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DOMESTIC WORKERS AND EMPLOYERS IN THE ARAB STATES

*Promising practices and innovative models
for a productive working relationship*



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ILO White Paper
Sophia Kagan

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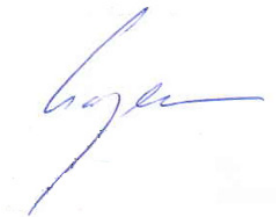
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FOREWORD

The domestic work sector in the Middle East is constantly evolving. No longer are domestic workers employed only to clean homes – modern households are increasingly expecting domestic workers to support the care of children during critical stages of development, aid the elderly to live with increased autonomy, and assist in chores and household management.

Important progress has been made over the last few years by a number of countries in the Middle East towards legislative change to protect migrant workers. Yet implementation and enforcement remain major challenges, and continuing and credible allegations of abuse and fraudulent behavior continue to plague the sector.

This paper presents a number of interesting practices from countries such as Singapore, Jordan, Canada, Ireland, Saudi Arabia and others which could be a useful tool for policymakers in developing strong regulations and enforcement mechanisms to achieve justice and employment satisfaction for both workers and their employers.



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EXECUTIVE SUMMARY

A productive employment relationship between a household (employer) and a domestic worker is a key ingredient to harmonious households and well-functioning labour markets across the Arab States in the Middle East (hereafter 'the Arab States'). Domestic workers support the care of children during critical stages of development, support the elderly to live with dignity, and (by relieving nationals of their domestic and care responsibilities) enable greater female labour participation, in furtherance of nationalization policies.

Although there have been some improvements in the regulation of this sector, much more can be done to ensure that there is better understanding between the two parties (domestic workers and their employers) and better systems of compliance, ultimately resulting in more harmonious and productive working relationships. As many Arab countries face continued allegations of 'modern slavery' in the global media, it is important to ask whether the current system of regulation is in fact serving the needs of employers and workers, and upholding basic human rights.

Through ILO research with employers of domestic workers in Jordan, Kuwait and Lebanon, as well as other research carried out with domestic workers, it is clear that in the absence of an effective system of regulation of the sector, employers often take regulation into

their own hands, leading to behaviours such as prohibiting a domestic worker to leave the house on the worker's weekly day off, which breach international standards. Some of the core concerns expressed by employers relate to potential economic loss of allowing freedom of movement of the worker – including their fear that they would lose the investment that they had made to bring the worker to the country of destination if she 'runs away', commits a crime or becomes pregnant.

The challenge for governments in the region is to develop policies that tackle discrimination while also helping to balance the legitimate concerns of both employers and workers. A well-functioning care and domestic work economy should ensure access to justice, effective enforcement and remedies in the case of abuse, while also addressing issues of prejudice through advocacy.

This White Paper presents a number of ideas for governments in the region to consider, and brings innovative thinking both from the Arab States and around the world (particularly from countries which also have high demand for domestic workers). We describe these practices as 'promising practices' as they demonstrate a step towards compliance with international labour standards, but may not necessarily show full compliance.

There are a variety of options for relevant government departments to consider, which would not only benefit workers but also employers, including:

- Establishing **mechanisms to improve transparency in the recruitment process** with a view to reducing costs of recruitment for the employer (noting the agreed international principle that workers should not pay for their recruitment).¹
- Creating a system for **skills development and recognition of domestic work**, ensuring that workers are trained with the necessary skills to meet the demands of employers (while also regulating training providers to ensure that workers and employers are not being excessively charged).
- Developing **laws, regulations, and mechanisms to ensure worker protection** (including the right to a day off outside the house).
- Developing a **system of monitoring** which includes confidential interviews with domestic workers and employers, and proactively dealing with any disputes.
- Introducing a **fast track dispute resolution system** including small claims tribunals for cases of unpaid wages.

In the long-term, it is important for governments to consider structural and legislative reform to reflect changing dynamics in their populations. Increasingly, households are demanding flexibility in hiring domestic workers, including the option of a part-time or a live-out worker. Allowing and supporting cooperatives is another important mechanism to consider. Cooperatives can help to provide an alternative to the current monopoly on recruitment that the private recruitment agency industry holds.

Finally, associations of both domestic workers and employers should be promoted to help ensure that government regulation is responding to the nature of this fast-changing sector, and ensuring protections for domestic workers. As demographics change, and as the needs of employers and workers change, there is a need for a dynamic mechanism of negotiation between workers and employers – a form of collective bargaining – which is currently missing in the Arab States of the Middle East.

The ILO stands ready to support governments in the region to develop and implement new thinking that can ensure a productive domestic work sector to the benefit of all – workers, employers and society.

¹ Private Employment Agencies Convention, 1997 (No. 181), and accompanying Recommendation (No. 188) establish the principle that workers shall not be charged “directly or indirectly, in whole or in part, any fees or costs” (Article 7).

ACRONYMS AND ABBREVIATIONS

CHCA Cooperative Home Care Associates (United States)

EOP Employers' Orientation Programme (Singapore)

GCC Gulf Cooperation Council

ILO International Labour Organization

JOD Jordanian Dinars

KSA Kingdom of Saudi Arabia

SUC Standard Unified Contract

WRC Workplace Relations Commission (Ireland)

INTRODUCTION

How the domestic work sector is regulated is a concern to over 3.16 million migrant² domestic workers³ and the households who employ them in the Arab States region (ILO, 2015d, p. 16).⁴ In the Arab States of the Middle East (hereafter 'the Arab States'), as in other parts of the world, domestic workers are increasingly being employed to take care of young children, as well as ageing residents – a rising demographic in the region. Given changing family structures and a reliance on a workforce that will undertake these tasks, the domestic work sector will continue to have critical relevance to public policymaking.⁵ Well-governed regulation of the domestic work sector is not only important from a social dimension – including quality of care for children and the elderly – but also has an important economic dimension. In freeing women from their care and household duties at home, outsourcing domestic work can enable greater female labour market participation. In addition, professionalizing the occupation of domestic work, including the care of young children, has the potential to open up new skilled job opportunities for migrant and national workers, in furtherance of nationalization policies such as the 'New Kuwait Vision 2035', the 'Saudi Vision 2030' and the 'Qatar National Vision 2030'. Ensuring that mechanisms are in place to regulate the conditions of workers and the conduct of employers also aims to eliminate cases and allegations of 'modern slavery', which carry implications not only from a rights-based perspective but also has the effect of dampening tourism and sometimes trade.⁶

Ultimately, a productive employment relationship between a household and a domestic worker is a key ingredient to a harmonious household. While many employer-domestic worker relationships are positive, common issues of mistrust, miscommunication and frustration between employers and domestic workers can lead to a tense environment which negatively impacts on each member of the household. This is not only a private, 'family' issue, but also a labour market issue as domestic workers are globally recognized as 'workers'.⁷ Without government support the sector can experience a high turnover of workers, poor efficiency in job matching and job placement, as well as a large irregular workforce (as a result of workers 'absconding', or leaving their employers because of the breakdown of the relationship between worker and employer, or labour rights violations). Governments have an important stake in designing and implementing regulations that enable a productive working relationship between domestic workers and employers, balancing the needs of each and ensuring mechanisms to terminate a relationship where necessary.

² The term 'migrant' is in accordance with international norms, in particular, Article 2 of the International Convention on the Protection of all Migrant Workers and Members of their Families (1990), which defines a migrant worker as a "person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national". Similar definitions are found in the ILO Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). It is important to note that governments in the Middle East view most labour migration as temporary and prefer to use the term 'temporary foreign contract labourers' or 'temporary expatriate workers'.

³ The Domestic Workers Convention, 2011 (No. 189) defines domestic work as "work performed in or for a household or households". This work may include tasks such as cleaning the house, cooking, washing and ironing clothes, taking care of children, or elderly or sick members of a family, gardening, guarding the house, driving for the family, and taking care of household pets (ILO, 2011; Tayah, 2016b). In the Arab States region, domestic workers are often divided into those who are live-in domestic workers undertaking general household duties (generally women) and cooks/gardeners/butlers/concierge, who are not live-in (and generally men). Different visa categories generally apply, though regulations are commonly similar (for example Jordan's Regulation No. 90 on Domestic Workers, Cooks, Gardeners and Similar Occupational Categories in 2009).

⁴ The Arab States region is comprised of the Occupied Palestinian Territories, Yemen, Iraq, Lebanon, Bahrain, Qatar, Syrian Arab Republic, Jordan, Kuwait, Saudi Arabia and Oman. This study does not, however, cover the United Arab Emirates.

⁵ See for example Shah et al. 2012.

⁶ Including the possibility of trade sanctions as a result of assessments in the US State Department's Trafficking in Persons Report, which include trafficking for labour/sexual exploitation of domestic workers, as well as other persons.

⁷ Most significantly under the Domestic Workers Convention, 2011 (No. 189).

There are a number of different categories of workers who perform domestic work in the Arab States region. This paper will focus on domestic workers who carry out household duties within an individual or family's household, particularly cleaning and taking care of children, elderly or sick members of a family. These are almost always migrant women from developing countries in Asia and Africa. Their numbers total 1.6 million across the region (ILO, 2015d, p. 18). This category of workers can be contrasted with other types of household workers (drivers, gardeners and security guards) who generally fall under a separate visa category, tend to be men and may not always be 'live in' workers – but who are commonly also labelled 'domestic workers', by definitions used in the ILO and by governments in the region. Domestic workers generally fall under a different category of workers in the national legalisation to those who are employed by cleaning and facilities management services, though many of the functions performed may be similar.

The regulation of domestic work in a way that balances and respects the rights of both workers and employers has consistently been stated to be a priority for governments in the Arab States region. In 2011, all members of the Gulf Cooperation Council countries (Bahrain, Kuwait, Oman, Qatar and Saudi Arabia) expressed support in the final vote of the Convention on decent work for domestic workers (ILO Domestic Workers Convention, 2011 (No. 189)). A number of Gulf Cooperation Council (GCC) countries had at the time also outlined their goals for the protection of migrant domestic workers, including laws relating to minimum wages, the protection of working conditions through labour inspection of households and a standard unified contract. Many of these stated plans have not yet come to fruition, although Kuwait has introduced a law on domestic workers and a minimum wage in 2015-16, and Qatar has recently adopted laws on the protection of domestic workers.

Meanwhile, studies of the attitudes of employers of domestic workers in Lebanon, Jordan and Kuwait, commissioned by the ILO in 2015-16, signal a significant degree of misinformation and noncompliance with existing laws and regulations. The studies also revealed tensions between the expectations of workers and employers, and mismatches of skills, which remain largely unaddressed by public policy in the region. Within the context of this policy gap, private employment agencies are sometimes playing a role in not only recruiting and placing workers informally, also regulating their working conditions and managing disputes – a role they are commonly not qualified for and in which they are not a neutral party.

The current status quo of low-compliance with existing laws, and weak enforcement mechanisms to address poor compliance is not compatible with the Arab States' visions of modern economies, efficient labour markets and a skilled labour force. This White Paper thus seeks to revive the dialogue on how the Arab States can practically and effectively regulate the relationship between domestic workers and employers, in a way which balances the legitimate needs of both groups. The paper is structured as follows: in Section 1, the paper briefly summarizes the context of the domestic work sector in the Arab States, outlining some of the key gaps and inefficiencies in existing regulation. Section 2 presents practical and immediate ways in which States can enhance existing policies to better balance the needs of domestic workers and employers. Section 3 focuses on more novel and innovative ideas, which would require more analysis and adaptation, but could, in the long-term, promote a much more productive and healthy domestic work environment.

SECTION 1: BRIEF CONTEXT OF DOMESTIC WORK IN THE ARAB STATES

Around 19 per cent of the world's domestic workers live in the Arab States (ILO, 2015a), and the region hosts the largest number of women migrant domestic workers in the world, estimated at 1.6 million (ILO, 2015a), though other estimates put the number much higher.

The figure is likely to rise substantially in coming decades as a result of changing demographics in the region. Consistent with trends in other parts of the world, lower birth rates and longer life expectancy have shifted the age structure in the Arab States region. By 2050, the proportion of older persons (60 years or more) is predicted to rise to 19 per cent compared to an average of around seven per cent in 2010 (UN, 2013). Because of previous high fertility rates in the region, the number of older persons is forecast to more than quadruple from 22 million in 2010 to 103 million by 2050 (Hussein and Ismael, 2016). Longer life expectancy means that an increasing number of people are living with chronic ailments such as hypertension, diabetes, heart disease and arthritis – requiring ongoing care. At the same time, an increasing number of elderly people do not live with their children, which has resulted in an increased need for external support (Shah et al., 2012). Household structures are further being transformed as more women move into the workplace,⁸ and families become increasingly nuclear. This has a further impact on the need for care services, as caring for the elderly is no longer always being fulfilled by female extended family members. A survey of Kuwaitis aged 70 or more found that domestic workers played a substantial role in providing daily assistance and care during illness and that this was particularly high among women and those living without co-resident children (Shah et al., 2012).⁹

The role of domestic workers in child care is equally important, as public childcare facilities are relatively rare in the Arab States.¹⁰ The quality of childcare – which many children in the Arab States receive from domestic workers – is important from an economic planning perspective, as early childhood development is closely linked to success in school, the workplace and in social and civic realms (Ehrlich and Fu, 2015). These are vital components to the achievement of many of the long-term visions of GCC countries, such as Kuwait's Vision 2035 for “transforming Kuwait into a financial and trade centre where the private sector leads the economy, creating competition and promoting production efficiency” (Kuwait Government, 10).

Domestic workers, like all migrant workers in the Arab States (with a small number of exceptions), are regulated by a sponsorship system often referred to as *kafala*. Under this system a migrant worker's immigration and legal residency status is tied to an individual sponsor (*kafeel*) throughout his or her contract period in such a way that the migrant worker cannot typically enter the country, resign from a job, transfer employment, and in some countries may not leave the country without first obtaining explicit permission from his or her employer (ILO, 2017a).

⁸ Although the numbers are still relatively low, with only 26 per cent of Arab women in the labour force compared to a world average of 51 per cent (ILO, 2012).

⁹ The survey found that 28 per cent of households with men above 70 years of age and 58 per cent of households with women above the age of 70 hired a migrant domestic worker (Shah et al., 2012).

¹⁰ Some recent initiatives include, for example in Qatar: establishing free kindergardens in public schools run by the Ministry of Education and introducing a diploma programme in early childhood education at Qatar University to ensure trained workers.

Domestic workers are explicitly excluded from the labour law of almost all countries in the Arab States region, with the exception of partial coverage in Iraq and Bahrain respectively (where domestic workers are granted a subset of rights under the labour law).¹¹ While some countries have separate legislation and/or regulations for domestic workers (including Jordan, Kuwait, the Occupied Palestinian Territories, Saudi Arabia, Syrian Arab Republic and Qatar), the standards set are commonly lower than those in the general labour law (ILO, 2016b). Additionally, a number of countries have regulations on private employment agencies, which play an important part in facilitating the entry of migrant domestic workers into the Arab States. In the absence of effective legislation, many countries in the region leave regulation of the employment relationship to the coverage of employment contracts, including standard unified contracts (SUCs)¹². As private contracts between the employer and the worker, the obligations are inherently difficult for either party (but particularly the worker) to enforce, and this can generally only be done through civil courts, and largely only in respect of unpaid wages.

While the most important change which could be made is to ensure coverage of domestic workers by the labour legislation and the active creation of clear mechanisms for monitoring and enforcement, other legislative and regulatory activities can also vastly improve how well this sector functions, contributing positively to the well-being of both households and workers. In particular, these strategies include: ensuring that labour inspectors (or other trained staff such as mandated social workers) have the ability to check on the working conditions of domestic workers; responsive dispute prevention and resolution systems; information and awareness raising for both workers and employers; behavioural change campaigns for employers of domestic workers; and the provision of advice on how to manage the employment relationship in the home in a way that is respectful to the human dignity of all parties involved.

The next section suggests a basic framework for extending current policies and regulatory practices in a way which more effectively balances the needs of workers and employers, based on promising practices from countries with a similar context to the Arab States region.

SECTION 2: PRACTICAL SOLUTIONS - EFFICIENT WAYS TO IMPROVE EXISTING FRAMEWORKS IN DOMESTIC WORK

The International Labour Organization's mission is to promote rights at work, encourage decent employment opportunities, and enhance social protection, and it is a mission that can only be achieved through social dialogue, giving an equal voice to workers, employers and governments. Social justice, including within private homes, cannot be achieved without engaging with employers of domestic workers. For this purpose, in 2015 and 2016, the ILO commissioned research on employers of domestic workers in Lebanon (ILO, 2016a), Kuwait (ILO, 2015a) and Jordan (ILO, 2015b), to better understand the needs, motivations and concerns of employers of domestic workers (hereafter referred to as 'ILO surveys'). In Lebanon, this was complemented by a study of the needs, motivations and concerns of domestic workers (ILO, 2016g).

¹¹ Revisions to the Bahrain Labour Law for the Private Sector, No. 36 of 2012 granting domestic workers the right to a written contract, wage regulations (although not the minimum wage), paid annual leave, exemption from legal costs of labour cases, and indemnity on termination of employment. Employers are subject to fines when they do not sign a written contract with the worker.

¹² Currently Saudi Arabia, Bahrain, Kuwait, Lebanon and Jordan have adopted SUCs for domestic workers, and Oman and Qatar have developed draft SUCs for migrant domestic workers.

The studies gave important insight into the concerns of employers, while also assessing the role of gender and racial discrimination in determining labour practices. Some of the core concerns expressed by employers related to potential economic loss – primarily the fear that they would lose the investment that they had made to bring the worker to the country of destination if they were to permit the worker freedom of movement. The challenge for governments in the region is to develop policies that can help to balance the legitimate concerns of both employers and workers; ensure a well-functioning care and domestic work economy; ensure access to justice and enforcement in the case of abuse; while also aiming to address issues of prejudice through advocacy and information awareness campaigns.

BOX 1: ILO STUDIES OF ATTITUDES OF EMPLOYERS OF DOMESTIC WORKERS IN LEBANON, JORDAN AND KUWAIT

The studies, both quantitative (Lebanon) and qualitative (Kuwait and Jordan), were aimed at examining the attitudes, perceptions and views of employers of domestic workers; understanding actual employment practices; and exploring the nature of the employment relationship.

The most comprehensive of the studies was completed in Lebanon in 2016, surveying over 1,200 employers of migrant domestic workers in Lebanon and conducting 30 in-depth interviews in major population centres across Lebanon.¹³ The findings relate to passport confiscation, domestic workers' freedom of movement on their day off and deduction of wages by recruitment agencies.

The study in Kuwait was undertaken in 2015 using a qualitative approach through focus group discussions and in-depth interviews with employers of domestic workers. A total of 73 employers participated in the focus group discussions and 6 employers in the in-depth interviews. The majority of the respondents shared the belief that domestic workers should take a day off, but it was also the norm, not to allow domestic workers to leave the house on this day. The most common practice expressed was 'one day off every one or two weeks inside the home' (ILO, 2015a, p. 19).

The study in Jordan was undertaken in 2015 using a qualitative approach through 20 semi-structured interviews with employers and senior managers of recruitment agencies, as well as a focus group discussions with senior managers of recruitment agencies. The study showed that the fear of material losses (such as the domestic worker leaving the workplace or theft) is commonly used to justify restrictions on the workers' freedom of movement and in some cases also used to justify violations of the worker's rights (ILO, 2015b, p. 5).

The key questions that the findings of the surveys pose for current regulation include:

- How can regulation balance the importance of a domestic worker's right to a day off (autonomously, outside of the house) with the employer's (sponsor's) concern that he/she is legally liable for any crimes committed by the worker? (as this might be one of the rationales for restricting movement)
- How can regulation balance the employer's concern for loss of up-front costs towards recruitment, with the worker's right to terminate the contract?

¹³ The study complements a 2015 survey of 1,500 live-in migrant domestic workers. ILO (2016) "Intertwined: The Workers' Side. A Study of the Working and Living Conditions of Migrant Domestic Workers in Lebanon."

- How can regulation balance the importance of employer's right to privacy with the obligation of labour inspection to assess compliance with human and labour rights in terms of the domestic workers' living and working conditions?
- How can regulation help to support both employers and domestic workers to establish organizations that represent their interests and engage in social dialogue?
- What role can behavioural change campaigns play in supporting a more productive and equal working relationship between employers and domestic workers?

Some key ideas, supported by promising practices from around the world, are suggested below.

2.1 Balancing workers' fundamental right to freedom of movement with employers' protection against financial loss

In Kuwait, Lebanon and Jordan, the ILO survey responses revealed that a significant proportion of employers took steps to prevent their domestic worker from leaving the employment relationship by refusing her a day off, refusing to allow her to leave the house unaccompanied, and/or confiscating her passport. Often the reason given was the need to protect the household against financial loss, particularly the loss of recruitment fees already paid. It is important to note that these practices are considered indicators of forced labour (ILO, 2016a). In ILO employer attitude surveys in Jordan, Kuwait and Lebanon, employers have often repeated the following concerns:

- Fear that the worker will 'run away' (leave her employment) and therefore the household would have to pay additional recruitment fees to secure a new worker.
- Fear that the worker will commit a crime (or be accused of committing a crime) which the employer, as a *kafeel*, is deemed responsible for.
- Fear that the worker will steal from the house and use the opportunity of leaving the premises to hide the stolen goods.
- Fear that the domestic worker will develop an intimate relationship and may become pregnant, and that the employer will be responsible for covering the costs of her repatriation (and then need to hire a new worker).

In sum, the fear of losing their significant investment, combined with a perception that a particular practice is 'culturally appropriate', often leads employers to take restrictive measures. This occurs despite the fact that these acts (preventing the worker from leaving, confiscating her passport) are commonly prohibited both by national law (standard unified contracts) and international law.

The fact that employers were often found to engage in conduct which is prohibited by the standard unified contract suggests that additional measures need to be taken by the States to improve compliance, including through behavioural change campaigns. For example, the vast majority of respondents in the three ILO surveys (including 94 per cent of Lebanese employers) stated that they confiscate their worker's passport.¹⁴ At the foundation of the employers' fear were often two types of misperceptions, both of which the State has the responsibility to address. The first was that domestic workers are 'too vulnerable', 'easily corrupted' and 'untrustworthy' and hence should not be trusted to go out alone. Secondly, employers held the perception that the State does not provide a financial remedy in cases where employers are not at fault, as the focus of the authorities will often be to detain and deport a worker. One employer summed up the situation as follows "...the state does

¹⁴ In Lebanon, while passport confiscation is not prohibited by legislation, court decisions in 2014 and 2016 found that employers who retain the passports of domestic workers are violating basic rights guaranteed in the international agreements that Lebanon has ratified, particularly their right to freedom of movement within a country and the right to leave the country (Legal Agenda, 2016).

not do anything about [a worker who leaves the employment relationship] and does not try to stop them. What about the employer who paid money? The state does not protect the employer!" (ILO, 2016a, p. 38). Below are some proposals on how governments can proactively counteract these perceptions to the benefit of both employers and workers.

Addressing employer misperceptions of domestic workers: behavioural change campaigns

Research studies by the ILO, corroborated by other household perception studies, show that employers' practices of prohibiting the domestic worker from leaving the house (or otherwise restricting her movements) is often motivated by discriminatory attitudes – attitudes related to the gender, nationality and class of the worker, and of the status of the occupation of domestic work. Thus, ensuring compliance with the law means tackling some of these attitudes, which may be prevalent even within State institutions.

Experience in Singapore (see box 2) shows that this type of behavioural change can be undertaken in a manner which promotes professionalization of the occupation and respect of the worker. Similar campaigns have also been undertaken in some parts of the Arab region, including Bahrain's 'Human Too' awards, led by the Labour Market Regulatory Authority, which encourages publicly celebrating the positive contribution of migrant workers, including domestic workers, to society.¹⁵ It is important that such campaigns are also targeted at State institutions in particular, who set the example for other employers of domestic workers to follow. For example, the joint campaign by the ILO and the International Domestic Worker Federation – My Fair Home - which aims to elicit attitudinal and behavioural change among employers of domestic workers to ensure decent work. The campaign encourages employers to sign onto the 'My Fair Home pledge', committing to core principles of decent work for domestic workers.

Evidence-based campaigns to articulate that domestic workers are not more likely to engage in criminal behaviour than other workers, nor are likely to engage in sex work, may help sway public opinion. Ideally behavioural change campaigns should also be accompanied by clear training and guidance on what the parties' rights and obligations are, to correct any misunderstandings or misinformation.

¹⁵ The LMRA's 'Human Too' Awards are a competition for youth on promoting respect for migrant workers (further information available at www.bahrainawards.com).

BOX 2: SINGAPORE'S BEHAVIOURAL CHANGE STRATEGY AND AWARENESS-RAISING FOR EMPLOYERS

Similar to the Arab States, Singapore hosts a large number of migrant domestic workers who enter the country on employer-sponsored visas. There are approximately 237,100 migrant domestic workers (as of June 2016) out of a population of five million, with most workers originating from other Asian countries.

Surveys of Singaporean employers had identified a reluctance to allow a domestic worker a day off due to fear that they will be 'morally corrupted' by "engaging in sexual liaisons with men, being led into 'undesirable', 'unhealthy' or 'bad habits' by the wrong crowd... or undertaking illegal [additional] work to earn extra income" (Yeo and Huang, 1998, p. 590). The Singaporean government, in introducing a legislative requirement in 2012 that all domestic workers must have a day off, pre-emptively counteracted this argument by emphasizing that domestic workers were workers, and that employers should regard them as professionals, rather than focussing on irrelevant considerations about their social and private lives.

Concurrently with the new legislative requirement, the government facilitated voluntary skills training programmes for migrant domestic workers to be held on Sundays (the day on which most domestic workers' day off falls).

The Singapore Ministry of Manpower furthermore requires that all first-time employers of domestic workers and those who have changed domestic workers frequently¹⁶ complete a three hour programme called the Employers' Orientation Programme (EOP), which emphasizes the professional work relationship between the domestic worker and the employer. The EOP must be completed at least two working days before submitting a work permit application. The EOP can be undertaken either in the classroom or online but employers are encouraged to attend the classroom EOP. The case studies and personal experiences shared in the class give the employer a better understanding of rights and responsibilities in employing and managing a domestic worker.

EOP completion is strictly applied and only in a limited number of cases can a representative attend in place of the employer (for example, if the employer suffers from a chronic medical condition, has a physical disability and is unable to walk, is 60 years old and above and suffers physical discomfort; or is pregnant and due to give birth shortly).

Source: Koh et al., 2016: 45; Singapore Ministry of Manpower, undated

¹⁶ This rule applies to employers who have submitted four work permit applications for Foreign Domestic Workers (FDWs) within a 12-month period, with the previous three FDWs each having been employed for less than three months.

Decreasing the costs of recruitment by ensuring transparency of private employment agencies

The high cost of recruitment is a source of considerable consternation by many employers of domestic workers in the Arab States. Surveyed employers in Lebanon and Jordan revealed the costs of recruitment to be between US\$3,000 and US\$5,000, which was higher than the average monthly income of households in Lebanon.¹⁷ Moreover, in many cases, employers in the ILO surveys did not have a clear breakdown of the costs. To counteract these high fees, employers often deduct these fees from the worker's salary, by paying the first three months of the worker's salary to the recruitment agency and not to the worker herself (ILO, 2016a).¹⁸ Despite the high costs of recruitment, frequently there are mismatches between the workers' skills and experience and the employers' requirements, leading to frustration on the part of both parties. A lack of feasible alternatives to the current recruitment agency model means that the agencies currently have a monopoly on the market. From the point of view of both the worker and the employer, the current system of recruitment is flawed and does not meet the needs or expectations of workers or employers.

To counteract these challenges, online recruitment can be encouraged to minimize the number of intermediaries involved – and thus reduce costs. It can also ensure transparency with regards to the costs employers are liable to pay, and for what. The example of KSA's Musaned (box 3) provides one promising practice. Countries like Bangladesh have also started using online registration processes for their nationals seeking employment abroad. The availability of online video interviews, between the employer and the worker, can also help to ensure a good match, as can the use of tools to aid negotiations – such as a list of tasks that the employer and domestic worker can agree on. Online recruitment and matching is also being facilitated by the private sector, including such organizations as HelperChoice.com and Housekeeping Co., who commit to only charging households for the matching service – not the worker.

Although not yet fully operational, another innovative idea is Kuwait's public-private corporation for recruiting workers, which was passed into law in 2015, and was established in September 2017. The corporation was designed “in order to control price hikes and avoid human rights violations,” with government agencies to own 40 per cent of the corporation, and 60 per cent to be open to national shareholders (i.e. citizens via local cooperatives) (Migrant Rights Org, 2016; Albilad Daily, 2016). The corporation's performance will be monitored by the Ministry of Interior, though the exact indicators of performance – including measures that will be taken to minimize recruitment fees and protect workers' rights – are yet to be outlined.

¹⁷ Although it should be noted that almost one third of the participants in the study (31.7 per cent) refused to provide information about their household income; this proportion of missing information on income is expected and is similar to that obtained in other surveys worldwide. Otherwise, 7.8 per cent of the interviewees selected the household income category of less than US\$1,000 per month; 19.5 per cent selected US\$1,001-\$2,000; 18.1 per cent selected US\$2,001-\$3,000.

¹⁸ According to the survey of employers in Lebanon, more than half paid between US\$1,000 and 2,000, a quarter paid between US\$2,000 and US\$3,000. In general, employers in Lebanon pay for travel and immigration costs separately and a small fee when they sign the contract at a notary public. However, the recruitment fees varied depending on the nationality of the worker. In Jordan, recruitment fee caps are set by the government, depending on the domestic worker's nationality, and range from 1,800 Jordanian dinar (JOD) for Bangladeshi domestic workers, to 2,600-2,800 JOD for Filipino workers and 3,500 JOD for Sri Lankan workers.

BOX 3: SAUDI ARABIA'S ELECTRONIC RECRUITMENT SYSTEM - MUSANED

The Musaned electronic system aims to provide transparency in the recruitment process. The system allows the Ministry of Labor and Social Development to monitor the contracting process between citizens and recruitment offices, as well as serve as an online documentation archive in the case of future conflicts between stakeholders. Furthermore, it may also help to break the geographical monopoly of recruitment offices and increase competition, by allowing employers to hire domestic workers directly.

While a promising initiative, it is important to independently assess the quality of services offered.

Source: Abu Dhabi Dialogue 2017

Clarify limits of the *kafeel's* legal liability for workers' conduct

Employers' fear of their personal liability for the conduct of their domestic worker was clear in the ILO surveys, with comments such as “[*Kafala*] is a huge responsibility. We are talking about taking care of an individual”, and the “sponsor is responsible if something bad happens to the worker or if she steals something” (ILO, 2016a, p. 25). Because *kafala* is not a particular law, but a collection of obligations established in laws, Ministerial Decrees and contractual documents, it can be difficult to ascertain the specific limits of responsibility of the *kafeel*. For example, in Lebanon, the sponsorship system consists of Order on Regulating the Status of Foreign Nationals in Lebanon (Order 319, 1962), the Labour Law, the General Contractual Obligations Law (1932), and the Lebanese Penal Code. Despite popular perceptions that these laws make a sponsor liable to third parties for breach of the law by the worker, analysis reveals no basis in law for this.¹⁹ In other countries such as Jordan, on the other hand, the Jordanian Civil Code No. 43 of 1976 does appear to pass some civil (though not criminal) responsibility to the sponsor.

A significant amount of confusion thus exists on this question, which may be perpetuated by government officials and recruitment agencies who are themselves unclear on the legal position. A statement by the relevant authority – whether the Ministry of Justice, Ministry of Labour and/or Ministry of Interior (General Security) – must be issued to clearly articulate that the worker is responsible for his or her own actions and not the sponsor (and preferably to have this eventually enshrined in the law). One example of this is Singapore, where the Work Permit obligations clearly articulate that the employer does not bear responsibility if their worker commits a violation, if they informed the worker of her obligations under the Work Permit (Singapore Ministry of Manpower). This would help to counteract the employers' fear of allowing their worker to leave the house because of their liability for her conduct.

¹⁹ Instead, the laws largely provide for employer obligations in relation to protection of the worker, including obligation of the employer to pay for the medical care of a worker living in his/her household (Art. 645 of General Contractual Obligations Law of 1932), and the obligation of the employer to provide a healthy working environment (Art. 647 of the General Contractual Obligations Law of 1932).

Provide a financial remedy for employers, such as an insurance scheme

As for other types of financial risks, a way to protect both parties is to introduce an insurance scheme which can compensate a party (or both parties) when he or she faces financial loss while not at fault. Such a scheme could require that all employers contribute to an insurance policy under which they will be reimbursed part of their recruitment costs if the domestic worker terminates the relationship before the contract ends, due to no fault of the employer. The conditions would need to be clearly articulated, and may include conditions such as an onus on the employer to prove that he/she complied with the standard employment contract, and any other conditions around hours of rest, weekly day off, and allowing the worker to keep her passport. There would also need to be a mechanism for either party to appeal a decision.

It should also be possible for domestic workers to move to a different employer. This would recognize that some employers and workers were not well-matched, and provide an opportunity for a better match in future, even if the employment relationship is terminated after the probation period has ended.

A pilot insurance scheme was initiated in April 2016 by Jordan's Recruiting Agencies Association, in response to a request made by the Ministry of Labour which operated by extending life, accident and health insurance to migrant domestic workers and reimbursing employers if the worker leaves their employment before the contract end period (as long as this was not due to the employers' mistreatment of the worker) (Aslan and Mazen, 2016). Although the latter (insurance to employers in case of a worker leaving her employment) is no longer mandatory, the pilot was an interesting and promising example of a system which could help to reassure employers that recruitment costs could be (partially or fully) reimbursed if they were not at fault for the termination of a contract with the domestic worker.

2.2 Balancing the employer's right to privacy with the State's obligation to prevent labour or criminal violations against domestic workers in the household

The right of households to privacy is vital, and the notion of public authorities and inspectors entering the private space to monitor and enforce regulations is often considered taboo (ILO, 2015e). In the Arab States countries, as in most countries in the world, the home has historical significance as a place of repose from society – one of the Arabic names being *sakan*, a derivative of the word *sakina*, that which is 'peaceful and serene'. Sobh and Belk (2011) point to the emphasis in Islam on the importance of respecting privacy for both men and women, based on notions of the sacredness of the home.

While the importance of protecting the privacy of the home is a critical policy priority, it must be weighed against the government's obligation to address and eliminate crimes which occur on private property, and other actions that may entail breaches of the labour law. For this reason, most Arab countries already allow the police to enter a private home without permission, if there is reasonable evidence of violence or a crime having been committed. For example, Article 7 of Jordan's Family Protection Law No. 6 (2008) states that "law enforcement agencies including Public Security Directorate officers shall go to the place where domestic violence allegedly happened [...], upon receiving a report that there currently is a situation of domestic violence or that it is about to happen..."²⁰

²⁰ Though the definition is limited to violence against family members and does not include violence against domestic workers in the household.

Governments can design regulatory measures which simultaneously protect the sanctity of the home while ensuring a mechanism to investigate abuse of the rights of domestic workers (see box 4).

Conduct regular, confidential interviews with the worker and the employer

Ensuring that government officials ‘check in’ with a domestic worker through a confidential interview away from the employer should be a standard practice. An opportune time to conduct these interviews is during the application or renewal of the work permit. If the domestic worker and employer are required to be present at the relevant Ministry during this process, interviews can be carried out in a quiet, private place within the offices. In circumstances in which it is not possible to conduct interviews with all workers, interviews can be conducted with a randomized selection of cases. A further promising practice would be to conduct interviews with employers who have multiple changes of domestic workers within a specified period (such as 12-24 months).

Randomized interviews and inspections, with the permission of the household owner, should also be considered. Both Singapore and Ireland (see box 4) allow randomized inspections of households. In both countries, the employer is contacted about the inspection in advance, and has the right to refuse an inspection, but must then provide an alternative meeting point or face a penalty and further action. In some cases, it will also be required that the domestic worker is also interviewed, confidentially and away from the employer. This helps to identify and respond to cases of trafficking or labour violations.

BOX 4: IRELAND’S INSPECTION SYSTEM

The Workplace Relations Commission (WRC) (formerly the Irish National Employment Rights Agency) is responsible for inspections including visiting households where domestic workers are employed. This is by appointment and provided there is no objection from the employer it takes place in the home. If for some reason it cannot take place in the home, the inspection will still go ahead and both the employer and worker will be interviewed as part of the inspection. As domestic workers have the same rights as all other workers, the employer will have to present for inspection the various documents as required by law (e.g. the employment contract, details of hours worked signed by the employer and worker, payslips, records showing rest periods, breaks holidays, etc.)

Source: Communication with WRC representative, and National Employment Rights Agency, undated

Encourage inspectors to conduct visits of households when complaints are received

Household inspections, with the consent of the household, are permitted in some Arab countries, but rarely carried out, even where a labour violation is suspected. For example, Jordan’s Regulation No. 90, states that “whenever the complaint is made about the accommodation of the worker, the accommodation shall be inspected for compliance with the present Regulation by two labour inspectors, male and female, with the consent of the householder.”²¹ Yet there are very few cases of such inspections having actually been carried out. In some countries, authorities can seek an expedited approval from a judge in order to

²¹ Section 11, Jordan’s Regulation No. 90 of 2009 on Domestic Workers, Cooks, Gardeners and Similar Occupational Categories.

allow an unannounced inspection, but this is commonly limited to allegations of trafficking – for example, investigations carried out by the Criminal Investigation Department in Kuwait. Ensuring that cases of abuse, including forced labour, are quickly identified can be facilitated through the creation of a ‘tip off’ phone line to which anyone – not just the worker – can call to provide information about criminal or labour violations against a domestic worker. Unlike many domestic work hotlines currently operating in the Arab regions, this type of hotline should allow a person to call anonymously, and works best when available at any time – including evenings and weekends. It is important that staff who operate the line are sensitized to dealing with vulnerable workers, particularly non-Arabic speaking workers.

It is also essential that labour inspectors are trained on dealing with forced labour and vulnerable workers, and have the requisite language skills or translation assistance. This can greatly help to ensure that the inspection team has the right mix of skills to investigate the situation fully and support the worker in case of abuse. Labour inspection teams could also consist of both men and women labour inspectors – to ensure ease of access to the household.

2.3 Balancing employers’ need for skilled workers, with workers’ need for wage incentives

While there is a prevailing assumption that domestic work is unskilled work, which was often reflected in statements made by employers in the ILO surveys, the responses revealed that, in fact, employers had very specific views on the standards and quality of work that they expected, including work efficiency, productivity, kindness and ‘servility’. Thus, even though this was not perceived as ‘skilled work’, the expectations of employers clearly pointed to a need for workers with specific experience and training. Furthermore, the research demonstrated that employers increasingly rely on domestic workers for a number of specialized tasks including taking care of the elderly, disabled, and children (Tayah, 2016). Hiring a domestic worker was perceived to be a ‘necessity’ (ILO, 2016a, p. 9) which could rarely be avoided given limited public investment in alternative, institutionalised, and affordable forms of care.

Employers in the surveys expressed some frustration that workers could not perform certain tasks, yet these unmet expectations were generally based on the (high) cost that they were paying recruitment agencies (ILO, 2016a) and/or misinformation provided by the agencies as to the skills or experience of the domestic worker. Poor language abilities were also stated as a cause for frustration. Yet, both in terms of basic professional skills and language skills, the issue was generally not a lack of interest by domestic workers to engage in training, but rather a lack of availability of such training. This has been recognized by domestic workers themselves. For example, in Lebanon in 2014, when domestic workers called on their governments to “expose us to the methods of cleaning and cooking in Lebanon and to ways for operating complicated home appliances; introduce us to basic words and expressions in the Lebanese dialect” (Tayah, 2014, p. 5).

Such basic training and certification of skills could be introduced by destination country governments, embassies or consulates, civil society organizations or the private sector, and a number of initiatives are already being explored in Lebanon (through the Equip programme²²). As part of skills training, basic literacy, financial education and negotiation and communication training must be provided to ensure workers have the confidence to negotiate for better working conditions and wages in line with their new skill set. Indeed, skills upgrading courses could be linked to appropriately-set wages and wage scales. Such courses offer the possibility to monitor the well-being of workers at low cost and without intruding into the private sphere of the employer.

²² See: <http://www.equip-center.info/>

However, while basic training in housekeeping is important, there is also a need to address the increasingly complex care obligations that are expected of domestic workers employed to look after elderly, disabled persons or young children. With population ageing, there is an increase in the number of people in need of long-term care, including administration of drugs, bathing, and taking blood pressure etc. These tasks should be recognized and certified through professionalization programmes (Tayah, 2016). Additionally, transversal skills such as communication and organizational capacity, which are required for the multitasking involved in household management, could also be recognized and certified, with wage scales commensurate with experience. This should be accompanied by transparency in the wage setting process – meaning that more trained/skilled workers receive higher wages.

Competency standards can be developed and used as a set of benchmarks to define the skills, knowledge and attributes people need to perform a domestic work role. Competency standards for domestic work – which are clearly separated from other occupations such as nurses – should be developed through input from the industry (that is, individual employers or care organizations). Such standards can be used to develop and implement training, to assess the outcomes of training, and to assess the level of a person’s existing skills and competencies, as well as for the purposes of wage setting. The ILO and relevant stakeholders from Bangladesh, Cambodia, Hong Kong (China), India, Indonesia, the Philippines, Singapore and Thailand developed the Regional Model Competency Standards (RMCS) for domestic workers in 2014.²³ These would, of course, need to reflect the specific context of the region, but the RMCS provide a basic framework for how the competencies could be classified.

BOX 5: PROFESSIONALIZATION OF DOMESTIC WORK IN HONG KONG (CHINA)

In Hong Kong (China), training for local (non-migrant) domestic workers is run by the Domestic Workers General Union (DWGU), through the Confederation of Trade Unions Training Centre (CTUTC). The Training Centre provides over one hundred hours of skills training for women entering the domestic work sector, including cleaning, laundry, care of infants and the elderly, negotiation, and labour rights. Once certified, students have access to the centre’s job referral programme through which women gained access to 19,287 quality jobs between 2002 and 2014. The Confederation negotiates contracts for its workers to ensure that workers are well-compensated. Despite the workers’ wages being much higher than the minimum wage, the Confederation has the highest job placement rate of any government-supported domestic workers job-referral programme.

Source: Housekeeping Co, n.d; Hobden 2015.

²³ The RMCS template is an adaptive tool, composed of six functional areas: (i) core competencies; (ii) domestic cleaning and basic housekeeping; (iii) cooking and food handling; (iv) caring for infants and children; (v) caring for elderly people; and (vi) caring for household pets and plants. Each functional area consists of competency standards identifying the key roles that the worker is expected to perform, which are then broken down into a number of “units of competence”; these are then further subdivided into “elements of competence”. For each element, “performance criteria” are defined which form the basis for assessment, with “range statements” provided for guidance (e.g. support requirements, cultural and religious needs, possible risks, equipment and aids, etc.).

2.4 Balancing the employers' need for continuous assistance, with the workers' right to rest

In the ILO surveys, employers often expressed a need for 24-hour service by the domestic worker – particularly when their responsibilities include the care of young children or elderly household members. Comments such as “she is part of the household” and “because no one else gets a day off neither does she”, were common arguments used by employers (ILO, 2016a, p. 15). Yet this attitude does not recognize that a lack of regular breaks affects the quality of the care that the worker can provide and that the right to rest is a fundamental right for all workers, and not a privilege.

Domestic workers are often not afforded periods of daily or weekly rest and are instead subject to long ‘standby hours’ – “periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls” (Anderson 2016). Although employers in the ILO surveys often perceived these hours as ‘a break’, studies show that stand-by hours (particularly at night) are mentally exerting and different from an actual rest period (Anderson 2016).

Support fair working conditions, including occupational safety and health, and accurate calculation of daily and weekly rest

Ensuring adequate periods of time off is critical for the safety and welfare of both the domestic workers and the household. Domestic work is commonly perceived as safe and non-threatening as it occurs in a household, and yet it can involve a number of serious risks, which increase with the fatigue of long working hours. The work often involves “significant repetition, bending and reaching, lifting heavy objects, extremes of heat (cooking, ironing), sharp objects (knives), handling potentially toxic cleaning products and prolonged exposure to dust” (ILO, 2010, p. 62). Working on balconies, cleaning from a height, and using ladders are also commonly required activities which carry a risk to the health and safety of the worker. For example, in Hong Kong (China), the government recently acknowledged the serious danger that domestic workers face in cleaning windows, and has included a new provision in its Standard Employment Contract which requires that “the window being cleaned is fitted with a grille that is locked or secured in a manner that prevents the grille from being opened; and no part of the helper’s body extends beyond the window ledge except the arms” (Manila Times, 2017).

Moreover, long hours without sufficient rest affects one’s ability to remain attentive to the needs of children, elderly or disabled people. As such, the right to rest ensures not only the health of the worker, but also would improve the quality of the service delivered to the household. Establishing a clear daily schedule, with scheduled breaks, would facilitate in planning for the worker’s rest period.

Governments and public institutions can work with civil society and trade unions to educate employers and domestic workers on the safety dimension of regular breaks for domestic workers, and assist with calculating working hours, including standby hours, using tools developed by the ILO.²⁴ This could also be incorporated in the standard unified contracts

²⁴ A working time tool was developed for live-in domestic workers by the ILO in 2014. The tool aims to help domestic workers keep a basic overview of their working time and tasks, by helping workers to record and calculate working hours, breaks, daily rest, weekly rest, and wages. The task check list can help domestic workers monitor their own work, as well as demonstrate to employers what tasks have been performed in what period of time. Additional information can also be found on the Factsheet “Right to Rest for domestic workers”.

used in the region. Employers can be encouraged to reconsider what is meant by 'work intensity' and recognize that standby hours are not rest time and should be remunerated (Anderson 2016 p. 85).²⁵

Enabling actual rest periods for workers requires a change of thinking for many employers, and a subsequent change of household routine – including requiring someone in the household to fulfill the tasks of the domestic worker during her break, or having a replacement worker assist if no family support is readily available. This is particularly important in cases when 24-hour care is needed, including for young children, elderly persons and persons with a disability.

BOX 6: CANADA'S CALCULATION OF WORKING HOURS

The guidelines for regulation of domestic work in the Canadian province of British Columbia note that: "The employer has the right to set the domestic worker's work schedule. However, because domestic workers live in their employers' homes, the line between being "at work" and "not at work" is often unclear." Thus, for 'standby hours', the guide notes that "if the employer asks the domestic worker to baby-sit or perform other duties outside of the normal agreed-upon hours of work, that time is work and must be paid appropriately (at overtime rates if applicable)."

Unless there is an emergency, domestic workers must have at least eight hours free from work between shifts and 32 consecutive hours free from work each week. Furthermore, the employer must keep a record of daily hours worked, even if the domestic worker is paid a salary instead of an hourly wage.

Source: British Columbia 2017

Establish facilities ('drop in' centres) where domestic workers can go on their day off

The ability to meet and interact with friends and fellow migrants is a critical aspect of positive mental health and work productivity – something which is commonly overlooked by employers who limit their domestic worker's ability to decide where to spend her day off. Meeting and interacting with other workers can also be a practical way of adjusting to a new country and new job, and resolving disputes and challenges that workers have with their employers through advice from other workers about dealing with challenging situations.

The domestic work sector is unique in that unlike construction, manufacturing, or agricultural work, domestic workers may not have any other colleagues or contacts outside the home. Their access to support services are also often hampered when employers do not let them leave the household. Domestic workers also often have limited public spaces in which to meet. For example, migrant women may be prohibited or discouraged from going to certain places like restaurants or cafes, unless they are with their employer (Pande, 2012, p. 391). Often migrant domestic workers are not allowed to swim in the resort pools and encouraged to not go near the pool area (North 2009).

²⁵ Article 10(3) of the ILO Domestic Workers Convention, 2011 (No. 201) states that "periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household... shall be regarded as hours of work..." The accompanying Recommendation No. 201, in paragraph 6(2)(c), stipulates that "the rate of pay or compensation for overtime and standby" should also be included in the terms and conditions of employment.

Being able to attend religious services can provide a safe space for domestic workers to meet and discuss issues. Faith leaders can often be a useful source of practical advice and mediation. Pande (2012) notes examples of faith leaders encouraging domestic workers “to respect their employers and avoid becoming [irregular], but to confront any physical abuse instantly” (Pande, 2012, p. 391).

The lack of public spaces freely available for migrant workers, creates a need for governments to make available ‘drop-in’ centres for all domestic workers, where they can safely meet and interact. This has already been implemented on a small-scale by non-government organizations and trade unions. However, in most other countries, the only facilities available for domestic workers to congregate are shelters. While also important, shelters have a different function to drop in centres, as they are spaces specifically for workers who have left their employers due to labour and human rights violations and often provide accommodation.²⁶

To facilitate interaction between domestic workers during their time off, governments, both national and local, can play an important role in providing public spaces for drop-in centres and assisting with financial support for running them in collaboration with civil society. Governments can also encourage, promote or facilitate initiatives by trade unions (box 7) and the private sector to provide spaces for domestic workers.

BOX 7: JORDAN’S AL-HASSAN WORKERS’ CENTRE

Established in 1998, the Al-Hassan Industrial Zone in Jordan is home to 17,000 garment factory workers, nearly 80 per cent of whom are migrant workers from India, Sri Lanka and Bangladesh. In 2013, a multi-purpose workers’ centre in the industrial zone was established with the support of a number of stakeholders including the U.S. Agency for International Development, the Jordan Industrial Estates Corporation, the Irbid Chamber of Industry, apparel factories within the industrial zone, the General Trade Union for Garment and Textile Industries, the Jordan Garment, Accessories and Textiles Exporters Association, and international brands. The centre is co-run by the migrant workers. It is open every evening after work, and during the day on Friday, when workers have a day off. As well as a computer room and gym, the centre also has a canteen, an outdoor sports area and classrooms offering English and IT courses. The thousands of workers employed in the industrial zone have access to legal advice and trade union support. Though currently subsidized by the Swiss Agency for Development and Cooperation (SDC), the centre also generates funds through small fees charged to workers for use of facilities and financial support from apparel companies in the Industrial Zone. Although not a centre for domestic workers, the Al-Hassan Workers’ Centre provides a good model for the creation of other such centres, including for domestic workers.

Source: BETTER WORK factsheet, n.d.

²⁶ See: Migrant Forum in Asia (2014). Providing Shelter for Distressed Migrant Workers: Rights-Based Approach. Policy Brief No. 9.

BOX 8: CREATING SAFE SPACES FOR DOMESTIC WORKERS: EQUIP (LEBANON)

The Beirut-based organization Equip is creating spaces for domestic workers. Equip aims to support recruitment agencies, employers and workers to help build professional and sustainable working relationships. The organization offers training, including first aid courses, to give employers more confidence in their workers; and, crucially, a mediation service to help resolve problematic cases. Equip also facilitates organized outings which eases the fears of employers that their worker will 'run away' on her day off.

Source: correspondence with Leena Ksaifi, Equip (2017)

2.5 Ensuring the rights of both parties through an expedited process for settling disputes

In most Arab countries, the key options for dispute resolution for domestic workers are voluntary conciliation with the employer through the help of a recruitment agency, the embassy or consulate, a civil society organization or the responsible Ministry; or judicial action through civil courts. Criminal cases can be brought by prosecutors if there is evidence of criminal conduct including physical abuse, and/or trafficking in persons, though this does not necessarily mean that there is financial compensation provided to the victim. Both conciliation and judicial cases brought by domestic workers in the Arab States face a number of hurdles, key among them being the difficulty of enforcing the participation of the employer; the precarious immigration status of the domestic worker while the dispute resolution is underway; the worker's accommodation/financial ability to support him or herself during the dispute period; and the length of time that dispute resolution entails – which can take months and even years.

Establish accessible (and gender sensitive) channels for complaints handling

There are a number of means for domestic workers or employers to file a complaint. Research has found that very few cases involving domestic workers were brought before the courts, the vast majority of conflicts were subject to an amicable settlement facilitated by NGOs or others, such as embassies. For example, in Lebanon, amicable or informal settlement of disputes was found to be the most common conflict resolution method applied in cases involving a migrant domestic worker – however, whether the settlement was a 'fair' outcome according to legal entitlements is unclear (Nasri and Tannous, 2014).

Typically, amicable or informal settlement of disputes are common if the domestic worker or the employer contacts a recruitment agency to mediate the dispute. This is a concern as recruitment agents are rarely qualified to fulfil this important role. Nor are they a neutral party, as in most cases, they see their primary obligation being to their 'client' who is the employer, and thus in many cases not well positioned to carry out mediation in a balanced way.

Other options for domestic workers to file a complaint include at their embassy or consulate; with the police (in cases where the sector falls under the mandate of the Ministry of Interior, or the complaint concerns a criminal matter); or with the Ministry of Labour. The accessibility of each of these mechanisms – in terms of physical access, language, and capacity and sensitivity of responding officials – will vary greatly. Commonly, domestic workers prefer to go to their embassy so that they can speak to someone in their own language. But this will not always be possible if there is no embassy or the country of origin has a ban on domestic workers. Additionally, embassies may have too few resources to deal with all cases. Going to the police station or the Ministry of Labour can be a daunting

prospect, but can be facilitated if there is a focal point who has received appropriate training on supporting domestic workers through lodging a complaint. As most domestic workers are women, creating a 'women's desk' in every police station, which is staffed by trained government staff, or secondees from foreign embassies or civil society organizations would support domestic workers to confidently access official complaints mechanisms.

BOX: 9: LEBANON'S SOCIAL WORKERS WITHIN THE MINISTRY OF LABOUR

In 2013, under Ministerial Decree No. 7429, the Ministry of Labour in Lebanon appointed six social workers to work on domestic worker dispute resolution, and specifically to assist in settlement of disputes between migrant domestic workers and employers. The ILO proposed job descriptions for the social workers drafted in consultation with relevant ministries and civil society. The social workers were trained on receiving, documenting and referring complaints, counselling migrant domestic workers and employers during disputes, as well as inspecting cases of conflict.²⁷

Introduce fast track dispute resolution, such as a small claims tribunal

Given the high number of disputes within the domestic work sector, governments should consider ways of ensuring a rapid and just settlement. In a number of countries, there are fast tracked specialised bodies that deal with disputes below a certain amount of money. For example, in Australia, an independent body deals with disputes through a three step process of assessment (to establish the background to the complaint and whether enforcement action is necessary); dispute resolution with a trained mediator; and a 'small claims process' for unresolved claims (ILO, 2016f). Some countries in the Arab States have started to introduce small claims avenues (though often through the courts rather than non-judicial bodies), however, at present, there are none that allow claims from domestic workers.

Additionally, there must be mechanisms to enforce judicial orders – which must be the obligation of the government authorities and not workers themselves. One way of doing this is to require employers to lodge funds upfront – either when they engage a domestic worker, or as soon as a dispute is registered – with the funds to be held in escrow to be disbursed to claimants. Failure to comply should result in a penalty. It is also possible for government authorities to create a fund for domestic workers who cannot recover funds from their employers (either because of insolvency, or because the employer cannot be contacted). One suggestion, based on a model in Hong Kong (China), is for the compensation fund to be financed by corporate taxes or foreign worker levies.²⁸

It is also important to make sure that during the period that the dispute is ongoing (which even in fast-track cases can unexpectedly be delayed), the domestic worker is given a temporary permit to reside and work with another employer. Currently, it is only with the employers' permission that domestic workers can change employer in most Arab States (which is unlikely to be given in case of an ongoing dispute). There are however indications of some promising practices, including in Kuwait, where a new regulation will enable a domestic worker to change sponsors without the permission of the employer.

²⁷ The social worker's job description has not yet been adopted by the Ministry of Labour, which limits the authority of the social workers to perform their duties. Recently, the Ministry of Labour provided mobile phones to the social workers, and linked these mobile phones to a hotline number dedicated to migrant domestic workers. The practice is recent and is to be further monitored, but is presented as a promising first step.

²⁸ See for example, HOME 2016.

BOX 10: IRELAND'S WORKPLACE RELATIONS COMMISSION ADJUDICATOR

The dispute resolution system in Ireland enables workers, including domestic workers, who feel that their employment rights have been breached, to make a complaint to Workplace Relations Information and Customer Services. Complaints at this stage are dealt with either through an inspection or by a hearing by an Adjudicator at the Workplace Relations Commission.

Salary-related complaints require employers of domestic workers to produce detailed wage records which they are legally obliged to maintain. Resolution of complaints through the Adjudicator is a faster process to resolution than through the Labour Court, but the latter path is available if either party is unsatisfied with the decision of the Adjudicator.

Source: Workplace Relations Commission (Ireland).

SECTION 3: 'OUTSIDE THE BOX'- MODELS FOR CONSIDERATION

While the previous section outlined some practical extensions to existing regulation of the domestic worker sector in order to solve some of the most immediate problems in the worker-employer relationship, this section proposes bolder ideas for consideration, which can bring Arab States on par with other modern economies in the regulation of domestic work. Ensuring a quality workforce of domestic workers who can fulfil the growing needs of the care economy will require piloting new models and ideas, and gradual legislative and regulatory change. A number of these ideas will be explored in this short section.

3.1 Introduce a legal channel for live-out migrant domestic workers, including 'freelancers'

In most countries around the world, the domestic work sector includes three broad categories of employment based on the hours of work and the nature of employment relationship:

- A. Hourly worker: a worker who works for one or more employers for a specified number of hours per day or performs specific tasks for each of the multiple employers on a regular or scheduled basis.
- B. Live-out worker (full-time/part-time): a worker who works for a single employer full-time or part-time and who returns back to her/his home after every work day.
- C. Live-in worker: a worker who most often works full-time for a single employer and also resides on the premises of the employer.

Generally, only the latter option is lawful in the Arab States – a situation which stems from the *kafala* system that limits workers to only one employer and provides the employer with significant control over the worker.²⁹ The absence of alternative and complementary models is, however, a lost opportunity for Arab countries, and reflects a status quo which is 'out of step' with emerging trends in other parts of the world.

Increasingly, countries that previously promoted a live-in model for domestic workers are moving towards hourly, or live-out full-time worker models which allow greater flexibility for both workers and employers. For example:

- Until the end of 2014, live-in caregiving was promoted by the Canadian government. However, due in part to allegations of human rights abuses by employers of live-in migrant workers, and the need for more flexibility in the living arrangements, under a new programme, caregivers do not have to reside in the home of the employer, unless it is something that the caregiver and the employer agree to in their contract.³⁰
- In 2016, Japan commenced implementation of a scheme to recruit live-out domestic workers in 'strategic special zones' to help take care of housekeeping and care of elderly residents. There is no cap on numbers and it is likely the scheme will grow in size (Washington Post, 2017).

While there will always be some employers that prefer a live-in domestic worker, allowing multiple types of employment relationships can provide much-needed flexibility to

²⁹ Despite these regulations, freelance workers operate within the informal economy in many countries due to the demand for part-time and full-time 'live-out' workers. As per the dominant *kafala* sponsorship system, all work undertaken outside of the relationship with the *kafeel* is considered illegal, and therefore the workers are considered to be in an irregular situation. In some countries, domestic workers may be employed through cleaning companies which act as the *kafeel*, and may service multiple households.

³⁰ For further information see: <http://www.cic.gc.ca/english/work/caregiver/apply-who.asp>

households in the Arab States. For example, a recent study with employers of domestic workers in Jordan showed that many preferred a part-time worker, either because they didn't have the space for a live-in worker, or did not need someone full time. "I hire a domestic worker two days a week" said one employer. "She also comes to help when I have a dinner party. I have a small apartment and my kids are grown, so I don't need someone full-time. This arrangement is less expensive and I have my privacy" (ILO, 2017b, p. 12).

Some types of part-time domestic work services may be available through commercial cleaning companies, but this is commonly used in businesses and government offices, not in private homes. There are concerns over the nature of this model as well – as the work is commonly conducted with an absence of regulation, and workers have made allegations concerning lack of access to decent accommodation, untimely payment of wages, etc. Thus, this kind of model should be approached with caution.

On the other hand, allowing live-out or hourly employment of domestic workers can be a more practical model, especially through technological advances which allow employers to register their need for services 'on-demand' and allow workers to work independently without having to go through an intermediary. This ensures that workers have a regular source of income.

The idea of a legal option for 'freelance' work builds on an emerging trend within the Arab States. Bahrain introduced a 'flex-visa' in the second quarter of 2017, which allows migrants (although not domestic workers) to work for multiple employers simultaneously, be it individuals or organizations, bringing greater flexibility to both employers and workers. Not only can this type of visa decrease the level of obligations on employers, but it can also help to regularize a large irregular workforce (while generating revenue for the government, from work permits) (ILO, 2017).

One way of testing the feasibility of the 'freelance' model is to pilot test it in a designated area, such as a city where there are many young families and single person households who do not need a full-time worker. Assessing the results for both workers and employers at the end of the pilot can then assist governments to decide whether to introduce the idea nationwide.

BOX 11: ON-DEMAND CLEANING SERVICE APPS IN INDIA

Although currently only available for local domestic workers, India's MyDidi application is an 'on-demand' platform which allows domestic workers and employers to connect to arrange domestic services. The app has two separate platforms – one for the domestic workers to accept requests for services, monitor their performance, and keep account of their income; and one for users to request and rate services. MyDidi also provides free training to all their workers, and the workers are paid a fixed income, even if they don't get a single service request for the entire month. The workers receive bonuses if they get a good rating from their customers, and conversely, if any employee gets negative feedback, they are re-trained before being given any new assignments. MyDidi also supports computer and financial literacy of their workers, and has opened bank accounts for all of their workers.

MyDidi has a number of advantages for both employers and workers, including the ability to track hours worked and earnings on the app, the ability to work flexibly, and a two-way ratings and review system, leading to mutual improvement of both workers and clients. Furthermore, the company has an insurance scheme to protect workers for injuries sustained during work and damage to personal property of clients. While this represents a promising practice, it is important to note that there has not yet been a thorough assessment of the platform.

Source: Hunt and Machingura, 2016

3.2 Allow domestic workers to form cooperatives, or be employed by cooperatives

Cooperatives can be an alternative to the traditional employment relationship of a domestic worker and an individual household (or, less commonly, a worker and a cleaning company – where this is permitted). A cooperative is “an autonomous association of persons united voluntarily to meeting their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise” (ILO, 2016b).³¹ While cooperatives can vary in terms of size, membership and function, the majority of cooperatives currently operating in the care sector are made up of workers, and/or clients.

The increase in the number of cooperatives in this sector suggests that this is a new type of care provision which can form an alternative to employment directly by a household or through a company. As member-owned and controlled enterprises, cooperatives minimize the costs that go to a third-party (such as a labour supply agency) and can ensure better skills matching to clients’ needs, as well as better terms and conditions of work for the members (ILO, 2016b).

Allowing cooperatives made up of domestic workers would not require radical legislative change as in some Arab countries migrant workers can join a cooperative or start their own (including Lebanon where non-nationals can legally join and start a cooperative, and in Kuwait where they are allowed to join cooperatives founded by nationals) (ILO, 2015c). Cooperatives in the agricultural sector in Jordan are already able to employ Syrian workers, meaning that the cooperatives act as the *kafeel* and the ‘employer’. This is an approach which could potentially be rolled out to other sectors and other types of migrants, including migrant domestic workers.

The function of a cooperative need not only be limited to the provision of services to employers. A cooperative model could also be an organization of workers who provide support to one another, or build a network with employers. For example, a cooperative could be created to:

- Mediate between current sponsors, migrant domestic workers and future sponsors during the transfer of sponsorship process.
- Upgrade the skills of domestic workers which may pave the way for transitioning into higher-skilled employment, including skilled care work.
- Find new employment and accommodation for migrant domestic workers who are dissatisfied with their current sponsors (ILO, 2015c).

BOX 12: US’ COOPERATIVE HOME CARE ASSOCIATES

The Cooperative Home Care Associates (CHCA) is a worker-owned homecare (elderly care) agency in New York City. CHCA is the largest worker cooperative in the United States, employing 2,200 inner-city homecare workers in the South Bronx and generating an annual income of over US\$64 million in revenues in 2013. Workers become “owners” with a buy-in of US\$1,000, paid in installments over time. Originally established in 1985 with the support of the New York Community Service Society, CHCA is now owned by 1,700 low-income women, from immigrant, African American and Latin American backgrounds.

The Cooperative was commenced on the premise that if workers owned their own company, they would be better trained and better treated, and thus they could offer better care to their clients. In 2000, the CHCA went on to create the

³¹ As defined in International Co-operative Alliance and the ILO Promotion of Cooperatives Recommendation, 2002 (No. 193).

Independence Care System – a multibillion-dollar managed-care company, with contracts with the New York City government to work with chronically sick and disabled adults. The cooperative has helped to ensure insurance, decent wages and respect in the community. The cooperative employs peer-mentors to answer caregivers' calls at desks, as well as a drop-in centre and practical training for workers.

Source: Yes Magazine, 2014

3.3 Allow both workers and employers to set up representative organizations to create better dialogue between both sets of parties

Both employer and worker organizations are critical elements of ensuring good working relations in society as they can help to represent the voice of employers and domestic workers respectively, and ensure balanced dialogue on productivity and determining wages and working conditions in the sector. Employers and workers are often at a loss when it comes to setting tasks, schedules, wages and hours. There is very limited scope for a single domestic worker to enter into a genuine negotiation about the terms of his or her employment contract. This may leave individual domestic workers vulnerable to accepting work in conditions that are contrary to the terms of the standard unified contract, national law (where it covers domestic workers), or basic human rights. The existence of workers' and employers' organizations can pave the way for collective bargaining, which can improve working conditions and extend labour protections to vulnerable categories of workers (Hobden, 2015). There are challenges to the establishment of both types of organizations in the Arab States. For domestic workers, and for migrants, there are restrictions on being able to form or join trade unions. As for employers, domestic workers are commonly employed by a disparate network of individuals rather than a business, making the establishment of a unified, representative group a particular challenge.

However, in a number of countries, alternatives have emerged to help ensure dialogue between employers and workers. For example, in Denmark and Switzerland, employer organizations that cover domestic work are primarily associations of employers in the care sector, while in Belgium and France, there are various employer organizations that represent private households (EFFAT, 2015).

BOX 13: ITALY'S DIALOGUE BETWEEN DOMESTIC WORKERS AND EMPLOYERS

In Italy, employers of domestic workers began to organize as far back as the 1960s, when the organization of domestic workers led employers to form small associations. In 1974, the National Federation of the Italian Clergy signed the first collective agreement covering domestic workers. Since then, the organization of employers has become much more widespread, eventually leading to the formation of two national federations of employers of domestic workers – DOMINA and FIDALDO.³²

Both organizations have signed and supported the terms of the agreement, including wage rates, periods of rest, paid holidays, sick pay and severance pay. The agreement is not universally applicable: it is only compulsory for employers who are members of DOMINA or FIDALDO or who have entered into contracts that explicitly or implicitly refer to it. When workers not formally covered by the agreement bring cases to court, judges use the provisions on wages and social security as the standards by which to adjudicate.

Source: Hobden, 2015

³² The Associazione Nazionale Famiglie Datori di Lavoro Domestico (DOMINA) and the Federazione Italiana Datori di Lavoro Domestico (FIDALDO).

CONCLUSION

Domestic workers play a pivotal role in Arab societies. They support the upbringing of children during critical stages of development, support the elderly to live with dignity, and (by relieving nationals of their domestic responsibilities) enable greater female labour participation, in furtherance of nationalization policies. Although there have been some improvements in the regulation of this sector, including the proliferation of standard unified contracts – which can be a useful way of promoting a positive relationship between domestic workers and their employers – much more can be done to ensure that there is better understanding between the two parties, and better systems of compliance, ultimately resulting in more harmonious and productive working relationships.

Given the rapidly increasing ageing population in the Arab States, and the need to ensure that early childhood education provides the foundation for a skilled national workforce, reassessing the way that the domestic work sector is regulated is an important policy priority. This White Paper has shown that, like many other modern societies which rely on domestic workers, Arab States can implement promising practices, by looking at innovative experiences from around the world.

The ILO stands ready to support governments in the region to develop and implement new ideas that can ensure a productive domestic work sector to the benefit of all – workers, employers and the society.

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SUMMARY

The domestic work sector in the Middle East is constantly evolving. No longer are domestic workers employed only to clean homes – modern households are increasingly expecting domestic workers to support the care of children during critical stages of development, aid the elderly to live with increased autonomy, and assist in chores and household management.

Important progress has been made over the last few years by a number of countries in the Middle East towards legislative change to protect migrant workers. Yet implementation and enforcement remain major challenges, and continuing and credible allegations of abuse and fraudulent behavior continue to plague the sector:

This paper presents a number of interesting practices from countries such as Singapore, Jordan, Canada, Ireland, Saudi Arabia and others which could be a useful tool for policymakers in developing mechanisms to develop strong regulations and enforcement mechanisms to achieve justice and employment satisfaction for both workers and their employers.

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