu Dhabi

The mission statement of ADJD is to safeguard the rule of law by ensuring justice, rights, and peace in society. It's vision is to provide an efficient and independent judicial system, based on excellence, to provide world class judicial services.

As part of the continuing development, I advised ADJD on the law, practices and processes in resolving labour claims. I undertook a root and branch review, assessed what was taking place and made appropriate recommendations for improvement. I was very impressed by the commitment, energy and ambition of the leadership of ADJD headed by HH Sheikh Mansour and HE Chancellor Yosuf Alabri, in seeking to ensure justice for workers could be delivered by the court.

The Abu Dhabi Judicial Department plays a central role in ensuring access to justice for migrant workers.

I identified the following underlying factors, amongst others, when undertaking his assessment of the effectiveness of the labour court.

Was the court accessible? Specifically, do workers know their rights and how to use the court to enforce them.

Was the court efficient in respect of the processes and the time taken to conclude claims?

It is important to appreciate that the Labour Court delivers justice to workers by interpreting necessary laws and enforcing them. However, collaboration with other government ministries that make appropriate laws, and the ministries that monitor the compliance with the laws is considered to be as important in achieving justice for workers.

In particular, ADJD has closely collaborated with MOHRE to ensure that access to justice for workers can be delivered and a memorandum of understanding was signed between the two parties last year to facilitate developments.

When considering accessibility, positive developments have taken place. For example:

- (1) When required, ADJD uses the mobile court. This is a converted bus that is able to go to labour camps and carry out court procedures in an accessible and

effective manner;

- (2) ADJD has delivered an excellent weekly awareness campaign for workers based in labour camps. The awareness sessions are well prepared and very well attended. Over 70,000 workers have benefited from this in 2017 and this year it is hoped that over 100,000 workers will benefit;
- (3) Information about making claims has been made more readily available. Brochures have been provided in relevant languages and labour court guidance can be found on the ADJD website in 4 different languages. Workers can now also use the ADJD online resource to immediately calculate the value of their labour entitlements;
- (4) There has been provision of legal aid officers to give advice to workers about their entitlements, claims and necessary procedures before a complaint is made. This is vital resource for illiterate and poorly educated workers;
- (5) A WhatsApp information number will be provided, in the main languages for workers to make direct enquiries to the Court.

Educating workers of their rights is essential. To enhance the empowerment of workers and reduce the potential for abuse by employers, education of rights should commence at an early stage in home countries and be reiterated to workers at every stage of the recruitment process. The Ministry of Foreign Affairs is working closely workers' home countries with a view to promoting cooperation in protecting the rights of workers in the UAE. MOHRE has launched Tawjeh Centres to advise workers of their rights and obligations at an early stage when contracts are being agreed.

For regulatory breaches, workers can make complaints through a toll-free hotline (8005005). Under the Labour Law, MOHRE Inspectors have the authority to investigate and refer breaches of the labour law to the Public Prosecution of ADJD to be dealt with as criminal matters. Dealing with regulatory breaches in this way can deliver justice to workers very effectively.

When considering efficiency there have been significant developments in Abu Dhabi. In particular:

- (1) In cases with more than 50 workers affected, MOHRE has agreed to notify ADJD public prosecution within 15 days of non-payment so criminal sanctions can be considered and an immediate application to seize the employers' assets. Further, a bespoke and streamlined registration process was put in place by visiting the labour camp and assigning group cases assigned to a single judge. In the case of Commodore, for example, 2776 cases were determined within 14 days of registration;
- (2) One-Day Labour Court was established, again with close collaboration with MOHRE, aimed at dealing with simple claims valued at less than 20,000 dirhams. A labour court judge has been assigned to sit in the MOHRE offices and gives judgment on the day that both parties are present or deemed to have

been properly notified. It is hoped that this will accelerate the resolution of claims and eventually up to 60% of the claims brought can be dealt with in this way;

- (3) The Labour Court is now considering an increased number of a summary matters such as return of passport, provision of certificates and medical insurance seeking to ensure that exploitation by unscrupulous employers is checked;
- (4) There has been an unprecedented increase in the number of claims brought to the labour court during 2017, perhaps due to changes in legislation and increase in knowledge of workers. In order to address this, additional judicial resources have been assigned;
- (5) There has been a significant reduction in the use of experts in labour court minor chambers and further developments are being considered in this regard. Consequently the potential for delay in resolving a case is reduced;
- (6) Legislative changes will allow for remote hearings which will reduce the time and cost of workers needing to attend court. Further, federal level discussions are currently taking place relating to the civil procedure laws and relating to notification;
- (7) To demonstrate how the court is applying the labour law in practice a quarterly bulletin of select recent Labour Court of Appeal Judgments is being considered with key points distributed to the media for publication.

In summary, the determination of the leadership of ADJD to ensure access to justice for workers is supported by tangible actions.

To further enhance the protection that migrant workers have continuous education, close collaboration with between the courts, public prosecution, government ministries and the media is recommended.

Bringing the law to the attention of workers and demonstrating that the law is being enforced by liaising with the media is likely to demonstrate to workers that their entitlements can and should be sought and if they decide to do so, they can have confidence that the court will enforce their entitlements in an effective and timely way.

Panellist statement

Ms Rothna Begum

Women's Rights Researcher on the Middle East and North Africa at HRW

In 2014, I issued a report on the abuses of migrant domestic workers in the UAE including several barriers to justice. Since then, the UAE has taken a number of steps. I will reflect on some of those changes as well as what still remains to be done.

While I met some domestic workers in the UAE who reported receiving good salaries and good working conditions, many complained of abuse and harsh working conditions. Most said their employers confiscated their passports, and many spoke of unpaid wages, confinement to the house, workdays of up to 21 hours with no rest and no days off, and in some cases, physical or sexual assault by employers. Domestic workers faced a whole host of legal and practical obstacles to redress, and many returned home without justice. I heard similar accounts from domestic workers who had returned to Tanzania as recently as 2016 and 2017.

In relation to access to justice, I will briefly discuss the current legal protections for domestic workers, the kafala system which acts as a barrier to justice, and lastly the monitoring and implementation necessary to help workers access justice.

Firstly, for domestic workers to access justice they need their rights recognized under law. However, the UAE's labor law excludes domestic workers from its protections. But in a positive move, in 2017, the UAE passed a law on domestic workers providing legal protections for domestic workers rights for the first time. Workers are now entitled to a weekly rest day, 30 days annual paid leave, 12-hour working days (by requiring daily rest of 12 hours, including at least eight consecutive hours of rest), sick leave provisions, and compensation for work-related injuries or illnesses.

These provisions are a significant advance, but are still weaker than the UAE labor law for all other workers. For instance, other workers are entitled to an 8-hour workday or 48-hour workweek. The law also permits the employer to make the domestic worker forego the rest day if paid overtime or provided an alternative rest day. It also does not stipulate workers be free to leave the workplace during their non-working hours. The UAE should seek to ensure its law is aligned with the ILO Domestic Workers Convention—the global treaty on domestic workers—which maintains that domestic workers should have protections equivalent to those of other workers.

While the 2017 law advances domestic workers' labor rights, the kafala system will continue to remain the most significant barrier for workers attempting to claim their rights. Migrant domestic workers' visas are tied to their employers and they are prohibited from leaving or changing jobs before the end of their contract without their initial employers consent. If they do, they can be punished with fines, imprisonment, deportation, and bans upon return for "*absconding*."

HRW has documented how the threat of "*absconding*" charges can trap workers in abusive conditions, and how some workers who fled to the police for help were instead arrested for "*absconding*." Many workers also drop cases against employers because they do not have work authorization and cannot afford to wait months for a resolution to their cases without an income. In 2013, I met a 22-year-old Indonesian domestic worker in Abu Dhabi, who described on top of abusive conditions that could amount to forced labor, how her employer had raped her. She fled several days later and filed criminal charges against him. But, in the initial court session her employer was called but she was not asked to provide testimony and instead told to wait until medical reports were examined. Four months later, she had not heard anything and had decided to leave because it was too costly to remain in the country without an income and no guarantee of justice.

The UAE has eased transfer rules for migrant workers through labor ministry decrees, including in cases where employers breach "*contractual or legal obligations*," but these transfer rules do not extend to domestic workers. The new law on domestic workers allows both employers and domestic workers to terminate employment if they fail to meet their contractual obligations. It also provides that in all situations following termination of employment, the authorities may grant the worker a new work permit if they wish to work for a new employer in accordance with regulations. This appears to be the current status quo. It is unclear whether the current requirement that workers must obtain former employers' consent to transfer to a new employer continues to apply.

The 2017 UAE law on domestic workers also reinforces the kafala system by imposing time limits on both the employer and the worker to report to the authorities if they leave. It requires employers to inform MOHRE within five days if a worker leaves them without a "*legitimate reason*" and it requires the worker to report to the ministry within 48 hours if they leave their employer without informing them. Current regulations already punish the employer if they fail to report that their worker has "*absconded*." This new requirement will likely result in employers being more likely to report workers for "*absconding*" immediately, and arguing that workers did not leave for a "*legitimate reason*," which is not defined in the law. Workers who do not or are not able to report to the authorities within 48 hours, may also be more likely to be punished for "*absconding*."

A by-product of the kafala system also reinforces employers' ability to demand recruitment costs from domestic workers when they plead to leave, even in cases of

abuse, which can be in thousands of dollars – usually more money than they have earned. Some domestic workers reported how their employers told them they had “*bought*” them, believing they did so when they paid such recruitment costs.

The UAE’s 2017 law does not help tackle this issue and instead reinforces it. It prohibits recruitment agencies from charging fees to workers or reimbursement of expenses but does not prohibit employers from doing so. Even more problematically, the law now provides that workers—not just employers—who terminate employment without a breach of contractual obligations must provide compensation of one month’s salary and pay for their own return flight tickets home. Many domestic workers who flee abusive employment conditions do not always feel safe reporting such conditions to the authorities or drop claims to return home quickly. This provision could end up trapping some in abusive conditions if they feel their claims will not be believed and further punish workers who do leave.

The UAE is also considering ways to mitigate problems arising under the kafala system without full reform. For instance, the UAE in March 2017, announced that it will replace recruitment agencies by the end of 2017 with Tadbeer Centres (procurement centres) that are privately operated but publicly regulated. These centres will provide pre-arrival interviews with domestic workers on their contractual rights, provide training to new workers, resolve disputes between workers and employers, and check on workers’ accommodation.

The UAE’s law on domestic workers will also allow recruitment agencies to “*sponsor*” domestic workers whom they then supply to employers for “*temporary employment*.” The potential advantage is that employers will no longer wield additional power over workers as their immigration sponsor, and they may be less tempted to recoup upfront recruitment costs through unpaid wages to their workers.

However, effective oversight over such agencies will be crucial if the rights of workers are to be protected. Domestic workers have repeatedly reported how recruitment agencies in the UAE sent them back to abusive employers, beat them for returning to the agency, or forced them to work for new employers. I have also documented cases of trafficking of domestic workers by agencies in the UAE into Oman.

The UAE should abolish the kafala system and “*absconding*” charges, and allow domestic workers to change employers without their employer’s consent.

Thirdly, while the domestic workers law will have little impact if there is little enforcement of the rights prescribed. Here, we have a very positive important mechanism provided in the UAE law—and the first in the GCC States to do so—which is that it allows for inspections of not just recruitment agency offices, but also workplaces, and workers’ residences where they have the permission of the owner. If they do not have permission, then the public prosecution can still conduct inspections in cases where the worker or the employer has made a complaint or there is reasonable evidence of a violation of the law.

Checks on labor conditions where they are done privately with the worker with adequate interpretation could help workers access help, especially those in abusive conditions.

While UAE authorities have prosecuted some employers for murder or extreme physical abuse, workers who want to file legal claims against employers or agents face both practical and financial barriers. It may be difficult for them to produce evidence in support of their claims as abuse often occurs within the employer's household, in private not in public.

In March 2018, the UAE reported that it is establishing a prosecution unit in Abu Dhabi focused on crimes against domestic workers. This is an important step that could help increase investigations into abuses of domestic workers.

While some workers told us that police officers treated them well, others said police encouraged them to return to abusive employers. Training to police and in particular prohibiting officers from returning workers to their employers against their will would help to tackle this issue. In some cases, employers filed trumped-up theft charges against workers who fled.

While the 2017 law provides that workers do not have to pay for court fees, there is no mention about fees for lawyers in civil cases. Few workers have the financial resources to hire a lawyer, especially if their complaint arises from non-payment of their full wages. The adjudication process may be long, lasting several months or more.

ANNEX II

**MOST IMPORTANT SERVICES PROVIDED
BY THE JUDICIAL DEPARTMENT IN ORDER
TO FACILITATE ACCESS TO JUSTICE**

PREPARED BY THE GENEVA CENTRE

First: Mobile court: it is a mobile centre carrying out procedures through an electronic circuit and it can move to different locations to provide justice services.

Most important achievements: the mobile court has moved to meet more than 4500 workers and has registered their cases, which is the first in its kind worldwide.

The human rights office in the Judicial Department coordinated its actions with the Labour Court to allow the mobile court to move to work locations. In cases of non-reconciliation, different cases have been registered along with workers' demands according to their place of residence, which were salary arrears, leave allowances, arbitrary dismissal fees.

Second: Legal aid department: on 23 May 2011, and according to the instructions of the Chair of the Judicial Department, and under the Administrative Act N. 106 for the year 2011, the Office of Legal Aids has been developed and is now attached to the administration of law affairs.

Activities and services of the department:

A) The service of legal help and guidance:

This service enables the person who refers to the Department to obtain legal guidance and guidance services concerning the suits filed by them or against them at all stages of the proceedings.

B) Appointing a lawyer on a no-fee basis:

This service enables persons of insufficient means to hire a lawyer to defend them at all stages of the proceedings before the courts of the Judiciary Department in accordance with the specified criteria.

C) Reimbursement of expert fees:

This service enables persons of insufficient means to reimburse the expert fees.

D) Reimbursement of publication fees:

This service enables persons of insufficient means to reimburse the expert fees, in accordance with the decision of the competent court concerning the cases brought before them.

Statistics:

Type of service	Statistical data on beneficiaries of legal aid		
	2014	2015	2016
Legal help and guidance	5571	8391	10672
Appointing lawyers	173	126	165
Expert fees	13	72	49
Publication fees	91	200	322

Third: Services for non-Muslims:

A) Family and inheritance court for non-Muslims:

On 18 January 2017, and under the decree of the Chair of the Judicial Department N. 4 for the year 2017, a specialized department has been established for every court of first instance to deal with personal status cases and inheritance cases for non-Muslims.

B) Will registration office for non-Muslims:

On 4 July 2017, and by virtue of the decree of the Chair of the Judicial Department N. 6 for the year 2017, a will and inheritance registration office for non-Muslims has been established. This office is specialized in registering wills and inheritance of non-Muslims allowing them to transmit ownership of their assets after their death, according to their wishes.

C) Outsourcing family guidance service to non-Muslims in churches and other religious bodies:

On 30 July 2017, the Chair of the Judicial Department approved to conclude memoranda of cooperation with churches in the State concerning fields of common interest, especially regarding registration of marriage contracts for non-Muslims in churches and presenting family guidance to non-Muslims.

Fourth: Specialized prosecutions:

A) Establishing a community service prosecution:

In the framework of the Department's policy aiming to expand specialized prosecutions, on 1 March 2017 and under the decree of the Chair of the Judicial Department number: 15/2017 a community service prosecution has been created. The purpose of this prosecution, related directly to the Attorney General, is to implement procedures related to community service

This community service prosecution aims to ensure effective implementation of community service measures, according to Article 120 of the federal penal code.

B) Establishing a Prosecution and a Judicial Department related to tourism offences:

On 11 January 2017, and by virtue of the Chair of the Judicial Department number 3/2017, a General Prosecution and a Judicial Department specialized in tourism offences has been established.

According to the second article of this decree, this general prosecution is specialized in investigating breaches perpetrated by tourists visiting Abu Dhabi and in taking actions as soon as possible without delay. The Judicial Department referred to in Article 1 of this decree shall have jurisdiction over the crimes committed by tourists visiting the Emirate of Abu Dhabi and shall render the judgment without delay.

C) Establishing a “Family and Child Prosecution Office”:

On 5 February 2009, and by virtue of the Chair of the Judicial Department number 4/2009, the Family and Child Prosecution Office has been established and its jurisdiction has been determined. This decree allows the attorney general to determine the jurisdiction of the Family and Child Prosecution Office. According to this mandate, the attorney general has taken the decree number 22/2009 stipulating that the Family and Child Prosecution Office be specialized in investigating the following crimes:

1. Juvenile crimes;
2. Criminal offences perpetrated within one family;
3. Give an opinion on issues related to the family and the care of minors before the different courts in the cases prescribed by law.

Article 2 of the same decree stipulates: *“The Family Prosecution Office shall have jurisdiction over all the offenses set forth in Article 1 which fall within the administrative boundaries of the City of Abu Dhabi.”*

Article 3 of the said decree upholds: *“The Family Prosecution Office is managed by a district attorney, who is assisted by a sufficient number of members of the Public Prosecution Office. He shall have all the functions of the Deputy Director of Prosecution.”*

On 19 March 2017, and under the decree of the Chair of the Judicial Department number 17/2017, the title of Family Prosecution has been changed to *“Family and Child Prosecution Office in Abu Dhabi Emirate”*. In accordance with Article 1 of this decree, the Family and Child Prosecution Office undertakes the investigation and of all crimes related to family and child affairs at the emirate level, and specialized judicial departments are established at each court level to investigate these crimes.

Thus, the Family and Child Prosecution Office was established as a specialized prosecution office concerned with children-juvenile cases.

The Family and Child Prosecution Office offers the following services:

- 1- Assign female social and psychological specialists to receive and treat children directly, without bringing the child before the prosecution, in order to avoid endangering his psychological health, and to carry out an in-depth study of his family

background, psychological and social status as well as his/her academic status.

2- Allocate special rooms to investigators which are separated from the room where the child is located. The two rooms are separated by a glass window that enables the child to watch the defendants in the parade line.

3- Allocate rooms attached to the chamber of the prosecutor separated by a glass window, which enables the prosecutor to see the child with the social worker from his office and to ask questions through hearing devices to the specialist. The child is not supposed to hear anything happening in the other room. The specialist asks questions in a simple manner, writes answers and answers the questions of the member of the prosecution through a hearing device in full privacy.

4- Interrogation rooms, the children's restroom and the children's playground are equipped with furniture, tools, toys and equipment suitable for different ages for children to provide safety so that they would not feel intimidated at the prosecution's headquarters. These rooms enable them to amuse themselves and eliminate the stress caused by the crime in question. This atmosphere facilitates the interrogation process. The colours of the walls of the rooms and floors have been carefully selected to ensure maximum comfort.

5- The results obtained from the development of the "*Child Prosecution Office*" were highly distinctive and positive. The interrogation rooms are now more private. The child never sees the defendants or the member of the prosecution office. He only meets the female specialist assigned to carry out her task.

Fifth: One-Day Labour Court:

The One-Day Labour Court deals with cases in which the value of claims does not exceed AED 20'000 (USD 5 445,80,- approximately). These claims represent 60% of disputes submitted to the labour court by MOHRE. There is one department adjudicating cases falling within its jurisdiction and it can be more than one department according to needs. Legal proceedings include simple labour matters in case of a non-friendly settlement and they should decide the matter the same day it is deferred to the court after hearing different parties and reviewing pleas.

The Court's mechanism of action will reduce many steps that should have been taken during the proceedings related to labour lawsuits, with no need to hold more than one hearing to decide on a simple case, which constitute a large proportion of filed cases.

Sixth: Translation services:

In order to guarantee the right to litigation for all citizens and residents in the State and taking into consideration that some citizens have insufficient means to hire a lawyer and therefore cannot recourse to litigation, the Judicial Department, through the department of legal aids, has signed contracts with lawyers to provide pro-bono legal aids to people with insufficient means. They are represented afterwards before the courts and the statement of claims and memos in support of their claims are submitted.

The following statistics highlight the amount of the legal aid provided by the Department to persons with insufficient means:

ANNEX III
OVERVIEW OF PUBLICATIONS OF THE GENEVA
CENTRE DURING THE PERIOD OF 2014-2019

OTHER PUBLICATIONS

1. Migration and Human Solidarity (2019)
2. 25 June 2018 World Conference Outcome Publication:
 Volume I: A Global Vision to Promote Equal Citizenship Rights (2019)
 Volume II: Verbatim and Working Papers (2019)
3. The Unprecedented Rise of People on the Move in the 21st Century (2019)
4. Veiling/Unveiling: The Headscarf in Christianity, Islam and Judaism: Proceedings of the UN Geneva Side Event Held on 23 February 2018 and Lessons Learned (2019)
5. Women's Rights in the Arab Region Between Myth and Reality: Proceedings of the UN Geneva Side Event Held on 15 September 2017 and Lessons Learned (2019)
6. Human Rights: Enhancing Equal Citizenship Rights in Education (2018)
7. Veiling/Unveiling: The Headscarf in Christianity, Islam and Judaism – Exhibition Catalogue (2018)
8. Human Rights Situation of the Rohingya Muslim Population in Myanmar (2018)
9. Islam and Christianity, The Great Convergence: Working Jointly Towards Equal Citizenship Rights (2017)
10. The Right to Development, 30 Years Later: Achievements, Challenges and The Way Forward: Proceedings of the UN Geneva Side Event Held on 5 December 2016 and Lessons Learned (2017)
11. Muslims in Europe: The Road to Social Harmony. Proceedings of the UN Geneva Side Event Held on 19 September 2016 and Lessons Learned (2017)
12. Women's Rights in the Arab Region: Myths and Realities (2017)
13. Islamophobia and the Implementation of UN Human Rights Resolution 16/18: Reaching Out (2016)
14. Muslims in Europe: The Road to Social Harmony (2016)
15. De-radicalization and the Roll-back of Violent Extremism: Proceedings of the Panel Meeting (2016)
16. In Defence of Special Procedures of the Human Rights Council: An Alternative Narrative from the South (2015 - English & Arabic)

ANNEX IV
BOOK ORDER FORM

Book Order Form

To order complimentary copies of the Geneva Centre's publications, please complete the form provided below.

Please allow 1-2 weeks for delivery.

Name:			
Organization:			
Address:			
City:	State:	Country:	Zip:
Title:			
Phone:			
Email:			
Publications of the Geneva Centre:	Price:	Quantity:	
Improving Access to Justice for Workers: The Case of the UAE (2019)	USD 10,-		
World Conference on Religions, Creeds and Value Systems: Joining Forces to Enhance Equal Citizenship Rights (2019) Two Volumes	USD 30,-		
Women's Rights in the Arab Region: Between Myth and Reality (2019)	USD 15,-		
Veiling /Unveiling: The Headscarf in Christianity, Judaism and Islam (2019)	USD 15,-		
The Unprecedented Rise of People on the Move in the 21st Century (2019)	USD 15,-		
Human rights: Enhancing Equal Citizenship Rights in Education (2018)	USD 12,-		
Islam and Christianity, The Great Convergence: Working Jointly Towards Equal Citizenship Rights (2017)	USD 15,-		

The Right to Development, 30 Years Later: Achievements, Challenges and The Way Forward (2017)	USD 10,-	
Women's Rights in the Arab Region: Myths and Realities (2017)	USD 15,-	
Muslims in Europe: The Road to Social Harmony - Proceedings of the UN Geneva Side Event Held on 19 September 2016 and Lessons Learned (2017)	USD 10,-	
Muslims in Europe: The Road to Social Harmony (2016)	USD 15,-	
De-Radicalisation or the Roll-Back of Extremist Violence (2016)	USD 10,-	
Islamophobia and the Implementation of UN Human Rights Council Resolution 16/18: Reaching Out (2016)	USD 10,-	
In Defence of Special Procedures of the Human Rights Council: An Alternative Narrative From the South (English) (2015)	USD 10,-	
In Defence of Special Procedures of the Human Rights Council: An Alternative Narrative From the South (Arabic) (2015)	USD 10,-	
Total:		
Order date:		
Signature:		

Please complete and return this form to:

- **By email:** info@gchragd.org
- **By post address:** Rue de Vermont 37-39. CP 186, 1211 Geneva 20, Switzerland.

Shipping costs for the delivery of the items are added on top of the cost (USD 10,-) for each ordered publication:

- **Europe:** USD 5,-
- **Middle East:** USD 10,-
- **North America:** USD 10,-
- **Other world regions:** USD 10-25,-



Rue de Vermont 37-39, CP 186 - 1211 Geneva 20
Switzerland
Tel.: +41 (0)22 748 27 80
www.gchragd.org

