

Social protection of migrant workers in the Gulf region

a law and policy case study of the United Arab Emirates.

Paper for the 2015 ILERA conference: workshop on the social protection of migrants: new regional developments and current challenges

Gijsbert Vonk

Simon Braaksma

Gijsbert Vonk (prof. dr.) is professor of public law at the University of Groningen and specializes in social security law. Simon Braaksma is an LLM-student at the same university who wrote his master thesis about the social protection of migrant workers in the Gulf Region, supervised by Gijsbert Vonk.

Abstract

The purpose of this article is to investigate the development of legal standards of protection for migrant workers (excluding domestic workers) in the Gulf region, in particular the UAE, in order to find out in what manner the UAE respond to internationally voiced criticism against the treatment of migrant workers. In section 2 we first outline the constitutional framework in order to find out how the competences in the field of labour and social security are divided between the multilateral level of the GCC, the UAE and the local emirates. Then in Section 3 we give a brief overview of the intensity, problems and challenges pertaining to the status of migrant workers in the Gulf region. Section 4 contains a description of the state of labour law protection of migrant workers in UAE. We deal with this first of all in a static manner, by highlighting the rules applying in the Labour Law of the UAE and then in a dynamic manner, by concentrating on the changes that have been introduced over the last ten years in law and policy. In section 5 we focus on the divide between law and practice: what measures have been taken to ensure that protective legislative standards are actually applied to the migrant workers? Finally, in Section 6 we present a short conclusion.

This version is the first draft that has not yet been submitted to a local expert for comments. Please do not quote

1. Introduction

This contribution focusses on the social protection regime for migrant workers applying in the Gulf region of the Middle East. These are the countries that are affiliated to the Co-operation Council of the Arab States of the Gulf (Bahrein, United Arab Emirates, Saudi Arabia, Qatar, Oman and Kuwait). This region is characterized by dynamic economies and labour markets. Migration is intense, not only between these countries but especially and foremost between third countries and the Gulf region. In most countries the percentage of the non-national workforce far outreaches the number of national workers. In the UAE this percentage is now 83%. Most third country workers come from Asia and Africa. The majority are employed in the oil industry, in construction and as domestic workers.

The quality of the social protection of migrant workers in the Gulf region is a contentious issue. Some press reports dealing with the construction of the football accommodation for the 2022 FIFA World Cup championships have highlighted the fact that immigrant workers in the construction industry are exposed to serious work hazards and left without much labour and social security protection. Other reports, such as the 2014 Human Rights Watch report “I already bought you”, are highly critical of the situation of domestic workers in the region. Domestic workers are reported to sometimes be kept in a state of semi slavery under a status known as *Kafala*, a sponsorship construction which requires the worker to seek the consent of his employer before he can move on to a new job. Similarly, there are complaints that in Saudi Arabia and Qatar migrant workers cannot leave the country without obtaining their employer’s consent for an “exit permit” from the authorities. Furthermore, there are reports of massive deportations of irregular workers from some countries, most notably Saudi Arabia.

The situation of migrant workers in the region is being increasingly placed on the agenda. Some states, like the UAE, are engaged in improving and enforcing minimum labour standards that employers have to adhere to when recruiting third country workers. Most recently in November 2014 the GCC labour ministers convened to discuss policies to ameliorate the situation for migrant workers in the Gulf. But on the whole, it is difficult to actually assess the success of such efforts in real terms.

The purpose of this contribution is to investigate the development of legal standards of protection for migrant workers in the Gulf region, in particular the UAE, in order to find out how the UAE responds to internationally voiced criticism against the treatment of migrant workers.

In section 2 we first outline the constitutional framework in order to find out how the competences in the field of labour and social security are divided between the multilateral level of the GCC, the UAE and the local emirates. Then in Section 3 we give a brief overview of the intensity, problems and challenges pertaining to the status of migrant workers in the Gulf region. Section 4 contains a description of the state of labour law protection of migrant workers in UAE. We deal with this first of all in a *static manner*, by highlighting the rules applying in the Labour Law of the UAE and then in a *dynamic manner*, by concentrating on the changes that have been introduced over the last ten years in law and policy. In section 5 we focus on the divide between law and practice: what measures have been taken to ensure that protective legislative standards are actually applied to the migrant workers? Finally, in Section 6 we present a short conclusion.

This study is focused on the migrant workers, excluding to domestic personnel. Their controversial situation in the Gulf region has been investigated in more detail elsewhere.¹

Furthermore, the present contribution focusses primarily on labour law and not on the social security system. The reason is that apart from the risk of industrial accidents and occupational diseases, the social security systems of the countries in the GCC area simply do not apply to non-nationals. At least this is the case for third country migrant workers. GCC themselves enjoy equal protection when they work in another state, on the basis a 2006 GCC unilateral law on insurance protection.²

For an overview of the relevant literature we refer to the website of the *Gulf Labour Markets and Migration Programme* which runs in the *Migration Policy Centre* of the *European University Institute*. <http://gulfmigration.eu>

2. Constitutional framework

The Gulf Cooperation Council

The Cooperation Council for the Arab States of the Gulf, also known as the Gulf Cooperation Council (GCC), was founded on May 25, 1981 and consists of six states: the United Arab Emirates, the State of Bahrain, the Kingdom of Saudi Arabia, the Sultanate of Oman, the State of Qatar and the State of Kuwait. The basic objectives of the GCC are stated in Article 4 of the Charter of the GCC. The basic objectives aim to achieve coordination, integration and inter-connection between Member States in all fields in order to reach unity between them. But also to deepen and strengthen relations, links and areas of cooperation now prevailing between their peoples in various fields. Furthermore, one of the objectives is to formulate similar regulations in various fields such as economic and financial affairs, commerce, customs and communications, education and culture. Social protection and immigration are not mentioned as relevant policy areas.

The GCC is primarily an inter-governmental organization, with the highest powers vested with the Supreme Council of heads of states and with the Council of Ministers. The Secretary General is head of the Secretariat of the GCC.

According to the GCC Charter neither the Supreme Council, nor the Ministerial Council can enact rules binding on the member states. Yet, there is a practice to adopt so called 'unified laws', consisting of harmonized rules which are to be adopted by the national legislatures of the member states. Although social protection and immigration are not referred to as relevant policy areas of co-operation, these fields are nonetheless part of the growing body of binding laws, emerging within the framework of the internal GCC market. This has created rights for nationals of the member states to have equal access to employment, social insurance and welfare services. For example, in 2006, the GCC enacted a "Unified Law on Insurance Protection Extension for Citizens of Gulf Cooperation Council States Working outside Their Countries in Any of the Council Member States". This Unified Law includes provisions for long-term benefits for old-age and retirement, disability, sickness and

¹ There are many publications. Just to mention three of these Heather E. Murray, 'Hope for reform springs eternal. How the sponsorship system, domestic law and traditional custom fail to protect migrant workers in GCC countries', 45 *Cornell International Law Journal* 461 (2013) . Human rights Watch "*I already bought you*". *Abuse and exploitation of female migrant domestic workers in the United Arab Emirates*, Report by Human Rights Watch, 2014.

² *Infra*, Section 2.

death of a family member under the social security schemes of the GCC member states. It provides equal access to social insurance schemes for GCC country nationals working in another GCC state.

In contrast to these efforts, apart from occasional resolutions and communiques from the Council of labour ministers, there does not seem to be an official GCC policy for migration and social protection of third country workers. This matter is left fully to the powers of the member states.

The United Arab Emirates

The United Arab Emirates (UAE) is a federal state. This is stated in article one of the Constitution. In a federal state the legislative power rest with the States, unless the legislative power is specifically addressed to the federal government. In that case, it becomes a task of the federal government. This system is also underlined in the Constitution of the UAE. The UAE sets out in the Constitution, under articles 120 and 121 which matters remain under the exclusive legislative and executive jurisdiction of the UAE. To be more precise, Article 120 sets out which matters are under the exclusive legislative and executive jurisdiction of the UAE. Article 121 sets out which matters are under the exclusive legislative jurisdiction of the UAE. All matters not assigned to the exclusive jurisdiction of the Union are under the jurisdiction of the Emirates. Labour relations and social securities are two of the areas falling under the exclusive legislative jurisdiction of the UAE, but the executive jurisdiction is a competence of the Emirates.

The UAE has a more 'regular' civil court system, as is formulated in the Constitution. The court system consists of a Supreme Court of Cassation, a Court of Appeal and a Court of First Instance. In principle, these courts only have jurisdiction in those matters where jurisdiction has been appointed to them in the Constitution. In fact, this means 'the local judicial authorities in each Emirate will have jurisdiction in all judicial matters not assigned to the Union judicature in accordance with the Constitution'. However, most of the Emirates have, de facto, transferred their judicial systems to the UAE Federal Judicial Authority, which means they are administered and supervised by the Ministry of Justice of the Federal Government. Only the Emirates of Dubai and Ras al Khaimah have retained their own judicial systems. Those local Court systems have the same structure as the Federal system, but it is noteworthy that Dubai has a special Labour Court. This court deals exclusively with disputes between employers and employees. The local courts will apply Federal law and the law enacted by the Emirate, but in the event of a conflict between both types of law Federal law will prevail.

3. Quality of the protection of the migrant workers' rights in the Gulf Region

3.1 *Some figures and trends*

The Gulf Region has been a popular region for migrants since the early 1970s. As is commonly known, this is caused by the large quantities of oil reserves in the region. Local governments decided not to develop their own native workforce to extract the oil, but to import this workforce.³ Migration flows and the demand for oil are therefore linked. However, the countries realized the oil wells are not of endless use, especially in the aftermath of the first Gulf War. The Gulf States therefore decided

³ M. Dito, 'Migration and the Gulf', DC: Middle East Institute, p. 72

to start nationalization policies.⁴ Nevertheless, figures show that the percentage of foreigners in the region has more than doubled in the last 40 years, from 20.6% in 1970-1975 to 47.3% in 2010.

Table 1: Native and foreign components and growth of GCC population (absolute numbers x 000s)

	Absolute Numbers			Percentage		
	Nationals	Foreigners	Total Population	Percentage of foreigners	Intercensal annual growth rates	
					Nationals	Foreigners
1970-1975	7,773	2,013	9,787	20.6		
1990-1995	15,494	8,554	24,049	35.6	3.4	7.2
2000-2005	20,576	12,216	32,793	37.3	2.8	3.6
2010	23,572	21,117	44,690	47.3	2.3	9.1

Source: Gulf Labour Market and Migration

This table shows that there is an enormous and still growing presence of foreigners in the Gulf Region. In Qatar and United Arab Emirates the percentage of foreigners even exceeds 85 percent.⁵

Table 2: Native and foreign components of GCC labour forces, 1975–2008 (000s)

	1975	1985	1990	1999	2008
Nationals	1,360	1,896	2,485	3,979	5,466
Foreigners	1,393	4,375	5,218	7,114	11,072
<i>Total</i>	2,753	6,271	7,703	11,093	16,538
% foreigners	50.6	69.8	67.7	64.1	66.9

Source: Martin Baldwin-Edwards, 'Labour immigration and labour markets in the GCC countries: national patterns and trends', p. 9

Table 2 shows the whole extent of the labour force in the GCC. Roughly, this group can be divided into two separate categories: domestic workers and 'others'. Since the beginning of the migration flow to the Gulf in the early 1970s, domestic workers form a substantial part of this flow. Both men (men are employed as cooks, gardeners, drivers, and security guards) and women may be employed as domestic workers, though the majority tend to be women.⁶ Specific statistics are not available, though it is clear that the official numbers do not reflect the actual presence of the migrant domestic workers in the Region. A Human Rights Watch report for example assesses the real figures as double or triple the official figures.⁷ The official figures claim there are over 1,800,000 migrant domestic workers (MDW) in the GCC.⁸ Nonetheless, this group represents a relative small share of the total migration as is shown in table 3.

Table 3: Nationals vs. non-nationals per sector in whole GCC excl. UAE

Public sector		Private and others		Domestic sector		% non-nationals	
Total population	Non-nationals	Total population	Non-nationals	Total population	Non-nationals	Total population	Non-nationals

⁴ Philippe Fargues, 'Immigration without Inclusion: Non-Nationals in Nation-Building in the Gulf States', Asian and Pacific Migration Journal, Vol. 20, Nos.3-4, 2011, p 279

⁵ Qatar Statistics Authority (QSA), Census 2010; UAE National Bureau of Statistics (NBS)

⁶ Bina Fernandez, 'Essential yet invisible: migrant domestic workers in the GCC', GLMM - EN - No. 4/2014, p.3

⁷ Human Rights Watch, Slow Reform: Protection of Migrant Domestic Workers in Asia and the Middle East (New York: Human Rights Watch, 2010), p. 8.

⁸ Bina Fernandez, 'Essential yet invisible : migrant domestic workers in the GCC', GLMM - EN - No. 4/2014, p. 4

4,163,356	401,741	12,700,082	11,195,230	1,748,655	1,871,636	9.6	88.2
-----------	---------	------------	------------	-----------	-----------	-----	------

Source: <http://gulfmigration.eu/percentage-of-non-nationals-in-govpercentage-of-non-nationals-in-government-sector-and-in-private-and-other-sectors-in-gcc-countries-national-statistics-latest-year-or-period-available/>

3.2 Generally recognized problems and challenges

The fact that migrant workers are highly represented in the private sector is a result of the decision governments made to import migrant workers instead of educating their own population. Local workers simply lack the required technical skills necessary. Moreover, the migrant workers are mostly less paid, except for high-skilled jobs, and are more flexible.⁹ In every GCC state most migrant workers are active in the construction industry, except for Kuwait. The construction labourers represent around 28 percent of the labour force active in the private sector. Most of the migrant workers are Asians. As far as figures are available, it is clear that Indians are the highest represented.¹⁰

What all those migrants, including the DMW, have in common is their dependence on the *kafala* system. This system is 'a sophisticated migration management system that shares two common policy stances of international migration: protectionism and the absence of any project for integrating immigrants into society.'¹¹ In this system the migrant worker is sponsored by a GCC citizen, government agency or a company (*kafeel*), who is financially and legally responsible for him. Only by following this procedure can the migrant worker acquire a visa and residence permit. Thereby the migrant worker and the *kafeel* are tied to one another. Switching from *kafeel* is not forbidden, however migrant workers tend to end up in a bureaucratic maze.¹² If the migrant worker wishes to leave the country during the contract period, he is only able to do so at his own expense. Normally, at the end of the contract, everything would be financed by the *kafeel*.¹³ Moreover, when the contract between *kafeel* and migrant worker ends, the migrant worker has an illegal status. Therefore, whether ending a contract is truly a realistic option is questionable. Even so *kafeels* often hold passports and other travel documents meaning ending the contract is made impossible.¹⁴

The regular process for acquiring a visa and working permit is by way of recruitment. Contractors in the Gulf States are responsible for recruitment, observing the guidelines of the visa regulations, labour law and the sponsorship system.¹⁵ Generally private recruitment agencies in the country of origin are used, as well as middlemen.¹⁶ A recruitment agency in the Gulf state produces a 'demand letter' which details the specifics of the job available and the preferred country of recruitment. This demand letter is then sent to the Ministry of Labour for visa approval for the vacant positions. When approved, the recruiting of the migrant workers starts. To get a job, migrant workers have to pay a

⁹ 'Emerging Strains in GCC Labor Markets' IMF Working Paper WP/04/71, International Monetary Fund, p. 7

¹⁰ Source: gulfmigration.eu

¹¹ M.M. Rahman, 'Bangladeshi labour migration to the Gulf states: patterns of recruitment and processes', Canadian Journal of Development Studies, Vol. 33, No. 2, June 2012, p 220

¹² M.M. Rahman, 'Bangladeshi labour migration to the Gulf states: patterns of recruitment and processes', Canadian Journal of Development Studies, Vol. 33, No. 2, June 2012, p 220

¹³ M. Baldwin-Edwards, 'Labour immigration and labour markets in the GCC countries: national patterns and trends', p.37

¹⁴ M.M. Rahman, 'Bangladeshi labour migration to the Gulf states: patterns of recruitment and processes', Canadian Journal of Development Studies, Vol. 33, No. 2, June 2012, p 220

¹⁵ R. Jureidini, 'Arab Gulf States: Recruitment of Asian Workers', GLMM - EN - No. 3/2014, p4

¹⁶ A. Vlioger, 'Domestic workers in Saudi Arabia and the Emirates; a socio-legal study on conflicts', p 119

fee to the recruiters. This process is mostly regulated by governments through legislation, such as the Labour Law of the UAE (*infra*). Other payments required to obtain a job (visa fee, local transport and accommodation etcetera) are not regulated. These payments vary from \$600 up to \$5000.¹⁷ The necessity to pay those excessive fees often leads to debt-bondage.¹⁸ Moreover the debt-bondage may lead to illegality, because of the need to pay the debts to the recruitment agencies.¹⁹

To restrict the migrant flow, governments have set quotas on the supply of visas. These quotas are set to reduce the presence of certain nationalities in the country or to lower them in certain industries or specific jobs.²⁰ On the other hand, there is still a demand for low-skilled migrant workers. This results in a mismatch between supply and demand. Local contractors resolve this imbalance by using visas for other jobs that they are enlisted for, putting the migrant worker in a vulnerable position.²¹

However, other ways to bypass this regular procedure have been discovered: the so-called 'flying visas' and 'free visas'. A flying visa is arranged by a migrant in a Gulf state, who will search for a job for a potential migrant in their home country by use of his own *kafeel* or the *kafeel's* personal or professional network. This process simply obviates the recruiter or recruiting agency, but is not illegal in any way.²²

'Free visas', not an official term but used and widely spread among migrants, are simply a manner to enter a Gulf state legally under the *kafala* system. Normally the migrant worker is employed by his *kafeel*, but in this case the migrant worker only uses the visa to acquire a legal status in the receiving country. From that position, he will search for real employment. This is an illegal procedure, because the migrant worker is only allowed to accept the job provided by the *kafeel*. The migrant worker is also forced to pay a fee for this type of visa, only the fee is less than in the case of a 'regular' visa. The fee payment makes the trade in visa quite lucrative for locals.²³ 'Free visas' make the migrant worker extra vulnerable, because he acts outside the control of authorities. If he needs to work under poor conditions for instance, complaining at a government agency will make clear he is an illegal immigrant. Moreover the migrant worker does not have any social protection nor health insurance, because he is, *de facto*, an illegal worker. In the event of illness, work accident and death people have to take care of their own.²⁴ Given these circumstances, exploitation is only a small step away.

Even when migrant workers arrive by regular and legal ways, abuse is not uncommon. Claims are made 'saying millions of mostly Asian and African workers are facing exploitation and abuse'.²⁵ This exploitation and abuse is quite diverse. One of the problems voiced is that wages which are promised, are not being paid. This may be caused by the fact that migrant workers hardly understand their contract, because most migrant workers are low-skilled and low-educated. Therefore recruiters

¹⁷ R. Jureidini, 'Arab Gulf States: Recruitment of Asian Workers', GLMM - EN - No. 3/2014, p5

¹⁸ <http://www.migrationpolicy.org/article/labor-migration-united-arab-emirates-challenges-and-responses>

¹⁹ ITUC, Migrant Workers in the Middle East December 2007, p. 7

²⁰ N. Shah, 'Restrictive labour immigration policies in the oil-rich gulf: effectiveness and implications for sending Asian countries', UN/POP/EGM/2006/03, p9 and 10

²¹ R. Jureidini, 'Arab Gulf States: Recruitment of Asian Workers', GLMM - EN - No. 3/2014, p5

²² M.M. Rahman, 'Bangladeshi labour migration to the Gulf states: patterns of recruitment and processes', Canadian Journal of Development Studies, Vol. 33, No. 2, June 2012, p 223

²³ Nasra M. Shah, 'Recent Labor Immigration Policies in the Oil-Rich Gulf: How Effective Are They Likely To Be?' p7

²⁴ ITUC, Migrant Workers in the Middle East December 2007, p. 4

²⁵ <http://www.aljazeera.com/news/middleeast/2014/11/gulf-states-urged-protect-migrant-workers-201411239393775227.html>

have the chance to promise wages they know will not be paid. Even when the migrant workers get their full salary, costs to cover food expenses are withheld from the salary. These costs can be as much as 20 percent of the total salary.²⁶

But financial abuse is not the only problem experienced by migrant workers. Discrimination and xenophobia are not uncommon. This is felt through unequal payment and the feeling of not being accepted.²⁷ The feeling of not being accepted is caused by the disdain and abuse towards people who are visibly different.²⁸

Poor working conditions are also common. Human Rights Watches described 'serious abuses' of construction workers in the UAE, even working conditions that led to 'high rates of death and injury'.²⁹ In other less risky jobs, poor working conditions are described as well: from maltreatment of a driver in Kuwait to the torturing an Afghan migrant by a brother of the UAE president.³⁰ Poor working conditions are observed with regard to working hours. It is not unusual to have to work until 3 or 4 o'clock in the morning on Thursday, in order to guarantee their official day off on Friday. Moreover extraordinary long working days are reported, up to 18 hours a day.³¹

As described earlier, there are different reasons for migrant workers to stay illegally in the Gulf States. Illegal migrants face penal actions when caught. However, most Gulf States grant amnesty every now and then. Illegal migrants are able to return to their home country without facing penalties or, in some cases, to regularize their situation.³² When people regularize their situation, by for instance renewing their expired working permit, they are able to stay. However, the amnesty measures also give governments the opportunity to reach their quotas, as described earlier. When people are made redundant, amnesty is an easy measure to deport them. Systematic and large-scale raids on labour sites are also reported.³³ For instance, Saudi Arabia deported 675,952 people in 2013 and 534,659 in 2014 (total to 11/2014).

4. Legislative standards and changes in law and policy

4.1 *The UAE Labour Law No. 8 of 1980*

As has been made clear in chapter two, the exclusive legislative jurisdiction regarding the social security and labour relations is a competence of the UAE. There is Federal Labour Law No. 8 of 1980 Regulating Labour Relations as amended by Federal Laws No. 24 of 1981, No.15 of 1985 and No.12 of

²⁶ ITUC, *Migrant Workers in the Middle East* December 2007, p. 4-5

²⁷ ITUC, *Migrant Workers in the Middle East* December 2007, p. 4-5

²⁸ Ray Jureidini, 'Migrant Workers and Xenophobia in the Middle East', UN Research Institute for Social Development, p. 3

²⁹ Human Rights Watch, "Building Towers, Cheating Workers," <http://www.hrw.org/en/reports/2006/11/1/building-towers-cheating-workers-0> (accessed February 18, 2010).

³⁰ Mohammed A. Auwal, 'Ending the Exploitation of Migrant Workers in the Gulf', *The Fletcher Forum of World Affairs* Vol. 34.2, P.96

³¹ ITUC, *Migrant Workers in the Middle East* December 2007, p. 7, 8

³² <http://www.migrationpolicy.org/article/labor-migration-united-arab-emirates-challenges-and-responses>

³³ Françoise De Bel-Air, 'Demography, Migration and Labour Market in Saudi Arabia', *Gulf Labour Markets and Migration*, P.10

1986. To get an impression of the comprehensiveness and the modernity of this Law, we have decided to give an overview of the main clauses.

Some categories of work are excluded from the Labour Law: officials, employees and workers of the Federal Government, members of the Armed forces, police and security and domestic servants in private residences and workers in the agricultural sector.

The basic assumption of Labour Law, chapter two, in the UAE is that 'work is deemed a right of the United Arab Emirates Nationals'. Though there are exceptions made for foreigners: 'others may only work in the State in accordance with the conditions set forth herein and the decisions issued in application thereof.' Nonetheless priority is given to 'locals'. When there are no nationals available, priority of employment is given to Arab workers holding the nationality of an Arab state. Thereafter other nationalities may obtain the job.

The priority accorded to nationals is also reflected in how employees are registered. Employers are free to employ any unemployed national and must notify the Department of Labour within fifteen days. The prior consent of the Department of Labour is required to employ non-nationals, next to 'the obtainment of a work permit in pursuance of the procedures and rules stipulated by the Ministry of Labor and Social Affairs.' The working permit will only be granted if certain conditions are met. These conditions are that 'the worker must possess professional competence or academic qualifications needed in the country' and moreover 'that the worker has lawfully entered the country and that he satisfied the conditions prescribed in the residence regulations in force in the state.' This means that every state is able to determine their own residence regulations and therefore these regulations are not under the jurisdiction of the UAE. These regulations describe certain proceedings necessary, like who is able to apply, documents required and fees required.

Nevertheless, the Department of Labour is not allowed to guarantee a job to a non-national if there are any unemployed nationals available capable of performing the job. These unemployed nationals are registered on their own request, next to those who are looking for a better job. If the non-national is allowed to work in the UAE, there are still possibilities to cancel the working permit. These possibilities are limited, namely: unemployment for three consecutive months, no longer fulfilling one or more conditions on the basis of which the card has been granted and when a national worker is qualified and able to replace the non-national. In the event of the last option, the non-national will be able to work until the end of the contract.

If any natural person or legal person is willing to intermediate for the recruitment of non-nationals, a license is required. A license is only granted to a national by the decision from the Minister of Labour, 'where the issuance thereof is deemed necessary'. Such a license is valid for a period of one renewable year, but will not be granted if there is any entity under the Ministries supervision already operating in the area capable of acting as an intermediary.

Article 18 of the Labour Law states that it is forbidden for any licensed labour agent to accept or demand any fee or material reward for arranging the recruitment. Only expenses approved or decided upon by the Ministry of Labour and Social Affairs are allowed. This article also prohibits the recruitment agent from interfering in the relation between employer and employees.

Children above the age of 15 are allowed to work. However the employment of children is subject to strict restrictions. For instance, they are not allowed to work during nighttime in industrial enterprises and they cannot be employed in 'jobs which are considered hazardous, exhausting or detrimental to health (...)'. These same criteria also apply for women.

Chapter three contains the provisions on employment contracts, records and remuneration. '(...) An employment contract shall be written in duplicate, with one copy to be delivered to the worker and the other to the employer', in accordance with Article 2. When a written contract is not available, the content of this contract may be proven by all admissible means of evidence. Article 36 lists which conditions at least should be mentioned in the contract, for instance the duration of the contract, nature and place of work and the salary. A probationary period can be included in the contract, with a maximum duration of six months. The employer is able to end the contract during this period without reason. However, the employer and employee cannot agree a probationary period more than once. In the case of a temporary contract and continuing service after the probationary period, this probationary period will be counted as part of the temporary contract. This temporary contract will have a maximum duration of four years, but may be prolonged 'one or more times for similar or shorter period/periods.' Article 39 sums up the conditions under which a contract will be considered to be a permanent employment contract, for instance when a contract is agreed for a limited period of time and continues afterwards without a new written contract. In such a situation the terms of the temporary contract apply to the new contract, except for the duration.

When an employer subcontracts any work to a third party, this subcontractor is liable to any entitlements by the employees executing this work. However, inasmuch as this complies with the Labour Law.

Article 55 to 64 of the Labour Law contain generally accepted rules concerning wages. Employees cannot be obliged to purchase 'food or other commodities' at certain shops, or to buy products produced by their employer. There is a limited list to which the employer is allowed to deduct any amount of money from the worker's wage, for instance the contributions to social security and insurance that the employee needs to pay for. There is a minimum wage set 'by a Federal Decree issued pursuant to a proposal made by the Minister of Labour and Social Affairs and approved by the Council of Ministers.'

Chapter 4 regulates working hours and leave. In principle, the maximum total working hours for an adult is 8 hours a day and 48 hours a week. However, if the Minister of Labour decides so working hours may be increased to 9 hours a day 'for employees of commercial establishments, hotels, restaurants, watchmen and similar operations'. The Minister of Labour may decide to reduce the working hours 'in respect of hazardous work or work detrimental to health'. During the Ramadan working hours are reduced by 2 hours. Commuting time is excluded from the working hours. Employees are furthermore, entitled to regular breaks, paid holidays (annual leave) and additional payments for overtime.

If an employee is ill, this not being related to a labour injury, he should report his illness within 2 days. His employer should arrange for the employee to undergo a medical examination. Article 83 sets out the conditions under which and the terms subject to which an employer is required to continue to pay wages. Article 86 sets out the conditions under which the employer is required to continue to pay wages when the employee resigns his job by reason of illness, before the lapse of 45 days. The government medical officer or the medical practitioner designated by the employer should confirm that the cause of resignation is justified. The employer has to continue to pay wages for at least 45 days. The employer is, however, not required to continue these payments if the illness is a direct consequence of misconduct on the part of the worker.

If an employee does not resume work following illness, the employer can terminate the contract at the end of the leave as laid down in Article 82, 83 and 84 of the Labour Law 'and in such case the employee shall be entitled to his gratuity in accordance with the provisions of this Law.'

During annual leave or sick leave, an employee cannot work for another employer. If an employee does work for another employer, the employer can dismiss the employee without notice and 'deprive him of the leave pay due to him.'

Article 90 states that if an employer has the right to terminate the contract, he will not dismiss the employee during his leave.

Chapter five addresses workers' safety, protection, health and social care. Article 91 and 92 of the Labour Law set out how an employer should protect his employees from certain hazards in the workplace. For instance fire prevention instructions and the use of protective gear. Moreover, the employer should also inform his employees of the occupational dangers involved and the protective measure necessary, and hereto he should post written instructions in the workplace. All employers are required to observe these rules.

Chapter six sets out the disciplinary rules of the Labour Law. Article 102 of this law contains the disciplinary penalties that can be imposed by the employer or his agent provided these are stated in a written description of the charge, the employee is heard, his defense is investigated and the findings of the above are recorded in a report kept in his personal file. This is set out in Article 110 Labour Law, as are the requirements pertaining to this report. The employee may not be charged after a time lapse of 30 days, nor may a disciplinary penalty be imposed once the investigation has been closed for 60 days. These penalties may be imposed in the cases described in the disciplinary code. The Minister of Labour and Social Affairs may determine a guideline with a model table of penalties and benefits, after which the employers are able to create their own regulations within the boundaries given. The law also imposes specific boundaries: 'fines prescribed in respect of any single offence shall not exceed five days' wage, and it shall not be lawful to deduct more than five days' wage in any one month in payment of fines imposed on a worker.' All these fines have to be recorded in a special register, stating reason and occasion of the penalty, the employee's name and the amount paid and 'in accordance with a resolution to be made by the Minister of Labour and Social Affairs in this respect' deposited into a special account, the monthly total being used to pay the social welfare of the employees. Financial benefit gained from denying periodical allowance or promotion should also be registered in this way also under the same conditions set out in Article 105. Article 106 and 107 of the Labour Law state the terms for denying periodical allowances or promotion.

Chapter 7 addresses the termination of the employment contract and the end of service remuneration. An employment contract terminates with the mutual consent of both parties, on the expiry of the period specified in the contract or in the case of a permanent contract, if parties comply with the Labour Law. However, a contract will not end on the death of the employer, unless the subject of the contract is connected with the person. The contract also terminates on the death of the employee, or if the employee becomes fully occupationally disabled, this being 'established by a medical report approved by the competent State Medical Authority.' If the employee is partially disabled, is able and willing to perform other work, at his request the employer will assign the employee other work. Article 120 sets out the grounds on which an employer can dismiss an employee. If he terminates a temporary contract on some other grounds the employer can be held accountable for the damage. However this compensation cannot exceed the wage paid for a period of three months, or the remaining period of the contract if this is less. Unless the terms of the contract stipulate otherwise. Termination of the contract is considered arbitrary if the reason for the termination is not work related. Termination is also considered to be arbitrary if the termination occurs following a formal complaint filed by the worker. The employer can be ordered to pay compensation to the employee. Article 121 states the grounds on which an employee can leave the

service of the employer without notice. Employees leaving for other reasons can be held accountable for the damage. This compensation cannot exceed the amount of half a month's wages paid for the period of three months, or the remaining period of the contract if this is less, unless the terms of the contract state otherwise. Article 117 states notice period to be observed by both employee and employer. During this period, the contract should be complied with. The contracting parties may extend this period but not reduce it. If the party obliged to give notice reduces this period then this party will be obliged to pay 'compensation in lieu of notice'. Lack of medical fitness cannot be grounds for terminating the contract if the employee has not used all his leave. No agreement to the contrary can be made. Article 125 requires the employer to issue an 'end of service certificate' if requested to do so by the employee. This should specify certain details regarding the job et cetera. Certificates or documents belonging to the employee should be returned at the end of the contract. If any changes take place in the legal status or form of the company, the employment contract valid at the time of change will be valid after the change. The service will be continuous. This Article also specifies who is responsible before and after the change. Article 127 sets out the conditions under which a non-competition clause can be imposed. Non-nationals who are absent from work with no valid reason and who have not validly ended their contract cannot take up employment elsewhere unless they have acquired the prior approval of the Minister of Labour and Social Affairs (Article 130 of the Labour Law). The cost of repatriation are payable by the employer, or the most recent employers if there are several employers. However, if the employee was responsible for the termination of the contract the employee has to pay for his own return. Article 132 to 135 describes how the 'end of service remuneration' is calculated. This remuneration can only be claimed if the period of employment is fulfilled after the effective date of the Labour Law, except for Nationals. In the case of death of the employee, his heirs will receive the severance pay. Article 137 and 138 of the Labour Law make an exception to the general rule for employees leaving on their own initiative. Article 139 sets out the conditions under which the right to the end of service remuneration is forfeited. If the employer has a saving fund into which makes payments in order to discharge his legal obligation, the employee will receive his remuneration from this fund or his legally established amount, whichever is more.

Chapter 8 provides rules on the compensation of occupational injuries. Work-related injury and occupational illness listed in a special schedule should be reported immediately by the employer to the police and to the labour department. The police will carry out an investigation into the cause of the accident. After this investigation, a copy of the report will be sent to the Labour Department and to the employer. The Labour Department may request that the investigation be completed, or finish it itself. If it becomes clear that the injury is work-related, the employer will pay the cost of the treatment until the employee is recovered. Article 145 and 146 provide rules on payment during the period of treatment when the employee is not able to work during his injury. At the end of the treatment a report will be made by the medical practitioner in charge. This report will indicate whether the employee has recovered from his accident and whether he will fully recover as well as contain information regarding the accident. If any disputes arise from the qualifications made in the report, 'the question must be referred to the Minister of Health through the competent Labour Department.' They will form a board of government physicians, who will take a final decision in the dispute. Article 149, 150 and 151 Labour Law describe how the remuneration in the case of death, partial disability and permanent total disability are calculated. Article 153 provides for exceptions regarding the remuneration described above in the event that the employee deliberately caused his injury.

Chapter 9 contains provisions on collective labour disputes. Article 154 provides a definition of collective labour disputes: 'any dispute between an employer and his workers, which involves the

common interest of all or a group of the workers in a certain firm, occupation, trade or professional sector.' In the event of such a dispute, employees and employers should try to settle it. If this does not succeed, the competent labour department will mediate. This mediation should lead to a settlement within 10 days, otherwise the labour department must refer the case to the competent conciliation board and notify both employees and employer in writing.

Chapter 10 provides rules on labour inspections. These inspections should be conducted by specialized inspectors attached to the Ministry of Labour and Social Affairs who carry special cards identifying them as such. The labour inspectors have certain powers described in Article 167 and 170 Labour Law. To enable the inspectors to enforce these powers employers should cooperate and provide them with the necessary information. An inspector should identify himself as being an inspector, 'unless he considers that the inspection mission requires otherwise.' The Minister of Labour and Social Affairs will issue regulations necessary for a proper inspection.

With regard to the health and security of the employees, the labour inspector may require employers to alter machines and equipment within time limits set by him. In the case of an imminent hazard he may require measures to be adopted that are necessary to avert the hazard. When any violation of this Law is discovered by the inspector, he will draw up a report of this violation and submit it to the competent labour department. If necessary the inspector can request the assistance of the police or competent administrative authorities. During inspections regarding health aspects the inspector will 'be accompanied by a specialised medical practitioner from the Ministry of Health or a medical practitioner appointed for the purpose.'

Chapter 11 lays down rules for penalties. Article 181 of the Labour Law is a general article providing for a minimum penalty for a violation of this law, for the obstruction of an official performing his duty under this law and for officials 'who disclose any confidential matter in respect of work, or any industrial patent or any other activities of work which may have come to his knowledge, in the course of his assignment, even though he has left the work.' If any provisions are violated, the fine will vary according to the number of employees. The fine may also vary if a similar offence is committed more than once in the same year. Criminal proceedings may also be filed against the manager in charge, or the company owner if there is reason to believe he is aware of the violations.

Chapter 12 contains concluding provisions. Article 190 of the Labour Law establishes a maximum fee that can be charged for documents and visas and states that rules may be adopted that are more favourable to national workers.

4.2 Changes in law and policy

Since the enactment of the Labour Law in 1980, there have not been many amendments to it. Certainly no significant amendment has been made. However, this does not imply that no changes are noticeable. Government policy can change, resulting in new ministerial decisions and resolutions which affect (the interpretation of) the Labour Law.

Kafala/sponsorship system

Although the sponsorship system is not mentioned in the Labour Law, it affects non-national employees as is described earlier. Non-nationals may only be employed in the UAE under the conditions mentioned in Article 13 of the Labour Law. Sub b of this article states that: 'the employee

has lawfully entered the Country and complies with the conditions stipulated by the residence regulations in force in the State.' To lawfully enter the country, a visa is required. In order to obtain a visa, a sponsor is required.³⁴ Only by complying with the sponsorship system, is it possible to work in the UAE. As described earlier, there are some downsides to this system. There are countries³⁵ and organizations who criticize this sponsorship system, for instance Human Rights Watch.³⁶ Under this pressure changes to the system have been made. One of the major changes is the ability to switch employers, without the necessity to leave the country or incurring a penalty. This reform is made in the Ministerial Resolution No. 1186, Article 1 and is, however, subject to the conditions set out in Article 2 of this Resolution. First of all, the employer and employee must agree to terminate the contract and, secondly, the employee must have spent at least two years with the employer. Furthermore, some exceptions have been made in Articles 3 and 4 of Resolution No. 1186. Article 3 states that there are two cases in which the consensus, as described in the first part of Article 2, is not required: when the employer violates his obligations, whether legal or consensual and in cases in which the employee is not responsible for ending the relationship. Both exceptions are neither limited, nor cumulative. To the second condition of Article 2 there are three limited exceptions made in Article 4 of this Resolution. Previously, the employee required a 'No Objection Certificate' (NOC). The NOC is a written permission of the (former) employer at the end of the service period, stating that the employee has no *objections* against the transfer of the employee to another employer. If the employee did not have this permission, the only way to obtain a new job and therefore switch to another employer was by leaving the country for six months.³⁷ With the adoption of the Ministerial Resolution No. 1186 the requirement of the 'NOC' should be history. However, *Gulf News* quoted a Ministry of Labour official who stated that a 'NOC' is still required in order to change jobs. Otherwise a one year ban would be imposed.³⁸

Nonetheless figures show that mobility has improved. In March 2011 28,000 migrant workers changed jobs, while before the monthly average was 4,000. This increased mobility has led to a reduction of people leaving the country and to an increase in the wage after termination of the contract by 10 %.³⁹

Human Rights Watch is still sceptical about the increased mobility. They argue that the research does not provide any numbers and figures about how many employees tried to change jobs but did not succeed, or tried to change jobs before the end of the contract.⁴⁰ While it is clear that the sponsorship system *has* changed in relation to the ability to change jobs the extent of this change still has to emerge.

Recruitment fees

Article 18 of the Labour Law states, briefly summarized, that a recruiter can neither demand nor accept fees. However in the chapter *quality of protection* it emerges that fees are still demanded from migrant workers. These fees often lead to debt-bondage. Ministerial Resolution no.1283 was

³⁴ Article 13, Ministerial Decision no. 377 of 2014, <http://gulfmigration.eu/uae-ministerial-decision-no-377-of-2014-amending-some-provisions-of-the-implementing-regulations-of-federal-law-no-6-of-1973-regarding-the-entry-and-residence-of-foreigners/>

³⁵ <http://www.arabianbusiness.com/us-urges-gcc-states-scrap-sponsorship-system-291241.html>

³⁶ 'I already bought you' http://www.hrw.org/zh-hans/node/129797/section/6#_ftnref33

³⁷ http://www.hrw.org/zh-hans/node/132633/section/5#_ftnref22

³⁸ <http://gulfnews.com/business/sectors/general/uae-labour-bans-still-enforced-but-workers-can-apply-to-have-them-lifted-1.1195279>

³⁹ Steffen Hertog, 'Arab Gulf States: an assessment of nationalisation policies', P21

⁴⁰ http://www.hrw.org/zh-hans/node/132633/section/5#_ftnref29

introduced to prevent these situations occurring. Article 6(b) of this Resolution states that agencies are forbidden to acquire 'any sums, monies, rights or gains under the name of commission, fees, or anything else for any reason and through any means whatsoever' on the private recruitment market. This article also gives the Ministry of Labour the power to force agencies 'to refund to the worker any amounts paid to any entity or person inside or outside the country with whom the Agency had dealt on the matter.'

Article 5 of this Resolution provides for another way of enforcing compliance from the recruitment agencies. The Ministry is given the power to revoke the license issued to an agency or to suspend it temporarily if it does not meet the conditions upon which the license was issued, if any documents required for licensing are incorrect, if the agency violates any provisions set out in relevant legislation and if the agency 'commits any act involving some form of forced labour or human trafficking'. Under the regime of the Labour Law this was not yet possible. Both articles, together with the provisions of the Labour Law, should prevent recruiters from demanding fees.

Nonetheless, migrant workers are still forced to pay fees. This is because many of these recruitment agencies operate outside the UAE and therefore outside the jurisdiction of the UAE.⁴¹ Bilateral agreements are a next step to prevent excessive fees being charged to the migrant workers. It is clear that the UAE government have made some agreements with several countries regarding this issue.⁴² Nonetheless there are critics who say that the agreements made are not specific enough.⁴³ For instance one of the provisions in such an agreement states that 'all workers recruited shall be given protection under the labour law and regulation in the U.A.E.'⁴⁴ This provision does not elaborate as to how the protection afforded should be guaranteed in practice.

Payment of wages

In order to secure payment of the wages to the employee, certain provisions have been created in a number of resolutions. One of the provisions is created in Cabinet of Ministers Resolution number 26 of 2010, regulating bank guarantees. This resolution complements the provisions given in Article 131-a-1 of the Labour Law. Bank guarantees are required in order to guarantee payment of the wages to the employees. Government owned or co-owned companies are excluded from this obligation.⁴⁵ In Article 5 of this Resolution a classification is given.

Another provision is the 'Wage Protection System' (WPS), fixed in the Ministerial Resolution number 788 of 2009. Companies are obliged to transfer their salaries through the WPS, so it is possible to prove the payment. If the company does not comply with these rules no new permits will be granted for the periods stated in Article 8 of the Resolution. If, for whatever reason, this is not achievable, the Ministry may suspend the granting of new work permits

'to all facilities belonging to the owner of the facility in violation, provided the full unity of partners (...)' and moreover judicial action is possible against all those responsible.

⁴¹ Froilan T. Malit Jr., Ali Al Youha, 'Labor Migration in the United Arab Emirates: Challenges and Responses', MPI, 2013

⁴² <http://www.uae-embassy.org/uae/human-rights/labor-rights>

⁴³ Wickramasekara, 'Something is Better than Nothing', Migrant Forum Asia, p.15

⁴⁴ Article 4 UAE MOU, 2006

⁴⁵ Article 6 Resolution 26, 2010

Emiratization

As described above there is a high, and still increasing, percentage of migrant workers in the UAE labour market. This is caused by the government policy of importing labour force instead of educating its own population. A transition in policy has been made in recent years.⁴⁶ One of the triggers of this transition is the high unemployment rate among nationals.⁴⁷ The change of policy is known as Emiratization, which implies a reduction on the dependency on foreign employees and 'to ensure that UAE citizens benefit from the economic growth in the country'.⁴⁸ Part of this Emiratization is trying to motivate people to work in the private sector. Emiratis often choose for the safe and well-regarded public sector. In order to create a labour force that is able to manage the fast developing UAE certain measures were taken.⁴⁹ As shown, under the labour law it is possible to give nationals priority. This preference is concretized in certain Ministerial Resolutions, for instance in Resolutions 442, 443 and 635. Resolution 442 states that nationals will replace Directors of Human Resources and the Employees Affairs Officials. Resolution 443 states that nationals looking for a job will be nominated for secretarial jobs in the private sector. Resolution 635 states that companies with more than 100 employees will hire a national or citizen of a GCC country as a public relations official. These are clear examples of the Emiratization program. There are also specific state programs aimed at improving the chances of nationals in the private sector. An example of such a program is the Absher Initiative. This program aims to 'improve Emiratis' chances in the job market, and to provide them with dignified standards of living by offering them stable and fulfilling career opportunities.⁵⁰ There are also private sector companies who develop programs to enhance the participation of Emiratis in the private sector, for instance Injazat and Abu Dhabi Islamic Bank.⁵¹ Nonetheless, the Emiratization of the private sector though to achieve. Therefore the UAE government aims at certain industries who resemble the public sector and thereby are more attractive to the Emiratis.⁵²

Deportation

The migration policy in the UAE has changed for several reasons since the early 2010s.⁵³ As stated above, there is huge unemployment among UAE nationals. In order to restrain the unemployment, a change in migration policy has been made. Quotas have been set and irregular migration reduced. This reduction is achieved by so called 'amnesty' programs. Chapter two describes this procedure. In summary, it offers illegals the opportunity to leave the country without facing penalties or, in some cases, to regularize their situations. There are no official figures available as to many people used the amnesty program to leave the UAE. News reports show that the figure should be estimated at a

⁴⁶ Françoise De Bel-Air, 'Demography, Migration, and the Labour Market in the UAE', GLMM - EN - No. 7/2015, p.5

⁴⁷ Ingo Forstenlechner and Emilie Rutledge, 'Unemployment in the Gulf: Time to Update the 'Social Contract'', Middle East Policy XVII, no. 2 (Summer 2010): 50

⁴⁸ Latham & Watkins, 'Employment Issues in the United Arab Emirates', p2

⁴⁹ Jasim Al-Ali, 'Emiratization: drawing UAE nationals into their surging economy', 2008, P 367

⁵⁰ Froilan T. Malit Jr., Ali Al Youha, 'Labor Migration in the United Arab Emirates: Challenges and Responses', 2013

⁵¹ Froilan T. Malit Jr., Ali Al Youha, 'Labor Migration in the United Arab Emirates: Challenges and Responses', 2013

⁵² Jasim Al-Ali, 'Emiratization: drawing UAE nationals into their surging economy', 2008, P 368

⁵³ Françoise De Bel-Air, 'Demography, Migration, and the Labour Market in the UAE', GLMM - EN - No. 7/2015, p.5

couple of 100,000s.⁵⁴ For example, between 2009 and 2013 63,000 Pakistanis were deported from the UAE.⁵⁵ However, people are not only deported due to irregular migration. Strikes are another reason for deportation. Article 13 of the Ministerial Resolution 707 of 2006 states that migrant workers will be banned from employment in the country for at least one year in the case of ‘an illegal strike or its instigation’. Prior to deportation, an employee may temporarily be suspended from work if he is involved in a strike and ongoing criminal investigation.⁵⁶ These consequences give the government and employers a pressure tool to force employees back to work.⁵⁷ There are also plenty of news reports showing that employees are deported from the UAE after they went on strike.⁵⁸

To prohibit former deportees to enter the UAE again illegally, the UAE has installed an iris scan system at all the entry and exit points in the country. In a three year period, it has prevented 46,000 people from entering the country illegally.⁵⁹

Security concerns are also a reason for changing migration policy. This has led to the deportation of Lebanese citizens and Palestinians from Gaza. There are no official figures available, but in 2010 Human Rights Watch already reported hundreds of deportations.⁶⁰ People were forced to leave their homes within a couple of days, after being long-time residents.

The phenomenon of deportation is widespread in the Gulf Region. In Saudi Arabia for instance, mostly Ethiopian migrant workers are deported from the country. They are seen as criminals and alcohol abusers.⁶¹ But there are also many Yemenis among the deportees, ‘dumped at the dusty and chaotic al-Tawal border crossing with Saudi Arabia’.⁶² In the period from 2011 to the end of 2014 official figures report a total of 2 million deportations.⁶³ These measures are the result of the so-called ‘Nitaqat’ campaign. This campaign can be compared with the Emiratisation in the UAE. The goal of the campaign is to force more nationals in the private sector, replacing the migrant workers.⁶⁴

In Kuwait thousands of illegal migrants have been deported as well, for the same reasons seen in other countries: reduce the unemployment among nationals.⁶⁵

5. Law and practice: the role of the Labour Inspectorate

⁵⁴

http://www.uaeinteract.com/docs/Thousands_expected_at_centres_as_UAE_visa_amnesty_begins/52230.htm

⁵⁵ <http://tribune.com.pk/story/656301/illegal-immigrants-208-pakistanis-deported-every-day-since-2009/>

⁵⁶ Article 112 Labour Law

⁵⁷ The ILO, ‘A rights-based approach’ P.174

⁵⁸ <https://www.hrw.org/news/2015/04/21/uae-nyu-compensate-migrant-workers>

⁵⁹ Nasra M. Shah, ‘Restrictive labour immigration policies in the oil-rich Gulf: effectiveness and implications for the sending Asian countries’, UN/POP/EGM/2006/03, P.6

⁶⁰ <https://www.hrw.org/news/2010/07/19/uae/lebanon-allow-lebanese/palestinian-deportees-appeal>

⁶¹ <http://gulfnnews.com/news/gulf/saudi-arabia/saudi-arabia-foreign-labour-crackdown-drives-out-2m-migrants-1.1261545>

⁶² <http://www.economist.com/blogs/pomegranate/2013/12/deported-yemeni-migrant-workers>

⁶³ <http://gulfmigration.eu/saudi-arabia-deportations-from-saudi-arabia-by-month-32011-112014/>

⁶⁴ Françoise De Bel-Air, ‘The Socio-Political Background and Stakes of ‘Saudizing’ the Workforce in Saudi Arabia: the Nitaqat Policy’, GLMM - EN - No. 3/2015, p.3

⁶⁵ <http://www.reuters.com/article/2013/06/12/us-kuwait-labour-idUSBRE95B0N620130612>

From the above, it follows that the UAE has a modern, well developed labour code, which lives up to contemporary standards and that the UAE government does take steps to further improve the legal position of migrant workers. But the question remains as to what extent such measures are effective. In this Section we will therefore take a closer look at the activities of the UAE labour inspectorate and the way these activities are envisaged by international institutions and watchdog organisations.

The Ministry of Labour has made a strategic plan, based on the UAE Vision 2021. The vision of this strategic plan is to 'create a stable labour market and a productive workforce to promote a competitive knowledge-based economy that revolves around UAE citizens.' Part of this vision is that the Emirati '(..)' aim to establish a comprehensive system for protecting labour rights, while safeguarding employers' interests; by providing excellent services in order to make the UAE one of the best destinations in the world for living and doing business.'⁶⁶ To guarantee protection of the labour rights, inspections are very important. This is the most effective way to objectively check whether the labour law and moreover the labour rights are respected. The Ministry of Labour and Social Protection is responsible for these inspections, to be more precise: the Inspections Affairs Sector of the Ministry, which is divided into four organizational units that are jointly responsible for the full inspection process.⁶⁷ The inspections are carried out by so called 'field inspectors'. In 2014 there were 367 field inspectors, while in 2005 there were only 130.⁶⁸ This might seem to be a proper increase, however in 2014 every inspector still has to watch over the situation of 11,760 employees. These inspectors completed over 228,670 inspections in the private sector in 2014. 17,217 violations were discovered and taken legal actions against. Warnings are also considered legal actions, if the violations are not that serious.

A special system has been developed in order to speed up the process of inspections. The system divides companies into different degrees, depending on certain risk-factors. This should speed up the process, though keep the inspections accurate.⁶⁹ Moreover the ILO and the UAE have signed an agreement 'on technical cooperation in the areas of labour market information, labour inspection, occupational and health safety systems, in addition to the settlement of labour disputes' system.'⁷⁰ This agreement should not only benefit the national employees, but also the migrant workers.

NGOs like HRW are very watchful over the situation of the migrant workers in the UAE. In February 2015 a special report concerning employees on the Saadiyat Island was published. Regarding the inspections, the main critic is the lack of transparency. HRW reported that they requested the number of labour inspectors in the UAE in 2014, but the UAE government did not respond. In addition, it is not clear which companies violated the labour law, how many companies faced prosecution and moreover, what the outcome of the prosecution is.⁷¹ However, these conclusions of the HRW date from 2013 and 2014. News reports, as referred to earlier on this chapter, show that part of these figures are made public. This shows that there is some improvement.

The ILO has made a Labour Inspection Country Profile of the UAE. According to this profile, there is no documented policy and inspection procedures are not standardized. This leads to an inconsistent policy amongst Emirates, but also in the individual Emirate. This is caused by the fact that there is no central organization, which is responsible for the coordination between involved institutions and

⁶⁶ <http://www.mol.gov.ae/molwebsite/en/about-us/mol-strategy.aspx#page=1>

⁶⁷ http://www.ilo.org/labadmin/info/WCMS_150919/lang--en/index.htm

⁶⁸ David Keane, 'Enforcing Migrant Workers' Rights in the United Arab Emirates', *International Journal on Minority and Group Rights* 15 (2008) 81–115, P91

⁶⁹ News report UAE government, april 1st 2015. Website mol.gov.ae

⁷⁰ <https://www.wam.ae/en/news/emirates/1395279518445.html>

⁷¹ HRW, *MIGRANT WORKERS' RIGHTS ON SAADIYAT ISLAND*, p 21 and 22

who coordinates an unambiguous policy. Next to this general issue, the ILO profile states that most visits focus on the illegal and undocumented migrant workers and moreover that only a small percentage of the visits is focused on the topic of labour rights, working conditions and workplace hazards. This seems contradictory to the vision of the Ministry of Labour, mentioned before. The fact that labour rights are not prioritized over the detection of illegal and undocumented migrant workers, is also reflected in the fact that sanctions are higher regarding violating the law concerning illegality than labour rights. The ILO also found out that most of the routine visits are announced. If employers declare that they are not ready for the visit, the visit will be postponed by a couple of days.⁷²

6. Conclusion

The purpose of this article was to investigate the development of legal standards of protection for migrant workers (excluding domestic workers) in the Gulf region, in particular the UAE, in order to find out in what manner the UAE respond to internationally voiced criticism against the treatment of migrant workers.

A first finding is that the GCC focusses strongly on the internal market and the equality of treatment for GCC country nationals in the respective member states, also in the area of labour law and social security. But there seems to be no explicit policy on the social protection of third country labour immigrants. This matter is left to the member states. Such situation reflects the division of powers in Europe before the nineties of the previous century, when the member simply denied any powers in the field of immigration policy to the EC-institutions.

Despite the many reported problems pertaining to the situation of migrant workers in the Gulf region and the doubtful reputation of many Gulf countries in this field, we found that the UAE have modern Labour Code, which lives up to contemporary standards. There are, however, a couple of issues that still need to be solved. In particular: 1) the opening up of the personal scope of application of the UAE social security system to all migrant workers, irrespective of nationality, unilaterally or by including social security in the agreements with countries of emigration; 2) the abolition of immigration rules punishing migrant workers have been engaged in industrial action; and 3) the further relaxation of the *Kafala*/sponsorship rules in order to make migrant workers less dependent upon the grip of the employer. Such improvements should be conducive to a better representation of migrant workers' interests process labour conditions and industrial democracy, on the whole.

With regard to changes the dynamics of law and policy we found that the UAE government does respond to international criticism and has visibly been committed to improving standards for migrant workers. This is visible in measures taken in order to reduce the negative effects of the *Kafala*-practices, efforts to abolish unauthorized recruitment fees (also by means of bilateral agreements), and the introduction of the Wage Protection System.

The UAE government is clearly committed to its labour inspectorate. However, this does not mean to say that the organization of inspectorate is fully adequate and transparent and that abusive practices are effectively stamped out, as is testified by criticism of international institutions and watchdog organizations such as the ILO and HRW. Furthermore, when it comes to inspections carried out into the situation of migrant workers, reportedly, the enforcement of immigration rules take priority over

⁷² http://www.ilo.org/labadmin/info/WCMS_150919/lang--en/index.htm

the enforcement of labour rights. Such situation is not unique to the UAE⁷³, but still needs to be changed.

With positive trends to report and so much room for improvement to remain, the question arises how the process of introducing further changes can be accelerated. This is a key question of governance. In our view, too often the UAE is on the defense, not acting pro-actively but acting in response to international criticism. Reaction to this criticism can be slow and portraying a lack of transparency, giving rise to speculations and a bad press. If the UAE truly want to improve its reputation about the treatment of its migrant workers, it must take up a more leading role in this area, formulating a clear national agenda, reporting openly about the progress made (or where necessary a lack of progress), pressing for more action by the GCC in the field of social protection of third country workers, stepping up bilateral relations with key emigration countries, and perhaps even ratifying to progressive and ill-fated 1990 UN Convention on the Protection of Rights of all Migrant Workers and their Families.

⁷³ This is intended as a reference to developments in European Countries, where considerations of immigration law increasingly overshadow social rights. Cf. Gijsbert Vonk and Sarah van Walsum, 'Access denied, towards a new approach to social protection of formally excluded migrants' in: *The social protection of formally excluded migrants*, Gijsbert Vonk (ed.), *European Journal of Social Security (EJSS)*, 2013, Vo. 15, No. 2, pp. 124-146