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Toward a Global Human Rights Regime for Temporary Migrant Workers:
Lessons from the Case of Filipino Workers in the United Arab Emirates

A Dissertation

Presented to

the Faculty of the Josef Korbel School of International Studies

University of Denver

In Partial Fulfillment

Of the Requirements for the Degree

Doctor of Philosophy

by

Regina A. Nockerts

June 2015

Advisor: David Goldfischer

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Title: Toward a Global Human Rights Regime for Temporary Migrant Workers: Lessons from the Case of Filipino Workers in the United Arab Emirates

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ABSTRACT

Temporary contract migrants as a class fall between systems of responsibility: home country, host country, and international community. The systems are separately inadequate and basically uncoordinated, leaving migrants in a precarious situation. The situation of temporary contract migrants is even more precarious as they cross international borders without a path to citizenship or full enfranchisement in the political, economic, and social life of the host country. Where citizenship and residence/employment are divided between multiple countries, the corresponding human rights obligations are similarly divided. This division results in migrant rights falling between different state-based systems of responsibility. Human rights can be divided between those that are inherent in citizenship (citizenship obligation) which are the responsibility of the sending state, those that are inherent in the physical body (presence obligation) which are the responsibility of the receiving state, and those that fall between systems of responsibility (involvement obligation) which require sending and receiving countries to act cooperatively. These categories provide clear guidance in sorting out responsibilities for the rights of temporary contract migrants and direct us towards possible avenues for reform. Once adopted, this framework can help guide bilateral or regional agreements on a case-by-case basis. Although the principles underlying split responsibility are universal, the required elements of cooperation are likely to vary between different contexts. This dissertation draws on analyses and interviews conducted with Filipino temporary contract migrants in the United Arab Emirates in order to substantiate the argument, illustrating strategies that migrants as agents utilize to improve their conditions, the tradeoffs that they have made in order to secure their livelihood in a global job market, and the impact that current policy frameworks have on their lived experience.

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ABBREVIATIONS

AED	United Arab Emirates dirham
ATN	Assistance to Nationals
BES	Bureau of Employment Services
COEMLEC	Commission on Elections
DOLE	Department of Labor and Employment
GCC	Gulf Cooperation Council
GDRFA	General Directorate of Residency and Foreigners' Affairs
HSW	Household Service Worker
ICPMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
IGO	Intergovernmental Organization
ILO	International Labour Organization
IOM	International Organization for Migration
MOU	Memorandum of Understanding
NGO	Nongovernmental Organization
NOC	Non-Objection Certificate
NSB	National Seaman Board
NYU	New York University
OEC	Overseas Employment Certificate
OEDB	Overseas Employment Development Board
OFW	Overseas Filipino Worker
OWWA	Overseas Workers Welfare Association
PD442	Philippine Presidential Decree 442
PDOS	Pre-Departure Orientation Seminar
Php:	Philippine Peso
POEA	Philippines Overseas Employment Association

POLO	Philippine Overseas Labor Office
PRO	Public Relations Officer
SSS	Social Security System
TCW	Temporary Contract Worker
UAE	United Arab Emirates
UDHR	Universal Declaration of Human Rights
UN	United Nations
USD	United States dollar
WPS	Wages Protection System
WTO	World Trade Organization

CHAPTER ONE: INTRODUCTION

Temporary migrant workers in the United Arab Emirates (UAE) face widespread, even systematic violations of their human rights. Conditions are particularly bad for domestic workers and construction workers. Labor abuses at major construction projects building luxury properties, Western-oriented museums, and branch campuses of Western universities in the UAE have grabbed the headlines thanks to recruiting and contracting fraud and pitiful living conditions.¹ Domestic workers are particularly prone to abuses of the labor law such as wage withholding and extremely long working hours because they are not, in fact, covered by the national labor law. While these dramatic headlines have captured most of the international attention, this does not represent conditions for the majority of UAE workers. Attention has focused on these areas because they are the most extreme cases, where individuals experience the most severe human rights violations, though they represent a relatively small percentage of the UAE workforce. But the problem is far wider. There are an estimated 7.8 million migrants in the UAE, representing over 90 percent of that country's population and around 85 percent of its workforce.² This study presents a comprehensive inquiry into the human rights situation faced by all migrant workers in the UAE. I find that all migrant workers in the UAE are vulnerable, from domestic workers to engineers and medical professionals. This study identifies specific aspects that are going wrong,

¹ *Guide to Employment Agencies: Regulation, Monitoring and Enforcement* (Geneva, Switzerland: International Labour Office, 2007), accessed February 7, 2015, http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---ifp_skills/documents/publication/wcms_118153.pdf. *The Island of Happiness Revisited: A Progress Report on Institutional Commitments to Address Abuses of Migrant Workers on Abu Dhabi's Saadiyat Island* (Human Rights Watch, 2012), accessed April 4, 2012, http://www.hrw.org/sites/default/files/reports/uae0312webwcover_0.pdf. *False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers* (London, UK: Amnesty International, 2011), accessed 7 February 2015, <http://www.amnesty.org/en/library/asset/ASA31/007/2011/en/b58f0185-455d-425c-bc4f-d6b7fe309524/asa310072011en.pdf>.

² Based on the UAE National Statistics Center 2009 Labor Force Survey which, in turn uses 2005 census population data. It is worth noting that Emiratis are overwhelmingly employed in the public sector due to favorable employment conditions; private sector employment, bound by UAE labor law, is composed of 99 percent migrant workers.

the severity of the problems, and how they relate to each other. As important, I identify who is responsible for addressing these concerns and propose potential solutions.

Summary, Aims and Relevance

Global migration has the potential to reduce global inequality by allowing workers to flow to areas where they are best rewarded, yet the global flow of people is highly constrained. National boundaries define citizenship and its attendant privileges; visa regimes categorize non-citizens, circumscribing their rights and privileges accordingly. We live in a world where international boundaries strain to delimit and control massive inequalities.

In much of the world today there is an ongoing conversation about the proper role of migration and migrant labor. This conversation spans migrant sending, transit, and destination countries, and affects an increasingly large number of people. The United Nations (UN) estimates that there were 232 million international migrants in 2013, 3.2 percent of the total global population.³ And the flow of international migration continues to grow globally, increasing by 50 percent between 1990 and 2013.⁴ While governments generally seek to maintain current levels of migration,⁵ receiving country populations are increasingly skeptical.

Temporary contract migration is gaining renewed interest as a possible means to allow large migration flows yet mitigate receiving country concerns. Temporary labor migration is not a new idea; major destination countries have dabbled in this area since the rise of immigration regulations in the WWII era. In the United States, the Bracero Program (1942 - 1964) is often pointed to as a cautionary tale of the potential pitfalls of temporary contract migration, from the difficulty of creating ethical recruitment systems to the difficulty in ensuring that migrants actually

³ *International Migration Report 2013* (New York, NY: United Nations, 2013): pp. 1-2, accessed May 8, 2015, http://www.un.org/en/development/desa/population/publications/pdf/migration/migrationreport2013/Full_Document_final.pdf.

⁴ *Ibid*, p. 2.

⁵ Lina Bassarsky et al., *International Migration Policies: Government Views and Priorities* (New York, NY: United Nations, 2013), accessed February 28, 2015, <http://www.un.org/en/development/desa/population/publications/policy/international-migration-policies-report-2013.shtml>

exit at the end of their employment/visa term.⁶ Despite such problems, countries from Canada to the United Arab Emirates are increasingly reliant on temporary contract migration, posing a growing challenge to the international community: *Can states today design temporary labor migration programs that are both politically responsible and that respect the rights of migrant workers?*

Two areas of growing concern have combined in recent years to increase the appeal of temporary contract migration globally. First, in the post September 11th environment, migration has raised security concerns. Immediately post-attack, fears surfaced that foreign terrorists might enter Western countries as legal migrants or that they might slip in through illegal migration routes. In the continuing global environment of unrest tied to religious fundamentalism, fears remain heightened regarding the failure of migrant communities to fully integrate into host societies. In this context, greater reliance on temporary migration can address these security concerns, promising to reduce both illegal migration (by more closely aligning labor market demands and migrant worker supply) and the strain of integration (by encouraging the exit of non-workers). Second, the global economic slowdown in 2008 increased concern regarding the long-term impact of migration on domestic labor markets. Native-born workers fear that migrants may take their jobs, especially during economic downturns and increased unemployment. Temporary labor schemes increase labor market flexibility, allowing for the import of labor when needed but also allowing those numbers to be easily and quickly reduced during times of economic downturn.

Major migrant sending countries also tend to view temporary labor schemes favorably. Of course, regular migration has long been viewed as an escape valve when domestic economies are not performing well or unemployment is high. However, sending countries have long been worried about the effects of emigration on local societies and economies, particularly through brain drain. Specifically *temporary* migration has the potential to offer the same advantages but to reverse some of the potential negative effects of high levels of emigration. Brain drain may be

⁶ David Griffith, *American Guestworkers: Jamaicans and Mexicans in the U.S. Labor Market* (University Park, PA: The Pennsylvania State University Press, 2006), Kindle book.

reversed if workers who gain new skills, knowledge, and ideas abroad return and reintegrate into the sending country labor market. Temporary migration also encourages migrants to maintain close ties to families and communities in the home country, which may find expression in increased remittances. Global recorded remittance flows in 2010 were an estimated \$325 billion USD (United States dollars), and these flows appear to be quite resilient in the face of economic downturn in host countries.⁷ Remittances not only support family members left behind, but have knock-on effects in the communities in which they are spent, and serve to increase national foreign reserves. In short, sending countries view well-designed and -managed temporary migration as a means of bolstering national development.

Individual migrants also appear to be in favor of temporary migration programs. While it is possible, even likely, that migrants would prefer the option of regular migration, the overwhelming response for temporary programs indicates that temporary programs are an acceptable alternative. It is impossible to say how many temporary contract migrants there are globally, as no comprehensive data on this question is available.⁸ However, if we look at indicative bilateral programs an encouraging picture emerges. Temporary work programs granting access to Europe and North America are oversubscribed. Even under more repressive regimes, such as the countries of the oil-rich Gulf, competition for temporary labor opportunities is fierce. Of course the popularity of temporary work programs among migrant workers is driven in no small measure by poverty and relative deprivation in the home country on the one hand, and the fact that access to rich country economies is severely restricted on the other hand. Yet this is precisely the point: temporary schemes encourage greater access by alleviating receiving country fears, creating increased opportunities globally.

⁷ *Migration and Remittances Factbook 2011*, 2nd ed. (Washington DC: World Bank, 2011): p. 17.

⁸ A global figure is impossible to estimate with any accuracy: while countries report to the UN regarding overall migration figures, they do not report specifically on temporary migration flows. Even if they did, there is contention as to what is considered a temporary labor program and what is not. For example, most countries would not include *au pair* programs but many rights activists would argue that they should be included. Even if one could collect comparable numbers for some countries, not all make program-specific numbers available.

In short, temporary contract migration is viewed by both sending and receiving countries, as well as by migrants themselves, as a win-win situation. By encouraging circulation and return migration it is hoped that a virtuous cycle of opportunities for the global poor, flexible and inexpensive labor for receiving states, and increased development for receiving states can be established.

Human rights groups and migrant advocate groups, however, have raised serious concerns about the impact of these policies on individual migrant workers. Government policies intended to ensure temporariness also entail greater restrictions on the rights and privileges of temporary migrant workers in their host societies. Human right groups raise two types of concerns: First, that the inability of *temporary* migrants to attain citizenship blocks their access to fundamental political rights such as representation; second, that restrictions on labor mobility (especially the inability to change jobs) place *temporary* workers at the mercy of potentially unscrupulous employers, facilitating a range of abusive practices.

Yet sustained attention to the effect that temporariness has on the full set of human rights for migrants is surprisingly scarce. The problem is not one of defining which human rights apply to migrants; clearly migrant persons deserve the full set of human rights acknowledged by the international community, enumerated in the United Nations' Universal Declaration of Human Rights (UDHR) and its covenants. However, in practice the international rights framework was set up to function within the system of nation-states. In the case of international migrants, where citizenship and residence/employment are divided between multiple countries, the corresponding human rights obligations are similarly divided. The situation of temporary contract migrants is even more precarious as they cross international borders without a path to citizenship or full enfranchisement in the political, economic, and social life of the host country. The result is that responsibility for the rights of each temporary migrant is divided, with both origin and destination countries bearing some obligations.

What are the consequences of temporariness for the human rights of migrant workers? In short, migrants fall between systems of responsibility: home country, host country, and international community. There is no international consensus that differentiation in treatment

between citizens and nationals is synonymous with discrimination and therefore unacceptable. Yet the systems for the provision of rights to citizens abroad and to non-citizens who are territorially present are separately inadequate and lack bilateral coordination. There is little chance for the emergence of an international regime to solve this coordination problem in the foreseeable future. In this context, existing human rights protections, embedded in the global states structure and a product of it, are an unsatisfactory protection.

We are left with the analytical and normative challenge of developing the best possible distribution of human rights obligations between states under the existing human rights regime and of determining what specific forms of cooperation are required in those cases where responsibilities are shared between home and host countries. In terms of that challenge, human rights can be divided into three categories: those that are inherent in citizenship, which are the responsibility of the sending state; those that are inherent in the physical body, which are the responsibility of the receiving state; and those that fall between systems of responsibility and which therefore require cooperation between the relevant states.

Those categories provide clear guidance in sorting out responsibilities for the rights of temporary contract migrants. Political rights remain the responsibility of the country of citizenship. Rights that are inherent in the physical body become the responsibility of the country of residence. Social and cultural rights, however, span international boundaries: migrant families are divided between workers in one country and dependents in another; social security is complicated by the fact that migrants' working years are passed in a different country than that of their youth or old age. Cooperation between sending and receiving countries is needed to address these rights adequately. With such cooperation it is in principle possible to provide temporary contract workers with the full set of human rights.

How can this framework be applied in practice? I do not mean to imply that providing human rights to temporary contract workers is easy to achieve in practice. It is not. Ensuring that human rights obligations are respected becomes much more challenging when international boundaries are crossed. Existing human rights norms and regimes have failed to adequately address the needs of temporary migrant workers. The division of human rights obligations which I

propose, applying well-established understandings of human rights to cases of temporary migration, would provide a critical step toward developing a comprehensive rights regime for temporary contract migrant workers. Once adopted, this framework can help guide bilateral (even regional) agreements on a case-by-case basis. Although the principles underlying split responsibility are universal, the required elements of cooperation, in particular, are likely to vary between different contexts. State capacity, variations in domestic legal systems, and variations in culture between different origin/destination country pairs are likely to effect the structures needed in any given case in order to ensure the greatest improvements in temporary contract workers' (TCWs) human rights.

In this dissertation, I will be applying this framework in depth to a case study of the UAE-Philippines migration corridor. The UAE is a country that relies heavily on temporary contract labor with no thought of granting those workers permanent status. They are quite outspoken in their intention to retain this system, but also in their insistence that migrant labor in the country can be arranged to the advantage of all parties. The Philippines, as one of the major migration partners of the UAE – and as an unashamed supporter of migration as a national economic strategy – generally agrees that migration between the two countries is mutually beneficial.

But the current status quo falls miserably short of its potential. The UAE legal system (crucially including employment and contract law) and enforcement practices patently privileges nationals with perverse effects on the rights of migrant laborers. Extreme abuses, including conditions of forced labor, while uncommon, often come to light. Equally concerning is the vulnerability of the majority of UAE migrant workers to a pattern of systematic, normalized abuse of fundamental human and labor rights. The norm in the United Arab Emirates, for example, includes passport confiscation, long hours without overtime compensation, verbal abuse, unequal pay with systematic disparities on the basis of nationality, and/or extremely low pay that falls below a living wage. The ability of migrants to organize in defense of their rights is also extremely limited; labor unions, strikes, and other forms of public protest are outlawed.

Yet the Philippines government, despite sincere and energetic efforts, is unable to bridge this gap by extending sufficient rights protection to its citizens abroad. The ability of sending

countries to project protections into the transnational sphere is limited by a general lack of cooperation or, alternatively, a deficient transnational normative framework. But the Philippines has also struggled to provide political and social rights to its citizens abroad. While great strides have been made in enfranchising migrant workers, the process remains cumbersome. More concerning, the Philippines social security system is struggling to provide a minimum standard of living to its citizens. Understanding this gap in the provision of rights, as well as illuminating migrant strategies for coping with their precarious situation, are prerequisites for designing ethical and effective policies that in fact provide temporary migrants with their full complement of human rights.

There are concrete and achievable policies that can be implemented in the UAE-Philippines migration context. Perhaps the single most important policy change toward the goal of improving the rights of TCWs in the UAE, would be to abolish the practice of labor bans. The UAE government currently imposes a six-month ban on workers who leave their employers before the end of their contract, imposing a significant constraint on the mobility of migrant workers. A second important step forward would entail the Philippines getting a better hold on the legal process through which recruitment agencies are held accountable for illegal recruitment practices. Finally, the two countries could work together to institute a functioning and mutually beneficial registration process for labor contracts. Both countries have attempted to impose contract registration unilaterally with poor results; a joint system is needed. These three reforms would represent huge strides in improving the human rights and the lived experience of temporary contract workers in the UAE. If a decent temporary contract migration program can be achieved in this bilateral context, the model they develop could be broadly applied.

There are significant problems and abuses in temporary migration programs. But labor will inexorably continue to flow across borders as people search for a better life for themselves and their families. As members of the international community, it is our task to create a global system in which labor can flow within well-crafted and enforceable legal systems that respect the dignity and rights of both employers and workers, citizens and migrants. The following exploration of the UAE/Philippines case was undertaken in hopes of contributing to that goal.

Definition of Major Concepts

Fruitful inquiry into how best to address that challenge requires a shared understanding of key concepts. First, we need to define temporary contract migration. What distinguishes temporary contract migration from other forms of migration? Second, we need to look at the specific UAE context. The region has a particular set of institutions and ideas of membership, structured by a situation where even nationals face significant limitations on rights-based claims, limitations which bear more strongly on migrants. Finally, we will need to examine the concept of “temporariness.” Temporary migration in the UAE can sometimes appear quite permanent as the UAE state, employers, and migrant workers rely on the continued renewal of temporary admission.

Temporary Labor Migration and Temporary Contract Migration

The International Organization for Migration (IOM) defines temporary labor migration as the “migration of workers who enter a foreign country for a specified limited period of time before returning to the country of origin.”⁹ The length of stay is not as important as the fact that it is explicitly temporary. In some cases, the duration of the entry permit is directly tied to the nature of the job, such as in seasonal agriculture work; in most cases however the duration seems arbitrary. But in all cases duration of residence is limited, defining a group of persons with fewer rights in their country of residence.

Temporary contract migration is a subset of temporary labor migration programs.¹⁰ The key characteristic of temporary *contract* migration is that employment and residence are tied to the migrant’s employment contract. In the most generic sense, temporary contract migration can be defined as: the movement across international boundaries of “workers with fix-term labor

⁹ *Glossary on Migration*, 2nd ed, International Migration Law (Geneva, Switzerland: International Organization for Migration, 2011), accessed May 8, 2015, <http://publications.iom.int/bookstore/free/Glossary%20nd%20ed%20web.pdf>.

¹⁰ Typologies of the larger category, temporary migration, can be found in: Martin Ruhs, “The Potential of Temporary Migration Programmes in Future International Migration Policy,” *International Labour Review* 145, no. 1-2 (2006). Manolo Abella, *Policies and Best Practices for Management of Temporary Migration*, (Turin, Italy: United Nations, 2006, accessed May 8, 2015, http://www.un.org/esa/population/migration/turin/Symposium_Turin_files/P03_SYMP_Abella.pdf.

contracts in destination countries and commitment to return to their country of origin after expiration of their work permit.”¹¹ In most cases, and as is the norm in the Gulf Cooperation Council countries, temporary contract migration schemes require the employer to sponsor the migrant’s entry and residence, further differentiating TCWs from other labor migrants.¹²

There is a middle ground that is beginning to emerge in the Gulf, in which residence is tied to continued employment but not to a specific employer or contract. The migrant must have an initial contract in order to be eligible to receive a visa; but the visa and work permit are either easily transferrable between employers or are not tied to a specific employer at all. For the purposes of this dissertation, this will also be considered temporary contract migration.

Kafala

There is some confusion in the literature regarding the legal status of kafala. Many critics, including rights-oriented intergovernmental organizations (IGOs) and nongovernmental organizations (NGOs), tend to use the term “kafala” to refer to the legal codification of the patron-client relationship between citizens/employers and migrants/workers, focusing solely on the (many and significant) negative aspects.¹³ Obviously, kafala then becomes a primary concern and target for action, rather than focusing on specific harmful laws and regulations individually. This is problematic. It is important to note that kafala is not synonymous with labor law in the UAE. Kafala is better understood as the underlying logic through which some basic principles of both labor and immigration law were derived and which continue to inform any legal modifications. Elizabeth Frantz explains it this way:

The kafala system can be understood as the set of rules, regulations, ideas and practices underpinning the recruitment and control of migrant workers. ... The specific rules and regulations differ from country to country, but the basic

¹¹ “Briefing Note No. 2: Temporary Labor Migration Programs,” in *Global Forum on Migration and Development* (Marseille, 2011), accessed May 8, 2015, https://www.gfmd.org/files/documents/gfmd_swiss11_Marseille_briefing%20note_no2_me_june8_en.pdf. See also: Abella, *Policies and Best Practices for Management of Temporary Migration*.

¹² Illiberal regimes are not the only ones to take advantage of contract migration; there are schemes in Western democracies such as the US and Germany that allow companies to bring in foreign employees for a limited duration of time, similar to GATS Mode 4.

¹³ For an example in the academic literature, see: Amrita Pande, “The Paper That You Have in Your Hand Is My Freedom’: Migrant Domestic Work and the Sponsorship (Kafala) System in Lebanon,” *International Migration Review* 47, no. 2 (2013).

elements are the same. Foreign nationals must have a local sponsor, or kafeel, who is in most cases the employer, in order to obtain residence and work permits. During the term of service, the worker does not have the right to quit except under specific circumstances, and in most cases cannot change jobs or choose a new employer without the sponsor's consent.¹⁴

In the UAE, the most significant legal principles which derive from kafala are sponsorship, the inability to change employers without consent, and the use of labor bans as a means to penalize breaches of contract. It should be noted that kafala also underpins some laws that protect or benefit employees, such as requirements to provide healthcare, an end of service "gratuity," and the legal requirement that employers pay for employees' to return to their country of origin periodically and at the end of their employment. Alternatively, there are existing laws in the UAE which contradict the logic of kafala, such as the prohibition on passport withholding. It is a mixed bag.

Further, kafala is a concept that is not well understood, either in the UAE or outside it. The majority of migrants that I talked to – not just Filipinos, but everyone – had not even heard of the term, let alone understood its impact on UAE labor law.¹⁵ This makes it unlikely that migrants, when asked about problems they face or changes they would like to see, would identify "kafala" as a source of complaint.

In this dissertation, therefore, the term "kafala" is used only to refer to the patron-client ethic with its overtones of patronization and legitimated control. Specific laws and regulations, though they may be codifications of that ethic, are discussed under the rubric of labor or immigration law. This departs from the norm in the literature on human rights abuses in the Arab Gulf.

¹⁴ Elizabeth Frantz, "Jordan's Unfree Workforce: State-Sponsored Bonded Labour in the Arab Region," *The Journal of Development Studies*, 49, no. 8 (2013): p. 16.

¹⁵ Alternatively, many people think that kafala only applies to domestic workers. It is true that household service workers, female and male, are explicitly excluded from coverage under UAE labor law and are instead regulated by immigration law. It is worth noting that UAE government employees are also excluded from coverage under the labor law, although this is usually to the employee's benefit. Again, the logic of kafala underpins key elements in both labor law and immigration law, making it relevant to all types of workers.

Emiratis, Citizens, and Locals

Citizenship is a relationship between an individual and the legal structure of a country. Citizenship is what defines an individual as appropriately linked to a specific state government which, in turn, is obligated to the individual, exchanging allegiance for his/her right to protection and political participation. Classical political thought interpreted the state's duty to protect in terms of the most basic physical security (Hobbes' one leviathan to overawe them all). However, the modern international community has extended the state's duty to protect to include the protection of citizens' human rights through such instruments as the Universal Declaration of Human Rights (UDHR).

Citizenship is not synonymous with nationalism or national identity.¹⁶ In the American tradition (shared by some other countries), the nation as a group is defined first by allegiance and territory - civic nationalism. In this tradition, citizenship and national identity are overlapping terms. However, this is not the global norm. In most of the world, national identity is bound up in race, ethnicity, religion, and/or history; nationals and citizens overlap to a lesser extent. The UAE is an interesting case, as the country codifies the distinction between citizens and nationals.

The UAE has two layers of citizenship. Formal citizenship grants the citizens the ability to enter and leave the country, and to hold a UAE passport. In local parlance, passport holders are considered citizens but are not Emirati. They have the right to enter and exit at will, to reside in the country independent of employment status, and to hold property. This is analogous to a permanent resident category in many democratic countries.

However, the provision of social welfare and political rights is dependent on evidence of a "true" Emirati family history, documented in the Kholasat Qaid, or Family Book. The passport identifies you as a citizen of the UAE; but only the Kholasat Qaid identifies you as an Emirati national:

Possessing this book, not a regular passport, is what apparently makes one a "real Emirati." Not having one is not too different from carrying a passport from

¹⁶ Article 15 of the UDHR protects the individual's right to nationality.

the United Nations. One can use the passport for travel but it doesn't show that you belong anywhere.¹⁷

Further, UAE parlance recognizes another unusual category: "locals." Locals are individuals who have lived in the UAE for long enough to consider it their natural home, yet they may or may not have citizenship or Emirati status. Many Filipinos that I spoke with considered anyone who wore typical Emirati style of dress to be a local. In fact, if they knew the country of citizenship, this was often identified; so you could hear someone referred to as an "Egyptian local" or a "Pakistani local."

Migrants

The term "migrant" also has a distinct meaning in the UAE. Bristol-Rhys documents the common alternative terms used for migrants in the UAE as follows:¹⁸

Table 1: Migrant Terminology in the UAE

	DEFINITION	TERM USED BY MIGRANTS	TERM USED BY UAE NATIONALS
1.	Low- to semi-skilled, recruited by labor contractors in the sending country and living in labor camps, contract visa.	Laborer	Worker
2.	Low- to semi-skilled, non-Western, earning below AED 8,000/month, individually sponsored through the <i>kafala</i> system.	Worker	Worker
3.	Semi- to skilled, either earns over AED 8,000 OR Western (regardless of salary), individually sponsored through the <i>kafala</i> system.	Expatriate	Foreigner

All three categories fit the definition of temporary contract workers (TCWs) as it is usually presented in the academic and practitioner literature. Therefore, when the term "temporary contract worker" or "TCW" is used, it will refer to all three categories of migrants. However, the challenges and severity of the problems faced by the groups may be very different. Therefore, the terms as used by migrants (given by Bristol-Rhys, above) will also be utilized as appropriate.

¹⁷ Sultan Al Qassemi, "Book That Proves Some Emiratis Are More Equal Than Others," *The National*, 7 February 2010.

¹⁸ Jane Bristol-Rhys, "A Lexicon of Migrants in the United Arab Emirates (UAE)," *Viewpoints Special Edition: Migration and the Gulf* (Washington D.C.: Middle East Institute, 2010).

Permanent Temporariness

The situation of migrants in the UAE is characterized in important ways both by the *de jure* impermanence of their legal status on the one hand, and by the *de facto* permanence of their prolonged stay in the country on the other. This situation can be termed “permanent temporariness.”

Migrant workers’ (as well as their dependents’) legal status in the country is tied to their employment by a specific employer. An employer must sponsor the employee’s work permit and residence visa and, upon termination of the employment relationship for whatever reason, the employer must cancel the work permit and residence visa, at which point the former employee has a limited timeframe in which to exit the country, typically thirty days. As work permits and residence visas are currently limited to two years, a migrant’s legal status in the country has, at most, a two-year horizon. In addition, there is virtually no chance of gaining UAE citizenship, and the UAE government has a mandatory retirement age of sixty five. In the end, everyone’s stay in the country is temporary.

At the same time, the mandatory retirement age is the only limit that the UAE government places on the maximum length of stay for migrant workers.¹⁹ If the worker is fortunate enough to line up consecutive two-year employment contracts, they may stay in the UAE for decades. In fact, there are migrants who have resided in the UAE for their entire lives. This typically happens when a young couple has children while working in the UAE. Within the Filipino community, if the parents have sufficient means, they may choose to raise and educate their children in the UAE, as the country is generally considered safer and with a better quality of life. These children, in turn, may grow up, find jobs, and stay in the UAE on their own successive employment contracts for the majority of their working life.²⁰ In this way, an individual may stay in the UAE for over sixty years without ever gaining access to citizenship or permanent residency.

¹⁹ And, technically, even this can be surmounted if the individual owns and operates a business in the UAE or works for the UAE government in a position of high importance.

²⁰ It is possible for multiple generations to “chain” residencies together for more than the two generations outlined above. While not unheard of in the Indian and Iranian communities, within the Filipino community such multigenerational experiences would be extremely rare.

It is to be expected that when a migrant first arrives in the UAE or when they occupy a position near the bottom of the economic spectrum, they are relatively inured to permanent temporariness.²¹ They have the least invested and, at termination of their employment contract, they are the most likely to be able to find a new job with a similar or better compensation package as the one they currently occupy within the sixty-day timeframe established by the notice and exit periods.²² However, as an individual becomes more established in The UAE, particularly as they climb the career ladder and equivalent jobs become more difficult to identify and obtain, the temporariness of their situation becomes more significant. That is, as a migrant becomes more *permanent* as a resident in the UAE, they become more aware of the *temporariness* that lies at the heart of their situation. The tension inherent in their situation and the rising costs of rupturing the balance becomes a crucial factor influencing decisions as diverse as changing employers, continuing education, investment strategies, and marriage and child-rearing.

Methods of Investigation

This work proceeds from the normative assumption that there are universal human rights, and that the failure to fully extend those rights to any particular category of humans (women, ethnic minorities, migrant workers, etc.) represents a wrong that needs to be redressed. The study contributes to theory development in human rights by developing a framework of split responsibility for human rights in cases of explicitly temporary migrants, where citizenship is divided from physical presence. The study uses the Philippines-United Arab Emirates migration corridor as a case study to explore illuminate the consequences of this framework. Methods are triangulated in order to ensure the most robust conclusions possible given the existing real-world constraints. The study utilizes the documentary record, semi-structured interviews with Filipino migrants, and topical interviews with key informants in the Philippine embassy and in the Filipino

²¹ This assumes that the migrant worker is not in debt; the impact of debt on the agency of the worker and its implications for the tenuousness of situations of permanent temporariness will be discussed in depth in Chapter Five.

²² At which point they will still need to exit the country, but with a sponsoring employer lined up return is much quicker, easier, and cheaper.

community in the UAE. In addition, a limited amount of participant observer information is also included based on my three years living and working in the UAE.

This project develops a theoretical approach to the problem of divided responsibility for the human rights of migrants. The study begins with theoretical development to determine an appropriate division of roles and responsibilities and establish what an optimal rights-respecting bilateral relationship would look like. To do this, the study will draw on the literature on human rights theory and its application to temporary contract workers. There is a large body of literature on international migration and the potential for the development of an international regime regulating the movement of people internationally. The literature on temporary migration is smaller but significant.

I will use a single, in-depth case study approach to establish the consistency between the normative/ theoretical standards and the case practices. The study primarily utilizes the bilateral relationship between the UAE and the Philippines to illustrate theoretical principles as well as to draw real world conclusions and recommendations for action. There is a large body of literature, academic and practitioner, illustrating the case of the Philippines. However, the literature on the United Arab Emirates is quite limited and there is no in-depth academic study of the UAE-Philippines relationship. Gaps in the literature will be filled through interviews with key informants in the UAE as well as interviews with Filipino migrants in Abu Dhabi and Dubai.

Case Study

Case selection was first narrowed down by three general simplifying conditions. First, only countries with functioning central governments were considered. Countries with ongoing, significant conflict were not considered. For example, the territory with the highest percentage of the population living abroad is the West Bank and Gaza (68.3 percent of the population), an area with an ambiguous state structure and a conflict with no immediate prospects of resolution.²³ The overlap between labor migration and refugee flows, though an important issue, is not one which this dissertation proposes to address.

²³ *Migration and Remittances Factbook 2011*, 2nd Edition.

Second, migration sending countries with populations below one million were not considered. For example, the country with the second highest percentage of the population living abroad, Samoa (67.3 percent of the population), had a population of just 0.2 million people in 2009.²⁴ This exclusion is both practical, as finding representative samples of such small populations is difficult, and theoretical. Countries with very small populations may have different relationships within regional systems, face different constraints on state knowledge and resources and, as such, may not be representative of major migration sending-countries.

Third, only sending countries which export labor at all skill levels are considered in order to control for the possible effects of skill level and income on human rights and the exercise of agency.

I was looking for a migration corridor where both sending and receiving countries meet all three of these conditions. I first looked at major receiving countries and selected the country that imports the highest amount of foreign labor as a percentage of population: the UAE. The UAE has the 14th largest migrant population in the world: 3,293,264 migrants were living in the United Arab Emirates in 2010.²⁵ As a percentage of population, however, the UAE has arguably the largest migrant population in the world with migrants comprising 88.5 percent of the total national population.²⁶ In addition, the UAE migrant population is growing, both in absolute terms and as a percentage of population. The UN estimates that the UAE was one of only nine countries whose total migrant population gained over one million international migrants in the period between 2000 and 2010; those nine countries accounted for 67 percent of the overall increase in the migrant stock over those ten years and the UAE alone accounted for roughly 3 percent of the global

²⁴ *Ibid.*

²⁵ *International Migration Report 2009: A Global Assessment* (New York, NY: United Nations Department of Economic and Social Affairs, Population Division, 2011): p. 2.

²⁶ The current World Bank data places the UAE third, behind Qatar (86.5 percent) and Monaco (71.6 percent). However, this relies on outdated census data for the UAE. In 2010 the UAE stopped relying on household-level census data to estimate its migrant population as the widespread reliance on illegal housing arrangements by low- and semiskilled workers skewed census data, significantly underestimating migrant populations. Newer UAE estimates instead use administrative data on visas, births and deaths, also a flawed measure but likely to be much more accurate. Cf: Martin Croucher, "Door-to-Door Census in UAE Is Scrapped," *The National*, April 6 2011.

increase in the international migrant population.²⁷ Finally, virtually all migrants in the UAE are either temporary contract workers or the dependents of a TCW. As the study centers on specifically temporary migrants where a significant element of obligation remains with the home country, this aspect is crucial. The UAE is also openly committed to maintaining the temporariness of its migration program, despite the fact that much of the criticism of the UAE's migration policies centers on those aspects which structure and enforce this temporariness.

There are also drawbacks to selecting the UAE. The most significant is the fact that the UAE is an authoritarian political system whose human rights record with respect to even its own citizens is poor. The UAE is not democratic and denies political representation not just to migrants, but to its citizens as well. This is offset by the fact that those rights which are weakest are political rights which, I argue, remain the obligation of the migrant sending country.

I then looked at the UAE's major sending country partners: India, Pakistan, Sri Lanka, Egypt, the Philippines, Bangladesh, Yemen, Iran, and Sudan.²⁸ Egypt, Yemen, and Sudan are excluded on the basis of ongoing conflict and/or state collapse. Sri Lanka is excluded as its emigrants in the UAE are overwhelmingly low-skilled and poor; Bangladesh could also potentially be disqualified on this basis. Of those that remain, the Philippines has the largest emigrant population as a percentage of the domestic population.

The Philippines is one of the world's largest countries of emigration. In terms of absolute numbers, the Philippines was the ninth largest net emigration country in 2010 with 4,275,200 emigrants (4.6 percent of the total population) and the fourth largest recipient of remittances (\$21.3 billion USD, 12 percent of GDP).²⁹ Filipinos enter the UAE labor market at all skill-levels and are actively sought by both the UAE government and employers as an attractive labor force. The Philippine state is active in promoting temporary labor migration as a national development strategy. This means that the state actively tries to keep its "overseas foreign workers" (OFWs)

²⁷ *International Migration Report 2009: A Global Assessment*. p. 3.

²⁸ *Migration and Remittances Factbook 2011*, 2nd Edition.

²⁹ *Ibid.*

engaged in their home communities and that they are energetic in advocating for the welfare of its citizens abroad. The Philippine state could plausibly take major steps that could provide generalizable lessons, or even a model, for sending states in general. Finally, the Philippines has the additional advantage that its citizens are largely bilingual Tagalog and English speakers, facilitating interviewing.

The primary disadvantage of the Philippines as a case study is that there are some professions in which they are little represented. There are quite a few Filipino domestic workers, clerks, office workers, engineers, nurses, and medical professionals, among others. However, there remain employment segments in which Filipinos are rare. In particular there do not appear to be many Filipinos in manual labor positions in the construction industry. There are Filipinos in construction, but they tend to be in engineering positions. There are Filipinos in manual labor, but they tend to be in domestic positions, cleaning crews, and other positions that are more visible to the general public. Manual labor in construction is an important segment of the UAE migrant labor population, though. Construction and domestic work are the two segments of the UAE labor market that garner the most global criticism for human rights abuses. The Philippines is nonetheless the best choice. In the UAE employment patterns tend to follow a hierarchy loosely based on nationality, in which workers from a specific nationality tend to be clustered in specific employment roles. There are only two nationalities that break this stereotype and whose nationals are widely employed across the spectrum: Indians and Filipinos. As a case study, India is particularly problematic due to strong regional differences within India that affect migration and employment patterns; this is not a concern in the Philippines case.

Semi-Structured Interviews

This study relies on interviews in order to capture the subjective factors that influence TCWs' decision-making, to establish motivations and preferences, and to capture the complex impact of TCWs' agency. Original data have been derived through field work and reflected in field notes, and interview audio recordings. Filipino migrants in the UAE were invited to participate in interviews in order to assess the impact of the migration system on their lived experience, focusing on areas identified in the academic and practitioner literature as being potentially

detrimental to the human rights of migrants as well as programs and other measures in place to address these areas.

Interviews were semi-structured using fifteen trigger questions, augmented with further probes as needed. Interviews were between twenty and ninety minutes in duration. Interviewees represented the full range of age, education, skill, and income levels. Both men and women participated.

Interviewees were recruited from the cities of Abu Dhabi and Dubai. Four main recruitment tactics were utilized. First, the researcher partnered with the Embassy of the Philippines in Abu Dhabi to recruit and conduct interviews. I stood by the door to the Embassy and asked people as they exited the building if they had time for an interview. If the individual agreed to an interview, I led them upstairs to a quiet area in a hallway where a table and chairs were set up. This recruitment method has the major advantage of reducing selection bias. All Filipinos in the UAE will come to the Embassy at one point or another. In person visits to the Embassy are required to conduct all types of routine business, from obtaining the ubiquitous Overseas Employment Certificate (OEC) to registering to vote overseas. The Embassy setting, however, was a double-edged sword. While recruiting at the Embassy reassured some interviewees regarding my presumed professionalism and the social and political acceptableness of my research, it made some people uncomfortable when answering questions about the governments of the UAE and especially the Philippines. As many interviewees fear that Embassy officials are corrupt, recruiting on Embassy grounds may also have tarnished perceptions of me; I was careful to emphasize that I was a student at a university in the United States, that their responses were entirely confidential, and that they could report me to my university if they felt I mishandled the situation in any way. Overall the advantages of recruiting in the Embassy outweighed the disadvantages and this was the most successful method of recruitment.

Second, the Embassy also introduced me to Bayanihan Council: an umbrella group in which all the major Filipino community and professional groups have representation. This council is convened by the Embassy, meets on the Embassy grounds, and serves as a primary vehicle for communication between the Embassy and the wider Filipino community. I was able to ask

Bayanihan members for entrée to talk to their group members. As a means of finding migrant workers to interview, this method was not particularly successful, though it would be useful for other reasons as described below.

Third, I utilized my personal networks to find interviewees. I asked Filipinos that I saw in the community, from workers at the businesses I patronized to friends I knew socially, to participate. I also asked non-Filipino friends to ask their Filipino friends if they would be willing to participate. And all interviewees were asked to pass my card on to friends that might be willing to participate. This type of snowballing was moderately successful in recruiting interviewees but also likely to suffer from selection bias.

Finally, the Embassy of the Philippines in Abu Dhabi allowed me to interview some women residents at a facility they operate for Filipinos in distress. This facility is largely occupied by domestic workers who have absconded from their employers due to significant abuse. The facility manager asked any women who were interested in participating to come to a specific room at a specific time when interviews would be held. Five women, all domestic workers who had absconded, agreed to be interviewed. This is obviously a selective recruitment technique, but it is also the only way to access and interview the worst abused Filipino migrants in the UAE.

The extent to which the resulting group of interviewees is representative is of course open to question. Sample-population congruence is difficult to determine, as the UAE does not publicize statistics about its migrant population by nationality. Statistics kept by the Philippines government are also unreliable, as not all TCWs appropriately report their employment status and contract, especially at the lower end of the economic scale.

Since interviewing is an indirect measure of attitudes, beliefs, and actions, it presents challenges to ensuring validity and reliability. It is true that interviewees will have biases, acknowledged and unacknowledged, which will affect their responses. Personal attributes, origin community background, and host community context all affect interviewees' attitudes and beliefs in oft unacknowledged ways. Interviewees may intentionally alter their narrative. This may represent an effort to present or preserve a certain self-image or an effort at self-justification. It may also represent an effort by the interviewee to tell the interviewer what she wants to hear.

However, lying is not the norm among those who volunteer; omission of relevant facts or the “strategic reconstruction” of events in order to present a certain rationale or logic is the more pressing concern.³⁰

There are several common strategies that were utilized to address these concerns. First, confidentiality was assured and only volunteers were interviewed in order to have respondents motivated to respond. Second, multiple questions were used to assess any given concept. Third, possible ulterior motives were proactively addressed by the interviewer, indicating that such motives are possible and/or common; where the interviewer normalizes these motives and does not assume a specific position, it is more likely that the interviewee will confirm or correct. I was attentive to the need to give neutral feedback and to probe for further information in a nondirective manner. Finally, a large number of interviews were conducted in order to look for areas of consensus, or to appropriately weigh conflicting claims, in order to derive the best explanation supported by the evidence.

Alternatively, bias may be introduced in the way the interviewee perceives the interviewer affects responses. In the UAE, nationality, race and class combine to create a unique social hierarchy. As a white, western woman, it was often assumed that I was near the top of that hierarchy where most Filipinos are lower on the spectrum; interviewees often initially referred to me as “Madam.” I was careful not to reinforce this hierarchy if possible: I wore simple clothing and introduced myself by first name and as a student.

Interviews with Experts

In addition to the interviews with migrants, I conducted interviews with key informants, including Filipino government officials, migrant rights advocates, and gatekeepers in the Filipino communities in Abu Dhabi and Dubai, as well as local academics. Interview questions were tailored to the specific area of expertise of the interviewee, but with the aim of obtaining their expert assessment of the successes and failures of temporary migration in the UAE, as well as of

³⁰ Brian C. Rathbun, "Interviewing and Qualitative Methods: Pragmatism and Practicalities," in *The Oxford Handbook of Political Methodology*, ed. Janet M. Box-Steffensmeier, Henry E. Brady and David Collier (New York, NY: Oxford University Press, 2008).

key government initiatives and programs. Of particular value were interviews with the Vice Consuls and the Labor Attaché at the Embassy of the Philippines in Abu Dhabi, and the representatives from Filipino rights advocacy groups. Local academics, while supportive, did not have significant substantive knowledge relevant to my research.

Archival Research

This research relies on written records for information on UAE law and policy, as well as to support arguments made in all areas. The written record, episodic and running, has been the only means available to assess UAE government positions and actions. While I attempted to establish contacts and interview Emirati officials or expatriate officials working in relevant offices, all declined to be interviewed. Information on UAE policy therefore was largely obtained through secondary sources, primarily written. Law and official policy were gathered from the Legal Gazette, UAE public statistical data sets, UAE government websites, and to some extent, the publications and data sets of the United Nations and its affiliated organizations.³¹ With regard to the Philippines, government statistical data sets, government websites, and UN sources were also relied on.

However, as Julie Gervais points out, archives “also have their drawbacks insofar as they convey an institutional point of view and make the researcher reliant on managerial tropism and *la pensée d’Etat* – the official discourse coming from ‘the State.’”³² They present a monolithic front, masking internal debate, conflict, or compromises; they offer a view of the outcome of a political process, not the process itself.

Information on informal policy and practice were obtained through UAE government websites and via local news media. This project relied heavily on the three major newspapers in the UAE: *The National* (published in Abu Dhabi), the *Gulf News* (published in Dubai), and the *Khaleej Times* (published in Dubai). News from these sources have a significant bias. While

³¹ The International Organization for Migration and the International Labor Organization, primarily.

³² Julie Gervais, "When Access Is Restricted: Craftiness and Combining Methods in the Study of a Secretive Elite," in *Political Science Research Methods in Action*, ed. Michael Bruter and Martin Lodge (New York, NY: Palgrave Macmillan, 2013).

media laws in the UAE have recently liberalized, they are still highly restrictive. This will be discussed in greater detail in Chapter Eight. Here it is important to note that self-censorship is pervasive and the local press is reluctant to publish stories that might anger UAE officials. Contentious issues are almost always presented in the light most favorable to the government position, with potentially critical statements often buried, if they appear at all, in the last paragraph or two. They are little better than government news outlets and should be regarded as such.

Design

This dissertation proceeds in three broad sections. The first section establishes the theoretical basis for the dissertation. Chapter Two poses and answers the question: who is responsible for migrants' human rights? It lays out the framework of divided responsibility and traces some of the major theoretical implications. The second section presents the historical roots of the present situation in the UAE and the Philippines. Chapter Three looks at the UAE, tracing the political, social, and economic factors that led to the development of the widespread importation of migrant labor. It examines how labor migration policy is actively managed in order to encourage social and political stability, as well as economic progress. Chapter Four explores the Philippine side of the equation, addressing why the state adopted large scale labor export as an economic development strategy. As in the case of the UAE, the Philippines uses labor migration policy to support political, social, and economic stability. The third section details the current situation for the human rights of Filipino migrants in the UAE, assessing the extent to which each state meets – or fails to meet – its responsibilities to protect specific rights. Chapters Five through Eight each address a specific subset of rights. Chapter Five looks at issues related to recruitment, contracting, and discrimination. Chapter Six examines factors enabling or constraining mobility, from development in the Philippines to passport withholding in the UAE. Chapter Seven looks at legal rights and security issues facing Filipinos in the UAE. Chapter Eight looks at the ability of migrants in the UAE to form groups, from family units to community groups to formal political and labor organizations. The final chapter, Chapter Nine, draws policy implications, offering specific ways to ensure the fullest possible respect for the human rights of Filipinos working in the UAE.

CHAPTER TWO: WHO IS RESPONSIBLE FOR MIGRANTS' HUMAN RIGHTS?

Introduction

This chapter explores the normative claim that the human rights of migrants should be the shared responsibility of both the migrants' sending and receiving states. I will explore the basis for this claim, then consider some practical implications of divided responsibility as a framework for the protection and provision of international migrants' human rights. Apportioning responsibility for rights protections is a precursor to effective leveraging of these claims to improve the lived experience of migrants. The chapter will conclude with a closer look at how divided responsibility can function to improve the lived experience of temporary contract migrants. Although this issue has implications for all states, my discussion focuses on the non-democratic context using temporary contract migration within the UAE-Philippines migration network as my primary example. Removing the discussion from the democratic context also removes considerations of those liberal or democratic rights which are distinct from human rights.

The argument presented here answers four questions in turn. First, which agents are obligated to protect the human rights of temporary migrants? I argue that both sending and receiving countries have compelling ties obligating them to act to respect, protect, and fulfill the human rights of migrants. Once the fact of obligation is established, I ask how state agents should act to produce more just outcomes in the current state-based international system in which there is no reasonable prospect of an international migration regime. I propose a model of divided responsibility in which sending countries retain "citizenship obligations" and receiving countries retain "presence obligations." Once these duties are appropriately apportioned, however, a limited but significant set of human rights remain substantively unprotected due to the transnational nature of the lives of temporary migrants. Sending and receiving countries must act cooperatively in order to fulfill these "involvement obligations." Third, I ask exactly what the human rights that agents are obligated to protect are. I argue that the United Nations' Universal

Declaration of Human Rights (UDHR) is the most appropriate model. Finally, I ask whether this system of divided obligations can be exercised extraterritorially. I argue that such an extension requires continued evolution of the norms of international sovereignty and human rights norms, already in flux, limiting some sovereign privileges in favor of international cooperation.

Evaluating The Legal Framework: What human rights are agents obligated to protect?

The essence of a human right is threefold. 1) Human. These should be concepts that all humans can agree should be available to all humans. 2) Rights. To say that you have a right means that you have a special, strong claim to make; rights trump interests, for example. 3) Obligation. Further, rights entail corresponding obligations incumbent on the representative authority/entity to ensure the respect, protection, and fulfillment of those rights. Obligation operationalizes human rights and without it human rights are an empty concept. Human rights obligations are placed on humanity generally but more specifically on any individual's state as the representative agent and the primary building block of the current international system. However, the enumeration of which specific rights should be included on the list of human rights is contested.

As the discussion below will make clear, I prioritize buy-in from diverse states. The reasons are both normative and practical. From the normative perspective, if we are claiming *human* rights for humanity on the basis of membership in the human species, a wide swath of humanity should be able to agree. There will always be outliers, but a broad consensus of the membership group should consent to the content of human rights. From a practical perspective, broad consensus is required in order to push states into actions that they might not otherwise take, which are outside of narrowly conceived self-interest or which are simply not otherwise a national priority. With regard to international migration, sending and receiving states tend to have distinct characteristics and interests; finding common ground is difficult. Using a common definition of human rights and a common source for their enumeration provides a base from which discussions can begin.

Shue would reduce the list of basic rights to only security and subsistence which, he argues, are necessary in order to enjoy all other rights.¹ He does not argue that other rights are not important so much as that there is an issue of relative importance such that these “basic rights” are a higher priority.² In contrast, the current UN position is that all human rights are “interdependent and indivisible,”³ and it lists nine international treaties as core to human rights. But international law is quite a bit wider than that. Chetail lists forty treaties that he considers the sources of international migration law.⁴ In contrast, this work relies on the Universal Declaration of Human Rights as the basic document specifying the content of human rights, including the human rights of migrants.

Why privilege the UDHR, then, as a single source of legally recognized human rights? I reject the full UN system of nine fundamental treaties because I prefer to avoid a massive expansion of human rights; such an expansion lacks global support. Human rights as they are enumerated in the international system today are a product of a specific liberal democratic tradition. As such, the buy-in by the rest of humanity is considerable but limited.⁵ This is not to say that non-western political traditions cannot incorporate a human rights agenda; rather, such agendas are likely to be considerably narrower than the framework established in the overlapping system of international laws and treaties that supposedly binds all nations. Of these nine treaties, only one has specifically to do with international migrants: the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPMW). This treaty has very few state parties, only forty seven, on par only with the much newer (and with

¹ Shue's theoretical work on human rights has had significant impact on how the UN and many other human rights organizations today view the “respect, protection, and fulfillment” of human rights, which language is used in this project.

² Henry Shue, *Basic Rights: Subsistence, Affluence, and U.S. Foreign Policy*, 2nd ed. (Princeton, NJ: Princeton University Press, 1996).

³ “What Are Human Rights?” United Nations Office of the High Commissioner for Human Rights, accessed May 7, 2012, <http://www.ohchr.org/en/issues/Pages/WhatAreHumanRights.aspx>.

⁴ Vincent Chetail, “Sources of International Migration Law,” in *Foundations of International Migration Law*, ed. Brian Opeskin, Richard Perruchoud and Jillyanne Redpath-Cross (New York, NY: Cambridge University Press, 2012).

⁵ For example, Ignatieff warned against the “idolatry” of human rights by Western nations resulting in an overextension of the rights agenda despite criticism of the concept by the Islamic world, Asia, and even segments within the West. Michael Ignatieff et al., *Human Rights as Politics and Idolatry* (Princeton, NJ: Princeton University Press, 2001).

many more signatories) International Convention for the Protection of All Persons from Enforced Disappearance.

Table 2: Number of state members of the core UN human rights treaties

TREATY⁶	NUMBER of State Signatories/Parties
UN UDHR 1948, (Universal Declaration of Human Rights)	193 UN member states
UN ICESCR, 1966/1976 (International Covenant on Economic, Social and Cultural Rights)	170 / 163
UN ICCPR, 1966/1976 (International Covenant on Civil and Political Rights)	74 / 168
UN ICERD, 1965/1969 (International Convention on the Elimination of All Forms of Racial Discrimination)	87 / 177
UN CEDAW, 1979/1981 (Convention on the Elimination of All Forms of Discrimination against Women)	99 / 188
UN CAT, 1984/1987 (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)	81 / 157
UN CRC, 1989/1980 (Convention on the Rights of the Child)	140 / 194
UN ICPMW, 1990/2003 (International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families)	38 / 47
UN CPED 2006/2010 (International Convention for the Protection of All Persons from Enforced Disappearance)	94 / 45
UN CRPD 2006/2008 (Convention on the Rights of Persons with Disabilities)	159 / 152

Source: *United Nations Treaty Collection*, <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

In addition to the core treaties, the UN has a system of around eighty human rights treaties dealing with topics from genocide to development. Of the wider system of overlapping UN treaties, the only well-accepted treaty dealing specifically with international migrants is the Protocol against Smuggling of Migrants by Land, Sea and Air; it is also the only one to focus on controlling migration and borders, rather than on protecting the wider rights of individual migrants. Simply put, there is no international agreement that the expansion of greater sets of rights for migrants is appropriate.⁷

⁶ Not included here are: and Convention on the Rights of Persons with Disabilities (2007/2008), and all the optional protocols. These later treaties are sometimes included in the list of core treaties, sometimes omitted.

⁷ It is also worth noting the fate of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), one of the UN's core human rights treaties. This treaty is largely a restatement of rights already established in the other core treaties, gathering those rights in one document to make explicit the claim that migrants should have access to the full list of human rights. Nonetheless, the ICPMW has far fewer ratifications than any other of the UN core treaties (see Table 2 below). While there are several reasons for the lack of

I reject further limitations, as with Shue's argument, because I feel it goes too far in the opposite direction, restricting acknowledged and norm-based human rights that are generally well-accepted today. Such a restriction also lacks global support. Shue's impulse to reduce the list of core human rights to just those which reflect "everyone's minimum reasonable demands upon the rest of humanity"⁸ is appropriate. But he has gone too far, omitting rights that evidence suggests are already globally accepted as human rights.

Following Donnelly's Universal Declaration Model, I accept the United Nations' Universal Declaration of Human Rights (UDHR) as the most appropriate enumeration of human rights.⁹ The Universal Declaration of Human Rights, for example, enjoys widespread, global support. The UDHR is considered a foundational document of the United Nations which defines and elaborates on the concept of human rights which is protected in the UN Charter. As such, the UDHR has been widely accepted by states. It was unanimously adopted by the UN General Assembly in 1948 (eight abstentions) and has formed the basis of the global discussion on human rights since that time. There is no need to back away from this document as a single source of essential and interconnected human rights.

The UDHR framework has several implications which are important for our purposes. First, it enumerates a specific list of recognized human rights. The UN specifies seven (or nine, depending on the source) of its treaties as "core" treaties specifying human rights. When looking at the rights of workers, the ILO designates eight "fundamental rights conventions" and identifies a further four migration-specific instruments and eleven instruments with containing specific

ratifications, it is generally felt that hesitation to explicitly include migrants in human rights guarantees is the primary reason.

⁸ Shue, *Basic Rights*: p. 19.

⁹ I utilize a slight simplification of Donnelly's model, which accepts as human rights all rights which as specified in any two of the following three documents: the UDHR, the ICCPR, and the ICESCR. Jack Donnelly, *Universal Human Rights in Theory and Practice*, 2nd ed. (Ithaca, NY: Cornell University Press, 2003).

provisions on migrant workers' rights.¹⁰ When taken as a whole, this system of overlapping treaties and instruments creates an expansive and contentious list of "rights."

Rather than pushing for broad ratification of the entire swath of relevant treaties and instruments, adherence to which would likely be shallow, it would be better to retrench, to advocate for a minimal conception of the "core," and to focus on improving adherence with these more manageable norms. I argue that sufficient rights are in place for migrants as human beings protected by the UDHR. The problem lies not in expanding the menu of rights but in focusing on their respect and application. In this vein, and for the purpose of identifying common international standards for human rights that are generally recognized by all states and applicable to all human beings, the UDHR provides the best base. The UDHR contains thirty articles; the enumeration of human rights it contains is considered comprehensive for our purposes.

The second major implication of accepting the UDHR framework is the fact that there is no recognized human right to migrate. It is an often recognized contradiction that although there is a universal right to exit a country specified in Article 13(2) of the UDHR, the right of entry is limited to the individual's state of citizenship.¹¹ The migrant sending country retains the obligation to honor the right of return and should act to facilitate reentry. In contrast, receiving countries have no particular responsibility to facilitate entry of potential migrants. The receiving state can weigh its interests against those of potential migrants in determining entrance requirements. The receiving state can come to agreements with potential migrants that limit access without necessarily limiting their human rights.

The final major implication of the UDHR framework is that, within the UDHR framework the obligations to *protect*, and *fulfil* human rights are appropriately linked to states. Where the obligation to respect (to refrain from acting in such a way as to deprive an individual of their human rights) are "held by all social actors," the obligations to "protect, to provide, and to aid are

¹⁰ International Labour Organization, "International Standards for the Protection of Migrant Workers," accessed February 5, 2014, <http://www.ilo.org/migrant/areas/international-standards-on-labour-migration-and-protection-of-migrant-workers-rights/lang--en/index.htm>.

¹¹ "The Universal Declaration of Human Rights," Article 13(2).

assigned almost exclusively to states.”¹² The UDHR assumes that individuals “belong” to countries or territories with political jurisdiction (Article 2). Significantly, key articles in the UDHR are written with reference to country/nationality (Articles 2, 13, 15, 21).¹³ Human rights are held by all individuals equally but those individuals are presumed to inhabit a specific position in a world of states. The obligations to provide and protect thus fall on the state to which the individual belongs. Human rights obligations are linked to states.

This is appropriate. Wherever one believes human rights arise from, whatever theory one grounds human rights in, the fact remains that human rights as established and practiced in the international community today are organized to operate within a system of sovereign nation-states. States are not the only actors on the international stage but they are privileged actors. This idea of state obligation is crucial to the international respect of human rights. Rights alone make moral/ethical and normative claims. But it is the institution of state obligation that gives rights traction and force in an individual's lived experience.

Protecting Human Rights: Which Agents are Obligated to Act to Protect the Human Rights of Temporary Migrants?

If states, as privileged actors in the international system, are appropriately linked to human rights obligations, we still must determine which states owe a duty to which individuals. When the state system emerged a state's authority extended as far as it was able to exercise territorial control. As people were relatively stationary, territory, authority and obligation largely coincided. The moral imperative to aid others largely stopped at the borders of the state. There was, and to a large extent remains, a presumed territoriality of jurisdiction. With globalization the plausibility of the idea that territorial distance lessens moral obligations has evaporated; ideas, trade, and people all move across borders with increasing intensity; the actions of states, corporations, and individuals around the globe are intertwined in surprising and dense networks; and densely connected institutions have emerged and strengthened to channel these flows. As

¹² Donnelly, *Universal Human Rights in Theory and Practice*, 2nd ed.

¹³ Article 2 is worded slightly differently: “country or territory to which a person belongs.” “The Universal Declaration of Human Rights.”

Shue argues, humans are now causally tied to each other.¹⁴ The presumed territoriality of jurisdiction is weakening.

Shue argues that rights impose normative duties on agents to avoid depriving individuals of their rights (“respect”), protect individuals from deprivation (“protect”), and to aid deprived individuals (“fulfill”).¹⁵ But the duty to fulfill begins to make distinctions between agents: agents are only obligated to take action to fulfill the rights of individuals who are one’s “special responsibility,” who are the victims of the failure of other (“specially” responsible) agents to protect, or who are victims of natural disasters.¹⁶

In analyzing the impact that Shue’s thought has on human rights today, Pogge, rejects the massive burden that this line of argument imposes on all states to intervene everywhere that there is a failure to protect. He posits that involvement increases duty/obligation so that different agents’ duty may have varying moral weight. Going back to the idea that today humans are causally related to each other (more than territorially), where those causal links are particularly strong or numerous, there is a relatively stronger moral claim to rights and the corresponding duties.¹⁷

Most applications of this principle are concerned with our responsibilities to distant, foreign others; for example: the obligation rich countries to aid poor countries. But migration exposes another aspect of this breakdown in territoriality. Migration scholars are increasingly concerned with the question of what human rights obligation a state owes to foreign citizens within its territory, whether they be legal migrants, illegal migrants, refugees, or others. Less studied but equally important is the question of what obligation the state has to continue to aid its own citizens abroad.

¹⁴ Shue, *Basic Rights*.

¹⁵ As noted above, Shue’s framework on basic rights is the forerunner to the “respect, protect, and fulfill” language that is used by the UN and many human rights organizations today.

¹⁶ Shue, *Basic Rights*.

¹⁷ Thomas Pogge, “Shue on Rights and Duties,” in *Global Basic Rights*, ed. Charles R. Beitz and Robert E. Goodin (New York, NY: Oxford University Press, 2009).

Following Shue I argue that the duties imposed on agents to fulfill human rights are international, though the duty imposed on different agents may look different. Applying this to temporary contract migration, I argue that migrants have human rights and are entitled to their full protection irrespective of territorial location. But the transnational nature of temporary migration means that both sending and receiving countries as agents have a “special relationship” with the migrant, and so an obligation to ensure the protection of migrants’ human rights. Following Pogge, I argue that involvement intensifies duties. Migration is a causal link between countries, strengthening the duty of both sending and receiving countries to act. Further, where migration corridors are denser, the duty to act gains in relative importance and moral weight.

So what does this “special relationship” between sending state, temporary migrant, and receiving state look like? There are two obvious bases on which such a relationship could be claimed: citizenship regimes or physical presence.¹⁸ For most people in the world today, these two bases would indicate belonging to the same state, harkening back to that ‘presumed territoriality of jurisdiction’ discussed above. However, international migrants by definition are physically present in a state other than their state of citizenship. Migrants necessarily challenge “belonging” for states – both the sending state, which retains citizenship ties with the migrant despite their physical absence, and receiving state, where the migrant is physically present but lacks citizenship status.

Citizenship = Obligation

Temporary contract workers retain the citizenship of the sending country. They are not given a path to citizenship in the host country. One of the basic elements of a temporary labor program is that at the end of the specified time, the migrant will leave the host country and return to their home country. As the temporary worker retains sending country citizenship, that state must assume that that migrant intends to maintain a substantive connection to the state of

¹⁸ The state-based nature of the UDHR precludes the idea of supranational answers such as may be found in the cosmopolitan global citizenship literature by authors such as Sassen and Coutin. Identity or integration is often proposed as an alternative means of basing claims of belonging. This basis is omitted here because its proponents inevitably fall back on physical presence or duration of stay as a proxy for more intangible ties of affiliation. See for example the work of J. H. Carens.

citizenship, including the intent to return and take up full participation in the polity at some point in the future.

First, some people really do want to return home. Not everyone who becomes a migrant wants to become a citizen in their host country. Family ties, a familiar social context, even considerations of cost (cheaper education for children or retirement costs or costs for elder care, for example) often encourage migrants to return even after a considerable length of time abroad. In this case, failure to assume that the migrant intends to return would deny the agency of the migrant and their choice to retain citizenship.

Second, let's assume that a migrant *would* prefer to take up citizenship abroad. This is by no means a certain process. While an individual has the human right to change his nationality, no state is obliged to offer nationality as a matter of human rights.¹⁹ Even where a country allows a path for citizenship, a migrant may not be granted citizenship for a variety of reasons, from failure to learn the local language to criminal background. They may have to return.

Third, and perhaps most likely, is the possibility that the migrant's life plans are flexible. As different types of bonds are strengthened and weakened in both home and host country, life plans change. A Filipino who migrated to the United States with the hope of eventually gaining citizenship may change his mind when he realizes that he would be required to complete a second residency in that country before practicing as a medical doctor, finds himself working in an alternate position for low pay, and with limited funds to enable him to travel the very long distance to visit his remaining family in the Philippines.

Beyond the migrant's intent, the sending state's intentions and actions may also strengthen their obligation to migrant citizens. Countries of citizenship often encourage migrants abroad to retain familial and economic ties in their "home" country. Migration reduces unemployment, especially for unskilled workers, in the sending country. Remittances by migrants abroad to family members in the sending country are a major source of foreign reserves in the

¹⁹ This is a similar construction to the right to exit. And it is just as hotly contested in both the academic and practitioner literature. C.f. Joseph H. Carens, ed., *Immigrants and the Right to Stay* (Cambridge, MA: The MIT Press, 2010).

developing world as well as serving as an informal social security network for the families of migrants. The World Bank estimates that remittances in 2010 exceeded \$440 billion, of which developing countries received \$325 billion.²⁰ To encourage the remittances to keep flowing, sending states have initiated a wide variety of programs from preferential savings plans to state-sponsored business investment opportunities. Through efforts like these, the state attempts to retain strong ties with its migrant citizens as citizens and participants in the “home” country. As these types of programs intensify and as more citizens leave the country, the sending state’s obligation also intensifies.

The temporary migrant citizen is clearly still a member of the polity, and a special relationship exists between him and his home state. Yet physical absence is often viewed as a negation of the state’s obligation to protect and provide for his human rights. Those rights are assumed to be inherent in the physical body of the person, which is absent. The state may acknowledge an interest in, or even a duty to, monitoring and advocating for the rights of its citizens abroad, but the obligation corresponding to a rights claim is often absent. This is wrong. Citizenship creates bonds of belonging in the socio-political space of the sending state, though those bonds may be incomplete.

Physical Presence = Obligation

Many human rights are substantially, substantively tied to physical presence. There are a large number of rights that cannot be logically divided from the human body; at minimum these include: freedom (Art. 1); life, liberty and security of person (Art. 3); prohibition of slavery (Art. 4); prohibition of torture (Art. 5); prohibition of arbitrary arrest, detention or exile (Art. 9); movement (Art. 13); asylum (Art. 14); thought, conscious and religion (Art. 18); expression (Art. 19); assembly and association (Art. 20); employment (Art. 23); rest and limited working hours (Art. 24); standard of living (Art. 25). These rights in turn are strongly interdependent on a wider set of rights which gives them substantive meaning. In order for the idea of human rights to have an

²⁰ *Migration and Remittances Factbook 2011*, 2nd Edition.

impact in the lived experience of the individual, the country in which she is physically present must assume the obligation to respect, protect, and fulfill these rights.

Legal entry creates a stronger obligation, as the state has consented to physical presence. This is reflected in several rights treaties. The International Covenant on Economic, Social, and Cultural Rights, for example, allows developing countries to determine the extent to which economic (but not social or cultural rights) are provided to non-citizens.²¹ The ICRMW, despite its low levels of ratification, also makes distinctions between legal and undocumented migrants, establishing additional for legal migrants. Further, the more migrants that a state allows legal entry to, the greater becomes its need to address their human rights: increased involvement leads to intensified obligation.

The temporary migrant clearly has substantive connection to the host country and a special relationship exists between him and his host state. For the receiving state, limited political belonging is inherent in the definition of migrant status – migrants are not citizens. This simple fact dictates differentiation in treatment. The constraints placed on migrants, however, all too often infringe on the basic human rights of those migrants. This is often dismissed on the basis that migrants as “guests” of the receiving state agreed to conditions upon entry, that conditions in the host country are better than in the sending country (“after all, why else would they keep coming?”), and that migrants may exit should they object to their conditions. The fact that the migrant did not have a “right” to enter, as opposed to being granted that opportunity through the benevolence of the receiving state, is all too often viewed as negating the receiving state’s obligations in large part. This is wrong. Physical presence over time creates linkages between the migrant and the host society and state. While physically present the migrant is subject to the receiving states laws and regulations, she creates social bonds with friends and neighbors, and contributes to the local economy often as both a producer as well as a consumer (the ILO estimates that of the 214 million international migrants in the world in 2010, 105 million were

²¹ David Weissbrodt, "The Protection of Non-Citizens in International Human Rights Law," in *International Migration Law*, ed. Ryszard Cholewinski, Richard Perruchoud and Euan MacDonald (The Hague, Netherlands: T.M.C. Asser Press, 2007): p. 224.

economically active²²). Physical presence creates bonds of belonging in the socio-political space of the receiving state, though those bonds may be incomplete.

The Divided Responsibility Framework: Going Beyond Legal Obligations

To sum up so far: temporary migrants have a special relationship with both home and host countries. This relationship is based on citizenship in the home country and physical presence in the host country. These special relationships mean that both home and host countries have an obligation to protect the human rights of temporary migrant workers as specified in the UDHR. Yet the fact that citizenship and physical presence have been divorced all too often leads to gaps in rights protections and provisions of international migrants. The 'presumed territoriality of jurisdiction' has been disrupted, allowing both sending and receiving states deny the obligation to provide the full spectrum of human rights. How can we address this gap to ensure that temporary migrants receive full access to human rights?

Shue would have us create institutions.²³ Chetail makes the case for "soft law," which might be understood as the beginning of an international regime.²⁴ Indeed, there has been a lot of discussion about the need for such a regime,²⁵ however none has emerged capable of leading global opinion and action.

The major IGOs concerned with the rights and welfare of migrants and migrant labor are the UN agencies, the IOM, the World Trade Organization (WTO), and the International Labour Organization (ILO). These IGOs are unable either to establish and enforce the content of such a regime definitively, or to effectively mediate the conflicting interests of sending and receiving states and successfully coordinate their actions. The IOM lacks a normative mandate and is

²² Quoted in: Ryszard Cholewinski, "International Labour Migration," in *Foundations of International Migration Law*, ed. Brian Opeskin, Richard Perruchoud and Jillyanne Redpath-Cross (New York, NY: Cambridge University Press, 2012).

²³ Shue, *Basic Rights*.

²⁴ Chetail, "Sources of International Migration Law."

²⁵ In favor, see: Bimal Ghosh, ed, *Managing Migration: Time for a New International Regime?* (New York: Oxford University Press, 2000). Andres Solimano, *International Migration in the Age of Crisis and Globalization: Historical and Recent Experiences* (New York, NY: Cambridge University Press, 2010). On this debate, also see: Rey Koslowski, *Global Mobility Regimes* (Palgrave Macmillan, 2011).

sometimes viewed as an organization “for hire” to major receiving countries.²⁶ The unwillingness of the IOM to challenge the status quo makes it an unlikely actor to lead in establishing a future migration regime. The WTO has had some success in facilitating the temporary movement of skilled workers through GATS Mode 4 but is unable to reach a similar agreement for semi- or unskilled workers which might aid sending countries and the global poor.²⁷ The ILO has had relatively more success by focusing on its decent work framework which is largely compatible with a human rights approach, though it also has had difficulties in extending this framework to migrant workers.

If the UN system is unable to form and lead an international migration regime, there is also a great deal of skepticism regarding the ability to create such a beast outside of the major existing multilateral framework. Koslowski argues that migration is not amenable to a global regime for three interrelated reasons. First, destination states have no incentive to join such a regime as low-skilled labor is abundant and can be obtained on advantageous terms through unilateral and bilateral measures. Second, there is little scope for reciprocity between migrant sending and migrant receiving states. Third, and largely as a result of the first and second, there is no leadership from a state of sufficient weight internationally to build an international regime.²⁸ Hatton focuses on the lack of reciprocity, stressing that international migration is game of absolute, not comparative, advantage, making multilateral cooperation extremely difficult.²⁹

It seems the likelihood of establishing an international institution with global reach on migration issues is vanishingly small. Yet, as was argued above, a unilateral framework is also inappropriate as human rights obligations are divided between sending and receiving countries. A

²⁶ C.f. Ishan Ashutosh and Alison Mountz, "Migration Management for the Benefit of Whom? Interrogating the Work of the International Organization for Migration," *Citizenship Studies* 15, no. 1 (2011).

²⁷ C.f.: Julia Nielson and Daria Taglioni, "A Quick Guide to the Gats and Mode 4," in *OECD - World Bank - IOM Seminar on Trade and Migration*, 28 (Geneva, Switzerland: 2003). Laura Ritchie Dawson, "Labour Mobility and the WTO: The Limits of Gats Mode 4," *International Migration* 51, no. 1 (2013).

²⁸ C.f.: Rey Koslowski, "Global Mobility Regimes: A Conceptual Framework," in *Global Mobility Regimes*, ed. Rey Koslowski, (New York, NY: Palgrave Macmillan, 2011).

²⁹ Timothy J. Hatton, "Should We Have a WTO for International Migration?" *Economic Policy* (2007).

middle round is needed, a framework within which states can act unilaterally and bilaterally in order to maximize respect for temporary migrants' human rights.

I propose a way of categorizing human rights obligations as they pertain to temporary migrants: human rights can be divided between those that are inherent in citizenship which are the responsibility of the sending state, those that are inherent in the physical body which are the responsibility of the receiving state, and those that fall between systems of responsibility and so require shared responsibility in order to give substantive meaning to the right.

Table 3: Human Rights Obligations under Divided Responsibility Framework

Type	Agent	Definition	Example
Citizenship obligation	Sending country	The obligation to protect and enable those human rights which are inextricably linked to the basic citizens' rights.	Elections and voting UDHR Article 21(3)
Presence obligation	Receiving country	The obligation to protect and enable those human rights which are inextricably linked to the physical body of the rights-owner.	Prohibition of torture UDHR Article 5
Involvement obligation	Joint	The obligation arising from a direct causal link between actions and/or policy in one country and human rights outcomes in the other country.	Social security UDHR Article 22

The sending country has a special relationship with the migrants it sends abroad on the basis of their citizenship. The sending state therefore has a special responsibility, an obligation, to protect the human rights of their citizens, regardless of where they are in the world. Further, as the country of citizenship, they retain the *primary* obligation to protect those human rights for which citizenship is a basic component. We will refer to this as citizenship obligation.

To better understand the citizenship obligation, I first look at the concept of citizenship and its meaning in the world today. Citizenship can be understood as a set of practices and institutions. At its heart, citizenship is membership in a state-based political community. Citizenship is bound up in identity; it is a defined, bounded group with clear insiders and outsiders. To those inside the circle of citizenship, the state extends certain rights and benefits; in exchange the citizen owes a duty of loyalty and respect for the laws of the state. The exact list of citizens' rights varies by state but at minimum includes: the issuance of identity documents (passports); entry into the country and permission to reside and work there; the ability to hold

property on equal terms; political participation to the fullest extent available; and state protection domestically (police), against war and aggression (military); and internationally (diplomatic).

In addition to these practices and institutions, there is also a normative component. Citizenship as a norm is firmly established in the international system today³⁰: states have citizens, citizens have rights and duties. However norms are not static and this one is currently evolving to encompass new demands. Sassen argues that “the changes brought about by globalizing dynamics in the territorial and institutional organization of state authority are also transforming citizenship.”³¹ As the movement of people is increasingly impeded by national borders,³² migrants and human rights advocates are increasingly demanding more effective and just means of regulating the flow of people and apportioning the benefits that correspond with citizenship (versus alien) status. The problem is that “if citizenship is theorized as necessarily national, then these new developments are not fully captured in the language of citizenship.”³³ Citizenship norms must adapt to changing global circumstances.

Citizenship is also intimately intertwined with human rights, which “share similar roots in liberal individualism.”³⁴ Both citizenship and human rights are based in the language of rights and responsibilities. In fact, the limitations of citizenship in ensuring adequate rights protections helped lead to the rise of the international human rights norm as an expanded list of rights, rights-owners, and duty-holders.³⁵ The basic citizens’ rights, listed above, are all considered either

³⁰ I am concerned here with the norm between state actors of citizenship as a means of categorizing the global population. There are also norms of citizenship which refer to the domestic norms regulating how citizens behave and are perceived in a specific state. Bosniak addresses this inward/outward division in: Linda Bosniak, *The Citizens and the Alien: Dilemmas of Contemporary Membership* (Princeton and Oxford: Princeton University Press, 2006).

³¹ C.f. Saskia Sassen, “Incompleteness and the Possibility of Making: Towards Denationalized Citizenship?” *Cultural Dynamics* 21, no. 3 (2009).

³² Neither migration nor national borders are new. What is new is the fact that national borders are policed in such a way as to impede the free flow of people - their movement, settlement and employment. It is only in the post-WWII era that passports have come in to general use.

³³ Sassen, “Incompleteness and the Possibility of Making”.

³⁴ Kate Nash, “Between Citizenship and Human Rights,” *Sociology* 43, no. 6 (2009).

³⁵ David Weissbrodt and Michael Divine, “International Human Rights of Migrants,” in *Foundations of International Migration Law*, ed. Brian Opeskin, Richard Perruchoud and Jillyanne Redpath-Cross, (New York: Cambridge University Press, 2012).

human rights or their logical policy expression. Even the basic fact of having citizenship is itself a human right – every individual has the right to a nationality.³⁶

But while the basic citizens' rights may be human rights, the reverse is not true: not all human rights are citizenship rights. When we look at citizenship obligation, therefore, we have a means of distinguishing its content: citizenship obligation is the duty to protect and enable those human rights which are inextricably linked to the basic citizens' rights (nationality, passport, entry, property, political participation, and physical security). Further, the sending country, as the country of citizenship, is the only agent positioned to *fulfill* the full substantive content of these rights, thus they retain the primary obligation to act.

Yet, as not all rights are citizenship rights, citizenship obligation does not adequately protect the full set of human rights for temporary migrants. In order to ensure that temporary migrants have access to and protection of their human rights, we must go further.

The receiving country has a special relationship with all of the individuals in its physical territory, including temporary migrants. The receiving state therefore has an obligation to protect the human rights of its residents simply on the basis of their presence and regardless of their legal status. Further, as the country of residence, they retain the *primary* obligation to protect those human rights for which physical presence is a basic component. I will refer to this as presence obligation.

The basic fact of physical presence is a simple geographic circumstance. However, that geographic circumstance becomes more complicated when we examine the related circumstances needed to make the individual's physical presence safe, secure and sustainable. First, physical integrity depends on the indispensable human ability to think, to hold an opinion, and to act on that opinion. Physical presence assumes personal autonomy. And, as will be discussed in greater detail below, the need for basic education is a necessary corollary of

³⁶ "The Universal Declaration of Human Rights." See also: Mirna Adjami and Julia Harrington, "The Scope and Content of Article 15 of the Universal Declaration of Human Rights," *Refugee Survey Quarterly* 27, no. 3 (2008).

personal autonomy and the ability to think and hold an opinion. Second, the individual's physiological needs, such as clean water, adequate diet, shelter, and rest, must be met. Physiological needs also include reproduction and sexual needs, but must also incorporate protection against gendered discrimination and sexual violence. For these physiological needs to be sustainable, the individual will need access to further essentials such as medical care, healthy working conditions, freedom of movement within the country, and property rights. Finally, physical presence demands security from physical attack, whether due to crime or war or state violence. And for security from attack to be sustainable an appropriate level of policing and legal guarantees, neither too strong nor too weak, must be in place.

Presence obligation is based on the fact that some human rights are inherently linked to the physical body of an individual. These factors – autonomy, physiology and security – form the basis of a secure and sustainable physical presence and, therefore, the basis of the presence obligation.

As with citizenship, physical presence has an intimate link with human rights. Human rights are theorized as rights inherent in the individual on the basis of their humanity. Physical integrity, in terms of bodily security, personal autonomy, and self-determination are at the core of the human rights mission. But not all human rights are tied to physical presence. When we look at presence obligation, therefore, we have a means of distinguishing its content: presence obligation is the duty to protect and enable those human rights which are necessary to needed to make the individual's physical presence secure and sustainable, ensuring his mental and physiological needs as well as his physical safety.

Not all human rights are based on the physical body of the individual. In the same way that citizenship obligation does not adequately protect the full set of human rights for temporary migrants, neither does presence obligation protect the full set. In fact, there remains a significant set of human rights and obligations that remain unaccounted for by either citizenship or presence. In order to ensure that temporary migrants have access to and protection of their human rights, we must go further.

Up until this point I have drawn a very definitive distinction between sending and receiving countries, between the country of citizenship and that of physical presence. But migrants lead transnational lives. The very content of some rights spans national borders. These are human rights that derive from humans' social nature; they are based in the networks, intimate or widely drawn, that humans are inevitably, necessarily involved in. Where these networks span borders, policy in one country may significantly impact human rights outcomes in another. Returning to the idea of the increasing causal links, we can say that these transnational networks' effect on human rights create an additional "special relationship" which involves sending country, temporary migrant, and receiving country together. Returning to Pogge's contention that involvement intensifies obligation, we can say that on the basis of this involvement both sending and receiving countries together take on additional obligations. I will refer to this as "involvement obligation."

Involvement is based on the premise that humans, as a social creatures, forms networks that are necessary for a life of dignity. These networks each have a set of values, norms and institutions which structure patterns of behavior and interaction, facilitating communal action. The networks which humans are inevitably, necessarily involved in include family, associations of various types (recreational, unions, political parties, etc.), and various levels of society (local communities, cultural groups, national groups). However, in the case of temporary migrants, not all of these networks can be confined within the borders of any given state. The transnational character of the temporary migrant's life – with childhood, family, and retirement largely confined to one state and the productive years and activities either confined to a different state or split between them – splits families and social groups. Further, as a migration corridor strengthens, culture and society may take on a significant transnational dimension reflecting migration between two specific countries as a patterned behavior with its own set of values and institutions. Sending and receiving countries are inevitably intertwined as the substance of these networks inherently bridge national borders.

Humanity's social nature of is intertwined with the human rights agenda. Donnelly points out that, though human rights as they are laid out in the UDHR and the Covenants are conceived

and phrased in terms of individual rights, “the very ideas of respecting and violating human rights rest on the idea of the individual as part of a larger social enterprise.”³⁷ Human rights largely regulate the minimum conditions upon which the individual enters various types of human communities – political, economic, and social – which allow him to create a life of human dignity.³⁸

However, the idea that these community networks might span national borders is not well represented in the existing human rights framework. While human rights as they are established in practice today envision the individual as part of families, political parties, unions, associations, ethnic and cultural groups, and nations, they do not envision the individual as a member of a group that is larger than the state or that transcends state borders. Yet the human rights of international migrants necessarily span national borders. Involvement obligation, corresponding to this limited set of rights, includes issues that are of immediate impact in the lived experience of those migrants. These include most social rights including social security and protections of the family. For these rights to have substantive meaning in a migrant’s transnational life, they must function across borders.

Neither citizenship nor physical presence as a source for human rights obligations is particularly controversial; most human rights approaches are based in either one or the other. What is novel is the fact that I accept both, allow the corresponding obligations to be assigned to different countries, and have identified some rights which do not fall under *either* set of obligations. This work goes one step further, arguing that a significant set of temporary migrants’ substantive rights remains unaddressed by either citizenship or physical presence. These rights are not based in citizenship rights nor are they inextricable from the physical body. Instead they are transnational.

³⁷ Jack Donnelly, *Universal Human Rights in Theory and Practice*, 3rd ed. (Ithaca, NY: Cornell University Press, 2013): p. 30-31.

³⁸ This is distinct from group rights, where the right is held by the group as a corporate entity. Instead, the right is held by the individual as a single member of a group.

Involvement obligation, then, is the duty to protect and enable these rights that necessarily span borders in the lives of temporary international migrants. Further, as the content of these rights spans borders, both the sending and receiving countries are involved and they retain a joint obligation to act to fulfill the substantive content of these rights.

Mapping Obligations with the UDHR

We often hear that rights have “corresponding” duties or obligations. However, the content of these duties is often left unexplored, assuming that state responsibility is a relatively uncomplicated matter of (lack of) will to enforce. However, with the growing importance of transnational forces, temporary international migration foremost among them, this simplifying assumption no longer holds for millions of people. The previous section described the nature and content of three categories of human rights obligations: citizenship, presence, and involvement. With this deeper understanding of the obligations in play, we can now explore how they correspond to the list of human rights acknowledged in the UDHR.

Framing Human Rights

The UDHR specifies some rights that frame the international human rights agenda. Without them the structure of the human rights system in the international community would not function. First, the first two Articles of the UDHR specify that all individuals are free and equal in rights and that everyone is entitled to all rights without discrimination. These two rights are essentially definitional to human rights: for a right to be *human*, recognized on the basis of the humanity of the individual and for no other reason, rights must be granted to free and equal individuals without discrimination. As such, these two rights are inseparable from all other human rights. All duty-holders retain an obligation to provide these rights as they cannot provide any other rights as human rights unless and until they fulfill the rights to free and equal rights and nondiscrimination. This applies equally to citizenship, presence, and involvement obligation.

Second, the final two Articles of the UDHR include allowable limitations (Article 29) and a salvatory clause (Article 30) stipulating that nothing within the UDHR should be interpreted as to allow actions which would contravene any of the rights it specifies. These types of clauses are fairly standard in treaty law, allowing treaty terms to function despite imperfections in the real world.

They are necessary for the overall strength of the UDHR and, as such, apply equally to citizenship, presence, and involvement obligation.

Citizenship

As argued above, the exact list of citizens' rights, as distinct from human rights, varies by state but at minimum includes: the issuance of identity documents (passports); entry into the country and permission to reside and work there; the ability to hold property on equal terms; political participation to the fullest extent available; and state protection domestically (police), against war and aggression (military); and internationally (diplomatic representation). Citizenship obligation is the duty to protect and enable those human rights which are inextricably linked to these basic citizens' rights; the country of citizenship retains the obligation to act to protect and fulfill these human rights for its citizens, even when they reside abroad.

These aspects of citizenship can be mapped with the human rights specified in the UDHR in a fairly straightforward, direct manner. To quickly summarize: Citizenship begins with the right to a nationality, Article 15 of the UDHR. The right to entry is protected in Article 13 (2); to reside in Article 13 (1); and to work in Article 23 (1).³⁹ The right to hold property is specified in Article 17 and rights to political participation in Article 21. The right to state protection does not have a one to one corollary. However, protection is the focus of Article 3 and protection against the overreach of the state security apparatus is protected in Articles 5 through 11. The ultimate protection against the overreach of the state is the freedom of movement and the right to exit the country (Article 13). These articles of the UDHR are directly related to citizenship obligation.

There is a further set of rights specified in the UDHR, however, that are indirectly related to citizenship obligation.⁴⁰ These rights are necessary in order to give substantive content to the direct rights. In particular, the right to political participation is an empty concept if the individual is

³⁹ The right to work is discussed in greater detail below. This section refers only to the most basic right to have work sufficient to support an adequate standard of living. All other work-related rights are better understood as related to presence or involvement obligation.

⁴⁰ In labeling these rights "direct" and "indirect" I do not intend nor desire any connotation that I consider one set of rights to be more or less important. I am merely attempting to characterize the relationship between the citizenship obligation and human rights as they are organized in the UDHR, not reflecting on the character or content of the rights themselves.

unable to freely engage in political thought, to express political opinions, and form political groups to represent her interests. These needs are reflected in the right to assembly and association (Article 20), the right to opinion, expression, and religion (Article 19), and the right to freedom of thought, conscience, and religion (Article 18), respectively. Similarly, the right to privacy is an important basis for state protection and for protecting against the overreach of the state security apparatus. The right to privacy is protected in Article 12 of the UDHR. Cumulatively these rights specify the domain of the individual within which the state should not intervene, and ensure that the individual is able to form non-state groups to protect his physical and political interests.

A Closer Look at Property Rights: Article 17

The right to property is contentious within human rights agenda.⁴¹ The existence and appropriate extension of property rights is an area of significant debate, including issues such as: the (moral) limits of accumulation, intellectual property rights, organs and tissues as property, cultural property, communal and corporate property ownership, squatting and slums, the relation of labor rights to property rights, etc. In fact, even the basic existence of a right to own property may be contested; the right to property, though enshrined in the UDHR, is not included in either the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights. But if it is to be reconciled with the larger human rights agenda, it must be understood as applying first to the body of the individual. Property rights as human rights begin with Locke's premise that the individual owns himself and his labor and has the right to profit from his labor. However, property rights as human rights can only be extended to other possessions in a limited way, with the understanding that possession may be limited in the common good and that the right to property cannot justify the neglect or abuse of other human rights.

⁴¹ The full ramifications of this debate are beyond the scope of this work. This work will confine itself to the basic idea of property rights as the right of an individual to own himself and his labor as well as the prohibition of arbitrary confiscation of possessions. John Locke, "The Second Treatise (1690)" in *The Human Rights Reader*, ed. Micheline Ishay (New York, NY: Routledge, 2007).

A Closer Look at the Right to Work: Article 23 (1)

The right to work is viewed skeptically by many.⁴² It is the right to freely engage in chosen economic activity in order to earn a minimum standard of living. The right to work places an obligation on state actors first to refrain from denying access to work or impeding individuals from choosing their desired work. This negative obligation generally does not pose a concern, though it may sometimes bump up against local licensing or educational requirements that impose barriers to entry into some professions, from medical doctors to beauticians. And, indeed, the right to work is primarily realized by individuals through their economic activity and the state's primary obligation is to respect and protect this activity.

However, when posed as a positive obligation – that the state has an obligation to ensure that there are sufficient jobs available for all or provide opportunities to those who cannot find work – the right to work becomes very contentious indeed. In order to adequately fulfill this right a state will need to take measures to ensure adequate employment opportunities. This means ensuring education and training as well as job-creation policies to encourage steady, full employment. This is a far more onerous, and far less implemented, interpretation.

This positive vision of the right to work, and the corresponding obligation for the state to fulfill (versus respect or protect) this right by ensuring employment opportunities, is best viewed as a citizenship obligation. The right to work is not inherent in physical presence; we do not ask that states extend the right to work to foreign tourists or students, for example. However, it is generally understood that citizenship entails the right to enter one's country in order to reside and work there. The state does not require citizens to obtain residence or work permits; these are benefits extended to citizens as a matter of course. Placing this citizenship right in the context of human rights extends the negative obligation that the state not prohibit or unnecessarily impede

⁴² For an overview, see: Jeremy Sarkin and Mark Koenig, "Developing the Right to Work: Intersecting and Dialoguing Human Rights and Economic Policy," *Human Rights Quarterly* 33 (2011). Guy Mundlak, "The Right to Work: Linking Human Rights and Employment Policy," *International Labour Review* 146, no. 3-4 (2007).

work to also include the positive obligation to actively seek to ensure that employment opportunities meet the level of demand for work.

The problem is that for major migrant sending states, the promotion of international migration is exactly the state's solution to the problem of high unemployment. Rather than creating jobs at home, states like the Philippines specialize in identifying opportunities, training workers, and exporting their citizens for employment abroad. Migration as a labor policy clearly does not meet the state's obligation with regard to its citizens' right to work. While labor migration is an acceptable strategy for individuals to utilize to seek better opportunities, states cannot simply export their human rights obligations.

Facilitating labor migration may respect (not deprive) an individual's right to work; however it cannot be said to help the state protect (ensure that third parties also respect) or fulfill (to provide what is necessary) that right. It fails to protect against third party deprivation as the sending state is generally unable to extend the reach of its labor law beyond its own borders meaning that rights-holders will be unable to make effective claims against the obligation holder in the event of a rights violation. It fails to fulfill the right to work as creating access to international movement is not the same thing as creating access to work. The state retains ultimate responsibility for the creation of adequate employment structures; while it may be able to delegate this obligation to the local level, it cannot delegate to another state over which it has no sovereign authority. International labor migration does not transfer the obligation associated with the right to work, *per se*, to the receiving country.

However, once an individual has been admitted to a foreign country and granted permission to work (usually by means of a work permit), the remaining work-related human rights must apply: choice of employment, just working conditions, equal pay, and just remuneration (Article 23), and rest and leisure (Article 24). These aspects of the right to work are properly understood as ensuring the safe, healthy, and sustainable physical presence of the individual. The receiving country also assumes some responsibility for the future un/employment of this individual by virtue of the state's (voluntarily assumed) involvement. Thus we can say that

protection against unemployment (Article 23 (1)), is an involvement obligation requiring coordinated action between both sending and receiving countries.

Presence

As was established above, presence obligation is based on the fact that some human rights are inherently linked to the physical body of an individual. First, physical presence assumes personal autonomy, to think and act as an autonomous being, and the need for basic education. Second, the individual's physiological needs, such as clean water, adequate diet, shelter, and rest, must be met. For these physiological needs to be sustainable, the individual will need access to further essentials such as medical care, healthy working conditions, freedom of movement within the country, and property rights. Second, physical presence demands security from physical attack, whether due to crime or war or state violence. And for security from attack to be sustainable an appropriate level of policing and legal guarantees, neither too strong nor too weak, must be in place. Presence obligation is the duty to protect and enable those human rights which are necessary to needed to make the individual's physical presence secure and sustainable, ensuring his physiological needs as well as his physical safety. The country where the individual is physically present, the receiving country of international migrants, retains the primary obligation to act to protect and fulfill these rights.

These aspects of physical presence can be mapped with the human rights specified in the UDHR in a fairly straightforward, direct manner. Physical autonomy is reflected in Articles 18 and 19. The right to education is established in Article 26. Physiological needs - such as clean water, adequate diet, shelter, and rest – are protected in Articles 24 and 25 (1). Medical care is also included in Article 25 (1). Working conditions are specified in Article 23, and property rights in Article 17. Protection against physical harm is guaranteed by Articles 3, 4, and 5. Legal guarantees are laid out in Articles 6 through 11. Again, the ultimate protection against the overreach of the state is the freedom of movement and the right to exit the country (Article 13); for receiving states, this is also supplemented by the right to claim asylum from political persecution in the sending country (Article 14).

As with citizenship, there is a further set of rights specified in the UDHR that are indirectly related to presence obligation in order to give substantive content to the direct rights already enumerated. In particular, the right to work and to favorable working conditions are empty concepts without the right to freedom of assembly and association (Article 20) and the right to unionize (Article 23). Similarly, the right to privacy is an important basis for personal autonomy, as well as for protecting against the overreach of the state security apparatus. The right to privacy is protected in Article 12 of the UDHR.

A Closer Look at the Right to Education: Article 26

The right to free and compulsory primary education for temporary migrants is complicated by the fact that primary education is not just about teaching literacy and basic math skills. Primary education serves a socializing function and may have significant impact on students' value structures. This is often utilized by states to encourage desired civic (and moral) traits. So the sending state has a stake in the education of its citizens abroad, as does the receiving state in the education of individuals within its territory. Is education, then, a case of entanglement between the sending and receiving countries, resulting in involvement obligation – the obligation that the two countries work together to create a functioning transnational system? I argue that it is not.

Education influences civic traits, but it equally influences ethical, religious, and cultural values. Education influences patterns of thought, opinion, and expression. It is an influential source of information and an early form of association for young persons. The overwhelming moral weight is in favor of allowing not the state but the individual – or, in the case of minors, their parents or guardians - to choose the ethical and moral content of education. And in fact, in tacit recognition of this socializing function, the UDHR specifies that parents should be able choose the type of education that children receive.⁴³

⁴³ The two Covenants explicitly grants parents' right to choose in order to "ensure the religious and moral education of their children in conformity with their own convictions." Article 18 (4) of the ICCPR and Article 13 (3) of the ICESCR.

And once control over the ethical and moral content of education is placed with the individual/parent, the case for involvement between sending/citizenship and receiving/presence states fades away. In fact, so does the argument that the right to education is tied to citizenship fade away. The only appropriate way to view education, therefore, is as linked to physical presence and as a presence obligation.

Involvement

As argued above, involvement obligation is based on the premise that humans, as a social creatures, forms networks. The networks which humans are inevitably, necessarily involved in include family, associations of various types (recreational, unions, political parties, etc.), and various levels of society (local communities, cultural groups, national groups). The transnational character of the temporary migrant's life – with childhood, family, and retirement largely confined to one state and the productive years and activities either confined to a different state or split between them – splits families and social groups. Sending and receiving countries are inevitably involved, as the substance of these networks inherently bridges their national borders. Involvement obligation, while corresponding to a limited set of human rights, includes issues that are of immediate impact in the lived experience of those migrants. These include social security, protections of the family, and cultural guarantees.

International Order

The state is viewed as the primary actor obligated to respect, protect and fulfill human rights without respect for how this obligation is to be exercised in cases where networks span national boundaries. However in the case of temporary migrants, some rights and their corresponding obligations do span these boundaries. There is one aspect of the UDHR that gives a basis for the internationalization rights and duties. Article 28 of the UDHR: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."⁴⁴

⁴⁴ "The Universal Declaration of Human Rights."

Article 28 was, and remains, aspirational: to create a peaceful international system. The UDHR was written in the post-WWII context and with the intent to contribute to a lasting international peace: “Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”⁴⁵ With the vivid memory of Nazi atrocities, the respect for human rights was envisioned as a means of preventing such violence as must propel nations, peoples to war. If a lack of rights and freedoms might compel conflict, then every individual’s ability to live free and secure in his rights depends on the ability to create a peaceful international system and every state has an obligation to cooperate in realizing this aim.

Yet, as has been argued above with respect to human rights obligations, increased involvement means increased obligation. Human rights in general place obligations on all states to create a global order that facilitates the exercise of human rights. But where interactions between states are more frequent, intensive, or patterned, the resulting obligation is more morally pressing. In issues of human rights which no state can hope to achieve unilaterally, the primary obligation is held not by one state, but by multiple states in cooperation. This is the basis of what I have termed involvement obligation. Article 28 gives this type of international cooperation a footing in the UDHR. Human rights may be viewed as a global public good. And as the world grows more globally interconnected, the need for a cooperative, rights-respecting international order also grows. Article 28 is increasingly relevant as the international system grapples with increasing international flows such as international migration.

Family

With regard to protections for marriage and the family (Articles 16 and 25(2)), the original draft of the UDHR would have protected only “the right to contract a marriage in accordance with the laws of the state.”⁴⁶ Its expansion into what would become Article 16 of the UDHR

⁴⁵ Ibid, Preamble.

⁴⁶ Humphrey Draft, included as appendix 1 in: Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York, NY: Random House, 2001).

acknowledges the fundamentally social nature of humans, but also reified a particular conception of “family” as the “natural and fundamental group unit.”⁴⁷ The concept of the “traditional conjugal family” has expanded under international human rights protections to date in order to incorporate broader women’s rights, reproductive rights, sexual orientation rights, and others.⁴⁸

Today we also need to broaden our conception of the family to acknowledge the transnational character of migrant families.⁴⁹ The UN Commission on Human Rights addressed this need in Resolution 2001/56 which encourages states to promote and facilitate family reunification and remittances and “*encourages* States of origin and of destination of migrants to consider the adoption of bilateral or regional strategies aimed at protecting the human rights of migrants and their families.”⁵⁰ The need to make more money to support their families is one of the primary drivers of low-skilled labor migration and typically 10 to 20 percent of the migrant’s income is remitted to their families in the sending country.⁵¹ At the same time, family (as well as social, ethnic and other networks) often play a role in the decision to migrate and in determining the country of destination. The result is a family that is inherently transnational, split between at least two countries, sending and receiving.

Moreover, mothers and children are increasingly split as migration “feminizes.”⁵² About half of migrants are women. The percentage of women migrants has not changed dramatically in the past forty years, but the reasons why women migrate have: a higher percentage of women

⁴⁷ “The Universal Declaration of Human Rights,” Article 16.

⁴⁸ Daniel Cere, “Human Rights and the Family,” *Academic Questions* 22 (2009). See also: Nicholas N. Kittrie, “Family Protection and Human Rights: Complementary Objectives or Collision Course?” *International Journal on World Peace* 15, no. 2 (1998).

⁴⁹ C.f. Catherine Locke, Janet Seeley and Nitya Rao, “Migration and Social Reproduction at Critical Junctures in Family Life Course,” *Third World Quarterly* 34, no. 10 (2013). Celia J. Falicov, “Working with Transnational Immigrants: Expanding Meanings of Family, Community, and Culture,” *Family Process* 46, no. 2 (2007).

⁵⁰ “Protection of Migrants and Their Families,” United Nations Commission on Human Rights, 2001/56, E/CN.4/RES/2001/56.

⁵¹ Solimano, *International Migration in the Age of Crisis and Globalization*.

⁵² “The feminization of migration” was coined by: Guy Standing, “Global Feminization through Flexible Labor,” *World Development* 17, no. 7 (1989). See also: Zuhail Yesilyurt Gündüz, “The Feminization of Migration: Care and the New Emotional Imperialism,” *Monthly Review* 65, no. 7 (2013). Nicola Piper, “Feminization of Migration and the Social Dimensions of Development: The Asian Case,” *Third World Quarterly* 29, no. 7 (2009).

migrate for economic opportunities today, a lower percentage for family reunification.⁵³

Ehrenreich and Hochschild famously exposed a “global care chain” in which women migrate to provide for their families by working abroad as care workers such as “nannies, maids, and sex workers,” leaving their own children to be raised by grandmothers or aunts.⁵⁴ This represents a “globalization of women’s traditional role” which increases the demand for female migrant care workers and disproportionately shifts the burden of global reproductive work onto women from the global south.⁵⁵ In this context the protection of motherhood and childhood (Article 25(2)) take on greater transnational dimensions.

Effective protections for transnational families require sending and receiving countries to work together to ensure that families, especially parents and children, are able to maintain strong affective ties despite prolonged physical separation. The sending country is *involved* in family welfare of its citizens abroad, because significant elements of this family typically remain in the home country, particularly dependent minors and elderly parents. The receiving country is *involved* in family welfare because temporary contract migrants are typically working in the receiving country to provide for these dependents. Policies created and implemented in one country will have a direct impact on outcomes in the other, creating a causal link between receiving country policy and human rights outcomes in the sending country.

In practice, the opportunities for cooperation are many. There is a need to streamline procedures to enable access to and registration of marriages and their dissolution across international borders such that a marriage, annulment, or divorce obtained legally in one country is recognized in another. Births and deaths also would benefit from streamlined processing. Pregnant women commonly face disadvantages in the recruitment and hiring process; in places

⁵³ Nancy V. Yinger, *Feminization of Migration*, Population Reference Bureau, 2006, accessed May 9, 2015, <http://www.prb.org/Publications/Articles/2006/TheFeminizationofMigration.aspx>.

⁵⁴ Barbara Ehrenreich and Arlie Russell Hochschild, *Global Woman: Nannies, Maids, and Sex Workers in the New Economy* (New York, NY: Metropolitan Books, 2003).

⁵⁵ Teal Kristen Rothschild, "Feminization of Migration," *Encyclopedia of Gender and Society* (2009), accessed February 14, 2014. http://0-search.credoreference.com.bianca.penlib.du.edu/content/entry/sagegs/feminization_of_migration/0.

such as the UAE and Taiwan⁵⁶ women are given pregnancy tests as part of their physical examination upon applying for employment visas and will be repatriated if they are found to be pregnant. There is a need for sending countries to review family reunification policies to expand them to the greatest extent practicable. For those who are not eligible for family reunification, or during the waiting period for those that have applied, sending and receiving countries must ensure that families nonetheless have access to sufficient means of communication and periodic travel in order to maintain familial ties.

Social Security

Social security (Articles 22 and 25) involves both sending and receiving countries as the productive phase of life, which would normally fund the non-productive phases (both young and old), is often spent in a different country than the nonproductive phases. Again, policies created and implemented in one country will have a direct impact on outcomes in the other, creating a causal link between receiving country policy and human rights outcomes in the sending country.

Migrant sending countries, often lower income developing countries, may find themselves with insufficient resources to provide basic social security. Collecting taxes from workers overseas is one option, though levying high taxes on income earned abroad is unpopular, especially as migrants are already liable for many taxes levied by the host country. Receiving countries, alternatively, tend to increasingly restrict migrants' access to social security in hopes of reducing the costs of migration to the state as well as discouraging "welfare migration."⁵⁷ The result is that migrants fall through the cracks, offered inadequate social security protections by either sending or receiving state.

⁵⁶ Yen-fen Tseng and Hong-zen Wang, "Governing Migrant Workers at a Distance: Managing the Temporary Status of Guestworkers in Taiwan," *International Migration* 51, no. 4 (2013).

⁵⁷ This is not to ignore the importance of south-south migration; Sabates-Wheeler and Feldman point out that south-south migrants "enjoy much lower increases in income, are more likely to be irregular migrants, are subject to greater risks of exploitation and are more likely to be expelled than those who migrate from developing countries to industrial countries." From: Rachel Sabates-Wheeler and Rayah Feldman, "Introduction: Mapping Migrant Welfare onto Social Provisioning," in *Migration and Social Protection: Claiming Social Rights Beyond Borders*, ed. Rachel Sabates-Wheeler and Rayah Feldman (New York, NY: Palgrave Macmillan, 2011): p. 10.

For the sending country, failure to plan for migrants' eventual return reduces the substantive content of the individual's human right to return. To say that an individual has the right to return at the end of their working career, but without having access to basic social rights such as unemployment, sickness, disability and old age protections, may make this a non-choice.

Major sending states have an additional source of obligation. States are obliged to make social security provisions "in accordance with the organization and resources of each state," (Art. 22).⁵⁸ Where the state is organized to facilitate migration and where the state gains a significant amount of resources from migrants, this should be taken into consideration. For major sending states, there is no excuse for failing to provide functioning social security systems for migrant citizens.

For the receiving country, the obligation derives from the migrant's participation in society and, for unemployment security specifically, in the workforce. Even where unemployment, sickness, disability, family status or age are legal reasons to end migrants' status, the obligation remains. A receiving state cannot simply export the obligation, forcing the receiving state to shoulder a disproportionate share of the burden of insuring against risk. Deportation or repatriation of migrants because they need social aid but without ensuring that social needs can be met by the migrant in the sending country or working to support migrants' social security in the long term effectively strips social rights of their substantive content. This onus is particularly stark in cases where the receiving state has collected taxes from migrant populations which would normally go to fund social security programs.

Sabates-Wheeler and Feldman argue: that social protection for migrants has four components:

- (i) access to formal social protection – that is, social security and social services – in host and origin countries; (ii) portability of vested social security rights between host and origin countries; (iii) labour market conditions for migrants in host countries and the employment recruitment process for migrants in the origin

⁵⁸ "The Universal Declaration of Human Rights," Article 22.

country; and (iv) access to informal networks to support migrants and their family members.⁵⁹

It is significant that each of these four elements is transnational in character. Access to social security that serves migrants requires arrangements that function internationally. Portability, contract standardization, legal guarantees and enforcement are major elements where bilateral or multilateral cooperation is required.

Culture

Article 27 of the UDHR establishes the human right “participate in the cultural life of the community,” including the arts and scientific progress. Culture, however, is a broad concept that is not defined in the UDHR. The exact meaning of culture and the appropriate content of cultural rights is continually shifting. At minimum, though, cultural rights protect the right to information, language, and education that are in keeping with cultural values; participation in handicraft and local economic forms; access to research activities and outcomes; as well as cultural practices.

Cultural rights are significant. They protect core aspects of an individual's identity. Culture, and cultural rights, patterns thought, speech, action, and production. This is expressed individually (cultural identity) and as a group (cultural community). However, the UDHR vests these rights in individuals, not the cultural community as a whole. The right to participate in cultural life is primarily realized by individuals through their culturally-oriented activity and the state's primary obligation is to respect and protect this activity. The obligation to fulfill cultural rights consists of the duty to ensure that the opportunities for such engagement and action are available to all.

In the case of international migrants, therefore, we must look at access to opportunities for cultural engagement and activity. The problem is that migrants are often seen to have given up their cultural claims when leaving their country of origin, yet are often viewed as outsiders from the perspective of their host country's local cultural community.⁶⁰ Sending countries are more

⁵⁹ Sabates-Wheeler and Feldman, “Introduction: Mapping Migrant Welfare onto Social Provisioning,” p. 21.

⁶⁰ C.f.: Rainer Baubock, “Cultural Minority Rights for Immigrants,” *International Migration Review* 30, no. 1 (1996).

likely to recognize the continuing importance of cultural rights (for them, cultural expressions and transnational cultural involvement keeps the diaspora involved and so the remittances flowing in), but they face steep challenges to continuing community engagement from a distance, especially without receiving country support. In contrast, receiving countries are likely to view migrant cultural expressions as a threat to domestic unity; temporary migrants are may be viewed as outsiders and long-term or permanent residents as needing to assimilate. Receiving states are unlikely to prioritize the rights of minority migrant groups when they conflict with the interests of the majority national group.

From the perspective of the migrant cultural community is a transnational concept. Temporary migrants can claim engagement in three cultures. They remain involved in the home country culture due to heritage, formative experiences, continuing lifestyle and family ties, and/or the intent to return. They become involved in the culture of the receiving country due to immersion in the host community on a daily basis. Finally, where migration flows are strong, a particular “culture of migration” may also form where the experience of migration (either self or close family member) patterns a community’s thoughts, speech, actions, and modes of production. The Philippines is often given as a primary example of the culture of migration.⁶¹

Policies created and implemented in one country will have a direct impact on outcomes in the other, creating a causal link between receiving country policy and human rights outcomes in the sending country. With cultural rights as with other involvement rights and obligations, the greater the migration flow, the greater the involvement, the greater the primacy of the corresponding obligation to cooperate to ensure that migrants can enjoy the right in question.

In practice, there are many opportunities for cooperation. Traditional vehicles of home country community include hometown associations, but may also include a variety of cultural practices. Professional associations, schools, clubs, even holiday observance all play a role. Host

⁶¹ Maruja M.B. Asis, "The Philippines' Culture of Migration," *Migration Information Source* (2006), accessed July 23, 2014, <http://www.migrationpolicy.org/article/philippines-culture-migration>.

country policies need to be aware of and allow space for these associations and activities. But the most significant issue is the vexed question of integration and assimilation. Much of the existing literature on migration and cultural rights looks regular migrants; with the possibility of long-duration stays, perhaps permanent, the state often pushes for migrant integration, threatening cultural identity. With temporary migration the reverse may be the case: knowing that migrants will inevitably exit, the state may resist migrant modifications to the local cultural structures, including the incorporation of home country or transnational cultural forms.

Indirect

As with citizenship and physical presence, there is a further set of rights specified in the UDHR that are indirectly related to citizenship obligation. These rights are necessary in order to give substantive content to the direct rights. In particular, the rights to family and culture are empty concepts if the individual is unable to freely engage in freedom of thought, expression, and assembly groups to represent her interests. These needs are reflected in the right to freedom of thought, conscience, and religion (Article 18), the right to opinion, expression, and religion (Article 19), and the right to assembly and association (Article 20), respectively. Similarly, the right to privacy is an important basis for family life and for protecting against the overreach of the state security apparatus. The right to privacy is protected in Article 12 of the UDHR.

Summary of the UDHR

Table 4: Rights, Obligations, and the UDHR

Human right specified in the UDHR		Citizenship	Presence	Involvement
Article 1: Innate freedom and equality		Framing	Framing	Framing
Article 2: Nondiscrimination		Framing	Framing	Framing
Article 3: Life, liberty and security of person		Direct	Direct	
Article 4: Ban on slavery			Direct	
Article 5: Ban on cruel, inhuman or degrading punishment		Direct	Direct	
Article 6: Recognition as a person before the law		Direct	Direct	
Article 7: Equal protection of the law		Direct	Direct	
Article 8: Effective judiciary		Direct	Direct	
Article 9: Ban on arbitrary arrest, detention or exile		Direct	Direct	
Article 10: Fair and public trial		Direct	Direct	
Article 11: (1) Innocent until proven guilty, (2) prohibition of ex post facto charges and penalties	1:	Direct	Direct	
	2:	Direct	Direct	
Article 12: Privacy; ban on interference in family, home, correspondence and reputation.		Indirect	Indirect	Indirect
Article 13: (1) Freedom of movement and residence within any country (2) exit any country and return to own country	1:	Direct	Direct	
	2:	Direct	Direct*	
Article 14: (1) Asylum, (2) limits asylum to persecution for political acts	1:		Direct	
	2:		Direct	
Article 15: (1) Nationality, (2) Ban on revoking nationality or preventing changes of nationality	1:	Direct		
	2:	Direct		
Article 16: (1) Marriage with equal rights, (2) free and full consent before marriage, (3) family is entitle to protection by society and the state	1:			Direct
	2:			Direct
	3:			Direct
Article 17: (1) Property, (2) Prohibition of arbitrary deprivation of property	1:	Direct	Direct	
	2:	Direct	Direct	
Article 18: Freedom of thought, conscience and religion		Indirect	Direct	Indirect
Article 19: Freedom of opinion, expression, and information		Indirect	Direct	Indirect
Article 20: (1) Peaceful assembly and association, (2) Ban on forced association	1:	Indirect	Indirect	Indirect
	2:	Indirect	Indirect	Indirect
Article 21: (1) Take part in government of own country, (2) equal access to public service in own country, (3) Elections with universal suffrage	1:	Direct		
	2:	Direct		
	3:	Direct		
Article 22: Social security				Direct
Article 23: (1) Work, choice of employment, just working conditions, protection against unemployment, (2) equal pay, (3) just remuneration “ensuring for himself and his family an existence worthy of human dignity,” (4) form and join trade unions	1:	Direct**	Direct**	Direct**
	2:		Direct	
	3:		Direct	
	4:		Direct	

Article 24: Rest and leisure, limitation of working hours, holidays with pay			Direct	
Article 25: (1) Adequate standard of living (food, clothing, housing, medical care, social services), (2) social protection for mothers and children	1:		Direct	
	2:			Direct
Article 26: (1) Free and compulsory primary education, (2) education to fully develop human personality, (3) parents choose the type of education for their children	1:		Direct	
	2:		Direct	
	3:		Direct	
Article 27: (1) Free participation in the cultural life of the community, (2) intellectual property	1:			Direct
	2:			Direct
Article 28: Social and international order				Direct
Article 29: (1) Duties to the community, (2) limitations to secure the rights of others, (3) prohibition on actions contrary to the purposes and principles of the UN	1:	Framing	Framing	Framing
	2:	Framing	Framing	Framing
	3:	Framing	Framing	Framing
Article 30: Prohibition of acts to destroy human rights		Framing	Framing	Framing

* In Article 13 (1) only the right to exit is linked to presence obligation.

** In Article 23 (1) only to the right to work is linked to citizenship; choice of employment and just working conditions are linked to presence; protection against unemployment is linked to involvement.

Can Divided Obligations be Exercised Extraterritorially?

So states are obliged. Sending states have citizenship obligation, receiving states have presence obligation, and they share involvement obligation. These obligations correspond to relevant human rights specified in the UDHR. But what, exactly are they obligated to do? Can we envision an extraterritorial jurisdiction over individuals residing and working abroad? In other words, the problem is not simply state-based jurisdictions, but the presumed territoriality of jurisdiction is deeply problematic for migrants.

Presence duties conform to the traditional territorially-based jurisdiction; they present no challenge to state sovereignty. This is a matter of the state acting to protect those within its territorial jurisdiction, as per traditional sovereignty norms. Citizenship duties, however, operate on a different logic: affiliational jurisdiction. To enforce citizenship duties, states claim jurisdiction over citizens regardless of their territorial presence or absence. This challenges the international norm of sovereignty: granting a citizen abroad the ability to participate in politics at home extends the home state's political sovereignty into the sovereign territory of another state. Sending and

receiving state sovereignties collide. Involvement duties go one step further: jurisdiction is shared between two presumably equal agents who must act cooperatively.⁶²

In other words, citizenship, presence, and involvement have fundamentally different logics regarding jurisdiction. Jurisdiction is essentially the license to act. If presence, citizenship, and involvement duties all operate on different jurisdictional logics (respectively: territorial, affiliational, and shared), how can states act in a coordinated, efficient way?

This is not a new question. It is essentially an extension of the question regarding the legitimacy of humanitarian intervention in a sovereign state system. This is an ongoing debate and a full discussion is beyond the scope of this work.⁶³ In summary, what is at issue is the balance of competing international norms: state sovereignty and human rights, non-intervention and peace preservation. International norms emerge, evolve, and fade. The norm of sovereign non-intervention has been dominant but may be weakening, and human rights norms strengthening. I am arguing that in order to extend human rights internationally, these norms need to continue evolving. Part of bringing in temporary migrant workers is assuming the relevant duties for their human rights. This includes ceding some sovereign privileges in favor of cooperation on citizenship and involvement duties.

Conclusion: From Aspiration to Practice

This project looks at the rights of specifically *temporary* migrant workers precisely because human rights advocates often assume that these programs are unable to provide for the human rights of the individual migrants. Many theorists argue that the temporary nature of temporary contract migration schemes is not morally permissible. Carens, perhaps the most well-known, bases his argument on the idea that over time (between five to ten years) social membership gives a migrant, legal or illegal, a moral claim on permanent legal status: "At some point a threshold is crossed, and they acquire a moral claim to have their actual social

⁶² As states are considered the highest unit, and each unit is at least normatively equal in the international system. This ignores de facto underlying power differentials inherent in the sending-receiving country dynamic. This is problematic but an extended discussion of power in the international system as it relates to migration corridors is beyond the scope of this work.

⁶³ See the work of Jack Donnelly, Martha Finnemore, Kathryn Sikkink.

membership legally recognized."⁶⁴ Lenard and Straehle similarly argue that: "we re-describe the 'temporary' element of temporary labour migration programs; the length of stay is not 'temporary', in our view; rather, it is the labour restrictions imposed on migrants who enter on the relevant visas that ought to be 'temporary.'⁶⁵

Bell and Piper concede the point that temporary labor migration programs violate human rights, but point out that ending them would actually lead to a worse outcome for temporary migrant workers. Looking at Singapore and Hong Kong, they argue that the relevant governments are likely to respond to increased rights by drastically reducing opportunities to enter, thus leaving migrants with time limits, no access, or illegal access. They suggest that:

unequal rights between citizens and migrant workers may be justified if this arrangement (a) works to the benefit of migrant workers (as decided by the migrant workers themselves), (b) creates opportunities for people in relatively impoverished societies to improve their lives, and (c) there are no feasible alternatives to serve the ends identified in (a) and (b).⁶⁶

Bell and Piper argue that this is the case in Hong Kong and, more tentatively, Singapore.⁶⁷

Even Martin and Rhus, advocates of temporary labor migration programs as a means of extending labor opportunities, assume that temporary workers "trade" away their rights for an increase in labor mobility.⁶⁸

In contrast, I have argued in this chapter that temporary contract migration can theoretically be conducted in such a way as to fully respect migrants' human rights by

⁶⁴ Joseph H. Carens, "1: The Case for Amnesty," in *Immigrants and the Right to Stay*, ed. Joseph H. Carens (Cambridge, MA: The MIT Press, 2010): p. 18.

⁶⁵ Patti Tamara Lenard and Christine Straehle, "Temporary Labour Migration: Exploitation, Tool of Development, or Both?" *Policy and Society* 29, no. 4 (2010): p. 293.

⁶⁶ Daniel A. Bell and Nicola Piper, "Justice for Migrant Workers? The Case of Foreign Domestic Workers in Hong Kong and Singapore," in *Multiculturalism in Asia*, ed. Will Kymlicka and Baogang He (Oxford Scholarship Online: Oxford University Press, 2005) accessed May 8, 2015, <https://dx.doi.org/10.1093/0199277621.001.0001>.

⁶⁷ Ibid.

⁶⁸ C.f. Philip Martin, "International Labor Migration: The Numbers-Rights Dilemma," in *Global Mobility Regimes*, ed. Rey Koslowsk (New York, NY: Palgrave Macmillan, 2011). Martin Ruhs, "Numbers Versus Rights in Low-Skilled Labour Immigration Policy? A Comment on Cummins and Rodriguez," *Journal of Human Development and Capabilities: A Multi-Disciplinary Journal for People-Centered Development* 11, no. 2 (2010). Martin Ruhs and Philip Martin, "Numbers Vs. Rights: Trade-Offs and Guest Worker Programs," *International Migration Review* 42, no. 1 (2008).

appropriately apportioning human rights obligations on both the state of citizenship as well as the state of presence. The question then becomes: how do we move these normative aspirations into the real world?

The remainder of this dissertation looks at one particular case study in depth: the Philippines-UAE migration corridor. Here let me begin by saying that temporary contract migration as it is currently practiced in the UAE violates nearly every principle of human rights respecting migration programs. Labor recruiting and contracting issues are distressingly common, sometimes rising to the level of forced labor. Conditions are particularly bad for construction workers due to their housing in labor camps and for domestic workers who are not covered under the country's labor laws. But all workers are vulnerable to widespread, systematic violations such as passport confiscation, long hours without overtime compensation, verbal abuse, unequal pay with systematic disparities on the basis nationality, and/or extremely low pay below a living wage.

The UAE's record on respecting the human rights of temporary contract workers is woeful. Yet despite its shortcomings, millions of temporary contract laborers continue to pour into the country to fill positions at all levels. The UAE thus gives us the opportunity to analyze the severity of the situation that temporary workers face and judge the potential effectiveness of remedial measures. Applying the divided responsibility framework developed here, we can see that there are concrete measures that can be taken by both the sending and receiving countries, as well as measures that can be taken cooperatively, that will improved the human rights situation and the lived experience of millions of temporary migrant workers.

CHAPTER THREE: DEMOGRAPHICS IN THE UAE AS BOTH CHALLENGE AND STRENGTH

Introduction

This chapter has two aims. First, it shows the historical forces that established the temporary contract migration corridor between the Philippines and the United Arab Emirates from the perspective of the UAE. Tracing the period from colonialism through the 1970s, the chapter first explores the social, political and economic forces that established the UAE's position as the major labor receiving country in the global economy. The UAE's harsh environment historically offered few opportunities for settled existence let alone advanced human development. The discovery of large oil reserves in the 1950s transformed this landscape almost overnight. However, the local population was grossly insufficient both numerically and in terms of needed skill sets to meet the needs of a rapid transformation to a modern economy based on the extraction and export of petroleum. The UAE responded with the wholesale importation of a labor force. The result of labor importation in the UAE has been a demographic imbalance of startling proportions: locals today make up roughly 10 percent of the total population.

Second, this chapter will show how the management of labor migration policy effects not just economic, but social and political stability. Labor migration serves a crucial economic function in the UAE. However the governing regime understands that the management of such large and vital flows substantially affects social and political stability. The demographic imbalance is usually viewed as a threat to the UAE - the concentration of foreigners may result in the overwhelming of local culture, places the UAE economy at the mercy of foreigners, and presents opportunities for large-scale public disorder. This chapter will show how the demographic imbalance is also utilized by the governing regime to shore up UAE national identity, ensure the privileged status of Emirati citizens, and thus contribute to regime legitimacy and stability domestically. Three interrelated strategies are examined: the local institution of sponsorship, *kafala*, which ties foreign workers to local employer/sponsors; the active management of the national composition of the workforce as

well as the duration of stay in order to avoid the full integration of foreigners and the spread of radical ideas; and the resultant creation of a local hierarchy primarily based on nationality in which Emiratis occupy an isolated but privileged position.

Terminology

We must pause for a moment to consider some terminology. In the United States the area that we are discussing is most often referred to as the Persian Gulf. Among the citizens of the region, however, this terminology is strenuously objected to, since they regard the term “Persian” as synonymous with “Iranian.” The term “Arabian Gulf” is preferred in the region and I will adhere to this naming protocol. The term “Gulf States” is used to refer to the countries of the Gulf Cooperation Council (GCC): Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates. The Trucial States is the name that the British as colonizers gave to a series of small territories on the tip of the Arabian Peninsula which were controlled by local emirs; each emirate was too small to be recognized as a separate colony and so the area was given the corporate name “Trucial States.” Upon independence the Trucial States assumed their current name, the United Arab Emirates (UAE). In this chapter, the name Trucial States is used to refer to the former colonial entity and UAE to refer to the modern state. The term “emirate” is used to refer to the territory over which a single emir (sheikh, or Arab royal family) exercises control. The term “sheikhdom,” alternatively, is a Western notion that refers to modern states which are controlled by a Sheikh (Emir or Arab royal family). Sometimes sheikhdoms and emirates coincide, as in the case of Bahrain, sometimes they do not, as in the UAE.

The UAE and the Birth of the “Demographic Challenge”

The Arabian Desert is a forbidding place.¹ The core of the emirate of Abu Dhabi is covered by a desert so inhospitable that at its core is an area known as the Rub Al Khali, the

¹ For a concise review, see: Frauke Heard-Bey, “The Tribal Society of the UAE and Its Traditional Economy,” in *United Arab Emirates: A New Perspective*, ed. Ibrahim Al Abed and Peter Hellyer (Abu Dhabi, UAE: Trident Press, 2001). For a more complete story, see her remarkably comprehensive book: Frauke Heard-Bey, *From Trucial States to United Arab Emirates* (Dubai, UAE: Motivate Publishing, 2004).

“Empty Quarter,” as humans have not managed to establish permanent settlement there.²

Instead, tribes in the area skirted on the fringes of this great sand desert, either living a semi-settled or a nomadic existence and utilizing all of the scarce resources that could be found. Life was dictated by the availability of fresh water sources and so settlements formed in the periodic desert oases, in the Hajar Mountains, and at the coast of the Arabian Gulf.

While most agriculture was impossible in the desert oases, date palms could grow there and became a cornerstone of existence both for its fruit and for the palm fronds from which everything from baskets to houses were constructed. Dates could be eaten fresh or preserved by boiling and compressing into a sugar-rich mash. But settled existence was impossible and families often moved between the oases and the coast with the seasons - spending summers in the shaded and less humid oases harvesting dates, and spending winters fishing at the coast. Camels provided transportation and sustenance (camel milk and occasionally camel meat) as well as leather and cloth (yarn was spun from camel hair), and were an object for trade.

Further north, away from the Empty Quarter, life gets a bit easier and permanent settlements were possible. At the base of the Hajar Mountains water is more reliable and available in greater quantities and so some additional crops could be planted in fields irrigated by the traditional *falaj*. Livestock such as goats and donkeys could also be maintained. Settlements along the Northern coast could combine fishing and agriculture. Port cities soon emerged, such as Sharjah and Dubai, facilitating trade between East Asia, East Africa, and Europe. Smuggling (especially gold into India) and piracy also emerged as lucrative businesses for these port cities.

At the coast, from north to south, there was fishing and pearling. Fishing provided both food (for human and camel) and fertilizer (for use or sale); what was not eaten fresh was dried or salted to preserve. Summer was pearling season and crews would spend the four summer months at sea. While pearls formed a part of the traditional economy for centuries, the pearling industry flourished in the 18th and 19th centuries with increased demand from India. During this

² The Empty Quarter is a sand desert of some 250,000 square miles and extends into Saudi Arabia, Oman, and Yemen as well as the UAE.

time permanent settlements were established on the southern coast, the most significant on Abu Dhabi island, and limited amounts of cash started entering the economy. In 1904 it was estimated that around 80,000 people lived in the territory that is today the UAE, one tenth of whom were nomadic or semi-nomadic Bedouin, the rest leading a relatively settled existence.³

The first half of the 1800s saw a decline in the role of Arab merchants in the East India trade. Western countries' interest in the region was primarily associated with its utility as a trade route and it was the British that would eventually gain dominance in the region.⁴ Beginning with the treaty between the Sultan of Oman and the British East India Company in 1798, Great Britain concluded a series of treaties with the Gulf States in which they offered an external security guarantee in exchange for the exclusion of third party traders and the end of piracy in the Gulf.⁵ In 1820 the British navy destroyed several ports and their fleets of ocean-going ships in the Trucial States and imposed the General Treaty of Peace on the Sheikhs of the Trucial States and Bahrain. Treaties conducted between 1820 and 1892 gradually extended Great Britain's role in controlling the foreign affairs of the Trucial States - Abu Dhabi, Ajman, Dubai, Fujairah, Ras al-Khaimah, Sharjah, and Umm al-Quwain - including disputes between rulers. Before Britain formalized and reified claims to rule in the Gulf, none of the ruling families had been able to assert uncontested dominance; Britain established some boundaries between the emirates and prohibited aggression between them. However, Great Britain largely abstained from direct involvement in internal affairs and governance. There was no attempt at imposing colonial law or administration of domestic matters, nor significant efforts to develop the region through Western-style institutions of education and healthcare, infrastructure, industry or agriculture. While the restraint from interference in internal affairs may have been appreciated by the rulers of the Trucial States at the time, it would later cause some resentment. In contrast to other British

³ Heard-Bey, "The Tribal Society of the UAE and Its Traditional Economy."

⁴ Uzi Rabi, "Britain's 'Special Position' in the Gulf: Its Origins, Dynamics and Legacy," *Middle Eastern Studies* 42, no. 3 (2006): p. 352.

⁵ *Ibid*: p. 352.

protectorates, upon securing its independence in 1971 the UAE would be little more developed than it had been a century earlier.

In the 1930s the pearling industry in the Trucial States collapsed as Japan introduced cheap cultured pearls and the wider world entered an economic recession. Coming as this did after the loss of involvement in the East Asian trade routes and the end of piracy due to British intervention, the large coastal settlements such as Sharjah, Dubai, and Abu Dhabi suffered greatly from the loss of their last significant source of trade. Other countries in the region were already producing oil and beginning on the rapid path to modernization. But oil had not yet been discovered in commercial quantities in the Trucial States.

With the end of WWII and the loss of its Indian colony in 1947, the British lost its original reason for desiring control over the Arabian Gulf. Its position as an ally in the Cold War and a counter to socialist-leaning Arab nationalism in Egypt, Libya and elsewhere gave the Gulf some geopolitical importance. However, Britain soon gained a new reason for desiring influence over the Trucial States: oil. Forbidding though the Arabian Desert may be, it covers vast oil reserves and “in the immediate post-war period the Gulf provided Britain with 80 percent of its crude oil imports.”⁶ But, while oil was being exported from the region and reserves had been discovered in the Trucial States in 1953, the UAE was barely beginning to develop its reserves. In the hopes of exploiting these oil reserves, development in the Trucial States finally became a British priority. Development was to promote economic activity and to minimize sympathy with the pan-Arab movement. According to a British official from the time: “our principal remaining interest in the Persian Gulf as a whole is access to the oil on the best possible terms. We may also feel, because of our historical associations, a certain sense of obligation to improve the lot of the people on humanitarian grounds particularly as our influence would soon decline if we made no such effort.”⁷ The 1950s saw the first steps towards development and modernization in the

⁶ Rabi, "Britain's 'Special Position' in the Gulf": p. 356.

⁷ Quoted in: Rabi, "Britain's 'Special Position' in the Gulf": p. 357.

Trucial States. The first modern school in the area was established in Sharjah in 1953, for example.⁸ Development would continue slowly for the next decade.

Oil in commercial quantities was finally discovered in the Trucial States in 1958 and the first oil shipments left Abu Dhabi in 1962.⁹ With this, the Trucial States finally had a large and reliable source of revenue. But development was painfully slow. Despite encouragement from the British who now viewed development as essential to stability and commerce in the region, the ruler of Abu Dhabi, Sheikh Shakhbut bin Sultan al-Nahyan (Shakhbut), was reluctant to spend the money that was flowing in to the government coffers. He literally kept the revenues from oil production under his bed: at one point British officials estimated that he had one million pounds sterling kept there in five gallon oil containers.¹⁰ He preferred to proceed slowly and carefully and to personally oversee every detail of the development plans that he signed, slowing to a crawl development projects but also hindering the creation and consolidation of essential state functions such as government departments of finance, health, education, public works, etc. In 1963 there were strikes in the oil fields, protesting conditions in the emirate and there were whispers that the al Nahyans might replace Sheikh Shakhbut with his younger brother, Sheikh Zayed bin Sultan Al Nahyan (Zayed).¹¹ The final straw was a dispute over maritime borders with Dubai in 1966 in which Shakhbut repudiated an agreement he had made only a year before, angering both the Dubai ruling family and the British. On 4 August 1966 the Al Nahyan family peacefully overthrew Shakhbut and placed Zayed in power.

Sheikh Zayed proved to be the right man in (almost) the right position at the right time. A charismatic younger son of Sheikh Sultan bin Zayed Al Nahyan, Sheikh Zayed was governor of Al

⁸ Abdulla Al Suwaidi, "The United Arab Emirates at 40: A Balance Sheet," *Middle East Policy* 18, no. 4 (2011).

⁹ Gerald Butt, "Oil and Gas in the UAE," in *United Arab Emirates: A New Perspective*, ed. Ibrahim Al Abed and Peter Hellyer (Abu Dhabi, UAE: Trident Press, 2001).

¹⁰ Miriam Joyce, "On the Road Towards Unity: The Trucial States from a British Perspective, 1960-66," *Middle Eastern Studies* 35, no. 2 (1999): p. 46.

¹¹ For an interesting look at succession in Abu Dhabi, see: Christopher Davidson, "After Shaikh Zayed: The Politics of Succession in Abu Dhabi and the UAE," *Middle East Policy* 13, no. 1 (2006).

Ain, the second largest city in Abu Dhabi and the traditional source of its power, during his brother Shakhbut's rule. Where Shakhbut was wary of change, Zayed embraced it. While Zayed was governor in Al Ain, that city developed at a much faster pace than the capital, Abu Dhabi. His success in negotiating both the modernization of Al Ain as well as royal family politics, led to his selection as the new ruler of the emirate Abu Dhabi when Sheikh Shakhbut's reign became untenable in 1966. With Zayed in power development in the emirate proceeded rapidly. Zayed invested in infrastructure projects and provided money to locals for housing and business enterprises. Not all of the money thrown in to rapid modernization was well spent, but the progress made in the first years of Sheikh Zayed's rule was impressive.¹²

Development proceeded rapidly not only in Abu Dhabi, the source of most oil revenues, but also in the poorer northern emirates of Ajman, Fujairah, Ras al-Khaimah, Sharjah, and Umm al-Quwain. One of Zayed's first decisions as ruler of Abu Dhabi was to transfer resources to the rulers of these emirates. This established Sheikh Zayed as protector of these Sheikhs and allowed for better governance of the northern territory.¹³ It was also instrumental in establishing Abu Dhabi's position and influence over the Trucial States as superior to that of Dubai, a fact which would be crucial in uniting the emirates in the next few years.

On 16 January 1968 Britain announced its plans to withdraw from the Arabian Gulf by the end of 1971. This was part of a larger move by the British to reduce defense expenditure and move to liberal economics, rather than colonialism, as a means of ensuring British interests in the region.¹⁴ With the British withdrawal, the very survival of the tiny sheikhdoms of the Trucial States was jeopardized. When the British signaled their intention to relinquish their control over the region, disputes emerged between the small Gulf sheikhdoms and the regional powers (Iran, Iraq, Saudi Arabia), as well as between the Gulf States themselves. Border disputes often arose due to inconsistencies or omissions in the British record and gained importance as the Gulf States tried

¹² For a first-hand account of the Shakhbut and Zayed years, see: Mohammed Al-Fahim, *From Rags to Riches: A Story of Abu Dhabi* (London, UK: The London Center of Arab Studies, 1995).

¹³ Joyce, "On the Road Towards Unity": p. 57.

¹⁴ Rabi, "Britain's 'Special Position' in the Gulf"

to define themselves and to establish ownership over potentially oil-rich areas that had previously been home only to semi-nomadic tribes.

The British supported federation of the Trucial States, Bahrain, and Qatar as the best way to avoid conflict and maintain stability in the Gulf. After initial declarations in favor, Bahrain and Qatar refused the idea of federation and instead respectively declared independence in 1971. This left the seven tiny emirates. There was some fear among the British and other Western powers that Abu Dhabi would also choose to go its own road, leaving the remaining emirates too poor and small to establish a functioning federal state. Under Sheikh Shakhbut federation would indeed have been difficult, especially given hostilities between Shakhbut and Sheikh Rashid, the ruler of Dubai. But Zayed was a firm supporter of federation and, indeed, became the driving force in the creation of the United Arab Emirates. When no agreement on federation had been reached by July of 1971, with British forces scheduled to withdraw that December, Zayed began negotiating in earnest. In particular he needed to convince Dubai's Sheikh Rashid; in order to do so the extent of the federal government was curtailed and Dubai was given rights in the federal structure nearly on par with those of Abu Dhabi, including the right of veto on the Supreme Council, the federal governing body.¹⁵ This has had a lasting impact as it has left responsibility for key policy areas that would normally be determined at the federal level, such as immigration policy, ambiguous and therefore open to emirate-level intervention.¹⁶

In the end, Sheikh Zayed was able to convince the Sheiks of six other emirates to federate and United Arab Emirates emerged as a nation in 1971. As the dominant political and economic force, Abu Dhabi under Zayed would both take the leading role in, and provide the most resources to, the federal government. The other emirates would gain protection and

¹⁵ C.f.: Malcom Peck, "Formation and Evolution of the Federation and Its Institutions," in *United Arab Emirates: A New Perspective*, ed. Ibrahim Al Abed and Peter Hellyer (Abu Dhabi, UAE: Trident Press, 2001).

¹⁶ The federal government appears to be increasingly asserting itself in immigration policy. Today broad immigration policy is set by the Ministry of the Interior, though each emirate has a General Directorate of Residence and Foreigners' Affairs which interprets and implements federal policy and may create additional policies of their own. Labor permits and residence visas are issued by the individual emirate. However the recent adoption of the Emirates ID, a federally-issued identification document, increases the federal role in oversight. Workers will no longer be issued labor cards, for example, and instead this information will be tied to the Emirates ID; as the federal government sets additional requirements for issuance of the Emirates ID, the ability of a worker to gain permission to live and work in any given emirate will depend on their meeting the federal standard.

resources from the new federation. The institutions of the new state drew significantly on traditional and colonial forms, and relied on traditional authority structures to gain legitimacy. Given the speed with which the country had to create its basic institutions in order to meet the deadline set by British withdrawal, there were few alternatives. The new Federal Supreme Council was based on the colonial Trucial States Council, the powerful Council of Ministers is largely drawn from the royal and other prominent families. The Federal National Council, though it has somewhat wider participation and is gaining a democratic form, has little power and generally serves a consultative role, similar to a traditional *majlis*.¹⁷ The actual *majlises* themselves have not disappeared and many of the rulers or others in the royal families continue to hold them; this mechanism for personal contact and communication between the rulers and the ruled is cherished in the UAE.

After independence the UAE continued to develop rapidly. As the oil and gas sector gained strength and sophistication, new industries sprang up. The need for basic infrastructure (paved roads, electricity, running water, etc.) and for the development of the citizen population (hospitals, schools, etc.) spurred the initial expansion of the economy. The capacity of the local population - both in terms of sheer numbers and in terms of expertise - was quickly overwhelmed. To staff the expanding economy the UAE quickly turned to the importation of labor. As more and more foreign workers came to the UAE, the economy further expanded to cater to their needs, offering everything from ethnic restaurants to specialized bank accounts.

With time the preponderant role that oil and gas play as the keystone of the economic architecture became viewed as a weakness as well as a strength. UAE rulers now wish to reduce their dependence on this non-renewable resources, and are seeking a path toward a prosperous post-oil economy. Recently the government has been investing heavily in tourism, alternative energy, and financial services with the hopes of creating viable economic alternatives to petrochemicals. Crucially, tourism and alternative energy continue to rely heavily on imported

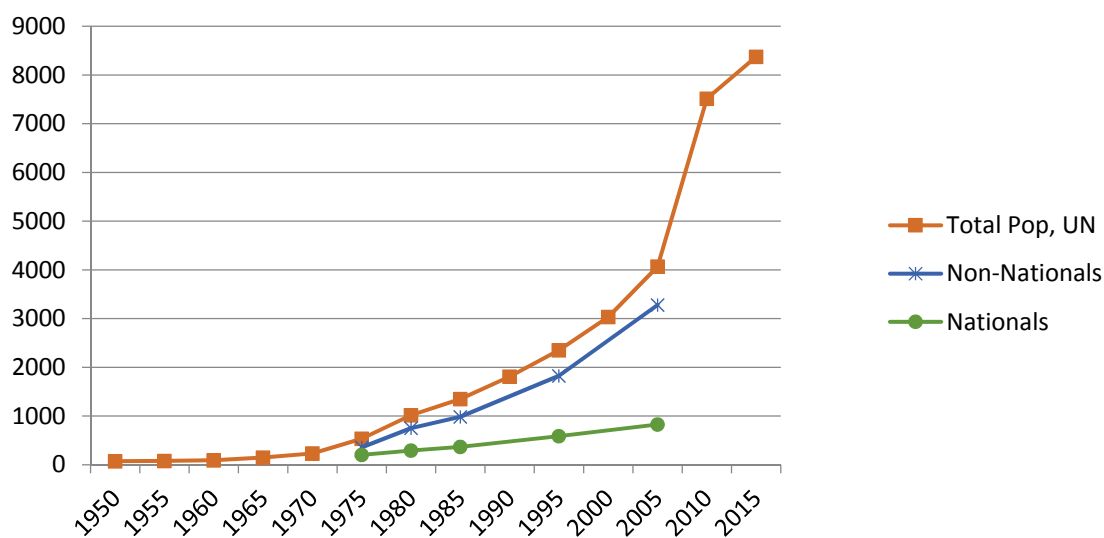
¹⁷ Peck, "Formation and Evolution of the Federation and Its Institutions"

labor and expertise; only in banking is the UAE having some success in “emiratizing” the new industry. It seems that labor importing is a long-term economic necessity in the UAE.

Labor Migration Policy and Its Effects on Social and Political Stability

While economic growth boomed with the discovery of oil, the native population was unable to keep up with the demand for labor. Population growth ballooned due in part to high birth rates and rising life expectancy among the citizen population, but in large part due to the large-scale migration of temporary workers. Table 5 below shows that population growth in the UAE is largely driven by the growth in the number of non-nationals present in the country.

Table 5: UAE Population Growth, 1950 – 2015 (thousands)



Sources: Total Population: Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, *World Population Prospects: The 2010 Revision*, <http://esa.un.org/unpd/wpp/index.htm> Accessed: 24 March 2013.

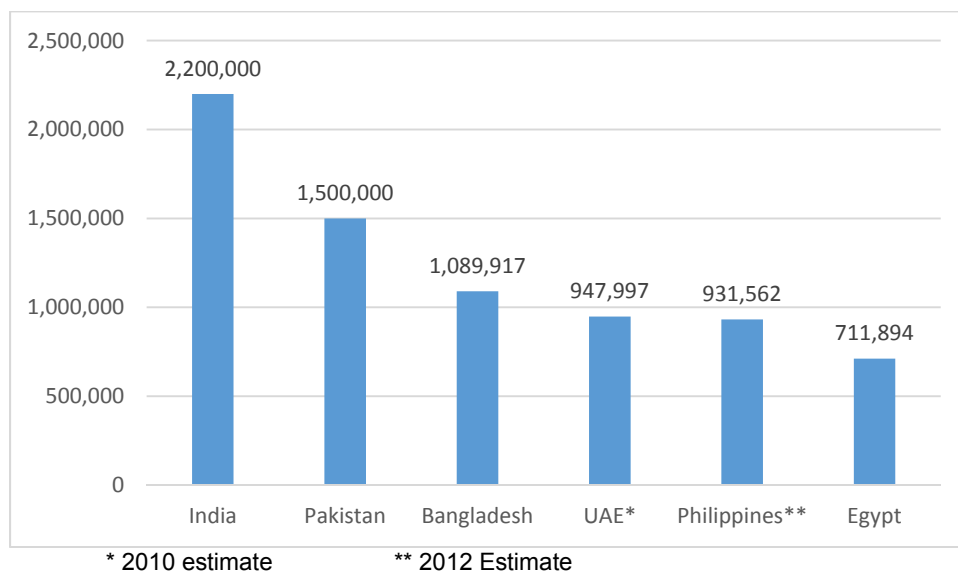
Nationals and Non-Nationals: United Arab Emirates National Bureau of Statistics, *Population by Emirates 1975-2005*, <http://www.uaestatistics.gov.ae/ReportDetailsEnglish/tabid/121/Default.aspx?ItemId=1869&PTID=104&MenuId=1> (Accessed 24 March 2013)

The large jump in numbers from 2005 to 2010 is associated with a change in the method used by the UAE government in estimating its population (from census data to administrative data such as visa issuance and birth and death reports). As there is little incentive for locals to misreport on the census and a large incentive for migrants to do so (due to the pervasiveness of illegal living arrangements among middle and low-wage earners), it is assumed that the census data underrepresented the migrant population and thus that this jump in numbers is largely attributed to the inclusion of previously uncounted migrants.

While labor migration was necessary for rapid economic development and the full exploitation of the country’s national resources, this preponderance of foreign nationals was bound to have a significant impact on the culture and politics of the UAE, as well as on its

economy. As one German official famously lamented in reference to his country's import of Turkish workers, "we asked for workers, and they sent us men." When large numbers of co-nationals exist in close proximity, they have a tendency to form groups, to congregate in residential neighborhoods, to establish ethnic restaurants, groceries, and shops.¹⁸ And there are very large migrant national groups in the UAE. In 2013 Emirati citizens were only the fourth largest national group in the UAE; there are more Indians, Pakistanis, and Bangladeshis in the country than there are Emiratis. See Table 6 below.

Table 6: Migrants in the UAE by National Group, 2013



Sources: India: "UAE Has 2.2m Indians: 40 percent from Kerala." *Emirates* 24/7 13 May 2013, Online ed.; Pakistan: Aftab, M. "UAE-Pakistan Trade to Expand." *Khaleej Times* 25 November 2013, Online ed.; Bangladesh and Egypt: "Trends in International Migrant Stock: The 2013 Revision: Migrants by Destination and Origin." Ed. United Nations Department of Economic and Social Affairs, Population Division 2013. POP/DB/MIG/Stock/Rev.2013; UAE: "Methodology of estimating The Population in UAE," United Arab Emirates National Bureau of Statistics, 31/03/2011, [http://www.uaestatistics.gov.ae/ReportPDF/Population percent20Estimates percent202006 percent20- percent202010.pdf](http://www.uaestatistics.gov.ae/ReportPDF/Population%20Estimates%2006%20-%202010.pdf), accessed 24 March 2013; Philippines: *Stock Estimate of Overseas Filipinos as of December 2012*: Commission on Filipinos Overseas, 2012.

Drastically outnumbered in their own country, migrant groups tend to look threatening from the Emirati point of view. There are a cluster of issues that could potentially pose problems for the UAE. Economically, the country is dependent on the labor of individuals who owe little

¹⁸ C.f.: Jane Bristol-Rhys, "Socio-Spatial Boundaries in Abu Dhabi," in *Migrant Labor in the Persian Gulf*, ed. Mehran Kamrava and Zahra Babar (London, UK: C. Hurst & Co., 2012).

allegiance to the country and may well decide to leave should conditions turn less favorable, and who remit billions of dollars every year to their home country, draining that money from the UAE economy. Politically, large numbers of foreign nationals in the UAE invites greater scrutiny from the government, in part because they may attempt to form interest groups aimed at influencing UAE politics or bringing critical international attention. In terms of hard security, there are fears that most of the serious criminal element in the UAE is composed of foreigners, and that disaffected workers may cause public unrest by organizing strikes or other demonstrations. One of the most commonly referenced threats, though, is the threat to Emirati national identity. The fear is that as the ratio of citizens to foreigners decreases, Emirati culture will be overwhelmed.

Alternatively, this “demographic imbalance” may strengthen Emirati national identity and boost regime legitimacy. By creating an internal “other,” traditional identity and cultural forms are reproduced and their relevance reinforced. As will be discussed below, the creation of a unified national identity has been a challenge for the United Arab Emirates. The formation of an in-group identity presupposes the existence of an out-group; migrant populations present the perfect group for “othering.” So long as the composition of the migrant population and their length of stay is carefully managed in order to avoid migrants’ integration with the local population, locals will remain a visible minority in their own country. Longva makes a similar point in reference to Kuwait:

From the mid-1970s onwards, with the enormous increase in Kuwait's oil revenue, it gradually became clear that the purpose of the Kuwaiti migration policy was to maintain the transient character of labor immigration in order to ensure that the migrants did not settle down permanently in the country. Given their numerical superiority, this would inevitably have changed the character of Kuwaiti society. ... As a result non-integration, rather than integration, was viewed as the basis of social stability. In carrying out this politics of exclusion the Kuwaitis consistently played on the diacritical differences between the migrants and themselves, maintaining, reinforcing, and, when necessary, inventing such differences.¹⁹

In order to mitigate the threats and maximize the benefits of labor migration, it is carefully managed by the UAE state. Three mechanisms are particularly useful for fine-tuning the balance

¹⁹ Anh Nga Longva, *Walls Built on Sand: Migration, Exclusion, and Society in Kuwait* (Boulder, CO: Westview Press, 1997): p. 44.

between migrants and citizens: kafala, national composition of the workforce, and hierarchy and Emirati privilege.

Kafala

As discussed above, state formation in the UAE relied on the institutionalization of many traditional authority structures. Another traditional form that was institutionalized in the new state is kafala, the local tradition of sponsorship. The word “kafala” derives from the root *k-f-l* meaning to vouch or be responsible for, or to provide for or be legal guardian of.²⁰ “It has been suggested that this socio-cultural institution originated from the age-old Bedouin custom of granting strangers protection and temporary affiliation to the tribe for specific purposes,” and was modernized as a means of controlling migrant labor on pearling boats.²¹ In a close-knit tribal society this type of patronage might be necessary for a guest worker to function within the group. A peculiar junction in history then led to its codification in the labor laws of the GCC countries. Kafala became the basis for of immigration policy for the new UAE state - as was and is the norm in the Gulf.

The basic premise behind kafala is that each and every foreigner in the country must be sponsored by a responsible party, the sponsor or *kafeel*. For most workers, this sponsor is the employer; high-wage earning professionals may sponsor family members.²² The sponsor takes on responsibility for the well-being of the worker, ensuring his health and safety as well as the payment of his wages. However, the *kafeel* also takes on responsibility towards the community, essentially vouching for the good conduct of the guest worker and ensuring that there is a permanent member of the community who is responsible for any damages, economic or social, that the guest worker might cause. In theory, the sponsor functions as an intermediary between the worker on the one hand and the community on the other, which would require him to maintain a personal relationship with both the worker and the community. The relationship towards the

²⁰ Ibid: p. 78.

²¹ Ibid: p. 78

²² Some individuals (mostly women) work while remaining sponsored by a spouse or parent.

worker, unsurprisingly, has taken on paternalistic elements, legitimizing a high degree of supervision and control over the actions of the guest worker.

The implications of kafala on the human rights of migrant workers will be discussed in succeeding chapters. Here I would like to focus on the benefit that kafala gives to Emirati nationals and the UAE government. Emirati nationals gain a pool of labor over which they may exercise extensive control. Workers are tied to a single, specific sponsor; this individual's name is actually on the worker's UAE residence visa and labor card, tying both of these prerogatives to continued employment with that specific individual. Any changes to the visa or the labor permit, therefore, must either be made with the permission of the sponsor or by proving to the Ministry of Labour²³ that the sponsor has been at fault under the prevailing law to such an extent as to release the migrant from her obligations. In this way kafala constrains workers from seeking alternative employment.

The ethic of responsibility that underlies kafala also constrains migrant workers and empowers local sponsors and employers. The idea that sponsors are responsible for the conduct of the workers that they have brought in to the country extends beyond the working relationship. This idea has supported the widespread, though illegal, practice of withholding passports, constraining workers' freedom of movement and their ability to flee abusive situations. Even should a migrant decide to flee an abusive situation, the sponsor is once again in the more powerful position. Fleeing from your sponsor, "absconding," is illegal under UAE law.²⁴

Kafala keeps labor costs low. As all businesses in the UAE must be majority owned by a UAE national, this is a direct support to the citizen population. The large supply of available workers globally would already tend to keep wages and the cost of that labor low. But the control that sponsors are able to wield under the kafala system allows them to leverage their position to get an even better deal. Under UAE labor law, the employer does not need to give cause for

²³ Or the Ministry of the Interior in the case of domestic workers.

²⁴ Reports are unclear whether absconding is an administrative or criminal offense. It is clear, however, that a worker who absconds is deemed to be in violation of the Labour Law and if found will be arrested, deported, and a lifetime labor ban will be issued against her.

making a worker “redundant” and firing her. Migrants may fear that complaints about abusive working conditions (for example late payment of wages or long working hours without pay or overtime are common complaints) may lead an employer to fire them which, in turn, would terminate their residency and force them to repatriate. Instead, many would prefer to accept their working conditions, at least for the duration of their contract, allowing the employer to extract more value from their labor. The threat of deportation looms large in the minds of many migrants.

Finally, kafala also opens up opportunities for Emirati citizens to gain an additional source of income from migrants. Winckler estimates that 600,000 foreign workers in the UAE have obtained visas by paying an Emirati citizen to sponsor them without actually employing them.²⁵ The migrant is then able to stay in the country, often for the purpose of working illegally.

The UAE government also benefits from kafala. It reduces the burden on the state for regulating immigration. As residence is tied to the employer, not the state, immigration becomes essentially an employment relationship rather than a political relationship. Government capacity to monitor workers is greatly increased as workers are embedded in a system in which each worker is tied to an employer with the *de facto* power of an immigration official. Individuals who pose problems, threaten to disrupt the status quo, or become vocal in their criticism are usually identified early. Firing such an individual means that any potential political implications of their deportation are minimized; the interaction becomes an economic transaction instead.

Kafala also minimizes the state’s role in providing welfare and assistance to individuals in distress. These costs are largely displaced onto the employer who is required to provide benefits such as health care,²⁶ an end of service gratuity,²⁷ and periodic return travel to the home country and repatriation at the termination of employment. Also, as immigration is an employment

²⁵ Onn Winckler, "Labor Migration to the GCC States: Patterns, Scale, and Policies," in *Viewpoints Special Edition: Migration and the Gulf* (Washington D.C.: Middle East Institute, 2010).

²⁶ Employer-provided health-care is currently required in Abu Dhabi, in the process of being implemented in Dubai, and under discussion in the other emirates.

²⁷ End of service gratuities will be discussed in depth in Chapter Eight. Note that the gratuity often serves in place of a pension. It is paid upon termination of employment in order to ensure that the worker has some resources saved. For younger workers who are not ready to retire, the gratuity is often used to fund transportation and living expenses involved in searching for a new job.

transaction, the migration of non-workers is restricted. Only those migrants who are able to show financial ability to support their family are allowed to sponsor dependents. Low-wage workers must leave their families behind. This reduces the state's burden to provide services such as food, shelter, and education to at risk populations.

Kafala reduces the bureaucratic and welfare burdens on the state, but also gives the state space to deny responsibility for violations of law and human rights. Mednicoff cites the extraordinary example of the Sheikh Issa scandal: after a video surfaced of a member of the ruling family, Sheikh Issa, beating and torturing an Afghan merchant, the UAE Ministry of Interior released a statement "that the incident was a private matter to be settled among the parties."²⁸ But most instances of this are more mundane. When critics complain of widespread abuses such as the withholding of wages, withholding passports, or denial of compensation for overtime, the UAE government points to the fact that these practices are illegal. The fact that the system discourages workers from reporting such violations is not addressed.

In the end, kafala encourages the weak enforcement of labor laws and the displacement of immigration regulation onto employers. As this benefits both Emirati sponsors and the UAE government, it is unlikely to change. However kafala is increasingly out of step with the demands of the modern Gulf economy. Let us for the moment make the (debatable) assumption that kafala served a necessary social and economic function in the pre-state era. As the economy of the Gulf rapidly expanded with oil wealth in the 1970s, the migrant worker population exploded. Today migrants represent over 90 percent of the population in the UAE and around 85 percent of the workforce.²⁹ It is unsurprising that the personal relationships which may have originally underpinned kafala have broken down. As distance between the Kafel and the worker grows, the ethic of responsibility also diminishes, resulting in an unwarranted and uninformed

²⁸ David Mednicoff, "The Legal Regulation of Migrant Workers, Politics, and Identity in Qatar and the United Arab Emirates," in *Migrant Labor in the Persian Gulf*, ed. Mehran Kamrava and Zahra Babar (London, UK: C. Hurst & Co., 2012).

²⁹ Based on the UAE National Statistics Center 2009 Labor Force Survey which, in turn uses 2005 census population data. It is worth noting that Emiratis are overwhelmingly employed in the public sector due to favorable employment conditions; private sector employment, bound by UAE labor law, is composed of 99 percent migrant workers.

circumscribing of migrants freedoms and rights. At best today kafala is a formality; at worst it is a mechanism for constraining agency and exercising unwarranted control over workers.³⁰

Nonetheless, the UAE government has signaled its commitment to kafala. While other countries in the region have relaxed or abandoned kafala, notably Bahrain and Kuwait,³¹ the UAE appears to have no such intentions.³²

National Composition of the Workforce

With the explosive growth of the oil and gas sector as well as the development of support and service industries that sprang up around it, the UAE soon faced an acute labor shortage. Bringing in Arab migrants to fill labor shortages seemed the logical solution. Indeed, this is the route that Saudi Arabia, Kuwait, and Bahrain had taken when they began to develop their economies post-WWII. However, bringing in these populations had a significant drawback: they often brought pan-Arab and other radical political ideas with them and were willing to engage in activism such as civic organizations, demonstrations and strikes. "The pan-Arab and nationalist leaderships that emerged in Kuwait and Bahrain displaced the more conservative merchant nationalists of 1938 as the leading sources of opposition to the Al-Khalifa ruling family in Bahrain, the Al-Sabah in Kuwait, and their British advisers."³³ Pan-Arabism presented a particular challenge for the Arab Gulf states in general because their cause often generated sympathy with more liberal or nationalist citizens.³⁴ In 1962 a Nasserist revolution toppled the Imam al-Badr regime in North Yemen, bringing the first republican government on the Peninsula and sparking a similar revolution in South Yemen in 1967 which ousted the British presence there. From South Yemen, pan-Arab unrest spread across the border to Oman; the new People's Republic of South

³⁰ Even with the best of intentions, the patronizing elements of kafala come through: Nadia Aftab Noor Ali Rashed, "Employers Have a Duty to Help Protect Household Staff," *The National*, 25 May 2012.

³¹ C.f.: Ramona Ruiz, "Join Forces to Help Migrant Labourers, GCC Told," *The National*, 16 May 2013.

³² Ola Salem, "UAE Watchdog Says UN Labour Report Lacks Credibility," *The National*, 12 April 2013.

³³ John Chalcraft, "Migration and Popular Protest in the Arabian Peninsula and the Gulf in the 1950s and 1960s," *International Labor and Working-Class History* 79, Spring (2011): p. 30.

³⁴ There is evidence that an "Arabist" identity and regional solidarity are still prevalent in the UAE. C.f. Peter A. Furia and Russell E. Lucas "Determinants of Arab Public Opinion on Foreign Relations," *international Studies Quarterly* 50 (2006).

Yemen supported Oman's socialist revolutionary guerillas in the Dhofar region. Egypt and Iraq also offered the Dhofari militants limited support, as did China.

This drama in Yemen and Oman was ongoing in the late 1960s, just as neighboring Abu Dhabi was transitioning to Sheikh Zayed's leadership and the Trucial States were gearing up for faster paced development. When, in 1968, the Dhofari militants began to call themselves the Popular Front for the Liberation of the Occupied Arabian Gulf (PFLOAG) and declared their fight to be against imperialism and oligarchic regimes, it is no wonder that the British-backed Sheikhs of the Trucial States would get a bit nervous.

Other migrant populations also engaged in demonstrations and strikes at times, however they garnered little local support and so were easier to deal with. In Bahrain and Kuwait in the 1950s and 1960s, "Iranians were depicted as pawns of the Shah's imperial schemes, and migrants from India and Baluchistan as a menace to Arab identity."³⁵ When they did strike, they were unable to draw on group identities, either tribal (as was the case in Yemen and Oman) or pan-Arab, that resonated with the larger public and so lacked popular support and resources – "a crucial indication of the importance of the ideas, organizations, and alliances that enabled workers' protests to have a larger political significance or not."³⁶ Non-Arab migrants' protests lacked larger political significance.

The UAE learned from unrest in the region and has manipulated the ethnic and national composition of its workforce as a means of controlling potential unrest. The composition of workers and the flows of various nationalities may vary considerably from year to year as either sending or receiving country em/immigration policies change. For example, from 2012 to 2013 the number of Nepalese workers coming to the UAE increased drastically, from around 2,000 per month in 2012 to about 9,000 per month in 2013 as construction in the region rebounded after the global economic crisis.³⁷ Alternatively, the import of Bangladeshi labor, formerly one of the largest

³⁵ Chalcraft, "Migration and Popular Protest in the Arabian Peninsula and the Gulf in the 1950s and 1960s."

³⁶ Ibid.

³⁷ Anwar Ahmad, "9,000 Nepalese Workers a Month Flocking to UAE," *The National*, 27 April 2013.

migrant flows, fell to almost nothing in 2013 as the UAE “tried to balance its labor market,”³⁸ reducing its reliance on this Muslim source. Rumors often circulate that visas are being slowed or halted for Egyptians or individuals from other countries with significant disturbances during the Arab Spring.³⁹

Longva reminds us that the shift from Arab to Asian migrant labor in the Gulf was due to more than political/ideological concerns. On the one hand, the number of Arab workers available was declining; on the other hand, Indians and others who had long mercantile ties to the region began to utilize these established networks for labor migration, aided by aggressive state policies to support labor export.⁴⁰ She argues that a combination of these forces led to the ultimate shift in migration policy to encourage the import of Asian workers.

In the 1970's most regimes in the Gulf region therefore turned to Asian labor sources. Workers needed to be cheap, educated, and able to communicate. At the same time that the UAE began looking for a non-Arab source of labor, new sources of cheap labor aggressively entered the global labor market. The Philippines was one of these countries. Filipinos were quickly incorporated into the UAE economy. They offered several advantages. Filipinos were highly educated and skilled, but still willing to work for relatively low salaries compared to Western and Arab workers with similar qualifications. Although few speak Arabic, most are at least conversant in English, making communication possible. And, of course, they were culturally inoffensive.

Hierarchy and Emirati Privilege

The UAE federation of sheikhdoms as a political structure left the traditional authority structures in place, unique in the region where most states formed around one dominant leader or family.⁴¹ Heard-Bey argues that this was essential to the UAE's successful state formation.

³⁸ Ibid.

³⁹ C.f.: Jen Thomas, "Firms See Obstacles in Hiring from Arab Spring Nations," *The National*, 25 August 2012. Haneen Dajani, "Halt on Egyptian Visas 'Just Rumour'," *The National*, 26 April 2011.

⁴⁰ Longva, *Walls Built on Sand*: p. 29.

⁴¹ Peck, "Formation and Evolution of the Federation and Its Institutions"

Forcing a single, dominant leader on the country would not have created unity among the seven emirates, she argues, but rather led to destructive infighting.⁴² Instead, by assuming the large majority of the financial responsibility for the federation, the leaders of Abu Dhabi gradually emerged as national figures and leaders. At the same time, leaving the distribution of the resources to the individual rulers of the emirates reinforced their role as beneficent rulers of the people while also encouraging them to support the federal structure. These two forces in tandem, it was hoped, would gradually create unity and a national identity.

It is difficult to say how successful the UAE has been at consolidating and institutionalizing this national identity. In discussing citizenship in Kuwait, Longva argues that the traditional vertical hierarchical structures which have been preserved in the state forms of the Gulf States explicitly trade total allegiance for protection and material welfare, thus undermining the concept of political entitlement.⁴³ Thus citizenship in the Gulf is characterized not by a sense of national identity, but by a sense of entitlement to material benefits which should be provided by the state to its citizens. Migrants, therefore:

“are the foil in relation to which the Gulf nationals perceive and define themselves. As non-nationals, the migrant workers are excluded from the social, economic, and legal privileges that Gulf citizenship entails and thus present a strong contrast that helps elicit national consciousness among the citizens.”⁴⁴

The UAE is essentially a rentier state. For the general population, the provision of resources was an attractive benefit of federation. The UAE government is largely funded by oil and gas revenue. Rather than collecting taxes from the population, revenue is actually redistributed to the citizenry through a variety of programs: free education (primary through PhD), free health care (including treatment abroad if needed), land and housing grants, marriage support, privileges to Emiratis in the private sector such as legal requirements on business ownership and preference in contracting, and, perhaps most importantly, public sector

⁴² Heard-Bey, *From Trucial States to United Arab Emirates*

⁴³ Anh Nga Longva, "Citizenship in the Gulf States: Conceptualization and Practice," in *Citizenship and the State in the Middle East, Approaches and Application*, ed. Nils A. Butenshon, Uri Davis and Manuel Hassassian 179-197 (Syracuse, NY: Syracuse University Press, 2000).

⁴⁴ *Ibid.*, p. 183.

employment on generous terms. As it is the state that is distributing income to society, rather than the reverse, the state has less need to offer concessions to society such as “a democratic bargain or a development strategy.”⁴⁵

Al Suwaidi acknowledges the existence of a rentier state but likens it to a social contract and claims that governance in the UAE is underpinned by a Lockean “explicit and implicit consent of the governed, in which the government's legitimacy rests upon a universal acceptance of both its form and those who lead it.”⁴⁶ Heard-Bey makes clear that this idea of consent of the governed has historical roots:

...[A]lthough the decision-makers in a tribal society are members of those families which have established their leadership prowess over several generations, an individual has no guarantee to inherit the chance to take up the mantle of a predecessor. He has to prove himself. In the past a leader who was not as brave, hospitable, generous and just as was expected of him lost his following. ... In the tribal society of eastern Arabia, where people had few worldly goods, they could vote with their feet and would go to pay allegiance to a better leader.⁴⁷

While some aspects of this tribal version of consent of the governed continue to function today, this theory is deeply flawed as a description of modern politics in the UAE. Succession in the royal families may not be guaranteed by birth to an individual; however leadership does not leave the family. And the ability of the populace to “vote with their feet” is now quite constrained by both internal and external borders that reify the power of the ruling families. Yom and Gause refer to this type of cultural argument as a rehashing of the “old Orientalist logic” which ignores “the historical reality that powerful ruling monarchies owe much of their modern power to colonial machinations rather than indigenous forces.”⁴⁸

⁴⁵ Matthew Gray, *A Theory of "Late Rentierism" in the Arab States of the Gulf* (Qatar: Georgetown University School of Foreign Service in Qatar, 2011), accessed May 8, 2015, <https://repository.library.georgetown.edu/bitstream/handle/10822/558291/CIRSOccasionalPaper7MatthewGray2011.pdf?sequence=5>.

⁴⁶ Suwaidi, "The United Arab Emirates at 40: A Balance Sheet"

⁴⁷ Heard-Bey, *From Trucial States to United Arab Emirates*: p. xxx-xxxi.

⁴⁸ Sean L. Yom and Gregory Gause III, "Resilient Royals: How Arab Monarchies Hang On," *Journal of Democracy* 23, no. 4 (2012): p. 75.

Instead, the rulers today are quite literally buying their legitimacy. Their generosity has been successful in generating cross-cutting coalitions to support the ruling families. The genius of Sheikh Zayed's insight in 1966 still functions today: "Sheikh Zaid's belief is that money should be made to circulate in the smaller Trucial States to the north of Dubai and that the Rulers themselves must have money in order to behave as rulers towards their people."⁴⁹ Oil revenues have supported the unique Gulf monarchical cultural and institutional forms that might otherwise seem anachronistic, enabling them to continue functioning despite the rapid modernization and globalization of society and economy in the UAE.

But this approach has a limit. It is bounded by state resources. Public sector employment has been one of the primary mechanisms through which to transfer a percentage of rents to the populace. In the UAE the local population is only about one million and less than 10 percent of the labor force.⁵⁰ Until now there have been enough prestigious public sector jobs at senior and mid-level positions to go around, employing most Emiratis on generous terms. But that is changing. With 85 percent of economically active nationals employed in the public sector (over 90 percent if you take joint public/private entities into consideration) the public sector is oversaturated.⁵¹ While the government is strongly encouraging the "emiratization" of the private sector, most Emiratis prefer the higher prestige, higher wages, shorter working hours, more paid holidays, and greater job security that is to be found in public sector employment. As a result, youth unemployment, already at 23 percent, is growing.⁵² Christopher Davidson estimates that the Gulf States are hitting their "break-even oil price," the price per gallon of oil needed in order for oil production to generate sufficient resources to pay for state expenditures, and that Bahrain

⁴⁹ British colonial official quoted in: Joyce, "On the Road Towards Unity": p. 57.

⁵⁰ Based on the UAE National Statistics Center *2009 Labor Force Survey* which, in turn uses 2005 census population data. *2009 Labour Force Survey* (Abu Dhabi, UAE: UAE National Statistics Center, 2009) accessed May 8, 2015, <http://www.uaestatistics.gov.ae/EnglishHome/ReportDetailsEnglish/tabid/121/Default.aspx?ItemId=1850&PTID=104&MenuId=1>

⁵¹ Ibid.

⁵² Angela Shah, "Helping Emiratis Succeed in the Private Sector," *New York Times*, 2 November 2011, accessed March 22, 2012, <http://www.nytimes.com/2011/11/03/world/middleeast/03iht-M03-GULF-WORK.html?pagewanted=all>.

and Oman may have exceeded it already.⁵³ The reluctance of Emiratis to enter the private sector also drives greater reliance on imported labor in the private sector;⁵⁴ 99 percent of private sector employees are foreign nationals.⁵⁵

Conclusion: Voice and Exit

While the UAE economy was jumpstarted by the discovery of oil in 1953 and its commercial exploitation in 1958, it quickly expanded. Oil wealth primed the pump, creating jobs not only in the oil and gas sector, but in a variety of support and service industries as well. To manage its new economy, the UAE was forced to import a massive workforce, from manual laborers to senior corporate officers. The result has been astounding national wealth unequally distributed between rulers and ruled: between the sheikhs and citizens, between employers and workers, even between Western expatriates and other workers. The system has worked to the UAE's advantage so far, but problems loom. The question that overshadows all other is this: what happens when the oil runs out?

The rulers of the United Arab Emirates are not blind to the fact that oil is a finite resource. In 2007 the government of Abu Dhabi released its *Policy Agenda 2007-2008*, the first document of Abu Dhabi's "2030 Plan."⁵⁶ The basic premise of this economic planning documents is that the economy of Abu Dhabi must diversify. The section on "planning and economy" begins with this assumption:

While deeply appreciating the opportunities created by the oil and gas sector, the Government recognizes the need to broaden and diversify the Emirate's economic success, and actively work to reduce the degree to which the economy of Abu Dhabi relies upon the upstream hydrocarbon sector.⁵⁷

⁵³ Christopher Davidson, "The Demise of the Desert Despots," *international New York Times*, 19 October 2013.

⁵⁴ Ingo Forstenlechner and Emilie Jane Rutledge, "The GCC's 'Demographic Imbalance': Perceptions, Realities and Policy Options," *Middle East Policy* XVIII, no. 4 (2011).

⁵⁵ *2009 Labour Force Survey*.

⁵⁶ The "2030 Plan" refers to a set of policy documents laying out the strategic vision of the Abu Dhabi leadership; this economic plan and the urban planning document are the most important. *Plan Abu Dhabi 2030: Urban Structure Framework Plan* (Abu Dhabi, UAE: Abu Dhabi Urban Planning Council, 2007), accessed May 8, 2015, <https://dot.abudhabi.ae/wcms/forms/PlanAbuDhabi2030.pdf>. *Policy Agenda 2007-2008: The Emirate of Abu Dhabi* (Abu Dhabi, UAE: The Executive Council, 2007), accessed May 8, 2015, <https://www.abudhabi.ae/pdfdirectview/en/146150/blaetterkatalog/blaetterkatalog/pdf/complete.pdf>.

⁵⁷ *Policy Agenda 2007-2008*: p. 12.

The Abu Dhabi Economic Vision 2030, part of Plan 2030, identifies the following economic sectors as the prospective “engines of economic growth and diversification”⁵⁸:

- Energy – Oil & Gas
- Petrochemicals
- Metals
- Aviation, Aerospace, & Defense
- Pharmaceuticals, Biotechnology, & Life Sciences
- Tourism
- Healthcare Equipment & Services
- Transportation, Trade, & Logistics
- Education
- Media
- Financial Services
- Telecommunication Services

The government of Abu Dhabi is careful to specify that they are not moving away from oil and gas; rather oil and gas revenues will fund the expansion of the economy into these new sectors, driving economic growth and increasing domestic prosperity. In the future oil and gas revenues will decline as a share of GDP first because other economic activities are increasing and only secondarily as the UAE hits up against the natural limits of its oil reserves. This is how Abu Dhabi imagines it will avoid that “break-even oil price” that Davidson argues is looming and instead continue to support a high standard of living for its citizens and shore up its ruling bargain over the long term.⁵⁹

Several of these newly prioritized sectors, however, come at the cost of rising international visibility. In particular, investments in tourism, education, and media services are

⁵⁸ *Abu Dhabi Economic Vision 2030* (Abu Dhabi, UAE: Government of Abu Dhabi, 2008): p. 11-12, accessed 8 May 2015, <https://www.ecouncil.ae/PublicationsEn/economic-vision-2030-full-versionEn.pdf>.

⁵⁹ Davidson, “The Demise of the Desert Despots”

likely to increase the visibility of the UAE internationally. In tourism, Abu Dhabi has begun construction on a new cultural district on Saadiyat Island. The first of its museums, the Louvre Abu Dhabi, is set to open in December 2015. It is likely that the new Zayed National Museum will follow, and possibly the Guggenheim Abu Dhabi will as well. However, both the Louvre and the Guggenheim projects have faced international criticism. The Guggenheim faced an artists' boycott in 2011 due to criticisms over labor conditions. Sporadic protests have been ongoing, including protest at the New York Guggenheim in March of 2014.⁶⁰

But it is the branch campuses of western universities that have come in for the greatest criticism. The UAE has branches of forty campuses, most of which are in Dubai.⁶¹ At the top are New York University (NYU) and Sorbonne University, both of which have branches in Abu Dhabi. New York University in particular has faced criticism from students and faculty, the larger academic community, and the wider world. Criticism first centered on the deplorable working and living conditions laborers faced on the construction of its Saadiyat campus, a charge which NYU hoped to address by instituting a "Statement of Labor Values" and requiring contractors on the project to sign up to certain minimum guarantees.⁶² However, labor violations continued,⁶³ leading more people to larger questions: how can one justify the tiny "bubble" of academic freedom and entitlement that NYU represents in a country where even the most basic rights are denied to the vast majority of the population? What is the value of a liberal arts education abroad when even its own faculty and students are subject to many of these same restrictions the moment they set foot

⁶⁰ Holland Cotter, "Door to Art of the World, Barely Ajar," *The New York Times*, 21 July 2014, accessed 9 May 2015, <http://www.nytimes.com/2014/03/20/arts/artsspecial/door-to-art-of-the-world-barely-ajar.html>.

⁶¹ Melanie Swan, "International Branch Campuses' Key Role in the UAE," *The National*, 18 September 2013.

⁶² The "Statement of Labor Values" can be found at: <http://nyuad.nyu.edu/en/about/statement-of-labor-values.html> and the list of guarantees at: <http://nyuad.nyu.edu/en/about/additional-labor-info.html>

⁶³ Ariel Kaminer and Sean O'Driscoll "Workers at N.Y.U.'S Abu Dhabi Site Faced Harsh Conditions," *New York Times*, 18 May 2014, accessed July 21, 2014, [http://www.nytimes.com/2014/05/19/nyregion/workers-at-nyus-abu-dhabi-site-face-harsh-conditions.html?module=Search&mabReward=relbias%3As%2C%7B%22%22%3A%22R1%](http://www.nytimes.com/2014/05/19/nyregion/workers-at-nyus-abu-dhabi-site-face-harsh-conditions.html?module=Search&mabReward=relbias%3As%2C%7B%22%22%3A%22R1%3A15%22%7D)

Report of the Independent Investigator into Allegations of Labor and Compliance Issues During the Construction of the NYU Abu Dhabi Campus on Saadiyat Island, United Arab Emirates, Nardello & Co., 2015, accessed May 8, 2015, <http://www.nardelloandco.com/pdf/NYU%20Abu%20Dhabi%20Campus%20Investigative%20Report.pdf>.

off campus? Christopher Davidson, former professor at Zayed University, a local university, has been amongst the most vocal critics:

With this mindset in place, many Western institutions - including universities - that should have been placing greater value on freedom, democracy and human rights have wittingly aided the survival of these regimes. Gulf monarchies have been sponsoring universities, museums and other cultural centres in the West in order to remind their superpower protectors of their existence and accumulate "soft power" with influential governments.⁶⁴

Rising international visibility inevitably draws increasing attention to human rights abuses, including abuses of temporary contract labor. Thanks to the brightening spotlight aimed by Western governments and human rights NGOs, labor issues are gaining prominence. That in turn may even start to create a more favorable climate for protests and strikes as workers feel more protected by the UAE's economic and security patrons. Certainly one must hope that the creation of progressive institutions of education and culture will not only increase external awareness, but will also increase domestic sympathy with the plight of those who are the worst off.

However, so far any possible loosening has proved ephemeral. Emboldened by the bubble of intellectual freedom he enjoyed in his job at the Sorbonne Abu Dhabi, Emirati lecturer Nasser bin Ghaith posted comments calling for political reform in an online forum. He and four others were arrested for insulting the government and inciting others to break the law; he was convicted and jailed. The Sorbonne declined to offer support for bin Ghaith, citing the fact that he had not been arrested for his academic work.⁶⁵ At the end of construction on NYU's new campus, and despite the university's labor values and contracted guarantees, many workers still faced terrible working and living conditions. In October of 2013, as the NYU construction project neared completion, workers of BK Gulf at Labor Camp 42 went on strike; on the second day the protests were busted up by the police, hundreds of strikers were jailed and deported.⁶⁶

⁶⁴ Christopher Davidson, "Oil and Troubled Waters," *The Times Higher Education Supplement*, no. 2079 (2012).

⁶⁵ Ursula Lindsey, "NYU-Abu Dhabi: A Careful Guest in a Foreign Land," *The Chronicle of Higher Education* (2012).

⁶⁶ Kaminer and O'Driscoll, "Workers at N.Y.U.'S Abu Dhabi Site Faced Harsh Conditions"

In effect, international pressure may amplify workers' voice, but it has not yet had much tangible impact on their conditions. But there is another option available to workers in the UAE: exit. The existence of an effective system for keeping workers' from getting political and economic voice is limited by the fact that workers can still vote with their feet. If there is external aggression or significant regional instability, the demographic imbalance turns from asset to liability. In that case migrants who are necessary to the functioning of both the government and the economy, but nonetheless free to leave and (intentionally) not committed to their adopted state, may indeed exit the UAE.

Right now the UAE only envisions such a mass exodus of laborers in the event of a deteriorating macro situation: significant internal or external conflict. However, at the micro level, exit remains an important strategy of last resort for workers in the UAE. Workers may wait until their employer sends them home on paid annual vacation (legally required in the UAE) and then never return or may simply work to the end of their initial contract but not renew, at which point they can either look for a new job or their UAE employer is legally required to pay to repatriate them. From the macro perspective, the fact that individuals may choose to exit is not viewed as particularly consequential. The assumption is that when one worker leaves there will always be another willing to take his place. The question we need to ask is whether this assumption is true.

There is some reason to hope that the global supply of cheap labor to the UAE is not bottomless. Wages are rising in some of the world's largest labor sending countries like China⁶⁷ and Bangladesh.⁶⁸ As opportunities in sending countries improve, the push to migrate may lessen. At the same time, we need to remember that the UAE government is not willing to allow just any migrant to enter the country. The government actively manages the national composition of its workforce to meet strategic goals. Employers too have an incentive to recruit workers with

⁶⁷ "The End of Cheap China," *The Economist* (2012), accessed July 21, 2014, <http://www.economist.com/node/21549956>.

⁶⁸ "Bangladesh Seeks 77% Rise in Wage for Garment Workers," *BBC News* (2013), accessed July 21, 2014, <http://www.bbc.com/news/business-24800279>.

basic competencies to lower the cost of training on the job site. It is possible that the race to the bottom has an end. Nonetheless, the bottom is a long way off.

Fortunately, though, even if an adequate labor supply is practically endless, exit still has a limited ability to pressure employers for change. Labor turnover has a cost; either the employer or the worker has to bear this cost. If the worker bears the cost (through higher placement fees, for example), then eventually the cost of migrating to the UAE will outweigh the benefits, causing the flow of workers to dwindle; if the employer bears the cost, then if turnover is too high the cost of poor conditions will outweigh the benefits. Protecting and increasing the ability of migrant workers to exit exploitative working conditions therefore becomes key not just to limiting the damage caused by these situations, but to preventing abuses in the first place.

CHAPTER FOUR: FILIPINO MIGRANT WORKERS IN THE ARAB GULF COUNTRIES

Introduction

This chapter will show how the colonial experience in the Philippines tied that country's economic development to that of the colonial power, the United States. When the Philippines achieved independence, the domestic economy was riddled with inefficiencies and corruption and unable to support its growing population. Faced with exploding national debt, a contracting national economy, and political unrest at home, the Marcos administration turned to the large-scale export of labor to restore the country's fortunes. Over time, migration became a primary strategy not only for national development and the employment of surplus workers, but also for mitigating the social unrest that the lack of domestic opportunities would otherwise encourage.

A Brief History of Filipino Migration

With 2,220,000 overseas foreign workers deployed in 2012,¹ or 2.3 percent of the total population, the Philippines is one of the world's major emigration countries. What really sets the Philippines apart from other major sending states such as Mexico or India is the high level of state involvement in migration at all stages of the process, from pre-departure to reintegration upon return. The Philippine state actively educates its citizens to be competitive in the global labor market, identifies opportunities for labor export, advertises the "great Filipino worker" to foreign governments and employers abroad, manages pre-departure tasks such as ensuring skills proficiency, contract registration, and destination country-specific orientations, polices departure through Manila International Airport, offers continuing support to citizens abroad through its diplomatic missions, seeks bilateral agreements with major destination countries to both increase flows and protect workers abroad, strongly encourages (at times even requires)

¹ Philippines Statistics Authority, National Statistics Office, "Quickstat," accessed May 8, 2015, <http://web0.psa.gov.ph/statistics/quickstat>.

remittances through official channels, offers opportunities for migrants to invest in the Philippines, and supports return and reintegration programs. Some authors have referred to this as a “labor brokerage” strategy on the part of the Philippine state.² The scope of government activity in this arena is unparalleled in the world today. How and why did the Philippines arrive at this strategy of not only facilitating, but encouraging temporary labor migration?

Colonialism: Setting the Stage for Filipino Migration to the Gulf States

The Philippines was first encountered by the West in 1521 when the Portuguese explorer Magellan arrived on his famous journey around the world in an attempt to find the Spice Islands. Magellan would ultimately die in battle in the Philippines after involving himself in a dispute between local chieftains, but not before claiming the islands for Spain, who had supported his voyage. Spain established colonial rule in the Philippines through the *encomienda* system of feudal control and administration, common to all of its colonies. The *encomendero*, or governor, was able to enrich himself by collecting tribute in the form of money, goods, or labor from the indigenous population under his control. Of this tribute, a quarter was kept by the *encomendero*, a quarter by the local church, and half by the colonial government.³ Local leaders were coopted as intermediaries between the Spanish and the indigenous populations and benefited materially through this function, “chang[ing] the configurations of traditional village society.”⁴ This bifurcation formed the basis of a durable social hierarchy with foreigners at the top followed by a local elite enmeshed in the global economic exploitation of the poor masses.⁵

Philippine migration is typically divided into four eras, or “waves.” The first wave resulted from this first colonial encounter. The Philippines was initially connected to world trade through

² C.f.: Robyn Magalit Rodriguez, *Migrants for Export: How the Philippine State Brokers Labor to the World* (Minneapolis, MN: University of Minnesota Press, 2010), Kindle book. Anna Romina Guevarra, *Marketing Dreams, Manufacturing Heroes: The Transnational Labor Brokering of Filipino Workers* (New Brunswick, NJ: Rutgers University Press, 2011), Kindle book.

³ Luis C. Francia, *A History of the Philippines: From Indios Bravos to Filipinos* (New York, NY: The Overlook Press, Peter Mayer Publishers, Inc., 2010): p. 66.

⁴ Renato Constantino, *A History of the Philippines from the Spanish Colonization to the 2nd World War* (New York, NY: Monthly Review Press, 1975, 2008): p. 388.

⁵ *Ibid.*, p. 388.

the “galleon trade” as a Spanish colony in the 1500s, which linked Philippine economic development exclusively to Spanish economic needs.⁶ Lacking significant mineral wealth, manufacturing capacity, or agricultural development, tribute under the *encomienda* system was not as valuable as that provided by other Spanish colonies. The Philippines’ real value to the Spanish crown was as a point of transshipment: Chinese and other East Asia goods were brought to Manila before being shipped to Acapulco then on to Europe. As little was produced in the Philippines, the galleon trade did little to encourage local economic production or development despite Manila’s key role in the trade. Starting in 1565, the galleon trade was essential to the Philippine economy nonetheless, as the silver obtained by the sale of goods in Acapulco was used to buy provisions and enriched local elites and the Spanish Crown. As the galleon trade ended (due primarily to resistance from merchants in Spain) in the early 1800s, Manila port gradually opened up to wider trade and became a global port city. While some local products gained importance, especially sugar, Manila would remain largely dependent on trade. This pattern of tied economic development would continue throughout Philippine history and would become important in establishing the labor brokerage state in later years.

By the end of the 1800s, the Philippines was emerging as a consolidated political identity. What had started as a group of islands largely organized around decentralized chiefdoms loosely consolidated in a shifting pattern of alliances and rivalries became a single entity through colonial administration and local reactions against it. The Philippines was gaining a national identity.

Renato Constantino, the eminent Filipino historian, is worth quoting at length:

The participation of the people in the various uprisings inevitably endowed them with the beginnings of political awareness. They saw what concerted effort meant; they were able to experience the sensation of collective and therefore intensified hatred against their oppressors. ...

The tradition of struggle against a common enemy was a principal factor in forging a consciousness of nationality. The other factor was colonialism itself. Administrative measures national in scope, and economic policies which resulted in the emergence of a national market, welded the separate islands into one country and one people ready to fight an anti-colonial war. The Revolution was

⁶ For a fuller exploration of the Philippine experience under colonialism, see: Francia, *A History of the Philippines*. Constantino, *A History of the Philippines from the Spanish Colonization to the Second World War*.

the culmination of the unarticulated and confused strivings of generations; it was also the final act in the forging of a nation.⁷

The Philippine revolution began in 1896 as revolutionary leaders formed a shadow government and declared an armed struggle for independence. A stalemate was quickly reached and a truce agreed upon in 1897 in which revolutionary leader Emilio Aguinaldo went into exile. Open hostilities resumed with the start of the Spanish-American War in 1898. Aguinaldo returned with American support to lead the Filipino troops against the Spanish. When Spain lost the Spanish-American War, colonial rule was transferred to the United States with the Treaty of Paris in 1898. The Philippines, which had expected independence at the conclusion of the war, continued to fight for independence until July 1902 and the signing of the Philippine Organic Act officially establishing Philippine governance under US colonial rule. Sporadic acts of resistance against colonialism would continue, however.

The colonial experience under the United States marked the beginning of a second wave of Filipino migration with flows largely directed towards the United States. The US was quick to establish its rule in the Philippines. The US Congress passed the Spooner Amendment authorizing the US to establish civil governance in the Philippines in March of 1901, even before the officially recognized end of the Philippine-American War in July 1902. Along with establishing legislative and judicial functions, the Americans put in place patterns that would set the Philippines up for future labor migration. First, the United States as colonial power revamped the education system of the Philippines. As part of its “benevolent assimilation,” the United States established free primary education in English-language public schools. Teachers were brought from the United States to teach in the Philippines. Additionally, the children of prominent families were often sent to the United States for their education with colonial government scholarships, which “established a direct migratory route between the Philippines and the United States.”⁸ English-language instruction would have a lasting impact on the Philippines. Today Filipino⁹ and

⁷ Francia, *A History of the Philippines*: p. 388-389.

⁸ James A. Tyner, *The Philippines: Mobilities, Identities, Globalization* (New York, NY: Routledge, 2009): p. 25

⁹ The Filipino language is largely based on Tagalog, the largest of the indigenous languages.

English are the two official languages of the country. More importantly, the fact that most Filipinos speak at least rudimentary English proves a significant advantage in the global labor market, providing a means for workers to communicate with each other and with employers in a multicultural work environment.

Second, the United States continued the pattern of tied economic development, giving US businesses priority access to the Philippines while hobbling Philippine trade with other countries through a series of tariffs and quotas. Even the Tydings-McDuffie Act, passed by the United States Congress in 1934 and establishing a ten-year timeline for Philippine independence, continued to impose tariffs and quotas which privileged US economic interests at the expense of Philippine economic development. At the United States' insistence the Philippine Constitution of 1935 ensured the property rights of US citizens and corporations. At the time, trade between the US and the Philippines had exploded and US investments in the Philippines were worth \$200 million.¹⁰ 80 percent of Philippine exports went to the United States and 65 percent of imports came from the US.¹¹ Thus, tied economic development under US colonial rule continued the pattern of Philippine dependence on the colonial power, further enriched and entrenched local power elites, and hindered the growth of a functioning, independent economy.¹² This is a pattern which would continue after independence.

Finally, US colonialism favored existing elites in the Philippines. In order to encourage collaboration with the United States, as opposed to nationalist, revolutionary struggle for independence, the United States supported the powerful landed elites' access to economic advantage and local political influence. This pattern established key elements of the political

¹⁰ Francia, *A History of the Philippines*: p. 172.

¹¹ *Ibid.*, p. 176.

¹² For a detailed look at Philippine economic development under US colonialism, see: Richard Hooley, "American Economic Policy in the Philippines, 1902 - 1940: Exploring a Dark Age in Colonial Statistics," *Journal of Asian Economics* 16, no. 3 (2005).

system in the Philippines that continue today: the provincial basis of national politics, elite control of national politics, and patronage politics operating through pork-barrel public-works projects.¹³

However, the general standard of living did improve under US colonialism. The United States invested in education, utilities, communications, and infrastructure projects as well as major agricultural and manufacturing industries.¹⁴ It was also during the time of American colonial rule that the Philippines would first experiment with large-scale labor migration. As denizens of a US colony, Filipinos had access to the US labor market that was increasingly denied to other Asian labor-sending countries by laws such as the Chinese Exclusion Act of 1882, the Scott Act of 1888, and the Immigration Act of 1924. Filipinos primarily came as cheap labor for Hawaiian plantations. Estimates range, but about 150,000 Filipinos arrived in the US between 1907 and 1930, most of whom went to Hawaii.¹⁵

World War II also played a role in establishing labor export as an economic strategy. The Philippines sided with the United States and was the sight of significant fighting in the war. Manila was first bombed by the Japanese on 8 December 1941, only nine hours after Pearl Harbor. Japan occupied the Philippines in early 1942, quickly and easily forcing out the American military presence led by General MacArthur (who famously vowed to return) and sending the Philippine government into exile. The last official Filipino troops surrendered to Japan on 6 May 1942. Japanese occupation from 1942 to 1944 was notoriously cruel. Troops, both American and Filipino, captured by the Japanese were treated horrendously and the general public was subject to harassment and abuse; crops were diverted to feed Japanese soldiers, causing hunger among the population.¹⁶ The United States military and General MacArthur did return in October 1944. In a series of devastating battles – including the Battle of Leyte Gulf, the largest naval battle of

¹³ Paul D. Hutchcroft, "The Arroyo Imbroglia in the Philippines," *Journal of Democracy* 19, no. 1 (2008).

¹⁴ Gerrdo P. Sicut, *The Philippine Economy During the Japanese Occupation, 1941 – 1945*, (Manila, Philippines: University of the Philippines, 2003).

¹⁵ Asis, "The Philippines' Culture of Migration".

¹⁶ Stanley Karnow, *In Our Image: America's Empire in the Philippines* (New York, NY: Ballantine Books, 1989): Ch. 11.

WWII, and the fierce, month-long urban Battle of Manila – the US retook the Philippines on 5 July 1945, but at huge cost. WWII took a massive toll on the Philippines.¹⁷ Of the more than 200,000 Filipino soldiers that fought, more than half died; roughly another one million Filipino civilians perished. Manila was basically leveled and at least one hundred thousand civilians died in that city alone. Urban centers and infrastructure were severely damaged. Shipping capacity, the mainstay of interisland transportation and commerce, fell dramatically.¹⁸ Sicat estimates that total economic output fell precipitously during Japanese occupation, decreasing by 70 percent from 1940 to 1945.¹⁹ At the end of the war the newly restored Philippine Commonwealth government estimated that damages to capital goods totaled at least 1.2 billion USD (nearly 20 billion USD in today's inflation adjusted dollars).²⁰

The need to rebuild coupled with reparations payments could have led to a new start for the Philippine economy. This did not happen. The international sentiment regarding reparations quickly changed in the aftermath of WWII. Rising tensions with the Soviet Union and the looming Cold War meant that the Allied Powers wanted to settle affairs in Asia quickly and establish Japan as a new ally. The US stopped supporting reparations and eventually the Philippines settled with Japan for \$550 million USD in payments, goods and services, and another \$250 million USD in long-term loans. The United States provided another \$620 million USD; however the majority of these funds, \$400 million USD, was to be spent on the restoration of individuals' (including US citizens') property, "reaffirming the unequal distribution of land and wealth that characterized the pre-war Philippines."²¹

The Philippines remained a US colony for another year until the Commonwealth era ended with the formal establishment of the Third Philippine Republic in 1946. The first five elected

¹⁷ For a more detailed look by sector at the economic impact of WWII, see: Sicat, *The Philippine Economy During the Japanese Occupation, 1941 - 1945*.

¹⁸ Sicat, *The Philippine Economy During the Japanese Occupation, 1941 - 1945*: p. 6.

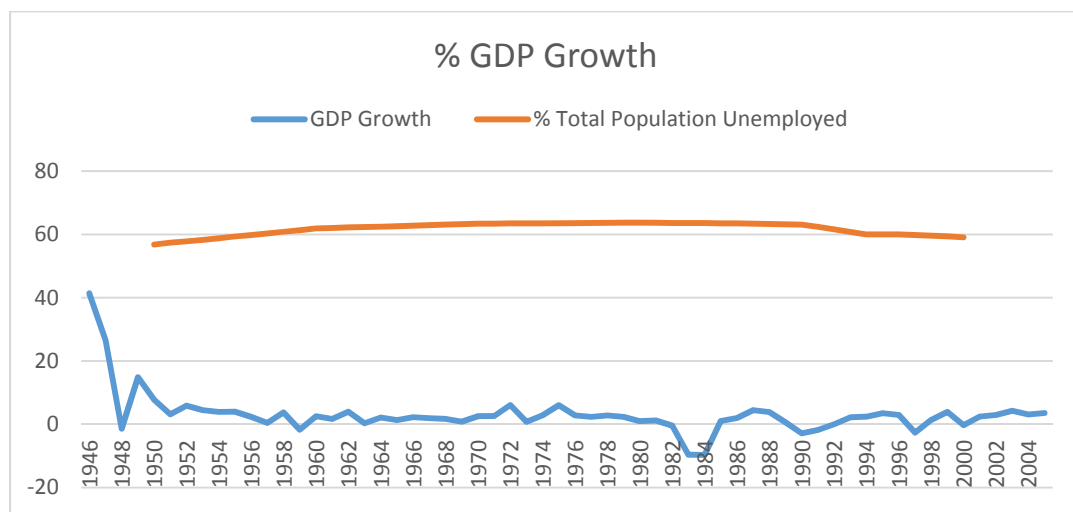
¹⁹ *Ibid.*, p. 25.

²⁰ *Ibid.*, p. 28.

²¹ Tyner, *The Philippines*: p. 44-45.

Presidents of the Philippines (Manuel Roxas, 1946-1948; Elpidio Quirino, 1948-1953; Ramon Magsaysay, 1953-1957; Carlos P. García, 1957-1961; Diosdado Macapagal, 1961-1965) were a mixed bag. The post-war need for national reconciliation and reconstruction drove the national agenda, but the administrations vacillated between continuing reliance on the United States and efforts to reduce American influence (particularly García's "Filipino First" policy). After the first few years of post-war reconstruction, GDP growth slowed and remained low until today. At the same time, unemployment rose and remained high (see Table 7 below).

Table 7: Philippine GDP Growth post-WWII, 1946 - 2005



Sources: GDP: Barro, Robert J. "Macroeconomic Crises since 1870 BPEA." Scholars at Harvard: Harvard University, 2008. Unemployment: Penn World Estimates for the Productivity Growth and Poverty Reduction in Developing Countries Report." Ottawa, Canada: Centre for the Study of Living Standards. CSLS Research Report 2003-06.²²

This mixture of slow GDP growth and high unemployment proved particularly difficult for the Philippines to manage. War damages, both to public infrastructure and to private capital stocks, made the creation of local employment difficult. And by the post-war period, the migration

²² Statistics on the Philippines before 1960 are uneven. In order to get comparable data for the 1946 to 1960 period, this study relies on two datasets. The data on GPD is based on Barro, which, in turn, relies on the Philippines' Office of Statistical Coordination and Standards, the World Development Indicators, and Hooley, Richard. "American Economic Policy in the Philippines, 1902 - 1940: Exploring a Dark Age in Colonial Statistics." *Journal of Asian Economics* 16.3 (2005): 464-88. The data on unemployment relies on the Penn World Estimates. Unfortunately, comparable data for unemployment as a percentage of the workforce is not available. Unemployment as a percentage of the total population is presented here as a reasonable, if imperfect, proxy. It should be remembered that this number does not take into account the young, elderly, or those who choose not to work and so appears artificially high.

path to the United States, previously an escape valve for excess labor, was narrowing drastically. The Immigration Act of 1924, also known as the National Origins Act, had established a quota system for the entry of foreigners into the United States, restricting immigration visas to 2 percent of the number of that nationality present in the US as of the 1890 census and completely excluding Asians. Filipinos had been exempt from the quota system because of their colonial relationship with the United States. In 1934, however, the Tydings-McDuffie Act ended this immigration path, immediately classifying Filipinos as aliens for immigration purposes even before full independence was granted and limiting immigration to the continental United States to fifty Filipinos per year.²³ In 1946 the Philippines (along with India) was exempted from the Asian exclusion zone by the Luce-Celler Act and so became eligible for a meager one hundred immigrant visas.²⁴ In addition, small numbers of Filipinos, primarily nurses, came into the United States via the Exchange Visitor Program established in 1948.²⁵ But until the Immigration and Nationality Act of 1965 got rid of racial restrictions and increased the cap for each Eastern hemisphere country - such as the Philippines - to 20,000, the flow of Filipinos to the United States slowed to a trickle.²⁶

Independence and the end of privileged access to the United States' labor market marked the beginning of the third wave of Filipino migration. Filipinos had to look elsewhere for opportunities for work. The pattern of Filipinos abroad began to globalize. Destinations in Asia gained in importance and Europe began to emerge as a significant destination. By 1973 – the end of the third wave – deployment of overseas foreign workers to Asia was two and a half times greater than deployment to the Americas (not including trust territories).²⁷

²³ There were exceptions for Filipinos migrating to Hawaii or joining the US military. C.f. Rick Bonus, *Locating Filipino Americans: Ethnicity & the Cultural Politics of Space* (Philadelphia, PA: Temple University Press, 2000).

²⁴ The Asian Exclusion Zone as a whole was gotten rid of in 1952 by the McCarran-Walter Act.

²⁵ For more information on Filipina nurses in the United States, see: Catherine Ceniza Choy, *Empire of Care: Nursing and Migration in Filipino American History* (Durham, NC: Duke University Press, 2003).

²⁶ For a review of US immigration policy, c.f.: Bill Ong Hing, *Defining America through Immigration Policy* (Philadelphia, PA: Temple University Press, 2004).

²⁷ "The Philippine Overseas Employment: Understanding Its Trend and Structural Change (Part 1)," *LABSTAT Updates* 10, no. 5 (2006).

The Marcos Years: Reaching the Point of No Return

The fourth wave of Philippine migration is characterized by state dependence on and institutionalization of migration as a strategy for economic, and therefore political, survival. This began during the Marcos regime (1965 – 1986) with Philippine Presidential Decree 442 of 1974. Marcos faced the problem of how to create economic growth and employment for the expanding and urbanizing population, while appeasing both his domestic constituency and his international patrons and despite an ailing economy. The administration began a massive effort of investment in infrastructure projects, raising government expenditure in real terms by approximately 43 percent by 1968.²⁸ This spending spree was largely funded by international borrowing. At the beginning of Marcos' presidency, Philippine national debt stood at \$600 million USD²⁹, 10 percent of GDP; by 1968 national debt was 1.4 billion USD and 19 percent of GDP. Fearing that national debt was quickly spiraling beyond the government's ability to repay, in 1970 official creditors and the IMF stepped in, offering to restructure Philippine debt in exchange for the country's participation in an IMF stabilization program. Austerity measures quickly stabilized the current account balance, but at huge cost to the general population. Consumer prices jumped at the same time that real wages dropped. As income inequality and absolute poverty grew so did political opposition to the Marcos regime. Protests and riots roiled the country in 1971 and 1972.

As the Communist Party of the Philippines played a significant role in organizing the protests, the Marcos regime was able to label the political unrest as part of the global communist threat, and was given virtual free rein by the international community to respond with severe tactics. On 22 September 1972 Marcos declared martial law in the Philippines. Beyond arresting dissidents, Marcos moved quickly to break the economic and political power of the existing elite by confiscating assets and dissolving Congress. He assumed rule by Presidential decree and declared his "New Society" would aim to end poverty in the Philippines. In large part this was to

²⁸ Robert S. Dohner and Ponciano Intal, "Introduction," in *Developing Country Debt and Economic Performance*, Volume 3, *Country Studies - Indonesia, Korea, Philippines, Turkey*, ed. Jeffrey D. Sachs and Susan M. Collins (Chicago, IL: University of Chicago Press, 1989); p. 382.

²⁹ Dohner and Intal, "Introduction": p. 383.

be achieved through a streamlined and technocratic approach to progressive development. In practice this meant a return to international borrowing,³⁰ this time through state-owned corporations to hide the rising government expenditure. The international community, and the United States in particular, continued to support the Marcos regime financially and politically. With the support of the military, powerful new interest groups in the country, and strong international allies, the Marcos regime would be able to repress opposition for over a decade.

Amid the economic and political restructuring of the early martial law years, Marcos issued Philippine Presidential Decree 442 (PD442) in 1974, institutionalizing the state's labor export policy. PD442 had several unusual provisions. First and most significantly, it established the state dominance in labor recruitment and minimized the role of private recruiters. PD442 created three agencies to manage recruitment: the Bureau of Employment Services (BES), the Overseas Employment Development Board (OEDB) and the National Seaman Board (NSB); in 1982 these agencies would consolidate into one agency, the Philippines Overseas Employment Administration (POEA).³¹ Second, it banned foreign employers from hiring Filipinos directly, institutionalizing the role of intermediaries in the recruitment and deployment of Filipino labor. Finally, it required that a percentage of each OFW's wages be remitted to family members in the Philippines using official channels.³²

But a further problem remained, a political problem: labor export did not fit well with the strong economic nationalist rhetoric that was popular in the Philippines post-independence. So Marcos and succeeding administration faced the challenge of turning labor migration into something nationalistic, patriotic. Marcos billed his new labor code established in PD442 as the new "magna carta" of labor and began to praise migrant workers for their contribution to the Philippines. But this discourse would be perfected in later administrations, particularly under

³⁰ Though official development assistance to the "anti-communist" regime also more than doubled.

³¹ Kristel Acacio, "Managing Labor Migration: Philippine State Policy and International Migration Flows, 1969-2000," *Asian & Pacific Migration Journal* 17, no. 2 (2008).

³² Guevarra, *Marketing Dreams, Manufacturing Heroes*: Ch. 2.

Corazon Aquino (1986 – 1992; the first to name migrants as “modern-day heroes”) and Gloria Macapagal-Arroyo (2001 – 2010).

And thus the forth wave of Philippine migration began. When the OEDB was formed in 1975 there were an estimated 1,174,940 Filipino workers overseas with an estimated annual deployment³³ of 36,000; by the time the OEDB was replaced with the POEA in 1982 deployment alone had increased to over 300,000 (64,169 of which were seamen).³⁴ In its seven years of operation the OEDB “opened” fifty two new labor markets, sent twenty three “marketing missions” to various countries to initiate recruitment negotiations, and signed bilateral agreements with Austria, Commonwealth of the Trust Territories, Iran, Kuwait, Nigeria, Qatar, Saudi Arabia, the United Arab Emirates, and Zambia.³⁵

Passed in a moment of optimism, when GNP and employment opportunities in the Philippines were increasing buoyed by momentarily high prices for Philippine exports, PD442 was originally envisioned as a temporary, stop-gap measure until local opportunities could catch up to population growth. But once begun the cycle of labor export would prove hard to break. When the price of exported commodities fell in 1975 and again in 1980, the Philippine economy took a significant hit. While the state tried to buy its way out of yet another economic slump, increasing capital expenditures even further and taking on ever more national debt, the domestic employment situation had become untenable.

In short, faced with exploding national debt, a contracting national economy, and political unrest at home, the Marcos administration turned to the large-scale export of labor to restore the country’s fortunes. Guevarra calls this model the “labor brokerage state.”³⁶ This option fit not only with the country’s legacy as an educated, English-speaking colony but also with the new export-

³³ Deployment refers to those workers whose contracts were processed by the POEA (or its predecessor, the OEDB) in that year; new hires and re-hires. The number does not include those who were simply continuing to work on an existing contract.

³⁴ Patricia A. Sto. Tomas, *Report of Operations of the POEA*, Philippines Overseas Employment Administration, 1982, accessed 9 May 2015, <http://www.poea.gov.ph/ar/AR1982.pdf>.

³⁵ Tomas, *Report of Operations of the POEA*.

³⁶ Guevarra, *Marketing Dreams, Manufacturing Heroes*.

led industrial economy that Marcos intended to create, only the primary product the Philippines was exporting was its labor force. Although the Nationality Act of 1965 in the United States had gotten rid of racial restrictions and increased the cap for Filipino migrants, the 20,000 migrants allowed into the United States was a mere drop in the bucket compared to unemployment and economic need in the Philippines. The Philippines needed to find new labor markets. The result was that by the time PD442 was announced in 1974, the Philippine state was actively looking for labor migration opportunities for its citizens globally.

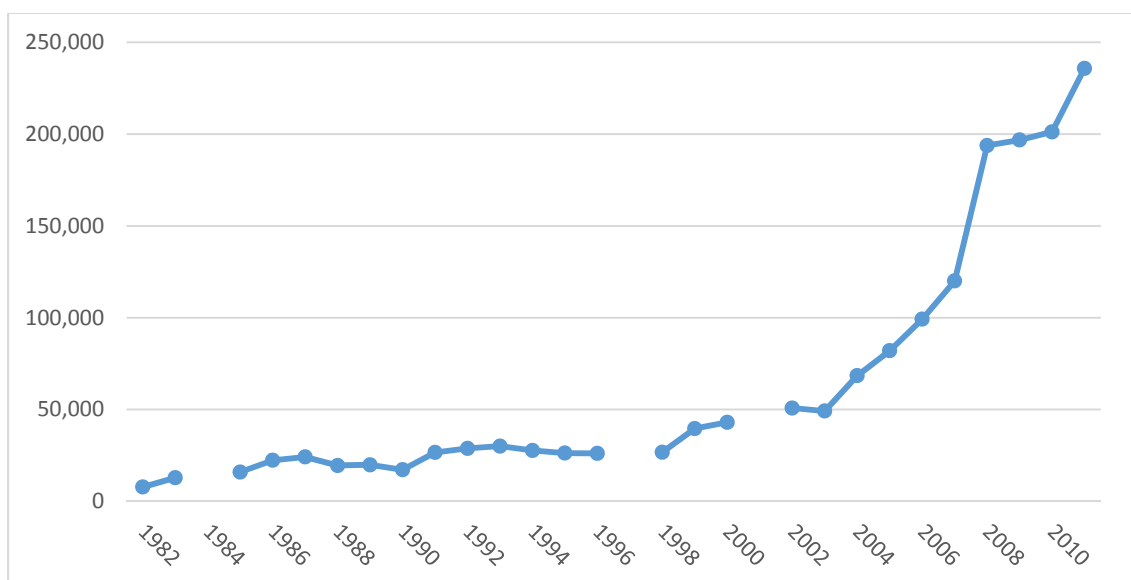
At just that moment in history, a new labor market was emerging in the oil-producing Arab Gulf states as global oil prices boomed. It is interesting to note that of the nine countries that the OEDB signed agreements with from its creation in 1975 until 1982, five were oil-producing countries in the Middle East; by 1982 over 84 percent of Filipino migrant workers were deployed to the Middle East. The UAE was one of those countries that the OEDB had an agreement with. The UAE had achieved independence in 1971 and was developing its economy at a breakneck pace. As discussed in the previous chapter, there was a need for labor to staff the growing economy but simultaneously a reluctance to rely too heavily on Arab migrants or, indeed, any one national group. Growth in labor migration between the Philippines and the UAE was a natural outcome for both countries. The Philippines established official diplomatic ties with the UAE in 1980.³⁷ By 1982, the first year the Philippines government recorded country-specific deployment data, there were 7,762 Filipinos deployed to the UAE³⁸; in 1986 when Marcos left power there were already 22,322 deployed to the UAE.³⁹ This number would only continue to grow.

³⁷ Ramona Ruiz, "'Significant Step' in Improving UAE-Philippine Relations," *The National*, 16 September 2013.

³⁸ *First Report of Operations of the Philippines Overseas Employment Administration*, Philippines Overseas Employment Administration, 1982, accessed May 27, 2014, <http://www.poea.gov.ph/ar/ar.htm>.

³⁹ *1986 Annual Report* (Mandaluyong City, Philippines: Philippines Overseas Employment Administration, 1986) accessed May 27, 2014, <http://www.poea.gov.ph/ar/ar.htm>.

Table 8: Deployment of Filipinos to the UAE, 1982 - 2011



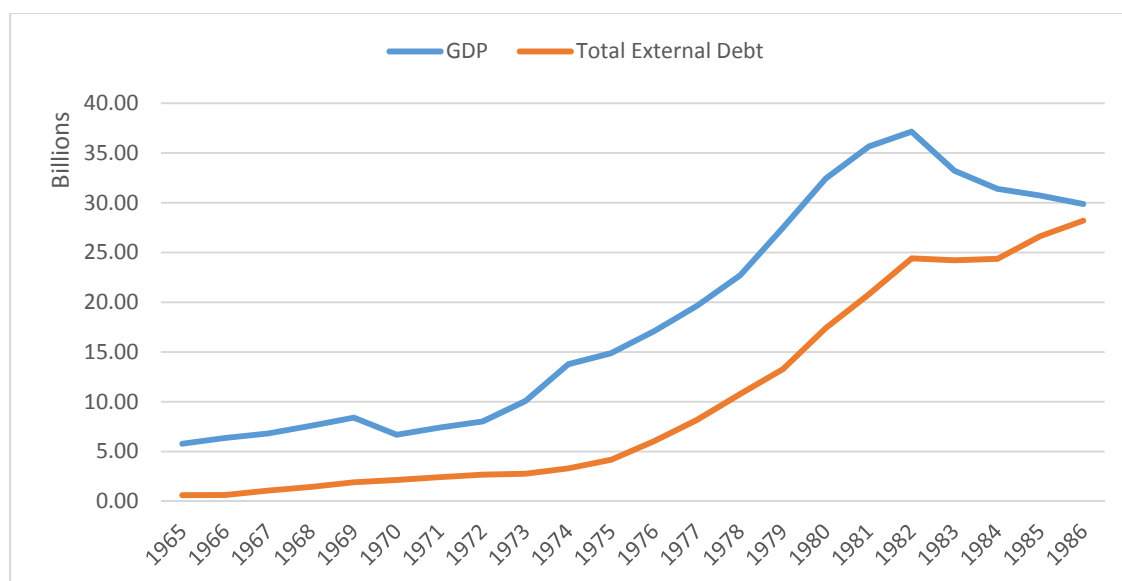
SOURCE: Annual Reports of the Philippines Overseas Employment Administration; available online: <http://www.poea.gov.ph/ar/ar.htm>

Marcos was overthrown in February of 1986 in a peaceful revolution known as the People Power Movement. During the final years of his rule, Marcos was plagued by failing health, scandals involving the imprisonment, torture and murder of political opponents, the loss of US support, and continuing rampant corruption. When presidential elections in 1986 were rigged and Marcos was declared the winner, the result was widespread rebellion. The political opposition managed to unite behind a single leader, Corazon Aquino, there were high-level defections in the military and police, and the Catholic Church dropped its support of the Marcos regime. On February 25th the Marcos family and its closest allies fled the country, taken aboard US military aircraft to Hawaii.

The Marcos legacy was one of continuing economic distress. When he was overthrown by the People Power Movement, GDP was declining and Philippine national debt had reached over \$28 billion USD, an unmanageable 94 percent of GDP (see Table 2 below). Unrestrained spending had not been limited to development projects, either. Imelda Marcos, President Marcos' powerful wife, had been infamous for her "beautification" campaigns (activities such as erecting and whitewashing walls to screen the massive slums from view of major streets) and, upon her

exile to Hawaii, the world marveled at her shoe collection containing an estimated 3,000 pairs. Corruption, long a problem in the Philippines, had reached new heights, epitomized by the personal wealth accumulated by the Marcos family: the family embezzled an estimated \$5 to \$10 billion USD,⁴⁰ much of that in the form of certificates for gold bullion that the family smuggled with them to Hawaii on US military planes. Little of these ill-gotten gains have been recovered by the Philippines government, despite a long effort to do so.⁴¹

Table 9: Philippine GDP and Debt under President Marcos



SOURCES: GDP: World Development Indicators, World Bank. DEBT: 1965-1970: Dohner, Robert S., and Ponciano Intal. "Introduction." *Developing Country Debt and Economic Performance: Country Studies - Indonesia, Korea, Philippines, Turkey*. Eds. Sachs, Jeffrey D. and Susan M. Collins. Vol. 3. Chicago, IL: University of Chicago Press, 1989. 28; 1971 - 1986: World Development Indicators, World Bank

Beyond the imposition of martial law and the violent repression of political opposition, the explosion of the national debt, and massive fraud and corruption, there were three bright spots on Marcos' record. First, despite the waste of money through corruption, many desperately needed infrastructure projects were completed under his rule. Roads, sewers, hospitals and schools were

⁴⁰ *Global Corruption Report 2004: Political Corruption* (London, UK: Pluto Press and Transparency International, 2004), accessed May 8, 2015, https://www.transparency.org/whatwedo/publication/global_corruption_report_2004_political_corruption.

⁴¹ Kate McGeown, "What Happened to the Marcos Fortune?" *BBC News*, 25 January 2013, accessed May 28, 2014, <http://www.bbc.com/news/world-asia-21022457>.

built in areas in desperate need of them. Second, he had managed to dislodge the established political elite in the country. This achievement was dimmed by the fact that he had supplanted the traditional elite with a new cadre of political and economic elites that were loyal to him. Nonetheless, with his overthrow there was at least some competition among elites. Third, opposition to the Marcos dictatorship had “nurtured the growth of vibrant civil society organizations dedicated to promoting the interests of ... others who had long been marginalized by the country’s political system”⁴² and reaffirmed the country’s commitment to democracy. When Marcos was overthrown by a popular mass movement, there was hope that the moment for genuine, far-reaching economic and political reform had come.

The Post-Marcos Era: Labor Migration as a National Project

The success of the People Power was made possible in part by the fact that the opposition to Marcos, from the old elites to the communists, were able to unite and support one figure: Corazon Aquino. Ms. Aquino was the widow of popular opposition figure Benigno Aquino Jr. Benigno had been assassinated by the Marcos regime in 1983; the general outrage that followed his assassination is often pointed to as the moment when momentum began to shift away from the Marcos regime and towards the opposition.⁴³ His wife, Corazon, had little experience in politics but Benigno’s death thrust her upon the national political scene. She harnessed her image as a “simple housewife” in order to garner support, a tactic that proved successful.

When Marcos and his allies fled into exile in 1986, Corazon Aquino assumed “revolutionary power” and ruled by decree to undo the Marcos legacy and write a new constitution: she abolished the 1973 Constitution, disbanded the existing parliament, established a provisional “Freedom Constitution” allowing her to exercise both executive and legislative authority, reorganized the legislative branch, established new legal codes, revised the

⁴² Hutchcroft, “The Arroyo Imbroglio in the Philippines”.

⁴³ C.f.: Clifton Sherrill, “Promoting Democracy: Results of Democratization Efforts in the Philippines,” *Asian Affairs, an American Review* 32, no. 4 (2006).

membership of the Supreme Court, repealed some repressive laws, restored habeas corpus, freed political prisoners, and began the quest to recover the wealth stolen by the Marcos regime. She formed a committee to draft a new constitution, approved by 78 percent of voters in 1987, which limited presidential powers and re-established a bicameral legislature. The new constitution strengthened social justice, civil liberties, and human rights. But most Marcos-era laws are still on the books and many of the companies that were placed under the control of his cronies are still owned by them despite efforts at monopoly-busting and market reforms. Elections were held in 1986 and Corazon Aquino was elected President. "Yet in these elections, many of the traditional elites were returned to power, causing a reprise of the obstructionist legislature that historically prevented major reform."⁴⁴ The Philippines quickly moved back to the former patronage politics based on provincial elites

The economy also continued to disappoint. Despite popular pressure to disavow the foreign debt racked up by Marcos, Aquino decided to honor all debts in order to secure new, needed loans and attract foreign investment. National debt increased by \$5 billion during her presidency, though the debt to GDP ratio was reduced a modest amount to 63 percent.⁴⁵ Inflation was in the double digits for most of her presidency (1986-1992), topping at 19 percent in 1991, and unemployment averaged 8.4 percent; both were higher than under Marcos.⁴⁶ Blackouts had become common in Manila. With the economy continuing to worsen, Aquino also continued to rely on the export of labor. Aquino was the first to refer to Filipinos abroad as national "heroes," a theme that would be picked up and amplified by later politicians. By the end of Aquino's term in 1992 cash remittances flowing into the Philippines were valued at \$2.2 billion USD, double what they had been in 1989 when the Central Bank of the Philippines began keeping records.

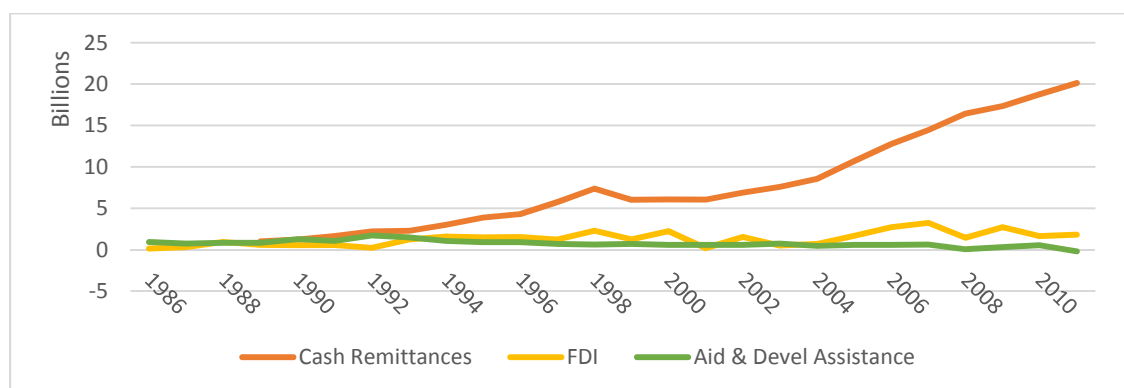
⁴⁴ Ibid.

⁴⁵ "World Development Indicators," World Bank: World Bank, 2015, accessed May 9, 2015, <http://data.worldbank.org/data-catalog/world-development-indicators>.

⁴⁶ Inflation statistics can be found at: Bangko Sentral ng Pilipinas, <http://www.bsp.gov.ph/statistics>. Unemployment statistics from: International Financial Statistics, IMF.

The importance of remittances as a source of foreign exchange would only increase, especially as compared to foreign direct investment (FDI) and official aid and development assistance offered by the international community. Succeeding presidents would continue to encourage labor migration and the resulting remittance flows.

Table 10: Sources of Foreign Exchange, Philippines, 1986 - 2011



Currency: current USD

Source: Remittances: Bangko Sentral ng Pilipinas; FDI and Aid: World Development Indicators, The World Bank.

Nonetheless, Corazon Aquino was generally beloved for her fierce defense of the democratic system as well as for her personal qualities of humility and her upright character. When Aquino's advisors claimed that, as she had not been inaugurated under the 1987 Constitution, its prohibition of reelection did not apply to her, Aquino vehemently disagreed and refused to run again. Instead she supported her close ally, Fidel Ramos. Her voice would remain powerful and she prominently influenced the course of Philippine politics under the next three administration as well.

Ramos had been a military general under Marcos and had led the surprising military revolt against him. Ramos won a narrow victory in the 1992 presidential race. The first major challenge to labor migration as an explicit government policy came in 1995. In that year Flor Contemplación, a Filipina domestic worker in Singapore was arrested for the suspected murder of a fellow Filipina domestic worker and a Singaporean child in the latter's care. Ms. Contemplación confessed to the murder while in police custody (though rumors of police abuse in obtaining the confession persisted), was tried, found guilty and sentenced to death. President Ramos

(president from 1992 – 1998) requested clemency on her behalf or at least a stay of execution pending the results of the autopsies; his requests were denied and Flor Contemplación was executed on 17 March 1995. Manila recalled its ambassador from Singapore and downgraded its diplomatic missions in protest. But for the Filipino public, this was seen as too little, too late. The lack of support by the Philippine embassy in Singapore for Ms. Contemplación during her arrest and trial, and the ineffectual efforts of the President after her sentencing came in for severe criticism. The broader question was raised as to what the government was, and what it should be, doing to protect the “heroes” that it advocated sending abroad. Criticism strengthened when a similar case involving a Filipina domestic worker, Sarah Balabagan, in the UAE, emerged later in 1995. While Ms. Balabagan escaped the death penalty, her case was seen to highlight the vulnerability female domestic workers face in foreign homes.

Figure 1: The Story of Sarah Balabagan

Sarah is from Mindanao, the predominantly Muslim province in the south of the Philippines. A middle child in a large family, Sarah left the Philippines at age 16 to become a domestic worker in Al Ain, United Arab Emirates. In 1995 she entered the UAE on forged documents, showing that she was 27 years old.

Shortly after she arrived, Sarah killed her employer, Almas Mohammed al-Baloushi. She stabbed him 34 times. She alleged that he was raping her at the time and she acted in self-defense. The case raised significant attention in the UAE, the Philippines, and globally. In the UAE, many Emiratis were outraged at the killing in the supposedly protected sphere of the home, and supported the al-Baloushi family's demand for the death penalty. In the Philippines and internationally, especially as the case followed shortly after the Flor Contemplación case, support for Sarah was strong.

Sarah ended up being tried twice. At her first trial she was convicted of manslaughter and sentenced to seven years in prison and payment of 150,000AED (\$40,872 USD) in blood money. But she was also awarded 100,000AED (\$27,248 USD) in compensation for the rape. The al-Baloushi family protested against the verdict. Sheikh Zayed intervened and called for a retrial.

At her second trial, Sarah was found guilty of premeditated murder. Sarah was sentenced to death. An international outcry followed. The Philippines government as well as various international rights organizations such as Amnesty International, were active and vocal – to the point of being unhelpful by pushing the Emirati authorities into a corner, it was sometimes argued – in advocating for her release. Sheikh Zayed again intervened, requesting the al-Baloushi family to accept blood money in lieu of the death penalty. After initial rejections, the family agreed.

On appeal the death sentence was quashed. Instead, Sarah was sentenced to one year in prison, payment of 150,000AED (\$40,872 USD) in blood money, and 100 lashes with a cane. This sentence was carried out. The flogging was divided into 20 lashes a day for five consecutive days and the police officer carrying out the punishment was required to tuck a Koran under his arm to limit the force of his blows. She was released from prison early, after 9 months, upon one final intervention by Sheikh Zayed.

A wealthy Filipino industrialist in the UAE donated most of the blood money. Gifts, in cash and kind, flowed in for Sarah. By the time she was released from prison, she was a wealthy woman by Filipino standards: a special trust fund worth several hundred thousand dollars had been set up in her name with donations from around the world. A Filipino movie was made of her story.

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The Ramos administration responded to the *Contemplación* and *Balabagan* cases with the establishment of the Gancayco Commission and the Republic Act No. 8042: Migrant Workers and Overseas Filipinos Act of 1995 (“Migrant Workers Act of 1995”). The Gancayco Commission was charged with looking into the actions of the government to protect its citizens overseas and to make policy recommendations for improvement. The Commission recommended sweeping changes:

- Phase out the deployment of female domestic workers to the Middle East;
- Phase out the deployment of female entertainers in Japan, Greece, and Cyprus;
- Tighten pre-departure and departure procedures including accreditation of employers, verification of contracts, pre-departure seminars, etc.;
- Strict enforcement of policy to establish OWWA centers in every diplomatic post;
- Strict enforcement of policy to establish the country-team approach in all embassies;
- Permanently ban agencies engaged in illegal recruitment;
- Create of special prosecutors and investigators for illegal recruitment cases;
- Create special courts to give priority handling to illegal recruitment cases;
- Provide legal assistance to all Filipinos involved (either as victim or wrongdoer) in capital or serious offenses;
- Create banks and hospitals for migrant workers and conduct feasibility studies for livelihood projects for returning workers;
- Create the economic and social environment needed to generate jobs domestically.⁴⁷

In effect, the Gancayco Commission sought to reduce the deployment of Filipinos to situations that were likely to be dangerous either due to the type of job or the method of deployment, to strengthen the ability of the state to provide support to workers abroad through its embassies, to encourage the return and reintegration of migrant workers and eventually to end the need for labor migration in the first place. These recommendations were met with some

⁴⁷ Joaquin Gonzalez, *Philippine Labour Migration: Critical Dimensions of Public Policy* (Singapore: Institute of Southeast Asian Studies, 1998): p. 125-126.

official skepticism at the time,⁴⁸ but received general popular approval and have guided Philippine policy regarding labor migration since 1995. These ideals continue to be influential in the POEA and Philippine embassies today.

The Migrant Workers Act of 1995 was lauded by the Ramos administration as the migrant workers' "magna carta" – ironically, the same term that had been used by Marcos to describe PD442 in 1974. The Act is explicit in shifting the language used by the state with regards to its position on, and role in, the export of migrant labor from the Philippines. On the one hand, the Act establishes the protection of Filipinos abroad, especially migrant workers, as a legitimate role of the Philippine state. On the other hand, the Act expressly states that: "the State does not promote overseas employment as a means to sustain economic growth and achieve national development."⁴⁹ The Migrant Workers Act of 1995 is the first statement of a rhetorical shift from "promotion" to "management" of labor migration. The Act lays out the government's plan for what that management will look like (see Figure 2, below).

⁴⁸ C.f.: "Romulo Criticizes Inquiry: Describes Gancayco Findings as 'Totally Absurd'," *The Filipino Express*, 28 May 1995, accessed May 9, 2015 from ProQuest Ethnic NewsWatch.

⁴⁹ "Migrant Workers and Overseas Filipinos Act," *Republic Act No. 8042*, Congress of the Philippines. Manila, Philippines, 1995, accessed June 1, 2013, <http://www.poea.gov.ph/rules/ra8042.html>.

Figure 2: Significant Elements of Republic Act No. 8042: Migrant Workers and Overseas Filipinos Act of 1995

- Gender-sensitive criteria for policies and programs;
- Free access to courts, judicial bodies, and legal assistance extended to Filipinos overseas;
- Political participation in the Philippine democratic process is extended to Filipinos overseas;
- Promotion of skilled migration as a means of protection for migrant workers:
 - “The State recognizes that the ultimate protection to all migrant workers is the possession of skills. Pursuant to this and as soon as practicable, the government shall deploy and/or allow the deployment only to skilled Filipino workers.”
- Prohibition of recruitment fees paid by migrant workers;
- Cooperation and partnership with non-governmental entities (AMMENDED in 2010 by RA 10022 to include recruitment agencies);
- Migrant workers may only be deployed to countries where their rights are protected by existing labor laws, multilateral legal instruments, bilateral agreement, or if the state is “taking positive, concrete measures to protect the rights of migrant workers,” (AMMENDED in 2010 by RA 10022 to remove the final category – quoted above – and require Embassies or Department of Foreign Affairs foreign posts to certify to the POEA whether labor conditions in each country meet Philippine requirements);
- The government of the Philippines may impose deployment bans when necessary;
- Defines “illegal recruitment” to include, among others things:
 - Charging excessive or inappropriate fees;
 - False information or misrepresentation;
 - Recruitment for jobs “harmful to public health or morality or to dignity of the Republic of the Philippines;”
 - Contract changes or substitution;
 - Passport withholding;
 - AMMENDED in 2010 by RA 10022:
 - Regulates conditions under which loans may be made to migrant workers for the purpose of funding allowable fees;
 - Restricts conditions under which recruiters may impose compulsory conditions on health examinations or training;
 - Forbids recruiters from “passing on” insurance fees to the worker;
- Makes the recruitment agency jointly liable with the employer for monetary claims including damages and unjust termination;
- Requires POEA to issue travel advisories and circulate information about labor and employment conditions, the human and workers’ rights standards of destination countries;
- Establishes funds for emergency repatriation, Migrant Workers Loan Guarantee Fund, and Legal Assistance Fund;
- Establishes a reintegration center for the reintegration of returning OFWs;
- Establishes a Resource Center for OFWs and Overseas Filipinos in every Embassy;
- Ensures shared government data on migration;
- Assigns roles in overseeing migration to the Dept. of Foreign Affairs, the Department of Labor and Employment, POEA, and OWWA; AMMENDED in 2010 by RA 10022 to include the Department of Health and Local Government Units;
- Reaffirms the country-team approach, established in 1993, at Philippine embassies;
- Deregulation or phase out of:
 - Recruitment activities: to become a matter between worker and employer;
 - POEA to drop regulatory functions.
This section REPEALED in 2007 by RA9422
- AMMENDED in 2010 by RA 10022 to establish:
 - Mandatory insurance coverage at no cost to the worker;
 - Congressional oversight committee

SOURCE: "Migrant Workers and Overseas Filipinos Act." Republic Act No. 8042. Ed. Congress of the Philippines. Manila, Philippines, 1995. <http://www.poea.gov.ph/rules/ra8042.html>

In particular, the Act establishes a mandate for increased government monitoring, promotion, and active protection of migrants' rights abroad. The act places the primary burden of this increased activity on the Department of Foreign Affairs:

The protection of the Filipino migrant workers and the promotion of their welfare, in particular, and the protection of the dignity and fundamental rights and freedoms of the Filipino citizen abroad, in general, shall be the highest priority concerns of the Secretary of Foreign Affairs and the Philippine Foreign Service Posts.⁵⁰

This places the various Embassies of the Philippines, as well as the outposts of the Department of Labor and Employment that are embedded within many embassies (today Philippine Overseas Labor Offices, POLOs, have been established in thirty four cities, including both Abu Dhabi and Dubai), in the uncomfortable position of attempting to ensure the enforcement of laws beyond the sovereign scope of the Philippines government. Embassy teams are given the responsibility to ensure that "labor and social welfare laws *in the foreign countries* are fairly applied to migrant workers."⁵¹

Through the Gancayco Commission and the Migrant Workers Act of 1995, the Philippine state began to define a set of rights that are portable, that Filipino citizens take with them when they leave the country. They also establish the legitimacy of the Philippine state in taking concrete actions to ensure not only those rights proffered by the Philippine state, but also those recognized by international agreements to which the *receiving* state is a party, are guaranteed in practice.

The Gancayco Commission and the Migrant Workers Act of 1995 were popular and the Ramos administration was generally successful for its first few years. The economy grew and foreign direct investment and remittances inflows were strong. Although unemployment remained at around 9 percent for most of his presidency, domestic wages increased. However, his presidency was tainted in the end by his attempt to amend the 1987 Constitution to change from a presidential to a parliamentary system of governance. Although this could plausibly be seen as

⁵⁰ Ibid.

⁵¹ Ibid., emphasis added. This was modified in 2010 by RA 10022.

a means of limiting the power of the executive office and encouraging parties to strengthen their reliance on policy platforms (instead of populism and expediency), this was seen as a move by Ramos to avoid the single term limit on the Presidency and retain power. Former ally Corazon Aquino led the successful political opposition against the proposed amendment.

Popular actor and political outsider Joseph Estrada won the 1998 presidential election. His administration became infamous for corruption. Transparency International estimates that he embezzled between \$78-80 million USD.⁵² Impeachment proceedings were initiated against him in 2000. When the Supreme Court decided not to allow evidence to be entered against him that had not been included in the initial impeachment complaint, it was widely perceived as evidence of corruption in the Court. A new round of popular protest followed and the “People Power II” movement, again led by Corazon Aquino, pushed Estrada out of power. His vice president, Gloria Macapagal-Arroyo, was sworn in as President on 20 January 2001. She was later elected to a full term as president in the 2004 elections amid allegations of vote-rigging.

Gloria Macapagal-Arroyo is from a powerful political family in the Philippines; she is the daughter of former President Diosdado Macapagal (president from 1961 – 1965). If Corazon Aquino was the first to term migrants as national heroes, Arroyo was the politician who perfected this narrative. The idea of labor bans on the deployment of Filipino workers, particularly female domestic workers and entertainers, to vulnerable positions was seriously discussed under the Ramos administration after the Flor Concepción tragedy. This option was not used at the time due to fears that bans were unrealistic given the economic situation in the Philippines and so would only lead to increased illegal migration which only places workers at greater risk.⁵³ The challenge of how to make workers less vulnerable remained a central debate. Arroyo’s particular contribution to Philippine labor export has been her activity to “upgrade” Filipino migrant workers in order to add value to this particular export commodity.⁵⁴ One such initiative aims to create

⁵² *Global Corruption Report 2004*: p. 13.

⁵³ Labor bans would be utilized after changes in Philippine law in 2009 made it illegal to deploy workers to countries without basic human rights protection in place. These bans were short-lived and of dubious effect.

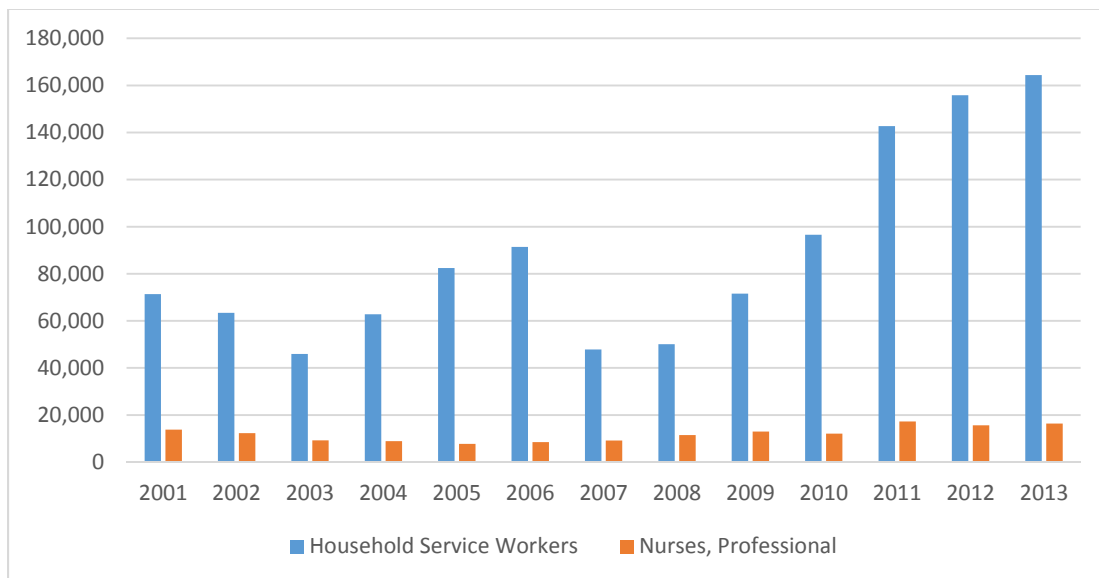
⁵⁴ Guevarra, *Marketing Dreams, Manufacturing Heroes*, Ch. 5.

“supermaids”: “As of 2006, all deployed domestic workers must be at least 23 years old, attend a country-specific language and culture course, and secure a certification on household work from a government-sponsored testing center.”⁵⁵

The logic behind “upgrading” is simple: labor and human rights abuses disproportionately affect low-skill, low-income workers, so increasing the skills of potential migrants should reduce human rights violations. The causal chain is assumed to function along these lines: higher skilled workers are able to do more complex or specialized labor; as relatively few migrant workers have these skills, these “upgraded” Filipino workers face less competition, are in higher demand and thus have more opportunities to choose an employer or to change employers; the fact that these workers are in demand increases their leverage with employers, allowing them to demand higher wages and/or better working conditions. Upgraded workers are *empowered* workers, able to demand better treatment and thus less likely to suffer abuse or to require state intervention. The state benefits from increased remittances, decreased reliance on welfare systems by OFWs and their families, and decreased political stress - between sending and receiving state as well as between the Philippine state and its OFW constituents - that might otherwise arise due to maltreatment of workers abroad. This strategy has so far had little impact on the skill level of workers sent abroad. From the time when Arroyo took office in 2001 until today, the number of new domestic workers the Philippines sends abroad continues to overwhelm the number of new nurses hired, a high-skill profession that the Philippines government supports for deployment (see Table 11, below). While there have been brief periods in which the gap narrowed (from 2003 – 2004 and 2007 – 2008), the rate of new hires of domestic workers in general is increasing faster than the rate of nurses; in 2013 there were ten times as many domestic workers newly deployed as nurses.

⁵⁵ Dovelyn Rannveig Agunias, *Migration's Middlemen: Regulating Recruitment Agencies in the Philippines-United Arab Emirates Corridor* (Washington D.C.: Migration Policy Institute, 2010) accessed May 8, 2015, <http://migrationpolicy.org/research/migrations-middlemen-regulating-recruitment-agencies-philippines-united-arab-emirates>.

Table 11: Filipino New Hires by Occupation



SOURCES: 2009 - 2013: *Compendium of OFW Statistics 2013*: Philippines Overseas Employment Administration, 2013; 2003 - 2009: *OFW Global Presence 2009*: Philippines Overseas Employment Administration, 2009; 2001 - 2006: *OFW Global Presence 2006*: Philippines Overseas Employment Administration, 2006.

Guevarra criticizes this approach:

In effect, the state shifts the burden of responsibility and protection from itself to the workers by implying that their best protection is empowerment – which they can achieve by becoming responsible and self-regulating. While these are fine virtues, this social labeling is disconcerting in that it is solely geared toward affecting the conduct of Filipino workers and not that of foreign employers or labor brokers.⁵⁶

But, of course, the Philippine state has little capacity to affect foreign workers or foreign governments. Even its ability to regulate labor brokers is complicated by the fact that many brokers in the Philippines work with a second broker or placement company in the receiving country over which the Philippine state has little leverage. The ability of the sending state to unilaterally regulate these transnational networks is minimal. In this context, focusing on the migrants through skills training and information dissemination makes sense as a strategy for sending countries. However, effective regulation will have to rely on bilateral or multilateral cooperation between sending and receiving countries.

⁵⁶ Guevarra, *Marketing Dreams, Manufacturing Heroes*: Kindle locations 814-816.

Bilateral agreements, though actively pursued by the Philippines as a more achievable goal than binding international agreements, have their own limitations. The primary difficulty is that major sending countries have a weak bargaining position. Ironically, the more migrants the sending country has in any specific receiving country, the more they rely on that country for employment opportunities and remittances, the more they need an agreement and yet the worse their bargaining position is. Additionally, bilateral agreements are only effective if successfully enforced and enforcement is largely up to the receiving, not the sending, country.

In 2010 the Philippines had bilateral agreements on labor and/or migration in force with fifteen countries; however it is unclear whether many of these agreements are binding or merely guidelines.⁵⁷ It is noteworthy that the Philippines has agreements in place with several of the countries known to have poor records with regards to the human and labor rights of migrant workers, including Saudi Arabia and Jordan for example. These agreements have not necessarily improved the situation. Despite a MOU on labor cooperation in 2010, a total labor ban imposed by the Philippine government on Jordan was not lifted until 2012 when Jordan signed further agreements with the Philippines to meet Philippine legal requirements such as the \$400 USD minimum wage. Even after these further agreements, abuse of domestic workers in Jordan remains distressingly common. In 2012 a facility run by the Embassy of the Philippines in Jordan received more than 950 requests for help, nearly 600 of which resulted in the Filipino being repatriated.⁵⁸ In 2011 the Philippines and Saudi Arabia engaged in a diplomatic row over the state of domestic workers in the Kingdom. An estimated 250,000 Filipinos and 900,000 Indonesians worked as domestic workers in Saudi Arabia at the time.⁵⁹ The governments of the

⁵⁷ I was unable to verify the status of a further four agreements. At least two of the agreements listed have since either lapsed (ex. UAE) or been superseded by labor bans (ex. Libya). *Bilateral Labor Agreements and Social Security Agreements* (Quezon City, Philippines: Center for Migrant Advocacy, 2010), accessed June 5, 2014, <http://centerformigrantadvocacy.files.wordpress.com/2012/06/bilateral-labor-agreements-and-social-security-agreements1.pdf>.

⁵⁸ Agence France-Presse, "Abuse of Maids in Jordan Continues, Despite Efforts to Protect Them," *The National*, 20 December 2012.

⁵⁹ Agence France-Presse, "Saudi Arabia Bans Filipino and Indonesian Maids," *The National*, 30 June 2011.

Philippines and Indonesia had issued new hiring guidelines⁶⁰ which included a \$400 USD minimum wage for domestic workers. Saudi Arabia responded by banning Filipino domestic workers outright. It was an interesting standoff, with each country betting that the other had more to lose. On the one hand, Filipinos and Indonesians make up the bulk of domestic workers in Saudi Arabia and replacing well over one million workers with domestics from other countries would be difficult and expensive for Saudi employers. On the other hand, while the Philippine government is clear that it is not afraid of losing out on domestic worker positions in Saudi Arabia, the Kingdom is the top destination for OFWs and the Philippines would have a very difficult time should a labor ban begin to affect other sectors. The ban stayed in place for over a year but, in the end, Saudi Arabia backed down, lifting the ban and signing an agreement recognizing the minimum wage and other protections. Again, enforcement is lacking and reports of abuse of domestic workers in Saudi Arabia continue.

Labor Migration Policy and Its Effects on Social and Political Stability

Despite difficulties in establishing protections for its workers overseas, every Philippine administration since Marcos has relied heavily on labor migration. While Marcos originally envisioned labor export as a stop-gap measure, it offers some unique advantages to the export-oriented state. And once begun, workers and politicians alike began to depend on the benefits that employment abroad offered. While the rhetoric surrounding labor migration may have shifted from “promotion” to “management” of Filipino labor migration, the policy in practice has only strengthened the labor migration cycle.

Economic Effects

Employment. Providing employment opportunities is the most obvious advantage that labor export offers. With persistently high levels of unemployment and low economic growth (see Table 7, above), the Philippines is an obvious candidate for large-scale export of labor. Beyond the movement of laborers abroad, remittances may have a further impact on the sending-country

⁶⁰ These guidelines would be enforced by the POEA. This agency is required to verify contracts before issuing permission for a Filipino to work abroad; workers without this permission are prevented from boarding flights at Manila International Airport.

labor supply. There are studies that suggest that households that receive remittances are less likely to participate in the local labor market.⁶¹ There is a relatively straightforward mechanism through which this works: income received from family members abroad contributes to family resources, reducing the need for recipients to work. However, there is a secondary mechanism that may be functioning as well. As working aged household members migrate abroad, those that remain behind must compensate for this loss in various ways, for example as the full burden of housework and child care falls on those who remain behind. Alternatively, Amuedo-Dorantes and Pozo point out that the income effect may be mitigated by the “disruptive effect” as the household compensates for foregone income (the migrant is often the primary breadwinner of the family and immediately after migrating there is typically a period of time while the migrant is becoming established during which they are unable to remit) and the up-front costs of migration through continued participation in the local labor market, though perhaps working fewer hours or engaging in informal sector work.⁶²

Poverty, consumption, and welfare: Remittances to family members have immediate impact in reducing poverty for beneficiaries.⁶³ And much of the money received is spend on the basic, immediate needs of the recipient household such as food and shelter, healthcare, and education, increasing recipient household welfare.⁶⁴ Further, such spending can improve welfare beyond the immediate recipient household: “consumption and the often downplayed ‘non-productive’ investments in housing, small businesses and education can have positive multiplier

⁶¹ C.f.: Edgard R. Rodriguez and Erwin R. Tiongson, "Temporary Migration Overseas and Household Labor Supply: Evidence from Urban Philippines," *international Migration Review* 35, no. 3 (2001).

⁶² Catalina Amuedo-Dorantes and Susan Pozo, "Migration, Remittances, and Male and Female Employment Patterns," *The American Economic Review* 96, no. 2 (2006).

⁶³ C.f.: Abhijit Das, Rashmi Banga and Pritish Kumar Sahu, *Impact of Remittances on Poverty in Developing Countries* (Switzerland: United Nations, 2011), accessed May 8, 2015, http://unctad.org/en/docs/ditctncd20108_en.pdf. Richard H. Adams Jr., and John Page, "Do International Migration and Remittances Reduce Poverty in Developing Countries?" *World Development* 33, no. 10 (2005). Luis San Vicente Portes, "Remittances, Poverty and Inequality," *Journal of Economic Development* 34, no. 1 (2009).

⁶⁴ Agnes Quisumbing and Scott McNiven, "Moving Forward, Looking Back: The Impact of Migration and Remittances on Assets, Consumption, and Credit Constraints in the Rural Philippines," *The Journal of Development Studies* 46, no. 1 (2010). Jean-Louis Combes and Christian Ebeke, "Remittances and Household Consumption Instability in Developing Countries," *World Development* 39, no. 7 (2011).

effects and increase local economic activity, through which the benefits of remittances also accrue to non-migrant households.”⁶⁵

Investment: As money comes into the economy through remittances, what is not spent on consumption may be invested.⁶⁶ Migrants rarely invest in traditional ways, buying stocks, bonds, etcetera; they are more likely to save money in local banks which in turn lend the money out to local entrepreneurs. Alternatively, migrants may directly invest in creating their own businesses, usually microenterprises. This will be discussed further in Chapter Eight, looking at the economic goals and aims of Filipino interviewees. And, although it is not a traditional investment, one can also talk about investment in human capital. Financing the education of family members such as siblings and children is often a primary goal of remitters. Knowing that high-wage employment is available abroad may encourage families to invest in education and skills training that is in high demand globally.

Tax revenue: Through the collection of taxes, the state actually captures a portion of remittances that are spent on consumption and investment.⁶⁷

Counter cyclical: Although not known when PD442 was issued in 1974, it is now emerging that remittances are counter cyclical from the perspective of the migrant-sending country. As remittances are motivated by altruism, they increase during periods of economic stress in the home country.⁶⁸ This is beneficial to the immediate recipients who receive badly needed income, but also to the wider economy as capital continues to flow even during economic

⁶⁵ Hein De Haas, "International Migration, Remittances and Development: Myths and Facts," *Third World Quarterly* 26, no. 8 (2005): p. 1274. See also: Dean Yang and Claudia Martinez, *Remittances and Poverty in Migrants' Home Areas: Evidence from the Philippines*. University of Michigan, 2005, accessed May 11, 2014, http://www-personal.umich.edu/~claudiap/yangmartinez_poverty.pdf.

⁶⁶ C.f.: Paola Giuliano and Marta Ruiz-Arranz, "Remittances, Financial Development, and Growth," *Journal of Development Economics* 90 (2009). Christopher Woodruff and Rene Zenteno, "Migration Networks and Microenterprise in Mexico," *Journal of Development Economics* 82, no. 2 (2007).

⁶⁷ Yasser Abdih, Adolfo Barajas and Ralph Chami, *Remittances Channel and Fiscal Impact in the Middle East, North Africa, and Central Asia*, International Monetary Fund, 2012, accessed 8 May 2015, <http://www.imf.org/external/pubs/ft/wp/2012/wp12104.pdf>.

⁶⁸ Jeffrey Frankel, "Are Bilateral Remittances Countercyclical?" *Open Economies Review* 22, no. 1 (2011).

crises, smoothing consumption and thus mitigating effects on both households and the wider economy.

Foreign exchange and GDP: Investments and remittances sent through official channels provide a significant source of foreign exchange for the Philippines. By 1977, the earliest numbers available, remittances already outstripped either foreign direct investment (FDI) or official aid and development assistance (see Table 10, above). Today, remittances far outweigh these flows and continue to grow.

The effect on GDP is less clear. While many researchers see benefits for economic growth, Chami et. al. actually find a negative effect on economic growth.⁶⁹ Their overall perspective is that the impact on long-term economic growth depends on how the individual governments in question use or channel remittances.⁷⁰ And there are plenty of pernicious incentives and thus perverse effects of labor export and remittances.

Perverse effect on the economy - Dutch disease: While remittances provide needed foreign exchange in the short term, there is a fear that in the long term they may actually destroy the conditions for the growth of the domestic economy.⁷¹ "Remittances constitute an inflow of finance and this may lead to an appreciation of the real exchange rate undermining the competitiveness of the traded-goods sector and, in particular, of exports; the so-called Dutch disease effect."⁷² While this does sometimes happen, it is not inevitable:

"there are many different paths through which remittances affect an economy. ... [N]one of these paths is necessarily active at any given time--that is, many economic and social conditions determine whether any given path is active or

⁶⁹ Ralph Chami, Connel Fullenkamp and Samir Jahjah, *Are Immigrant Remittance Flows a Source of Capital for Development?* (International Monetary Fund, 2003) accessed May 8, 2015, <http://www.imf.org/external/pubs/ft/wp/2003/wp03189.pdf>.

⁷⁰ Natalia Catrinescu et al., "Remittances, Institutions, and Economic Growth," *World Development* 37, no. 1 (2009).

⁷¹ Pablo Acosta, Emmanuel K.K. Lartey and Fredrico S. Mandelman, "Remittances and the Dutch Disease," *Journal of International Economics* 79 (2009).

⁷² Veronica Bayangos and Karel Jansen, "Remittances and Competitiveness: The Case of the Philippines," *World Development* 39, no. 10 (2011).

significant. And, finally, many of these paths have opposing or conflicting economic effects."⁷³

Social Effects

Perverse effects on individuals and families - reduced incentive to work, social costs of migration, decision-making with limited knowledge: As mentioned above, households receiving remittances are less likely to participate in the sending-country labor market. If this happens on a large scale, leaving too few workers in the sending-country labor market, it may drive up wages, in turn increasing production costs, and so reducing economic competitiveness.⁷⁴ In a country like the Philippines, with double-digit unemployment numbers and with significant competition for local job opportunities, this pernicious cycle does not seem to be a realistic fear.

However, social costs associated with migration are being felt in the Philippines. Migration splits families apart. There are fears that dividing spouses leads to increased levels of infidelity and of broken marriages. As divorce is illegal in the Philippines,⁷⁵ broken marriages in turn lead to more social costs in continuing infidelity as spouses split and form new long-term relationships, sometimes including children, with others that they are not free to marry. But the greater concern is for the children of migrants. It is thought that mothers, as opposed to fathers, migrating may be particularly detrimental to children.⁷⁶ There is a perceived "crisis of care" in the Philippines as mothers migrate in order to provide a living wage for families, leaving children to be raised by their grandparents or other close female relatives.⁷⁷ Behavioral and emotional problems may result. Education outcomes for the children of migrants are mixed: increased income means

⁷³ Ralph Chami and Connel Fullenkamp, "Beyond the Household: Remittances That Migrants Send Home to Their Families Also Have a Major Impact on the Overall Economy," *Finance & Development* 50, no. 3 (2013): p. 51.

⁷⁴ Bayangos, and Jansen, "Remittances and Competitiveness: The Case of the Philippines".

⁷⁵ Divorce is not recognized but annulment is; however annulments are difficult and expensive to obtain. While a Filipino who is a legal resident of a second country may often obtain a divorce in the second country, such a divorce is usually not recognized by the Philippine state and, should they ever return to the Philippines, the state will consider them married to their first spouse and consider any second marriage bigamous.

⁷⁶ Francisca M. Antman, "The Impact of Migration on Family Left Behind," in *International Handbook on the Economics of Migration*, ed. Amelie F. Constant and Klaus F. Zimmermann (Northampton, MA: Edward Elgar Publishing, 2013).

⁷⁷ Rhacel Salazar Parreñas, "Mothering from a Distance: Emotions, Gender, and Intergeneration Relationships in Filipino Transnational Families," *Feminist Studies* 27, no. 2 (2001).

increased access to education for children, but without parental involvement attendance and performance may suffer.⁷⁸ Alternatively, Parreñas argues that the difficulties may be worse for fathers, who have a harder time emotionally connecting with children from abroad than mothers do.⁷⁹

It should also be noted that migrants often make decisions about migration based on incomplete or inaccurate knowledge. Often when they arrive in the country of destination, they find that the expenses associated with living and working abroad are higher than expected. This limits the amount of money available to be remitted, saved and/or invested.⁸⁰

Political Effects

A new political constituency: As the numbers of Filipino workers leaving the country increased, a new constituency was born. In 2003 the Philippines passed Republic Act No. 9189 (amended by RA10590), "The Overseas Absentee Voting Act," allowing Filipino workers to vote from abroad. Today nearly 10 percent of Filipinos live – and in many cases work – outside of the Philippines. And that 10 percent supports a much larger number of Filipinos still resident in the Philippines through remittances. In the end, a large percentage of the Philippine population is affected by labor migration. This has the potential to be a powerful constituency. Filipino politicians have been courting migrants and their families as a political force. During the 2004 presidential elections, the first to allow overseas voting, registration or certification to vote from abroad had to be completed during a two month period that elapsed six months before the elections; the ability to register and then to vote was also hindered by the fact that all paperwork and voting had to be done in person at an Embassy or consulate.⁸¹ Turnout in the 2004 was a reasonable 65 percent (compared to local turnout of 70 to 75 percent) but only 26 percent in the

⁷⁸ Antman, "The Impact of Migration on Family Left Behind": p. 296.

⁷⁹ Rhacel Salazar Parreñas, "Transnational Fathering: Gendered Conflicts, Distant Disciplining and Emotional Gaps," *Journal of Ethnic and Migration Studies* 34, no. 7 (2008).

⁸⁰ Ernesto Castañeda, "Living in Limbo: Transnational Households, Remittances and Development," *international Migration* 51, no. S1 (2012).

⁸¹ *Joint Congressional Oversight Committee on Absentee Voting*. Pasay City: Republic of the Philippines Senate, 2004, accessed May 8, 2015, http://www.senate.gov.ph/13th_congress/spot_reports/Oversight%20Absentee%20Voting_dec1304.pdf.

presidential elections of 2010 and with midterm elections in 2013 reaching only 16 percent.⁸² Reforms were made to the process allowing for field and mobile registration units for the next elections in 2016 as well as other measures aimed at increasing participation. As the practical ability to vote from abroad is extended to more people, the importance of OFWs as a political constituency only increases. Connecting with this valuable constituency may make a significant difference come election time.

Stability: As in other major sending countries, labor migration supports political stability by serving as a “safety valve,” reducing unemployment, reducing the demand for state welfare, and decreasing the chances of political rebelliousness and instability. However, this stability may be threatened due to scandals, such as the Contemplación or Balabagan cases described above.

Perverse effect on governments - stability as a negative and reduced incentives to implement political and economic reforms, dependency: The biggest concern is how labor export as a development strategy affects governance. There is evidence that large scale migration and remittance flows negatively impact sending country institutions.⁸³ Government promotion of large-scale labor migration in the Philippines was a response to economic weakness at home, a lack of infrastructure, and rising public dissatisfaction with government corruption and ineffectiveness. By relieving these pressures, labor migration may also reduce the pressure to fix the root domestic political and economic problems. Further, it may produce a new set of incentives, institutionalizing the structures that produce and support labor export, and thus perpetuating it. For example, the higher education system of the Philippines has been rearranged to support labor export, producing well-educated graduates explicitly for migration abroad in fields such as nursing.⁸⁴

⁸² Commission on Filipinos Overseas, "Overseas Voting Act 2013," accessed July 22, 2014, http://www.cfo.gov.ph/index.php?option=com_content&view=article&id=1988:overseas-voting-act-2013&catid=108:cfo-press-release&Itemid=839.

⁸³ Yasser Abdih et al., "Remittances and Institutions: Are Remittances a Curse?" *World Development* 40, no. 4 (2011). Catrinescu, et al., "Remittances, Institutions, and Economic Growth".

⁸⁴ Barbara L. Brush and Julie Sochalski, "International Nurse Migration: Lessons from the Philippines," *Policy, Politics & Nursing Practice* 8, no. 1 (2007).

Once in this position, labor export heightens fears that the Philippines is too dependent in the global economic system. Labor export “heightens the division of labor between the global North and South.”⁸⁵ Burdened with massive debt and hindered by local influence peddling and a bureaucratic structure that benefits from the status quo, the Philippines is unable to generate sufficient employment opportunities at home, instead exporting its brightest and most entrepreneurial citizens to work for low wages in jobs that they are overqualified for.

Despite its limitations, the export of labor fit well with the general redesign of the Philippine economy towards export-oriented industrialization. Not only does labor migration provide expanded employment opportunities, reducing unemployment at home and relieving the social and political tensions that often accompany high unemployment levels, but it also provided some badly needed capital for the Philippine economy.

Conclusion

Exploding national debt, a contracting national economy, and political unrest at home may have caused the Marcos regime to turn to labor export as an economic and development strategy, but this pattern has since become embedded in the institutions of the state. Since the downfall of Marcos, labor export has been supported and expanded by succeeding democratic regimes. The result is that the Philippine state is involved in the migration process at all stages “managing” the process. Within the Department of Labor and Employment (DOLE) alone there are a family of agencies to oversee labor migration, the most significant of which are the Overseas Workers Welfare Administration (OWWA), the POEA, and the POLOs. Under the Department of Foreign Affairs, there is an Undersecretary for Migrant Workers Affairs, the Overseas Absentee Voting Secretariat, and the embassies and consulates take an active role. The Office of the President has the Commission on Filipinos Overseas. This web of agencies facilitates migration and also provides a mechanism for responding to migrant issues, including human rights concerns.

⁸⁵ Guevarra, *Marketing Dreams, Manufacturing Heroes*: Kindle location 147.

Yet migration as a development strategy has a mixed record. At the micro level, remittances tend to help recipient families increase their standard of living. At the macro level, migration promises to provide needed capital, monetary and human, to fund development projects. But migration will only serve to prime the pump if the other necessary conditions for development are present. In order to create a self-sufficient national economy in which the role of labor export declines, the Philippines needs to address major inadequacies at home, particularly the cumbersome bureaucracy and widespread corruption. In the meantime, it seems that the “culture of migration,” established both with the Filipino people and in its government, is set to continue for the foreseeable future.

The challenge remains how to make workers less vulnerable. And the Philippine state, over years and decades of experimenting with migration policy, has arrived at its current web of agencies providing a host of requirements, restrictions and entitlements. But there is a tension here between the positive impulse that is state’s expanded notion of responsibility for the human rights of its citizens abroad and the negative outcome that has resulted in the state constraining migrant agency. Policies that require Filipinos to utilize the services of a recruitment agency despite the inability of the state to curb their exploitative practices, or which limit the right of Filipino citizens to exit the country, highlight the dangers of the approach that the Philippines government has taken.

The migrant gains an extra layer of protection when engaging in the precarious world of international labor. But this layer of protection is thin. The sending state has limited capacity. This is both a function of the Philippines as a specific state – lack of resources, byzantine bureaucratic structure, and pervasive corruption – and of sending states in general – their ability to project into the physical territory of another state (the receiving state) is limited by the other state’s own sovereignty. In effect, the Philippines government, in a patronizing attempt to protect workers from the worst violations, has bound them in a series of policies and programs that serve to constrain their agency or, worse, push them into illegal immigration.

The Philippine state needs to improve actions on its basic responsibilities for human rights, draw attention to those areas where receiving countries bear the burden in whole or in

part, and establish partnerships where possible. Where partnership are impossible or impractical, rather than see the state focus on regulating the behavior of workers beyond its borders, focus should be placed on policies that enable, rather than constrain, workers: freeing movement and removing barriers to exercising agency. The remaining chapters will explore such policy options in detail.

CHAPTER FIVE: WORKING, WAGES, AND THE MIGRANT UNDERCLASS

Introduction

The aim of the next three chapters is to take the framework of divided responsibility for TCW's human rights laid out in Chapter Two and apply it in the context of Filipino workers in the United Arab Emirates. Chapters 3 and 4 showed how the migration corridor between these two countries was established and how the governments arrived at the migration policy configuration that exists today. The next chapters will illustrate how the practice of temporary contract migration impacts the human rights of individual workers throughout the migration process, using interviews conducted with Filipinos in the UAE. This approach will serve to highlight where the policies currently in place fail to adequately address weaknesses, and how the divided responsibility framework can improve upon the current situation.

While the theoretical framework is organized by categories of rights, by locating obligation for the rights specified in the UDHR, this section is organized by the major themes that orient the migrant experience in the UAE in order to contextualize the framework. I will walk through the major issue areas of concern in temporary contract migration, highlighting the challenges that each poses for human rights, addressing where the obligation to remedy lies, and proposing mechanisms through which such remedy can be effected.

I will attempt to balance the competing goods of protecting human rights on the one hand and respecting migrants' agency on the other. In a perfect world these two important realms would coincide, but in practice today they often conflict. This happens in two ways. First, policies that are put in place to protect migrants often restrict their ability to make choices that they view as in their best interests. In response, migrants may choose to circumvent the official process, putting themselves in situations that are actually riskier than if no human rights protections existed. Second, a policy that intends to address one human rights deficit may actually limit the exercise of another human right. Often the government will acknowledge this effect, but will have

judged that the benefit outweighs the harm. How legitimate is this type of decision? When does the state have the right to make this judgment and what role should migrants play in the decision?

The next three chapters will rely heavily on interviews conducted with Filipino migrants in the UAE to illustrate how migrants respond to their precarious situation in order to reduce vulnerability to exploitation and human rights abuses. Protection against the exploitation of guest workers has less to do with human rights protections in the receiving country than is often assumed, and more to do with the ability of migrants to leverage human and social capital through expanding migrant networks in order to improve their conditions and make tradeoffs that secure their livelihood in a global job market. By leveraging human and social capital through expanding migrant networks, migrants are potentially able to improve their position.

This chapter will focus on recruiting, contracting, wages, debt and discrimination. When combined, these factors have the potential to create a toxic employment situation, reducing migrant labor to little more than forced or bonded labor. The violations of human rights discussed in this chapter are among the most high profile internationally and among the most studied precisely because they potentially have such grave impact on the human rights and lived experience of migrant workers.

Recruiting

The ILO estimates that of the 214 million international migrants in the world in 2010, 105 million were economically active.¹ The POEA estimates that in 2013 there were 562,635 newly hired migrant workers (not including seafarers) from the Philippines alone. Connecting all of these workers with employment positions across the world presents a major challenge. There is an information gap regarding what jobs/workers are available, where, and on what terms. This information gap is generally overcome in one of two ways: recruitment agencies or personal networks. Each strategy has risks and advantages.

¹ Quoted in: Cholewinski, "International Labour Migration".

The first job that a migrant gets upon arrival in the UAE is often difficult. Without experience in the country and with residence tied to employment, workers' first job is often exploitative. Danielle, an office worker, describes her first job in the UAE:

First job, it was really terrible because the employer knows that I don't have any experience. So I went, I experienced that. I didn't get salary on time. I was so naive about the laws and other things that my employer is able to give me insufficient compensation. And I found out that I didn't have any working visa.²

How does this happen? What conditions in the process of finding work in the UAE lead to so many negative initial experiences?

Recruitment Agencies

Recruitment agencies are middlemen in the migration process. They form a central position where employers and workers can meet. In this context, recruitment agencies' first responsibility is as matchmaker, matching employer needs and employee skills. In order to assure a good match, recruitment agencies must serve as information brokers. They must be familiar with the prospective employer's requirements and the skills that the offered job demands, they must know the legal requirements shaping migration in both the sending and receiving countries in order to ensure that the worker is legally able to migrate and work abroad, and they must be familiar with the professional capabilities as well as the expectations for living and working conditions of the prospective migrant worker.

The government of the Philippines also requires agencies to provide some other basic functions for workers. In particular, Philippine law requires the Philippine recruitment agency disclose the full terms and conditions of employment to the worker and makes the agency jointly liable for "all claims and liabilities which may arise in connection with the implementation of the contract, including but not limited to payment of wages, death and disability compensation and

² Danielle (Office Worker), interview with the author, 9/15/2013.

repatriations.”³ In other words, the government requires that the recruitment agency provide an employment contract that meets both Philippine and UAE law and which the worker must sign before leaving the Philippines. Additional legal requirements include a pre-departure orientation, and repatriation if necessary.⁴ There are also several secondary functions that recruitment agencies often provide in order to attract clients – both employers and employees. Agencies provide logistics support, which includes providing accommodations in Manila for prospective workers while paperwork is being processed, orchestrating document collection and authentication, arranging medical and PDOS (Pre-Departure Orientation Seminar) appointments, making travel arrangements, and pick-up and orientation at the airport in the UAE. Finally, agencies offer informal mediation in the event of a labor dispute.

For these services, recruitment agencies charge a fee. Under Philippine law these fees are capped at one month’s salary plus allowed documentation fees (passport, good conduct clearance, authentication, birth certificate, OWWA medicare, required trade tests, required inoculations, and medical exam; the agency may only charge for reimbursement of the actual cost as stated by official receipts) unless the charging of recruitment fees is not allowed by the receiving country, in which case no fees should be charged to the worker.

UAE Labour Law *does* prohibit charging recruitment fees to the worker:

It is not permissible for any licensed labour agent or supplier to demand or accept from any worker whether before or after his recruitment, any commission or material reward in consideration for arranging such recruitment, nor may he obtain from him any expenses except as may be decided or approved by the Ministry of Labour and Social Affairs.⁵

The employer should bear the cost of recruitment, transportation, visas and work permits, etc. It is generally understood that the UAE does not enforce this rule, particularly on foreign

³ *POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers* (Philippines: Philippine Overseas Employment Administration, 2002), accessed May 8, 2015, <http://www.poea.gov.ph/rules/POEA%20Rules.pdf>.

⁴ *Ibid.*

⁵ United Arab Emirates Federal Law No. (8) of 1980: Labour Law and Its Amendments.

recruitment agencies.⁶ The Philippine government has likewise made no attempt to prohibit Philippine recruitment agencies operating in the Philippines from charging the otherwise legally allowable one month's salary. And so recruitment agencies in the Philippines routinely charge recruitment fees to workers destined for the UAE despite the fact that it is technically illegal to do so.

Should the recruitment agency violate the law or should an employment situation abroad prove to be unacceptable, the worker may file a case against the recruitment agency with the Philippines Adjudication Office. the *POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers* specifies that the Philippine agency "shall assume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the contract, including but not limited to payment of wages, death and disability compensation and repatriations" and "shall guarantee compliance with the existing labor and social legislations of the Philippines and of the country of employment of the recruited workers."⁷ The recruitment agency may be required to compensate the worker and may be subject to administrative penalties: reprimands, suspension of license for up to one year, or the cancellation of the license to operate. Monetary awards and fines that cannot be paid outright may be paid from the agency's escrow deposit or surety bond, posted by every agency as a precondition for licensing, though the sums involved (a bank deposit under an escrow account of Php 1 million / \$22,624 USD and a surety bond of Php 100,000 / \$2,262 USD⁸) are often insufficient as a deterrent and may be insufficient to cover all damages.

Problems with recruiting agencies appear to be common among OFWs in the UAE, though they rarely result in the worker filing charges either in the UAE or the Philippines. Out of the forty seven OFWs interviewed, twenty one utilized the services of a recruiter; of those, six experienced a significant problem.

⁶ Michael Dickson, "Stagnant Wages Dash Hopes of UAE Migrants," Al Jazeera, 12 May 2014, accessed November 20, 2014, <http://0-search.proquest.com.bianca.penlib.du.edu/docview/1523707969?pq-origsite=summon>.

⁷ *POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers*.

⁸ Agunias, *Migration's Middlemen*: p. 5.

As a middleman, recruitment agencies essentially have two “clients” in any transaction: the employer and the worker. This can lead to a conflict of interest in which the interests of one client are prioritized above the other. Especially at the low-skilled end of the spectrum, this tends to disadvantage the worker. The UAE labor market is competitive, with more workers seeking to enter the market than there are jobs available. Agencies compete to attract employers and to attract the best possible workers from the Philippines to fill those positions. This often results in agencies placing overqualified workers in positions with below average wages.

One interviewee, Juliana, went through a recruitment agency to obtain a job as a barista at a UAE-branch of a western chain coffee shop. Her employer paid all expenses related to her recruitment and travel, including agency fees, but the job was very low salary and low skill. When asked if the agency did a good job for her, Juliana says no, because they “didn’t respect my interests” in arranging a barista position for her: “anyone with a high school degree could do this job. And I have a bachelors.” She feels she was overqualified for the position and, after working a bit more than a year, changed employers to a higher-skill, higher-wage position.⁹ To get Juliana released from her original employer before the end of her original two-year contract, her second employer agreed to reimburse the original employer for the expenses related to her recruitment. Such deals are not uncommon.

More significant problems with recruiting agencies also arise. One of the most common is overcharging for services. Filipinos destined for the UAE should not be charged anything, given that UAE law forbids collecting recruitment fees from workers. Of the twenty one interviewees that utilized the services of a recruitment agency, fifteen were illegally charged a fee. Even ignoring the UAE prohibition, charges to the migrant under Philippine law are legally capped at one month’s wages,¹⁰ yet workers may be charged more. Of those fifteen interviewees that were

⁹ Juliana (Receptionist), interview with the author, 9/8/2013.

¹⁰ *POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers.*

charged, two were charged more than the equivalent of one month's wages by their recruiting company.

Dominic's story is a fairly straightforward example of overcharging for recruitment. His first two-year contract in the UAE, arranged through an agency, paid 3,250 AED (\$885 USD) per month, which was about one half the normal salary for an accountant in the UAE. The recruiter charged him the equivalent of two months' salary and Dominic paid using the money he had in savings. When he signed his second two-year contract with the same employer, his salary went up to 7,500 AED (\$2,042 USD), but that was still low given that he had been promoted to a senior position, worked with two departments, and had gained consulting responsibilities. The next time he renewed his contract he held out for 12,000 AED (\$3,267 USD) per month.¹¹

Ava, domestic worker, went through a recruitment agency to find work. The Middle East would not have been Ava's first choice of destination, but it is what the agency offered her. She had to pay 9,000 AED (\$2,450 USD) for the agency fee, the equivalent of several months' salary; her employer paid travel and expenses. However, the family treated her very poorly, refusing to give her sufficient food. She was only allowed to eat table leftovers; when there was nothing left over she did not eat. "If there [were] apples, Madam counted. I couldn't take." They treated her like a robot. "But humans don't go on forever; they get tired, they get sick." After nine months, Ava ran away.¹²

Another two interviewees were overcharged not by their recruiter, but by their employer. It is not uncommon for employers to pay the recruitment fee as per Philippine and UAE law, but then to turn around and demand reimbursement from the employee.

- Nicole, domestic worker, had three months' salary withheld by her employer; Nicole preferred not to talk about exactly what ended this job, but she had to leave on short notice and return to the Philippines.¹³

¹¹ Dominic (Accountant), interview with the author, 10/7/2013.

¹² Ava (HSW), interview with the author, 3/30/2013.

¹³ Nicole (HSW), interview with the author, 9/18/2013.

- Ella, food service, had five months' salary withheld by her employer, and was paid the ridiculously low salary of 600 AED (\$163 USD) plus free food, accommodation, and transportation.¹⁴

While some, like Dominic, have sufficient money at their disposal to pay recruitment fees, most have to take out a loan to pay this fee. Loans may be provided by the recruiter, the employer, or a bank loan; but the migrant is more likely to borrow the money from family or friends. Overcharging for recruitment fees can be the first step in a spiral of debt for migrant workers, eroding their ability to earn a living wage and, at the most extreme, placing migrant workers at risk of forced labor.

The second common problem is that agencies place workers without fully vetting the employer or the labor situation, placing the worker in an unfair labor situation. In a little less than half of the cases of interviewees that utilized a recruitment agency (ten of twenty one cases), the initial job had a negative outcome; in six of these cases, the conditions affecting the workers were such as a responsible agency would have been expected to either prevent or address the problem:

- Ava, Nellie, Rika: domestic workers absconded due to severe maltreatment;
- Gloria, Victoria: Contract conditions not met;
- Ella: Pay below Philippines minimum wage.

Victoria went to the UAE through an agency, and the whole process from the time she applied with the agency until she was on the ground in the UAE took only about one month; her employer paid everything, i.e., all fees and transportation. Nevertheless, she would not recommend her agency because they placed her with a bad company: the company did not honor contract stipulations on working hours and overtime pay, nor their verbal agreement to give her annual pay raises. At the conclusion of her initial three-year contract, Victoria quit and found a new job. She still thinks that there are promising employment opportunities in the UAE and she

¹⁴ Ella (Food Service), interview with the author, 3/20/2013.

would like to help her brothers find work here. She wants them to go through an agency because of the difficulty in finding a job in the ninety-day visit visa timeframe, along with the difficulty of converting that visit visa into an employment visa. Victoria is now looking for an agency for her brothers to use by selecting good employers in the UAE, then seeing which agencies in the Philippines they work with.¹⁵

Interviewer: How do you find a good agency?

Victoria: Actually I'm looking for an agency for [my brothers]. Like, for certain company, these are the agencies that they deal with in Manila. I suggested that.

Interviewer: So you're selecting the agency by first finding the company here in the UAE?

Victoria: Yes.

Interviewer: And then finding out which agencies they deal with?

Victoria: Which agency they have, yes.¹⁶

Essentially, Victoria is taking upon herself the informational role that agencies are supposed to play.

These are precisely the kind of conditions that migrating through an agency jointly liable for the terms and conditions of the contract is supposed to prevent. Agencies are responsible for placing migrants in these situations and so are responsible for conducting due diligence. They receive compensation specifically for their role as an information broker and so bear a duty to obtain and disseminate appropriate information. The human rights implications of agencies failing to scrutinize potential employers or check up on workers after their arrival in the destination country are diverse, as the potential deficiencies in labor conditions are varied.

Finally, the agency may simply be unscrupulous. They may intentionally deceive the migrant or the state. Recruiters may be implicated in contract bait and switch schemes (discussed further below), contract falsification or the submission of dummy contracts for verification by the

¹⁵ Victoria (Accountant), interview with the author, 9/28/2013.

¹⁶ Ibid., 9/28/2013.

Philippines government, falsifying workers travel documents (especially for the purposes of deploying underage workers), the sale of unused work orders or unused visas (known as reprocessing, or “repo”), deploying workers to blacklisted employers, or deploying workers on tourist visas to avoid government regulation. This is unusual, but cases do arise.

Rika comes from a poor family and her parents struggled to put her and her siblings through school. As soon as she graduated from high school at age seventeen, Rika started looking for work to help support her family and send her sister to high school. With only a high school education herself, Rika had a hard time finding a job in the Philippines. A local recruiter told her that she could find work as a housemaid abroad. The minimum working age in the UAE is eighteen and the Philippines requires domestic workers to be at least twenty three years of age. “I know it’s not allowed,” she acknowledged, but her recruiter showed her how to change her passport to make her age appear higher. At age seventeen, she left the Philippines on a passport that showed her age as 29, patently untrue. When she got to the UAE, the work was more or less what she had expected, cooking, cleaning, etc. Her salary was supposed to be 1,000 AED (\$272 USD) per month – well below the \$400 USD minimum wage established by the Philippines government; but in thirty one months, Rika was only paid for two months. For the duration of her first two-year contract, her employer promised to pay her at the end of the contract. At the end of the contract, no money was forthcoming. To make matters worse, her employer, who had confiscated her passport, failed to renew her residence visa, and Rika became an illegal immigrant. During this time Rika’s employer kept her locked in their residence and prohibited her from using the phone, so she was unable to contact her family or her agency for help. However, her family, worried that they had not heard from her or received any remittances, did get in touch with the recruitment agency. Although the agency had placed her with a family in the UAE, they then were unable to locate her *with that same family* when her parents reported her missing. Eventually Rika escaped and fled to the Philippine Embassy in Abu Dhabi.¹⁷

¹⁷ Rika (HSW), interview with the author, 10/7/2013.

UAE Placement Agencies

When the UAE first emerged as a labor importer in the late 1970's, the country's economy was only beginning its rapid development. With the expansion of the oil and gas sector, and with it the entire economy, the UAE needed rapidly to increase the workforce and, given the small national population, turned to migrant labor as a solution. However, the mechanism for attracting and bringing in labor was also in its infancy. There were no local manpower agencies or recruiting agencies. In this context, Philippine recruitment agencies were able to deal directly with Emirati employers as "trustworthy partners."¹⁸ Over time, Emirati agencies did develop and were able to utilize their own in-country networks to insert themselves as intermediaries in the labor recruitment process. As of 2009 there were 283 agencies operating in the UAE.¹⁹

However, Philippines law requires that recruitment agencies operating in the country be owned by Filipinos; foreign agencies cannot recruit directly in the Philippines. So these new Emirati agencies could not take over the process entirely. Instead, today we often see partnerships between UAE and Philippine agencies. The UAE agency will enlist and interface with employers and the agency in the Philippines will recruit and vet workers; the two agencies will work together to match workers to employers, set up interviews, and manage the process. Fees are split between them on a prearranged basis; however, "many [of the reputable UAE agencies] no longer pay service fees to recruiters in the Philippines because they are in high demand."²⁰ If the UAE agency – that is to say, the employer – no longer pays the Philippine agency, that agency must generate its revenue through fees charged to workers, driving up illegal prices for workers.

Owned and operated in the UAE, these agencies are subject to the much lower UAE regulations on recruitment and employment. The UAE does not require agencies to provide proof of financial competence, has lower minimum standards for contract requirements, and there is no

¹⁸ Agunias, *Migration's Middlemen*: p. 42.

¹⁹ *Ibid.*, p. 6.

²⁰ *Ibid.*, p. 42.

minimum wage. There is little that the Philippines government can do to regulate these agencies or sanction them in the event of violations of Philippine law. The Philippine government can give the UAE recruitment agency a black mark if it fails to meet Philippine requirements and, if the company collects too many black marks, bar them from officially operating with Philippine agencies. So far this approach has been ineffective.

The Decline of Recruitment Agencies?

There is no long-term data available on the percentage of Filipino workers that come to the UAE through recruitment agencies, compared to those who utilize alternative strategies. But the general sentiment among people I talked to was that agencies were no longer the preferred means of migrating to the UAE. Their function as a paid intermediary and information broker is only valuable if the individual does not have friends or relatives in the destination country that can help them free of charge. And as more Filipinos arrive in the UAE to work, the network grows.

For Moses, going through a recruitment agency is associated with increasing regulation by the government and the massive paperwork and bureaucratic structure, which complicates the process of departure for many migrants. "Recruitment agency was relevant maybe ten, fifteen years ago. But because there's a lot of people already here, and it's easier. Because the biggest stumbling block in the Philippines for the Filipinos are our own government. Our biggest problem is our government."²¹ He prefers the relatively uncomplicated process of getting a tourist visa, and worrying about gaining permission to work later.

In addition, companies that are in high demand – that pay well and treat workers well – can have their choice of workers in the country, workers that have proven their ability and willingness to succeed in the UAE working environment. Many companies that are recruiting through agencies in sending countries are relying on the fact that potential workers do not know the cost of living or the prevailing wage rates in the UAE in order to attract cheap labor. Edward would not recommend that his friends or family use a recruiter to come to the UAE. He feels that the best positions are often filled in the country, without using recruiters.

²¹ Moses (Financial Adviser), interview with the author, 3/18/2013.

If this will be their first time, then it's OK [to go through an agency]. But if they have some experience already and they know what is the culture, I mean, they have already an idea that there's some companies giving a good compensation here, I don't think so. Because some of the companies were giving not much big salary.²²

Networks and Hiring

As a result of the problems with recruiters and the perceived benefits of relying on networks in the destination country (cost savings, access to better jobs), many interviewees often preferred to rely on their personal networks. Zoe: "I learned a lesson that before going to another country you should really know the background. And if you have friends it is better."²³ It is important to point out that outcomes in terms of obtaining an initial job with favorable working conditions²⁴ do not actually differ significantly if the Filipino worker relies on her network rather than on an agency:

- Agency: 21 interviewees
 - 11 (52 percent) positive outcomes
 - 10 (48 percent) negative outcomes
- Network: 25 interviewees
 - 12 (48 percent) positive outcomes
 - 13 (52 percent) negative outcomes

Networks have their own set of weaknesses as a means of finding employment through "direct hires," the use of visit visas, and the illegal purchase of visas.

Direct Hire

Direct hires (also called "name hires") are the preferred means of obtaining a job abroad. In a direct hire, the prospective migrant deals directly with the employer to negotiate his or her

²² Edward (Retail Supervisor), interview with the author, 8/28/2013.

²³ Zoe (Real Estate), interview with the author, 9/24/2013.

²⁴ Where "favorable" is determined by the migrant herself.

contract terms while still in the Philippines. The advantage is that, while the worker is aware of the contract terms and conditions before leaving, there is no middleman demanding payment. The worker is required to obtain clearance from the Philippine government in the form of an OEC, and so she must obtain a passport, work visa or work permit, and verified employment contract for submission to and verification by the POEA, and arrange to attend a PDOS and undergo a medical examination. The employer is still required to pay recruitment, transportation, visas and work permits costs; the worker pays documentation costs.

The disadvantage is that there is no entity in the Philippines that the Philippine government can hold liable should a problem arise. Once the worker arrives in the UAE on a direct hire, their only protection is the relevant UAE law. However, as many Filipinos do not place much reliance on their own government (a sentiment which will be explored in greater detail in Chapter Seven), and as successful prosecutions of erring agencies are rare, this does not appear to be a strong objection.

Direct hires are often orchestrated by workers in the host country who refer friends or family members to their employer. As such, the friend or relative's endorsement of the company essentially replaces the Philippine government's threat of prosecuting erring agencies as a means of ensuring good behavior. This guarantee, however, has not proved to be any more effective. For the eight interviewees who obtained their first job through a direct hire, the outcomes were mixed.

Coco's sister lived in the UAE and arranged for her employment at a local school for students with disabilities. Coco was lucky to get this job as an assistant teacher as she does not have a university degree; if the employer had gone through an agency it is likely that they would have hired someone with a relevant degree. Her salary, while not high by UAE standards, is similar to what a licensed teacher in the Philippines makes. In addition, her working conditions are quite good, her working hours lower than average, and her salary paid promptly and in full.²⁵

²⁵ Coco (Assistant Teacher), interview with the author, 9/30/2013.

Scarlet also was able to arrange for a direct hire; her outcome however, was quite different. Scarlet's friends helped her set up the direct hire. They warned her that the salary offered was low, but she was generally unaware of living and working conditions in the UAE. She was not familiar with the cost of living in the city and so did not realize that the contracted wage, 1,500 AED (\$409 USD) with no accommodation or allowance, is not a living wage in the UAE.

I just know from the others that it's so low salary, that it's not enough. Yeah 'cause I don't know how much equivalent it is. I only know that [one dirham is] ten or eleven peso in the Philippines; I don't know that when we rent a just a one room, or a bed space or, it cost 500 [dirhams, \$136 USD]. That's why when I get there, 'oh my god, how much I lost?'²⁶

Scarlet thought that she was coming for a job as a clerk – her contract and visa were for this position – but when she was met at the airport by the company's Public Relations Officer (PRO), she was told that there had been a change of plans. The owner of the company needed a maid and it had been decided that she would fill this position for the next few months until a regular maid could be obtained. As she would be given food and accommodation in her employer's house, her salary was further reduced to 800 AED (\$218 USD). Scarlet's story will be discussed in greater depth in Chapter Seven; suffice to say that after seven months of deteriorating conditions, Scarlet absconded. When I talked with her, Scarlet was living in a facility for distressed workers in the Embassy of the Philippines, awaiting deportation.²⁷

While direct hires remain a desired means of obtaining employment, they are difficult to arrange and few workers are able to utilize this channel. Instead, many Filipinos exploit loopholes in the regulation of tourism between the Philippines and the UAE.

Tourist and Visit Visas

Many Filipinos who have relatives or friends in the UAE who might be able to help them find employment come to the UAE as tourists. Regulations for tourists in the UAE are divided into

²⁶ Scarlet (Clerk/HSW), interview with the author, 10/7/2013.

²⁷ Ibid.

three categories depending on the nationality of the tourist: GCC residents, nationalities eligible for visa on arrival, and all others. Filipino tourists are in the third category and so face the strongest regulations. Filipinos are not eligible for visas on arrival; they must apply ahead of time through a tourist agency, hotel, or family member (family members must put down a 1,000 AED (\$272 USD) deposit, refundable when the tourist leaves the country). The duration of these visas depends on what type of visa the individual applied for. There are thirty-day tourist visas (100 AED / \$27 USD, renewable once for 500 AED / \$136 USD), thirty-day short-term visit visas (500 AED / \$136 USD, nonrenewable), and ninety-day long-term visit visas (1,000 AED / \$272 USD, nonrenewable) available.²⁸ After the visa expires, the individual must physically leave the UAE and is banned from reentry for thirty days.²⁹ Individuals seeking employment this way must pay for their visa, travel, and living expenses during the job search. They have at most ninety days to find a job and finalize the hiring process.

This is a common practice. According to Agunias, “Maher Hamad Al-obad, executive director for inspection at the UAE Ministry of Labour, estimates that between 20 to 30 percent of migrants enter with a visitor visa in hand, find an employer, and change status while in the United Arab Emirates or in a third country.”³⁰ My interviews indicate that this is, if anything, a low estimate: of the forty six interviewees, seventeen (37 percent) initially came to the UAE on visit visas.

Pressure to find a job during the thirty- to ninety-day period also results in individuals taking jobs that they might not otherwise have accepted or that do not meet POEA standards of employment.

²⁸ These numbers are from the UAE Ministry of Foreign Affairs website as of 7 July 2014 (<http://www.mofa.gov.ae>); costs may differ slightly by Emirate. The duration of visas, eligibility for renewal, reentry bans, and the cost have changed over time, and sponsoring entities may charge additional fees. As a result interviewees may have faced slightly different rules at the specific time when they entered the UAE; and conditions may change in the future.

²⁹ Individuals from countries that are eligible for visa upon arrival in the UAE may extend their stay indefinitely by doing consecutive “visa runs”: crossing the nearest international border and then returning immediately on a new 30 day visit visa. Most developing countries, including the Philippines, are not eligible for visa upon arrival and so cannot avail of this strategy. Nonetheless, it would seem that some Filipinos have been successful in doing visa runs. Other Filipinos will exit to Kish and wait out the 30 day exclusion period there before returning to continue looking for work.

³⁰ Agunias, *Migration's Middlemen*: p. 16.

Of course, I'm a college graduate. I want also a good job. ... Then my visa is almost finished. Then the friend of my cousin, he said, one of the [fast food restaurants] is also opening on that side [of Dubai]. He said, 'if you want, you pass your CV and we will interview you.' So they interviewed me. I'm scared because, say my visa is almost finished and I need to go exit and where I will get money again for the payment? Even if my cousin is there, my food is free, the house if free, I am shy to ask more. ... Even working as a housemaid, I will find so that I will not go home to our country. Then at that time they hired me.³¹

The job that Alexandra accepted was at the counter of a fast food restaurant, a position that paid 2,000 AED (about \$545 USD) per month, with free accommodation and transportation. This is below the Philippine minimum wage and, by her own account, barely enough for her to live on.

Furthermore, individuals on visit visas, particularly if they are concerned about meeting the deadline, are vulnerable to scams. Maria Joy and her husband arrived in Abu Dhabi on visit visas. They had used their savings to pay for the visas and had few resources remaining. Aware that they had a limited amount of time to find jobs, they were discouraged by the low wages offered by the jobs they interviewed for. One day a man called them claiming to be from a company in Ajman (one of the northern Emirates in the UAE) that could help them find jobs. If they agreed to pay 600 AED (about \$164 USD) each he guaranteed them he could find them high-wage positions. They paid but then never heard from the man or his company again. Maria Joy and her husband, already in a poor position, could ill afford to lose the money, yet they did not report the scam to the UAE authorities fearing deportation: "We did not complain. Why? Because we are on visit visa. We both knew that it is prohibited for a tourist to look for a job here."³² Sadly, Maria Joy and her husband did not realize that looking for a job while in the UAE

³¹ Alexandra (Food Service), interview with the author, 2/23/2013.

³² Maria Joy (Manager), interview with the author, 3/16/2013.

on a tourist visa is not illegal under UAE law, though exiting the Philippines for this purpose is prohibited by the Philippine government. This once again points to the need for unified policies.

Finally, it is not possible for an individual to transfer from a visit visa to an employment visa without exiting the country. As flights to the Philippines are expensive, most workers take the cheapest flight out of the country: they go to Kish, Iran. A small island of the coast of Iran, Kish is a free zone and its economy is based on duty-free shopping and GCC workers doing visa runs. There are half a dozen low cost flights between Kish and the UAE every day, as well as a variety of budget hotels, restaurants, and other services that cater to low-income workers on visa runs. If everything goes smoothly, the process of cancelling the old visit visa and obtaining a new employment visa usually takes a couple of days. Sometimes, however, there is a hiccup. Angelica came on a visit visa, found a job after one month and was asked to exit to Kish so that her employment visa could be arranged. Once she was in Kish, however, there was a problem processing her employment visa. It seemed that there was a conflict in the immigration system between the visa application submitted by her new employer and one previously submitted by her sister. Angelica ended up waiting in Kish for three months while the issue was sorted out.³³

Buying a Visa

One final option is available to migrant workers in the UAE: buying a visa on the black market. For a fee, an Emirati with a company will agree to “hire” an individual on paper, processing all of the necessary documents to get the individual a labor permit and residence visa, but without actually requiring the individual to work for the company. This is illegal, of course, and it is difficult to estimate how prevalent visa buying is. However, it is not uncommon in the UAE.

Nicole is the only person I interviewed who admitted to buying a visa. After a series of jobs as a domestic worker that ended quickly, none lasting longer than two years, Nicole preferred to go freelance. She decided to get her own visa rather than seek another domestic sponsor. She paid to have a company issue the visa but does not work for that company. Her boyfriend, a local policeman, helped her set this up and supported her when money was tight for

³³ Angelica (Office Worker), interview with the author, 9/12/2013.

the next few months. She was able to get a residence visa and, when I talked with her, had been in the country on this visa for about a year. She doesn't think that she will continue to do this, however, as it is very expensive. On the other hand, the freelance work she is currently doing pays better for fewer hours of work. She hopes to convince her one of her current clients to sponsor her next visa but allow her to continue working freelance on the side, also illegal for both the worker and the employer.³⁴

Human Rights Implications

Recruiting does not necessarily lead to violations of human rights. In fact, the Philippines is relying on the idea that recruiting agencies can support migrants' human rights. However, as it is currently practiced in the Philippines-UAE migration corridor, recruitment leaves workers vulnerable. The human rights impact of unscrupulous recruiters can be felt in several ways depending on the circumstances a specific worker finds herself in. As Rika's story illustrates, recruitment agencies can be complicit in abuses against the protection of childhood and the family, constraining movement and security of person, and ensuring just remuneration. In aggregate, these violations may constitute a situation of forced labor.

Adding in a second, destination-country agency only compounds these problems. While in theory adding a second agency to the process should add another layer of protection for the worker – there is another entity that they can petition for help should the need arise or be held liable for violations – this is not what we see in practice. Instead, UAE employment agencies are likely to represent the employer's interests. And, as these agencies are largely out of the reach of the Philippine government, there is little incentive for them to change this perspective. In addition, when a UAE agency is involved, the agency in the Philippines is likely to obtain its fee from the worker, have less contact with the employer, and so be less informed about the projected employment situation, and consequently even less able to serve their function as an information broker.

³⁴ Nicole (HSW), interview with the author, 9/18/2013.

Direct hires have the potential to help migrants by reducing costs and increasing flexibility. However, there is no guarantee that the company hiring the migrant directly will be any more likely to respect workers' rights than companies working with recruiters, and without a representative in the Philippines, there is no way for the government of the Philippines to hold these employers accountable. Instead, migrants are entirely reliant on the UAE government, which has lower labor and human rights standards.

Migrants may prefer to enter on a visit visa as it is cheaper and offers more flexibility than either recruiting agencies or direct hires. However, the thirty- to ninety-day visit visa timeframe places the migrant under pressure to find a position. As the end of the visa approaches, migrants become more desperate and therefore more willing to accept borderline job offers and more vulnerable to abuse. It is not until they are able to regularize their status and obtain a work permit and residence visa that they are given any labor protections under UAE law. Again, the Philippines government has little means to problems abroad and there is no partner entity in the Philippines that can be held responsible.

Buying a visa places the migrant in the most precarious situations. Migrants remain in an illegal living and working situation. While the sponsor is also breaking the law, penalties for the sponsor are not severe. The worker faces a fine, jail time, deportation, and labor ban if discovered.

Contracting

Filipinos who leave the Philippines in order to work abroad must have a signed contract registered and verified by the government of the Philippines. The Philippines enforces this policy at its airport: in order to board a plane, Filipinos must show a valid visa for their destination country; if they have an employment visa, they must also show the immigration official an Overseas Employment Certificate (OEC). To obtain an OEC, the worker must have satisfied a range of administrative requirements, including registration and verification of their employment contract. The Philippines government will only verify contracts that meet its minimum requirements, including: specified remuneration; meeting the minimum wage requirement; provision for food, transportation and accommodation; authorized causes for termination. This

means that anyone hired through a recruitment agency or through a direct hire should have a contract before leaving the Philippines.

The UAE also requires that all workers in the country have a contract on file with its Ministry of Labour. Contracts should be in both Arabic and English (Arabic takes precedence in the case of a dispute), should specify the date on which work begins and when the contract concludes, place and nature of work, and the amount of remuneration. Any changes to the employment contract should also be registered with the Ministry of Labour, but the Ministry will consider other evidence of changes (such as pay slips showing a raised salary) in case of a dispute so long as they advantage the worker.

The main problem is that the contract registered in the Philippines and the one registered in the UAE are not always the same contract.

Contract bait and switch is a very common fraud. The worker is given a contract to sign in their home country that not only meets all legal requirements, but that looks advantageous to the worker. The worker signs the contract and is processed for departure, including any payment due to the agency for their services. Upon arrival in the host country the worker is informed that the original contract is no longer available or valid and is asked to sign a new contract.³⁵ The new contract, however, has terms which are considerably less advantageous to the worker. Often this new contract has terms which do not meet the minimum requirements set by the POEA in the Philippines or which are so bad that the migrant herself would have turned down the job had she still been in the Philippines. Turning down such a contract in the UAE, however, is more complicated. If the migrant turns down the offer, they also lose their eligibility for residence and would need to repatriate at their own expense. Alone in a foreign country and after having already

³⁵ The UAE Ministry of Labour is clear that signed contracts should be honored regardless of where the contract originated. However, in the UAE legal system priority is given to the standardized English/Arabic employment contract that is required to be on file with the Ministry of Labour. Where the UAE contract and a contract signed in the home country conflict, the courts may choose to honor the conditions more favorable to the worker provided that the alternate contract is in Arabic but in the past the courts have tended to rely solely on the UAE contract. C.f.: Ramona Ruiz, "New Labour Contract Rules Praised," *The National*, 17 January 2011. Ola Salem, "Maids Wage Contracts Must Be Honoured If Signed Says UAE Foreign Minister," *The National*, 22 May 2013.

handed over a substantial sum of money to the recruitment agency, most workers feel they have little choice but to accept the new contract terms.

Ten years ago Rachelle was the victim of one such scam. Her first job at a department store in the UAE had terrible working conditions: low salary, long hours, no day off, no overtime, and no medical insurance.

Interviewer: When you left the Philippines, did you have a contract?

Rachelle: Yeah, we had a contract after I leave. They said that we have only eight hours duty. We have yearly vacation. But when we reach here, it's nothing happen.

Interviewer: Did you sign a different contract?

Rachelle: Yeah, when we came here, we have different contract here in the department store.

Interviewer: So why did you sign the second contract?

Rachelle: We have no choice. I'm already here. And I don't want to go home, you know. I just borrowed the money to pay for the agency. And I'm already here. And they said what to do: we have to sacrifice.

Interviewer: So you did that for two years?

Rachelle: We complained. We complained. We go to the Embassy. But they cannot do anything because they already process our visa. If we will not accept, they will cancel us. Still we need to pay for the processing fee that they have done with us. So, we just stay, all of us. We are seven ladies. We finish the two years then all of us we go. Like that.³⁶

Things have changed a bit in the ten years since this happened to Rachelle. Today, if a Filipino reported such an incident to the Embassy of the Philippines, more would be done to

³⁶ Rachelle (Office Worker), interview with the author, 10/22/2013.

assist the worker and to penalize the recruitment agency and the employer involved.³⁷ However contract bait and switch does still happen, relying on the vulnerability of workers and using threats against their livelihood to prevent them from reporting such incidents.

Victoria found a job in the UAE through a recruitment agency. As is the norm, she agreed to terms and signed an initial undertaking in the Philippines. However, when she got to the UAE she was given a contract with different terms, increasing the number of hours she was expected to work and doing away with overtime pay.³⁸ As this new contract would be registered with the Ministry of Labour in the UAE, its terms would be those legally binding in that country. She signed the new contract for one simple reason: "I am already here. I cannot do anything. I can't go back to Manila." Victoria worked the full contract term but refused to renew it despite the fact that her employer was "begging" her to stay.³⁹

Even when the contracts match, employers often fail to live up to contracted terms. The most commonly violated terms seem to be working hours and overtime pay. Both of these issues are regulated by the UAE Labour Law which limits the regular working day to eight hours a day (nine hours in specified professions) with one day off per week, or forty eight hours a week plus no more than two hours per day of overtime; overtime must be compensated with an increase of at least 25 percent. Most interviewees had problems in at least one of these areas. Cases of relatively minor discrepancies between contract terms and actual working conditions provided are common and often migrants prefer to deal with the situation without involving the authorities. Unfortunately, dealing with contract violations without the authorities generally means putting up with existing conditions for at least one or two years in order to avoid a labor ban.

³⁷ This scam may be carried out with or without the recruitment agency's knowledge. Regardless, by Philippine law the recruiting agency is jointly liable with the employer for the contract and upon return the migrant can bring charges against the recruitment agency. However, such cases take a very long time and have a poor record of success.

³⁸ Overtime pay is protected in UAE Labour Law (with the exception of "persons holding responsible senior posts in the management or supervision") and so this clause would likely be unenforceable if Victoria had chosen to contest her contract. However, such contestations are unusual for reasons that will be addressed further in Chapter Seven. Victoria herself was aware that she could file a case with the UAE Ministry of Labour but chose not to: "I didn't want any dispute. I just want to leave the company in a nice way." Victoria (Accountant), interview with the author, 9/28/2013.

³⁹ Victoria (Accountant), interview with the author, 9/28/2013.

While Maria Joy is not thrilled with her own job, it is her husband's contract that is worrying her most. He took a job in finance and received two salary payments as usual. But on the third month his employer told him that he would not be paid unless he met a quota; his wage was withheld and never subsequently paid. In the fourth month he was told that he was now on a full commission basis and his wages would entirely depend on his sales. None of these changes in his wages are stipulated in his labor contract, but Maria Joy and her husband do not dare report the violation: "If we go to the police, then the company will pay for him and then they will cancel his visa. I think that's the normal procedure here." The couple have little savings and are supporting family members in the Philippines; they are dependent on their wages. But it is not just the loss of one job that prevents them from reporting the matter. They fear that if he quits now, less than one year in to his labor contract, he will face an automatic six-month labor ban.⁴⁰

Finally, in a few cases, the contract may simply never materialize. The employer may simply withhold the contract from the employee, not giving them a copy of the contract registered with the Ministry of Labour. Without written evidence of the terms agreed to, a migrant may find it difficult to fight to see them upheld. Today the Ministry of Labour website makes registered contracts available to workers online; they may register online using their labor card for access to the system. Many workers are unaware of this, but it is an important step in the right direction.

When the company that she had worked at for five years had to shut their office in Abu Dhabi, Mia needed to find another job quickly. She was offered an administrative position that she thought would be beneficial. In particular, she had negotiated a good wage. However her new employer failed to issue her a written contract. Mia did receive a labor card and residence visa, though, so her contract must have been registered with the Ministry of Labour. When she began working for the new company, she found that her wages were far lower than agreed. When she complained, she was told that the lower wage was part of her six-month probation period. Mia was not happy with this new provision, but without a written contract, she had little recourse. After

⁴⁰ Maria Joy (Manager), interview with the author, 3/16/2013.

six months, however, her salary did not increase. After a year at the same low salary, Mia quit her job.⁴¹

Human Rights Implications

As with recruiting, contracting does not necessarily involve human rights violations and should rather prevent them. However, weaknesses in the contracting process in practice in the Philippines-UAE migration corridor leave workers vulnerable to abuse. Contract bait and switch and a lack of written contract leave workers susceptible to violations of their human rights to choice of employment and freedom from slavery; they also raise concerns about access to a fair legal process.

Favorable Remuneration

The Universal Declaration sets out a right to “just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity.”⁴² This is linked to the concept of a living wage, a wage sufficient to support the laborer and allow him to maintain his family, allowing for the social reproduction of labor. International organizations such as the United Nations, International Labour Organization and the World Bank have developed the concept of a “living wage” as it relates to poverty. The ILO has perhaps the best developed methodology for assessing living wage: “the hourly pay rate a full-time worker would need to earn to support a family of four at the poverty line,” where the poverty line is “the income level that is necessary for a family of four to be able to afford a low cost nutritious diet and non-food necessities at levels that are considered acceptable for the country.”⁴³ While the ILO methodology intentionally does not specify what these “non-food necessities” are, preferring to allow room for country-specific variability, it is clear that the living wage must account for some non-food items. They estimate that in low income countries non-food costs make up 42 percent of total costs and in high-income

⁴¹ Mia (professional), interview with the author, 9/17/2013.

⁴² The Universal Declaration of Human Rights, Art. 23(3).

⁴³ Poverty and living wage rate estimates derived by this formula are thus country specific but also comparable across countries. Richard Anker, *A New Methodology for Estimating Internationally Comparable Poverty Lines and Living Wage Rates* (Geneva, Switzerland: International Labour Office, 2006): p. 6, accessed May 8, 2015, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms_079165.pdf.

countries non-food costs represent 81 percent of total costs for individuals at the poverty line.⁴⁴ In general, we can say that basic needs to ensure a living wage include not only subsistence needs such as food and shelter, but also clothing and necessary personal care items, utilities, transportation, basic health care, child care, primary education, minimal rest and leisure, and taxes.⁴⁵ Thus, living wage rates are country specific, varying depending on local cost of living, social welfare provisions, and level of development.

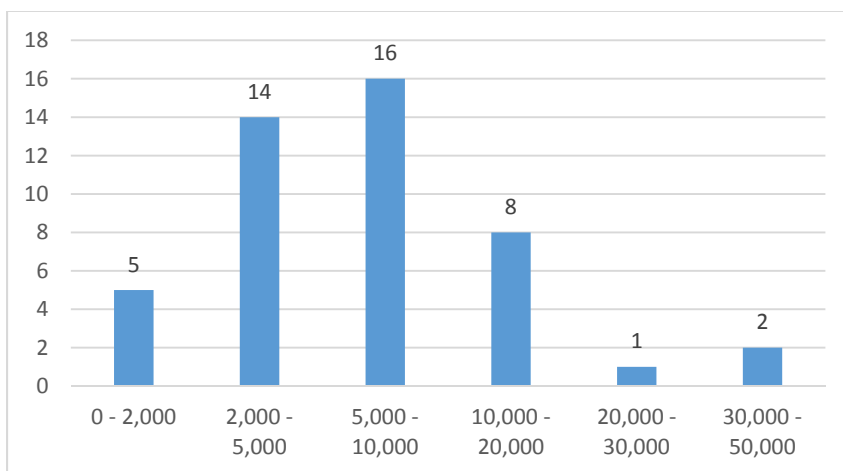
It is even more complicated to assess the living wage rate for temporary migrant workers whose families are typically split between home and host countries which may have vastly differing costs of living and levels of development. In Abu Dhabi, for example, the cost of living is higher than in the Philippines – pushed up by very high rent prices in particular, but also, should a migrant be able to bring his family with him, by the extremely high cost of education. Thus, where the migrant's family is assumed to be located will affect the estimated living wage. As will be discussed in greater depth in Chapter Eight, we must assume that the temporary migrant worker's family will remain in the home country. Thus the living wage should be such as will support a family with one person in the UAE and three in the Philippines.

Of the forty six interviewees that told me about their salary (only one person declined), the wage breakdown is as follows:

⁴⁴ Anker, *A New Methodology for Estimating Internationally Comparable Poverty Lines and Living Wage Rates*: p. 46.

⁴⁵ The exact elements that are included in living wage vary depending on the calculation. C.f. David H. Ciscel, "The Living Wage Movement: Building a Political Link from Market Wages to Social Institutions," *Journal of Economic Issues* XXXIV, no. 2 (2000).

Table 12: Wages of Filipino Interviewees



SOURCE: Interviews with respondents; employer provided housing in shared accommodations is valued at 500AED /\$136 USD.

At the low end of the spectrum, in the 0 – 2,000 AED (0 - \$545 USD) per month range, are three domestic workers and two food service workers. At the upper end of the spectrum are a doctor and an architect. The cost of basic needs for one person can be quite high in Abu Dhabi. A sample monthly budget might look like this⁴⁶:

Bed space in a room shared with four to six people: 500 to 750 AED (\$136 – 204 USD)
 Groceries to be cooked at home: 500 AED (\$136 USD)
 Transportation: 300 AED (\$82 USD)
Incidental expenses: 300 to 500 AED (\$82 – 136 USD)
TOTAL: 1,600 to 2,050 AED (\$436 – 559 USD)

After meeting their own basic needs, many Filipinos in the UAE make enough money either to support their extended families in the Philippines or to start accumulating savings for their own financial future, but not both. For a low-wage worker earning less than 5,000 AED (\$1,362 USD) per month, these bare minimum expenses eat up roughly half of their wages. The remaining wages could make a sizable contribution to the maintenance of a household in the Philippines, could pay for a mortgage or the college tuition of a sibling or child, could fund the establishment of a microbusiness, or could contribute to a retirement fund. However, it is only enough to do one of these things at a time.

⁴⁶ Estimates based on interviews.

For Victoria, this tradeoff is quite explicit. Victoria is the oldest of five children. Her father is deceased and, as the oldest, she feels responsible for her younger siblings. She worked while going to university in order to pay tuition and was determined that her younger brothers and sisters should not have this burden. When she got a job in the UAE, her salary was 4,000 AED (\$1,090 USD); she later found a new job paying about 5,500 AED (\$1,499 USD). She remitted half of her salary to support her mother and siblings and lived off of the other half of her salary. It was not until years later, when the last of her siblings graduated from college and found a job that her financial obligations in the Philippines reduced sufficiently to allow her to begin saving money for herself. While she still remits about 1,000 AED (\$272 USD) to her mother, she is able now to save between 1,000 and 2,000 AED (\$272 – 545 USD) each month. Victoria is single. She is a bit wistful when she says that she might like to have a husband and children, but she feels that staying single allowed her to fulfill her obligations to her parents and siblings:

Single. Still single, unfortunately. Or fortunately, I don't know. Depending on how you look at things. ... It took me a long while to have [my brothers and sisters] all settled in their own life. Yes. Although, I just miss one part of my life. I am still single. There's that.⁴⁷

Does Victoria make a wage sufficient for “ensuring for himself and his family an existence worthy of human dignity”⁴⁸ when she feels prevented from marrying or taking such measures as would enable her to support herself in her old age?

What about Ava, a domestic worker? The local family she works for pay her 1,000 AED - 700 AED (\$272 – 191 USD) as salary and 300 AED (\$82 USD) as an accommodation allowance, as she does not live in the family's house. Her employer provides her with health insurance and annual flights to the Philippines. She earns a bit extra by ironing for another family. This amount is barely enough to cover her needs in Abu Dhabi and she often needs to share meals with friends in order to save money. But every month she remits money to the Philippines to help her

⁴⁷ Victoria (Accountant), interview with the author, 9/28/2013.

⁴⁸ Universal Declaration of Human Rights, Article 23(3).

son, his wife and two children. She bought her son a motorcycle with side car so that he could start a transportation business. But even so, he does not earn enough money to support his family and is always asking for more. Most months she saves around 100 AED; this is supposed to be for her own retirement, but she often uses it as an emergency fund to pay for her own or her family's unexpected expenses. Ava is not in debt, but can you call this a living wage?⁴⁹

On the other hand, Nicole's first position as a domestic worker paid her only 500 AED (\$136 USD) per month, but the family treated her well, gave her good accommodation and food, and allowed her to select any items she needed for herself when the family went grocery shopping. "When you are working with an Arabic family, you don't need money. They give you everything." She was able to remit most of her salary to pay for her children's educations. The value of her accommodations, food, and incidentals in the UAE market would have been at least 1,500 AED (\$409 USD), bringing her total package up to 2,000 AED (\$545 USD). Is this a living wage?⁵⁰

A good estimate for a living wage for an individual with a family to support would be around 5,000 AED (\$1,362 USD) per month, or 2,500 AED (\$681 USD) where accommodations, food and other incidentals are included. This salary should allow the temporary migrant worker to support herself in the UAE and three family members in the Philippines. By this standard, about 60 percent of respondents were making a living wage sufficient to support themselves and their families in the Philippines.

Minimum Wage

A minimum wage is a different concept than a living wage. The minimum wage is the minimum legally allowable wage. In many urban areas globally the minimum wage is set below the living wage and it is generally recognized that a single minimum wage job is insufficient to support a family. In the United States, for example, the average family of four would need "more

⁴⁹ Ava (HSW), interview with the author, 3/30/2013.

⁵⁰ Nicole (HSW), interview with the author, 9/18/2013.

than three full-time minimum-wage jobs” at the federal minimum wage in order to support the family.⁵¹

In the UAE there is no minimum wage. The UAE Labour Law specifies that a minimum wage “enough for the employee's basic needs and to secure means of living” should be set by Federal decree but no minimum wage has been set yet, thirty five years later.

However, the Philippines government requires that its workers abroad make a minimum wage:

Guaranteed wages for regular work hours and overtime pay, as appropriate, which shall not be lower than the prescribed minimum wage in the host country, not lower than the appropriate minimum wage standard set forth in a bilateral agreement or international convention duly ratified by the host country and the Philippines or not lower than the minimum wage in the Philippines, whichever is highest.⁵²

The government of the Philippines enforces the minimum wage prevailing in the country on overseas Filipino workers by requiring that a valid contract specifying an appropriate wage is registered with the government before the Overseas Employment Certificate, required by immigration officials in order to exit the country, will be issued.⁵³

The UAE does not have a legally-mandated minimum wage and there is no bilateral agreement between the Philippines and the UAE regarding minimum wage, so the Philippines minimum wage should prevail. However, this is loosely enforced for everyone but domestic workers.

The Filipinos surveyed who were earning well above the minimum wage were supportive of the idea. Fortunado, a highly skilled professional, explained his support:

I have a waiter at my restaurant taking a salary ... 300 dollars a month; for one employee, 300 dollars. And then ... you are going to abroad just to get 250

⁵¹ Amy K. Glasmeier, "Poverty in America: Living Wage Calculator," Massachusetts Institute of Technology, accessed July 29, 2014, <http://livingwage.mit.edu/>.

⁵² *POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers*.

⁵³ Minimum wage requirements can be found in: *POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers*.

dollars a month. You see. So what's the point of going abroad if you can earn 300 dollars in the Philippines, then? It would affect on *my* salary, definitely, because I am going to lose something. But in the lower class, like housemaid earning 300 dollars, you don't have to go abroad; you stay in the Philippines because you can earn that as well in the Philippines. ... Definitely, it must be.⁵⁴

The idea of the Philippines government setting a minimum wage for workers overseas is not as straightforward as it first appears. The problem is that the Philippines government is unable to offer a viable alternative to low-wage foreign work for all of its citizens. There is strong competition for low-wage work in the Philippines already; the economy is basically unable to offer jobs to all of its unskilled workers that are currently working for below minimum wage abroad.

Alexandra tells how the minimum wage provisions set by the Philippines government may actually work against low-wage migrants:

One of my cousins already is here. I am the one who... I bring her also in [the same company I work in] because at that time they are hiring and all the tickets and the visa they are provided [by the company]. ... But now they are not hiring from the Philippines anymore because I think our Embassy are asking already minimum salary, free accommodation, free transportation, that my company cannot afford. ... For my relatives and in our place, of course even small salary, as long as they have permanent job, they will accept. But now our company stop it already. ... For example, now they are hiring. I can introduce some of my neighbors, cousins, but I cannot help them now. They will be hired but of course they should come here as a visit visa. And they need also money to spend for that one.⁵⁵

A brief chat with a (Western) store manager confirmed that the chain was no longer hiring direct from the Philippines. She felt that this was a pity because Filipinos make good fast food

⁵⁴ Fortunato (Architect), interview with the author, 3/23/2013.

⁵⁵ Alexandra (Food Service), interview with the author, 2/23/2013.

workers, but the chain would not raise the salary when there are plenty of qualified workers either already present in the UAE, or from countries without minimum wage restrictions.

Wage Withholding

There are various reasons why a worker's wages might not be paid in full each month. During times of financial crisis a company may decide to withhold wages in full or in part. During the global financial crisis many construction companies found themselves in this position.⁵⁶ Employers may garnish wages to cover recruitment costs, although this is illegal under UAE law. Or the employer may simply not want to pay the worker the agreed upon amount.

The UAE's Wages Protection System (WPS) has basically ended this practice for most workers. The WPS is coordinated between the Ministry of Labour and the Central Bank of the UAE. Employers are required to pay salaries electronically into bank accounts set up for employees with participating banks; wage information is shared with the UAE Central Bank and the Ministry of Labour, allowing them to identify companies that are delaying or failing to pay wages in a timely manner. The UAE introduced WPS in 2009 and it was slowly phased in over the next two years with deadlines for larger companies first and gradually extending to small companies. Today most employers are covered by the system and it seems to have drastically reduced wage withholding. There are still instances of companies failing to pay workers; however with the paper trail created by WPS, workers have an easier time proving their case if they report it to the Ministry of Labour.

There are two exceptions to WPS, areas that are still vulnerable to wage withholding. First, workers sometimes make verbal agreements with employers alongside their formal contract. These side payments, of course, are not covered by WPS. Gabriel signed a contract that included only half of the wages he had been promised; the other half was to be paid to him in cash. Once he started working, however, he found that while the contracted amount was deposited into his bank account promptly every month, the cash was not always forthcoming.

⁵⁶ Asa Fitch, "Building Workers End Strike over Unpaid Wages," *The National*, 11 June 2009.

Without the full amount written into the contract, however, there was nothing he could do about this.⁵⁷

Second, domestic workers are not included in the WPS system. Domestic workers are still commonly paid in cash. Employers are supposed to provide a receipt for wages, signed by both the worker and the employer. But many employers forgo this formality and unscrupulous employers may pressure workers to sign without actually giving them their full wage. Of the seven domestic workers interviewed, three had had their wages withheld by their employers.

Human Rights Implications

The failure to provide a living wage restricts the workers' right to fair remuneration and an adequate standard of living for herself and her family. The Philippines has tried to address this issue by extending its minimum wage to citizens beyond its borders. But, in doing this, it has restricted its citizens' right to exit the country and has essentially trapped low-skilled workers in the Philippine economy which cannot itself provide stable employment at a living wage, nor sufficient social security to supplement its unemployed and underemployed population.

Debt

Recruiting, contracting, and wage issues all contribute to migrant debt. Many prospective migrants needed to take out loans to finance their recruitment fees or visit visa expenses, as well as to carry them over until the first payday. Often these loans are financed by friends or relatives, occasionally by a bank or recruitment agency. This is the first step on the road to debt. Low wages mean that many migrants live right up to their means and have little if any savings. Extra money is remitted to support family members in the Philippines or loaned out to friends during times of emergency. If the worker has an emergency and needs extra funds, she has little choice but to borrow, in turn, from her friends and family.

As discussed above, fees payable by the worker are capped by both Philippine and UAE law. Philippines law caps fees at the equivalent of one month's salary, plus reimbursement for allowed documentation costs. The employer remains liable for visa fees, airfare, POEA

⁵⁷ Gabriel (Nurse), interview with the author, 10/15/2013.

processing fee, and OWWA membership fee. If the receiving country bans the collection of recruitment fees from the worker, then Philippine law also recognizes this stipulation and likewise bans the collection of fees.⁵⁸ The UAE bans the collection of recruitment fees from workers. As such, recruitment fees should not be charged to workers in the UAE. However, the imposition of such fees is routine. Most of the people interviewed who paid recruitment fees, paid the equivalent of one month's salary. They got the money to pay in several different ways. Some make arrangements for wage deductions. Enzo borrowed money from friends, some of whom he has not been able to pay back yet.⁵⁹ Adrian got the money from two sources: by selling the small furniture business he had owned and operated in the Philippines, and from his wife, a teacher in the Philippines, who took out a loan from the teacher's association.⁶⁰ Grace took out a loan from her employer in the Philippines to pay recruiting fees to obtain a new job abroad.⁶¹ Ella's recruiter helped her arrange a loan through a bank in the Philippines; it took her two years to repay the loan.⁶²

Employers also pay recruitment fees. They are legally obliged to do so. The problem is that they may try to recoup those fees if a worker leaves. Lissa was a driver for a local family; the family paid about 10,000 AED (\$2,724 USD) for her recruitment.⁶³ Lissa worked for them for about five years, she completed two contracts and had negotiated a third contract when a sudden dispute with her employer over passport withholding disrupted her working situation. Lissa and her employer both ended up filing charges with the Ministry of Labour, she alleging passport withholding and he accusing her of absconding. Lissa is now in legal limbo. After the absconding charges were filed, she was detained pending a decision in her legal case. It is likely that the

⁵⁸ *POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers.*

⁵⁹ Enzo (Chef), interview with the author, 9/12/2013.

⁶⁰ Adrian (Engineer), interview with the author, 9/10/2013.

⁶¹ Grace (Hotel Receptionist), interview with the author, 3/20/2013.

⁶² Ella (Food Service), interview with the author, 3/20/2013.

⁶³ Lissa (HSW), interview with the author, 10/7/2013.

absconding case against her would be upheld in court and she will face a labor ban preventing her from working in the UAE. Lissa supports family in the Philippines and would like to continue working in the UAE, though preferably for a different sponsor. In order for this to happen, her current employer would have to agree and drop the legal case against her, which he might do if someone were to “buy” her, that is, reimburse her employer for recruitment fees:

Right now I'm looking for someone who will buy me from my employer. ...

Yesterday I went to another sponsor because the only way to solve this – the UAE way – is to sell me to another sponsor. But I'm still waiting for other options.

Like, I don't know, I'm still studying [to see if] I can buy myself, like that. Not yet sure.⁶⁴

It is not uncommon for a migrant to have several sources of debt. Haley's experience demonstrates how the accumulation of debt, even if it does not overwhelm the individual, can prevent them from saving and blight their prospects for future prosperity. Haley first came to the UAE in 2006 to work in a low-level retail position. Consumer credit was easy before the global market crash in 2008/9 and, despite her low salary, she was able to obtain a credit card. She used the card to take out a 2,000 AED (about \$545 USD) cash advance in order to help out a friend in need. The friend never paid her back and Haley spent the next few years paying off the debt. When she finished, after four years in the UAE and with no savings, Haley headed back to the Philippines hoping to finish her university degree. She spent about three years studying and working but the family was unable to afford her tuition on top of other family needs, such as the educations of her younger brother and her nephews. Haley returned to work in the UAE without completing her degree. She borrowed about Php 10,000 (about \$230 USD) to pay for relocation expenses. When one of her nephews fell ill she borrowed additional money from friends in the UAE to help cover his hospital expenses. After six months working, she has almost paid back

⁶⁴ Ibid.

these loans. Haley's debts are barely manageable given her salary and they entirely preclude her saving money. And with the next family emergency Haley could easily slip back into debt.⁶⁵

Lifestyle, Debt, and Imprisonment

Debt is an area that the Philippines government and the Embassy of the Philippines focus on. The narrative is that people migrate abroad for the noble purpose of supporting their families, and they reprehensibly fall into bad and irresponsible behavior patterns which prevent them from achieving their goals. Sebastian could be the poster child for this:

Sebastian: Actually the first uh one year, when I'm uh working here, I spend too much actually. I spend too much.

Interviewer: What were you spending on?

Sebastian: Girls. Yeah, I spend money on girls. So that's why. I go to the bar, I drink, and I buy things that actually is not necessary, yeah. That's why. So, I spend too much actually. So when I went vacation, then I just realize: one year but I had not save much. That's why. So when I come back here I just being smart, like that. What I do right now with 50 percent I send to my bank in the Philippines. So I will not use it anymore.⁶⁶

Beyond "bad" behavior, consumer credit is easy to obtain in the UAE in the form of credit cards. Many Filipinos take out credit cards not to use for everyday purchases but as a means of covering unexpected or emergency expenses. The result is that, instead of paying off the balance every month, many carry a balance and only slowly repay the debt. Of course, assuming credit card debt as a means of cash financing is, in effect, a very high interest loan.

Marjorie is one person in this type of situation. She took out a credit card after arriving in the UAE. She did not use the card for purchases, only to borrow cash which she then lent to friends. One friend, in particular, borrowed large amounts in order to pay for her daughter's cancer-related medical bills. In the end Marjorie, whose basic salary as a massage therapist is

⁶⁵ Haley (Food Service), interview with the author, 2/23/2013.

⁶⁶ Sebastian (Engineer), interview with the author, 9/13/2013.

4,000 AED (about \$1,090 USD, though she usually earns another 4,000 AED / \$1,090 USD in tips), racked up 16,000 AED (about \$4,350 USD) in credit card debt. Some of the friends that she loaned money to have managed to repay her. Some, she acknowledges, never will. Her friend whose daughter is fighting cancer remains unable to pay. She does not regret loaning the money, though she does now regret taking out the credit card in the first place.⁶⁷

The Embassy of the Philippines focuses on awareness, education and creating opportunities to save and invest. The Embassy runs seminars on financial literacy under the “Pinoy Wise” program, launched in 2012, for example.⁶⁸ The UAE government, by contrast, falls back on the threat of imprisonment. Unpaid debt is a criminal offense in the UAE and can lead to imprisonment and deportation. Of course, coming up with the money to repay a debt from prison is also difficult. Nonetheless, once jailed, the individual will not be released until the debt is paid, a settlement reached with the creditors, or a financially solvent friend or relative offers to secure the loan or to surrender their passport to the UAE authorities as a guarantee in order to secure the debtors release. Declaring bankruptcy is not an option.

Moses tried to help a friend having problems with debt:

So I have this friend that she went to prison for bouncing the check. And she's the bread winner, so she cannot afford to stay in prison to ride out the debts. And she needs somebody to give up a passport in exchange, like a bail passport. So sometime in June I told her: 'Anyways, my flight won't be until September six. So yeah, OK. If it would help you go [out of jail], take my passport.' So I gave up my passport to the Dubai courts. And the guy's like: 'are you sure what you're doing?' 'Yeah, yeah. If it would help them go.' June, July, August. She only managed to rectify everything in November. So my passport was in jail for six months. ... But I learned my lesson that it's scary really not to have a passport.

⁶⁷ Marjorie (Massage Therapist), interview with the author, 10/8/2013.

⁶⁸ Ramona Ruiz, "Wise up to Pinoy Savings Scheme, UAE Filipinos Urged," *The National*, 19 November 2012.

So I was thinking of getting additional passport; just in case something like that would happen, I can still get out of the country.⁶⁹

Unfortunately, some migrants with significant debt which they are unable to pay choose to flee the country rather than face imprisonment. Ariana's husband signed as guarantor on a loan for a friend, let's call him Bob. A few months after receiving the loan, Bob lost his job and could not make the loan payments; after a few months the bank reported the friend to the police and Bob was arrested. Ariana's husband went to his Emirati boss and asked for help getting Bob out of jail. But when Bob was released, he ran, sticking Ariana and her husband with the full value of the loan. "And then we went home [to the Philippines] to talk to his family, to talk to especially the father, and the father said, 'I'm not gonna pay him because it's not my loan. And it's your fault, you signed the paper.'" Arianna and her husband next approached the bank in the UAE and asked what to do. The bank asked for help locating Bob, the principal debtor, but then never followed up, either with them or with Bob. She is happy that the bank never asked for payment from them but she is worried that it will come back to haunt them: "And we always have to check if my husband is in the blacklist already in the immigration. Good thing we have friends working there!"⁷⁰

Human Rights Implications

Reasonable amounts of debt are not a human rights concern. The Philippines government caps recruitment fees at one month's salary in part to limit debt to reasonable levels, so that the investment workers make in recruiting fees does not exceed the returns they receive from working abroad. The fear is that if a migrant worker's debt to recruiters and/or employers mounts too high, this could place the worker at risk of bonded labor, where his entire wages go towards servicing his debt payments. Unable to change employers or return home, the worker may have to fall back of yet more borrowing in order to support his family, leading to a spiral of debt. In the UAE this type of situation has been prevalent among construction workers from

⁶⁹ Moses (Financial Adviser), interview with the author, 3/18/2013.

⁷⁰ Arianna (Nurse), interview with the author, 8/3/2013.

Southeast Asia, some of whom work for two years or more just to repay their recruitment;⁷¹ it seems less prevalent among Filipinos.

While the UAE does not release detailed crime statistics, it is fair to say that imprisonment for debt remains a distressingly common problem for Filipinos in the UAE. While the prohibition on imprisonment for debt is not found in the UDHR (though it is prohibited in the ICCPR), debtor's imprisonment as it is practiced in the UAE nonetheless undermines human rights that are protected in the UDHR. Depriving a person of their freedom as a means of penalizing a monetary debt is senseless. The state is put to the expense of maintaining them in prison, the creditor continues to go without payment, and the debtor is senselessly deprived of his freedom. Imprisonment for debt also impinges on the right of the individual to a just standard of living – while in jail they are unlikely to be able to earn the necessary money to repay the debt.

Discrimination and the Migrant “Underclass”

Gardner suggests characteristics of the migrant populations in the Gulf: they are “guest worker” populations for whom naturalization is not feasible; they live lives that are separated from that of nationals and social interactions between migrants and locals are confined to work; workers' experience is organized and controlled through the kafala system; gender, ethnicity, nationality, language and religion all shape the “migratory conduits between south Asia and the Gulf,” slotting people into particular types of work and so creating a workforce “deeply patterned by ethnicity and nationality.”⁷² Longva elaborates on the pattern found in Kuwait:

The post-oil boom labor market was divided into an ‘Arab’ and an ‘Asian’ sector, with the Iranians in a category of their own. ...the allocation of the various ethnic groups in this market had been clear from the beginning, Arabs were found in all types of occupation, except that of domestic servant, and usually at a level superior to Asians. The latter were concentrated mainly in low-paid jobs in the private sector. Straddling the two groups, ethnically speaking, the Iranians

⁷¹ “*The Island of Happiness*”: *Exploitation of Migrant Workers on Saadiyat Island, Abu Dhabi* (New York, NY: Human Rights Watch, 2009), accessed May 8, 2015, http://www.hrw.org/sites/default/files/reports/uae0509webwcover_4.pdf.

⁷² Andrew Gardner, *City of Strangers: Gulf Migration and the Indian Community in Bahrain* (New York, NY: Cornell University Press, 2010): Ch. 1.

worked mostly as merchants and laborers, but never in the government and the domestic spheres.⁷³

The hierarchy described by Longva is very similar to what is found in the UAE. However, we can elaborate on this a bit. In the UAE hierarchy, Filipinos occupy a position towards the top of the 'Asian' sector. With the "Asian" group, Japanese and Koreans would occupy a higher position while Pakistanis, Indonesians, Sri Lankans, Nepalis and other Southeast Asians would fall beneath them. One group that is missing from Longva's account are Indians. Much like Iranians, Indians in the UAE occupy a unique position. Due to long trade ties with the UAE, there are Indians embedded in the UAE economy at all levels. This hierarchy is not established in law, but its practice is a generally recognized social fact.

First, the labor market is segmented, with different types of work loosely corresponding to specific nationalities. Many cab drivers are Pakistani or Bangladeshi, security guards are Egyptian. In this context, Filipinos are domestic workers, sales and office assistants, and nurses (but not doctors). Princess explains: "Usually, if you meet Filipinos here, you will see majority of them, particularly [in] Abu Dhabi, they were like cashiers and bankers and service related businesses. That's the thing. For me it's easier to jump [between sectors] because of my job: it's professional and it's technical. But what if your job is like a call center? It's quite different. I have a friend who is having a hard time trying to jump from hospitality to another business. That's the issue there."⁷⁴

One result of the segmentation of the labor market is that deskilling is common. No matter what their level of experience or their position in the Philippines, it is assumed that Filipinos in the UAE are and will be assistants not managers, nurses not doctors. Maria Joy refers to this as the "minus-one" phenomenon.⁷⁵ Cherry states: "I'm a manager there [in the Philippines]. But [in the UAE] I'm always an assistant, always an assistant."⁷⁶ Gabriel bemoans the fact that

⁷³ Longva, *Walls Built on Sand: Migration, Exclusion, and Society in Kuwait*. p. 31.

⁷⁴ Princess (Office Professional), interview with the author, 3/16/2013.

⁷⁵ Maria Joy (Manager), interview with the author, 3/16/2013.

⁷⁶ Cherry (Office Professional), interview with the author, 9/12/2013.

Filipino professionals are treated like “common helpers” and asked to do things degrading to their profession.⁷⁷

A second effect of labor market segmentation is that pay is differentiated by nationality. Filipinos, it is generally acknowledged, make less than their Western, Arab, or Indian coworkers. Zoe notes that employers pay Asians less than Europeans or Arabs. “If you go to a company and they have a lot of Asian employees, they pay poorly. But if you enter an office with a Western or Arab receptionist, they pay more. For sure.”⁷⁸

Cherry makes a very good salary, but it is still, she feels, below the salary she deserves. She signed a three-year contract with this company shortly after the economic crisis when jobs in the UAE were scarce and salaries dropped. When she signed her second contract three years later, and after the economy had recovered considerably, she was disappointed not to receive a raise. Worse, shortly thereafter she was transferred from one department to another within the company and her annual bonus was reduced. She feels that racism was a factor in this decision: “They deduct thousands [of dirhams] ... because the owner of the company told me ‘but your budget is very big.’ Oh my budget is very big? Why? [Because] I am a Filipina, very big.” She points out that she works longer hours for less pay than her Arab male coworkers.⁷⁹

Some have rationalized this. Fortunado blames the fact that Filipino architects are paid less on the fact that there is an excess supply of Filipinos:

Otherwise I’m a normal architect and my salary will not be as... because, you know, because I’m a Filipino. Of course. I mean, first, we have a lot of supply. Every year there are a lot of architects. So if you are a normal architect, you think you will last in the market? I don’t think so. Because wherever you go you will hire architects. Even in the Philippines, if you’re looking for architect today, after

⁷⁷ Gabriel (Nurse), interview with the author, 10/15/2013.

⁷⁸ Zoe (Real Estate), interview with the author, 9/24/2013.

⁷⁹ Cherry (Office Professional), interview with the author, 9/12/2013.

one hour we will give you ten. You have to choose. I mean there are a lot of supplies so you cannot demand.⁸⁰

Joey also earns less than his “white” colleagues. However he does not view the discrepancy as discriminatory. Rather, he attributes the difference to the “cost of living”:

Interviewer: Do you think racism is a problem here?

Joey: No, in our company, racism is not allowed.

Interviewer: Do you get paid the same salary as...?

Joey: No, definitely, white people are getting higher. Because it is being based on the cost of living where you come from, no?⁸¹

Joey points out that the cost of purchasing property or other goods is lower in the Philippines than it is in Great Britain so that he can achieve similar life goals with a smaller salary.⁸² Discrimination, he feels, is better understood by the way people treat you. And his coworkers treat him as an equal: they speak to him respectfully, his bosses shake his hand, and he is invited to social outings after work. He points out that our conversation is a conversation between equals.

Emiratization

At the top of this racial/national hierarchy, of course, are the Emiratis. At roughly 10 percent of the population, Emiratis occupy the top economic, political, and social positions. The country is very publically pursuing “Emiratization,” or localization, of the workforce by targeting specific sectors (banking, for example) or specific job titles (Public Relations Officer, for example) that should be occupied by Emiratis. It is generally acknowledged that Emiratization cannot reduce the number of migrants in the UAE. Rather, the policy aims to achieve full employment for locals by placing them in key positions. Interviewees I spoke with were aware of the Emiratization

⁸⁰ Fortunato (Architect), interview with the author, 3/23/2013.

⁸¹ Joey (Engineer), interview with the author, 10/21/2013.

⁸² While this might sound similar to the argument presented above regarding establishing a living wage for families split between home and host country, they should not be confused. At issue here is equal pay for equal work. Variability based on the cost of living can only be relevant when attempting to establish national minimums such as the poverty line, the living wage, or, potentially, a minimum wage.

campaign but were not too worried about it. There was no resentment, and, in fact a few people expressed their sympathy with the idea of the government taking concrete action to ensure their citizens are employed.

Interviewer: How do you feel about Emiratization?

Sophia: Emiratization. What to say. Because it's not that much in our department. We have some locals but they're not that much so it doesn't effect that much to our work.

Interviewer: Do you think they get treated the same way that you do?

Sophia: Of course not! Of course not. No

Interviewer: But that's not a problem?

Sophia: I think it's a problem, you know. But if you can see their life here, as compared to life that you are having, I think it's just fair for them to have that much.⁸³

None of the individuals I talked to had been a victim of Emiratization in the UAE. The closest was Fortunado, who missed out on the opportunity to go to Qatar. When his boss got a job with a new company in Qatar, he was going to go as well but at the last minute there was a problem with his visa:

Problem with my visa. They found out that I am a Filipino and I am not entitled for that kind of salary. So. So. They told me that they have a problem with my visa. ... Unfortunately the government said this package can be given to a local, to a Qatari; we can find a lot of architects here in Qatar.⁸⁴

Most interviewees were not worried about Emiratization, feeling that there are few locals either willing and/or able to do their job.

Interviewer: What do you think of the Emiratization drive? Do you think it will work?

⁸³ Sophia (Nurse), interview with the author, 9/15/2013.

⁸⁴ Fortunato (Architect), interview with the author, 3/23/2013.

Danielle: I don't think so. No other local would like work in in a gas station, right? Because Emiratization, ninety percent or a hundred percent locals will be like having a skilled work here, right? Things like that, right?

Interviewer: Yeah.

Danielle: Correct me if I'm wrong. No, no, I don't think locals would drive a taxi.⁸⁵

Princess: Of course, at the same time we are also wondering 'what if there is Emiratization?' But with the latest project we just dispatched five hours ago, I don't think so. Because there these projects [with] 2015 deadlines. And they need the people like us. There's nobody there, no locals that can actually do the job.⁸⁶

Nonetheless, the specter of Emiratization did worry some in well-paid professional positions. I asked Fortunado, the architect who did not go to Qatar, if his well-paid job in the public sector is secure:

No. Because now I understand. Because we are expats. It so happened that I have an extraordinary talent for work that some locals don't have. ... These people, even though ... they are there in government, still they are smart, they know what to do and they know what they want. They know that they can help you. But the reason why you are there is because you are going to help them. Otherwise they will get no one. ... And here, in UAE... all in the Middle East, they impose the localization. ... They want all the locals to have work and that is the problem of the government, everything. So I cannot tell that I was on the safe side.⁸⁷

⁸⁵ Danielle (Office Worker), interview with the author, 9/15/2013.

⁸⁶ Princess (Office Professional), interview with the author, 3/16/2013.

⁸⁷ Fortunato (Architect), interview with the author, 3/23/2013.

Human Rights Recommendation

Discrimination on the basis of nationality or race is a violation of workers' human rights. In this case, discrimination has led to a highly segmented market that constrains Filipino's ability to advance in their career. This segmented labor market is characterized by wage discrimination on the basis of nationality. The end result is that migrants form an "underclass": a stratum of relatively poor workers segmented by nationality into relatively rigid economic and social structures that reify and ossify their low position.

Conclusion

The issues presented in this chapter – illegal recruitment practices, contract bait and switch and other contract-related offenses, extremely low wages, debt, and discrimination – are some of the most high-profile human rights violations affecting migrant workers today. The Gulf Cooperation Countries are notorious for these issues in particular. And, indeed, they have the potential to inflict the most significant impact on the lived experience of individuals affected.

At the least calculation, illegal recruitment affects millions of migrant workers globally, placing them at a disadvantage from the beginning of their experience working abroad. As was demonstrated here, charging illegal recruitment fees to Filipinos headed to the UAE is relatively common. Charging fees beyond those legally allowed allows recruiters to take advantage of their position as middlemen in order to extract fees disproportionate to the value of their service and disproportionate to the value of the future income of the worker. Other, less common violations include forging necessary documents or deploying a worker to a job that she is not qualified for. These practices strip workers of protections and place them in situations in which they are likely to face further, more serious difficulties.

Contract bait and switch is relatively rare, but its consequences are likely to be very severe. Workers who have experienced bait and switch are likely to end up in the worst employment situations, below the minimum standards set by the home country, and below what they would have agreed to themselves. Contract bait and switch robs workers of their agency. And, as recruiters and employers complicit in bait and switch are inevitably aware that they are

engaging in illegal and unscrupulous behavior, they are often willing to take further unscrupulous actions to prevent workers from reporting, or even exiting, these labor situations.

Extremely low wages not only makes life difficult on a day to day basis for wage earners, it also threatens their ability to fulfill the original goals motivating their migration in the first place. Workers struggle to support families and to pay back debts, let alone to save any money for their own futures. The result is often spiraling debt. Many workers take on debt to pay initial recruitment fees; if they are unable to support themselves or their families, they may take on more debt. Again, this places strain on the worker and defeats the original purpose of labor migration.

Any of these issues is serious in its own right. But it is as an interrelated set that they pose the most serious threat. Each one makes the individual more vulnerable to experiencing the next, as well as compounding the severity of the effects on the individual's lived experience. Taken together, illegal recruitment, contract bait and switch, low wages, and debt potentially constitute a situation of unfree labor. In the worst situations, these conditions may constitute human trafficking, bonded labor, and/or modern day slavery. It is this toxic mix that has caught the attention of the US State Department's Trafficking in Person's (TIP) Report, Human Rights Watch, and various other interested groups.

I do not mean to diminish the seriousness of these violations when they do occur. But, when considering how significant these problems are, we also must take two further issues into consideration. First, the worst outcomes are experienced by a relatively small percentage of individuals. Second, the existing legal structures in the UAE are capable of dealing with the worst situations.

The UAE does have anti-trafficking laws and specialized police and other institutions to address the issue. These institutions are not as effective as they could be and there is considerable room for improvement, but they are improving. The US State Department's TIP

Report considers the UAE to be a Tier Two country.⁸⁸ Tier Two is defined as: “Countries whose governments do not fully comply with the TVPA’s minimum standards but are making significant efforts to bring themselves into compliance with those standards.”⁸⁹ The TIP report notes “sustained, but uneven, progress” in addressing these issues, with trafficking (particularly sex trafficking) receiving more attention than forced labor. The major problem is that forced labor violations tend to be dealt with through the regular labor law rather than through the anti-trafficking statutes. That means that, although workers may be released from these situations and possibly compensated, offending recruiters and employers are not penalized to the fullest extent of the (criminal) law.

More needs to be done, certainly, to address debt bondage and human trafficking in the UAE. And the UAE is working with international partners to strengthen its systems and implement reforms. The pace of reform remains unnecessarily sluggish. Mercifully, few workers find themselves caught in these worst situations, though many are vulnerable.

⁸⁸ In 2008 the TIP report placed the UAE on the Tier Two Watch List, an embarrassment for the UAE; since then it has remained on the Tier Two list.

⁸⁹ *Trafficking in Persons Report*, United States Department of State, 2014, p. 43, accessed March 1, 2015, <http://www.state.gov/documents/organization/226844.pdf>.

CHAPTER SIX: IM/MOBILITY

Introduction

The international migrant as we understand that category today – generally defined as an individual who resides in a different country than their country of birth or their country of nationality – is a product of the international state system. The idea that the individual needs permission to cross international borders and/or authorization to reside in a particular locale is relatively new to human history. For example, passports only came into general use following WWI, as a means of ensuring national security in the post-war era. Since that time migrants have faced the growing challenge of movement in a world order in which states are increasingly concerned about migration as both a potential boon to national economies as well as a potential danger to social and political cohesiveness and national security.

But concerns about migrants' mobility does not end after they cross an international border and enter the destination country. Migrants' freedom of movement may be directed and constrained throughout the migration process, from departure through return and reintegration. Temporary contract workers are particularly prone to constraints on mobility. TCWs are brought in to a destination country for a specific time period to do a specific job; constraints on the ability to change employers are built into most TCW programs. This tends to coincide with other constraints as well, such as restrictions on residence.

This chapter looks at how Filipino workers in the UAE experience mobility and immobility. From the time an individual decides to leave the Philippines in search of work abroad their options, decisions, and outcomes are shaped by their ability to negotiate mobility. In this sense, mobility goes hand in hand with migrants' agency, enabling and constraining the individual's capacity to make decisions and have those decisions affect important goals in their lives. Immobility, alternatively, robs agency of its substantive content by removing voluntariness from decisions to stay or go.

Migration and Choice

We usually view labor migration as a choice. But choices are never entirely unconstrained. What are the outlines of this choice? How do we know if there are genuine options available? At what point do the constraints – which we all inevitably face – make the choices that migrants face so narrow as to rob migration of its voluntary nature?

The Decision to Leave the Philippines

The first decision in the migration process is the initial decision to try to find work abroad. Ambassador Grace Relucio Princesa argues that the Philippines is enmeshed in the global system and that migration is inherently part of this system; the goal she argues, should not be to end migration from the Philippines, but rather to ensure that it is “migration by choice.”¹ The Ambassador’s, and the Philippine government’s, goal is to ensure such conditions both in the Philippines and abroad as to give Filipino workers a viable choice to work in the Philippines or to seek better opportunities abroad. This does happen for some Filipinos. Victoria had a good job in Manila as a senior financial planning analyst making 43,000 PHP (\$958 USD); her first job in Abu Dhabi paid a similar salary, but she wanted an “opportunity to grow more in other place,” to explore the world, so she went to work abroad.² But Victoria’s story is not the norm. Most Filipino workers in Abu Dhabi were pushed out of the Philippines by poverty, unemployment and underemployment, low wages, and family pressures.

Poverty

In 2012, 25 percent of the population of the Philippines was below the national poverty line; roughly 42 percent of the population earned less than \$2 USD per day.³ Nearly 20 percent of families were below the poverty line in 2012.⁴ These numbers would be even higher if migration did not serve as an escape valve, allowing a growing number of poor Filipinos to find work

¹ Ambassador Grace Relucio Princesa, interview with the author, 10/30/2013.

² Victoria (Accountant), interview with the author, 9/28/2013.

³ “World Development Indicators”.

⁴ See the Philippines Statistics Authority: http://www.nscb.gov.ph/secstat/d_income.asp.

abroad. As it is, poverty is an important factor pushing millions of Filipinos into labor migration as a personal or family survival strategy.

Ellie was employed, but had little choice but to migrate in search of work. When her husband, working in Saudi Arabia, separated from her and stopped sending money to support their three children, her job selling Avon products door to door was not enough to support the family.

Because I spent all my money for my husband to go there in Saudi Arabia, that time I don't have anything for me [or] for my kids. Because that time I have a business there, this buy and sell. Maybe you know this, Avon products? I'm selling that. ... After all of my money finished and [my husband] is not supporting my kids. My kids they will stop their studies because [I had] nothing, I don't have money. I don't want to tell my parents. ... I don't want anybody will be affected because of my problem. ... Then when they come to know, I'm almost done. My kids almost they stopped to go to school. ... So sometimes my kids, I told them not to go to school because we don't have money. We don't have rice. We don't have food to eat. So that time my mother, she will come to know; my father will come to know; all my family they come to know. Then my co-mother in the school, she referred me [to] my recruiter.⁵

Unemployment and Underemployment

For some Filipinos it is not absolute poverty, but the inability to find regular employment that pushes them to consider employment abroad. Justin, an engineer, could only find short-term contract work. While this was usually enough to support his young family, it was not a comfortable existence and he decided to search for stable employment abroad.⁶

Most often, though, the inability to find work and poverty go hand in hand. Alexandra is a sweet, quiet, very intelligent woman. After completing a degree in business administration from a

⁵ Ella (Food Service), interview with the author, 3/20/2013.

⁶ Justin (Engineer), interview with the author, 9/13/2013.

provincial university, she went to Manila to find work. After months of searching, however, Alexandra was unable to find steady employment. During this time Alexandra lived with her sister's family who provided for her food and shelter. But her sister was also unemployed and the family's meagre resources stretched. Alexandra sewed old t-shirts into sanitary pads which she used during her monthly period, then washed and reused; her dream of owning a cell phone seemed out of reach. Alexandra interviewed for many jobs in Manila but these positions required her to pass a medical exam, which she failed. Alexandra has a hereditary condition; despite the fact that her condition is not contagious and manageable with minimal medical oversight, it placed her at a disadvantage in the competitive Manila job market. Desperate for work so that she would not be a burden on her sister and her family, Alexandra took short-term contract work in a factory. After her five-month contract was up, she faced the same dismal job prospects. When a friend offered to help her get a visa to work abroad, Alexandra took her chances.⁷

Wage/Opportunity

Even when the individual is not in a situation of absolute poverty, the opportunities abroad often offer substantially greater rewards. Maria Joy worked for the government of the Philippines in a professional position and, while her job paid enough to support her life, there was not much left over; her salary at a bank in the UAE allows her to save money for her future.⁸ Grace worked as a nurse in the Philippines and her salary of Php 13,000 (\$291 USD) was barely enough to pay the bills. As a hotel receptionist in Abu Dhabi she is able not only to support herself, but also to support her family in the Philippines and pay for her brother's education; if she is able to get her nursing license in the UAE, she has the potential to earn even more. Sophia worked in the Philippines as a nurse for three years but the salary offered for nurses abroad was much higher: "If you would convert this 9300 [AED, \$2,532 USD; her current salary], it's like almost 100,000 [pesos] in the Philippines. But unlike if you were working there, 15,000 or 20,000

⁷ Alexandra (Food Service), interview with the author, 2/23/2013.

⁸ Maria Joy (Manager), interview with the author, 3/16/2013.

[pesos; \$334 or \$445 USD]. [What you earn in the UAE] Is way, way far from what you are getting [in the Philippines].”⁹

Even if an individual does not initially intend to seek work abroad, the wage differentials between the Filipino and foreign employers convinces many to migrate. When faced with the opportunity to provide a comfortable living for themselves and their families, sufficient pay for important life goals like a family house, the college education of siblings and children, to build a business and/or provide retirement savings, many Filipinos understandably choose labor migration.

Family

It is important to remember that the decision to work abroad is rarely made in isolation. The Filipino culture places great importance on tightly-knit extended family structures. The impact of labor migration on the family is discussed in greater detail in Chapter Eight. It is important to note here, though, that family considerations often motivate labor migration decisions. Migration and remittances are often integral to securing financial stability not just for the migrant’s immediate family, but for a wide circle of relations. Often as the migrant’s earnings increase, his family responsibilities do as well. Arianna explains:

[Filipinos] only leave because they don’t have anything in the Philippines. That’s it. But, given a choice, they will stay in the Philippines. Because poverty in Philippines is too much. And, you know, it’s difficult, especially [for] Filipinos. They have this close family relationships. So if your family is doing OK, you have to reach out to your aunt so that they will be OK; you have to reach to all your relatives so they will be OK. So I think there is a pressure for them to earn more so that everybody will be OK. ... That’s why I think they are migrating.¹⁰

For most, these drivers – poverty, unemployment, low wages, and family pressures – work together to push the individual to migrate to work abroad, as Adrian explains:

⁹ Sophia (Nurse), interview with the author, 9/15/2013.

¹⁰ Arianna (Nurse), interview with the author, 8/3/2013.

Broadly speaking, Philippines is a good country. But we have a lack of job. We have a lack of employment. And if you have employment, if you are in the government or in private, you have a small salary. You cannot fit everything you want to fit in. And you cannot give what everyone [needs]. So even you want to help somebody you cannot help. You have a tiny amount of money. That's the one I decided to go abroad.¹¹

Human Rights Implications

It is important for us to ask what the reasons motivating an individual to seek work abroad are in order to interpret their subsequent decisions regarding employment and life abroad. The decision to seek work abroad may be so constrained as to be a non-decision. If the migrant has no viable alternative in the Philippines to support themselves and their families, the idea that they *consent* to their working situation abroad is questionable.

This is particularly important because the conditions in the Philippines that led up to the decision to migrate often stand in the mind of the migrant as a proxy for the conditions to expect upon repatriation. Without repatriation as a viable exit strategy, the decision to continue working abroad is similarly robbed of substantive content. If an individual struggled to survive before leaving, they may be more likely to accept a worse position and more likely to continue working despite inadequate working conditions in order to avoid repatriating.

In this way the conditions motivating migration decisions may indicate constraints on migrants' mobility, on their substantive ability to choose to stay in place in, or to return to, their home country.

Constraints on Departure

Once the decision to migrate has been made, the prospective Filipino migrant worker faces additional restrictions on her mobility. The Philippine government, in its sincere effort to protect its citizens from human rights abuses, restricts the ability of workers to exit the Philippines. The Philippine government must verify and approve working situations before it will

¹¹ Adrian (Engineer), interview with the author, 9/10/2013.

allow Filipinos to leave the Philippines to take up positions abroad, and it actively tries to identify and stop workers from misusing non-work eligible visas as a means of entering a destination country in order to search for work.

POEA Processing Requirements

Philippine law requires Filipinos departing for work overseas to have an acceptable employment contract in hand specifying a wage that meets or exceeds the minimum wage requirements, a valid work visa arranged, a medical clearance, technical training or skills testing completed, social security and welfare fees paid, etc. To police these requirements, all departing workers are monitored by the Philippine Overseas Employment Administration (POEA). Once all requirements have been met, the POEA will issue an Overseas Employment Certificate (OEC). The worker must then produce this certificate at a POEA center at Manila International Airport before being allowed to exit the country. The Philippine government refers to this process as verification: the POEA is not just verifying that the employment offer exists and an appropriate work visa issued, but is also verifying that the offered terms meet the minimum conditions required by the Philippine government. In effect, the individual must have permission from the federal government of the Philippines in order to exit the country to take up employment abroad.

Migrants do not like the OEC requirement for several reasons. Many object to the time and expense it takes to meet all the requirements. The process usually takes a week or more and multiple trips to various government offices as well as visits to an approved medical center and Pre-Departure Orientation Seminar (PDOS) training center. Moses expresses this common sentiment:

We have this like POEA fee, the OWWA fee, all the fees, the PDOS fee, the overseas employment certificate fee. We have all this kinds of fees. It boils down to getting an OEC. Because the Overseas Employment Certificate, this will exempt you from travel tax and airport tax. So if you don't have this, they can

screw you in the airport. So you have to pay all this fees, attend all their seminars supposedly to 'help' you.¹²

Visit Visa as a Means of Departure

Those prospective migrants that do not have a job offer in hand or who are unable to meet the POEA's minimum requirements for any reason (such as a contracted wage below the minimum wage) may try to enter the UAE on a visit visa and then later change their status and obtain an employment visa.

While not explicitly allowed, the practice is not forbidden by the UAE government and is generally acknowledged to be widespread. The UAE government does nothing to discourage visitors from job hunting. The only hindrance is that in order for Filipinos to change their visa status from visitor to resident, they must exit the UAE - usually by taking a short trip to the Iranian island of Kish, as it is the cheapest flight to an international destination from the UAE. By exiting, the original visitor visa is ended and the new residence visa can be processed (this is not required for individuals from countries eligible for visit visa on arrival who may work in the UAE while processing of the residence visa is ongoing).¹³ Processing usually takes a few days but may take weeks or even months if there is a problem with the visa for any reason, during which time the individual is stuck in Kish. Once the residence visa is ready, the individual reenters the UAE as a resident.

When Enzo transferred from his first sponsor to a new sponsor, he had to exit the UAE in order for the paperwork to be processed. Enzo went to Kish. He flew there on a small plane and got a fourteen-day (renewable) Iranian visa on arrival. Hotel rooms cost about 40 AED (\$11 USD) per day and food another 30 to 40 AED (\$9 to \$11 USD). His company gave him a daily allowance that covered his expenses for the eight days it took for them to transfer him under their sponsorship. But many are not so fortunate. While he was waiting for his visa, Enzo found it

¹² Moses (Financial Adviser), interview with the author, 3/18/2013.

¹³ Keren Bobker, "UAE Employer Is Responsible for Costs of Hiring an Employee," *The National*, 12 July 2014.

heartbreaking to see stranded Filipinos turning to odd jobs, begging, or even prostitution in order to make enough to survive.¹⁴

If there is a problem getting the new visa in the UAE processed people can be stuck in Kish for a very long time. Angelica came to the UAE on a visit visa, found a job after one month and was asked to exit to Kish so that her employment visa could be arranged. Once she was in Kish, however, there was a problem processing her employment visa: it seemed that there was a conflict in the immigration system between the visa application submitted by her new employer and one previously submitted by her sister for a renewed visit visa. Angelica ended up waiting in Kish for three months while the issue was sorted out. Even Angelica is lucky, though. If her employer had decided it was not worth the effort to struggle through the immigration bureaucracy and had given up, Angelica would have stuck in Kish until she was able to pay for her own repatriation flight back to the Philippines.¹⁵ Those that do not have sufficient resources to pay for a flight are stuck in Kish. It is estimated that there are about 2,000 Filipinos on Kish Island, some waiting for visas to be processed, others stuck with insufficient means to repatriate.¹⁶

It seems fair to say, therefore, that job searching on a visit visa is legal and allowed under current UAE policy. The country benefits from the practice, as it ensures the presence of a flexible pool of available workers. The fact that the visit visa sponsor, usually a close relative, must put down a 1,000 AED (\$272 USD) deposit, refundable when the visitor exits the country (either to repatriate or to go to Kish to await residence visa processing), ensures that most visitors who are not successful in finding a job do exit, thus reducing potential negative side effects.¹⁷

¹⁴ Enzo (Chef), interview with the author, 9/12/2013.

¹⁵ Angelica (Office Worker), interview with the author, 9/12/2013.

¹⁶ Ramona Ruiz, "Stranded Filipinos Face Repatriation," *The National*, 23 October 2008. Ramona Ruiz, "UAE Rights Group Seeks Resolution for Filipinos Stranded on Kish," *The National*, 4 January 2013.

¹⁷ While I did not interview any individuals who failed to find employment within the visa period, those I spoke with came to the UAE on a visit visa and had difficulties in finding employment talked about the pressure to find work or else repatriate; some took jobs they were not happy with in order to meet the deadline. None mentioned the idea of overstaying their visa. This is not entirely convincing but, given that several people freely admitted to other types of illegal work situations (working on a visit visa, obtaining part time employment, even buying a black market visa), it is persuasive.

From the perspective of the government of the Philippines, those who leave the Philippines with the intent to seek employment but without the authorization of the POEA do so illegally until they register with the Embassy and regularize their status.¹⁸ This means that job seekers on visit visas in the UAE are illegal as far as the Philippines is concerned, even if the UAE does not view them as such. If an individual does find a job, exits the UAE and successfully transfers from a visit visa to a residence visa, he may then register his contract with the Philippines government. If the contract meets the minimum POEA standards, he can regularize his status this way – a necessary step in order for the individual to obtain an OEC and thus be allowed to make return trips to the Philippines – for annual vacation leave, for example – without hindrance. If the contract does not meet POEA minimum standards, especially the minimum wage requirement, the situation is unclear. As mentioned in Chapter Five, the minimum wage requirement is not usually enforced, except for domestic workers. The OFW may be able to obtain the OEC, or may not. If he cannot get the OEC, he faces the choice between repatriating (if the worker quits without cause in the first two years of employment, he faces a six-month labor ban), or not returning to visit his family in the Philippines during his years of employment abroad.

When the Philippine government first passed the Migrant Workers Act of 1995, illegal migrants composed as much as 50 percent of Filipino migrants.¹⁹ To clamp down on illegal departures, the Philippines government polices departures through Manila International Airport. Immigration officials are on the lookout for those departing without the correct documentation, with fraudulent documents, or those they suspect to be misusing tourist visas.

Jasmine was caught up in one of these checks by Immigration officials at Manila International Airport. She and a friend had intended to go to the UAE to look for jobs as nurses.

That is really funny story. Because ... the one who sponsor for the both of us is [my best friend's] friend, way back high school. So obviously we don't have the same family names. So when we go to the airport through Immigration in the

¹⁸ "Philippines Approves New Migrant Worker Act," *Migration News* 2, no. 7 (1995).

¹⁹ "Philippines Approves New Migrant Worker Act".

Philippines, [my friend] passed the immigration officer but I wasn't able to go through with her. But I already have the tourist visa. So I was delayed for two weeks and took another flight. Because in the Philippines, actually they are very strict with regards to immigration passes. ...

So I was very depressed that time because the officer was really strict. ... They going to question you everything: 'Why you go there? Why you going to spend one month? What are you going to do there?' Like that. So I don't have any choice; I need to go back. And then I need to prepare all the papers from my [existing Philippine] employer, because at that time I'm still working [in the Philippines]. ... So they just want a proof that I'm coming back and I will not go to the other countries and just do the 'hiding and everywhere.'²⁰ So I provided them the papers that you needed. ... And then I passed. Then after two weeks I was here. And then I start searching.²¹

Jasmine knows that the migration path she chose is illegal. She understands why the Philippine government prohibits the abuse of tourist visas for job searching. But she is not convinced that prohibiting workers from exiting the country is the right strategy.

Jasmine: Because mostly in the Philippines, Filipinos go out of the country through a tourist visa. ... You know they call it 'TNT'²² in the Philippines: they are living in other countries without papers. ... Philippine government wants to avoid it. That's why they are very strict when it comes to immigration policies.

Interviewer: Do you think that's a good thing for them to do?

Jasmine: For us, maybe it's a good thing because when Filipinas go out of the country and they are not under any insurance, maybe they have an accident. Whatever happen to them, the government will not cover them. So it's a sad part

²⁰ Reference to the Tagalog phrase *tago ng tago*, literally translated as "hiding and hiding," commonly used to signify an illegal migrant.

²¹ Jasmine (Nurse), interview with the author, 8/3/2013.

²² Tagalog acronym for "tago ng tago."

of the story if it will happen to them. But the good thing is if they can able to go out of the country, they can [be] able to feed their families.²³

Human Rights Implications

The government of the Philippines is restricting the human rights of its citizens to freedom of movement and to exit the country. Article 13(2) of the UDHR specifies that “Everyone has the right to leave any country, including his own, and to return to his country.”²⁴ Under the convention, this right can only be limited to ensure the human rights of others or in the interests of public order and welfare:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.²⁵

The OEC requirement and efforts to police the misuse of visit visas do infringe upon this human right.

The government of the Philippines, as with the governments of other major sending countries, offers two justifications for this infringement. First, the government points to the practical concern that when workers enter these precarious working situations and predictably fall victim to abuse, they then turn to their government for support. The Philippines government, however, has limited resources to aid OFWs. While there is an emergency repatriation fund established by the Philippines government, priority must be given to those in the worst conditions, such as those waiting to be repatriated from war zones. In recent years repatriations from Iraq, Libya, Syria and other conflict zones have stretched the resources of the Philippine government.²⁶ Nonetheless, the Philippine Embassies struggle to provide the most support possible to OFWs in trouble. For example, the Embassy of the Philippines in Abu Dhabi is given an annual budget for

²³ Jasmine (Nurse), interview with the author, 8/3/2013.

²⁴ Universal Declaration of Human Rights.

²⁵ Ibid., Article 29 (2).

²⁶ Henelito A. Sevilla Jr., "The Emergency Evacuation of Overseas Filipino Workers (OFWs) from Libya and Syria," *Middle East Institute* (2013), accessed August 11, 2014, <http://www.mei.edu/content/emergency-evacuation-overseas-filipino-workers-ofws-libya-and-syria>.

legal support for workers in distress which is not nearly sufficient to aid all OFWs who request support; the Embassy also runs a facility for absconding workers or others who find themselves in need of emergency shelter; and there is a backlog of individuals awaiting repatriation who cannot afford airfare without financial support from the government.

The Embassy's resources are already stretched and so minimizing the number of cases, it can be argued, is in the interests of "the general welfare in a democratic society."²⁷ This is unconvincing. While the argument may hold for prohibiting the deployment of workers into conflict zones, this logic is unpersuasive in the context of the UAE today – a peaceful and prosperous country with a functioning government. Further, as was shown in Chapter Five, the outcomes in terms of a favorable working situation (as determined by the worker herself) are no worse for those who entered the UAE on visit visas than for those who entered utilizing the services of a recruitment agency. If there is no convincing case for invoking the general welfare, then this argument cannot be held to justify the infringement on the human right to exit.

This is a contentious claim so it should be specified clearly. There are circumstances when the Philippine government might appropriately issue a travel ban to a country, for instance in cases of ongoing war or conflict. There are also circumstances when the Philippine government might appropriately issue a deployment ban for a specific country or for a specific type of employment, for instance in the case of the deployment bans to Jordan and Saudi Arabia discussed in Chapter Four. However, if there is no deployment ban nor travel ban in place for a country, attempting to police minimum overseas employment conditions (largely the minimum wage requirement and the state's preference that workers deploy through an agency) by denying individuals with valid tourist visas the ability to exit the country is unwarranted. The Philippine state is denying people their human right to exit for fear that they individual might use that tourist visa to look for a job, they might actually obtain a job, that the job obtained might be below the

²⁷ Universal Declaration of Human Rights, Article 29 (2).

minimum standard (in terms of wage or other contract guarantees) set by the Philippines government, and the worker might then turn to the Embassy for support.

Let's look at each step in this chain of possibilities. First, the worker might job hunt on a tourist visa. Yes, there is a pattern of Filipinos using tourist visas to job hunt in the UAE. The Philippines has no objection to the activity of job hunting in general; they are not claiming extraterritorial jurisdiction over actions committed by their citizens abroad which the home state deems heinous crimes.²⁸ They are objecting to the misuse of tourist visas. But this use is not illegal in the UAE. And, while recruitment agencies are a preferred means of deployment, they are not required under Philippine law.²⁹ So exactly what misuse are they objecting to? Second, they might obtain a job. As the Philippine state is unable to ensure that all citizens can find work domestically, it actively encourages its citizens to seek employment abroad as a means of reducing domestic unemployment and encouraging development and remittances. The Philippines has become a labor exporting state, so it can hardly complain about this. Third, that job might be below the minimum standards set by the Philippine state. Yes, it might be, in which case the Philippine state may refuse to issue the OEC. But the job might not be below the standard. Further, there is no evidence to suggest that the outcome of jobs obtained via tourist visa job hunts are any worse (or any better) than those obtained through a recruiter. Finally, the worker may turn to the Embassy for support if she finds herself in a situation where she is being treated unfairly. Yes, they might; and if they do the Embassy would be obligated to respond to any violations of its citizens rights. That is true. However, this happens in relatively few cases, is better correlated with job type than with deployment type, and so is better addressed through sector-specific deployment bans if warranted. In summary, positively denying individuals' human right to exit on the basis of this chain of *possible* actions, and without any clear evidence of a pattern of resulting human rights violations, is unwarranted.

²⁸ This prohibition is not therefore analogous with the United States' Federal Laws on the Extraterritorial Sexual Exploitation of Children, for example.

²⁹ As was discussed in Chapter Five, the Philippine state does allow "name hires" in which a worker is hired directly by the overseas employer with no agency involvement.

Second, the Philippines government argues that infringement of the right to exit is necessary in order to ensure the respect for – and their ability to protect – other, more significant rights. Angel Borja, the Labor Attaché at the Embassy of the Philippines in the UAE, is aware of the tension between the human right to exit and these measures which the Philippine government takes to prevent Filipinos from leaving at will, but argues it is necessary in order to protect Filipinos' human rights.³⁰ There is a need to balance the individual's human right to exit and the state's obligation to ensure that the full set of human rights of its citizens are protected and fulfilled, such as the prohibition of slavery, the right to choice of employment, to a healthy working environment, and to a living wage.

The UN and the Office of the High Commissioner for Human Rights consider human rights to be "interdependent and indivisible,"³¹ making it difficult to deal with situations where one human right is knowingly infringed upon for the express purpose of preserving another. The fact that the right to exit seems to conflict with other rights can be resolved at the theoretical level by assessing where the obligation to protect and fulfill these rights lies within a system on split responsibility for the rights of migrants. None of these rights are the sole responsibility of the government of the Philippines. It is by taking unilateral action that the government of the Philippines has created this conflict. In a cooperative environment, increasing freedom of movement and the ability to exit should only strengthen the worker's ability to ensure freedom from slavery and the choice of employment. Our first choice for addressing the problem should be in cooperative solutions, not unilateral ones. If a Filipino has a valid entry visa for the UAE, the Philippine state should not impede her right to exit the Philippines.

Residence

First we should note that there are legal restrictions on the ownership of property by foreigners in the UAE. Outside of a few small enclaves, ownership is largely prohibited. Within these enclaves, the price of property is high, mortgages for foreigners have recently been capped

³⁰ Labor Attaché Angel Borjas Jr., interview with the author, 10/23/2013.

³¹ "What Are Human Rights?"

at 50 percent of home value, and very few foreigners in the UAE can afford the purchase price.³² Most people rent housing or live in housing provided by their employer.

There are four distinct categories of legal residences that are common in the UAE: houses or villas, single-family apartments, labor camp accommodations, or accommodation within the employer's residence. The rental market in the UAE is astronomically high. Although rental prices are lower than they were before the global market crash in 2008/9, which affected the UAE housing market particularly strongly, in 2013 the average rental price of a three bedroom home was higher in Dubai than in Manhattan.³³ Prices in Abu Dhabi are similar, with the \$325 USD average price per square foot only slightly below Dubai's (\$333 USD).³⁴ High prices push most Filipinos out of the rental market for single-family residences in houses, villas, or apartments. Labor camp and residence in the employer's household – which have their own issues, discussed below – are at the employer's discretion and are not offered to most workers.

That leaves most Filipinos in the uncomfortable position of seeking illegal rental housing by subletting rooms or even bed space in apartments managed by friends or other intermediaries. Most Filipinos I spoke with rent a "bed space." Bed space is exactly what it sounds like: individuals rent just enough space for a bed (usually a bunk bed) and perhaps a cabinet in a room shared with others, usually between four and six people per room. The bed and mattress are often provided, sometimes a locking cabinet is as well. Theft is a significant concern. Friends or families usually try to rent a room together so that all of the individuals in the room know each other and trust each other, which is useful when leaving precious belongings in a shared room. Usually the door to each individual room locks as well, so that only the occupants have access to the room. Overcrowding is a problem. In an apartment that is illegally sublet for bed space, the

³² Zainab Fattah, "Dubai Expat Rents Exceed Pay Hitting Competitiveness," Bloomberg, 18 November 2013, accessed May 9, 2015, <http://www.bloomberg.com/news/2013-11-17/dubai-expat-rents-exceed-pay-hitting-competitiveness.html>.

³³ Ibid.

³⁴ Reuters. "Tenants Become Investors as Abu Dhabi Engineers Property Rebound," *Gulf Business*, 22 February 2014, accessed June 30, 2014, <http://gulfbusiness.com/2014/02/tenants-become-investors-abu-dhabi-engineers-property-rebound/#.U7FV7PmSwrM>.

living room and dining room are usually rented out as well, so that a typical three bedroom apartment may have four or five occupied rooms and from sixteen to thirty people living there. The kitchen is typically shared. Rent is usually calculated by taking the total rent of the apartment plus a fee for the actual renter or the person managing the apartment,³⁵ and dividing it equally between the rooms; very large rooms that can accommodate more people (such as a large living room), or rooms with an attached bath may cost extra. The price per room is then divided equally between the individuals renting bed space in the room; the more people per room, the lower the rent per person. Rent for a bed space starts at about 500 AED (\$136 USD) per month and ranges up from there.

Families in slightly more affluent circumstances may rent illegally subdivided villas in order to obtain affordable family housing. Villas, stand-alone buildings that were originally built to house a single family, are often divided up into several units by the owners and rented at low rates. A one bedroom apartment in a subdivided villa may rent for half of what a legal villa goes for.³⁶ Dividing a villa without municipal approval is illegal, and tenants living in these accommodations are subject to denial of services such as water and electricity, and to possible eviction by the municipality. Subdividing is especially common with older villas after the original Emirati family moves out. As such, these villas are often in established Emirati family neighborhoods and so attract negative attention from the authorities.

Illegally sublet villas and apartments are usually in older buildings and so subject to a host of other problems as well. Older buildings, villa or apartment, were not built to house the density of residents that they are currently maintaining. Rarely are any updates to electricity or water made during these conversions, and basic maintenance is neglected. Tragically, structure fires due to electrical overload, kitchen fires, or other fire hazards are relatively common and cause hundreds of injuries and deaths each year. In 2011 there were 3,274 building fires

³⁵ In some cases, the Emirati owner of the apartment may be the one subletting the space and so may take this cut. However, usually it is an enterprising renter or fixer who manages these apartments.

³⁶ Anjana Sankar, "Double Blow for Expatriates Sharing Villas in Abu Dhabi," *Gulf News*, 5 June 2013.

reported nationwide; ninety five people died and 1,817 were injured.³⁷ Fire codes have not kept up and in 2012, when tougher new rules were put in place, it was estimated that as much as 70 percent of the buildings in the UAE had “some form of facade cladding that has a combustible thermo-plastic core between two sheets of aluminum.”³⁸ Other than fire, mold problems and cockroach infestations are common. When I interviewed her at her home, Maxine joked that the “cockroach also has visa for roaming around here.”

In short, rent in the UAE is high for often crowded, dirty, and insecure residences. For example, Jasmine lives in an illegally sublet apartment; there are seven accommodation rooms in the apartment and around twenty five people living there; she shares a room with five other people. For this, Jasmine pays 750 AED (\$204 USD) – more than average for a six-person room. She stays because she likes and trusts the other people in the room: “I think I need to pay that much for security and friends.”³⁹

Soon, however, renting bed space may no longer be an option. The municipal governments of Dubai and Abu Dhabi have been progressively implementing a “one villa, one family” policy, starting in 2008 in Dubai and in 2011 in Abu Dhabi. At various times tenants of illegally subdivided villas or apartments with multiple, unrelated tenants have received eviction notices, and/or had their power and water turned off. The rules have been unclear, changeable, and unevenly enforced until this time. What is clear, though, is that illegally subdivided villas in Emirati family neighborhoods have been targeted first in most major municipalities;⁴⁰ Sharjah’s campaign has been particularly brutal.⁴¹ Abu Dhabi also established a cap on the number of people that can *legally* share an apartment (capped at three unrelated individuals per bedroom or

³⁷ Haneen Dajani, “Dh25m a Year to Cut Fire Deaths,” *The National*, 1 February 2012.

³⁸ Eugene Harnan, “Cladding Holds the Key to Dubai Tower Inferno,” *The National*, 21 November 2012.

³⁹ Jasmine (Nurse), interview with the author, 8/3/2013.

⁴⁰ Mohammed N. Al Khan, “Dubai Municipality Warns Bachelors to Stay out of Residential Areas,” *The National*, 13 August 2014.

⁴¹ Jennifer, Bell, “Eviction Threat to Thousands of Abu Dhabi Villa Tenants,” *The National*, 20 May 2013. Kakande, Yasin Kakande, “Bachelors Pack Their Bags and Leave Neighborhoods,” *The National*, 6 April 2012.

one family) or villa (capped at six unrelated individuals or one family).⁴² Sophia is one of the lucky ones: she and her family (her husband and their three daughters) had rented an inexpensive unit in an illegally subdivided villa. Fearing increased enforcement by the municipality, they decided to take accommodation provided by her employer.⁴³ Most individuals, however, do not have this option. They are faced with the challenge of finding new, legal accommodations on their own.

In 2012 the UAE federal Ministry of the Interior got involved, requiring an attested tenancy contract issued in the individual's name before issuing residency visas. Migrant workers renting bed space or rooms in shared apartments would be unable to obtain or renew their residency visa. Panic ensued as low-wage workers wondered how in the world they would be able to afford to rent an apartment independently. In the next few months the rules changed several times, first limiting the rule only to family visas sponsored by expatriates, then cancelling it altogether in Abu Dhabi, before again requiring the attested contract for family residence visas.⁴⁴ As of 12 August 2014, the website of the Abu Dhabi General Directorate of Residency and Foreigners Affairs only lists the attested rental contract as a requirement for family visa issuance. The general picture that emerges is that the major municipalities and the federal government wish to limit the number of unrelated people living communally in villas or apartments. The idea that this type of policy will again be enforced without regard to the ability of the average worker to afford an independent residence concerns many people. Without affordable housing in most urban areas, Filipinos fear that they could be pushed out of the cities, into labor camps, or forced to repatriate.

Pushing low income workers to repatriate would, of course, leave vacant thousands of low-skill, low-wage jobs that are nonetheless essential to the basic functioning of the UAE economy. This is clearly not in the interests of the UAE government and is not, in my estimation,

⁴² Jen Thomas, "Tenancy Rules to Clarify Law on Illegally Subdivided Villas," *The National*, 7 February 2012.

⁴³ Sophia (Nurse), interview with the author, 9/15/2013.

⁴⁴ "Attested Rent Contract Is Now a Must for Abu Dhabi Visa," *Emirates 24/7* (2012), accessed August 12, 2014, <http://www.emirates247.com/news/emirates/attested-rent-contract-is-now-a-must-for-abu-dhabi-visa-2012-08-08-1.470665>.

the intended end goal. Abu Dhabi's *Urban Structure Framework Plan* gives us a better picture of what that desired end goal may be.⁴⁵ The Plan clearly establishes the idea of "Emirati neighborhoods," many of which are designed to be low-density residential housing.⁴⁶ Emirati neighborhoods are to be scattered throughout the best areas of the city "such that there is no part of the city that Emiratis would not wish to live in."⁴⁷ "Expatriate worker housing,"⁴⁸ on the other hand, is primarily envisioned as "worker settlements," a euphemism for labor camps, placed near "long term job sites or transportation routes," in other words outside of the city or in industrial areas that are not inhabited by Emiratis; smaller, temporary settlements/camps may be established on major construction sites.⁴⁹

In short, the UAE authorities would like to shift low-wage workers into camps or designated neighborhoods, distinct from the privileged Emirati neighborhoods. While such housing might form part of a national strategy, it is not a comprehensive solution. Migrants have clearly indicated their distaste for life in labor camps, as discussed below. Pushing low-wage workers into marginal areas also serves to intensify their disadvantages, from decreasing available services to increasing their daily commutes. The implied segregation along class lines is worrying from a social justice perspective as well.

The conditions of workers who live in labor camps and employer-provided housing may be significantly worse than those who currently live in independently rented accommodations. Camps are relatively self-contained, fenced compounds providing at least minimal sleeping, eating, and recreational space for residents. Entrance and exit is regulated by guards and the level of control over residents' mobility may vary. Camps do not function on the basis of tenancy agreements with residents. Rather, a company builds or leases a camp (or a specified portion

⁴⁵ *Plan Abu Dhabi 2030*.

⁴⁶ *Ibid*: p. 14.

⁴⁷ *Ibid*: p. 87.

⁴⁸ A euphemism for low income housing.

⁴⁹ Camps are to be no larger than 10,000 persons, though, to prevent overcrowding (and, according to other sources, the potential for major unrest). *Plan Abu Dhabi 2030*: p. 159-160.

thereof) for the accommodation of the bulk of their workforce. The lack of tenancy has two common implications for workers. First, laborers in the UAE tend to be stuck in labor camps. On one hand, their wages reflect the fact that the company is providing cheap room and board.⁵⁰ On the other, alternative living arrangements are difficult to arrange because rents in Abu Dhabi and Dubai are sky-high. Second, the lack of individual tenancy tends to discourage the provision and maintenance of even basic services. Depending on the camp management, this may make living conditions in a camp unbearable. Camps tend to be constructed outside of urban areas and so are often cut off from services that might normally be provided by the city, such as sewers and public transportation. At the same time, the camp owners have limited incentives to provide alternative services at their own expense. Employers provide busses between the camp and the worksite but nowhere else, isolating camp residents and highlighting the asymmetrical power relationship between employer and employee. Sewage is handled through septic tanks. However, tanks are not always properly maintained and, in the worst cases, are left to overflow with predictable consequences.⁵¹ Conditions like this might upset the residents, but the residents are not the ones that have contracted with the camp. Residents are stuck and, because they do not have individual leases or options to go elsewhere, they have little to no leverage over camp management. If the camp management and/or the employer are primarily concerned with providing housing as cheaply as possible, this may lead them to overlook even significant deficiencies in the facilities.

After a series of high profile exposés – including a report by Human Rights Watch⁵², a Panorama documentary by the BBC⁵³ and another by Al Jazeera⁵⁴, reports by ABC's 20/20⁵⁵ and

⁵⁰ Most compensation packages in the UAE specify a basic salary on top of which allowances for things like accommodation or transportation may be added. Residents of labor camps, where food, accommodation and transportation are provided do not receive these allowances, only a low basic salary.

⁵¹ *Panorama*, "Slumdogs and Millionaires," aired 6 April 2009 on BBC One, accessed July 31, 2012, <http://www.bbc.co.uk/programmes/b00jqgww>.

⁵² "The Island of Happiness."

⁵³ *Slumdogs and Millionaires*.

⁵⁴ "Blood, Sweat and Tears," Al Jazeera, aired August 18, 2007.

⁵⁵ Brian Ross and Jill Rackmill, *20/20*, "Dark Side of Dubai's Boomtown," aired November 17, 2006, on ABC.

by Frontline⁵⁶, and documentaries by International Trade Union Confederation⁵⁷ – the government of the UAE has begun to improve the situation in labor camps, putting further health and safety regulations in place and increasing enforcement, and even establishing its own model camps for high profile construction projects on Al Saadiyat Island. More could be done, however. Enforcement remains lax, and, even where enforced, penalties for even the most egregious violations are minimal.⁵⁸ Angelo, who works for one major construction company in Abu Dhabi notorious for the poor conditions in its labor camps, says that living conditions are improving but still lag behind. Although as a professional he did not live in a labor camp, he had frequently visited such camps. He compared conditions in the UAE unfavorably to labor camps that he had seen while working in Saudi Arabia. The older facilities often found in the Musaffah neighborhood of Abu Dhabi and the Sonapur neighborhood of Dubai, he feels, are particularly bad.⁵⁹

I have visited five labor camps and have found that conditions vary widely. At none of the camps were conditions as bad as those reported in the international press and by interested human rights groups. The first camp I visited was a small purpose-built compound that housed women who worked for a local cleaning company. Conditions were crowded with most small rooms holding six women; the shared kitchen and bathroom blocs (each serving about ten rooms) were basic but relatively clean; the recreation room was the only place with air conditioning. This camp was in Abu Dhabi's Musaffah neighborhood, both an advantage and a disadvantage. Musaffah is a busy neighborhood, primarily composed of low-wage workers and predominantly male. The neighborhood is considered one of the only areas of Abu Dhabi that is unsafe for women, especially after dark, due to the high incidence of sexual harassment. Because of this, the camp I visited had a curfew. The stated policy was that the women could leave at any point. However, if they left after curfew, they would have to explain where they were going and why to

⁵⁶ *Frontline World*, "Dubai: Night Secrets," aired September 13, 2007 on PBS.

⁵⁷ Paul Ames, *Hidden Faces of the Gulf Miracle* (Brussels, Belgium: International Trade Union Confederation, 2011), accessed May 8, 2015, <http://www.ituc-csi.org/hidden-faces-of-the-gulf-miracle,9144>.

⁵⁸ Syed Ali, *Dubai: Gilded Cage* (New Haven, NY: Yale University Press, 2010).

⁵⁹ Angelo (Engineer), interview with the author, 10/21/2013.

one of the women in charge of the camp. And, in whatever case, the curfew would be enforced upon their return and latecomers would not be allowed back in for the night. On the positive side, however, unlike many camps, the camps in Musaffah are in close proximity to a bustling neighborhood with shops, restaurants, and easy access to public transportation.

In contrast, I also visited a small labor camp for male construction workers on the worksite of a new skyscraper. The labor camp was clean and ordered, workers were housed in converted shipping containers, each with air conditioning. Shared bathing facilities were in good condition and cafeterias provided ethnically-appropriate cooked meals. Some trees had been planted along the temporary streets to provide shade. In contrast to Musaffah, however, this camp was on the newly developed Al Reem Island with no neighborhood and no public transport. Residents are basically stuck at the camp.

It is those workers who live in the homes of their employers that face the most uncertain living conditions. Maxine trained as a nurse in the Philippines and took a job in home healthcare in the UAE. Her first posting was with a local family in the city of Abu Dhabi and paid 3,000 AED (\$817 USD) with room and board included. However, room and board turned out not to be as Maxine had expected. She was shocked to learn that she was expected to share a small room in the garage with another female nurse and to sleep on the floor. When she voiced her dismay, the other nurse told her she shouldn't be so "choosy." In a small act of rebellion, Maxine took some blankets and slept on a couch in the house without asking permission. She kept this up for two months because her wages were initially withheld. When she was paid, Maxine used her own salary to buy a mattress, blankets, pillows and other basic items. Maxine worked in this household until the family changed healthcare providers. Maxine's second position was no better. She was posted in a rural household. The home was remote with nothing within walking distance, no public transportation, and few taxis. Maxine felt very isolated. Although she wanted to change, the home health agency would not give her an alternative posting. In the end, Maxine fell ill and it was the family of the woman she was caring for who requested that she be removed – they did

not want a sick nurse in the household. Fortunately for Maxine, her third posting was in a hospital.⁶⁰

Maxine's story highlights the fact that it is not the nature of work performed by domestic workers that places maids and nannies at risk. After all, Maxine was not a maid engaged in 'women's work,' but a skilled, professional nurse. Residence inside the employer's home places any worker in a precarious situation by isolating them and giving the head of household an extraordinary degree of control over the movements and actions of the worker.

Nellie, a domestic worker, faced the worst case scenario: her employers locked her into their home. Nellie worked as a housemaid for a local family. While her situation was unhappy for the first year, it became unbearable when after a year the family suddenly refused to pay her wages. After her wages had been withheld for four months, Nellie decided to flee. One problem, however, was that the door to the apartment was usually locked and Nellie did not have a key. One day providence intervened: on his way to school one of the sons of the family asked her to carry his backpack down from the apartment for him; she did so and, after sending him off, she realized:

Oh my God! I am here outside. I am alone. They go already school' And then that is already my chance to go. My Madame is sleeping, the door's not locked. 'I'll go.' And then I did that, yeah. I did not want to miss this opportunity.⁶¹

Nellie left with only the clothes on her back and the money in her pocket.

Human Rights Implications

These housing conditions raise several human rights concerns. The high cost of legal rental units calls into question the ability of TCWs in the UAE to earn a living wage. Unsafe conditions and the failure of many illegal residences to meet building code raise issues about health and basic safety. Crowded and unsanitary conditions in rentals and labor camps raise concerns about the human rights to health and a basic standard of living.

⁶⁰ Maxine (Receptionist), interview with the author, 9/3/2013.

⁶¹ Nellie (HSW), interview with the author, 10/7/2013.

Residential concerns also raise the issue of limitations on mobility and the freedom of movement. The UDHR specifies that “everyone has the right to freedom of movement and residence within the borders of each state.”⁶² For those renting accommodations, the lack of affordable, legal housing pushes low and middle-income workers, including most Filipinos in the UAE into substandard, and often illegal, housing. Targeted enforcement of housing regulations are designed to keep low income workers out of Emirati neighborhoods. The result is the formation of ethnic neighborhoods⁶³ that are socially, economically, and legally enforced. For those living in labor camps, movement is regulated in a more regimented way through control over entrance to and exit from the camps, but is also restricted by the isolated nature of many camps, especially the larger camps, in outlying areas that are not served by public transport. Workers, especially domestic workers, living in their employer’s homes face the greatest restrictions. Employers, often with the support of recruitment agencies,⁶⁴ may not provide appropriate accommodations or allow household workers to leave the house unaccompanied.

At their worst, as in Nellie’s situation, the restrictions tied to residence may raise the specter of forced labor. When a worker is denied the ability to physically exit an undesirable work situation, when they are locked in a residence and not allowed to leave, there can be no doubt that their continued labor is not a freely made choice.

Passport Withholding

There two reasons commonly given as to why employers routinely withhold passports in the UAE. First, many employers maintain that they hold their employees’ passports for the employee’s benefit, to keep the passport safe from loss or theft.⁶⁵ As most workers in the UAE live in shared accommodations, either in employer-provided labor camps or in rented “bed space” accommodations, they maintain that important documents are safer if kept by the company under

⁶² Universal Declaration of Human Rights, Article 13.

⁶³ See also: Bristol-Rhys, "Socio-Spatial Boundaries in Abu Dhabi."

⁶⁴ C.f. Ramona Ruiz, "Families Urged to Give Maids a Day Off," *The National*, 4 April 2012.

⁶⁵ C.f. Jen Thomas, "Hotels Defend Holding Employees' Passports," *The National*, 7 November 2011.

lock and key. Second, there are often appeals to the fact that this is just part of the standard business culture in the UAE; businesses have always done this and so continue to do it. Of course, this practice has been illegal for more than a decade, outlawed by official decree in 2002. Neither of these provides a convincing explanation for the vehemence with which employers cling to the practice despite it being outlawed by the UAE government and unpopular among workers.

There is another explanation, a far more convincing one, which you will rarely hear employers admitting to on record. Employers pay a price to hire foreign workers, sometimes to the recruitment agency in the form of fees for service and always to the UAE government in the form of fees for visas, health checks, etc. Employers consider this as one part of the cost to the company of the worker during their initial contract period; other costs include wages and health insurance, for example. The problem is that once paid, an employer may feel that they are entitled to the full two years of service under any circumstances and that the worker has no right to quit. If the worker does not complete the full term of their contract, losing out on the processing fees is not seen as merely a cost of doing business in the UAE; employers may feel that the worker has cheated them out of the corresponding proportion of the visa and processing fees. Yet employers are not legally entitled to demand repayment of those fees, either from the government or from the worker. Instead, they may attempt to make it more difficult for the worker to quit, such as by requesting a labor ban be placed on a worker who quits before the end of the contracted term even if they resign and honor the contracted notice period. But stopping an employee from quitting early who is prepared to accept a ban is more difficult. Passport withholding is a means of ensuring that workers do not “abscond,” or run away without notice. An anonymous employer speaking to a local newspaper explains: “I paid big money as bank guarantee and visa charges. Two of my workers absconded within three months of their recruitment. Now, they will use this amnesty to get away from here. How can I compensate my loss?”⁶⁶

⁶⁶ The employer was protesting against a UAE government amnesty that allowed illegal migrants to leave the country without penalty. Riyasbabu Riyasbabu. “Many Companies Holding Back Passports of ‘Illegals,’” *Khaleej Times*, 18 July 2007.

Ellie's company withholds the passport of its workers as a matter of company policy. Moreover, they have explicitly linked this policy to the costs paid by the employer in initial recruiting and visa processing. For Ella to get her passport in order to return to the Philippines on a brief trip to attend her grandmother's funeral, she had to find someone willing to post a "guarantee" for her: "if you're under contract you need to deposit money or otherwise you have to look for somebody to guarantee you that you will come back. And if you don't come back they are the one who will pay because you didn't come back." This is tied to the initial hiring process and so after the worker completes the full term of the first contract, her employer no longer requires this guarantee, though it still withholds passports.⁶⁷

There is a general acceptance of the practice among Filipinos workers. Cherry, for example, accepts that her passport will be withheld as a matter of course:

Of course I know there is a law. I know. I know that there is a law that the passport should not be kept by the employer. I think it was two to three years ago. But some of the employers are keeping it for their, you know, for their safety. Especially if you are handing cash, if you are handing money, like that.⁶⁸

Some insist that they agree with the system. Nina, who shares a room with four of her friends, argues:

I think to keep [your passport] in the company will be more safer than to keep [your passport] in your home because, you know, even you know the people around you, but still you don't know what they can do to you in the future. So, that's what I believe. So at least in in the company, they keep [passports] in the safe, so nothing will happen to that.⁶⁹

Others do object or attempt to get their passports back through some subterfuge:

⁶⁷ Ella (Food Service), interview with the author, 3/20/2013.

⁶⁸ Cherry (Office Professional), interview with the author, 9/12/2013.

⁶⁹ Nina (Personal Assistant), interview with the author, 10/26/2013.

Gabriel: Well, the situation in our company is that they keep our passport. But, I was clever at that time to ask for my passport because I said I would go to the embassy to process something. And then I did not return my passport to them because I feel a passport is something like a bank passbook, it's a personal property. So, I don't feel like returning it to them because it's property.

Interviewer: Do you know it's illegal for them to take it?

Gabriel: Yeah, I know. But sometimes they just twist the regulations or the policies. So since I know my rights, I know how to go around these things.⁷⁰

Passport withholding is not reserved to low-wage or domestic workers. Medical doctor Gloria, accountant Dominic, engineer Angelo – all well-paid professionals – were all subject to passport withholding. Jasmine is a nurse. Her first employer withheld the passports of its workers as a matter of course. Employees handed over their passports in exchange for their labor cards; if for any reason they needed to get their passport back, they were required to request it in advance, then exchange their labor card for the passport. Jasmine signed a two-year contract with this company. After she had completed her first year, she was eligible for annual vacation. She picked the dates, obtained approval from her manager, then purchased her airline tickets. Two weeks before she was set to leave, Jasmine requested her passport. The manager refused to give it to her. It transpired that the doctor that Jasmine usually worked with (and whom few other nurses could manage to work with, given the doctor's abrasive personality) would be taking vacation in another month and her manager wanted her to delay her trip to coincide. Jasmine, with plans made and tickets already in hand, did not agree. When the manager continued to refuse to give her the passport, though, she had no choice but to reschedule.⁷¹

At the end of her two-year contract Jasmine had no intention of continuing to work for this employer. She lined up another job and gave her two months' notice as required in her contract.

⁷⁰ Gabriel (Nurse), interview with the author, 10/15/2013.

⁷¹ It should be noted that in the UAE the employer has the right to choose when employees may take annual leave; it is therefore unclear whether it was *illegal* for her employer to demand she change her plans after initially agreeing to the dates she requested. Jasmine (Nurse), interview with the author, 8/3/2013.

At the end of the contract, however, her employer again refused to return her passport, insisting that she continue working with the abrasive doctor. When Jasmine maintained that she wanted to quit, they told her that they would not issue her the necessary release document allowing her to transfer her nursing license to another sponsor. Jasmine consulted the UAE Ministry of Labour who informed her that, while the passport withholding is illegal, the employer was within their rights to refuse to transfer her license. Jasmine negotiated with her employer, agreeing to work another week in exchange for the passport and release of her license. Then another week. Then another. It is likely that her employer delayed hoping that the new job Jasmine had lined up would fall through so that Jasmine would be forced to continue working for them or face repatriation to the Philippines. Fortunately for Jasmine, her new employer was patient. After a month, Jasmine gave up. She demanded her passport back and canceled her existing license with the Health Authority of Abu Dhabi, and then began the licensing process anew under the sponsorship of her new employer.⁷²

Stories like Jasmine's, although not the norm, are common enough that many in the wider Filipino community are aware of the dangers associated with passport withholding. However, given their perceived risk versus reward, most do not feel free to speak out. A conversation I had with Dominic, an accountant at a local company, is illustrative. First, Dominic listed three reasons why passport withholding might not be so bad:

1. "Actually, yeah, it belongs to you, but basically you have to comply on the, you know, management policy."
2. "I view it as one way of protecting the interests of the company, also. Imagine if you're a company with lots of accountabilities. If you're if you're an accountant here with so huge responsibility and accountabilities and then if you can just get out of country, I don't think it would be good."

⁷² Jasmine (Nurse), interview with the author, 8/3/2013.

3. “So the way we [Filipinos] are living in this place is we're living with other people. We don't have our [own] room. So imagine if your passport is just there, we're just leaving it inside the room, imagine what will happen.”⁷³

But Dominic was clearly unhappy about these excuses even as he listed them off. When pressed, he admits that he would prefer to keep his own passport:

Dominic: What is it? I cannot do anything. Because, you know, the last time I went to the Philippines ..., after I came back here, I have to give it back. Because at that time they ask for that, yeah. So you cannot do anything, you know. It's kind of difficult for us now. Maybe if the Labour Department will do some inspection maybe we can get our passport back. Yeah.

Interviewer: If you had the choice, would you want your passport back?

Dominic: Absolutely. Yeah.⁷⁴

Human Rights Implications

At its most basic, passport withholding is theft. Systematic passport withholding undermines the right to property. But a passport is not just any property. It is systematically withheld because a passport is a specific type of identity document which represents and embodies two important principles: nationality and freedom of movement across international boundaries.

A passport proves citizenship. And with citizenship come certain prerogatives. For temporary contract workers, the right as a national to claim representation and/or aid from one's country of citizenship, particularly from the embassy as the nearest competent representative. The second, related, prerogative is the right to enter one's country of citizenship. The ability of a TCW to repatriate in case of extreme need is a strategy that most would consider a last resort. Yet it is exactly this right that employers are attempting to block by withholding the passport. Without their passports, the freedom of movement of TCWs is extremely limited.

⁷³ Dominic (Accountant), interview with the author, 10/7/2013.

⁷⁴ Ibid.

Exiting a Working Situation

In the UAE termination of a working situation is governed not only by contract and labor law, but also by immigration law due to the coupling of employment and residence. When, where, why and how an individual exits her job has consequences for her continuing labor and residence rights in the UAE.

The way that the UAE government processes permissions to reside and work in the country is currently evolving rapidly. The Emirates ID card aims to create a single electronic database of the population of the UAE, linking all government services and functions to a single source. Registration for the card was opened in 2005 and completed in 2012. Since then many government services have in fact been tied to the card. As part of this restructuring, the Ministry of Labour and the Ministry of the Interior have both integrated their services with the Emirates Identity Authority (the authority in charge of the Emirates ID) and are attempting to streamline their procedures, reducing redundancies and inefficiencies in the system. Currently there is still confusion regarding the exact requirements regarding the issuance and termination of contracts, work permits, and residence visas. A primary example is that the Labour Card, formerly a crucial identity document as well as proof of employment, is being phased out and replaced with an online work permit system linked to the Emirates ID.

Many of my interviewees were not familiar with the ways in which the system is changing. In the midst of this shifting landscape, many are basing their decisions on previous experiences, either their own or their friends' and families'. While many of the changes promise to benefit workers, unfamiliarity with the law and its changes have led some individuals astray or frozen others in uncertainty. My own attempts to record this are also liable to the same weakness. While I will attempt to note where the laws have changed and how this change might affect migrants' decisions and actions in the future, it is likely that continuing changes in the law will render some of this analysis obsolete rather quickly.

Most contracts in the UAE are for a limited term, generally for two years.⁷⁵ A worker may quit at any time, however there are severe penalties for quitting early. If the employee finishes her contract term, she may give notice and quit her employment with few restrictions. She will be eligible for the full end of service gratuity. The employee is free to look for a new job and to transfer sponsorship to her new employer or to repatriate with expenses paid by her employer. The major restriction that she faces is that she has only thirty days to either transfer under another employer's sponsorship or exit the country.

If, however, the worker quits before finishing her contract, she may be required to compensate her employer for the loss of labor (half a month's pay for each month remaining in the contract up to a maximum of 1.5 month's salary), forfeits her right to repatriation paid for by the employer, and is subject to a labor ban. A labor ban prevents the worker from taking up any employment in the UAE for the duration of the ban, usually six months.⁷⁶ Bans usually mean the worker has little choice but to repatriate. Workers will thus go to great lengths to avoid having a labor ban placed on them.

In the UAE the concept of "unfair dismissal" is extremely limited: while the dismissal must be for a reason related to employment, the employee may simply be made "redundant" for any reason; the same position may immediately be refilled with a new hire. Princess was subject to this type of "redundancy":

[During the global market crash in 2009] the boss failed to get some clients he was expecting so he had to let the whole team go, ... the studio manager (me), the graphic designer assistant, the marketing assistant, and the programmer and the assistant programmer. All five went out. Our salaries at least like 5,000 to 7,000 [AED / \$1,362 – 1,907 USD]. And now they hired people to come in at a

⁷⁵ An "unlimited term" contract is also possible. While most workers greatly prefer unlimited contracts as they do not have financial penalties if the worker terminates the contract, employers generally do not offer them to new employees (for exactly that same reason). However, limited term contracts may "roll over" into unlimited term contracts if at the end of the specified contract term the worker continues to work and receive a salary without signing a new contract. The period at the end of a limited term contract, therefore, is often a time of tense negotiation between employer and employee.

⁷⁶ One-year bans may be requested by employers; some immigration or labor offenses carry lifetime bans.

lower salary. The graphic designer starting at 2,500 [AED / \$681 USD]. The assistant designer starting at 2,000 [AED / \$545 USD]. They are trying to budget, we understand.⁷⁷

Employees that are made redundant do not face a labor ban and the employer is required to either give notice or cash in lieu and to pay end of service benefits. However, this is often a struggle. Zoe complains: “Here there is no such thing as thirty days’ notice like we have in the Philippines.” If you go to the Department of Labour, she complains, they may ask the company to pay you the benefits that are owed, “but you are still out.”⁷⁸ The worker made redundant then has thirty days either to find a new employer and transfer under their sponsorship, or to exit the country.

If the employee quits while under contract, however, there are increased restrictions. If the employee quits within the first year of employment, he is subject to an automatic six-month labor ban which will be upheld even if the employer provides the employee with a No Objection Certificate (NOC) stating that they do not object to the worker leaving their employ or going to work for a different employer. Dominic, an accountant with ten years’ experience in the Philippines, got a job as an accountant through a recruitment agency in the Philippines. Unaware of the typical salary in the UAE, he accepted an offer with a salary similar to the one he received in the Philippines. When he arrived in the UAE, he discovered that the going rate for entry-level accountants was double what he was making. He started looking for another job fairly quickly and, after nine months, he got an excellent offer from a different company. However, Dominic was still within the first year of his initial labor contract and so faced an automatic labor ban, preventing him from accepting the new job: “The company didn’t let me go and I don’t have the power to, you know, cancel my contract in order to go. There was automatic ban at that time.”⁷⁹

⁷⁷ Princess (Office Professional), interview with the author, 3/16/2013.

⁷⁸ Zoe (Real Estate), interview with the author, 9/24/2013.

⁷⁹ Dominic (Accountant), interview with the author, 10/7/2013.

If the employee quits after one year but within the first two years⁸⁰ of employment the employee still faces the automatic six-month labor ban; however the ban can be lifted if the first employer issues an NOC or if the worker is able to find a new job which meets the minimum salary requirements set forth by the Ministry of Labour. The best case scenario is for the first employer to release the worker with a NOC. Some people are lucky. Rachele worked in a department store for two years then left; got a job as a telephone operator for six months, then as a secretary for a year and a half, before coming to her current employer as a secretary: "And the good thing is: there is ban, but I am so blessed that those company who get didn't give me bans."⁸¹

Many workers will work just the minimum required time, one year, with an employer for the express purpose of avoiding a labor ban. Enzo had a job that he liked, but the pay was low and he was often paid late. When a woman offered him a job with greater responsibilities and higher pay in a new restaurant she was opening, Enzo resigned to accept the new position with his old employer's permission. When he went to sign the new contract, however, he found that the terms were substantially different from the terms they had verbally agreed to. Having already resigned his old position, Enzo signed the new contract anyway. He worked for just over one year in order to avoid the automatic labor ban and is now looking for a new job. He is aware that it is possible that he will still be banned if his employer requests it, but has faith that "God will help me."⁸²

However employers, aware that the NOC is the quickest, easiest, and most reliable means to avoid a labor ban, may take advantage of this situation. Employers have been known to barter the NOC against a longer notice period, reduced end of service benefits, or just an outright payment. Juliana quit her first job after one year in order to take a new job. As part of the transfer, her first employer agreed to release her with a NOC when the second employer agreed to

⁸⁰ Two years has been the duration of validity for the Labour Card; as the Labour Card is being phased out it is unsure if this time limit will change.

⁸¹ Rachele (Office Worker), interview with the author, 10/22/2013.

⁸² Enzo (Chef), interview with the author, 9/12/2013.

reimburse the company for expenses related to her recruitment and initial migration.⁸³ This type of reimbursement is not unusual and is a legal grey area. In cases like Juliana's, where the new *employer* paid, the deal is likely legal. If Juliana was asked to pay herself this would seem to contradict UAE Labor Law, which specifies that the employer pays all recruitment costs; however the courts have allowed employers to request reimbursement from employees leaving early if such reimbursement is stipulated in the labor contract.

There are three ways in which a worker may be entirely exempted from a labor ban: if the worker can prove significant abuse on the part of the employer, if the worker's profession is on a list of highly desirable professions which are explicitly exempted from bans, or if the worker is employed in a free zone.

Abuse of labor law: Some violations of labor law on the part of the employer are considered significant enough to release the employee from her contract obligations without a ban. The most common of these offenses is wage withholding. If wages are left unpaid for two months or longer, the worker can petition the Ministry of Labor. In the past, proving unpaid wages was difficult.

Danielle's employer withheld her passport but gave her a labor card. While she was not too concerned about having her passport withheld, she wanted a photocopy of her the residence visa (which should have been in her passport) in case she should ever be asked by the authorities to produce it. She repeatedly asked about the residence visa and was told not to worry about it and that she did not really need a copy of it. When a year had passed and she still had not seen evidence of the residence visa, she checked herself with the General Directorate of Residency and Foreigners Affairs through their online system. She learned that she did not in fact have a residence visa; she had unknowingly become an illegal immigrant. Coupled with the fact that the company perpetually withheld several month's pay, Danielle decided to quit her job. It turned out this was not easy. Her employer refused to release her and, as she was only one year

⁸³ Juliana (Receptionist), interview with the author, 9/8/2013.

in to a three-year contract, she faced a labor ban if her employer did not agree to give her an NOC. Danielle decided to file a case with the UAE Ministry of Labour over the unpaid wages, hoping to win a court decision releasing her from her employer. While the case was being investigated, she no longer worked, and so no longer received a wage; this was a difficult period for Danielle during which she barely scrapped by. Fortunately, Danielle found a new job. And, even more fortunate, her new employer was a semi-governmental organization. In the UAE governmental and semi-governmental employers are not subject to UAE labor law and are able to circumvent many regulations on hiring and firing. Her prospective employer was confident that they would be able to resolve her situation and hired her despite the pending labor case. She began working immediately, but it took another five months before her case could be settled. In the end an agreement was reached between the Public Relations Officer at her new company and her former employer. Danielle agreed to drop the case she had filed with the Ministry of Labor and her claims to two months back pay, about 7,000 AED (\$1,900 USD). In exchange, her former employer agreed to release her from her employment contract and pay all fines related to her illegal stay, about 20,000 AED (\$5,445 USD). Despite losing out on wages due her, Danielle is satisfied with the outcome. Moreover, she is confident that it is only because her new employer was a semi-governmental company that her former employer was willing to negotiate at all. And, indeed, most companies would be neither willing nor able to hire her without an NOC, without a valid visa, with significant fines outstanding, and with a case pending with the Ministry of Labour. Unable to work to support herself yet unable to repatriate due to the fines outstanding, her prospects would have been dismal indeed.⁸⁴

Today, however, the implementation of the Wages Protection System (WPS) has made proving wage withholding much easier. WPS requires that all employees be paid electronically into compliant bank accounts so that the Central Bank and the Ministry of Labour can evaluate payment history. WPS launched in 2009 and employer enrolment was completed in 2010; all

⁸⁴ Danielle (Office Worker), interview with the author, 9/15/2013.

interviewees except domestic workers were paid electronically and none of those reported current wage withholding (though a few reported minor delays in payment of a few days or a week).

Exempt professions: Some professions are not subject to labor bans. Ministerial Decision No. (360) of 1997 establishes several professions – including engineers, doctors, pharmacists, nurses, accountants and auditors – that are exempted from automatic labor bans.⁸⁵ Though the exact professions on the list seem to be flexible and open to interpretation by the Ministry of the Interior, these six professions seem stable. The fact that individuals in these professions can change employers benefits them significantly. When employment conditions are unsatisfactory or fail to live up to the contracted agreement, these professionals will exercise their ability to change employers. Gloria's first employer in the UAE was less than ideal. While her salary was paid promptly, Gloria was unhappy with certain other policies at the hospital, particularly the fact that they did not provide maternity benefits (she was pregnant at the time) and expected her to work longer hours than contracted without paying her overtime. Most workers in her position would have had little option but to continue in this job for at least one year, and more likely for two years, or face a mandatory labor ban. But Gloria is a medical doctor. After less than one year, Gloria was able to successfully change employers.⁸⁶

Free zones: Free zones are designated areas in the UAE where the UAE Labor Law is not enforced. Free zones benefit foreign businessmen as they are able to bypass national laws on local ownership of companies, capital repatriation, and other restrictions. Free zones also benefit workers as free zones issue their own employment permits (not the Federal Ministry of Labour) and the legal sponsor is not the employer but the free zone itself.⁸⁷ As the Ministry of Labour is not involved in issuing the employment visa, any labor ban registered with the Ministry need not be enforced within the free zone, meaning that even a banned worker may obtain a job

⁸⁵ "Executive Regulations of Entry and Residence of Foreigners Law and Its Amendments," General Directorate of Naturalization and Residence United Arab Emirates Ministry of Interior, Ministerial Decision No. (360) of 1997, Article (63), Abu Dhabi, UAE, 1997.

⁸⁶ Gloria (Doctor), interview with the author, 10/20/2013.

⁸⁷ A tacit acknowledgement that the UAE's restrictive labor laws function as a benefit to Emiratis in their role as local employers.

in a free zone. Free zone workers do not need the consent of their employers in order to change jobs within the free zone because the employer is not the sponsor of their residence visa, the free zone is; though the free zone may choose to impose a ban at its own discretion or at the request of an employer, this is uncommon. Further, any ban that is issued by the free zone against workers need not be enforced outside of the free zone (though it appears that the two-year requirement is honored by the Ministry of Labor even in these cases). Workers rightly feel that free zones offer them significant advantages in terms of mobility and choice of employment.

Interviewer: But if they didn't want you to go, had you completed your contract? Did they release you from your contract? Or you just left anyway?

Princess: They gave me a hard time. But the advantage is I was in Dubai Media City, it's a free zone. So, the moment that my new employer paid my guarantee and then the lady from Dubai Media City office smile and tell me 'OK, you show them this. And if they don't want to give you your passport, call the police. Just give them a very sweet smile because right now you belong to us. This is free zone. So if this Jordanian former boss of yours gives you a hard time and would not let go of your fricking passport show them this and they'll do. "If you don't give right now we will call the police and the police will put you in jail." Halas,⁸⁸ that's how I got my passport. They gave me a hard time. And a lot of Filipinos will be tricked into this because they are trying to let you not get the [end of service] gratuity. So that's what they are after.

Interviewer: Were you able to get the gratuity?

Princess: Oh, yes! I scared them off of their wits!⁸⁹

Absconding

Workers who exit an employment situation without giving notice are considered to have absconded. Absconding is a violation of Labour Law in the UAE and therefore illegal. Absconders

⁸⁸ Arabic, meaning: enough, finished. This is a word that most migrants in the UAE are familiar with.

⁸⁹ Princess (Office Professional), interview with the author, 3/16/2013.

are subject to arrest, a fine (which is accrued per day of illegal residence), deportation, and a lifetime ban on employment in the UAE.

Nellie had been working as a housemaid in the UAE for a year making 900 AED (\$245 USD) per month plus an extra 300 (\$82 USD) during the school months for tutoring. But then one month her employer told her there was a problem at the bank:

My employer did not give me my four months' salary and I've been here long time. When the first month, they told 'Sorry we did not,' because they have a problem from the bank. And then, because of I have heart, and I feel that they don't have money, okay. First offense. And then, 'Another month, again?' They told me that the two months already that passed, it is a fund for ticket if I want to go home in the Philippines. So I'm thinking that 'Why do you want to take that two months from me?' And then I told 'Okay, buy ticket.' I told to my madam, 'Oh come, Madam. I have already two months. Buy ticket. I will go. But I do not want to stay here. I do not want work [for] nothing. What I have to do? I have kids! I have family. My kids is taking some milk; they want food. What I have to do?'⁹⁰

Her family in the Philippines suggested that she look for new work, a cousin in the UAE suggested that she go to the Embassy for help. So Nellie absconded.⁹¹ She ran to the Embassy and the Embassy tried to help. But the Embassy prioritizes settlement out of court. If both sides cooperate, it is the easiest and fastest way to resolve these cases. The employer can cancel the worker's visa and return her passport thus allowing her to leave, the agency is liable for the return airfare, and the worker will relinquish claims to back pay. But pursuing mediation for out of court settlement is risky. If the employer refuses to cooperate, they can file case against the worker for absconding. Whichever side files first tends to have an advantage in the court system as they set the terms of the initial legal battle. So if the Embassy delays filing in order to pursue mediation, the employer gains the opportunity to take the lead.

⁹⁰ Nellie (HSW), interview with the author, 10/7/2013.

⁹¹ Ibid.

In Nellie's case, the Embassy went to the immigration officials at the General Directorate of Residence and Foreigners Affairs for mediation, but her employer did not cooperate; the Embassy then went to her UAE placement agency, but the agency refused to pay the withheld wages. In the meantime her employers filed an absconding case against her. Nellie now needs to decide if she will plead guilty to absconding, in which case she will have to go through the legal process of conviction including a short (a few days) detention in Shahama jail and deportation (the UAE government will pay for her return airfare), or whether to stay and fight the charge and demand her back pay, a process that the Embassy estimates will take about four months. She has not yet decided but is clearly leaning towards pleading guilty, she just wants to make sure that she will only be banned from the UAE afterwards, not all work abroad. ⁹²

Cumulative Effect

The issues surrounding residence, passport withholding, and absconding when considered together can compound with disastrous results for the worker. Lissa was a driver for a local family in Abu Dhabi for more than four years; the family she worked for routinely withheld the passports of their domestic workers. Lissa signed and worked two successive two-year contracts with them. When negotiating her third contract, Lissa took advantage of the fact that her services were badly needed at the moment the negotiations were happening to secure a substantial raise. After the period of great need passed, however, her employer began to express discontent with her new, higher salary. Lissa feared that her employer might turn to underhanded tricks to terminate her employment without having to pay her end of contract benefits. One day Lissa had to take her passport with her to run an errand, when she returned to the house and her employer asked for the passport back, Lissa refused to turn it over to him:

But I just don't know. I just cannot hand over it. I just cannot hand it over. So I told my Baba, 'I cannot give you my passport. If the immigration tell me to give you the passport, OK, I will give. But I need an assurance that you will not breach

⁹² Ibid.

my contract because that is the very thing I am fighting for. I am fearing you use me for four years and then you'll just throw me out like that.'⁹³

Her employer insisted she relinquish her passport and a battle of wills ensued. In the end, Lissa decided to take her case to the UAE Immigration (the General Directorate of Residence and Foreigners' Affairs), hoping that they could mediate a solution: "But unfortunately, even though I was taught that that was the right thing to do, you have a conflict with your sponsor that you cannot handle in their home, go to the Immigration where there is a mediator. But that didn't happen." Meanwhile, her employer, angry that Lissa had filed a complaint against him with the Immigration officials, filed a complaint with the Abu Dhabi police claiming that Lissa had absconded. When I met Lissa, she was resident in a facility run by the Embassy of the Philippines in Abu Dhabi, waiting for a court resolution to her situation.

Human Rights Implications

The ability to end a working situation without undue hardship is crucial to maintaining a substantive right to choice of employment and therefore to the prohibition of slavery. Even if a job is freely entered into initially, if a worker cannot quit they can no longer be said to be working of their own free choice.

Further, restrictions on terminating quitting are a major contributing factor to other human rights violations and to the impunity with which employers commit violations. Without this basic capacity, workers have little choice but to endure unfair and exploitative labor practices that would otherwise be unacceptable to them. This fact appeared time and again in interviews with Filipinos in the UAE: fear of a labor ban affects the decision making of migrants, pushing them to accept violations of their rights as human beings and as workers for the duration of time in which they are subject a labor ban.

There is also an issue of equal access to legal protection. While employees cannot quit without significant civil penalties including labor bans, as well as possible sanctions for

⁹³ Lissa (HSW), interview with the author, 10/7/2013.

absconding, employers are not similarly constrained. A worker may be made redundant for any purpose and failure to comply with end of service terms is not treated as a criminal offence.

Permanent Temporariness: Nationality, Passports and Family Books

In the UAE there is no category that corresponds to permanent residency as it is generally understood in the West: the right to reside, study, and work in the country of residence for an indefinite period, to travel freely in and out of that country, and to enjoy all those rights and privileges available under the law except those reserved for citizens as a matter of human rights, national security, or the public good. As was discussed in Chapter One, the closest concept to permanent residency in the UAE is actually Emirati citizenship. Citizenship is difficult to attain other than by birth. Though there is no official stated policy for nationalization, Sayed Ali explains what are thought to be the informal requirements:

The requirements to be considered for citizenship are often thought to include thirty years' residence, being Muslim, Arab and an Arabic speaker, and having a clean police record, 'proper' academic qualifications and a 'healthy' bank balance – though it is at the government's discretion to give citizenship after a screening process, at which point personal influence (*wasta*) comes into play.⁹⁴

However, even where an individual gains citizenship they are not necessarily considered a "true" Emirati national. There are two basic forms of identity documents issued by the UAE: passports and *Kholasat Qaid*.⁹⁵ The passport identifies you as a citizen of the UAE; but only the *Kholasat Qaid*, or Family Book, identifies you as an Emirati national. The UAE passport guarantees the holder the right to remain in the country without a visa but little more. Emirati nationality is associated with the *Kholasat Qaid*.⁹⁶ Many of the privileges accompanying Emirati nationality are reserved for those holding a *Kholasat Qaid*, from college scholarships to interest-

⁹⁴ Ali, *Dubai: Gilded Cage*.

⁹⁵ Also written "Khulasat Al Qaid" and usually translated as the "Family Book."

⁹⁶ C.f. Bassma Al Jandaly, "Emirati Passports Not Enough for Ids," *Gulf News*, 26 October 2008.

free housing or business loans.⁹⁷ And the Kholasat Qaid is virtually impossible to attain except by decent or marriage to an Emirati male.

For the vast majority of workers in the UAE, then, residence is conditional on agreement to a limited term of stay. Residency is tied to employment and is limited to a two- to three-year horizon. This is an explicit national policy, codified in Labor Law, and well understood by migrants. There is no regular path to permanent status or citizenship. When a migrant agrees to participate in a temporary worker program it is with the explicitly stated condition of *temporary* admission to the country. This should serve to temper feelings of belonging and identity and there is some evidence that it does do so.⁹⁸ For example, when the recession hit Dubai in 2008/2009, the architectural firm that Fortunado worked for underwent massive layoffs, going from over four hundred people down to about sixty. He kept his job but the experience was meaningful for him, suggesting that he should not rely too heavily on his position in the UAE: "I'm not sure if it a lucky thing. But, of course, when you see your friends leaving you're going to think twice. Wow. So that is the reason why we decided to start with our own business in the Philippines. It's a good thing. So from then it's an eye-opener that we have to do something that we have an option. What happens if we found out that I have no job one day? So you have to do something."⁹⁹ His wife and son went back to the Philippines and started a restaurant that he hopes will eventually support his day to day needs in retirement. He remains in the UAE without his family. "My focus is more on work, work, work. Because my wife is not working. This is not permanent; this is temporary. I have to save in the future for my wife and me."¹⁰⁰

Nonetheless, migrant workers in the UAE often stay for prolonged periods of time by arranging successive employment contracts and continually renewing their residence visa. James anticipates staying in the UAE for the foreseeable future:

⁹⁷ Qassemi, "Book That Proves Some Emiratis Are More Equal Than Others."

⁹⁸ Ali, *Dubai: Gilded Cage*, Chapter 5: Guests in Their Own Homes.

⁹⁹ Fortunato (Architect), interview with the author, 3/23/2013.

¹⁰⁰ Ibid.

James: I'm gonna stay here.

Interviewer: You're gonna stay here?

James: Yeah. I love here. I want to go back again and again and again here. I spent two years in the Philippines. Then I [came] back here. I don't like in Philippines. We don't have money in Philippines. It's hard to find a job in Philippines.¹⁰¹

But eventually, everyone must face the reality that they cannot stay for the long term. It is well understood among workers that residence is tied to employment. This is reinforced in myriad ways: an individual must have a work permit before they can initially apply for a residence visa and in order to renew the residency visa every two years; evidence of employment and sufficient wages are required to sponsor relatives' residency; part of the process of quitting a job is to cancel the residency visa. It is also generally known that employment in the UAE cannot go on forever; there is a mandatory retirement age of sixty five in the UAE.

Adrian: But in my age right now, maybe two to three years I can stay. Then after that I can be for good. ... OK, for good ... [with] my family. Because I cannot stay longer here abroad, you know.

Interviewer: Why not?

Adrian: This is not my place.¹⁰²

Compounding the problem, many temporary contract migrants would understandably choose to bring their families with them to the host country. In the most complex cases, migrant children are born and raised in the host country. These children are likely to form a greater sense of belonging in the host country than in their country of citizenship, which often remains basically unknown. In the UAE it is not unheard of for multiple generations of a family to spend their entire lives, from cradle to grave, in the UAE without ever gaining permanent status, much less the full complement of citizens' rights. Arianna and her husband have been in the UAE for over a

¹⁰¹ James (Food Service), interview with the author, 2/23/2013.

¹⁰² Adrian (Engineer), interview with the author, 9/10/2013.

decade. All three of their children were born and raised in the UAE. While Arianna and her husband hope to retire in the Philippines to start a small farm “and we'll just enjoy whatever we had worked for,” the future is more complicated for her children:

To go back to the Philippines? I don't think so. We have a house in Philippines, we are building a house in Philippines, but I don't [think] my children would like to stay there for good. They like the lifestyle here. They don't want to [go back to the Philippines] because it's, you know, it's different. Here, they have things they enjoy that they cannot enjoy there. The only thing my eldest daughter likes there is because she can have a dog in our own house. Here it's difficult to have a dog in an apartment. Other than that, she doesn't like the climate, she doesn't like that not all of the houses have AC, she doesn't like the small roads, and there's always traffic. But she's not used [to life] there. She's used to the life here. So maybe if she is old enough for college, then we'll see where she will go. But for now we'll stay here, yeah.¹⁰³

Arianna, however, does worry that her kids have no emotional attachment to the Philippines:

That's why now - we are just building the house [in the Philippine]. It's not yet finished. I am telling my children ‘This will be our house, you know, if ever we need to go there. What design you want? What color you want?’ Because they are kids, they are excited. ‘Oh you put a swimming pool!’ ‘You can have a dog!’ And [my daughter] said, ‘Mommy, we'll have air con?’ ‘Yes. We'll have air con in all the rooms!’ And ‘oh we'll have our back-up generator, we'll have solar panels so we'll not have any other electricity.’ And my husband is laughing, and I'm: ‘oh my God! We're spending more on the house!’ But I am telling [my daughter] and also I'm showing her because we have friends who, you know, have college kids

¹⁰³ Arianna (Nurse), interview with the author, 8/3/2013.

and they all go home to Philippines. 'When you're big enough, when you finish high school, you go to Philippines. Where do you want to go?' And [my daughter] said, 'OK, but Mommy I want to have a flat in Manila.' 'OK, we'll buy a flat in Manila!' So I we are preparing. ... We are preparing her that, if the time comes that we need to leave here, then we have to go back to Philippines. ... But they know that this is not forever here. We have to go somewhere else after this.¹⁰⁴

Nonetheless, almost all Filipinos that I spoke with expressed a desire to return to the Philippines one day.¹⁰⁵ While some expressed envy at the perks associated with being a "true" Emirati, all identified themselves as Filipino, Cabayan, Pinoy.

Interviewer: If you could get residency, permanent residency here, would you want that?

Arianna: Sure! I'll have a Land Cruiser, I'll have a villa, I'll have monthly supply of rice and sugar and flour. Yes, of course!

Interviewer: Would you want to retire here? Because, you know, there's a difference here between family book and passport, right?

Arianna: Yes.

Interviewer: So, even if you get the passport, you don't necessarily get the Land Cruiser.

Arianna: You don't, no. [A friend] has a passport but he doesn't get the benefits. Yeah. For here, because it's Middle East, I don't know if this is stable country after few years. So I think it's really better to go home in the Philippines. Because I at least there, even if we have war, I know that it's my country, but here I'm not so sure. ... I it's better, I think, to retire in your home country, in the Philippines.¹⁰⁶

¹⁰⁴ Ibid.

¹⁰⁵ Some expressed the desire to establish permanent residency, or even dual citizenship, in a Western country as a possible supplement to retirement in the Philippines; only one expressed a desire to retire in the UAE.

¹⁰⁶ Arianna (Nurse), interview with the author, 8/3/2013.

Expressing a true desire to retire in the UAE, to stay until death is rare. Ava is one of the few. She has been in the UAE for over twenty years. She met and married her second husband, a non-Gulf Arab from a family that had been in the UAE for even longer, in the UAE. She converted to Islam and learned Arabic in order to marry him and get along with his family. As her two daughters from her first marriage grew up, she brought them over to the UAE on visit visas and helped them find jobs (her son has remained in the Philippines). She has made friends and established her professional life there. Her network and personal ties are stronger in the UAE than in the Philippines. But Ava is approaching retirement age and facing the harsh reality that she cannot stay in the UAE, her home, for much longer. The sincerity in her voice is heartbreaking:

Why doesn't the UAE give people a chance to do like in the USA? Why they don't give people that we working very long time [a] chance to stay here permanently like the US system? Why they can't? That's the problem. ... If I could stay here for a lifetime, I would stay. The problem is, if no work, I cannot.¹⁰⁷

Human Rights Implications

Imposing restrictions on entry is not a human rights violation – there is no right to entry. Reaffirming those restrictions with every new visa period is similarly not a violation. Ruhs rightly argues that “*residence and employment on the basis of a temporary work permit alone does not create an entitlement to stay permanently in the host country.*”¹⁰⁸ The host country may choose to grant permanent residency on other merits (economic, marriage, etc.), however, no legal right to stay is acquired through participation in a temporary migration scheme. Ruhs points to Singapore and the GCC states as cases where “there is effectively no possibility for migrants employed on temporary work permits to acquire permanent residence.”¹⁰⁹ While there is no “permanent residence” status in the UAE, there are some mechanisms through which migrant status with

¹⁰⁷ Ava (HSW), interview with the author, 3/30/2013.

¹⁰⁸ Ruhs, “The Potential of Temporary Migration Programmes in Future International Migration Policy”: p. 9.

¹⁰⁹ *Ibid.*, p. 9.

greater permanence can be achieved (primarily through property or business ownership in the country) and the prospect of achieving citizenship (passport) remains rare but possible. However, for the majority of TCWs in the UAE, permanent settlement in the country is not an option, migrants know that it is not an option, and they have accepted the terms of residence offered to them.

A more complex question is to ask if the integration into society of long term migrants such as Ava, or of young people that have lived their entire lives in the country such as Ariana's children is so complete as to create an obligation, a right. In the case of long term residents, I would argue that it does not. Again, the migrant, as a capable agent of her own future, has accepted these terms not once, but every two years. The argument for children born and raised in the UAE is much stronger. These minors are in the UAE through no action of their own, they know no other home, and being forced to settle somewhere new for the first time at retirement age sixty five would certainly be painful and jarring. Perhaps the UAE does have an obligation to these individuals. But it is not an obligation tied to a human right. This would be tantamount to arguing for a human right to jus soli citizenship, something that is not generally accepted. Few countries outside of the Americas accept the principle of jus soli unconditionally, many Western and Middle Eastern nations place significant restrictions on jus soli citizenship,¹¹⁰ and most of the world simply does not recognize it. So long as the child is not made stateless by the UAE's decision not to grant citizenship, the human rights of the child are not violated. It would be a positive step if the UAE opened an opportunity for citizenship to children born on its soil, but not all good things are human rights.

Conclusion

The issues of im/mobility presented here may at first glance appear less significant than the high profile, high impact issues discussed in the previous chapter. However, I argue that this set of factors which creates immobility is actually the very crux of the problem. Each one of these

¹¹⁰ Denying citizenship status to the children of illegal immigrants or restricting it only to second generation immigrants or to individuals who would otherwise be stateless, for example.

factors –policies constraining the means of departure from the Philippines, constraints on residence, passport withholding, constraints on quitting, and policies tying residency to employment – shuts off significant, even crucial, alternate opportunities. As viable alternatives are closed down, the worker becomes increasingly constrained to continue working in their existing position even when conditions are exploitative.

Immobility constrains migrants' agency, their ability to make choices deciding the course of course of their lives. In particular passport withholding and constraints on quitting reduce agency to such an extent that the worker becomes reliant on state regulation and enforcement. However, as will be demonstrated in the next chapter, these mechanisms often do not work or provide sufficient protection to migrant workers.

There are limits to the abuses that employers can get away with set by the limits of what migrant workers will tolerate. The most obvious is wage withholding. When wages are withheld, workers will try most any mechanism possible to address the situation. It is perhaps not surprising, therefore, that this is one area in which UAE government regulation works well on behalf of workers: the Wages Protection System provides a mechanism to both encourage wage payment and provide evidence should wages be withheld.

The second limit, however, is not an issue but a time limit. Workers in the UAE will tolerate almost any abuse (short of wage withholding) for the one or two years necessary to avoid receiving a labor ban. However, once this threat is passed, the worker regains a significant element of mobility and she is likely to exercise the option to change employers. This demonstrates just how crucial mobility truly is in reducing the incidence of human rights violations among migrant workers.

CHAPTER SEVEN: SAFETY, SECURITY, AND THE LAW

Introduction

When we think about migration and security, we usually think about the possible negative impact that migration, especially large-scale migration, can have on national security. After the September 11 attacks on the United States in 2001 there was a flood of literature, academic and popular, assessing the security threats that migration posed. While the flood seems to be receding, this “securitization” of migration remains a persistent framing mechanism in political and popular discourse internationally. We have seen increased restrictions and more elaborate processes of control over migration arise in tandem with efforts to police borders against illegal immigration. Headlines about migrants’ access to courts tend to focus on deportation proceedings or the prosecution of migrant criminal offenders. The UAE is no exception to this trend.

For obvious reasons, this is not how migrant workers in the UAE tend to view the situation. They are more worried about their individual interactions with the police, courts, and other legal structures and their ability to secure safety and security for themselves and their families. Security in this chapter is understood broadly to include not only personal safety but also human security and issues around the legal structure that mediates migrants’ access to redress and voice.

Illegal Immigration and Deportation

There are a significant number of illegal immigrants in the UAE; there are “about 65,000 unauthorized migrants – including those who entered the country illegally, visa over-stayers, migrants working on tourist visas, and others.”¹ There are no public figures regarding the various mechanisms through which migrants entered illegal status. Although it is possible to enter the

¹ Froilan T Malit Jr. and Ali Al Youha. "Labor Migration in the United Arab Emirates: Challenges and Responses," Migration Policy Institute, 18 September 2013, accessed September 2, 2014, <http://www.migrationpolicy.org/article/labor-migration-united-arab-emirates-challenges-and-responses>.

UAE illegally – one could walk over the border with Oman or cross the Arabian Gulf from Iran via small boat, or enter on forged documents – this is unusual in general and practically unheard of for Filipinos. Such “infiltration,” as it is known in the UAE, is usually the result of human smuggling in which migrants from across South Asia (especially Pakistan) are taken by foot to Iran and then by small boat across the Arabian Gulf.² In contrast, most illegal Filipino migrants in the UAE are either visa over-stayers or working on a tourist visa.

Illegal migrants are in a precarious position in the UAE and the Gulf as exiting the region is particularly difficult. The fine for overstaying is 125 AED (\$34.03 USD) per day. This quickly adds up and many illegal immigrants literally cannot afford to leave the country through regular channels. Illegal exit is also difficult and unlikely given the geography of the GCC.³ Periodic amnesties offer illegal migrants the opportunity to exit the UAE without paying fines for overstaying, though the migrant usually needs to find the funds to cover his own airfare. In the most recent amnesty, from December 2012 to February 2013, 61,826 illegal migrants were granted exit permits allowing them to leave the UAE; in the previous amnesty (2007), 246,699 illegal immigrants were given exit passes and another 95,259 were able to regularize their status and remain in the UAE.⁴

This dissertation does not deal with the topic of illegal immigration in depth. Only one interviewee was in an illegal situation. After a series of disappointing contracts, Nicole, a domestic worker, decided to try going freelance – working for multiple families at an hourly rate. To do this, rather than being sponsored by and working solely for a single person, Nicole illegally purchased a visa. Her visa shows that she works for a local company in a menial position; this is a fiction. Nicole’s situation is not the norm, neither for Filipinos nor for illegal migrants in the UAE. Not many domestic workers pursue this option as it is both high risk and high cost. Nicole herself

² C.f. Nadim Kawach, “UAE Deports over 97,000 Foreigners in Three Years,” *Gulf News*, 12 February 2004. Sunil K. Vaidya, “Infiltrators Take a Heavy Toll on Oman,” *Gulf News*, 3 April 2013.

³ There is an active smuggling route between Iran and the UAE based on small crafts crossing the Arabian Gulf and it is possible to enter the UAE this way with the help of a smuggler.

⁴ Ahmad, “UAE Amnesty Woos More Than 61,000 Illegals.”

does not think she will buy another visa when this one expires after two years and instead is considering looking for a new sponsor, though she hopes to work freelance on the side.⁵

Nonetheless, illegal immigration is an unavoidable undercurrent in any discussion with migrants in the UAE for two reasons. First, it is relatively easy to fall into an illegal immigration situation. As discussed in Chapter Six, UAE law greatly restricts the ways in which a worker can exit a working situation; if a worker quits without legally acceptable cause, they must compensate the employer. If the worker cannot pay the required compensation, or if she simply runs away without giving notice (absconding), she has broken UAE law and becomes an illegal migrant. Even if the worker quits in an approved fashion or pays the compensation, employment and residence are tied together in such a way that the worker has thirty days to either find a new employer/sponsor or exit the country. If she fails to meet this deadline, she becomes an illegal migrant.

Second, visa cancellation and deportation is the default mechanism through which the UAE authorities deal with problematic migrants. If a migrant is found guilty of a crime, any crime, deportation is a possible penalty. Workers have been deported for crimes as minor as begging⁶ and public obscenity.⁷ Immigration violations and labor unrest (striking is explicitly illegal under UAE Labour Law) are almost always met with deportation. As such, the fear of deportation, of losing one's job and one's adopted home, is always a consideration mediating a workers' decisions regarding her employment and personal behavior. This fragility, therefore, is a constant backdrop in the conversations I had with Filipinos migrants in the UAE about their experiences and plans for the future.

⁵ Nicole (HSW), interview with the author, 9/18/2013.

⁶ Bassam Za'za, "Three Beggars Fined and Will Be Deported from Dubai," *Gulf News*, 25 July 2013.

⁷ Including various offences such as swearing or nudity, but also including kissing in public or other "offensive" displays of affection. Though deportation for such offenses is rare unless the perpetrator was drunk at the time of the offence or offered insult to an officer. Any crime committed while under the influence of alcohol, regardless of blood alcohol level, is more likely to be penalized harshly.

Crime and Personal Safety

Most interviewees report that they feel that the UAE is a “safe” place. When questioned about this a bit deeper, it is clear that different interpretations of “safety” influence this answer. Freedom from petty crime, robberies and assaults is what most interviewees initially commented on. Bliss marvels that she can leave her wallet on the table at a restaurant and it will not be stolen.⁸ The only time Mary Grace ever called the police is when she found an expensive phone in a taxi. It turned into a big deal: the police kept her and the taxi while the owner was contacted, the police gave the alleged owner a lineup of phones.⁹ Few people are afraid of violent crime. In fact, the fact that people feel safe walking on the streets in most neighborhoods, even after dark, is often mentioned as one of the best things about living in the UAE.

However, this feeling of safety is somewhat illusory. The US State Department’s Overseas Security Advisory Council (OSAC) classifies the crime rates in both Abu Dhabi and Dubai as medium threat. In its 2014 report on Dubai, the OSAC notes:

While the reported crime rate is low, actual crime rates may be higher due to underreporting. The host nation is sensitive to maintaining a very safe and secure public image which may discourage individuals from reporting crime. The host government takes measurable steps to nurture an image of safety and security. The resulting feeling of relative safety may cause Western expatriates to take fewer precautions than they would in other major cities. Complacency and poor security practices have resulted in Westerners occasionally being the victims of residential, commercial, and vehicle burglary.¹⁰

The truth is that, while the vast majority of migrants in the UAE would not risk arrest, loss of employment, and deportation for the sake of petty crime, such crime does exist. Though the

⁸ Bliss (Office Professional), interview with the author, 3/16/2013.

⁹ Mary Grace (Manager), interview with the author, 3/30/2013.

¹⁰ “United Arab Emirates 2014 Crime and Safety Report: Abu Dhabi,” United States Department of State Bureau of Diplomatic Security, 3 February 2014, accessed September 5, 2014, <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=15084>.

UAE government does not release detailed crime data, it is estimated that scams, petty theft, and sexual harassment continue to occur on a regular basis. Concerns about the general safety of life in the UAE linger for many people.

Scams and Petty Theft

One area that is ripe for exploitation is real estate. As described in Chapter Six, apartments in the UAE, and especially in the cities of Dubai and Abu Dhabi, are expensive and difficult to find. Because of this, when someone does find a good deal on an apartment, they need to move fast to secure the rental unit. A full year's rent is normally paid in one initial payment. This is the perfect mix for scamming: potential targets are motivated, must move quickly without sufficient time to fully vet a deal, and large amounts of money are in play. One of Cherry's friends referred her to a housing agent. The agent showed her a very nice apartment that was available for 135,000 AED (\$36,752 USD). It looked like a legitimate deal, the agent was able to show her the appropriate documents from the Municipality and had copies of the owner's ID documents. Cherry agreed to an unusual payment scheme, though: she would pay in two installments; after her first check for 63,000 AED (\$17,151 USD) cleared, the agent would give her the keys in exchange for the remainder of the money. Cherry gave the agent the first check and waited. And waited. She started calling the agent to check the progress of the deal but soon the mobile number was disconnected. Cherry went to the apartment and found the woman who owned the unit. The owner claimed that, while the agent had worked for the woman in the past, the agent had recently absconded. Dubious, Cherry asked why the agent had had the documents and the copy of the owner's ID; the owner claimed the agent had stolen them. Cherry and the owner approached the police. Eventually the agent was found and arrested. But the finale was not exactly what Cherry had hoped for. The Red Crescent stepped in, offering to repay 40,000 AED (\$10,889 USD) if Cherry would forgive the remainder of the debt, allowing the agent to be released from prison and deported. Cherry refused: "That's my hard earned money because that money is my [housing] allowance. And the company is cutting it from [my salary]. So for one year

I didn't use that allowance... So I need to get it back to me."¹¹ Cherry then went on break for the Ramadan holiday, expecting to discuss the matter further when she returned. Instead, the agent was pardoned by the Ruler of Abu Dhabi as part of the Ramadan celebrations. Cherry received no compensation whatsoever.¹²

Recruiting is also an area well-known to be rife with scams. Such scams do not only happen in the country of origin. Prospective workers in the UAE are also vulnerable. The recruiting scam that Maria Joy and her husband fell victim to, described in Chapter Five, is a variation on a common scam. After arriving on visit visas to look for employment, Maria Joy and her husband struggled to find well-paying jobs. With their savings dwindling, they were feeling more and more pressured to find work. When a man called them posing as a headhunter, they were interested. For a fee of 600 AED (\$163 USD) each, the man promised to find them good jobs in the northern Emirate of Ajman. They paid the fee but never heard from the man again.¹³ The position of relative weakness that job seekers in Abu Dhabi face makes them vulnerable to this type of scam. The deadline that job seekers face when in the country on a limited term visit places additional pressures on job seekers. There are unscrupulous persons that take advantage of these weaknesses. Maria Joy did not report this scam to the police because she feared she and her husband would be deported for job seeking while on a tourist visa: "We did not complain. Why? Because we are on visit visa. We both knew that it is prohibited for a tourist to look for a job here."¹⁴ The government of the Philippines does prohibit its citizens from leaving the country to look for work on a tourist visa and is very active in its attempts to prevent this practice; the misconception that this practice is illegal under UAE law as well is common. But the UAE

¹¹ Cherry (Office Professional), interview with the author, 9/12/2013.

¹² The pardoning of prisoners, especially those convicted of financial or other non-violent crimes, during Ramadan is common. Up to several thousand prisoners are pardoned every year. It is a gesture of forgiveness and generosity, though those pardoned are immediately deported. Usually these pardons are accompanied by the respective ruler assuming the prisoner's debt and compensating the harmed individual/s; Cherry's case is unusual in this respect.

¹³ Maria Joy (Manager), interview with the author, 3/16/2013.

¹⁴ Ibid.

government does not, in fact, forbid job-seeking while on a tourist visa and Maria Joy could have sought help from the UAE police.

Joey fell victim to another common scam, this one involving petty theft. He left the office one day with a bunch of stuff in his hands. When he got in his car, Joey put all the stuff down on the passenger seat. It was a hot day, so he opened the car windows. As he started the car, a man appeared at the passenger window; the man told him there was a problem with his car, pointing on the ground on the passenger side. Joey got out of the car and walked over to see a puddle of some oil or fluid on the ground. He bent down to inspect it closer and determined that it was not actually leaking from his car. For a while, the stranger was encouraging him to keep looking for the mystery leak, but then suddenly walked away. "He just walked away. Then, when I go back in my car, oh wow, all my things are gone - the two perfumes that I just recently bought from online shopping and my new S3 [smartphone] is gone." Joey did not report the incident to the police.¹⁵

It is important to note that two of these three interviewees did not report the crimes that they fell victim to to the UAE authorities, supporting the likelihood mentioned above that crime in the UAE is underreported.

Sexual Harassment

Alexandra feels safe in the UAE. In fact, she lists physical safety as one of the best parts about living in the UAE. Yet Alexandra would never leave home without her cell phone: "Don't leave your cell phone, especially if you are outside. Because somebody is following you there or somebody will grab you and put you inside the car. At least if you have cell phone, you can call the police."¹⁶

This fear may seem a bit melodramatic, but Alexandra has cause to be worried. Stories of rape frequently make the news and she herself has been subject to harassment such as men exposing their genitals or masturbating in front of her in public on several occasions. She laughed

¹⁵ Joey (Engineer), interview with the author, 10/21/2013.

¹⁶ Alexandra (Food Service), interview with the author, 2/23/2013.

when she told me the story of how one evening as she and some colleagues left work by the back door after closing only to find a man masturbating by the door. When they screamed in shock, he only stared at them and continued masturbating. The women retreated back into the restaurant while a manager called the police. She laughed, but confessed, "it's awful; it's very scary."¹⁷

Many women in the UAE have their stories about sexual harassment or even assault; it is pervasive but underreported. Of the twenty seven women interviewed for this project, twenty three reported some type of sex crime (including sexual harassment) or persistent fear of sexual crime that affected their behavior. The most common are incidents of sexual harassment, such as where men in vehicles cruise alongside women walking in order to make comments, ask how much a woman would charge for sex, shout a phone number at her, and/or ask her to get in the car. Even women who feel that sexual harassment is not a problem for them report these types of incidents:

Nina: I feel that this country is peaceful. It's a peaceful country, even though there are some incidents that bothers me, especially those things, the rape, and the blah blah blah. But really, if you will compare to other countries, still those type of incidents here is lesser than to the other country. Yeah.

Interviewer: Pretty much every woman I have talked to here has had some form of sexual harassment or some problem like that. And you're a beautiful girl. And especially if you're walking around, late at night, after work.

Nina: Yeah. No, I haven't [had a problem].

Interviewer: Guys shouting phone numbers at you?

Nina: Oh, that one? Yes.

Interviewer: Yes. See.

Nina: Yes. But no...

¹⁷ Ibid.

Interviewer: Cars slowing down and following you when you're walking on the street?

Nina: I think once. But I'm not too worried.

It is common for men to shout “how much” at women; a barely disguised euphemism asking for sexual favors in exchange for money, otherwise known as soliciting prostitution. This is so common that the phrase “how much” has entered the vernacular. Mia explains:

Yeah, because one time also when I am working in Sharjah, somebody asked me ‘how much.’ Before I didn't know what is ‘how much.’ Yes, I know the meaning of ‘how much,’ but I don't know ‘how much’ of what, of what? Then, when I went to my sister, I told my sister, ‘One guy says to me ‘how much.’ What does that mean?’ And she, she's laughing at me. Because I don't know. And [she says]: ‘Sister, he's asking how much for you. You, you! Not anything!’ ME!¹⁸

This and other bad experiences early in her stay in the UAE left a lasting impression on Mia. As a result of persistent sexual harassment in public, Mia changed her behavior.

Before I was, I think, not weak, but I am new here, so I don't know the tradition. I don't know anything. I thought: ‘if he smiles, I'll smile; that's okay.’ But, no, if he smiles, don't smile. Because if you're smiling, it means you like him. It's not okay. So now if I am walking, I'm not looking at the face.¹⁹

Worse, Mia has internalized some of the ethic and it has affected her behavior in subtle ways:

I think it's from ourselves. If you are going out there and you're wearing sleeveless or mini skirt, then everybody will be looking at you. But if you are wearing decent dress, then it's a different thing.²⁰

¹⁸ Mia (Professional), interview with the author, 9/17/2013.

¹⁹ Ibid.

²⁰ Ibid.

Groping is also fairly common, particularly in crowded public areas such as bus stations. Ella had an incident at a bus stop in Dubai. There were separate queues for men and women and the women got on the bus first; as she was getting on the bus a man grabbed her buttocks:

Before I get in the bus, one man touch my ass. I'm very, very angry! My bag, I throw my bag there [on the ground]. I beat him, boxed him left and right. And him going only like this {holds hands in front of her face}. Like that only. I very, very angry that time! Because, you know, I thought: why you only do like that only to the Filipino ladies? Why don't you do your same nationality like that? Or the Arabic ladies? Why only Filipino? Then the bus driver he heard that I am shouting, he saw also that I'm boxing that guy. ... And then the bus driver told me..., 'Cabayan, just get in and relax.' I tell him, 'You are Filipino. You are telling me that just get in and relax? You will not say anything about this guy? You didn't see what he did to me?' I told him. He told me, 'Please Cabayan, because you know there is a police outside.' 'I am not afraid of the police. If I know that I am right I am not afraid of the police.' I told him that. Then another guy he brought my bag inside on the seat. And he told me, "OK Cabayan. Just sit, calm down and relax. Because after a while the police will [come] around and otherwise our bus will have delay.' That time I'm thinking also for my accommodation. Because for accommodation they will close [the entrance] at eleven o'clock; after eleven o'clock I cannot get inside. So nothing to do! ... If I don't think that I will be sleeping outside, otherwise that guy will be in jail! I will call the police. ... I can do it! I'm not afraid!²¹

Coco admits to this type of harassment as well but feels that this sort of thing is the same everywhere in the world: she once went on a trip to Europe with some of the students of the school she works at and it was "the same there, too."²² I am unconvinced. Personally, I have

²¹ Ella (Food Service), interview with the author, 3/20/2013.

²² Coco (Assistant Teacher), interview with the author, 9/30/2013.

travelled extensively and have never before been stopped by a strange man in public and asked for sex. In three years in the UAE it has happened to me on at least five occasions – once outside the Embassy of the Philippines, still on Embassy property!²³ And my obvious whiteness should protect me in the UAE's race and nationality-conscious hierarchy. Like Mia and Coco, many women become accustomed to this behavior, make conscious or unconscious changes to their behavior or clothing, and learn to laugh it off. But the first time a complete stranger, in broad daylight, in a public place asks you "how much," it is a jarring and insulting experience. And when a complete stranger in a vehicle starts stalking you on your walk home, perhaps even opening the door to the car and demanding that you get in with him, it is frightening no matter how many times you have had to deal with it. Mia again:

When I first came here I don't even think about that, but my first month here, it was, how can I say, nightmare. It was just a lot of guys just come near you and ask your number and harass you. And then, [one time] I cried in the center island in the road because I was so afraid because one guy with his Toyota Land Cruiser stopped on my side and opened his door and said, 'Come with me!' I was shouting and I run in the center island so he cannot approach me. Already I was crying.²⁴

One of the most difficult things about sex crimes in the UAE is that women find it difficult to turn to the police for help. There is often an assumption that non-Arab women, particularly Asian women, in Abu Dhabi are promiscuous or of loose moral values. In "he said, she said" situations, the woman will find herself at a disadvantage. Even should the police take a woman's complaint seriously, a conviction for sexual assault, including in cases of rape, is difficult to achieve in the UAE. Sharia law in the UAE devalues the testimony of women. In order to get a conviction, either the attacker must confess or the attack must have been witnessed by four adult

²³ Twice while waiting outside Abu Dhabi hotels for friends, once on the street in Dubai's ritzy Palm Jumeirah neighborhood, and once on the side of the highway while I was trying to change a flat tire.

²⁴ Mia (Professional), interview with the author, 9/17/2013.

males. Sometimes medical evidence can be introduced if the woman reports the crime immediately and submits to an exam by a doctor at a government hospital. Such evidence, though, is not usually conclusive. And without a sexual assault conviction, the woman reporting the crime is likely to become the subject of a criminal investigation for sex outside of wedlock (a crime in the UAE); her testimony becomes evidence against her. Several high-profile cases where female victims of rape have been arrested and jailed reinforce the message that women should not report this type of crime to the UAE authorities.²⁵ Needless to say, this serves as a significant deterrent to women wishing to report sexual crimes to the UAE authorities: in a 2009 survey, more than half of women said they would not report rape to the police.²⁶

Women are aware of this official ambivalence and it affects their actions. On her way home from a New Year's Eve party, Cassandra was subject to a check of her immigration documents by a CID officer who assumed she was a prostitute.²⁷ When Lissa ran away from an abusive labor situation, she intentionally avoided going to stay with a male cousin for fear the police would assume she had absconded due to an illicit romance (a common story-line), rather than due to a labor dispute, and so dismiss her case.²⁸

But Maxine has a particularly jarring story. She was with friends waiting to be served at a restaurant one evening when a man she identified as a "local Indian" (a man wearing the traditional gulf Arab dress, a kandura, but who appeared ethnically Indian) attempted to queue jump. Maxine was not entirely polite when she pointed out to the man that "the queue is there," pointing to the end of the line. The man challenged her, asking what her name was. Maxine refused to tell the man her name. When she was seated, eating her meal, the man was still

²⁵ C.f. "Alicia Gali, Woman Who Spent 8 Months in UAE Jail after Being Raped, Tells Her Story," *Huffington Post* (2013), accessed July 16, 2014, http://www.huffingtonpost.com/2013/05/12/alicia-gali-raped-uae-jailed_n_3263593.html. Nicola Goulding and Phil O'Sullivan, "Norwegian Woman: I Was Raped in Dubai, Now I Face Prison Sentence," *CNN*, 21 July 2013, accessed July 16, 2014, <http://edition.cnn.com/2013/07/20/world/meast/uae-norway-rape-controversy/>. Nadya Khalife, "Dubai's Shameful Record on Rape," *The Guardian*, January 29, 2010, accessed July 16, 2014, <http://www.theguardian.com/commentisfree/2010/jan/29/dubai-rape-women-middle-east>.

²⁶ Awad Mustafa, "Survey Says Women Unlikely to Report Rape," *The National*, 6 January 2010.

²⁷ Cassandra (HSW), interview with the author, 3/30/2013.

²⁸ Lissa (HSW), interview with the author, 10/7/2013.

staring at her. When she left the restaurant, she found the police waiting to detain her. The man came out of the restaurant and told her that he had lodged a complaint against her. She tried to ask the police why they were detaining her, but the officers did not speak sufficient English or Tagalog to communicate with her.²⁹ When she was taken to the police station, Maxine told her story to several different police officers, still confused as to why she had been detained only for telling a man not to cut in line. When she was released at three o'clock the next morning, she still did not know why. Tired and upset, she went home. She did not go to work the next day and so it was not until the following day that she found out that the police had visited her employer to enquire about her. Her employer was the one who finally explained the situation to her: the man at the restaurant had reported her to the police as a prostitute. Apparently, the man claimed that he had been a customer of hers and had refused to pay so that when she saw him again at the restaurant she had gotten upset and insulted him. She had been detained and questioned on suspicion of prostitution. Her employer vouched for her good character and the matter was allowed to drop. Her employer did warn her in future to be more careful:

He said how [people] can make stories. And then they can just put you to jail. And my employer says 'be very careful; these ladies have different look.' And from then on I'm told not to go out late and if there's anybody who is like that, my employer said just don't mind them. Just go. Just go away. And that's how it is. Sometimes I hate to be here.³⁰

There are several thought-provoking aspects to this story. First, it is interesting to note that the man in the restaurant felt no qualms about admitting to the police about using, and not paying for, the services of a prostitute. Second, the police did not, in fact, detain him but rather focused on the woman. Third is the level of acceptance shown by her (Western male) employer in dealing with the situation and in the advice he gave Maxine. Given this appalling show by males

²⁹ Most senior police officers in Abu Dhabi do speak English, though many patrol officers do not. In addition, the accent and word choices of non-native speakers, including both Filipinos and Arabs, can be difficult to understand, making communication difficult.

³⁰ Maxine (Receptionist), interview with the author, 9/3/2013.

in positions of authority, it is of little surprise that Maxine was ready to let the matter drop and now feels a “phobia” towards the police and towards non-locals wearing local dress, a habit she feels signifies arrogance or self-importance: “The pure locals are not like that. There are also other nationalities who wear kandura just to make them my superiors. And from then on, I don’t like to, if they are in the restaurant or like this, I don’t like even to look at them.”³¹

In fact, of the twenty three individuals that discussed their stories of sexual crimes with me, only two were reported to the police: the masturbation incident discussed above which was witnessed by a group of people, and the single case of attempted rape. I meet Scarlet at the facility that the Embassy of the Philippines maintains to support workers in distress. Scarlet was a victim of contract bait and switch as discussed in Chapter Five. When she arrived in the UAE she expected to work as a clerk but instead was forced to work as a housemaid in the house of her employer. She was promised a minimal salary, worked long hours, was constantly being shouted at, and confined to her employer’s house. She was given a bed space in the family’s laundry room; as the family occasionally had reason to enter the laundry room, she was not given a key to the room and so could not lock her door. When, after five months her employer stopped paying her wages, Scarlet was getting desperate. The last straw was a rape attempt. Scarlet prefers not to talk about the assault. But she clearly recounts the aftermath. Scarlet absconded; she ran to the Embassy of the Philippines where Embassy officials helped her to file a complaint with the police; the process took several weeks because the Embassy first sought to reach a mediated solution with the Public Relations Officer of the company involved. Unfortunately, her employer had already filed a complaint with the police alleging that she not only had absconded, but that she had stolen personal items from the household where she had worked.³² In the end three issues were raised with the UAE authorities: an immigration issue regarding her visa status (her

³¹ Ibid.

³² Many Filipinos believe that if they report abusive labor conditions to the police their employer will retaliate by falsely alleging that the worker stole from the employer and that the police will believe the employer and dismiss their story; this cannot be proven or disproven without access to detailed crime statistics (which are not made public by the UAE authorities), but it is a common fear. C.f. Ames, *Hidden Faces of the Gulf Miracle*: p. 20. “I Already Bought You” *Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates* (USA: Human Rights Watch, 2014), accessed May 8, 2015, http://www.hrw.org/sites/default/files/reports/uae1014_forUpload.pdf.

visas was for employment as a clerk but she had been put to work as a domestic worker, an entirely different visa category under UAE law); a labor issue regarding the withheld wages; and criminal cases regarding the conflicting allegations of rape lodged by Scarlet against her employer versus the theft accusation lodged by her employer. The employer admitted to the police that he had forced Scarlet to work as a housemaid and had withheld her wages, though he denied the rape; Scarlet denied the theft. Nonetheless, Scarlet was arrested and her employer was not. She spent five days in detention before her court date. She was frightened and horrified to find herself being viewed by others around her, from the guards to the other (especially the Filipino) inmates, as a criminal: "It's so hard there. I am thinking 'I didn't do anything, then why I am here?'" The final indignity was being marched from her cell in shackles:

Then some of the police, I don't know, because they want me to walk fast and how could I walk fast when they put like that? But I try my best. And then there's scars there on my feet because it's so hard with the bracelet, it's so hard to step. Then they go, 'Quickly quickly, yala yala.' But I'm just praying that I will be released that time when we go to court.³³

When she finally had her day in court, Scarlett got a firsthand look at the courts' official priorities:

When I left [my employer's house] he attempted me to rape, that's why it's a big deal. When I [was] put in the court ... the prosecutor said that there's a bigger problem, because 'you put this girl into the house that absolutely not to be in the house.'³⁴

Of all the issues in play, the immigration violation was considered the most significant by the court. In the end, her employer was required to cancel her visa, allowing her to repatriate without penalty. The labor case was left unresolved and Scarlet will have to go to the Ministry of Labour to pursue the lost wages or settle out of court. Both Scarlet and her employer were persuaded to

³³ Scarlet (Clerk/HSW), interview with the author, 10/7/2013.

³⁴ Ibid.

drop the criminal cases against the other. While it is terrible to see a case of sexual assault go unaddressed by the courts, this was probably in Scarlet's best interest as she could produce no evidence of the assault that would have been accepted by the court and would have risked further jail time; she had only her own testimony.

Regional Instability and War

Finally, we should note that the possibility of regional conflict also worries some migrants. Most respondents feel that there is little chance of war or violent conflict within the UAE itself. Adrian, for example, attributes this to the fact that "American and United Nations here; they are protecting Abu Dhabi."³⁵ But there is also a general awareness that the Arab Spring might have consequences for the UAE and that the Muslim Brotherhood has some presence – though to what extent is unclear – in the country. Angelo, a member of his local professional association, when discussing the new requirement in the Emirate of Dubai for groups such as his to register with the UAE government, he attributed the rule change to growing political tensions and the possibility that "there's some problem with the [Muslim] Brotherhood."³⁶ Angelo did not fear falling foul of these rules, though, "because our group is not related to politics; it's a community group so we don't worry. And we really have got the embassy [to] help us."³⁷

However, some are not so sure and so take basic precautions, just in case conflict in the Middle East heats up or looks to spill over to the UAE: they do not leave their money in Emirati banks. Maria Joy and her husband withdraw their entire salaries as soon as they are paid. They use the bulk of the money to pay for their life in the UAE and most of the rest is remitted. However, any extra money that they have they keep in cash in their wallets. Maria Joy and her husband do not trust the banks in Abu Dhabi "because if some things happen here it will be difficult for us to withdraw our money."³⁸

³⁵ Adrian (Engineer), interview with the author, 9/10/2013.

³⁶ Ibid

³⁷ Ibid.

³⁸ Maria Joy (Manager), interview with the author, 3/16/2013.

And some people are a bit concerned that conflicts heating up in neighboring countries could spill over to the UAE. There was some concern about what would happen in the West decides to become involved militarily in Iran or Syria.³⁹ If the region were to be seriously threatened by violence, some Filipinos plan to leave. One concern that they do have concerns their access to passports withheld by employers:

Dominic: The political stability in the neighboring countries.

Interviewer: Does that concern you?

Dominic: Yeah. Especially what happened the last time because US is starting for Syria. ... And then there's also some problem with the Iran. ... That's the only thing that concerns me. Yeah.

Interviewer: What would you do if there was a hot war in the region?

Dominic: I have to get my passport first!⁴⁰

Interviewer: Does it worry you not to have your passport?

Cherry: Yeah, I worry what happens. What if there is a war? ... I need to go back home. I have ticket. But where's my passport? So I know what to do. I have the number of the acting manager. Given my passport, I will go back home immediately if there is a war or any problem here.⁴¹

But the possibility of violent conflict coming to the UAE seemed remote. Most interviewees were not concerned. These interviews were conducted in 2013; since then the region has further destabilized. In 2014 Islamic State of Iraq and the Levant (ISIL) and Jabhat al-Nusra were recognized as significant threats and the United States-led coalition (of which the UAE was an active member) began airstrikes against these groups in Iraq (August 2014) and Syria (September 2014). In 2014 the UAE and Egypt also began airstrikes against Islamist militia

³⁹ Interviews were conducted in 2013, when neither the US nor the UAE were involved militarily in these countries.

⁴⁰ Dominic (Accountant), interview with the author, 10/7/2013.

⁴¹ Cherry (Office Professional), interview with the author, 9/12/2013.

forces in Libya. In December 2014 the UAE suffered its first domestic terrorist attack in the recent era: an Emirati woman, Alaa Bader Abdullah, motivated by Al Qaeda ideology murdered an American teacher at a mall then planted a bomb outside the residence of an American doctor in Abu Dhabi.⁴² It is possible that assessments of security due to regional instability are changing.

Human Rights Implications

A most basic human right, physical safety, is at issue here. The UAE authorities do a good job of protecting the populace against most violent crime as well as scams and petty thefts. But physical safety is not restricted to protection against murder, assault, and robbery. Two significant human rights concerns remain. First, women regularly face sexual harassment in public and routinely fear sexual assault. Harassment of women goes unaddressed by the police and, when a woman does report a crime her testimony is systematically devalued. The result is that sexual harassment remains pervasive and sexual assault a very real fear for women in the UAE today.

Second, there are important human rights issues regarding the way crime is handled by the UAE government. The underreporting of crime is a problem. The UAE legal system does not encourage migrants to approach the police or seek legal support even if they are victims of crime. It is not fear of the police that drives underreporting; most interviewees do not report feeling afraid of the police nor do they feel that the authorities are corrupt. In fact, most interviewees report that they have respect for the police and feel that the police would help them should they report a problem. The general sentiment is that it is better to go unnoticed by the UAE authorities if possible. There are several potential elements contributing to this sentiment. Probably the strongest motivating factor is fear of drawing negative legal repercussions, especially jail time and/or deportation. Many scams, such as the recruiting scam discussed above, target vulnerable populations, relying on the victim's fear to prevent them from approaching the police. This fear

⁴² "Reem Island Murder Suspect to Appear in Federal Court," *The National*, 1 March 2015.

also discourages women from reporting sexual crimes. This prevents migrants from fulfilling their human right to effective remedy of violations by a competent legal tribunal.⁴³

Working Conditions

Most workers in the UAE have reasonably good working conditions. There are several areas of particular concern in the UAE, however: working conditions of domestic workers residing in the employer's home; physical safety on construction sites; and the health and safety of outdoor workers during the UAE summer.

Concerns about working conditions are strongest for domestic workers. Without legal guarantees regarding working hours and rest and leisure, domestic workers often work very long hours with no day off. Their isolation in the house of the employer makes them both more likely to be taken advantage of and less able to seek help from the UAE authorities. All of the housemaids I spoke with had had problems with long hours and poor working conditions. Rika reported that she started her workday when she got up at 5 AM and was expected to work until all the work was done, perhaps as late as 1 or 2 AM.⁴⁴ Nellie also worked long hours, she was fed only eggs and noodles, and her employer would not only yell but she also had to put up with the children throwing things at her.⁴⁵ Scarlet was also expected to get up at 5:30 AM to get the family's children ready for school and then work all day, was not given a day off, and was subject to verbal abuse.⁴⁶ Scarlet felt that her working conditions were largely due to her residence in her employer's house:

Because very different between when you work inside the house and then outside. Because outside – even if you work ten hours, you can you can still sleep. After that [time], you can sleep, you can [do] everything that you want. But inside the house there's a difference. Because even if they say that you have just

⁴³ Universal Declaration of Human Rights, Article 8.

⁴⁴ Rika (HSW), interview with the author, 10/7/2013.

⁴⁵ Nellie (HSW), interview with the author, 10/7/2013.

⁴⁶ Scarlet (Clerk/HSW), interview with the author, 10/7/2013.

to work ten hours, you have to work. Because you're there, you're in the house, you have to work. Even the ten hours turns [into] twenty four hours.⁴⁷

Poor working conditions are inextricably linked to the isolation domestic workers experienced in the house. The first family Ava worked for worked her “like a robot” and did not provide her with adequate food; the family she works with now treats her much better, but she also does not live with them (she rents a bed space).⁴⁸ Similarly, Nicole spent one “miserable” year working for a family that expected her to work from 6:30 AM until past 7:00 in the evening and fed her primarily rice and tuna; she quit and now rents an apartment with her sister and works illegally as a freelance housemaid, where she sets her own hours and is free to leave if an employer does not treat her with respect.⁴⁹ Two women I spoke with who worked as drivers for local families, also considered domestic workers, experienced significantly better conditions. Drivers are considered to have a more valuable skill than housemaids (qualified female drivers are more difficult to find), they are paid better than housemaids, and, crucially, the nature of their profession means that they cannot be confined to the house. It is therefore unsurprising that they did not experience problems to the same degree.

Worksite safety on construction sites in the UAE does not receive enough attention. Most attention is focused on recruiting, passport withholding, pay withholding, and labor camp problems. But there is less information about the actual physical working conditions. It is difficult to say how prevalent the issue is, as each Emirate keeps its own statistics, these statistics may not be complete, and are not made public.⁵⁰ However, we can assume that the problem is considerable. Local news media reports that construction accidents are the UAE’s “second most common cause of emergency cases after road trauma.”⁵¹ And we can safely say that this is not

⁴⁷ Ibid.

⁴⁸ Ava (HSW), interview with the author, 3/30/2013.

⁴⁹ Nicole (HSW), interview with the author, 9/18/2013.

⁵⁰ Newspaper reports make clear that statistics about work-related accidents are being collected at some level. The news media is used to distribute some basic statistics, but no comprehensive data set has been released and no mention of the methodology used.

⁵¹ Bell Jennifer Bell, "Pledge to Cut Worksite Deaths and Injuries in the UAE," *The National*, 30 April 2014.

the full extent of the problem: the ILO reports that “in practice, work-related injuries are greatly under reported, while the occupational diseases are never reported.”⁵² Construction workers in the UAE suffer serious injuries and fatalities due to falling from height or being hit by falling objects. Car and bus accidents are another significant cause of work-related accidents: labor camps are located up to two hours’ drive from the construction sites they serve and workers are bussed back and forth, usually in old vehicles that lack air conditioning. There have been several high-profile accidents that have been blamed on driver error, most recently a crash in May 2014 due to driver error (speeding) that killed thirteen people and seriously harmed another fourteen.⁵³

Also crucial in the UAE is the midday break. Average summer temperatures in the UAE are over 100 degrees; high temperatures can reach 122 degrees or higher. The UAE government has instituted a mid-day break rule: during the height of summer, from 15 June to 15 September, all outdoor work must stop from 12:30PM to 3PM. If at any time the temperature is above 50 degrees Celsius (122 degrees Fahrenheit), all outdoor work must cease. Companies may seek a waiver if continuous work is necessary for technical or safety reasons, but then must provide workers with adequate safety measures.

Worksite safety and midday heat received few comments in my interviews. One major factor behind this is that relatively few Filipinos work as construction laborers or in positions which require them to work outdoors. Among my interviewees, the only workers who worked outdoors were engineers in the construction industry who oversaw work onsite. These six men all reported reasonable safety measures and that their companies respected the legally mandated midday break during the summer.

Instead, the most common complaint is long hours, often without overtime pay. By UAE law, workers can work eight hours a day or forty eight hours a week (officially the UAE has a six-day work week; Friday is the day of rest), plus at most two hours of overtime per day. Overtime is

⁵² International Labour Organization, “Labour Inspection Country Profile: United Arab Emirates,” accessed April 1, 2015, http://www.ilo.org/labadmin/info/WCMS_150919/lang--en/index.htm.

⁵³ C.f. Ramola Talwar Badam, “Dubai Death Crash Has Labourers on Edge About Bus Journey to Work,” *The National*, 15 May 2014. Salam Al Amir, “Drivers Involved in Fatal Dubai Bus Crash Deny Culpability,” *The National*, 7 August 2014.

paid at 125 percent of the worker's normal rate. However, many workers reported working ten or more hours a day without overtime pay. Angelo considers this "normal" for the UAE:

Angelo: The only difference is in [my employment] contract it is eight hours per day. But the norms here in UAE is ten hours a day. ... In the beginning I thought, 'oh, there's something wrong.' Because in Saudi Arabia I work eight hours; after eight hours it's an overtime. But here, no. There's no overtime pay, especially for the [salaried] staff.

Interviewer: So do you work on average ten hours a day, then?

Angelo: Yes, from the start.⁵⁴

Human Rights Implications

Unsafe conditions at work threaten the physical and mental health of workers, impinging on the basic human rights to life and security. In addition, poor working conditions undermine the right to "just and favorable conditions of work."⁵⁵ Where long hours and the failure to provide a day of rest are at issue, the rights to rest, limited working hours, and holidays with pay are also infringed upon.

Access to Legal Redress

Access to legal redress is about the ability of an individual to find a means of resolving intractable legal disputes through the state's apparatus of justice. For this to happen three basic elements must be in place: 1) the individual needs to be able to make, and the state needs to be able to receive, complaints or petitions for redress; 2) the state needs to consider these cases in full and without discrimination, the individual needs to be able to act as a legal person before the law (police, courts, etc.) and to be allowed to defend herself should the need arise; and 3) wronged parties must receive equitable and effective relief from, or compensation for, harm and damages. In effect, individuals, whether citizen or migrant, need full and fair access the legal system.

⁵⁴ Angelo (Engineer), interview with the author, 10/21/2013.

⁵⁵ Universal Declaration of Human Rights, Article 23 (1).

Filing a Complaint

Regular criminal issues such as scams, thefts, and sexual harassment should be reported to the police. Each Emirate maintains its own independent police force. While higher-ranking police officers are usually UAE nationals, police officers below the rank of lieutenant tend to be Arabic-speaking foreign nationals. Many of these lower ranking officers do not speak English and “are often reluctant to make independent decisions.”⁵⁶ Difficulties in communication between the police on the street and non-Arab migrants are common and the resolution of even minor problems may take substantial amounts of time and the involvement of several layers of police bureaucracy.

When discussing the police, most interviewees expressed respect for the institution. Twenty six interviewees felt that they would approach the police in case of need and another seven felt that they could do so as a last resort; only five felt that they should avoid the police at all costs. None feared physical mistreatment at the hands of the police. Coming from the Philippines where corruption among the police is rampant, there was a general sense of relief that the UAE police are professional and relatively corruption-free.⁵⁷

There are a limited set of situations in which a worker might conceivably approach immigration officials at the General Directorates of Residence and Foreigners’ Affairs (GDRFA; emirate-specific divisions of the Ministry of the Interior). It is possible that a worker might approach the GDRFA if an employer, for example, were to fail to provide the necessary residence visa. However, this is unlikely. Instead, immigration issues are generally taken to either the police or the Ministry of Labour (as residence is tied to employment, this is not as far-fetched as it might at first appear). Interviewees talked about the possibility of approaching the police or the Ministry of Labour, but did not envision circumstances in which they would go to the GDRFA to resolve a

⁵⁶ "United Arab Emirates 2014 Crime and Safety Report: Abu Dhabi".

⁵⁷ The UAE is considered one of the least corrupt countries in the Middle East and is ranked 25th out of 174 countries globally by in Transparency International's 2014 Corruption Perceptions Index. Transparency International, "2014 Corruption Perceptions Index," accessed April 20, 2015. <http://www.transparency.org/cpi2014>.

dispute.⁵⁸ However, if a dispute is significant enough to involve either the police and/or the courts, it is likely to have implications for the worker's immigration status.

The Ministry of Labour is also generally respected as an institution, but considered a drastic option for dispute resolution. Most interviewees would prefer to avoid bringing the Ministry in on labor disputes if possible. All told, many interviewees who had reason to bring complaints to the police, Ministry of Labour, or immigration officials did not do so. The most common complaint that workers had was the fact that employers required workers to work long hours without paying overtime, illegal under UAE Labour Law. Yet most workers shrugged this off as just part of the working culture of the UAE and not something to approach the authorities about.

Similarly, twenty two interviewees reported that they had been subject to passport withholding; only eleven reported that they retained their passports.⁵⁹ All but one of these interviewees were aware that passport holding is illegal in the UAE. While all but one of those whose passports were withheld would have preferred to keep their own passports, none were willing to go to the police or the Ministry of Labour. They tended to feel that it was simply the norm for UAE employees and that it would not be worth reporting infractions to the authorities.

If workers tend to view the police and Ministry of Labour as relatively fair, unbiased, and competent, what constrains workers from approaching the UAE authorities with viable complaints? Interviewees expressed three fears that help to explain this conundrum.

1. Employer Retaliation

The primary reservation that interviewees expressed about approaching the UAE authorities does not actually have to do with the efficacy of those institutions. Instead, workers fear that going to the police or the Department of Labour will anger their employer, leading to retaliation. The greatest fear is that the Ministry of Labour will ask the employer to remedy whatever is the immediate problem (withheld wages, unpaid overtime, etc.) but will stop short of

⁵⁸ The only instances in which interviewees approached the GDRFA was to obtain visas for dependents – spouses or children.

⁵⁹ A further 14 interviewees were not asked about passport withholding; no interviewees who were asked this question declined to answer.

releasing the employee from their employment contract and waiving any applicable labor ban. Many fear that the employer will meet the letter of such a mediated solution, but will then find an excuse to fire the worker as retaliation for their having initiated a complaint with the Ministry of Labour. Maria Joy's husband, also working in the UAE, took a job in finance and received his first two monthly salary payments, but on the third month the company told him that he would not be paid unless he met a quota; he was never subsequently paid. The next month the company decided that he would be paid entirely on a commission basis for the remainder of his contract. None of this is stipulated in the contract but Maria Joy and her husband do not dare report the violation: "If we go to the police, then the company will pay for him and then they will cancel his visa [immediately fire him]. I think that's the normal procedure here." Her husband is looking for a new job and only when he has secured a different job will the couple consider going to the police. Maria Joy is afraid that either of them is fired now that person will be banned⁶⁰ or, if not, have trouble finding other jobs within the exit grace period, forcing them both to leave the country and begin the difficult and expensive process of international migration over again. Given that it took them two months to find a job when they first arrived, she is skeptical whether a two week grace period would be sufficient.⁶¹

Even if an individual is willing to take the risk themselves, they may be afraid that an employer may take revenge on a family member. Gabriel's employer expects him to work more than the eight hours a day or forty eight hours per week stipulated in his contract and without paying legally required overtime. Gabriel, far better informed on the subject than many workers, understands that this is a violation of his contract and of UAE Labour Law. He knows that if he reports these violations to the Ministry of Labour, they would likely support him in his rights:

⁶⁰ In most cases such a firing would not result in a ban: only workers who are fired for gross misconduct as specified in the Labour Law may face a ban; workers who are made "redundant" – the common catchall category used to fire workers – are free to find new employment.

⁶¹ The grace period is currently 30 days, not two weeks; Maria Joy was laboring under several such misunderstandings about the details of UAE Labour Law and immigration policy. Maria Joy (Manager), interview with the author, 3/16/2013.

I went to the Ministry of Labor [for advice] ... and they were really accommodating. Like, for example, if you have a problem with your company, you explain that to the Ministry of Labor and then at that very moment, they will call the company. They will check. If the company's doing this but it's against the labor policies, so they will call, right away, the HR. 'This particular employee is complaining that you are doing this to him or to her. Can you explain? Is this true or not? And why are you doing this?'⁶²

Nonetheless, Gabriel is reluctant to involve Ministry of Labour officials in his current predicament:

I am weighing the consequences of my actions since my wife is working in the same company and then I'm trying to bring my child over here. So I think I just, hmm, keep silent for the meantime. Because it is undeniable that the employer will threaten you to be terminated if you go to the Labor or something like that. If you go against the company or if the company feels you as a threat to them, then they will make some stories just to justify their accusation and then eventually terminate you. So I don't want to make that problem.⁶³

2. Fear of Deportation

Second, the fear of deportation (esp. those in vulnerable situations and women) prevents people from making complaints. As employers can fire complaining workers with impunity, and because employment and residence are tied together, workers are concerned that they might be not only fired by a vindictive employer, but kicked out of the country as a result. Even Cassandra, whose story will be discussed below as an example of a migrant successfully securing the help and support of the Ministry of Labour in the resolution of a dispute, had considered the possible implications her actions might have on her residence. It is significant that Cassandra worked under objectionable conditions that violated her rights for *two years* before approaching the

⁶² Gabriel (Nurse), interview with the author, 10/15/2013.

⁶³ Ibid.

Ministry of Labour. Under UAE Labour Law, after two years of employment she would no longer be subject to a labor ban if she ended up having to quit as a result of her complaint. In effect, after two years of employment, the cost benefit analysis of reporting to the Ministry changed, emboldening her to make her complaints public.

3. Fear of Discrimination

Finally, while Filipino workers were confident in the police's impartiality in disputes between non-nationals, they were much more hesitant if the case involved UAE citizens. There is a general feeling that the enforcement of laws is flexible. Interviewee Moses puts it this way: "Actually in in UAE, everything here is legal until you get caught. It's all legal until the police get involved."⁶⁴ This attitude affects the willingness of migrants to approach the police.

Discussing likely scenarios in which he might need to call the police, Angleo advised his wife that she should call the police if any "Pakistani" man should harass her on the street, but is concerned that he might not get a fair hearing if he happens to get into a traffic accident with an Emirati driver.⁶⁵ Similarly, in a dispute with a foreign employer Mia sought help from the Ministry of Labour, but expressed hesitation in doing so if her complaint were against an Emirati:

Interviewer: You wouldn't be afraid to go to the police?

Mia: No, no, no. Because he is Palestinian, so we are both foreign in this country. He's not a local, so it's okay with me. Fight until the end.

Interviewer: But would it be different if it was a local?

Mia: I think so. Because they can do anything, everything, I think.⁶⁶

Thus interviewees expressed respect for the UAE authorities at the same time they expressed great hesitation in approaching them in case of need. The prevailing sentiment is that the police and Ministry of Labour are best reserved as an option of last resort, to be turned to only if conditions become unbearable and, if at all possible, only after working for an employer long

⁶⁴ Moses (Financial Adviser), interview with the author, 3/18/2013.

⁶⁵ Angelo (Engineer), interview with the author, 10/21/2013.

⁶⁶ Mia (Professional), interview with the author, 9/17/2013.

enough to avoid an employment ban.⁶⁷ Instead, interviewees sought to avoid “trouble” and to leave bad employers in a “nice” way.

Interviewer: Well, have you ever had to go to [the Ministry of] Labour for anything? Or to the police?

Victoria: No no no. Not in the least. So far.

Interviewer: Because you would have been owed overtime.

Victoria: Yes, I know.

Interviewer: You didn't go to Labour about that?

Victoria: I didn't want any dispute. I just want to leave the company in a nice way.⁶⁸

Mediation

But, if approached, interviewees report that the Ministry of Labour acts in a fair and unbiased manner. For example, Cassandra worked at a coffee shop. The job had a very low salary and her employer consistently demanded that she work long hours without overtime pay. After two years (of a three-year contract) she approached the Ministry of Labour to ask about “my rights;” she was informed that her employer owed her for past overtime and that Ministry officials would attempt to negotiate a settlement if she made a formal complaint. Her only criticism about the process was the complicated nature of the process for filing the complaint: “Of course if you looked at the [Ministry of] Labour you had a lot of things to do.” First she had to go to a legal typing shop to get the complaint formally typed up in Arabic. Then she had to go to the Ministry of Labour building to submit the paperwork, and wait there for her initial interview with a Labour official. During this initial interview the official will hear the petitioner’s complaint and decide if it may have merit; if they feel there is grounds for complaint, the official will the immediately call the employer to get their initial response and, if necessary, set up a mediation session. In Cassandra’s case, the Labour official told her boss over the phone that he would probably be

⁶⁷ There is a one-year statute of limitation for employment-related disputes, however.

⁶⁸ Victoria (Accountant), interview with the author, 9/28/2013.

required to pay past overtime and set a date for the mediation session. So Cassandra went home. Her employer called her that evening, very angry that she had gone to the Ministry of Labour. She told him that she had tried to talk to him many times but “you don’t mind me,” so she went to the Ministry of Labour for help. The employer did not wait for the mediation session, but asked what she wanted:

I said ‘at least the paper what I want. You give me my release paper or pay me what I want. What you get from me, you have to pay.’ I said this. He said ‘ok.’ He make everything and then he pay me back. He gave me my release paper and said, ‘ok cancelled. You can go find work.’⁶⁹

Cassandra was able to arrive at an acceptable compromise with her employer through mediation with the help of the Ministry of Labour. The legal system in the UAE offers two opportunities for mediation in most labor disputes.⁷⁰ The first is through the Ministry of Labour: when a complaint is received by the Ministry, an official will make an immediate attempt to determine the facts of the case and arrive at a mediated settlement. Should that fail and the case be brought to the court system, a second round of mediation through the courts’ Reconciliation and Settlement Committees follows.⁷¹ Successful mediation is the fastest and least expensive means for a worker to receive compensation that he finds acceptable.

However mediation as a means of ensuring fair compensation suffers from several weaknesses as well. First, mediation in the UAE is not actually very effective. In 2012 only 27 percent of new cases brought to Reconciliation and Settlement Committees were settled amicably; in 63 percent of cases a party (or parties) were unwilling to reconcile and further legal action was necessary.⁷²

⁶⁹ Cassandra (HSW), interview with the author, 3/30/2013.

⁷⁰ Labor cases accounted for 73 percent of new cases in Abu Dhabi in 2012. C.f. “Labour Courts in Abu Dhabi Ruled in Favour of Workers,” *Khaleej Times*, 31 March 2013.

⁷¹ Mediation looks a little different for household service workers as they are not subject to UAE labor law. As HSW fall under the jurisdiction of the Ministry of the Interior, initial attempts to mediate the situation may be made by the police and then by the Sharia courts’ Family Guidance Section.

⁷² The remaining cases were either unresolved or subject to another anomaly. “Labour Courts in Abu Dhabi Ruled in Favour of Workers.”

Second, workers who accept mediated settlements may settle for far less compensation than they would have been legally entitled to receive. The primary aim that most complainants are looking to guarantee is the right to change jobs without a labor ban; they are willing to sacrifice other objectives in order to secure this freedom of employment. Danielle's story was addressed in Chapter Six; to summarize: her employer only paid her sporadically, her passport was withheld, and she had never seen her employment visa; though her employer assured her all the paperwork was in order, when she checked a Ministry of Labour online database she discovered that, while she did have a work permit, her employer had not processed the paperwork to obtain the required residence visa for her and as a result she was residing illegally in the UAE. But the legal implications of Danielle's story deserve further examination here. Danielle tried to quit her job, asking her employer for a Non-Objection Certificate which would allow her to find a new job; her employer refused. So Danielle went to the Ministry of Labour and filed a complaint. While the Ministry of Labour was investigating her case, Danielle was fortunate to find an office position with a semi-governmental company. While this new semi-governmental employer was legally able to hire Danielle without the NOC, they preferred to attempt to find a negotiated settlement. The negotiations that followed were largely held between the Ministry of Labour representative and both employers' Public Relations Officers (PROs). Danielle was represented by her new employer's PRO and did not take part in the negotiations. After five months of negotiations Danielle was presented with a deal: the first employer would pay all fines related to her year-long illegal residence and would issue the NOC, in exchange, Danielle agreed to forfeit two months' withheld wages or about 7,000 AED (\$1906 USD). The new employer's PRO advised her to accept the deal: "And it was good that they [the new employer] backed me up when all the other ... court cases. But that time I didn't push to win a court case because they said they said they'll lose something about it."⁷³ Danielle was satisfied with the outcome. But by UAE Law she was entitled to everything she received as well as the lost wages: it is the

⁷³ Danielle (Office Worker), interview with the author, 9/15/2013.

employer's responsibility to secure both the work permit and the residence visa, they illegally withheld her passport, and if wages are withheld for two months or longer the Ministry of Labour will waive the labor ban. In addition, it is significant that Danielle was in a near ideal position to negotiate: she had already secured a position with a company capable of ignoring a labor ban, making the obtaining of the NOC a convenience but not a necessity. Nonetheless, she agreed to forgo what she agrees is quite a bit of money.⁷⁴

Third, should the employer prove intractable and mediation fail, the Ministry of Labour has a fairly limited range of administrative measures that it can take for remediation. Instead, when mediation fails a legal case must proceed through the court system, a lengthy process that places a heavy burden on the worker. And the results are uncertain. So, for those seeking to remain employed by their current employer, mediation by the Ministry of Labour or the courts is not viewed as a viable option unless one is intending to – or at least prepared to – either go through with a court case against their employer or leave the UAE.

Going to Court

The legal system in the UAE is complicated and constantly evolving. First, it is important to recognize that there are two sources of law in the UAE. Laws may either be made through the legislative process or by decree (issued jointly by the President and the Council of Ministers).⁷⁵ As a result, the legislative process is opaque. Interestingly, while there are federal-level legislative bodies and federal-level laws and regulations, there are three relatively separate judicial systems in the UAE: the federal court system adjudicates in the emirates of Abu Dhabi, Sharjah, Ajman, Fujairah, and Um Al Quwain while Dubai and Ras Al Khaimah have their own, independent court systems with jurisdiction over the application of federal laws in those Emirates; to make matters even more complicated, free zones are also independent jurisdictions and may have independent

⁷⁴ Ibid.

⁷⁵ Farrukh B. Hakeem, "United Arab Emirates (UAE)," in *Crime and Punishment Around the World*, ed. Mahesh K. Nalla, 377-384 (Santa Barbara, CA: ABC-Clio, 2010).

judiciaries as well or may rely on the judicial system of the Emirate in which they are located.⁷⁶ Within each Emirate there is a three-tiered court system consisting of courts of first instance, appeals courts, and the court of cassation. The courts of first instance are divided into three sections: criminal (misdemeanor or felony), personal status (both criminal and personal status laws are to be in accordance with Sharia religious rules, though Sharia is posed as a more central concern in personal status cases⁷⁷), and civil cases. In the Federal and Dubai systems, civil courts are further divided into separate courts to hear civil, commercial, administrative, immigration and naturalization,⁷⁸ and labor cases.⁷⁹

For an individual to file a civil case directly with the UAE Federal or Dubai courts, the issue must first be brought to a Reconciliation and Settlement Committee. If no amicable settlement is possible a case can then be registered with the clerk of court at the correct court of first instance. The claimant must submit a detailed claim, including the names and addresses of parties, typed in Arabic (licensed legal translation companies often prepare these documents for a fee), submit any supporting documentary evidence, and pay a court fee if applicable.⁸⁰ The defendant is then served with a summons and a copy of the claim and supporting documents; the defendant may then file a written response to the claim at the first trial period. The trial is thus conducted in stages, meeting and adjourning in order to allow parties to prepare written memoranda and documentary evidence until the court decides it is satisfied. Cases are decided

⁷⁶ Charles J. Glasser, "United Arab Emirates (UAE)," in *International Libel and Privacy Handbook*, 513-521 (Hoboken, NJ: John Wiley & Sons, 2013).

⁷⁷ Sharia law will not be discussed at length here. Federal legislation has jurisdiction over all but the Sharia cases. The UAE Constitution guarantees that Islamic Sharia law is the basis of all legislation, though the judiciary has been uneven in enforcing this, declining to strike down some laws that clearly violate Sharia. It is generally accepted that Sharia courts hear personal status cases and cases involving public morals. Sharia courts hear many cases that would normally be dealt with by civil courts in non-Sharia legal systems, raising the possibility of overlapping jurisdiction. C.f. Hakeem, "United Arab Emirates (UAE)."

⁷⁸ There is a separate courts to hear naturalization and immigration issues in Abu Dhabi and Dubai and real estate cases in Dubai. It is unclear whether these are considered separate courts or as part of the administrative court section. Nevertheless, these issues have dedicated courts.

⁷⁹ For an overview of the UAE legal system, see: Hakeem, "United Arab Emirates (UAE)."

⁸⁰ In labor cases employees are not assessed fees unless the case is not accepted or dismissed; for other types of cases the fee may be deferred in exceptional circumstances.

on the basis of these written documents; oral arguments are rarely allowed. This process may take months, or even years, to conduct.⁸¹

Labor disputes - such as non-payment of wages, end of service compensation, work-related injury, etc. – are governed by Federal Law No. (8) of 1980 (the “Labour Law”). Contract issues are generally considered a civil matter. However, some labor and contract issues also have criminal implications. Criminal cases may only be initiated by the state; they are filed, investigated and pursued by the public prosecutor’s office. Trials are conducted and decided by judges and there is no set standard for the burden of proof. Only those accused of a felony have a right to an attorney at trial, though the defendant may be represented by a lawyer at his own expense for lesser crimes should he choose. Proceedings are in Arabic, though interpreters are usually available. Penalties may include fines, jail time, deportation, and corporal punishment; the death penalty is possible for serious crimes.⁸²

While migrant workers have equal ability to bring cases under UAE law, this complicated, uncertain, expensive, and lengthy structure discourages most from attempting to initiate legal action. Most cannot afford lawyers. The Embassy of the Philippines in Abu Dhabi will provide basic legal assistance through the Assistance to Nationals (ATN) section including orientation to the process, advice, and transportation. This allows the individual to show up at court and gives them at least the basics needed to represent themselves. The Embassy will pay lawyers’ fees for nationals in significant need, such as victims of sex crimes or other serious crimes. The ATN section is perpetually short on personnel, cars, and funds for legal fees, however, and so full assistance cannot be provided to every Filipino in need.

Once involved in a proceeding, criminal or civil, migrant workers have equal standing in the courts alongside UAE nationals. However, there is a gendered difference. The testimony of

⁸¹ C.f. Bashir Ahmed and Chatura Randeniya, *Litigation and Enforcement in the United Arab Emirates: Overview*, Practical Law, 2014, accessed May 8, 2015, <http://global.practicallaw.com/4-501-9686>.

⁸² For more information, see: “Filing a Case before UAE Courts,” Abu Dhabi Government, accessed September 10, 2014, https://www.abudhabi.ae/portal/public/en/gen_info_detail?docName=ADEGP_DF_302720_EN&_afrlLoop=4323779413855632&_adf.ctrl-state=fbdq1p06_4.

women, both citizen and foreign, is devalued under Sharia law, and women have difficulty successfully presenting their side of a dispute. This is particularly relevant in cases that involve sex acts. Sex outside of wedlock is illegal in the UAE and a woman engaged in extramarital sex is likely to be convicted and jailed. However, in determining whether a sex act was consensual, coerced, or forced, the testimony of the woman will only carry one third the weight of that of the man, as discussed in Scarlet's case above. Women are not equal persons under UAE law.

The cost of pursuing a labor case through the court system is beyond many migrant workers. Besides the court fees associated with filing a civil claim, individuals involved in a court case, civil or criminal, must continue to support themselves living in the UAE while the case is ongoing. In addition, parties to an ongoing civil case are not exempted from the laws tying residence to employment or from labor bans. Thus, if an individual is attempting to pursue a case against his employer, he may find himself in a very difficult position. If he quits his job he may be subject to a labor ban and forced to leave the country after thirty days. If he is fired by the employer he must be given notice as specified in his contract, typically thirty days. Then he has a thirty day exit period; he may search for another job (and thus residency sponsor) but if unsuccessful must exit the country. In these circumstances, it is possible for the employer to act to delay the court proceedings, failing to appear at trial or requesting adjournments to file additional memoranda, in hopes that the worker might be forced to exit the country and thus the case would not be heard in full.

The chronological order in which cases are recorded with the UAE court authorities can be significant in determining the way in which the cases are considered by the courts. This is particularly an issue in cases where workers "abscond" (leave suddenly and without notice, run away; absconding is illegal under UAE law) from employers who are violating labor law or contract terms. When a worker absconds it is fairly clear to the employer that she is intending to report the abuse in order to seek help from the authorities. If the employer, however, is able to go to the authorities first to report the crime of absconding committed by the worker, the courts will

consider the absconding charge first or at least simultaneously with other charges.⁸³ If the worker is found guilty of absconding, she may well be deported before the labor or civil/contract case is decided. Alternatively, if the worker files the labor complaint or lawsuit first, then no absconding charge can be registered against her until those complaints are settled.⁸⁴ The result is a race between the worker and the employer to be the first to file a complaint with the relevant authorities. Should the migrant worker lose this race, her case may not be heard in full.

Let's return to the story of Scarlet, discussed above, the woman who had been given a contract as a clerk but arrived in Abu Dhabi only to be put to work as a housemaid at a lower salary. After seven months working as a housemaid, she ran away from her employer to the Embassy of the Philippines. As her visa had been issued for a company in Dubai, however, the Embassy in Abu Dhabi sent her back to the Consulate in Dubai. The Consulate then proceeded to try to help her negotiate a settlement with her employer. The Consulate tried to contact her boss but was unable to reach him. They then called the PRO for her company to set up a meeting with him, but had to wait for weeks because the PRO was out of office due to an injury. By the time consular officials finally took her to the General Directorate of Residency and Foreigners Affairs⁸⁵ (often referred to as "Immigration") to lodge a complaint, her boss had already filed a criminal case against her for theft (which Scarlet maintains is baseless).⁸⁶ Scarlet ended up with three simultaneous legal cases: an immigration issue regarding her visa status; a labor issue regarding her withheld wages; and a criminal case regarding the conflicting allegations of rape

⁸³ It seems that, as absconding is a violation of immigration rules, it will be considered separately from violations of the civil code (such as contract issues) or Labour Law (such as wage withholding). I can find no legal requirement for this, but it is generally considered to be the standard practice.

⁸⁴ Also note that the employer is supposed to wait until the worker has been absent from work for seven days before notifying the Ministry of Labour; however the Ministry does not check and so employers often ignore this requirement if it suits them. "Employees Absent over 7 Days to Be Listed as Absconders," *Khaleej Times*, 12 September 2006.

⁸⁵ The GDRFA are the emirate-specific offices that regulate nationality, passport, immigration and residency issues; although they have some degree of autonomy, they are under the purview of the Ministry of the Interior. Domestic workers in the UAE are not covered under the Labour Law; instead issues arising with their employment are dealt with by GDRFA and the Ministry of the Interior.

⁸⁶ Filing theft charges is reportedly a not uncommon mechanism employers use to pressure workers, especially domestic workers. C.f. Ames, *Hidden Faces of the Gulf Miracle*: p. 20. "I Already Bought You" Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates.

lodged by Scarlet against her employer versus the theft accusation lodged by her employer. In a sense, the court did find in Scarlet's favor, ruling that putting someone with a work visa to work as a domestic worker was a significant violation of immigration rules, but the result was disappointing. The employer was required to cancel her visa, releasing her from sponsorship and the theft charges were dropped; this means she will not be arrested and allows her to legally exit the country which, as she is now unemployed, she will be required to do. But the court did not compensate Scarlet or impose any significant penalty on the employer. Scarlet will have to continue her case with the Ministry of Labour if she wants to get paid the back wages due to her. She is hoping that the Ministry of Labour can mediate a solution because a further court case would require time and resources that she does not have. "If he will pay me, I will close the case. But even if he refuse, I can go home."⁸⁷

Domestic workers face additional hurdles when attempting to pursue court cases. First and foremost, they are not under the jurisdiction of UAE labor law and so have far fewer protections under the law. Contract violations and pay disputes, which would normally be violations of labor law, must instead be pursued through other means. Second, domestic workers are more likely than other workers to have extremely low wages, wages withheld (they are not covered by the Wages Protection System), minimal savings, passport withheld, and to be dependent on their employer for their housing. The cumulative weight of these burdens makes it particularly difficult for domestic workers to pursue lengthy and expensive court proceedings. Finally, and perhaps most worrying, there is a fear that the UAE legal system, from the police receiving initial complaints to the courts making final adjudications, are simply more hostile to claims made by domestic workers than to other types of workers in the UAE.⁸⁸ Domestic workers, more than any other type of worker, seek out help and support from the Embassy of the Philippines to navigate these difficult legal waters.

⁸⁷ Scarlet (Clerk/HSW), interview with the author, 10/7/2013.

⁸⁸ C.f. *"I Already Bought You" Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates*.

Finally, even after a court decision has been handed down, it cannot be considered final. Beyond the regular court appeals process, court rulings may be reviewed, revised, or even overturned by the country's political leadership. In the case of Sarah Balabagan for example (her trial for the killing of her employer is discussed in detail in Chapter Four), Sheik Zayed, the ruler of Abu Dhabi at the time, intervened at least three times: first to overturn her initial limited conviction and relatively light sentence and order a retrial, second to overturn the death penalty she received after conviction in her retrial, and finally to grant her early release from prison after she had received relatively light corporal punishment and served nine months in prison.

The Role of the Philippine State

The Philippine state has a role to play in ensuring its citizens abroad have access to legal redress. First, as migrants maintain substantive ties to their home country they may occasionally find themselves involved in legal proceedings under the jurisdiction of their home country legal system. In the case of Filipino migrants, such ties often involve the maintenance of immediate family members (spouse, children, and parents), banking or financial transactions, property, and businesses, among others. Some actions can be taken by migrants abroad through consular offices, from entries in the civil registry (registering births, deaths, marriages, etc.) to authentication of documents, to renewing Philippine driver's licenses. The state encourages migrants to establish powers of attorney to allow trusted family members or friends to act on their behalf in other matters; a generic "Special Power of Attorney" template is available from the Foreign Service of the Philippines and can be legalized by Embassies.

Alternately, migrants may find themselves involved in legal proceedings in the host country. In this case, the Embassy of the Philippines may still play an important role. The Philippine Embassies consider "assistance to nationals" to be a primary function. The Embassy of the Philippines in Abu Dhabi provides legal advice and assistance, including access to transportation, translation, and legal representation if necessary, to Filipinos in distress; funds may be available for bail bonds and court fees through a nationally administered legal defense fund. However, the Embassy's resources are extremely limited.

When one enters the Embassy of the Philippines in Abu Dhabi, you are immediately aware of the press of people and activity. There are long lines at each counter of people seeking to conduct all sorts of business. Despite a growing trend towards e-services in many countries, most business at the Embassy of the Philippines still needs to be conducted in person and may well require multiple visits to the Embassy. This can be quite frustrating, especially for Filipinos that live outside of Abu Dhabi or Dubai⁸⁹ and so need to take a day off of work and arrange transportation in order to come to the Embassy or consulate. And, at some point in their stay in the UAE, pretty much every Filipino will have at least one issue arise that will require them to go to the Embassy - from renewing passports to registering to vote to applying for Overseas Employment Certificates. The inefficiency and long lines are a particular nuisance that several interviewees commented on:

The only remembrance we can have of the bad life we had in the Philippines is when you go to the Embassy. And you see those forms, those messy queues. That's typical Philippines. Welcome to the Philippines, the Philippines in Abu Dhabi.⁹⁰

But the real concern is corruption. Corruption is endemic in Philippine politics. In 2014 Transparency International ranked the Philippines eighty fifth out of 175 countries in their Corruption Perceptions Index and remarked: "Since the country's independence in 1946, the Philippines' history has been marked by a legacy of deeply entrenched patronage and clientelist systems, state capture by the ruling elite, and widespread high-level corruption."⁹¹ High hopes for the current President Aquino, elected on an anti-corruption pledge, are fading as his regime is now enmeshed in a corruption scandal.⁹² Interviewees feel that that the Embassy is not immune

⁸⁹ There is a large consulate in Dubai that can serve most of the same functions as the Embassy in Abu Dhabi.

⁹⁰ Princess (Office Professional), interview with the author, 3/16/2013.

⁹¹ Maxime Agator, Marie Chêne and Maira Martini, *Corruption and Anti-Corruption in the Philippines*, Transparency International, 2013, accessed May 8, 2015, http://www.transparency.org/files/content/corruptionqas/Country_profile_Philippines_2013.pdf.

⁹² "Over a Barrel," *The Economist*, 28 June 2014, accessed March 1, 2015, <http://www.economist.com/news/asia/21605958-government-accused-bias-fighting-corruption-over-barrel>.

from this disease. A recent scandal involving the illegal sale of the “affidavit of support and guarantee” by Embassy personnel to UAE tourist agencies reinforced the impression within the Filipino community that the Embassy is rife with corruption.⁹³ Nicole, for example, is dismissive of the Embassy: they are “rubbish,” selfish and corrupt: “You can tell. They are very rich. All of them.” Yet she admits that if she did have trouble she would go to the Embassy first to ask what to do.

The Embassy remains the last best ally that a Filipino worker in significant distress can turn to in the UAE. The Embassy runs welfare programs through the Overseas Workers’ Welfare Administration office, including a facility for workers who have fled abusive labor situations. The Assistance to Nationals (ATN) section offers advice, transportation and translation services to workers in distress and has some funds that may be used to pay bail, lawyer’s and court fees. These services provide a – minimal – safety net for Filipino workers in the UAE.

When asked to identify good things about the Embassy, many interviewees pointed to the OWWA facility in particular. Interviews with five residents of this facility drive home its importance. These women, all domestic workers, reported suffering from physical (including sexual) and mental abuse, the withholding of wages, passport and cell phone confiscation, extremely long work hours, the denial of holidays or adequate rest periods, insufficient food, insufficient living quarters, and being locked into the employer’s residence. They fled abuse with little or no money or other resources and turned to the Embassy for help. For example Nellie, who was usually locked into her employer’s apartment, one day found herself alone outside one day after helping her employer’s son carry his book bag to the school bus. Instead of returning to the apartment as she was supposed to, Nellie ran. She had no money in her pockets, no passport, and only the clothes on her back: “So I decided to go here so that I will be safe. Wherever I go, wherever I am,

⁹³ This affidavit allows individuals in the UAE to sponsor tourist visas. There are allegations that Embassy officials certified blank affidavits which they then sold to tourist agencies, allowing the agencies to bring individuals to the UAE without going through the proper oversight. Ramona Ruiz, “UAE Rights Group Call for Probe into Document ‘Sale’ by Philippine Officials,” *The National*, 18 August 2013.

no one will hurt me because I am already at the Embassy. My Philippines Embassy! The one who cares us, yeah?"⁹⁴

But the Embassy's ability to intervene in the legal process of the UAE is minimal. Even the Embassy's facility for abused workers occupies a legal grey area: the UAE government tolerates it but the Embassy prefers to keep a low profile for fear of causing a political issue. And while Embassy personnel can offer advice, they cannot represent Filipinos in UAE courts.⁹⁵ The Embassy's ability to act as a representative of harmed individuals is also compromised by its role as the representative of the Philippine state and the Filipino people as a whole. However bad conditions may be for any specific worker, the Gulf region – and the UAE in particular – is an important labor market for Filipino workers. The Philippine state engages in what Guevarra calls "labor diplomacy":

whereby Filipino workers become the state's resources to be harnessed and commodities to be traded supports the ways the state attempts to manage labor migration... As a result, the state envisions this strategy as a bargaining point for negotiating mechanisms that ensure the protection of overseas Filipino workers through formal or informal bilateral agreements with labor-receiving countries.⁹⁶

This stance, while of debatable benefit to Filipinos in general,⁹⁷ may make the Philippine state and its Embassy personnel reluctant to rock the boat on behalf of any one person. All Embassy personnel I spoke with emphasized the fact that "significant" harm to workers is largely confined to domestic workers and, even then, is rare; they would hate to see the majority of workers who benefit from employment in the UAE barred from this market because of the abuse of a small minority.

⁹⁴ Nellie (HSW), interview with the author, 10/7/2013.

⁹⁵ Only Emirati nationals and certain other privileged, Arabic speaking individuals, can serve as trial lawyers.

⁹⁶ Guevarra, *Marketing Dreams, Manufacturing Heroes*.

⁹⁷ Recent work by rights organizations such as Human Rights Watch questions how rare such abuse really is, for domestic workers and construction workers, and recent academic work has called into question conditions faced by other types of workers. C.f.: "*I Already Bought You*" *Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates. Building Towers, Cheating Workers: Exploitation of Migrant Construction Workers in the United Arab Emirates*, Human Rights Watch, 2006, accessed May 8, 2015, <http://www.hrw.org/reports/2006/uae1106/uae1106web.pdf>. "The Island of Happiness Revisited." Pardis Mahdavi, *Gridlock: Labor, Migration, and Human Trafficking in Dubai* (Stanford, CA: Stanford University Press, 2011).

Perhaps because of this, the Embassy of the Philippines in Abu Dhabi also supports mediation as the best strategy for many of its nationals in distress.⁹⁸ The Embassy will attempt to serve as a mediator in some cases, serving as an alternative to approaching the Ministry of Labour; this is particularly important for domestic workers who, as they are under the jurisdiction of the Ministry of the Interior and not the Ministry of Labour, cannot avail themselves of Labour mediation. The Embassy prioritizes settlement out of court. Vice Consul Norman, in charge of the ATN section, stresses that court cases take a very long time to be resolved, often lasting for months, and that the result is uncertain.⁹⁹ If both sides cooperate, mediation is the easiest and fastest way to resolve cases. The employer can cancel the worker's visa, return her passport, and possibly give an NOC thus allowing her to leave or find new work, often the employer will pay for repatriation or the UAE state may deport the individual; the worker usually relinquishes claims to back pay in these cases.

But pursuing mediation through the Embassy is risky. If the employer does not want to cooperate, they can file a case against the worker for absconding. As described above, whichever side files their complaint first tends to have an advantage in the UAE court system as they set the terms of the first legal battle (whether the court will consider the absconding charge or the labor case first). So if the Embassy delays filing in order to pursue mediation, the employer gains the opportunity to take the lead. While workers who have reported to the police or the Ministry of Labour have stopped this particular clock, workers who avail themselves of Embassy mediation have not. Filing a complaint with the Embassy does not constitute filing a complaint with the UAE government and so if the employer should file an absconding charge while Embassy negotiations are ongoing, the worker has no recourse.

Finally, specifically in the case of its citizens working abroad, the Philippine state has attempted to devise mechanisms that allow them to extend their reach beyond the territorial

⁹⁸ The Embassy suggests that most labor and contract disputes be settled through mediation; allegations of trafficking, sex crimes, physical abuse, or other serious crimes are directly referred to the police and immediate legal action.

⁹⁹ Vice Consul Vice Consul Norman E. Padalhin, interview with the author, 10/22/2013.

borders of the Philippines and give the state leverage to ensure some form of redress or compensation is offered to Filipinos harmed while working abroad. The primary example is the Migrant Workers and Overseas Filipinos Act of 1995 which defines “illegal recruitment” and makes the Philippine recruitment agency jointly liable with the foreign employer for monetary claims, including damages and unjust termination, arising from employment abroad.¹⁰⁰ So should a worker return to the Philippines without having been able to secure legal redress in the UAE courts, they may still have the option to pursue the recruitment agency through the Philippine courts. Holding the recruitment agencies jointly liable is a good idea, but it has not worked out in practice. As in the UAE, successful prosecution of recruitment agencies in the Philippines is a long and drawn out process which places a significant burden on the migrant alleging having been harmed. Successful prosecution is extremely rare.

Human Rights Implications

Legal redress puts the judicial system to work in the service of human rights. It is a key mechanism through which human rights are protected from abuse, from the state itself or from third parties; it is how the state holds violators to account. If the legal system does not function to allow migrant workers to have their cases heard in full and without discrimination, and to offer relief and fair compensation, employers have little to check them from engaging in abusive practices. And, indeed, we find that abusive practices are common and that the legal system does not function to check these practices. The failures of the UAE legal system to adequately protect the legal rights of migrant workers infringes on the workers’ human rights to equal protection, nondiscrimination, and effective remedy.

Equal Protection and Nondiscrimination

There is a lot of ignorance about the law in the UAE. There are many misconceptions about what is legal or illegal and about how to register complaints. Laws and regulations in areas crucial to people’s lives, especially visa issues, change frequently and often without advance notice. It is often felt that some legal processes, such as obtaining the required labor permits for

¹⁰⁰ See Ch. 4 Fig. 2 for an overview. "Migrant Workers and Overseas Filipinos Act."

new workers, are easier for some companies than for others due to the *wasta*, or influence, of the company's owner.¹⁰¹ The right to equal protection fails on several levels in the UAE.

UAE national versus migrant: It is beyond the scope of this project to attempt to answer whether there is, in fact, a bias in favor of UAE citizens or employers in the UAE court system. What we can say with confidence, however, is that interviewees perceived that such a bias exists in the UAE government and courts. This perception makes interviewees hesitate to take legal action against an Emirati in any but the worst cases.

Employer/sponsor versus worker: One of the primary aims of this section has been to demonstrate the many ways in which employers operate from a position of legal privilege, especially given the fact that residence is tied to employment. Negotiating the complex, expensive, and drawn-out legal system is beyond the means of most workers, but not beyond their employers. The particular law that prevents workers from changing employers without the consent of their sponsor (their current legal employer) is of special relevance in this respect, giving employers particular leverage over labor.

Men versus women: Women's testimony in criminal cases is systematically devalued. Women are simply not equally represented or protected by the law.

Domestic workers: Work conducted in the domestic sphere occupies a shadowed niche in the UAE. The privacy of the home is respected above the rights of those paid to work in the domestic sphere. Domestic workers are not equal to other workers in the eyes of the UAE law: UAE Labour Law protections do not extend to domestic workers.

Effective Remedy

Article 8 of the UDHR establishes that: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."¹⁰² This right is compromised in the UAE.

¹⁰¹ The actual role that *wasta* plays in commerce and government interactions is beyond the scope of this work. Here I only wish to address the *perception* of Filipino interviewees about the ability of informal power structures to influence government action in law enforcement and the judicial process.

¹⁰² The Universal Declaration of Human Rights.

Some violations of the law are treated as important by the police, mediators, and the courts, such as wages withholding and failure to obtain the necessary documents (work permit and visa). But there is official apathy on common (illegal) practices such as passport withholding and unpaid overtime which are often considered part of the local business culture. These practices however, jeopardize fundamental human rights. Passport withholding compromises the individual's right to identity and to freedom of movement. Unpaid overtime compromises the right to just and favorable remuneration.

Fear of employer retaliation and deportation also erodes the guarantee of effective remedy. First, fear of employer retaliation discourages migrant workers from seeking legal remedy in many cases. Migrants do not report labor violations except as a last recourse, when they are willing to walk away from their current employer. Second, fear of long, expensive, and uncertain court cases strongly pushes migrants to accept whatever mediated solution would be offered, no matter if it is significantly less than what they are legally entitled to. Employers gain leverage in such mediations and migrants lose it.

The fact that "absconding" is a crime also favors employer/sponsors over workers. Prosecution for absconding may short-circuit other pending court cases. Employers may file absconding charges as a means of escaping their legal obligation to workers.

Conclusion

Every country has crime; the UAE is no exception.¹⁰³ It does not seem worse than other, Western countries. In fact, violent crime and corruption are lower than average. The UAE state is efficient in addressing most types of crime, including violent crimes such as assault and robbery as well as non-violent scams when they are reported. The state is making a serious and effective attempt to protect the rights of the population in this respect.

However, there is one group within the population whose safety and security UAE law systematically fails to protect: women. Sexual harassment is not only pervasive, it is largely

¹⁰³ There is another area in which the UAE response falls short which is not addressed in this discussion: due process guarantees for crimes related to public order and terrorism; this will be addressed in greater detail in the next chapter.

unaddressed by the UAE authorities. Sex crimes globally are underreported, but the problem is particularly profound in the UAE. When sex crimes, from harassment to rape, are reported to the UAE police, female victims are likely to find their own behavior and thoughts called into question; she may find herself facing criminal charges. As a result, women are hesitant to approach the police, offenders often go unpunished, and the cycle of pervasive sexual harassment and sex crimes is allowed to continue. For most women this environment is annoying but bearable. Low but persistent levels of harassment become a normal part of the background, uncomfortable at times but manageable. Women manage the situation by subtle changes in their behavior, from changing the clothes they wear to avoiding eye contact with men or making sure not to smile at a stranger. But for some women, the situation has profound impact. Women victims of rape, at a moment when they have been subject to massive harm, face the prospect of further unfair treatment at the hands of the authorities if they report the crime. The UAE state fails to protect the human right to safety and security of women against sex crimes.

The second major challenge is the constraints on legal redress. Even when existing laws have clearly been violated, migrants may avoid coming to the police and seeking legal solutions as the legal process is stacked against them. Though formally equal under the law, the process of arguing a case in the UAE is complicated, expensive, lengthy, and uncertain, disadvantaging temporary migrant workers relative to employers. Migrants tend to have less experience with the legal system, fewer monetary resources with which to prepare and present their case (or to pay any resulting penalty), less time remaining in the country (remembering that cases can stretch out for months or even years), which all results in migrants being less tolerant of the uncertain outcome of the legal process. This problem affects all migrants; is it the unstable foundation upon which their access to justice in the UAE is based. Without effective legal redress, effective protection and provision of human rights is impossible. The UAE state has the potential to fix this, it is mainly about enforcing existing laws and increasing capacity of existing institutional structures that are currently functional but lacking adequate resources. The question is one of willingness.

CHAPTER EIGHT: ORGANIZATION, PARTICIPATION, AND THE FAMILY

Introduction

Article 20 of the Universal Declaration of Human Rights protects the right to freedom of assembly and association. While the UDHR is written with reference to the individual, many of the rights enumerated protect the right of the individual to form and participate in specific types of groups: national (Art. 15), familial (Art. 16), religious (Art. 18), cultural (Art. 27), and economic groups (Art. 17) including labor unions (Art. 23).

It is understood that the full flowering of the human condition requires the individual to act in society with others. All realms of human life are affected by the ability of the individual to form groups: civil, political, economic, and private. Group formation and inclusion is more difficult for international migrants whose lives span geographic and political spaces. This span may prevent them from fully engaging in relevant, established groups, while simultaneously creating new groups for engagement across borders. This chapter will look at issues affecting the organization of Filipino migrants in the UAE, identifying aspects that facilitate or impede group formation and collective action.

Filipino Community Groups

As discussed in Chapter Seven, the law in the UAE changes quickly and there may be significant differences between the *de facto* law and the way it is enforced – or ignored – in practice. Laws governing the formation and actions of civic and religious groups fall into this category. While law restricts the formation of such groups, the general practice is to tolerate civic and religious groups so long as they act with discretion.

Religious Groups

It might be thought that non-Muslim religious groups would face significant repression in the UAE, a Muslim monarchy. While the UAE constitution establishes Islam as the official religion, it also guarantees the freedom of religious worship: “Freedom to exercise religious worship shall

be guaranteed in accordance with established customs, provided that it does not conflict with public policy or violate public morals.”¹ The UAE has the reputation for being the most liberal country in the Gulf with regard to religious liberty and a surprising degree of tolerance is shown to most religions. In fact, it may be that the greatest control over religious belief is exercised against Muslims: the UAE state controls the content of prayers and sermons in (majority) Sunni mosques and monitors content in (minority) Shia mosques.

Given the large migrant population in the country, a wide number of religions are also present. The majority of the population is Muslim (76 percent), but a significant percent are Christian (9 percent), Hindu and Buddhist, with small numbers of Arsis, Baha’is, Druze², Sikhs, Ahmadis, Ismailis, and Jews present.³ The UAE state collects data on the religious affiliation of individuals requesting a residence visa, but it is reported that individuals from faiths that face hostility from the UAE authorities, such as Jews or Shia Muslims, intentionally misrepresent their religious affiliation for fear of discrimination.⁴

Christian churches are allowed to function in the UAE. The rulers of each Emirate are at liberty to make land grants to religious groups, allowing them to build churches. Religious groups are not required to register with the UAE government, but the system of land grants requires the larger congregations to engage with the ruling families. There are over thirty five Christian churches in the UAE.⁵ But not all Christian denominations, nor all non-Christian groups, have dedicated facilities and so may share the facilities of other denominations or may hold their religious ceremonies in rented facilities such as clubs or hotels or in private residences; this practice is tolerated by the UAE authorities.

¹ “United Arab Emirates Constitution of 1971 with Amendments through 2004,” United Arab Emirates, 1971 (2004), accessed May 9, 2015, https://www.constituteproject.org/constitution/United_Arab_Emirates_2004.pdf.

² Official UAE data considers Baha’is and Druze as Muslim. “UAE Religion,” Global Security, 2014, accessed November 3, 2014, <http://www.globalsecurity.org/military/world/gulf/uae-religion.htm>.

³ *United Arab Emirates 2013 International Religious Freedom Report* (United States: United States Department of State, 2013), accessed November 1, 2014, <http://www.state.gov/documents/organization/222529.pdf>.

⁴ *United Arab Emirates 2013 International Religious Freedom Report*: p. 6.

⁵ Christian churches include Catholic churches and the Church of Jesus Christ of Latter-day Saints; there are also dedicated Hindu temples and a Sikh Temple. *United Arab Emirates 2013 International Religious Freedom Report*: p. 7.

Most Filipino migrants are Christian, though some (primarily those from the poorer Southern province of Mindanao) are Muslim. For many Filipinos, religion is an important part of their personal identity and social life in the UAE. When interviewees were asked what they do with their free time, the most common answers were internet use and church. Women in particular are likely to attend church services regularly. The largest Catholic church in Abu Dhabi, Saint Joseph's, has a Filipino priest in residence and offers two weekly Catholic masses in Tagalog. The services are overcrowded.

Enzo was a lay pastor in the Philippines. While in the Philippines he found that many of the people that sought his support and advice were part of transnational families. Issues of infidelity between spouses in different countries were particularly difficult for him to understand:

Married people coming in my office and asking me about their husband or wife in another country. ... And they say to me, 'What happened, Pastor?' ... I say 'I don't know what's happening in another country; I don't know what is there.' ... It's happening in the other country where married people get separated. But most important [reason why] husband and wife go in another country is to earn money for their families. ... That's why I said to the Lord, 'Lord give me a chance to go in another country.'⁶

In hopes of understanding better the problems that migration posed for transnational couples, Enzo looked for an opportunity to work abroad himself. He was offered a low-wage food service position in the UAE and accepted. Nonetheless, he was concerned at the prospect of going to the UAE: "Then how can I go in another country, most especially this country? How can I teach biblical [studies] here in this, a Muslim country? Maybe not allowed the bible because they are Muslim. I pray to God."⁷ But Enzo persevered and came to the UAE. He has been relieved to find that he can practice his faith openly. He is active in his church in the UAE and continues to give advice and support to his fellow migrants.

⁶ Enzo (Chef), interview with the author, 9/12/2013.

⁷ Ibid.

Certain behaviors are not tolerated by the UAE authorities, however. First and foremost, non-Muslims are strictly prohibited from proselytizing and may be fined, jailed and/or deported if convicted of proselytizing to Muslims. Online activities are included in this prohibition. While non-Muslims are allowed to convert to Islam, Muslims are not allowed to change religions. And while non-Muslim women may marry Muslim men, a Muslim woman may not marry a non-Muslim man.

Fund raising activities are restricted but not prohibited. All charitable giving in the UAE is legally required to go through organizations recognized by the federal government or the government of the Emirate in which it is operating. Most of the authorized groups are either semi-governmental aid agencies (such as the Abu Dhabi Fund for Development), local branches of major international charities (such as the UAE Red Crescent Authority), or charitable outreach on the part of major corporations (such as the Emirates Airlines Foundation). Churches do not appear on the listings of authorized charitable organizations published by the UAE or Emirate-level governments.⁸ Nonetheless, they do engage in fund raising and charitable activities and this appears to be tolerated by the relevant authorities. Donations baskets are openly passed around during masses at St. Joseph's Cathedral.

Civic and Cultural groups

Federal Law No. (2) of 2008 on the National Societies and Associations of Public Welfare governs the activities of such groups. The law requires that in order for a society⁹ to be incorporated, its founding members and staff must have Emirati citizenship; any expatriates joining the society may only be considered "Associate Members".¹⁰ Once incorporated, groups are subject to strict oversight by the Ministry of Social Affairs which must approve its activities and

⁸ It may be that churches are authorized to collect funds even though this information is not made public; it is also possible that churches obtain individual authorization for specific fund raising drives rather than seek blanket authorization.

⁹ "Any assembly (group) having a regulation valid for a limited or unlimited period, comprising natural or artificial persons, for the purpose of achieving a social, religious, cultural, scientific, educational, professional, feminine, innovative, or an artistic activity, or provision of humanitarian services, or for serving a charity or consolidation purpose..." "Federal Law No. (2) of 2008 in Respect of the National Societies and Associations of Public Welfare," United Arab Emirates, 2008: Ch.1, Art. 2.

¹⁰ "Federal Law No. (2) of 2008 in Respect of the National Societies and Associations of Public Welfare": Ch. 1, Art. 3.

audit its finances. Only incorporated groups may collect funds (membership fees, returns on investments, or receive donations or gifts, etc.).¹¹ Further, no unincorporated group may compete with the activities of an incorporated group; and there are incorporated groups for everything from aid to trafficking victims to sports clubs.¹² The upshot of this law is that, while community groups can form, they cannot generally collect funds (neither for their own operating expenses nor for charitable activities) and the scope of their activities is limited.

There are nonetheless a large number of Filipino community groups active in the UAE, from hometown associations to a ballroom dancing club. They operate informally and adhere to a set of informal rules of operation. Although not acknowledged by the UAE government, these groups are usually registered with the Embassy of the Philippines. The Embassy requests that registered groups keep the Embassy informed of all group activities and that they send a representative to a monthly meeting of the Bayanihan council (an umbrella group in which all registered groups and the Embassy have representatives in order to facilitate communication and cooperation within the Filipino community in Abu Dhabi and the UAE). This relationship has mutual benefits. Groups gain Embassy insight into what actions may or may not be tolerated by the UAE authorities and, by extension, some political cover for their actions; by the same coin, the Embassy gains the ability to monitor group actions and the opportunity to discourage actions it views as inappropriate. Bayanihan also serves as a forum for the Embassy to inform Filipino groups of any significant changes to UAE or Philippine law and to gain their support in disseminating important information to the Filipino community in the UAE.

While this system appears quite constraining, group leaders and members did not feel constrained either by the UAE government or by Embassy oversight. Two areas emerged as possible areas of constraint: political orientation and the collection of funds.

Some interviewees expressed the idea that political groups are not be tolerated in the UAE. Angelo is an officer in his professional association. He is aware of these informal rules

¹¹ Ibid., Ch. 3, Art. 43.

¹² Ibid., Ch. 6, Art. 54.

regarding how non-incorporated groups operate. His group reports activities to the Embassy but he does not worry that either the Embassy or the UAE government might constrain the group's non-political activities.

Angelo: I heard that during the time there's some problem with the Brotherhood.

The Embassy advised us that we must inform [them about] whatever activities we have. In case of any problem with the local authorities, they can help us.

Interviewer: Do you feel like that is a problem? Does that worry you at all, that the local authorities might see your group?

Angelo: No, because our group is not related to the political.¹³

The second area of constraint is in the collection of funds to support informal groups and engage in charitable activities.¹⁴ UAE law prohibits unincorporated groups from collecting funds and these groups cannot open a UAE bank account.¹⁵ This hinders group activities. Most groups do nonetheless collect money from their members, often in the form of membership dues to pay for group operating expenses but also regularly through fund raising events or through purpose-specific drives (for example to collect money for flood relief after a hurricane hits the Philippines). Groups deal with the inability to get a bank account in three primary ways. First, much can be accomplished with cash. The UAE is a cash-friendly society and vendors and venues can often be paid for in cash. Second, a group's treasurer may deposit the group's money in her personal bank account, but keep track of the funds through her own accounting. Third, money for specific charitable purposes is usually channeled through a major Philippine charitable organization, usually the Red Cross of the Philippines. In this case, the group may collect cash but then immediately donate it to the Red Cross.

¹³ Angelo (Engineer), interview with the author, 10/21/2013.

¹⁴ This is not to imply that the UAE discourages charitable giving. The UAE government is one of the most generous donors to international humanitarian relief and its citizens regularly give zakat (charitable giving prescribed in Islam). There is even a federal Zakat Fund that collects tens of millions of dollars in donations annually and accepts payments online, via mobile, and via kiosks in public areas, and provides a hotline with access to a mufti who can help you calculate the proper amount of payment. C.f. Alice Haine, "Zakat Is Not Just Charity, but a Divine Duty," *The National*, 18 August 2012.

¹⁵ "Federal Law No. (2) of 2008 in Respect of the National Societies and Associations of Public Welfare": Ch. 3, Art. 43.

It is important to stress that all of these avenues are illegal and open the group up to intervention by the UAE authorities. In fact, the police have occasionally stepped in to halt fundraisers by informal groups in order to enforce this rule: fund raisers are halted and organizers are asked to either submit for approval from the relevant authority (the UAE Ministry of Social Affairs or the Islamic affairs and Charitable Activities Department of the Government of Dubai) or partner with the Red Crescent Authority.¹⁶ Occasionally stronger punishments have emerged: when thirty members of the Islamist group al-Islah group were arrested by the UAE authorities, illegal fund raising was among the charges laid against them.¹⁷ Most Filipino groups are not worried, however, and continue to collect cash from members.

One interviewee was the President of her hometown association, Pag-Iribang Bicolnon sa Abu Dhabi.¹⁸ The group's focus is on supporting people from her region in the Philippines, often helping them find employment or helping them navigate life in the UAE. While the group must keep the Embassy informed of its activities and seek approval for any project that involves soliciting funds, she does not feel constrained in the group's activities. Despite needing to obtain approval, the group is able to raise donations to support her region and the Philippines in the event of a disaster. The group is not eligible to have a bank account, however, and so donations are channeled through the Philippine Red Cross. Despite being in a Muslim country, the group hosts an annual Saint's day celebration. Funds for this event (for venue rental and food, for example) are collected from members in cash and, if needed, run through her bank account, as the group's treasurer.

This rather lassie faire approach to community group regulation may be changing, however. Recently Dubai's Community Development Authority instituted new rules for the registration and licensing of non-profit social clubs.¹⁹ Registration will have benefits and

¹⁶ C.f.: Ramona Ruiz, "Philippine Flood Effort Delayed by Red Tape," *The National*, 20 October 2011.

¹⁷ "UAE Jails 30 over 'Muslim Brotherhood' Ties," *BBC News Middle East*, 21 January 2014, accessed November 5, 2014, <http://www.bbc.com/news/world-middle-east-25824395>.

¹⁸ This interviewee and her group will remain unnamed to protect her anonymity.

¹⁹ Ramona Ruiz, "Dubai Government to License Social Clubs for Filipinos," *The National*, 03 June 2013.

drawbacks. On the positive side, licensed clubs will be able to open bank accounts, to employ staff and apply for visas and labor cards.²⁰ On the other hand, licensing will cost 2,000 AED (\$544 USD) which may be beyond the means of small clubs. There have also been rumors that the Community Development Authority will require clubs to have a dedicated office; the cost of renting office space is far beyond what most Filipino groups can afford. Even large and active groups such as Migrante, use role in the UAE will be explored in greater detail below, worry that they could not afford this. Another worry is that licensing approval is dependent on the content of the group; the CDA freely admits that it will reject applications of groups that it feels are not competent, redundant, or do not “add value for the community.”²¹ So far licensing is only required in Dubai. However, policies implemented in one of the Abu Dhabi or Dubai emirate, the dominant political emirates, are often copied by the others.

Human Rights Implications

Article 20 of the Universal Declaration of Human Rights protects the right to freedom of assembly and association; Article 27 protects the individual’s right to “participate in the cultural life of the community.”²² Assembly and association, the ability to form groups, is basic to the manifestation of culture. Culture is a collective endeavor based not only on shared understandings but also on human interaction and collective action. Migrant workers are physically removed from their homeland. The ability to form cultural groups is an important means of acknowledging their cultural differences and constructing their social and cultural identity in both home and host countries.

In the UAE such cultural groups occupy a legal grey area. So long as they do not compete with officially recognized groups and do not contravene laws against insulting Islam or the royal families, they are largely tolerated. However, routine operations tend to violate existing laws, as with the collection of money (whether in membership fees, fund drives, or other), making

²⁰ Ibid.

²¹ Janice Ponce de Leon, “Social Club Licensing for Community’s Benefit,” *Gulf News*, 05 May 2014.

²² Universal Declaration of Human Rights.

them at best liable to intervention or, at worst, subject to arbitrary shut down with organizers open to fines, jail time and/or deportation. At the very least, the legal precariousness of social groups is worrying.

Registration would end legal uncertainty. But the way in which registration is currently being implemented in Dubai, the first Emirate to require it of social clubs, opens up concern regarding the criteria used to approve or deny registration applications. By giving the UAE authorities the ability to approve or deny on the basis of the content of the group, these authorities become the gatekeepers of what is or is not acceptable in migrant culture. Groups rejected for registration in Dubai feel that their rights have been violated:

Wendell Castro, head of the group [whose application for registration was rejected by Dubai authorities], told Gulf News: 'We want to follow the rules. But it's so disappointing because we weren't doing it for ourselves. We feel we have been deprived of a right, of a human need to gather and organize.'²³

Political Groups and Participation

The human right to political participation is guaranteed in the UDHR. In the most straightforward sense, Article 21 guarantees the individual the right to choose (or become a) political representatives, engage in public service, and to participate in elections in the country of his citizenship. In the case of temporary contract migrants, who *temporarily* reside outside of their country of citizenship, the human right to political participation is more complicated. What level of political participation is open to them in host countries given that their residence is of limited duration? Alternatively, what, if any restrictions, can their country of citizenship impose on them on the basis of their temporary absence?

Voice in the UAE

Under Federal Law No. (2) of 2008 on the National Societies and Associations of Public Welfare, registered groups cannot be political in nature and cannot go beyond their mandates and engage in political action:

The society may not deviate from the objectives stipulated under its articles of association. The Society and its members are prohibited to interfere in politics or

²³ Ponce de Leon, "Social Club Licensing for Community's Benefit."

in the matters that impair the State security and its ruling regime, nor to arouse sectarian, racial, or religious disputes.²⁴

This prohibition is enforced and groups that have publicly taken overly political stances have been subject to takeover by the government or dismantled.²⁵

The groups that the UAE has cracked down on in recent years are primarily pro-reform political movements that emerged during the Arab Spring – such as the Hewan online forum or the pro-democratic petition movement²⁶ – and/or associated with religious ideologies that the UAE views as extremist, such as the Islamist political group al-Islah.²⁷ These groups' members are mainly Emirati and Arab and their aims would undermine the ruling bargain of the state. The arrest and trial of these groups' members (especially the high-profile arrests of Emirati lawyer Mohammed al-Mansoori and blogger and human rights activist Ahmed Mansour) has been visible in the UAE press and interviewees were usually aware of at least the basic outline of the issue.

Given this context, it would not be surprising to find that other groups of expatriates advocating politically sensitive issues might face similar crackdowns. However, there are Filipino groups in the UAE that publicly take up politically provocative issues. For example, the group Migrante focuses on migrant labor issues; the group Gabriella fights for women's issues and raises concerns about violence against women and the plight of domestic workers in the UAE. Both of these groups are vocal in the UAE press and openly critical of UAE policy and of the Embassy of the Philippines. As the topics they raise are politically sensitive, it might be expected

²⁴ "Federal Law No. (2) of 2008 in Respect of the National Societies and Associations of Public Welfare": Article 16.

²⁵ C.f.: "UAE: Civil Society Crackdown Widens," Human Rights Watch, 2011, accessed November 11, 2014, <http://www.hrw.org/news/2011/05/03/uae-civil-society-crackdown-widens>.

²⁶ C.f. Freedom House. "United Arab Emirates," *Freedom in the World*, accessed November 5, 2014, https://freedomhouse.org/report/freedom-world/2013/united-arab-emirates#.VFt9_nF-Oc. Christopher Davidson, "The United Arab Emirates: Frontiers of the Arab Spring", *Open Democracy*, accessed May 8, 2015, <https://www.opendemocracy.net/christopher-m-davidson/united-arab-emirates-frontiers-of-arab-spring>. Kristian Coates Ulrichsen, "The UAE: Holding Back the Tide," *Open Democracy*, 5 August 2012, accessed November 7, 2014, <https://www.opendemocracy.net/kristian-coates-ulrichsen/uae-holding-back-tide>.

²⁷ The UAE claims that al-Islah is an Emirati-based branch of the banned Muslim brotherhood; the group denies this accusation. C.f.: "UAE Jails 30 over 'Muslim Brotherhood' Ties." David Hearst, "The UAE's Bizarre, Political Trial of 94 Activists," *The Guardian*, 6 March 2013, accessed May 8, 2015, <http://www.theguardian.com/commentisfree/2013/mar/06/uae-trial-94-activists>.

that their actions would not be tolerated. Surprisingly, neither group reported problems. It is unclear where the line between acceptable and unacceptable political activism lies.

There are some activities that are clearly not tolerated. First, migrants cannot vote in the UAE. This is hardly surprising: the human right to political representation belongs only to citizens and yet even Emirati citizens have extremely restricted voting rights. All of the Gulf States remain hereditary monarchies and the UAE is no exception. The President of the UAE is the ruler of Abu Dhabi, the Vice President is the ruler of Dubai, and all positions that exercise significant political power are filled by decree. The only political positions that are filled by election are within the Federal National Council, a body that is half elected and half appointed but, even there, the “electorate” is restricted to an electoral college with 129,000 Emirati members chosen by the rulers of the seven emirates. In addition, the Federal National Council is primarily an advisory body with no legislative power and little regulatory authority; it has no real power. While this is deeply problematic for Emirati citizens, who have the right to genuine participation and representation in their government, it is less problematic for migrants who do not have a human right to vote in the UAE as they are not citizens of that state.

Similarly, political parties are outlawed in the UAE. Neither Emirati citizens nor migrants can organize a group whose primary intent is to acquire and exercise political power. The exercise of political power remains the sole prerogative of the ruling families and their directly selected agents. Again, this poses a greater challenge for the human rights of Emirati citizens than for migrants, as the right to direct participation as envisioned in the UDHR is confined to citizens.

Of greater concern, those exercises of political voice to which migrants do have a human right on the basis of their presence (not their citizenship) in the host country are also significantly constrained. Public meetings or demonstrations are not necessarily illegal but they do require a government permit. Such permits are exceedingly rare. In effect, citizens and migrants alike are not able to organize public demonstrations in order to voice their political concerns.

Nonetheless, some political pressure can be brought to bear through the national and international media. The UAE authorities are sensitive to their global reputation in the press.

Wearing argues that the abuse of migrant laborers directly impacts on the valuable international image and prestige of the Gulf regimes and uses Qatar as an example:

Qatar did not go to great lengths to secure the World Cup so that football fans around the globe would associate the country with a tournament where 4,000 construction workers may die before a ball is even kicked. However, on the other hand, the exploitation of armies of insecure migrant workers is a key component of the Gulf monarchies' domestic strategy for survival. These regimes may now have to choose between their image abroad and the security of their class privileges at home.²⁸

Similarly, negative press regarding labor camp conditions in the UAE forced the UAE to address the issue.²⁹ There are now new rules regarding labor camp operations and there are model labor camps operating in several locations, including the Saadiyat Island Construction Village designed by the Tourism Development & Investment Company (100 percent owned by the government of Abu Dhabi). This same impulse that drives the authorities to address issues that have come to the spotlight, however, also pushes them to strictly regulate the local media.

While the UAE constitution formally guarantees freedom of opinion and expression, that protection is illusory. Speech, political or otherwise, is limited by prohibitions on insulting the UAE state or its rulers (UAE penal code, Articles 176 and 178); blasphemy laws (Federal Law No. 3 of 1987); restrictive media laws (1980 Press and Publications Act; a new draft law was published in 2009 that would have banned the jailing of journalists but was never passed); stringent anti-defamation laws (a criminal offense in the UAE: Federal Law No. 3 of 1987); a cybercrime law (Federal Decree-Law no. (5) of 2012); and laws against contravening public morality. Access to the internet is censored. Of particular concern is the fact that any statement, true or not, that damages a public figure's reputation is considered libelous and that libel is considered a criminal offense.³⁰ Defamation laws have been used to target the press as well as individuals. Cybercrime

²⁸ David Wearing, "The Fate of Gulf Migrant Workers Is Deeply Connected to the Fate of the Arab Uprisings," *Open Democracy*, 6 May 2014, accessed November 10, 2014, <https://www.opendemocracy.net/arab-awakening/david-wearing/fate-of-gulf-migrant-workers-is-deeply-connected-to-fate-of-arab-uprisi>.

²⁹ "The Island of Happiness." *Slumdogs and Millionaires. Blood, Sweat and Tears. Dark Side of Dubai's Boomtown. Dubai: Night Secrets. Hidden Faces of the Gulf Miracle.*

³⁰ Matt J. Duffy, *Media Laws and Regulations of the GCC Countries: Summary, Analysis and Recommendations* (Doha, Qatar: Doha Centre for Media Freedom, 2012).

laws have been used to target individuals using social media, including Twitter, as a means of sharing information and expressing controversial opinions.

The result is pervasive self-censorship that effects all levels of society, including the local press. For example, the press is hesitant to report on stories that present a negative image of the country's royal family or that might encourage economic pessimism.³¹ Issues that might tarnish the country's international reputation, such as violent crime or human rights violations, tend to be downplayed in the local press. Individuals, too, feel the pressure to self-censor, especially regarding content that they publish in online forums. Recently the issue that has compelled the greatest show of force by the UAE authorities is the call for political reforms by Emiratis in the wake of the Arab Spring uprisings. Hundreds of arrests have been made and defamation and cybercrimes have been among the charges laid against the dissenters. But the fear of speaking out extends beyond the press and beyond these hot button issues. The RAND Corporation, Gallup Polls and the Konrad-Adenauer-Stiftung were all forced to close their UAE operations in 2012. Other than those publicly critical of the GCC governments,³² academics working on diverse issues such as press freedom³³ and the conditions of migrant workers³⁴ allege that they have been forced to leave the UAE because of the content of their research. It is inevitable that this environment would have a chilling effect on political speech among the UAE community at large, including its migrant worker community.

There remain some outspoken groups, but they are not high profile groups internationally and the space allowed to them is narrowing. Migrante International is perhaps the most significant migrant rights NGO operating from *within* the UAE. It operates informally – without UAE government licensure – and on a minimal budget. They utilize the UAE media as a means of

³¹ Joe Pompeo, "The National: Abu Dhabi's Brief Experiment in Press Freedom," *New Republic*, 28 February 2013, accessed November 10, 2014, <http://www.newrepublic.com/article/112542/national-abu-dhabis-brief-experiment-press-freedom>.

³² Christopher Davidson and Kristian Ulrichsen in particular.

³³ C.f.: Duffy, *Media Laws and Regulations of the GCC Countries*.

³⁴ C.f.: Stephanie Saul, "N.Y.U. Professor Is Barred by the United Arab Emirates," *The New York Times*, 16 March 2015, accessed April 19, 2015, <http://www.nytimes.com/2015/03/17/nyregion/nyu-professor-is-barred-from-the-united-arab-emirates.html>. Ali, *Dubai: Gilded Cage*.

distributing their message and the group's Middle East country coordinator, Nhel Morona, frequently gives interviews criticizing UAE and Philippine state policies on issues of relevance to Filipino migrant workers. Of particular concern for the group are the failings of the Philippine state and the Embassy of the Philippines in the UAE. They are vocal critics of perceived official failings, from the increasing complexity and cost of migration-related paperwork³⁵ to the potentially corrupt sale of documents by Abu Dhabi Embassy staffers.³⁶ UAE policies also come in for their fair share of criticism, particularly with reference to the plight of domestic workers and the increasing incidence of violence against women.³⁷ But where Migrante's criticism of Philippine policy directly criticizes the Philippine state, its policies and its officials, the group's comments with regard to problems in the UAE are more carefully phrased to avoid such direct criticism of the UAE state or its officials, criticisms which would be illegal under UAE law. Nonetheless, Migrante activists walk a fine line. To be politically active in the UAE, one must accept the fact that the line between what is an acceptable level and style of criticism and what is not is unclear, and that the price for overstepping the boundary is possible arrest and imprisonment and, most likely, deportation.

Political Participation in the Philippines

In contrast to their position in the UAE as a host country, Filipinos living abroad remain an important political constituency in their home country. With language labeling overseas workers as "national heroes," the Philippine government stresses the idea that overseas workers continue to be part of the Philippine nation despite their physical absence. The continued reliance of the Philippine economy on overseas workers would make them politically significant in any case: migrants and their families (in the Philippines or abroad) form a large and comparatively well-to-do constituency. These new heroes of the Philippines become "a particular kind of citizen,"

³⁵ Ramona Ruiz, "UAE Filipinos Plan Protests over Fee Increases by Philippine Government Agency," *The National*, 11 January 2014.

³⁶ Ruiz, "UAE Rights Group Call for Probe into Document 'Sale' by Philippine Officials."

³⁷ Ramona Ruiz, "Migrante-UAE Alarmed over Spate of Rape Cases Involving Filipinas," *The National*, 25 January 2013.

expected to leave the Philippines but to remain always Filipino.³⁸ And by stressing the continuing identity of OFWs as Filipino nationals, the state “has become subject to demands by this very population that citizenship rights must also be extended to them while they are abroad.”³⁹

The case of Filipino temporary contract workers is particularly useful in showing the weaknesses of the arguments against the full incorporation of migrants into the political system of the home country. Some argue that migrants are no longer subject to the laws of the Philippine state, do not pay taxes, and so should no longer have a say in creating those laws; regulating the lives of people within the state should be made by those citizens residing in the state and so subject to its laws on a daily basis. However, Filipino OFWs do remain subject to a wide variety of laws that regulate important aspects of their lives; the Philippine state has made a point of ensuring that the POEA and other state agencies are involved in every stage of the migration cycle, from pre-deployment to return and reintegration, and they pay a variety of fees for these privileges. Many also remain engaged through immediate family members – such as spouses, children, and elderly parents – and through property ownership. To deny them the right to participation would be deny them the ability to influence the laws and policies regulating these important life aspects.

In 2007 there were 115 states and territories that allowed external voting and 100 that did not.⁴⁰ In 2003 the Philippines enacted the Overseas Absentee Voting Law (Republic Act no. 9189) allowing citizens over age eighteen to vote in federal (presidential and legislative) elections through Philippine diplomatic missions abroad, and in 2004 absentee voters were allowed to vote for the first time. Registration of overseas voters for the 2004 presidential elections was a complicated process requiring potential registrants to go to a diplomatic post (embassy, consulate, or diplomatic mission) in person to prove their identity and submit biometric data which

³⁸ Robyn Magalit Rodriguez, "Migrant Heroes: Nationalism, Citizenship and the Politics of Filipino Migrant Labor," *Citizenship Studies* 6, no. 3 (2002).

³⁹ Rodriguez, "Migrant Heroes": p. 347.

⁴⁰ Andrew Ellis et al., *Voting from Abroad: The International Idea Handbook* (Stockholm, Sweden: International IDEA, 2007).

would be used to produce a registry of overseas voters and to issue voter ids.⁴¹ The authorities allowed only two months for the registration period, creating a bottleneck at the overseas posts that collected and processed applicants. In total, COEMLEC, the Philippine voting authority, approved and registered 359,297 voters, only about 5 percent of the total stock of OFWs⁴² and about one third of the total applications; only 233,092 of those registered actually cast a ballot in the 2004 election.⁴³ Beyond the difficulty in registering, the “killer clause” was the need for non-temporary migrants (about half of overseas Filipinos) to submit an “affidavit of intent to return” stating that they will return to the Philippines in the next three years (failure to do so would have been punishable by imprisonment; this requirement was scrapped in 2013).⁴⁴ Since then, absentee voting has grown in importance in Philippine elections. By mid-2014 there were over one million Filipinos registered to vote overseas and COMELEC hopes that over two million will be registered before the 2016 presidential elections.

In the UAE alone, 47,720 Filipinos were registered to vote before the 2010 presidential election, though only 7,917 (16.6 percent) actually voted.⁴⁵ And in 2013, a midterm election year, of the 77,487 eligible voters, only 6,888 actually cast their ballots.⁴⁶ Voter turnout in the Philippines as a whole was much higher: 75 percent and 61 percent of registered voters cast ballots in 2010 and 2013 respectively.⁴⁷ Only ten interviewees had actually voted from overseas.

⁴⁸ Three reasons seem to prevent more Filipinos in Abu Dhabi from voting. First, there are

⁴¹ Ellis et al., *Voting from Abroad*.

⁴² Commission on Filipinos Overseas estimated the stock of OFWs in 2004 at 7,143,137 (3,204,326 permanent residents and dual citizens, 2,899,620 temporary migrants, and 1,039,191 irregular migrants). “Stock Estimate of Overseas Filipinos as of December 2004,” Commission on Filipinos Overseas, accessed August 20, 2013, <http://www.cfo.gov.ph/pdf/statistics/Stock%202004.pdf>.

⁴³ Ellis et al., *Voting from Abroad*: p. 196.

⁴⁴ *Ibid.*, p. 197.

⁴⁵ Ramona Ruiz, “Nearly 8,000 Filipinos Turn out to Cast Votes in Abu Dhabi and Dubai,” *The National*, 12 May 2010.

⁴⁶ Ramona Ruiz, “UAE Filipinos Leave It Late to Vote in the Polls,” *The National*, 14 May 2013.

⁴⁷ “Voter Turnout,” International Institute for Democracy and Electoral Assistance, 2014, accessed April 1, 2015, <http://www.idea.int/vt/countryview.cfm?CountryCode=PH>.

⁴⁸ Out of 41 interviewees that discussed this question.

practical difficulties in getting registered and voting overseas; there is an additional hassle. The process requires the prospective voter to show up in person at a diplomatic post (the Embassy in Abu Dhabi, the consulate in Dubai, or a special field post established for the purpose of voter registration and voting) on two occasions, first to register and then to vote. For most Filipinos, this requires taking time off from work on two occasions which is not always practical. This is particularly difficult for individuals who do not live in Abu Dhabi or Dubai and so must travel some distance in order to register and vote.

Second, not all Filipinos are convinced that politics in Manila impacts them in Abu Dhabi.

Interviewer: Would you register with the embassy to vote? Or do you think do you think that's important?

Sebastian: Actually I don't want to exercise my right anymore.

Interviewer: Why not?

Sebastian: Because nothing happens, really, so. Actually I don't want to be registered. I don't want to vote.⁴⁹

In fact, interviewees were split on whether politics in Philippines affects overseas Filipino workers. Some say it does not affect them; most say it does. Interviewees give two reasons: 1) the policies in place affect migrants through their continuing family and/or economic ties; 2) corruption leads to a waste of the fees paid by migrant workers and undermines the programs in place to support them. Mia sums up the response of many overseas Filipinos about the politics of their home country:

Interviewer: Do you think that the politics or the politicians in the Philippines, do you think they affect your life here?

Mia: Yeah, of course.

Interviewer: In what ways?

⁴⁹ Sebastian (Engineer), interview with the author, 9/13/2013.

Mia: ... Because of corruption, you know. Like, maybe, you know now the situation of the Philippines: they are taking the money from the tax of the people and just living a luxurious life. ... I thought that was just an exaggeration but it's not. It's true. I just now realized that, oh my, why are we working here and we have a lot of money in the Philippines? No, I like to vote, but no like this. It's too late to realize I should have done something.

Interviewer: But there's always next time. Do you think you'll vote next time?

Mia: Yeah, yeah, yeah. Yes, of course. And I vote [for] the poor ones.⁵⁰

The third reason many interviewees gave for not voting is precisely this pervasive disgust with corruption. While desire to end corruption may spur some to vote, the seeming ubiquitousness of corruption in Philippine politics discourages more. For example, Edward feels that his vote “doesn’t count, anyway,” despite the fact that he acknowledges that politics in the Philippines affects his life in tangible ways such as exchange rates and the Embassy and social security programs available to him:

Edward: Actually before I leave my country I registered myself. But the last election I did not vote.

Interviewer: Why not?

Edward: I don't know. It's not because I didn't want to. Maybe because of sometimes I didn't have the feeling of, you know, urging myself to go here and vote. I feel like, you know, it doesn't really make sense a lot to me.

Interviewer: Why?

Edward: I don't know. I it doesn't mean that I just don't care about my country. But maybe I just don't have this much trust to ... to this kind of ... election thing. Because, anyhow, money people are going to win it in the end.⁵¹

⁵⁰ Mia (Professional), interview with the author, 9/17/2013.

⁵¹ Edward (Retail Supervisor), interview with the author, 8/28/2013.

Cherry goes one step further, linking corruption in the Philippines to the national reliance on migration as an economic strategy:

If you can hear the news, ... you know most of our taxes were got by some of the big people there, corrupt politicians. You can see it affects our lives. ...

But when I see the economy of the Philippines, when I see all the politician/s, they are all corrupt. So in my mind, what is the use of my vote? ... Then I'm not a registered voter there at the Embassy because I don't like vote because for me all of them are corrupt. ... That's why we are all we are here. How many populations here? Too many, too many Filipinos here.⁵²

Filipinos in the UAE face other difficulties in exercising their political voice in home country politics. It is complicated for overseas workers to form groups, such as political parties, that are able to compete on the national stage. While the major political parties have certainly courted the support of overseas Filipinos, especially since migrants played a notable role in the ouster of President Estrada,⁵³ their representation in the party structure remains truncated.

The single biggest political group representing overseas Filipinos is Migrante International, a left-leaning human rights advocacy group. Migrante has 200 member organizations in twenty three countries; Migrante Middle East has a chapter that is active in the UAE.⁵⁴ The group was founded in response to the death of Flor Contemplacion, a domestic worker hanged in Singapore in 1996 for murder, and since then has made it their mission to advertise the failing of the Philippine state in representing the interests of its migrant citizens. Migrante is active in assisting individual migrants in need, but their larger mission is as “an active defender of the rights and welfare of OFWs by raising public awareness on their plight and providing a critical analysis of the Philippine government’s labor export policy program as the

⁵² Cherry (Office Professional), interview with the author, 9/12/2013.

⁵³ Rodriguez, "Migrant Heroes": p. 351.

⁵⁴ Migrante International, "About Our History," accessed November 11, 2014, <http://migranteinternational.org/about/>.

main factor responsible for the commodification of Filipino workers.⁵⁵ But Migrante's mission is critical, not constructive: they serve as a necessary critique of the policy omissions and failures of the Philippine state but their proactive political agenda is limited.

Human Rights Implications

The larger human rights issue that this raises is the fact that migrants have limited political voice, both in their country of citizenship and in their country of residence. Political voice in the home country is often limited by restrictions on voting while overseas and by the practical hurdles of forming political groups that are able to represent migrants on the home country political stage. In the host country, temporary status usually disqualifies migrants from access to political representation. This double elimination means that migrants have little chance to affect the rules and laws that regulate their lives.

Political participation in the UDHR is restricted to "the right to take part in the government *of his country*..."⁵⁶ The fact that migrants are excluded from voting or holding office in the UAE is not a human rights violation. But their right to hold and express political ideas in the host country is nonetheless protected in human rights: freedom of thought,⁵⁷ freedom of opinion and expression,⁵⁸ freedom of assembly and association,⁵⁹ are all specifically protected by the UDHR. The exercise of these rights, in turn, is harnessed to migrants' political agendas in order to advocate for change. Restrictions on political thought and speech by the host country is a violation of migrants' human rights. Such restrictions are systematic in the UAE. Political influence in the UAE is not exercised through public mechanisms such as voting, forming political parties, or holding public demonstrations, and the exercise of public speech is risky.

From the perspective of the sending country, guarantees of political participation must be stronger yet. Citizens have a human right to participate in the politics of their own country, the

⁵⁵ Migrant International, "About Our History."

⁵⁶ Universal Declaration of Human Rights, Article 21 (1), emphasis added.

⁵⁷ Ibid., Article 18.

⁵⁸ Ibid., Article 19.

⁵⁹ Ibid., Article 20.

country of citizenship. The fact that they are not physically present does not obviate this right: migrants must be given a genuine opportunity to run for office, engage in public service, and to vote in elections. Filipinos abroad gained the right to vote in federal-level elections in 2004. While the process of voting overseas still has procedural difficulties that need to be smoothed, the extension of the franchise to Filipinos abroad is a major human rights accomplishment. Difficulties remain, however, in the guise of low voter turnout and the lack of groups dedicated to migrants as political actors. Filipinos abroad still face significant constraints on their activities as political actors in the Philippines.

Economic Organization

While the UAE may allow some space for migrant workers and their families to organize civic and religious groups, and tolerates some political activity so long as it does not threaten to undermine the ruling bargain of the Emirati state, it does not brook the formation of economic interest groups. Unionization of migrant workers would necessarily undermine the political equilibrium. As argued in Chapter Three, ensuring the powerlessness of labor/migrants as opposed to owners/Emiratis is one of the foundations of state legitimacy. Migrants are a carefully constrained population of “others” as contrasted against the privileged Emirati population. Management of this balance is used by the government as a means of securing Emirati privilege and thus shoring up regime legitimacy through the distribution of rents; weighing in favor of labor/migrants, labor organization would undermine the current political balance and so is not tolerated.

Labor and Collective Action

The standard argument in favor of unions - that they allow labor to have sufficient bargaining power to compete on equal terms with employers – clearly falls into this category of measures that would upset the current balance. Unions would also offer to workers the ability to seek safety in numbers. Grievances could be advanced by the union on behalf of without any individual having to out himself as a troublemaker. Because workers fear employer retaliation, the ability to advance grievances anonymously or as part of a group of like parties would offer valuable protection.

Interviewer: If you could give one recommendation about how the policy could be changed so that employees would not be afraid?

Gabriel: Well definitely establishing union, labor union. That's really helpful to the employees here. Because in my country, in the Philippines, labor union is allowed. But here it's not allowed. So basically, you can't raise your voice to your HR because it's threaten you to terminate you if you complain. So basically, just can't complain. And then if you have labor union, they will be someone who would represent you in a much higher degree and sometimes they would come up with an agreement. So, it's very helpful.⁶⁰

But, while unions would help migrant workers, they would not help (Emirati) employers. The formation of unions is forbidden by law.

Without unions, some professional associations registered by the UAE government began to agitate for the rights of their members.⁶¹ In particular, the Jurist Association and the Teacher's Association supported a 2011 petition calling for political reform and increased democratic representation in the UAE. This was deemed illegal political action, outlawed by Article 16 of the National Societies and Associations of Public Welfare law.⁶² In response, the Ministry of Labour exercised its ability to replace the Associations' boards with members appointed by the state.⁶³ Professional associations were essentially shut down as a possible means of advancing claims.

Without the ability to form official organizations, union or otherwise, laborers have been forced to turn to unorganized strikes as a means of making their most serious grievances public. In one of the most well-known cases, construction workers on the building site of the Burj Khalifa

⁶⁰ Gabriel (Nurse), interview with the author, 10/15/2013.

⁶¹ Membership of expatriates in these registered associations is limited by law to non-voting, non-leadership roles, limiting the ability of migrant workers to exercise significant political voice through these channels.

⁶² "Internationally-Recognized Core Labour Standards in the United Arab Emirates," in *WTO General Council Review of the Trade Policies of the United Arab Emirates*, 12 (Geneva, Switzerland, 2006), accessed May 8, 2015, https://www.wto.org/english/tratop_e/tp_r_e/tp362_e.htm.

⁶³ "Internationally-Recognized Core Labour Standards in the United Arab Emirates": p. 3.

(then known as the Burj Dubai) staged a series of illegal protests from 2004 through 2007. The workers were repeatedly threatened with mass deportations but the actions did lead Sheikh Mohammed bin Rashid al-Maktoum, who became ruler of Dubai in 2006, to order better conditions for workers.⁶⁴ In general, however, those thought to have instigated or organized a strike are deported⁶⁵ and face a lifetime labor ban, making striking a risky strategy for migrant workers. Strikes in the UAE tend to have one of three root causes: wages being withheld for several months, extremely low wages, or extremely bad living conditions. The grievance must be severe in order for the worker to jeopardize not only his job with the company but his residence and any potential for obtaining future employment in the UAE.

In some sense, mediation through the Ministry of Labour and the UAE courts is intended to take the place of independent labor organization. Mediators are to deal with all disputes between employers and workers regarding issues such as wages, rates of pay, hours, or other terms or conditions of employment. If workers wish to file a collective grievance, they are legally obliged to do so through the Ministry of Labour, which will first attempt to reach settlement through mediation.⁶⁶ But, as discussed in detail in Chapter Seven, mediation is often not an attractive proposition for migrant workers; it is of dubious effectiveness in representing and protecting the rights of migrant workers.

Social Security

If the Filipino migrant worker in the UAE cannot rely on collective action to ensure his welfare, neither can he rely on state-run social security systems in either country. In some tightly-knit regional systems such as the European Union social security systems do function across borders, and the idea of securing social security “portability” through bilateral and multilateral

⁶⁴ “Strike Halts Work at Dubai Tower,” *BBC News*, 23 March 2006, accessed May 9, 2015, <http://news.bbc.co.uk/2/hi/business/4836632.stm>. “Dubai Workers’ Strike Called Off,” *BBC News* (2007), accessed May 8, 2015, <http://news.bbc.co.uk/2/hi/business/7074917.stm>. Migrant Rights, “Behind the Glamorous Facade of the Burj Khalifa,” accessed July 7, 2012, <http://www.migrant-rights.org/2010/01/04/behind-the-glamorous-facade-of-the-burj-khalifa/>.

⁶⁵ C.f.: Chris Arsenault, “Striking Dubai Workers Face Mass Deportation,” *Al Jazeera*, 2013, accessed November 11, 2014, <http://www.aljazeera.com/indepth/features/2013/05/201352375248751541.html>.

⁶⁶ United Arab Emirates Federal Law No. (8) of 1980, Chapter 9.

agreement is growing in importance internationally.⁶⁷ However, in the UAE migrants are largely excluded from social security programs and in the Philippines the social security system is underfunded and inadequate, leaving the individual to manage her own social security.

If you're getting old, the government [of the United States] still they giving, right?
... Yeah. But in the Philippines if you don't have those kind of uh like SS [social security] benefits, you cannot get anything. So you're getting old without anything.⁶⁸

As residence in the UAE is explicitly temporary, the provision of social welfare such as employment and unemployment, sickness and disability, education, and pension benefits is also limited. Where the benefits are directly tied to the working life of the individual, the state takes some steps to guarantee employer provision for workers' welfare. However, the basic assumption is that, as migrant workers have no right to stay and no right to employment in the UAE, the state does not assume an obligation to provide social welfare benefits to migrant workers. The assumption is that the home country retains primary obligation in this respect. Yet it is precisely the failure of the Philippine state to provide adequate unemployment, sickness and disability, and retirement benefits that is a major factor pushing Filipinos to migrate in search of better wages to support themselves and their families. It is a vicious cycle for migrants. One interviewee, Moses, had an interesting observation. Moses works as a financial adviser, specializing in Filipino families' needs; he stresses the need for migrants in the UAE to take responsibility for their own financial security:

The reason why you don't pay tax [in the UAE] is because the government here doesn't have social responsibility to you. If you get sick, you are on your own; if you grow old, you're on your own; even if you die, you're on your own. If you

⁶⁷ For an international overview, see: Kenichi Hirose, Milos Nikac and Edward Tamagno, *Social Security for Migrant Workers: A Rights-Based Approach* (Budapest, Hungary: International Labour Organization, 2011), accessed May 8, 2015, http://www.ilo.org/budapest/what-we-do/publications/WCMS_168796/lang-en/index.htm.

⁶⁸ Haley (Food Service), interview with the author, 2/23/2013.

have kids sent to school, you're on your own. No one will take care of it for you but yourself.⁶⁹

The problem is that state social security schemes in general rely on three principles that do not function well across international boundaries unless explicit accommodation is made to facilitate the portability of contributions and benefits: risk pooling (fundamental to all insurance programs), pre-funding, and redistribution.⁷⁰ Unless portability regimes are established, the temporary migrant will face the risks and pay into (or otherwise contribute to) the receiving country system while working abroad, but be unable to receive the benefits once she has repatriated. There are some efforts made by sending countries to ensure that migrants pay in to national social security schemes while abroad; the Philippines, for example, requires OFWs to pay in to the national Social Security System (SSS) program. But making these payments across borders is difficult and costly to the OFW; many Filipinos abroad allow their membership to lapse.

Employment. The UAE government offers strong support for the employment of its citizens. Most Emiratis are employed on generous terms in the public sector. As the public sector is reaching saturation, the government has an active campaign of "emiratisation" for the private sector as well. To encourage the hiring of locals companies must meet quotas of Emiratis employed and certain job titles are reserved for Emirati citizens, for example. The logic of emiratisation is to ensure full employment of the Emirati population and to decrease reliance on foreign labor, particularly in supervisory and management positions. The flip side of this, of course, is that the UAE government has little interest in ensuring the employment of its migrant population. Instead, residency is tied to employment so that should a migrant job seeker fail to find employment they will be forced to leave the country. The failure of sending countries such as the Philippines to effectively ensure the domestic employment of their citizens is one of the primary reasons why they support temporary labor migration programs.

⁶⁹ Moses (Financial Adviser), interview with the author, 3/18/2013.

⁷⁰ Robert Holzmann, "Portability of Pension, Health, and Other Social Benefits: Facts, Concepts, Issues," in *International Organization for Migration International Seminar Series: International Organization for Migration*, 2010.

Healthcare and sickness: The Philippines attempts to extend healthcare to all of its citizens through the National Health Insurance Program, known as PhilHealth.⁷¹ PhilHealth is primarily funded through income taxes of all employed persons (mandatory enrolment) and employer contributions; migrants are not exempted and must pay the P 1,200 annual subscription fee before they can obtain an Overseas Employment Certificate. In return, PhilHealth reimburses the cost of migrant members' hospitalization overseas and provides coverage for immediate family members in the Philippines. PhilHealth is minimal but adequate coverage. Cassandra, a driver for an Emirati family, has PhilHealth coverage and has used it several times:

Yes, I have PhilHealth. I pay for that. And I need that because I have son, you know? They cover in PhilHealth my son, my mother and father, and including myself. So it's better. I use it already and I have good health[care] for how many times. ... You know dengue? My son had dengue. ... He used to have long time. Thanks God is ok now. My father before he died, he was confined at the hospital. But, thanks God, I use it. Really good use. Was a bill for 50,000 pesos and it went down [to] 2,000, something like that. They refund me back the things that we use in the hospital. So it's OK.⁷²

The Philippines has made membership in PhilHealth mandatory for OFWs because adequate provisions are not always available in the host country for migrant workers and rarely cover their families in the home country. In the UAE, while the country has a modern healthcare infrastructure, including a growing medical tourism industry, the provision of health insurance varies by Emirate: only Abu Dhabi and Dubai⁷³ require employers to provide health insurance for all employees, including domestic workers. Justin, a low-wage worker who could not afford to pay insurance premiums on his own, is happy to have basic coverage through his employer: "We

⁷¹ PhilHealth. "Philhealth: Agency's Mandate and Functions," accessed November 12, 2014, http://www.philhealth.gov.ph/about_us/mandate.html.

⁷² Cassandra (HSW), interview with the author, 3/30/2013.

⁷³ Dubai's healthcare law is new: it entered into force in February 2014 and will take two and a half years for full implementation. "Dubai's Mandatory Health Insurance Law Comes into Force," *The National*, 15 February 2014.

have health insurance here in the company. We have an [insurance] card. If we have problem with our body we can go to direct to the hospital.”⁷⁴

The quality of healthcare varies between Emiratis and expatriates however. First, the UAE federal government provides generous insurance coverage to all Emiratis through its Thiqqa plan, while the Abu Dhabi (Basic) Plan – offered by the same insurance company, Daman, but targeting expatriates – offers a far lower standard of coverage.⁷⁵ In October 2014, a new concern arose regarding the bifurcation of care when one of the biggest and best hospitals in Abu Dhabi, the Sheikh Khalifa Medical City (SKMC) run by the Cleveland Clinic, began to treat only UAE nationals, turning away all expatriates, even those who were receiving continuing care or follow-up care for conditions originally treated at SKMC.⁷⁶ Emergency rooms will treat urgent cases irrespective of insurance status.

Employment injury and disability: The Philippines offers minimal security against disability arising from workplace injury or other sources. OWWA provides disability and dismemberment benefits (coverage ranges from Php 2,000 to Php 50,000 (\$45 – 1,119 USD) for partial disability and Php 100,000 (\$2,238 USD), in case of total permanent disability) for OFWs⁷⁷ and SSS offers a “disability pension” (between Php 1,000 and Php 2,400 / \$22 - 54 USD depending on length of membership; minimum membership to be eligible is three years).⁷⁸ These pensions are inadequate as a means of primary support. As with health insurance, these programs are in place because protections are often lacking in host countries. In the UAE the employer is liable for treatment of illnesses or disability as prescribed in the Labour Law. However, workplace deaths

⁷⁴ Justin (Engineer), interview with the author, 9/13/2013.

⁷⁵ For more information on Thiqqa, the health insurance available to UAE nationals, visit their website at: <https://www.thiqqa.ae/opencms/opencms/Thiqqa/en/thiqqa-program/schedule-of-benefits/> Information on the Abu Dhabi (Basic) Plan can be found here: <https://www.damanhealth.ae/opencms/opencms/Daman/en/plans/member-guides/basicplanmanual.pdf>.

⁷⁶ SKMC has long restricted inpatient treatment to nationals only but formerly allowed expatriates to receive outpatient care; emergency room care remains open to all. Jennifer Bell, “Abu Dhabi’s Biggest Hospital ‘Only Treating Emiratis’, Claim Expats,” *The National*, 20 October 2014.

⁷⁷ Overseas Workers Welfare Administration, “OWWA Programs and Services,” accessed November 16, 2014, http://www.owwa.gov.ph:8080/wcmqs/programs_services/.

⁷⁸ “Summary of SSS Benefits” (Philippines: Philippine Social Security System, 2012), accessed November 16, 2014, https://www.sss.gov.ph/sss/DownloadContent?fileName=SUMMARY_OF_BENEFITS.pdf.

regularly go unreported to the UAE authorities. The injury and death of construction workers in particular remains an area of significant human rights abuse for migrant workers in the UAE. Human Rights Watch shows that, while official Dubai statistics recorded thirty four workplace deaths of construction workers in 2004, estimates using data from private sources show that there were closer to eighty work-related deaths of Indian nationals alone.⁷⁹ It is freely rumored that employers will use whatever means necessary to get rid of injured workers and avoid paying the legally-required benefit:

And as an expat in Dubai, no matter where you came from, we are only as good as we are healthy. The moment that we are damaged goods, they will find a way ... to ship you back to wherever you came from and after you are out they wash their hands, you are on your own.⁸⁰

Maternity: The Philippines government offers maternity benefits to SSS members equal to sixty-days salary (seventy eight-days in the event of delivery by caesarian section).⁸¹ Again, the Philippines offers this as protections in host countries are often lacking. However, the UAE does offer reasonable benefits to legally employed mothers. UAE Labour Law entitles all working women to leave with full pay for forty five days and allows for an additional one hundred days of unpaid leave if medically necessary.⁸² This provision of the law is generally obeyed. The problem with maternity in the UAE is that unmarried women giving birth will be detained by the UAE authorities for the crimes of sex outside of wedlock and having children outside of wedlock, and will be jailed with their infants until they can be deported. Hospitals will request to see the marriage certificate of any pregnant woman that arrives for care. Most unwed mothers in the UAE, therefore, avoid hospitals and forgo prenatal care; they take their annual leave to coincide with the expected birth of their child and return to their home country for the delivery.

⁷⁹ *Building Towers, Cheating Workers.*

⁸⁰ Moses (Financial Adviser), interview with the author, 3/18/2013.

⁸¹ "Summary of SSS Benefits."

⁸² The Emirate of Sharjah allows sixty days. United Arab Emirates Federal Law No. (8) of 1980.

Indigence: Migration is many Filipinos' response to indigence in the Philippines and the failure of the state to provide a sufficient safety net for its poor citizens. Nor does the UAE offer support to its poor migrant workforce. There is no minimum wage in the UAE and poor migrants who get into debt are liable to arrest and imprisonment. There are various charitable programs set up by both private and semi-governmental groups to help workers but support is neither comprehensive nor continuous. Charitable giving is at its height during the Ramadan holiday when large iftar⁸³ tents are set up in public areas to feed the hungry; one of the largest, the iftar meal at the Sheikh Zayed Grand Mosque fed between 22,000 and 25,000 people each day during the 2014 Ramadan.⁸⁴ But such giving is not sustained throughout the year and is not motivated by any sense that the recipients of such aid have a *right* to such support.

Unemployment: As with most (though not all) major migrant sending countries, Philippine state social security does not offer unemployment benefits.⁸⁵ Individuals may purchase unemployment insurance on the private market, but few Filipinos do so. Instead, workers are encouraged to engage with the global labor market in order to find employment. The unemployment rate in the Philippines was 7.2 percent in 2013⁸⁶; if the estimated 5,563,831 temporary and irregular Filipinos migrants working overseas returned to their homeland, the unemployment rate would nearly triple to roughly 21.4 percent. Labor migration is a means for the Philippines to deal with a lack of employment at home, essentially exporting the problem. Alternatively, temporary contract migration in the UAE – as elsewhere in the world – is specifically designed to disallow migrant unemployment: at the end of her employment, whether at the end of a contract or in case of termination or if the migrant resigns her job, residence in the host country

⁸³ Muslims are required to fast during the day during the holy month of Ramadan; at sunset each day the fast is broken with the iftar meal.

⁸⁴ Anam Rizvi, "Sheikh Zayed Grand Mosque's Iftar Meals for 515,000," *The National*, 20 July 2014.

⁸⁵ Axel Weber, *Social Protection in Case of Unemployment in the Philippines*. International Labour Organization, February 2010, accessed November 12, 2014, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-manila/documents/publication/wcms_126070.pdf.

⁸⁶ Lisa Grace S. Bersales, "2014 Annual Labor and Employment Status", Philippines Statistics Authority, accessed April 1, 2015, <http://web0.psa.gov.ph/content/2014-annual-labor-and-employment-status-comparative-annual-estimates-2014-and-2013>.

also ends. Unemployment benefits in the UAE take the form of an end of service gratuity and a one-way air ticket for the purposes of repatriation provided by the employer and guaranteed by the Labor Law.

Old age and pensions: The UAE government has pensions and social security schemes set up for UAE nationals established in Pensions & Social Securities Law, Federal Law No. (7) of 1999; there is no similar scheme set up for migrant workers. The Philippine Social Security System (SSS) provides pensions for all workers, including OFWs, who pay in to the system during their working life. The basic plan, mandatory for all OFWs, provides at least Php 1,200 (\$28 USD) per month.⁸⁷ This is inadequate as a primary means of support. The optional Flexi-Fund Program acts as a savings account and pension plan on top of SSS. Participating SSS members may make additional contributions which are automatically invested in government securities.⁸⁸ Flexi-Fund contributions plus earnings are paid out at retirement or in case of disability either as a lump sum or as an additional pension. SSS is the one program that many Filipinos seem to have confidence in and some have even availed themselves of the Flexi-Fund option. For example, Edward has voluntarily paid only into SSS because "it's the kind of agencies that you know you can really lean on so when you get old. It's not like the other agencies that, after ten to twenty years, then they will announce that they're going to shut down the company."⁸⁹ Others are not convinced that it is worth the effort of paying into the system. Angelo is no longer paying:

SSS. I did not continue anymore because there's less privilege I can get from that SSS. ... But SSS, it is for retirement only. So I believe I already save [enough each month] for my retirement. So I don't need this SSS. And it's very small amount you can get from that.⁹⁰

⁸⁷ "Summary of SSS Benefits."

⁸⁸ "OFW Members Earn from SSS Flexi-Fund Program," *ABS-CBN News*, 22 August 2014.

⁸⁹ Edward (Retail Supervisor), interview with the author, 8/28/2013.

⁹⁰ Angelo (Engineer), interview with the author, 10/21/2013.

Death benefits: Adequate provision for surviving family members in the event of a death is an important aspect of social security, particularly if the deceased was the primary breadwinner for a family or if there are dependent children in need of continuing care. If a migrant worker dies, the UAE does not offer death benefits to his family.⁹¹ The UAE is not alone in this; although ILO treaties aim for equality of treatment with regard to social security provisions including death benefits, few countries provide for the family after the death of a migrant.⁹² More problematic, the deceased's bank accounts in the UAE are immediately frozen until the estate can be probated⁹³ and their residence visa – and therefore also the visa of any dependent family members – is cancelled, leaving dependent family members in a difficult position. Any money kept in the UAE, including money owed as wages or end of service gratuity, will be distributed to the workers' heirs according to Sharia guidelines as established in the Labour Law unless there is valid will in the UAE, attested by the Embassy of the individual's country of citizenship.⁹⁴ Without a will in place, the UAE courts may also award custody of minor children according to Sharia, which privileges the blood relatives of the man over his wife. Having such a will drawn up can be an expensive prospect. Burying or repatriating human remains can also be expensive and involves a large amount of paperwork.

In the Philippines OWWA does offer a death benefit to migrant workers. OWWA membership includes life insurance (Php 100,000.00 / \$23,000 USD for natural death and Php 200,000.00 / \$46,000 USD for accidental death) for the duration of the employment contract

⁹¹ Also known as "survivor benefits." In the UAE if a worker dies or is permanently totally disabled as a result of a labor accident or occupational disease, Labour Law does award the family the an indemnity equal to the basic pay of the employee for a period of 24 months but not less than \$4,900 USD nor more than \$9,529 USD, to be distributed to the heirs according to Sharia law, hence privileging male heirs and blood relations.

⁹² ILO Treaty No. 118 has been ratified by only thirty eight countries; the Philippines has ratified it but the UAE has not. *Equality of Treatment (Social Security) Convention*. Geneva: International Labour Organization, 1962.

⁹³ If the migrant did not leave a valid will, the estate will be distributed according to Sharia principles with the bulk of the estate being distributed among the individual's male relatives; a wife will typically inherit only about 1/8th of the estate or one quarter of the estate if there are no children.

⁹⁴ Sharia law discriminates against women in inheritance rights and child custody and privileges blood relationships over marriage: daughters receive half of what sons get, wives may be receive as little as one eighth of the estate, and a deceased man's parents may receive custody of minor children even if his wife is capable of caring for her children. Ola Salem, "UAE Expats Warned to Make Will or Have Their Inheritance Dealt with Via Sharia," *The National*, 9 September 2013.

abroad and a burial benefit (Php 20,000 / \$4,600 USD).⁹⁵ SSS offers a “death pension” to the primary beneficiary (widowed spouse or dependent child, no less than Php 1,000 / \$23 USD per month) and a “dependent pension” to dependent children (10 percent of the primary death pension but no less than Php 250 / \$5.75 USD for up to five children).⁹⁶

The End of Service “Gratuity”

Typically temporary migrant workers, given the limited timeframe of their residence, are not eligible to receive pension benefits in the host country. At the same time, while working abroad many migrant workers either do not pay into their home country pensions systems or do so on a voluntary basis and often sporadically or at a reduced level. There is an increasing concern for creating internationally “portable” pensions systems in order to ensure that migrant workers are not left without a safety net in their old age. However, today only a small fraction of the 105 million migrant workers globally have access to such systems.⁹⁷ The UAE is among those states that limits its pension system to nationals.

However, UAE Labor Law requires employers to pay an end of service gratuity. Although there are some subtleties in the law, the basic premise is that the worker receives the equivalent of one month’s basic salary for each year worked upon the conclusion of her employment situation.⁹⁸ Gratuities are, in effect, a form of enforced savings for the end of the individual’s working term. It is not entirely clear what the purpose of these gratuity payments is under the UAE Labour Law, but the law gives us a hint by establishing that the end of service gratuity can be forfeited if the employer is paying in to an equivalent pension fund for the employee during

⁹⁵ "OWWA Programs and Services."

⁹⁶ "Summary of SSS Benefits."

⁹⁷ Workers within tightly-knit systems, either regional blocks such as the EU or major migration partners, may have access but this is not the global norm. C.f. Hirose, Nikac, and Tamagno, *Social Security for Migrant Workers: A Rights-Based Approach*. Gloria O. Pasadilla and Manolo Abella, *Portability of Social Benefits: The Economics of a Critical Topic in Globalisation* (Munich, Germany: Center for Economic Studies, Ludwig Maximilians University and the ifo Institute, 2012), accessed May 8, 2015. www.cesifo-group.de/portal/pls/portal/!PORTAL.wwpob_page.show?_docname=1216842.PDF.

⁹⁸ Gratuities are not necessarily paid at the end of a contract if the employee signs a new contract or continues on an unlimited contract; rather it is paid when the individual leaves her employer entirely.

their term of employment.⁹⁹ It is probable that the UAE government sees them as a form of pension or security against retirement.¹⁰⁰ Some Filipinos view it this way as well. Coco, who has no savings after spending almost fifteen years in the UAE and thirteen years with her current employer, is planning to fall back on her gratuity: "It is something, right? At least at the end there will be something."¹⁰¹ This is risky because the end of service benefit may be withheld under certain circumstances: if the worker is fired with cause, if she resigns before completing five years of service, or if she leaves at any point without giving notice.¹⁰²

In addition, few Filipinos stay employed by a single company for the duration of their working lives. Often they change jobs after two to five years in search of career advancement or wage growth. The gratuity is paid out each time the individual leaves a given employer. So rather than getting one large lump sum at retirement, the individual may get several smaller sums paid out throughout their working life. These smaller sums are rarely rolled over into retirement savings or formal pension plans. Instead, they commonly fund transportation and living expenses while the individual obtains a new job, leaving the individual with little or no retirement savings. Cherry, for example, is now at her third place of employment in the UAE.¹⁰³ Her first two jobs did pay end of service benefits when she resigned her position. Cherry sent quite a bit of her end of service money to the Philippines to support her sister who was bedridden due to multiple scoliosis; she was cheated out of another hefty sum in a real estate scam, and the remainder she lost in unlucky stock market speculation. The money she received that should have funded her retirement is gone and Cherry has little savings left.

⁹⁹ United Arab Emirates Federal Law No. (8) of 1980, Article 141.

¹⁰⁰ However, this is not the only possible rationale for the legal requirement to pay end of service benefits. In discussions with workers in the UAE, including with Emiratis, two other rationales were presented. Some see the end of service gratuity as insurance against unemployment, providing sufficient resources for a worker to live off of while searching for a new job. Also plausible is the idea that the end of service gratuity represents a means of encouraging repatriation by ensuring that the individual has sufficient means to successfully return and reintegrate in their home country. This argument is supported by the fact that UAE Labour Law also specifies that the employer should pay for the migrant's return airfare upon conclusion of employment.

¹⁰¹ Coco (Assistant Teacher), interview with the author, 9/30/2013.

¹⁰² United Arab Emirates Federal Law No. (8) of 1980.

¹⁰³ Cherry (Office Professional), interview with the author, 9/12/2013.

Furthermore, employers often try to shortchange employees on the end of service gratuities. There are several ways this can happen. One is by paying a small basic salary and supplementing that salary with allowances and bonuses. As the gratuity is calculated on basic salary alone, this reduces the amount that the employer will need to pay in gratuity. Marjorie is in this position. Her basic salary as a massage therapist is 4,000 AED (about \$1,090 USD), though on average she earns another 4,000 AED in tips each month. Her end of service gratuity will be calculated only on the 4,000 AED basic salary. As she has been employed with the same company for seven years, the difference is 22,000 AED (about \$5,990 USD) and growing.¹⁰⁴

Another strategy employers use to reduce gratuity payments is to pay out the gratuity at the end of every contract rather than at the end of employment, as is required by law. By law the amount of the gratuity is based on the last salary paid. So if an employee works two years at a low wage then receives a raise, at the end of employment the entire gratuity payment should be based on the new, higher wage. As most raises are negotiated at the end of a contract term and promotions usually involve signing a new employment contract, paying out at the end of the contract is likely to reduce the total amount paid in the long run. This is illegal unless the employee consents; the problem is that disagreement runs the risk of angering employers who may, in turn, fire workers without cause. Mary Grace came to the UAE in 1981 and worked her way up in her company; today she is a manager and makes a relatively high salary. However, after she had been with the company fifteen years, in 1996, her employer calculated and paid out her end of service benefits as of that point.¹⁰⁵ Mary Grace did not disagree, she took the money and put it in the bank.

Zoe's company shorted her on her gratuity by failing to include commissions as part of her wages. Her first contract was a three-year contract. When it ended, the company paid out her end of service benefits. These benefits were based on her basic salary, not including commission. She found out only a month ago that commissions should be included in the

¹⁰⁴ Marjorie (Massage Therapist), interview with the author, 10/8/2013.

¹⁰⁵ Mary Grace (Manager), interview with the author, 3/30/2013.

calculation of end of service benefits for employees who regularly work on a commission basis. She wants to do something about that. She has decided to try to calculate what her commissions were during that period and add it up (she has an accountant friend who can help her with this), give the information to her company, and request that they pay her the remaining gratuity. She is not sure that they will pay it but feels that asking is worth a try; she does not intend to approach the Ministry of Labour if they refuse.¹⁰⁶

In short, gratuities are paid out throughout the life of the employee and are often insufficient to cover retirement needs. If the end of service gratuity is intended in some part to replace formal pension schemes, as is the most likely explanation, it falls far short of this goal. Instead, workers tend to utilize this money throughout their career to pay for life transitions or family emergencies. Essentially the gratuity is used by Filipinos to make up earlier shortfalls in the social security system for healthcare, maternity, unemployment and indigence and rarely lasts to support a migrant in their old age, the ostensible reason for its existence. The result is that many Filipinos are unable to support themselves in their old age and do not receive sufficient state support; they must either continue working or fall back on their families.

The Family as Social Security System

Without state support for workers or sufficient social security guarantees, the migrant worker needs to find independent means of ensuring his economic and social security. The core insight of the “new economics of labor migration” theory is that individual migrants are not independent actors; rather migration decisions are made by larger units, typically families or households, in order to both maximize expected income but also to reduce economic risks through income diversification. In less developed economies in particular, the desire to reduce risk through diversification of employment and labor strategies becomes more important. Having at least one member of a household employed abroad in a labor market that is relatively independent of the local economy means that during times of local economic stress the

¹⁰⁶ Zoe (Real Estate), interview with the author, 9/24/2013.

household can rely on the remittances from the worker abroad.¹⁰⁷ One important result of this theoretical framework (as opposed to neoclassical economic theories) is that it predicts return migration: as a member of a household, the worker abroad should remain engaged with the household in her home country and will return once the household's target has been achieved. The new economics of labor migration offers us insight into why Filipinos choose to go abroad as temporary migrants in the UAE, how they understand their economic security, and what their goals are.

In effect, employment abroad is a means to diversify a *family's* earnings and may serve as a privatized, internationalized social security system. Remittances from abroad commonly pay for everything from children's education, to young couples' home building, to elderly parents' health care. Most remittance-receiving households rely on the money to purchase food and pay school and medical fees.

Table 13: Remittance Expenditure

Expenditure Category	Percentage of Remittance-Receiving Households Using Remittances for This Purpose in Q2 2014
Food and other household needs	96.1 percent
Education	69.5 percent
Medical Expenses	64.6 percent
Debt Payments	48.9 percent
Savings	46.6 percent
Purchase of appliances or consumer durables	28.4 percent
Purchase of house	12.5 percent
Investment	9.1 percent
Purchase of car or motor vehicle	7.3 percent
Other	0.0 percent

SOURCE: *Consumer Expectations Survey Second Quarter 2014*. Manila, Philippines: Banko Sentral ng Pilipinas, 2014.

¹⁰⁷ For an overview, see: Douglas S. Massey et al., "Theories of International Migration: A Review and Appraisal," *Population and Development Review* 19, no. 3 (1993). J. Edward Taylor, "The New Economics of Labour Migration and the Role of Remittances in the Migration Process," *International Migration* 37, no. 1 (1999). The new economics of labor migration theory is most closely associated with the work of Oded Stark; C.f.: Oded Stark and David E. Bloom, "The New Economics of Labor Migration," *American Economic Review* 75 (1985). Oded Stark, "Migration Decision Making: A Review Article," *Journal of Development Economics* 14 (1984).

In this way, workers abroad often serve as social security for their extended families. Cherry makes a very good salary but nevertheless has little savings and is just breaking even, given her debt payments, expenses, and remittances. This is largely because she is the primary financial support for her sister who has been struggling with multiple scoliosis.

It's break even because of this. So if you were remove my sister, I will be ok. But she's my sister. And she is thirty six, she is single, she doesn't have any family. So I am the eldest, that's why I need to support. That is our culture. If she got married, OK, she's husband responsibility. But she did not get married. She is single, old lady. That's why.¹⁰⁸

And, in reverse, many Filipinos are relying on family networks to act as a social security network, protecting them in case of need. Cassandra does pay quarterly into the voluntary SSS fund but it will not be enough to support her in her retirement. She is relying on her son who she feels should be able to help her:

Of course [SSS] will not be enough. But after that time my son is already big. Of course he will support me. Payback time, right? ... My son's always telling me, 'Mama, I promise you, when I finish [school] I will let you home.' I said, 'Ya, really? Are you sure? But don't get married until you pay me back.' ... I was joking. But it's good I heard it from them no? It's meaning that you raised this children in a good way.¹⁰⁹

Moses, a financial planner, is very worried that his clients are not prepared for this role as the social security providers for their families. He fears that migrant workers will spend all of their money on their and their family's immediate needs, driving them to rely on their children for their own retirement and thus perpetuating the cycle:

Moses: I still have to meet somebody that they'll tell me: 'you know, I stopped sending money to the Philippines long time ago because my parents told me that

¹⁰⁸ Cherry (Office Professional), interview with the author, 9/12/2013.

¹⁰⁹ Cassandra (HSW), interview with the author, 3/30/2013.

'son, daughter, never mind sending us money here because we already had saved so much from the money that you sent us before.'"

Interviewer: Well but I guess that's kind of the point, isn't it? It's a different type of retirement saving. You would expect your children to then pay for your retirement. ...

Moses: Yeah, because in my generation we are our parents' retirement scheme. That's why I tell them, 'would you rely on your children for your own retirement? Or would you want to do it for yourself?'

...

Moses: If you die here in Dubai, what would happen to the loved ones in the Philippines if you don't have insurance? They also die. If you get sick, would you say to your loved ones in the Philippines, 'Mom, Dad, can you send me money back to Dubai because I'm sick in Dubai?' So everybody is dependent on the person that is working in Dubai. So I tell them, 'you are the goose that lays the golden egg; you're the ATM of the family.'¹¹⁰

This culture of relying on your children to provide for one sickness or old age is beginning to change. Haley, who until now has remitted about half of her meager salary to support her family in the Philippines, is second guessing this:

[My partner,] she's always saying like that to me: 'Don't give everything for them. Just save for yourself. What if there's problem? What if you cannot work anymore? Then you don't have any savings, you don't have any business. What will happen to you?' She will get the point. I understand but I only..." she pauses, then continues: "Then I will think, she's right. What will happen if I don't have anything? What will happen to me? What if she leave me also? What if my

¹¹⁰ Moses (Financial Adviser), interview with the author, 3/18/2013.

parents soon die? What if? Really like that. I'm thinking that now. ... Because I don't want to stay here if I don't have anything in the Philippines.¹¹¹

Starting next year, Haley plans to reduce the amount she remits and start saving money for her own further education.

Business or Retirement Plans

Nearly all interviewees were currently supporting family members in the Philippines: sending remittances to pay for day to day expenses, school fees, housing costs, etc. But interviewees understand that this is unsustainable in the long term: the UAE has set the retirement age at sixty five. Once an individual reaches the age of sixty five the Ministry of Labour will no longer issue a work permit; without the work permit, the individual will no longer be eligible for a residence permit and faces the necessity of repatriating. Most interviewees expressed not just their expectation, but their willingness to return to the Philippines:

Interviewer: How long do you think you'll work abroad? For all of your life abroad?

Justin: No, no.

Interviewer: Or do you hope to go back?

Justin: Because I think I if I will work abroad in my whole life, I cannot manage my family, my daughter or my son. I will not see him grow up. ... I will work five years in abroad. After that I will put a small business in the Philippines. Then I'll stop my go abroad. And much better in the Philippines because you have your family and a simple life in the Philippines.¹¹²

Interviewer: If you had the opportunity, if somebody said that you could stay here and retire in the UAE, do you think you would want to?

Rachelle: No.

¹¹¹ Haley (Food Service), interview with the author, 2/23/2013.

¹¹² Justin (Engineer), interview with the author, 9/13/2013.

Interviewer: Why not?

Rachelle: It's not good to, you know, when you got get old here. I could not see myself retiring here. Though life is easy, but it's still nice to be in the Philippines.¹¹³

Interviewer: So do you plan on retiring in the Philippines?

Gabriel: Of course. There's no place like home.¹¹⁴

At one point Filipinos in the UAE will need to return to the Philippines and they need an economically viable plan for their return and reintegration. Most interviewees hope to save enough money to start a small business to support themselves (and perhaps their children as well) after they return. Joey explains:

See [once you return to the Philippines] if you will spend what you have saved here, maybe after the five years you will have no money. So it's better to start a business that can accommodate your requirement, your basic necessities without taking money from what you have saved, no? And from that amount, from that investment, you should be able to at least gain some profits, no?¹¹⁵

The most common businesses that interviewees aim to open are restaurants (five interviewees¹¹⁶), property development (three interviewees¹¹⁷), and farms (five interviewees¹¹⁸). For most interviewees these business plans are rather vague goals. But Princess is an exception. She is in stage two of a four stage plan for her future:

¹¹³ Rachelle (Office Worker), interview with the author, 10/22/2013.

¹¹⁴ Gabriel (Nurse), interview with the author, 10/15/2013.

¹¹⁵ Joey (Engineer), interview with the author, 10/21/2013.

¹¹⁶ Maria Joy (Manager), interview with the author, 3/16/2013. Rachelle (Office Worker), interview with the author, 10/22/2013. Sophia (Nurse), interview with the author, 9/15/2013. Thomas (Airport Worker), interview with the author, 10/8/2013. Nicole (HSW), interview with the author, 9/18/2013.

¹¹⁷ Zoe (Real Estate), interview with the author, 9/24/2013. Nina (Personal Assistant), interview with the author, 10/26/2013. Princess (Office Professional), interview with the author, 3/16/2013.

¹¹⁸ Mia (Professional), interview with the author, 9/17/2013. Arianna (Nurse), interview with the author, 8/3/2013. Joey (Engineer), interview with the author, 10/21/2013.

1. Buy a property for the family home: achieved;
2. Build a house: construction ongoing;
3. Start a real estate development business: target two years of savings;
4. Retire from work abroad and reintegrate into the Philippines: target age forty five.¹¹⁹

Princess has been relatively successful in saving to achieve her goals. There are several factors behind this. Most obviously, Princess makes a relatively high salary (14,000 AED per month or \$3,811 USD; sixth out of forty six interviewees who reported their income), making it easier to set aside a portion of her income. But she also lives a relatively modest lifestyle and is highly motivated by the idea of retiring early and returning to the Philippines.

Only three interviewees have already managed to start successful businesses. It is not surprising that all three make above average salaries. Cherry (salary: 14,000 AED / \$3,811 USD per month) built a small store selling office supplies and convenience items in her provincial city. She owns the land and built the building, already a substantial investment. Her husband lives in the Philippines, runs the store and lives off of its profits. The shop itself is doing well; it is currently turning a profit that is about equal to her salary in the UAE. They hope to add a second floor to the building, expand the store, and add a money exchange and bill payment services. Cherry estimates that it will take another three to four years of savings to accomplish this but that, once completed, the revenues from the business will replace her income in the UAE and she will be able to repatriate.¹²⁰

Fortunado (salary range: 30,000 to 50,000 AED / \$8,167 to \$13,612 USD per month) has several investment properties and a restaurant. His wife and eldest son run the restaurant and live off of its profits; his mother in law lives off of the profits from one of his investment properties. With his other investments, he makes enough money that he could retire now and live a simple life in the Philippines but prefers not to. He chooses to stay working in the UAE:

¹¹⁹ Princess (Office Professional), interview with the author, 3/16/2013.

¹²⁰ Cherry (Office Professional), interview with the author, 9/12/2013.

That's why all my friends [in the Philippines] are saying: 'How long are you going to staying abroad. I mean, you have your business. Your children, when they are going to finish college you can stay here. You have apartment. Just live simple life and you will survive in the Philippines already. What's the point?' No I'm not doing my job, I'm enjoying my life. ... As long as still have work, I can have strong mind, body. Actually, I have a friend here [in the UAE] ... who is fifty nine years old. So I cannot imagine; wow, fifty nine years old.¹²¹

Mary Grace (salary: 15,800 AED / \$4,301 USD per month) has lived in the UAE for over thirty years; she has worked for the same company for the entire duration. Over the years her remittances have paid for the family house, two cars, college educations for her children, and has provided the seed money for several small businesses:

- Two internet cafes, each employing three or four people: of her businesses, these provide the most reliable income, though the electricity is expensive;
- Fish pond, employs one person: a good business but vulnerable to floods and heat;
- Live band, performers paid per gig, employs twenty two to twenty four people: she provides the trucks, cars, and instruments; this is only profitable during the party season.

She has enough saved that she could retire now but she chooses not to. "As long as I am still strong and they do not cancel me I will stay." Instead, she wants to open one more business: a small hospital or clinic for her son, who is currently in medical school. She knows it will be expensive, but hopes that she will be able to save enough before she is forced to retire.¹²²

While starting a small business to support oneself in one's old age is the standard goal of most Filipino workers in Abu Dhabi, this strategy has many pitfalls. In 2014 the World Bank ranked the Philippines 161st out of 198 countries in ease of starting a business;¹²³ the process is long, complicated, and riddled with corruption. Once established things do not get easier. The

¹²¹ Fortunato (Architect), interview with the author, 3/23/2013.

¹²² Mary Grace (Manager), interview with the author, 3/30/2013.

¹²³ "Economy Rankings," World Bank Group, accessed November 16, 2014, <http://www.doingbusiness.org/rankings>.

Philippines has an abundance of small restaurants and shops and competition is fierce; property speculation is an inherently risky proposition; and farming is low wage and vulnerable to weather and natural disasters (to which the Philippines is prone). One difficulty is that such businesses require someone in the country to run them. Often the migrant worker will go into partnership with a relative, likely a sibling, who is living in the Philippines and will manage the day to day running of the business.

Arianna: We don't have yet a business in Philippines. It's difficult to put up a business in Philippines when you're not there. I don't try it because most of my friends did it and it just didn't work out.

Interviewer: Why do you think it doesn't work out?

Arianna: Because they put so much trust on the person handling in the Philippines, the money, they never discuss it. So, by the time they go home and check, 'Oh are we getting any profit?' 'No, no it's like this, because it's like this, it's like this.' But they cannot question it because it's a family, it's a relative who's handling it. So, for family's sake, they just keep quiet and OK. No need, we'll wait until we go home.¹²⁴

And the truth is that many of these businesses do fail. Ava has worked as a seamstress, a clerk, and a domestic worker in the UAE and has struggled to save money for her future. When her husband (an Arab man living with her in the UAE) died, he left Ava some money plus she had some little savings of her own. So Ava decided to return to the Philippines and try to set up a grocery business. The grocery did not earn enough and she took up basket weaving in addition. This still did not earn enough to support her and her children, now adults with children of their own. Eventually her money ran out. After two years Ava decided to come back to Abu Dhabi. "It's a bit easier here," she says, despite the fact that she shares a crowded room and often does not have enough money to buy groceries at the end of the month. She is getting old and wants to

¹²⁴ Arianna (Nurse), interview with the author, 8/3/2013.

retire next year. She does manage to save about 100 AED (\$27 USD) a month for herself so that she can do something, start another small business, when she retires. Sometimes she has to use that money to eat or help her son when things are tight, but she has some savings in the bank. But she knows she doesn't have enough money saved to support both herself and her son's family and that this fact is unlikely to change before she is forced to retire from work in the UAE.¹²⁵

Despite the high cost of starting a business and the strong possibility of failure, this remains most migrants' stated strategy.¹²⁶ The Philippines government is worried about the proliferation of and reliance on small businesses: as of 2012, 89.4 percent of Filipino businesses were micro enterprises and a further 9.74 percent were small businesses; only 0.86 percent were medium or large enterprises.¹²⁷ The Philippines would like to encourage investment in larger enterprises such as cooperative agro businesses. They have attempted to address this, creating opportunities for investment that are hawked by the network of government agencies that support OFWs, including its Embassies. But Filipinos by and large do not invest in these programs. Victoria is the only interviewee who expressed an interest in investing her money directly in a large-scale business enterprise. There is a tourist development planned near her hometown, an idyllic seaside location, that she is considering investing in.¹²⁸ Similarly, few interviewees talk about investing in the stock market; only four interviewees had done so.

¹²⁵ Ava (HSW), interview with the author, 3/30/2013.

¹²⁶ It is impossible to say what the rate of failure among small businesses in the Philippines is. Roughly half of the labor force of the Philippines is employed in the informal economy, much of which is comprised of micro businesses of the type that migrants tend to engage in. However, no statistics are kept on the success or failure of these businesses. C.f. Rene E. Ofreneo, "Growth and Employment in De-Industrializing Philippines," *Journal of the Asia Pacific Economy* 20, no. 1 (2015).

¹²⁷ Republic of the Philippines Department of Trade and Industry, "MSME Statistics", accessed April 17, 2015, <http://www.dti.gov.ph/dti/index.php/msme/msme-statistics>.

¹²⁸ Victoria (Accountant), interview with the author, 9/28/2013.

Human Rights Implications

Debt and low savings (only 46.6 percent of remittance-receiving households in the Philippines have savings¹²⁹) drive reliance on home country social security and employers' end of service payments. Yet, these earnings abroad are not themselves secure. The migrant is in a precarious situation.

In the UAE the ability of migrants to form economic groups or to petition the state for economic support, including social security provisions, is extremely restricted. The right to form labor unions is specifically enshrined in the UDHR: "Everyone has the right to form and to join trade unions for the protection of his [sic] interests."¹³⁰ The UAE government has not allowed labor unions to form and groups that have tried to take an unofficial role in advocating workers' interests collectively have been repressed by the authorities. Strikes are forbidden by UAE law.¹³¹ This imposes significant harm and is a serious violation of the rights of migrant workers. Without political representation or the ability to form unions or strike, migrant workers in the UAE have little ability to influence the rules and regulations that structure their working lives.

Neither can the migrant worker in the UAE rely on social security systems. Attempts by the Philippine state to fill this gap are praiseworthy but inadequate, leaving Filipinos to rely on family as a means of ensuring economic and social security. Again, social security is explicitly guaranteed in the UDHR:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.¹³²

As discussed in Chapter Two, social security needs to extend transnationally because migrant families are transnational. Sending countries often cannot afford to extend a robust social

¹²⁹ *Consumer Expectations Survey 2nd Quarter 2014* (Manila, Philippines: Banhko Sentral ng Pilipinas, 2014) accessed May 8, 2015, http://www.bsp.gov.ph/downloads/Publications/2014/CES_2qtr2014.pdf.

¹³⁰ The Universal Declaration of Human Rights, Article 23(4).

¹³¹ United Arab Emirates Federal Law No. (8) of 1980, Article 112.

¹³² The Universal Declaration of Human Rights, Article 22.

security system to citizens within their territorial borders, let alone to citizens abroad. Yet temporary contract migrants often do not meet the criteria for social security in their destination country where they pass their productive years, the years in which they would normally be contributing to their home country social security systems. The UAE is no exception to this rule and most forms of social security are not provided to migrant workers. The Philippine government has attempted to step up and fill these gaps. But the same structural and economic weaknesses that push migrants to leave the Philippines in the first place also impede its ability to provide an adequate social security safety net. The Philippines does not offer support for employment, unemployment or indigence; its resources are insufficient to adequately provide for the one in five Filipinos that fall below the national poverty line, let alone the roughly half of the population that fall below the World Bank's \$2.00 USD a day global standard.¹³³

Family Reunification

When asked why they went to work abroad, most interviewees spoke of family obligations. That is the official line, as well: the fact that migrants endure the hardship of overseas life and work in order to send remittances support their families in the Philippines makes them the “new heroes” of the Philippines. Few interviewees *want* to be separate from their families; this is a sacrifice. Moreover, this particular sacrifice is riddled with moral ambiguities, for the individuals involved as well as for the sending and receiving states that encourage – and in some cases mandate – the separation.

Some but not all migrant workers in the UAE may sponsor the residence visas of their immediate family dependents (spouse, dependent children, and dependent parents). Rules regarding visa issuance are set by federal law. To sponsor a wife or child, the male worker must earn at least 4,000 AED (\$1090 USD) per month (or 3,000 AED / \$817 USD if accommodation is provided by the employer)¹³⁴ and provide evidence that their dwelling is adequate (show an

¹³³ Ofreneo, "Growth and Employment in De-Industrializing Philippines": p. 123 – 125.

¹³⁴ Investors are also eligible to sponsor immediate family members, though they must pay a hefty 70,000 AED bank guarantee in order to do so.

authenticated rental contract and the latest Abu Dhabi Water and Electricity Authority bill). For a woman to sponsor her husband or child she must be employed in an accepted profession¹³⁵ and earn at least 10,000 AED (\$2,725 USD or 8,000 AED / \$2,180 USD if the employer provides accommodations). The worker must show the original marriage contract to sponsor a spouse or original birth certificate to sponsor a child. Unmarried daughters may be sponsored at any age; sons may only be sponsored until the age of eighteen unless they are students at a UAE university. To sponsor a parent or “relative of the second-degree,” the worker must earn at least 20,000 AED (\$5,450 USD) per month, have a dwelling with at least two bedrooms, and show evidence that the parent is a dependent. As they do not hold regular work permits, domestic workers and laborers are categorically denied the right to sponsor dependents. On the other hand, mosque imams, teachers, and school bus drivers are exempt from the salary requirements.

Out of fifteen men interviewed, twelve make more than the 4,000 AED (\$1,090 USD) salary requirement for a man to sponsor his family; of the thirty-two women, only eight meet the 10,000 AED (\$2,725 USD, or 8,000 AED / \$2,180 USD with accommodation) salary requirement. This means that over half of interviewees were not eligible to sponsor their families and that there is a strong gendered dimension to eligibility.¹³⁶ And so migrant families in this context can be divided into three groups: those who are able to reunify in the UAE, those that are legally eligible but choose to remain divided between the UAE and the Philippines, and those families that are ineligible for family reunification.

Worker Sponsors Family

We think of the migrants who are eligible to sponsor their families as the lucky ones. And they are: they have choice. Gabriel and his wife, both nurses, had planned to leave their daughter in the Philippines with his parents. After a year and a half of separation from her, however, they have changed their minds:

¹³⁵ The list of acceptable professions includes engineering, education, nursing or medical professionals.

¹³⁶ This breakdown is not likely to be representative of the entire UAE migrant population as Filipinos rarely work in construction, a major employer of low-wage men.

Gabriel: Because I am planning to bring my child over here then for good, hopefully for good. Because my wife is really missing my daughter. Because when we left our daughter, she was only like one month. I left my daughter, she was two weeks old, because I really need to come back here because of the job.

Interviewer: That's very hard.

Gabriel: It is.

Interviewer: Is that the last time you visited the Philippines, when you left her?

Gabriel: Yes, it was the last time.¹³⁷

There is nothing comparatively unusual, good or bad, about the arrangement that Gabriel and his wife have made for their daughter's care in the Philippines while they live and work abroad. His parents are living in a decent house and Gabriel is able to remit sufficient funds to pay for his daughter's upkeep. This is a situation that thousands of Filipino parents in the UAE are familiar with. But Gabriel and his wife are pained by the situation and want their daughter with them. They are fortunate that they are eligible to obtain a visa for their baby and bring her to the UAE.

But this does not make raising a family in the UAE easy for migrants. The biggest problem that migrant families face is the sheer expense of raising children in the UAE. While the cost of living and the cost of child care are higher in the UAE than the Philippines, far and away the largest cost is education. While education is provided free to citizens, expatriates must pay. There are some public schools that will accept Arabic-speaking expatriates, but they charge fees. Most Filipinos place their children in private schools. There is a great variety of private schools in the UAE that vary in terms of curriculum, quality of instruction, quality of facilities, and, of course, price. It is generally acknowledged that the best schools follow the American or British curriculum. But these schools are expensive¹³⁸ and most have a waiting list for matriculation. Filipino schools

¹³⁷ Gabriel (Nurse), interview with the author, 10/15/2013.

¹³⁸ The American Community School, one of the most expensive in Abu Dhabi, charges 73,130AED (\$19,910 USD) for the 2014-2015 year for high school (grades 9 through 12) instruction.

are easier to get in to and less expensive but have a reputation for a lower quality of instruction and a lack of discipline:

Interviewer: Is it expensive to pay for school here?

Arianna: Because my child is going to an IS.

Interviewer: What is that?

Arianna: International School. British school. It's a bit expensive. It's *really* expensive. We can choose to put her in a Philippine school, which is less expensive - I think it's 6000 [AED / \$1,635 USD] a year.

Interviewer: How much is the British school?

Arianna: ... The grade five is around nineteen something [19,000+AED / \$5,173 USD] this coming school year. So it's really expensive. But I have seen the children that are going to Philippine school and I really don't like their manners and how they act, their attitude. Sometimes I feel shame that I see them, that they're Filipinos and they're acting like this.

Interviewer: How do they act?

Arianna: It's not what you expect, I mean, coming from a close family culture... You're not supposed to raise your voice at an adult, you know. Normal Philippine traditions. Here they're like: 'ahhh!' [*makes a mock scream and flails hands*] I just don't like them! I see with ten years they have boyfriends. I don't want my child to be like that. I didn't grow up to be like that. And even their parents, I can see that they cannot do anything about it. You know, they cannot even tell their children, 'Stop that. That is not right.' And it's not what I want for my children.¹³⁹

There is also the issue of permanent temporariness to be considered. Arianna (whose story is discussed at greater length in Chapter Six) is worried that her children have grown up in the UAE and have no emotional attachment to the Philippines. As the children get older she

¹³⁹ Arianna (Nurse), interview with the author, 8/3/2013.

would like them to return to the Philippines to attend university there, but her children do not intend to do so. As she looks forward to eventual retirement in the Philippines, she wonders where in the world her children will call home.

For many migrants that are legally eligible to sponsor children, the expense of education often makes this an impossible option. As children get older and school fees increase (most schools are on a sliding scale with the lower grades costing less and the more advanced grades costing more), many parents face the necessity of sending their children back to the Philippines. And if the children repatriate, either a parent must go with them or some other accommodation must be made for their support and care. Sophia and her husband have three young children, all living with them in Abu Dhabi. Their eldest child is in school and the second is just reaching school age now. Sophia and her husband both make good salaries as nurses at a local hospital and her husband's package even includes an "education allowance" designed to defray the cost of paying school fees in Abu Dhabi. However, school fees are high and the education allowance does not cover all the costs:

Sophia: There's a certain allowance that you can get from [the employer] but not all.

Interviewer: Does it cover the school?

Sophia: Not covering all, yeah. Like for us, we got only I think 12,000 [AED, \$3267 USD].

Interviewer: And so how much does school cost for your kids?

Sophia: It changes as they [get older]. Now I think for us it's more than 10,000 [AED, \$2,723 USD] for each. And we have two [in school], so we're paying extra for those. That's why I want to go back home now!

Interviewer: I was going to ask because your third child, when she enters school, will you be able to afford it?

Sophia: I don't think so. I don't think so.

Interviewer: So do you plan on going back to the Philippines?

Sophia: Yeah, going back. I'm planning to send them back next year, because my eldest will be going to high school now, so grade seven, something like that. So, yeah. And the small one is grade one, so, starting grades. So I'm planning to send them back home for a better education.¹⁴⁰

Eligible to Sponsor Family but Chooses Not To

The end result is that many migrants who are eligible to sponsor family members in the UAE instead choose not to do so. This is a difficult decision to face but it is a choice. Mark is an engineer with a multinational construction company. Given his position and salary, he is eligible to sponsor his family in the UAE. He chooses not to do so. Mark is clear that the only reason that he is in the UAE is for the money. While he feels that the UAE is nicer, more free and open, than other countries in the Gulf where he has worked, it is still not where he would like to raise his family.

Interviewer: That's very difficult for you guys to be apart for so many years.

Mark: Not really. Since I started working, I've always been in other places. I [would] only go home once a week, or sometimes twice a month, so my wife has gotten used to it. My children have gotten used to it. ...

Interviewer: Do you miss them?

Mark: Oh, I do, but I have to work for them.¹⁴¹

The cost of living is lower in the Philippines and there is a familial support network in place that makes raising the children easier. In fact, one of the children is currently having some problems in school. Mark has asked his wife to quit her job in order to focus on the children. The relatively high wage he makes in the UAE coupled with the low cost of living she faces living with her parents in the Philippines makes it possible for them to forgo her income. Mark returns home for a visit once a year, in the meantime he keeps in touch with weekly phone calls.

¹⁴⁰ Sophia (Nurse), interview with the author, 9/15/2013.

¹⁴¹ Mark (Engineer), interview with the author, 9/13/2013

Not Eligible for Family Reunification

Low-wage men and low- to mid-wage women are not eligible to sponsor family members. Few interviewees questioned this, given the expense of supporting a family in the UAE and the fact that the UAE government takes no responsibility for families and offers no social security. Fortunado explains:

“If you are going to get your son, your wife, it’s not a problem. But, of course, the visa is restricted for the professional. If you are a laborer, driver of course they will not allow you to get your family. Financially-wise it’s a big question that how you going to sustain your lifestyle with your children, sending them to the school? So that is exclusively for the professional.”¹⁴²

Fortunado is a professional and currently is eligible to sponsor family members. But this was not always the case. He remembers the first time he left the Philippines to work abroad and left his wife and children behind:

I cannot forget the feelings of leaving your children behind. ... Because during that time I don’t have my family with me. I cannot forget the feeling of going to the airport, my son is still young ... and my wife is crying and my son is crying. It seems that I am the most unlucky person in the world. It seems that something in yourself dies, your heart stops beating, something... Going to the airport, I will not look back again just to see my wife and my son is crying. I *hate* that feeling. ... You cannot imagine, I mean, your worst, worst nightmare. Then it’s another inspiration as well that you have to take: just to avoid that feeling you have to bring your family. So that’s, maybe, that’s another thing that inspired you to work more, to bring your family.¹⁴³

But most workers are not so fortunate. For most workers in low-wage, low-skill positions, and particularly for women, working their way up to become both eligible to sponsor children and

¹⁴² Fortunato (Architect), interview with the author, 3/23/2013.

¹⁴³ Fortunato (Architect), interview with the author, 3/23/2013.

able to pay for school fees in the UAE is unlikely. They face an indefinite amount of time separated from their loved ones.

The Philippine state, which does provide social security to OFW families, is increasingly concerned about the societal and familial costs associated with transnational families. Of particular concern is the impact of separation the on children of migrant mothers. Studies are mixed as to whether the absence of one or both parents is detrimental to the welfare of the child. It is thought that without appropriate parental supervision and role models, children may have problems with social adjustment, may not do as well in school, and generally have lower welfare outcomes. Alternatively, parental migration may encourage children's agency and independence.¹⁴⁴

Cassandra is so proud of her son, she almost busts with it. The boy is in the Philippines, living with her sister. He is eight years old, in third grade, and he is doing well in school, top ten in his class. Unlike many low-wage workers who prefer to pocket the cash in lieu of vacation, Cassandra goes back to the Philippines every year during her annual vacation period. Last year when she was home on vacation she saw his grades had gone down. She had a four month vacation and so she stayed there and focused on him. "I said: 'I am angry because I feel like I am working for nothing.'" At the end of the school year his grades were in the top ten.

Of course you're a mom you have to be proud. You have to say 'oh congratulations.' You have to say that because, you know, he will think, 'my mom doesn't care of me.' Of course you have to let them let him feel that 'oh my mom she's proud of me.' Because he's alone, sometimes I feel sad when, you see, if I go home people ask him, 'where's your mother?'¹⁴⁵

¹⁴⁴ Maruja M.B. Asis, "Experiences of Left-Behind Children in the Philippines," *Asian Population Studies* 2, no. 1 (2006).

¹⁴⁵ Cassandra (HSW), interview with the author, 3/30/2013.

She tries very hard to stay involved in his life and be a parent, even from a distance. When she is not home, she Skypes regularly. But her sister is the one who is there every day and her son is very attached to the sister.

Cassandra: Mainly he cared more for my sister more than he cared for me, because this is the first time that he grow up. And I cannot say anything.

Interviewer: Is that good or bad?

Cassandra: I don't know if it's good or bad.¹⁴⁶

Human Rights Implications

At issue here is whether there is a human right to family reunification. The UDHR specifies a right to marry and found a family, and that marriage and the family shall be protected.¹⁴⁷ However, it is generally understood that this right stops short of a human right to family reunification. In the case of refugees or those separated from their families as a result of a crisis beyond their control or in the case of an unaccompanied child, humanitarian concerns demand that family reunification be our goal. But for migrant workers, the case for a right to reunification is much weaker. The UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families requires that:

States Parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children.¹⁴⁸

But as the Convention has not been ratified by any major receiving country, it seems that those countries of employment have rejected the right to family reunification.

Family reunification is a stated goal of immigration policy in some countries such as the United States, but this is viewed as a humanitarian, not a human rights, issue. In the European Union, where family reunification is recognized as a human right, it is still significantly restricted:

¹⁴⁶ Ibid.

¹⁴⁷ The Universal Declaration of Human Rights," Article 16.

¹⁴⁸ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 44.

only migrants with “reasonable prospects of obtaining the right of permanent residence” may sponsor relatives.¹⁴⁹ *Temporary migrants are not eligible*. EU states “may require the non-EU national to have adequate accommodation, sufficient resources and health insurance, and may impose a qualifying period of no more than two years.”¹⁵⁰ Moreover, sponsorship is restricted to spouses and minor children¹⁵¹ (and even children over the age of twelve whose primary residence is not with the sponsor may be excluded¹⁵²). The European Court of Human Rights has further ruled that there is no absolute obligation for the state to admit the relatives of persons residing there. In the UAE, only workers who are able to financially support their families are allowed to sponsoring dependents’ residence visas. Their support and upkeep are the responsibility of the migrant. Those families that cannot afford the relatively high cost of living in the UAE must leave dependents in the home country. The prohibition of family sponsorship is a fairly standard restriction in temporary work programs. The UAE is not out of line with human rights obligations or international practice in this respect.

Conclusion

The issues discussed in this chapter all address the ability of temporary migrants to form groups to express their identities and interests, familial, cultural, political, and economic. Deficiencies in these areas are widespread, affecting the majority of Filipino workers in the UAE. However, they are of varying impact on the lived experience of migrants. In many cases, as with community groups or family reunification, migrants are largely able to engage in group activity as a result of official tolerance despite laws that enable undue restraint; tolerance is viewed as an act of benevolence and the UAE state does not acknowledge a human rights obligation in this respect. While the situation remains precarious, therefore, its impact on the lived experience of migrants is muted.

¹⁴⁹ “Council Directive of 22 September 2003 on the Right to Family Reunification,” *2003/86/EC*, Council of the European Union (Brussels, Belgium, 2003), Chapter 1, Article 3(1).

¹⁵⁰ “Family Reunification,” European Commission, accessed November 18, 2014, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/immigration/family-reunification/index_en.htm.

¹⁵¹ “Council Directive of 22 September 2003 on the Right to Family Reunification,” Preamble (9).

¹⁵² *Ibid.*, Preamble (12).

Of the greatest immediate concern are restrictions on the rights of migrant workers to form unions or engage in other types of organized labor advocacy, such as protests or strikes. The right to form unions is clearly expressed in the UDHR: “Everyone has the right to form and to join trade unions for the protection of his [sic] interests.”¹⁵³ This right ensures the ability of labor to engage in negotiations with employers or the government on a fair footing. Given her relatively weak position relative to governments or corporations, the individual worker is basically unable to advocate effectively for her rights and interests. Alone she simply lacks sufficient leverage. This is reflected in the proliferation of exploitative labor practices, as outlined in the preceding chapters.

In the larger picture, however, the greatest concern is what impact these constraints on the ability of migrants to form groups – familial, cultural, civic, political, and economic – have on the larger human rights situation. Without political voice and as an atomized individual, the migrant worker is a dwarf among giant corporations and governments. Without the ability to form groups, the individual’s social, economic and political voice is muted, nearly silenced. Migrant workers largely come to the UAE alone, they face restrictions in their ability to create social groups that might to some extent form a local safety net in case of need, they are justifiably excluded from exercising political leverage through voting or holding office but also face illegitimate restrictions on their ability to publically express political opinions about their plight or to advocate politically for significant changes, and, finally, they are forced to confront powerful employers as atomized workers without the benefits of labor organization. The sum of these limitations to form groups at all levels is greater than any one part.

These limitations in the ability to form groups encourage the existing power imbalance that disadvantages migrants relative to citizens, and workers relative to employers. The fear is that the lack of group representation will compound other structural weaknesses such as the migrant underclass discussed in Chapter Five or the legal privileges described in Chapter Seven. Restrictions on the ability to form groups limits the ability of individual migrants to make their

¹⁵³ The Universal Declaration of Human Rights, Article 23 (4).

voices heard, compounding structural weaknesses in the UAE's economic, social and political systems, which in turn reinforces the existing power imbalances, creating and reinforcing exploitative labor situations in which migrants have no means of seeking remedy, either alone or in concert with others.

CHAPTER NINE: CONCLUSION

Introduction

The first section of this dissertation established the theoretical basis for this work; the second section provided the historical background that led to the migration corridor between the UAE and the Philippines; the third section looked at the current condition of Filipino migrants in the UAE in detail. Past and present. This final chapter looks to the future, examining possible policy mechanisms to address human rights deficiencies of temporary migrant workers in the UAE.

Ideal policy solutions would both fully address the cause and content of systematic human rights violations and also be practically achievable in the currently existing political and social context of the UAE. They would be both complete and easy. There is rarely an ideal solution.

In the UAE context, however, the range of what is possible, as well as the reasons why a policy is available or unavailable may be unfamiliar to the western reader. The UAE is an absolute monarchy, ruled by a small royal family and relying on the distribution of rents and patronage politics to garner popular support. In many ways, the royal families of the Emirates of the UAE have a large degree of freedom of action. They may rule by decree and are not constrained by partisan politics, clashing vested interests, or immovable constitutional law. When the inclination is strong, even far-reaching policies may be made or changed with startling rapidity.¹

Economic imperatives, the UAE's international political reputation, and the larger geopolitical interest in maintaining good relationships with allies necessary for international

¹ Though in these cases there is often a delay in implementation as unwieldy bureaucratic structures struggle to keep up with policy.

security intertwine to pressure for change. The UAE's economy is currently heavily petroleum based. However, petroleum is a finite resource and the country's political leadership recognizes the need to diversify the economy and reduce reliance on oil and gas. Tourism, alternative energy, and financial services have been identified as areas for economic growth and expansion. As the country evolves towards a higher-skilled economy, the need to attract more high-skilled labor may stimulate concessions: higher skilled workers have greater opportunities in the global marketplace and so greater leverage in negotiating the conditions of their employment.

Further, bringing in large multinational corporations raises the specter of increased international attention to labor conditions, threatening the UAE's image as a modern and tolerant Muslim country in the international community. Major construction projects – particularly those that involve a well-known international partner such as the NYU branch campus and the new Guggenheim museum in Abu Dhabi – have been targets of international protests regarding labor rights. The increasing dependence on the tourism industry is particularly significant as development of tourist infrastructure targeted at the international market necessarily also creates an international audience for human rights and labor concerns. Consumers, especially those from developed countries, may hesitate before spending their tourism dollars in a country that has a reputation for human rights violations and unfair labor practices.

The UAE's international reputation is not merely a matter of pride. In the UAE's case it is crucial to both economic diversification and to long-term geopolitical security. Again, as the UAE prepares itself for a gradual but inevitable transition to a post-oil economy, gaining a reputation for unfair labor practices, labor unrest, and general human rights violations is detrimental to attracting the high-skilled labor as well as international tourists necessary for the success of their economic diversification strategy. These factors keep the UAE open to pressure from outside groups – including NGOs, government and academic criticism, and, especially, international news media – regarding human rights reforms.

A negative human rights reputation also damages the UAE's position with crucial western allies. The UAE relies on the major western powers, and particularly the United States, to guarantee its security. In an increasingly volatile region with conflicts that threaten to spill over

into the UAE, the support of western military powers is crucial to the UAE. To garner international support, the UAE can offer both its oil wealth and its appeal as a model for a moderate, tolerant, stable Muslim state. As fear of radical, militant Islamic groups grows globally, this image of UAE compatibility with Western values is both increasingly important and increasingly difficult to maintain.

So far the US and other Western allies have largely turned a blind eye to repression in “moderate” Arab allies such as the UAE. But there is a fear that the need for credible Arab partners (in order to ensure that attacks on Islamists are not understood as attacks on Islam) makes the US blind to repressive domestic policies in those countries that actually fuel “the very extremism they purport to fight.”² Human rights violations, repression of civil society, and a lack of opportunity for domestic have-nots are arguably at the root of Islamic extremism. And Islamic fundamentalism and extremism have persistently bubbled up in the UAE. Overt extremist group activities, such as those of the al-Islah group discussed in Chapter Eight, have been immediately and firmly put down. But individual actions are harder to control. Most recently, an Emirati woman, a mother of three, stabbed to death a Romanian-American kindergarten teacher in a mall bathroom and attempted to plant a bomb outside the residence of an Egyptian-American doctor, apparently “in an attempt to create chaos and terrorize the country.”³ The UAE authorities claim that the woman acted alone and had no links to terrorist organizations, though she had recently viewed “terrorist websites.”⁴ Her attack came only one month after the US State Department, including the US Embassy in the UAE, warned of threats against American and international schools on a “Jihadist website.”⁵

² Michele Dunne and Frederic Wehrey, *U.S.-Arab Counterterrorism Cooperation in a Region Ripe for Extremism* (Washington, DC: Carnegie Endowment for International Peace, 2014).

³ Associated Press Dubai, “Abu Dhabi Stabbing: Female Suspect Arrested in Murder of American Teacher,” *The Guardian*, 04 December 2014.

⁴ Dana Moukhalati, “‘No Terror Link’ to Reem Island Mall Murder Suspect,” *The National*, 07 December 2014.

⁵ “Security Message for U.S. Citizens: Riyadh (Saudi Arabia), Int’l Schools Terror Threat”, United States Department of State, Bureau of Diplomatic Security, accessed December 5, 2014, <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=16504>.

Beyond a loss of crucial Western support, any actual spillover of regional hostilities into the UAE could cause a flight of migrant workers, with enormous economic repercussions. The UAE authorities have been quick to condemn domestic violent acts such as the recent stabbing death, and to stress the basic safety of life in the UAE.⁶ Certainly there has been no threat of civil war in the country and to date no signs of such unrest as had rocked Bahrain, sending tremors through the migrant labor population (the Philippines briefly suspended deployment to Bahrain due to the protests, for example). However, the expat labor pool is relatively flexible; if security conditions worsen, many may choose to leave the UAE. Experience in Libya shows that Filipino workers are reluctant to leave even in the face of significant instability, though there is eventually a breaking point. The Philippines issued a mandatory evacuation order for its citizens in Libya when the civil war broke out in 2011, but many workers quickly returned to the country; when violence again heated up in July of 2014, a second mandatory evacuation order was issued for the 13,000 Filipinos remaining in Libya.⁷

The UAE rulers confront opposing constraints. On one hand, they must try to offer sufficient liberty and opportunity at home (including showpiece reforms) to be credible both to Western allies and to an increasingly politically aware domestic population. On the other, they wish to retain their absolute monopoly over political power, which requires sufficient control over civil society to crush challenges to that authority—whether in the name of extremist Islam or in the name of liberty and equal opportunity.

Constraining change are concerns about the stability of the domestic political and social status quo. To understand what is achievable and what is not in the UAE, we must take due consideration of the unusual ruling bargain that has been struck between the royal families and the wider population. The ruling bargain was discussed in depth in Chapter Three; here let us note that the provision of cheap, flexible migrant/labor to Emirati/employers is part of a larger

⁶ C.f.: Moukhallati, "'No Terror Link' to Reem Island Mall Murder Suspect."

⁷ "Philippines Evacuating Workers from Libya after Beheading, Gang Rape," *Al Jazeera America*, 31 July 2014, accessed December 9, 2014, <http://america.aljazeera.com/articles/2014/7/31/libya-philippinesevacuation.html>.

system by which the UAE government distributes rents in the form of both economic benefit and social privilege to its citizens. Policies that would strike at the fundamental basis of this domestic ruling bargain are extremely unlikely to gain traction. Calling for democratic reforms, an end to kafala, and the right to strike or unionize would call into question the larger political project, and so are not only implausible but their promotion may undermine the more limited, but still desirable, policy reforms that are achievable.

This chapter will look at possible policy reforms in greater depth. I advocate gradual, phased change in order to allow the Emirati state sufficient room to manage the conflicting demands of political and social stability, economic diversification, international reputation, as well as respect for human rights. There remains space for significant reforms that alleviate systematic and significant human rights abuses, though many of the most egregious and severe abuses remain problems that only long-term changes to fundamental structures will resolve.

Replacing Vulnerability with Agency

If the UAE is characterized by a high degree of state capacity for change but a general unwillingness to upset the status quo, the Philippines faces the opposite problem. As discussed in Chapter Four, the government, beholden to Filipinos working overseas (and their remittances), is enthusiastic in its support for these worker's human rights. In contrast to the UAE, domestic reform in the Philippines is primarily hindered by a failure of state capacity due to limited resources and the prevalence of corruption. Internationally, the Philippine state actively attempts to extend the reach of its authority over Filipinos abroad. However, its ability to effect change is limited by the sovereignty of other states and its need to ensure that important international labor markets remain open to Filipino workers, especially its skilled workers.

When asked about the long-term role of migration in the Philippine economy, Grace Relucio Princessa, Philippine Ambassador to the UAE, says that, while she considers labor migration to be an inescapable part of the modern, globalized economy, "it must be migration by choice."⁸ When workers have a choice between different employment situations, they have the

⁸ Ambassador Grace Relucio Princessa, interview with the author, 10/30/2013.

necessary space to be selective of jobs, employers, and destination countries for employment abroad. They are therefore less likely to enter into precarious labor situations and, should they find themselves in an exploitative situation, more likely to exit that position.

In the long run, the best change that the Philippines can make to improve the human rights situation of its migrant workers abroad is to address development at home. A lack of stable, well-paying jobs in the Philippines pushes Filipinos to work abroad. For example, Guevarra documents how the lack of positions in the Philippines coupled with very low pay pushes nurses, especially new graduates, to work abroad.⁹ If the choice between employment situations includes decent working conditions at home, workers are less likely to migrate into uncertain labor situations beyond the reach of the Philippine state. Or, if they do choose to migrate, they would have a relatively secure fallback position should employment abroad not meet their needs. In that case, concerns such as the fear of being fired or facing a labor ban will have less power to shape the attitudes and actions of Filipinos in the UAE.

But development is a long-term project. We need to look for other mechanisms which will increase the choices available for OFWs as well. Filipinos in the UAE today lack agency, the basic ability to make decisions that will largely direct the course of their lives. Instead, in the current temporary labor system, the ability to make decisions is hampered by the high cost of recruitment or job search, an inability to negotiate the legal system, fear of deportation and labor bans, among other aspects. As with the UAE, we should take a phased approach in order to address the conditions of current workers to the best of our present-day ability, while paving the way for more fundamental changes over time.

Policy Implications

If the goal of reform of UAE policy is to find a progressive path towards improving the human rights of migrant workers, recognition of the lived experience of those workers that can show us how to prioritize those gradual reforms. Immediate reforms should aim to increase the agency of migrant workers, to enable them gain more control over their own futures. We are

⁹ Guevarra. *Marketing Dreams, Manufacturing Heroes*.

looking for reforms that are 1) ambitious but achievable, 2) increase the agency of workers, and 3) provide a path towards the progressive realization of the full set of human rights.

Not all issues that were raised in the preceding chapters will be addressed here. Instead, this chapter focuses on seven major goals. These goals are conceived of in broad terms, looking at the elements necessary in order to guarantee migrants a life of dignity. It is difficult to prioritize these goals. Since they are interrelated, fully addressing one will require advances in other arenas as well. In addition, we must balance breadth versus depth of impact. As the preceding chapters have made clear, the most profound violations of human rights, those that have the most extreme impact on migrants' lived experience, are fortunately rare. Situations of forced labor, debt bondage, rape or physical violence are the exceptions, not the rule. Violations such as passport withholding or pay discrimination may not be as dramatic, but are widespread and have an insidious influence, undermining the human rights of millions of migrants in the UAE. Based on the standard of assigning roughly equal weight to the depth versus the breath of impact, the goals are listed below in order of priority.

1. Protect the ability of migrants to choose their employment;
2. Ensure a living wage;
3. Streamline recruitment, contracting, and deployment;
4. End illegal practices as part of the "business culture";
5. Support for domestic workers;
6. Allow migrants to form labor organizations;
7. Create a transnational social security net.

For each goal, a series of potential policy reforms is given. Each series of reforms is designed to start with relatively small and build up to more significant, comprehensive reforms. In the Philippines the limiting factor is often the lack of resources. The Philippine state is generally active and supportive of changes to support its OFW citizens, though it does not always have the practical capacity to implement effective changes. In the UAE, some few policies are readily achievable because there is existing domestic support for reform (as with bankruptcy laws, discussed below) and/or because the reform has limited negative impact on entrenched domestic

actors (as with creating micro-lending opportunities). More ambitious reforms lack these elements. In order to achieve deeper policy reform greater pressure for change will need to be brought to bear on the UAE government. A discussion of the potential strategies for increasing these sources of pressure, or for creating new ones, is beyond the scope of this dissertation. Nevertheless, it is clear that the UAE government is vulnerable to international public opinion and pressure from its western allies for improvements on migrant worker rights. Far-reaching policy reform is possible, though difficult.

Goal: Protect the Ability of Migrants to Choose their Employment

The greatest bulwark against the violation of migrants' human rights is the individual's ability to choose their employment. The ability to choose entails far more than the formal acceptance of a position. Instead, it is bound up in the individual's choice sets: in order for choice to have substantive content, the individual must have viable alternatives. Ottonelli and Torresi propose four "necessary and sufficient conditions for migration to be voluntary": non-coercion, sufficiency (alternative options would be at least minimally acceptable), exit options, and information.¹⁰ An individual who has been compelled by overwhelming circumstance or by coercion from another individual (or the state) in order to migrate or to take a specific job, cannot be said to have chosen that path; a person who is tricked into taking an unacceptable position or who, once engaged, has no option to exit their employment situation is not free to choose.

However, choice is not black and white, a power that you either have in its entirety or lack completely. We are all faced with constraints on our choices for any number of legitimate reasons. When considering quitting a job we might be constrained by our need for income, contractual penalties for breaking an employment contract, or other reasons. When do these normal constraints rise to the level of coercion, robbing individuals of choice? Some constraints, such as corporeal punishment and imprisonment, are purely coercive and clearly unacceptable violations of fundamental human rights. Yet there is a vast grey area in which employers and

¹⁰ Valeria Ottonelli and Tiziana Torresi, "When Is Migration Voluntary?" *International Migration Review* 47, no. 4 (2013): p. 801.

states act to constrain migrant workers' mobility to varying degrees, from requiring notice periods to imposing labor bans, which will need to be assessed in greater detail. Ottonelli and Torresi argue that "we are coerced into sticking to a plan or contract if the cost of the exit option is unbearable..."¹¹ They give little guidance, however, in distinguishing the bearable from the unbearable. Here, a constraint is considered unbearable if it necessarily violates human rights or intentionally creates a situation in which the alternative is a life in which basic human dignity (the ultimate goal of human rights and as specified by the UDHR) is rendered impossible.

Increasing the ability to walk away increases the resiliency of migrants as agents to respond to unbearable conditions. By ensuring choice, not only do we avoid certain inherent human rights violations (the right to choose employment, for example), but we also reduce vulnerability to a much wider set of violations by enabling individual migrants to avoid exploitative situations in the first place or to independently exit them should they become drawn in. Increasing migrant worker's ability to choose also decreases employers' incentives to engage in human rights violations by reducing the expected return associated with exploitation.

Policy Path

1. End restrictions on the departure of visit visa holders to the UAE;
2. End absconding as a crime;
3. End labor bans;
4. End employer sponsorship.

1. End Restrictions on the Departure of Visit Visa Holders to the UAE

Restrictions on Filipino worker's ability to choose their employment begin in the Philippines. While the Philippine economy is unable to support full employment, the state requires that individuals who seek to work abroad have a contract registered with the POEA before the individual exits the country. Even where it is legal in the receiving country, as in the UAE, the Philippine state does not allow its citizens to use tourist visas (or visit visas in the UAE) to seek employment. My reasons for objecting to this are explained in greater detail in Chapter Six. In

¹¹ Ibid., p. 801.

summary, positively denying individuals' human right to exit their country in order to avoid Filipinos possibly taking jobs below the minimum standard set by the Philippines, but without the Philippine state being able to provide a viable alternative, and without any clear evidence of a pattern of human rights violations resulting from the use of visit visas for job hunting, is unwarranted.

In countries where seeking employment while on a tourist visa is illegal, the Philippines can certainly act as a partner in preventing this. But in countries where it is allowed and where the Philippines does not otherwise object to its citizens traveling and working, exiting on a valid visa should not be obstructed.

This need not impose an intolerable strain on the Philippine migration management system. Additional resources needed to deal with the increase in job-seeking tourists and to help migrants later change their status from tourist to overseas foreign worker would be offset by savings in policing visit visa holders. And such a move would be popular with a potentially powerful constituency: the millions of Filipinos who work abroad and their families, many of whom prefer not to use recruitment agencies.

2. End Absconding as a Crime

The issue of absconding is one of the component pieces of the larger concept of kafala, or sponsorship. The idea behind sponsorship is that the employer takes on responsibility for the worker. This responsibility has two dimensions, inward- and outward-facing. Inwardly, the employer is responsible for the welfare of the worker, everything from the payment of wages to their health care. Outwardly, the employer is responsible for ensuring that the worker obeys the laws and norms of society or, if they do not, reporting breaches immediately. Reporting absconding is essentially the means by which an employer reports that they can no longer serve this outward-facing oversight function as they do not know where the worker is physically located, breaking the sponsorship relationship. Without sponsorship, the individual becomes an illegal

immigrant immediately and is subject to administrative action. The worker cannot simply walk away from his job; if he does so he forfeits the right to employment and residence in the UAE.¹²

A worker fleeing exploitation and abuse is not, under UAE law, absconding; after all, the abusive employer has already broken the inward-facing relationship implied by kafala. The problem is that, once the absconding charges have been filed, it is up to the worker to prove that he had reason to flee his sponsor. Workers might abscond for many reasons. When confronted by the authorities, most allege exploitative labor conditions and/or abuse. However, there are also a significant number of people who believe that the majority of workers who abscond do so without (legally justifiable) cause. When asked "Why are so many maids absconding?" Judge Ali Humaid bin Khatam, Head of the Dubai Public Prosecution of Naturalization and Residency Department, answered:

An increasing number of housemaids are found escaping their sponsors in a bid to raise their income. In most cases, absconded maids work on an hourly-basis and earn much more than they ever did when they worked for a sponsor for a fixed and limited salary.¹³

It is fairly commonly accepted, however, that working conditions for domestic workers are harsh, that local standards allow for very long hours, poor living conditions, severe restrictions on movement and communication, etc; recruitment agencies and employers are quite open in the local press about their expectations regarding these issues.¹⁴ Police in Dubai, for example, have recommended that employers treat domestic workers better in order to reduce the likelihood of their absconding.¹⁵

It seems that absconding charges should be treated by the UAE authorities with caution. This research, as well as research conducted by various human rights groups, shows that

¹² It should be stressed here that there are provisions in the Labour Law that allow a worker to quit without notice, though he will be liable to compensate his employer for damages should he do so. Similarly, an employer can fire an employee without notice, though the company will be liable to compensate the worker.

¹³ Mohammed Al Sadafy, "What to Do When: Your Housemaid in Dubai Has Absconded," *Emirates* 24/7, 13 November 2012, accessed May 9, 2015, <http://www.emirates247.com/crime/local/what-to-do-when-your-housemaid-in-dubai-has-absconded-2012-11-13-1.482614>.

¹⁴ C.f. Ramona Ruiz, "Many Maids Are Being Deprived Time Off During the Week," *The National*, 18 May 2014. Ruiz, "Families Urged to Give Maids a Day Off."

¹⁵ Wafa Issa, "Treat Maids Better to Cut Crime, Dubai Police Say," *The National*, 18 June 2013.

migrant workers in the UAE will tolerate a significant degree of hardship in order to secure their employment abroad. And, again, exploitative and abusive situations are not uncommon. Yet, at the moment the presumption is with the employer filing the charges, not with the worker who has fled; in essence, the worker is presumed guilty. At the very least, the UAE government should remain agnostic when absconding is initially reported. Police should investigate the labor situation of absconding workers before determining whether charges should be filed against the worker, against the employer, or if a mediated solution can be found. This change in enforcement would represent a step in the right direction.

A more decisive, and necessary step, is to simply end rules against “absconding.” Ending the prosecution of absconding should be achievable in the current UAE environment. Employers would remain sponsors and could still be required to cancel their sponsorship when an employee quits without notice. Absconding should be considered simply a matter of the employee quitting without notice. As such, employer’s interests would still be represented through rules regarding breach of contract, penalties as proscribed by law or contract, or through civil proceedings. However, they would no longer be able to use deportation and a lifetime labor ban as means to pressure migrants or to avoid alternate legal proceedings.

3. End Labor Bans

Labor bans are popular with employers and business owners as they provide additional leverage over workers subject to this weighty penalty.¹⁶ The greatest objection to ending labor bans is likely to come from employers who view them as a necessary means of protecting the investment they made in recruitment fees, transportation, etc. in order to bring a worker to the UAE in the first place. However, it should be stressed that UAE Labour Law already provides a mechanism by which employers are compensated for the costs associated with early termination of a contract:

If the contract has been terminated on part of the employee, for reasons other than those provided for under Article (121) hereof, the employee becomes liable for compensating the employer against losses incurred by him in consequence of

¹⁶ Labor bans are particularly weighty penalties because they represent not just the loss of a job, but also the worker cannot look for another job, loses her residency in the UAE, and becomes liable to pay for her own repatriation.

contract termination, provided that the amount of compensation, may not exceed half a month's pay for a period of three months or for the remaining period of contract, whichever is shorter, unless the terms of the contract provide otherwise.¹⁷

This is enough of a penalty; it is more than sufficient to cover lost recruitment costs in most cases. To insist on the labor ban only serves to disempower workers to such an extent as to make systematic labor abuse basically inevitable.

As the businesses in the UAE that benefit from them are ultimately owned by Emiratis, there is a powerful constituency behind keeping labor bans. But there is room for hope. Getting rid of the ban might be possible for two reasons. First, there is a growing recognition that attracting the best workers, rather than the most desperate, to come to the UAE is not, actually, very easy. That is the logic behind exempting key professionals from the ban. Engineers, accountants, doctors and nurses, and specific other professionals are exempted because they are in particularly high demand and short supply. But employers in the UAE complain of the poor quality of all types of workers, from healthcare providers to housemaids. The truth is that getting qualified people of any profession to come to the UAE is not so easy and getting them to stay for longer than one contract is even more difficult. If the law did not force individuals to stay in negative employment situations for the length of a full contract, it is possible that more and better qualified individuals would be willing to take the risk of coming to the UAE and be satisfied to stay.

Second, getting rid of the ban does not change the incentives of the state. While labor bans benefit Emirati business owners, they do not help the state. Even should a worker change jobs, and therefore sponsors, early, the worker would remain tied to specific employers who fulfill basic immigration and welfare roles in place of the state.

4. End Employer Sponsorship

The ultimate goal must be to do away with sponsorship entirely. Ending sponsorship is not necessarily the same thing as ending temporary labor migration. The problem with

¹⁷ United Arab Emirates Federal Law No. (8) of 1980. Article 116.

sponsorship is not that residence is tied to employment, but that employment is tied to a single employer who is given extensive control over the mobility of the worker for up to two years. Of the GCC countries, Bahrain has taken the first steps to dismantle sponsorship by making the Labour Market Regulatory Authority (LMRA), rather than employers, the official sponsor of all foreign workers in the country; Kuwait and Qatar have publically pledged to follow suit.¹⁸

The UAE, by contrast, has reaffirmed its commitment to kafala sponsorship as a means of regulating labor and immigration.¹⁹ However, weakening of sponsorship can be seen even in the UAE. The free zones already have a similar arrangement to Bahrain's, in which the free zone authority, rather than employers located within the zone, sponsors workers, making it easier for workers to move to new employers. If Qatar, considered to be one of the strictest kafala states, follows through on its promise to shift sponsorship to a federal government entity in 2015, it is likely that the UAE could be brought to follow suit. Ending employer sponsorship would have a very significant impact: it would mean that employers would no longer need to consent to a worker changing jobs and would not be able to impose labor bans on quitting workers.²⁰

As with Bahrain, the UAE could transfer sponsorship to the Ministry of Labour (or another government body). This agency would then have the responsibility of ensuring that workers enter and exit the country in a regular fashion – a normal government regulatory function. To maintain temporary labor migration programs but to end the confinement of workers to a single employer, the UAE could issue visas making migrant workers eligible for only specific types of positions, either restricting by sector or by eligible positions (to only those positions that cannot be filled domestically, for example).

¹⁸ Zahra Babar, *Free Mobility within the Gulf Cooperation Council*, Georgetown University School of Foreign Service in Qatar, 2011, accessed May 8, 2015, <https://repository.library.georgetown.edu/bitstream/handle/10822/558290/CIRSOccasionalPaper8ZahraBabar2011.pdf?sequence=5>.

¹⁹ Salem, "UAE Watchdog Says UN Labour Report Lacks Credibility."

²⁰ This only ends the *employer's* ability to engage in these actions; as seen in Bahrain, the federal government can still prevent workers from leaving their employer or impose labor bans. The Bahraini government requires workers to remain with their employer for at least one year and, even if that requirement is met, the LMRA is free to reject applications to change employers and continues to do so in most cases unless the first employer consents. *For a Better Life: Migrant Worker Abuse in Bahrain and the Government Reform Agenda* (USA: Human Rights Watch, 2012), accessed May 8, 2015, <http://www.hrw.org/sites/default/files/reports/bahrain1012ForUpload.pdf>.

Goal: Ensure a Living Wage

Earning a living wage is not only a human right in itself (Article 23(3)), but also a means of securing many other human rights. Securing an adequate standard of living, supporting a family, and obtaining social security, for example, are primarily realized by individuals through their economic activity; the sending and receiving states primary obligation is to respect and protect this activity.²¹ In order to afford these rights, individuals must earn a living wage. Earning a living wage also protects against debt bondage, a form of modern slavery, and generally empowers migrants to achieve life goals.

Policy Path

1. Stop imprisonment for debt and establish personal bankruptcy laws in the UAE;
2. Create a UAE minimum wage;
3. Set the minimum wage at a living wage.

1. Stop Imprisonment for Debt and Establish Personal Bankruptcy Laws in the UAE

It is not uncommon for temporary migrants in the UAE to take on substantial amounts of debt. The debt cycle begins with borrowing to pay recruitment fees and may continue with borrowing from friends, family, employers, etc. in order to make ends meet during family emergencies or other periods of hardship or extraordinary need. Occasionally, workers may take on credit card, bank loan, or other formal debt; this was particularly common during the easy credit years before the global financial crisis of 2008/9, when even very low-wage workers were eligible for high-interest credit cards and bank debt in the UAE. Another layer of Filipinos are involved in debt when they agree to cosign loans for friends or family in less fortunate circumstances. An even wider circle of individuals in the UAE assumes debt in order to pay for expensive housing in the UAE.²² If an individual falls behind on payments to UAE creditors there is no bankruptcy protection, and she may be arrested and imprisoned for debt.

²¹ As discussed in Chapter Two; the state's responsibility to provide is limited to ensuring a minimal safety net.

²² It is typical for one full year's rent to be paid up front either by the renter issuing a series (2 or 4) post-dated checks, a form of debt and/or by the renter taking a housing loan from their employer.

The UAE needs to establish bankruptcy laws and end the practice of imprisoning people for unpaid debt. Debt should be considered a civil, not a criminal offense, and there should be means for debtors to restructure their payments. Without this, debtors will fear coming forward to the UAE authorities in cases where unpaid debt or debt bondage is at issue. Bankruptcy protection and the end to debtor's prison would not necessarily change the amount of debt a migrant may be forced to take on, but it would substantially influence how that debt is treated and eliminate excessive repercussions, such as debt bondage.

It is not only workers who will benefit, but businesses and the state as well. Imprisoned debtors cannot work to earn money to pay back the money owed to their creditors; and the state must pay for their imprisonment. Given those costs, it is not surprising that there is a sizable demand for legal reform in this area.²³ Further, the UAE has recently taken some steps in this direction. Emirati citizens are already exempt from imprisonment for debt; a 2014 draft law would also exempt terminally ill patients, pregnant women, seniors and minors.²⁴ This exemption should be extended to all individuals.

2. Create a UAE Minimum Wage

In its 2008/2009 *Global Wage Report* the ILO noted that minimum wages “are a nearly universal policy instrument,” applied in more than 90 percent of ILO member states but with the “significant exception” of “some Gulf countries, such as Bahrain, Saudi Arabia and the United Arab Emirates.”²⁵ As argued in Chapter Five, a minimum wage requirement must come from side of the destination country, not the sending country. Attempts by the Philippines to enforce its own minimum wage laws on OFWs have been mainly ineffective and, in some cases, actually counterproductive: narrowing the employment options available to migrants, encouraging labor migration via tourist visas, and inviting contract bait and switch. In the long run this is worse for

²³ Editorial, “A Reminder of Need for Bankruptcy Law,” *The National*, 01 July 2013. Editorial, “It’s Time for the Bankruptcy Law,” *The National*, 12 September 2013.

²⁴ Samir Salama, “Relaxation for Debt Defaulters in UAE,” *Gulf News*, 19 May 2014.

²⁵ Patrick Belser et al., *Global Wage Report 2008/2009: Minimum Wages and Collective Bargaining: Towards Policy Coherence* (Geneva, Switzerland: International Labour Organization, 2008): p. 34, accessed May 8, 2015, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_100786.pdf.

migrants than if no minimum wage had been set, as it takes away the ability to make an informed decision about employment.

On the other hand, there is potential to establish a minimum wage in the UAE. There is precedent for a minimum wage in the region: some of the Gulf countries (Kuwait, Oman, Saudi Arabia, and recently Bahrain) do have a minimum wage, though only Kuwait extends it to expatriates as well as nationals. The UAE Labour Law also specifies that a minimum wage “enough for the employee's basic needs and to secure means of living” should be set by Federal decree; the minimum wage may vary by sector but should cover all employees, not just citizens.²⁶ The Labour Law was passed in 1980 but no minimum wage has yet been set.

Establishing a minimum wage would be unpopular with employers, which is to say with many UAE citizens, who would be forced to pay the higher wages. However, there is a major reason why the UAE may nonetheless choose to impose a minimum wage: it can be viewed as an alternative to tripartite bargaining and labor organization (e.g. unions).²⁷ Unions are discussed further below; suffice to say that the UAE government is vehemently opposed to independent labor organization. The state argues that the laws in place are sufficient to protect the welfare of workers and, as the state offers all necessary protections, unions are unnecessary. This is patently untrue and, in the face of persistent labor unrest including strikes and riots on worksites and in labor camps, concrete improvements to the laws protecting workers are clearly warranted. In a sense, minimum wages serve as a protection for those at the bottom of the socioeconomic scale who lack leverage relative to employers. But it is a mechanism that remains fully under the control of the state and, as such, may be an acceptable option.

3. Set the Minimum Wage at a Living Wage

Low wages are most directly resolved through the implementation of a minimum wage, which the UAE does not currently have. A minimum wage need not guarantee a luxurious

²⁶ United Arab Emirates Federal Law No. (8) of 1980, Article 63.

²⁷ This sentiment extends beyond the UAE: “In many of these cases, to protect the most vulnerable workers in the labour market, governments seem to have turned towards minimum wages policies as a substitute for collective bargaining.” Belser et al., *Global Wage Report 2008/2009*.

lifestyle, but it must protect the most basic ability of workers to ensure their and their family's subsistence. Currently, there are very few countries in which the minimum wage is equal to a living wage. Of the 100 countries surveyed by the WageIndicator Foundation, including twenty OECD (Organization for Economic Cooperation and Development) countries, only seventeen had a minimum wage set at or above the living wage.²⁸ However, demands to set the minimum wage at the level of a living wage have reemerged in many developed economies recently. There are strong living wage movements today in the United Kingdom²⁹ and the United States³⁰ in particular. In the UAE, a wealthy country that has invited guest workers as a crucial element in its development and which professes concern for the welfare of its residents, the minimum wage should go one step further and approach a true living wage.

Goal: Streamline Recruitment, Contracting, and Deployment

The impact of recruitment, contracting, and deployment irregularities can be profound. Each has the potential to cause significant harm to the human rights of migrant workers; as an interrelated set they have the potential to lead to some of the worst violations, such as debt bondage and forced labor. But recruiting and contracting for temporary labor migration is difficult to regulate appropriately. Recruiters have two constituencies, job seekers and employers, with nearly diametrically opposed interests in the labor market. In situations where the supply of workers far exceeds the supply of employment opportunities, the interests of workers are likely to be considered secondary to those of employers. The Philippine state has tried to insert itself into this process, regulating minimum conditions that must be guaranteed to workers being deployed abroad. Enforcing these regulations has been difficult. Recruiters have strong incentives to cheat, resources for inspection and prosecution are scarce, the legal structure is cumbersome and

²⁸ This is not an ideal dataset as it is compiled through a "network of associated, yet independent regional and national partner organizations" of variable quality and relies heavily on user-contributed data sites such as Numbeo (www.numbeo.com). However, there are few other organizations that have attempted a large-N comparison of living wage rates. Martin Guzi and Paulien Osse, *Estimating Living Wage Globally - 65 Countries*. WageIndicator, 2013, accessed January 3, 2015, http://www.wageindicator.org/documents/publicationslist/publications-2013/Estimating%20Living%20Wage%20Globally_201311.pdf.

²⁹ See the Living Wage Foundation: <http://www.livingwage.org.uk/>.

³⁰ The issue of a living wage has motivated the recent "Fight for 15" protest movement of low-wage workers, particularly fast food workers, in the United States. See: <http://fightfor15.org/april15/>.

further burdened with corruption. And workers will themselves often abet agents in skirting the law in an effort to secure a (scarce) job: a worker presented with the choice between a “reprocessed” contract³¹ or no job at all will often look the other way from any irregularities in the paperwork. Filipino recruitment agencies continue to skirt the law with near impunity.

Policy Path

1. Create micro-lending opportunities;
2. Revise recruitment fees: allow migrants to pay, set reasonable fees, and require evidence of how recruitment fees were paid;
3. Create fewer, larger recruitment agencies eligible to recruit for at-risk positions;
4. Establish a joint contract verification system with contract registration before deployment;
5. Strengthen enforcement of recruitment laws and policies.

1. Create Micro-Lending Opportunities

Ensuring that individuals are able to pay recruitment fees without incurring crippling debt is a substantial challenge. Many potential Filipino migrants do not have sufficient personal resources to pay recruitment fees and so must take out loans in order to do so. Most migrants borrow from friends and family. For those who cannot, there are few options available for formal loans. If a low-skill, low-wage worker is able to secure a bank loan, the interest rate is likely to be very high, up to 240 percent.³² This can be the beginning of a spiral of debt that could lead to imprisonment in the UAE or forced labor situations.

Migrants need a means of obtaining funds before departure, and not at usurious rates. This is an area where the UAE and the Philippines may be able to work together for a common advantage. What is needed is a government-sponsored micro-lending program for migrants in the Philippines-UAE corridor. While the Philippines has some programs through which its citizens can seek loans, they are insufficient. They require one resource which is in short supply in the

³¹ Using a contract that meets POEA standards or for which there is a job order approved by the POEA in order to process the worker for deployment from the Philippines, but with no intention of actually having the worker fill that position once he arrives in the destination country.

³² Agunias, *Migration's Middlemen*: p. 12.

Philippines and which is abundant in the UAE: capital. With UAE support, alternative borrowing options could be developed to pay allowable recruitment and travel fees and so reduce reliance on recruiters, employers, friends, family, and credit cards.

This is not likely to be particularly difficult for either country. The Philippines already has a nascent structure in place that could be adapted to this purpose. The UAE, in turn, is generous in offering development support. Currently much of this aid has been directed towards Middle Eastern or Muslim countries. But if even a relatively small percentage of the UAE's \$5.89 billion dollar (US) foreign aid budget directed towards this purpose could make a significant difference.³³

2. Revise Recruitment Fees: Allow Migrants to Pay, Set Reasonable Fees, and Require Evidence of How Recruitment Fees Were Paid

First, migrants should be allowed to pay recruitment fees. This is currently not allowed under UAE law and Philippine law supports this prohibition. In an ideal world, workers would not be required to pay any fees and a minimum wage law would protect the worker from potential wage reductions resulting from this cost being passed on to the employee. But requiring employers to pay all recruiting costs has proved unworkable in practice. Many workers simply end up paying anyway, either through illegally collected fees, illegal wage withholding, or through bribes. Because jobs are scarce, banning recruitment fees to workers has simply pushed this common practice underground. And, by pushing it underground, several negative externalities also arise, from predatory lending to increased corruption. Where the employer does pay the fee, he may feel entitled to recoup this cost by extracting excess value from their work (such as unpaid overtime) or by refusing to allow the worker to quit without a labor ban. Even if no improper dealings take place, the worker ultimately pays for recruitment in any event, if not directly, then passed on from the employer in the form of reduced wages. Allowing the migrant to pay these fees up front makes the payment transparent and increases the ability of the worker to make an informed choice about migration.

³³ *United Arab Emirates Foreign Aid 2013* (Abu Dhabi, UAE: Ministry of International Cooperation and Development, 2014), accessed May 9, 2015, http://86.96.156.214:8080/pdfs/UAE_Foreign_Aid_Report_2013.pdf.

Second, if the state allows recruitment fees, it also has a say in what those fees are. It can set reasonable limits. The crucial element is that, whatever the fee, it should be set at the same level by both countries and should be enforced by both countries. The Philippines normally allows Philippine agencies to charge migrants up to one month's salary and places no restrictions on what may be charged to employers, (though it disallows fee collection from all domestic workers as well as workers whose destination country prohibits collecting such fees). The UAE forbids its recruitment agencies from charging any fees to migrants and places no restrictions on what may be charged to employers. The UAE should allow reasonable fees. The Philippines policy of a one month's salary cap on fees charged to workers is appropriate; this fee should be split between the partner agencies and the migrant should not be charged twice. In addition, neither country regulates the fees placed on employers. But, again, if the fees charged to employers are too high, they may try to recoup money from workers. And in the Philippines-UAE case, in addition to recruitment agency fees, employers have to pay transportation costs as well as various fees to both the Philippine (OWWA and PhilHealth membership, for example) and UAE (visa fees, for example) governments. These fees need to top out somewhere; a one month's salary cap seems appropriate here as well.

Third, as a deterrent to charging such fees illegally, recruitment agencies and employers should be required to provide evidence of how recruitment fees were paid. These fees can be matched up with information from registered contracts as well as the Wages Protection System to ensure that migrants were charged an appropriate amount and that the fees were not recouped through wage withholding.

These three elements are discussed together because they are a package of reforms. All three must be implemented together in order to have a positive impact. As it is, this is by no means a fool-proof system. It is possible that employers may continue to try to recoup fees through bribes. But taken together they lower the incentive to cheat, while cutting off common mechanisms through which cheating occurs.

Allowing migrants to pay reasonable recruitment fees is the natural counterpart to ending Philippine restrictions on the use of tourist or visitor visas for job hunting (discussed previously).

In this view the recruitment agency is a service provider with a fee for service model. If the potential migrant does not require the service, they are free to utilize alternative means to seek employment, such as legal job hunting on visitor visas in the UAE.

The changes needed for the Philippines to implement this system – setting a cap on the fees charged to employers and implementing a system for tracking recruitment fees – are not likely to impose a political strain. However, the Philippines already faces significant strain on its resources and implementing further documentation processing and inspections, on top of an already complex and strained process will add difficulties. The UAE is likely to face the opposite problem. It has the resources needed to implement these changes (allowing migrant workers to pay reasonable recruitment fees and implementing a system for tracking them) but is likely to face political difficulties. The domestic population is not likely to object, but human rights groups active in the region may do so. In order for the UAE to make a credible claim that allowing fees to be charged to workers actually benefits those workers, these policy changes will have to be accompanied by serious enforcement measures and a commitment to prosecuting offenders. In particular, establishing reporting and enforcement mechanisms establishing how fees were paid is likely to be crucial in this respect.

3. Create Fewer, Larger Recruitment Agencies Eligible to Recruit for At-Risk Positions

Allowing workers to exit the Philippines on tourist visas for the purposes of legal job hunting (discussed previously) is likely to reduce the number of people seeking deployment through recruitment agencies. Unfortunately, the workers most likely to be taken advantage of by recruitment agencies are likely to be among those that continue to require their services: workers without strong personal networks in the country of destination, who are seeking employment in unskilled areas or areas in which there is a surplus of qualified workers. There are two specific professions which are particularly vulnerable to exploitation by recruitment agencies and employers: domestic workers and construction workers.

Currently the Philippines state attempts to regulate recruitment agencies by setting stringent standards for becoming and remaining a licensed recruitment agency. As discussed in Chapter Five, these standards have not been particularly successful at curbing abuses. This is

partly due to corruption and partly due to the fact that as middlemen, recruitment agencies have two “clients” in any transaction: the employer and the worker. This can lead to a conflict in which the interests of one client are prioritized above the other. Especially at the low-skilled end of the spectrum, as with domestic workers and construction workers, this conflict of interest tends to disadvantage the worker: low-skilled workers are far more abundant than employers wishing to hire them. A new approach is needed.

One option would be to limit recruitment to a small number of approved recruitment agencies. Only contracts brokered by these approved agencies would be processed by the Philippine POEA and the UAE Ministry of Labour, consolidating recruitment with a few large companies. This would facilitate oversight and regulation, and also increase the potential impact of sanctions by either the UAE or Philippine governments: a company that does good business recruiting for the UAE due to its privileged position should be more vulnerable to losing that position, reducing the likelihood of their engaging in illegal practices.

There are significant drawbacks to this approach. First is the fact that the success of this strategy relies on commitment by the relevant governments to effective oversight, a willingness to intervene on behalf of the workers, and to impose effective penalties. This has been lacking in the past in both the Philippines and the UAE. Second, this system entails the loss of competition and options that might otherwise drive improvement; this would essentially create an oligopoly. Ethical, innovative, small agencies would be shut out of the process. For mid- and high-wage workers, these disadvantages outweigh the potential benefit and so such a system need not be extended to all contracts. The lack of any other realistic option coupled with the sheer enormity of the problem makes this a worthwhile option for specific low-wage workers, particularly domestic workers and construction workers.

4. Establish a Joint Contract Verification System with Contract Registration Before Deployment

Recruiting and contracting are areas where neither the Philippines nor the UAE can adequately address the problem unilaterally. In particular, independent regulations regarding contracting have directly contributed to the contract bait and switch phenomenon. Right now both the UAE and the Philippines require that a contract be issued and registered with the relevant

authority, and each has a mechanism for ensuring that this is done. However, the two systems are entirely independent. The Philippines requires that the contract be verified by the POEA and withholds the Overseas Employment Certificate, required for the migrant worker to exit the Philippines, until this has been done. The UAE requires that contracts be registered with the Ministry of Labour and will not issue the labor permit and residence visa without it. But at no point do the two authorities check to see if it is the same contract that has been registered in both places, opening the door for contract bait and switch. And, while the Philippines government may suspend the license of any Philippine agency involved and blacklist the UAE agency, “neither is liable for contractual breaches under UAE law.”³⁴ In both countries complaints rarely make it to the relevant authorities. Migrants may be unaware of the laws and the resources available to help them (especially in the destination country) or may be complicit in avoiding regulations in order to secure a job that does not meet government standards for whatever reason.

Contract bait and switch, with or without the migrant’s knowledge, is often the first step towards unfree labor conditions and modern slavery. Once the worker arrives in the destination country, he really has no idea what job and what terms of employment await him. He is relying on the word of a recruitment agent who has already proven willing to engage in fraud against the relevant government/s; what faith can a worker place in the chances that he will not be scammed as well? And once in the destination country, his ability to renegotiate terms or reject the contract entirely are significantly limited.

A memorandum of understanding (MOU) between the Philippines and the UAE on labor was signed in 2007. This agreement establishes certain requirements for contracts – specifically, that contracts should state the required qualifications, conditions of employment, salary, accommodation, and transportation terms of employment. It also ensures a role for both governments in regulating, verifying, and authenticating contracts (though priority is given to the

³⁴ Ramona Ruiz, “Minimum Wage for Filipino Maids in Saudi a Model for Gulf Countries,” *The National*, 9 October 2012.

UAE Ministry of Labour in this matter) and requires that a standard model contract³⁵ be drafted. The MOU lapsed in 2012 and the Philippines government has been active in trying to negotiate a new agreement. As of April 2015, they felt that they were close to agreement but no official document had been signed.

In 2008 a pilot project was announced that aimed to coordinate actions between the government of the UAE, India, and the Philippines in order to identify and implement best practices in contractual labor migration, the aptly named Pilot Project on the Administration of Temporary Contractual Employment Cycle from India and the Philippines to the United Arab Emirates.³⁶ The first phase of the project deals with recruitment and contracting and calls for “an understood and enforceable contract that is available in the language of the worker and which corresponds to the English-language of Arabic-language contract issued by the employer.”³⁷ Further, the project established “‘one-stop-shop’ centers in India and in the Philippines for receiving and processing applications for work.”³⁸ The problem is that this approach maintains the current problems of country-specific silos. What is needed is not two “corresponding” contracts, but one single contract recognized by both governments.

Instead, the UEA seems to have signaled its willingness to continue to try to deal with contracts independently. In 2014 the UAE created a standard employment contract for domestic workers, an advance that the Philippines and other destination countries had advocated. The new standard contract, however, fails to offer some basic protections that sending countries had hoped for, such as a minimum wage or set working hours.³⁹ The Philippine response was muted, praising the contract as a step forward but reserving judgment. The UAE then, in a circular

³⁵ This is a tactic that the Philippines likes to utilize. A standard model contract is not a binding document. Instead, it is intended to be the basic text that employers and workers then modify to suit their specific circumstances. Having a standard model contract in place does not ensure that individuals will use it but it does set a good example.

³⁶ C.f. International Organization for Migration, “Labour Mobility in Asia - Managing the Temporary Contractual Employment Cycle,” accessed July 29, 2014, <http://www.iom.int/cms/en/sites/iom/home/what-we-do/labour-migration/labour-mobility-in-asia--managing-the-t.html>.

³⁷ Ibid.

³⁸ Ibid.

³⁹ “New Standard Contract for UAE Domestic Staff Is Just the Start,” *The National*, 2 June 2014.

released by the Ministry of Labour on 26 May 2014, instructed recruitment agencies to “rely on the new standard contract, removing the need to have the contracts of domestic workers ratified by the embassies of their countries of origin,”⁴⁰ and instructing agencies that they should not require employers to deal with sending country embassies. The Philippines responded quickly, halting all contract processing for domestic workers in the UAE.⁴¹ Rosalinda Baldoz, Philippine Secretary of Labor, expressed her concern that without verification, domestic workers would be vulnerable to human trafficking.⁴² Baldoz blamed the halt on the fact that the new UAE regulations make it impossible for the Philippine government to carry out contract verification before approving deployment, required under Philippine law; the UAE government responded that contracts in the UAE are the responsibility of the UAE authorities, not embassies.⁴³

This type of tit for tat is not helpful. It strains good relations between the Philippines and UAE governments, alienates Emirati employers, and pushes desperate Filipino workers towards illegal migration. The solution is to establish a single, binding contract registered with both governments before the migrant leaves the Philippines on a UAE employment visa. This would establish a single process for contract verification that involves both governments directly: the contract verified by the first government would be passed directly to the second government for verification; only after both governments approve would the Philippine Overseas Employment Certificate (OEC) and the UAE work permit be issued. There is no a priori reason why the Philippines government should be the first to verify a contract; if the UAE is more comfortable having the initial say, as it seems to have indicated,⁴⁴ this can reasonably be accommodated. The important aspect is simply that the verification should be speedy, as deployment will be delayed

⁴⁰ Shireena Al Nowais, "UAE Employers Frustrated with Inability to Get Filipino Maids," *The National*, 25 June 2014.

⁴¹ Nowais, "UAE Employers Frustrated with Inability to Get Filipino Maids."

⁴² Ramona Ruiz, "Philippines Trying to Stop Women Travelling to the UAE to Work as Maids," *The National*, 24 June 2014.

⁴³ Janice Ponce de Leon and Nada Al Taher, "UAE Clarifies Housemaid Contract Rules with Embassies," *The National*, 24 June 2014.

⁴⁴ "The ministry reaffirmed its complete willingness and is ready to provide the embassy of the Philippines and any other embassies with the new contract after being attested by relevant bodies as per the prescribed procedures." in: Ponce de Leon and Taher. "UAE Clarifies Housemaid Contract Rules with Embassies."

until both governments have approved. This should be done not only for domestic workers, but for all contracts offered to workers in the Philippines.⁴⁵

We know that this type of program is possible, both technologically and politically. The Philippines and other major sending countries advocate contract verification as a means of protecting against trafficking and forced labor. The Philippines is likely to support serious joint efforts. The UAE, in turn, has already established a similar project with India in 2011 using an online contract registration system; Indian officials report that it has reduced contract fraud and helped to protect workers.⁴⁶

The difficulty is in arriving at a common set of standards that both countries agree should be applied. Wage expectations are likely to be a sticking point. There is an often expressed sentiment in the UAE that Filipino workers are expensive and that the minimum wage that the Philippine state has set is unreasonable, particularly for domestic workers.⁴⁷ The UAE, however, has no real interest in enforcing a lower wage than the Philippines would choose to set. If it is true that Filipino workers are expensive relative to their contemporaries, then employers need not hire them; if, on the other hand, the employer values Filipinos' generally good English language skills and solid educational background, they may choose to recruit in the Philippines at a higher wage. The UAE state may push for a lower wage guarantee but should ultimately defer to any reasonable amount set by the Philippines. The Philippines, after all, shares the UAE interest in avoiding a minimum wage that prices its workers out of the market.

5. Strengthen Enforcement of Recruitment Laws and Policies

The overwhelming need for both the UAE and the Philippines, however, is to strengthen enforcement of recruitment laws and policies. Simply enforcing existing laws effectively would

⁴⁵ This would not apply to workers exiting the Philippines on UAE tourist visas.

⁴⁶ "India, UAE Take Measures to Save Indian Workers from Fraud," *United News of India*, 14 September 2011, accessed December 15, 2014 from ProQuest Central.

⁴⁷ Ramona Ruiz, "Filipino Maids Shunned in UAE over Minimum Wage Demands," *The National*, 13 February 2013.

already do much to improve the situation of workers; and putting new laws on the books will do little in practice if they are not enforced. Unfortunately, it is also the most difficult.

The Philippine Republic act of 1995 defines illegal recruitment widely to include charging excessive fees, altering the terms after a contract has been approved by the Department of Labor, withholding travel documents, and providing false information, among others.⁴⁸ Agunias shows that in 2008, 23 percent of the 290 cases filed against recruiters by workers deployed to the UAE were for excessive fees and another thirty percent were for misrepresentation.⁴⁹ The government has proven itself unable to deal with the volume of complaints, allowing cases to drag on for years, despite the fact that POEA Rules and Regulations (Part VI, Rule III) establishes that legal proceedings should be resolved in ninety days with a further fifteen days to initiate an appeal if needed, and that illegal recruitment has a prescription period (statute of limitations) of five years. Of those 290 cases filed by OFWs from the UAE, only ninety six (33 percent) were resolved in the first six months; 121 cases (42 percent) were still pending at the end of the year.⁵⁰ Corruption is also a problem as recruiters pay off officials, migrants, and migrants' families. When an agency does actually come up for legal action, witnesses are routinely paid off or that agency simply dissolves (forfeiting the Php 1,100,000 (\$24,682 USD) in escrow and surety bonds that law requires them to post⁵¹) and a new one re-forms. Rosalinda Baldoz, Undersecretary of the Philippine Department of Labour and Employment, explains that the criminal prosecution for illegal recruitment "does not instill fear among illegal recruiters because they can pay not only the officials who will handle the case but the victims and the family, who are in need of money. Without a witness, the case falls flat on the government's face. It is very difficult to build up to the level of prosecution."⁵²

⁴⁸ "Migrant Workers and Overseas Filipinos Act," (Section 3.2.6).

⁴⁹ Agunias, *Migration's Middlemen*: p. 29.

⁵⁰ *Ibid.*, p. 29.

⁵¹ *POEA Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers*.

⁵² Agunias, *Migration's Middlemen*: p. 31-32.

The Philippines needs to drastically reduce the time it takes to prosecute illegal immigration offenses. The Philippine government has established a special task force to pursue cases and established courts to hear them. However, the process still takes too long and results in too few convictions. This is mainly a question of resources: more are needed. Then the penalties need to be made both more proportionate and more likely to be realized. Bonds should increase so that forfeiture is more of a deterrent.⁵³ Closure orders are allowed in cases where a preliminary POEA or DOEL examination has determined that illegal recruitment activities are ongoing and pose a risk of future exploitation;⁵⁴ more use should be made of this power. Legal penalties are appropriately harsh:

Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than twelve (12) years and one (1) day but not more than twenty (20) years and a fine of not less than One Million Pesos (Php1,000,000.00) [\$230,000 USD] nor more than Two Million Pesos (Php2,000,000.00) [\$460,000 USD].⁵⁵

But the five-year prescription period should be extended to ten years. A crucial piece of the puzzle, as Agunias rightly points out, is that more needs to be done to encourage migrants to report offenses and pursue complaints through legal channels through their conclusion. That means making legal action practical for migrants by speeding up prosecution and ensuring that the material settlement they are eligible to receive is proportionate to the crime.

The UAE, on the other hand, has sufficient resources to prosecute illegal recruitment and has few issues with corruption in this regard. However, the will to fully pursue illegal recruitment and contracting violations is lacking. The UAE government balances the welfare of migrant workers against a host of other interests and is liable to find other those interests to be more pressing, particularly citizen welfare and economic progress. It should be stressed that these

⁵³ This may pose a heavy a burden on small firms. Currently, the Philippine state considers that there are too many recruitment firms, making competition for employers/jobs fierce and thus increasing the incentives to exploit workers and also making regulation more difficult. Discouraging small firms in this context is not necessarily a bad thing; nonetheless, should the situation change, bonds could be tied to the number of workers that an agency deploys.

⁵⁴ "Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, as Amended by Republic Act No. 10022," Republic of the Philippines, Manila, Philippines, 2009, Rule VI, Section 11.

⁵⁵ "Ibid., Section 5 (a).

issues can also be addressed under a system that respects the UAE rule of law and workers' rights under that law. Undermining the rule of law is not in the long-term interests of the UAE. One concrete change that needs to be made is to separate civil responsibility for redressing harm done to workers from corporate liability under criminal law. Today the UAE prioritizes mediated solutions to labor violations. While this may be an adequate response to the civil complaint, it should not absolve criminal liability and the UAE should continue to prosecute offending recruitment agencies and employers.

It is one thing to simply state that corruption needs to be addressed and sufficient resources expended, that receiving countries should prioritize migrant worker welfare. It is quite another thing to actually do it. The failure of enforcement is the seemingly overwhelming issue always to be reckoned with. This is a long-term, perhaps unending, process for both the Philippines and the UAE.

Goal: End Illegal Practices as Part of the UAE "Business Culture"

It is important to remember that the *kafala* system is not reducible to legal sponsorship; it is not a single, static, codified legal principle. It is better understood as the underlying logic of employer responsibility for employees through which some basic principles of both labor and immigration law are derived (see Chapter One). Gardner makes this argument in relation to Bahrain. Writing at roughly the same time that Bahrain officially changed its sponsorship laws, Gardner reminds us that *kafala* is only "partially codified in law" and is primarily a cultural practice.⁵⁶ Changing the law does not equate to changing the practice. Similar to what Gardner describes in Bahrain, there is a business culture in place in the UAE based on *kafala* sponsorship that is generally accepted but that has little to do with UAE Labour law. In particular, passport withholding, unpaid overtime, and wage discrimination are widespread; most workers are affected by at least one of these violations. This needs to be addressed.

⁵⁶ Andrew Gardner, "Engulfed: Indian Guest Workers, Bahraini Citizens, and the Structural Violence of the Kafala System," in *The Deportation Regime: Sovereignty, Space, and Freedom of Movement*, ed. Nicholas De Genova and Nathalie Peutz (Durham, NC: Duke University Press, 2010).

Policy Path

1. Provide comprehensive, accessible information regarding labor and immigration law online;
2. Allow anonymous complaints to the UAE Ministry of Labour;
3. Improve labor inspection, with special attention to passport withholding, unpaid overtime, and wage discrimination;
4. Enforce equal pay laws.

1. Provide Comprehensive, Accessible Information Regarding Labor and Immigration Law Online

The reason these three (passport withholding, unpaid overtime, wage discrimination) are so difficult to address is because they are generally accepted as the routine course of business in the UAE. They are normalized: employers do not think twice about engaging in them, workers tend not to object to them, and the UAE government does not seriously enforce laws against these practices. For those interested in the rights of migrant workers in the UAE, we need to look for ways to destabilize this process.

A promising avenue would include utilizing the sending country governments and the international media to try to break the normalization among migrant workers of specific rights violations. All of these issues are violations of the UAE labor law for which migrants, if they proactively seek help, may reasonably expect to be upheld by the UAE Ministry of Labour. As was discussed in Chapter Seven, the Ministry of Labour is generally willing to intervene on workers' behalf if its help is sought. The Philippines has implemented some programs designed to reach all workers and inform them of their rights. The centerpiece of this information campaign has been the Pre-Departure Orientation Seminar (PDOS) required of all workers before deployment abroad. This is a good program and could usefully be extended. However, interviewees who discussed the PDOS with me usually reported that they were not focused on information about their rights or what to do in case of problems, or that they had forgotten whatever they learned. Information on important topics needs to be made readily available to OFWs on a continuing basis. Fortunately, there are cheap, and nearly ubiquitous mechanisms available. Better use needs to be made of the internet and social media as means of distributing

information by the sending country, as well as interested human rights organization. Information should be easy to understand, in Tagalog as well as English, and frequently updated.

The UAE has made positive strides in making information available to workers. For example, workers today can access online databases that show them their labor status, visa status, or the labor contract that the Ministry of Labour has on file for them. However, there is little information about passport withholding, overtime violations, or wage discrimination to be found on the Ministry's website. While most information is available in Arabic and English, very little is available in other languages. In addition, the quality of the English language translations of information on UAE government websites is notoriously poor, though standards seem to be improving as the relevant websites mature. More information needs to be provided on the most common violations. That information should be simple to understand, preferably with quality translations in English and Tagalog, and readily accessible from the Ministry's website.

2. Allow Anonymous Complaints to the UAE Ministry of Labour

Since 2008 the Ministry of Labour has had a twenty four-hour, toll-free number that workers can call to report labor violations. Hotlines make it easier for any worker to report violations, but are especially crucial for workers living and working in isolated areas such as construction workers. Hotline operators speak several languages common among low-skilled workers in the UAE, including Tagalog. While complaints are confidential, they are not anonymous. The UAE views the hotline as a means of expediting and simplifying the process for workers to lodge official complaints which will result in the Ministry taking official action to address the issue. But workers may be hesitant to put their names forward for fear of employer retaliation. Anonymous complaints are crucial to making hotlines work for workers. This is relatively easy to achieve as the hotline structure is already in place.

3. Improve Labor Inspection, with Special Attention to Passport Withholding, Unpaid Overtime, and Wage Discrimination

The laws are in place; should an individual approach the police or Ministry of Labour complaining of passport withholding the authorities generally act in his favor to resolve the situation; the courts generally enforce relevant laws when a case is brought to them. The next

step to take in enforcement is to improve labor inspection. Currently the UAE's Ministry of Labour has an Inspection Affairs Sector that conducts inspections regarding compliance with the UAE Labour Law, occupational safety, and the payment of wages.⁵⁷ However, labor inspection in the UAE is not well-focused to address labor exploitation or the concerns regarding the human rights of migrant workers.

In 2014 the Ministry of Labour reported that it conducted over 288,670 visits of inspection bringing 17,217 illegal practices to light.⁵⁸ However, only 479 facilities were referred to the public prosecutor for legal action. This discrepancy can largely be accounted for by looking at what types of violations the Inspection Affairs Sector deems serious. Maher Al Obed, Assistant Undersecretary for Inspectional Affairs: "Some of the measures taken against violating practices were just warnings as the offence was not considered serious, such as misleading overtime calculations."⁵⁹ Indeed, many of the violations that were recommended for prosecution are serious violations: withholding wages for over two months and failure to provide signed contracts accounted for about half of the cases. However, it is important to remember that unpaid overtime is one of the most persistent violations of workers' rights in the UAE precisely *because* it is not considered a serious crime and is not pursued by the UAE authorities. Passport withholding and wage discrimination are not even mentioned by the Inspection Affairs Sector.

To some extent, the Inspection Affairs Sector is lacking sufficient resources. There are 367 field inspectors, each one responsible for the annual inspection of 857 facilities and monitoring the situation of 11,760 workers.⁶⁰ Clearly more inspectors are needed. However, there is also a failure in the utilization of existing resources. The ILO reports that most time and resources are allocated towards inspections targeting illegal workers "during which the inspectors

⁵⁷ Ministry of Labour inspections are loosely collaborated with the inspection arms of various other federal and emirate-level government entities, such as the UAE Ministry of the Interior (regarding visa status of workers) and the Health Authority Abu Dhabi.

⁵⁸ UAE Ministry of Labour, "Ministry of Labour Inspections Department 2014 Summary," 1 April 2015, accessed April 4, 2015, <http://www.mol.gov.ae/molwebsite/en/media-center/news.aspx?DisableResponsive=1#page=1>.

⁵⁹ Ibid.

⁶⁰ Ibid.

are usually accompanied by policemen, who detain such workers on the spot, and keep them in custody until they are deported;” very few inspections target the improvement of labor conditions and labor rights.⁶¹ Finally, most inspection visits are routine and are announced. If the employer objects to the visit or requests extra time to prepare, the visit is usually delayed for a few days.⁶² More inspections need to be triggered by worker complaints, target worker rights, and annual inspections should be unannounced.

This is largely a matter of prioritization. Currently the UAE prioritizes immigration control and economic growth and its labor inspection practices reflect this. As with other issues, changing priorities requires a long-term shift in the view of the UAE government. This is possible: there is a growing domestic sentiment that labor unrest needs to be addressed; enforcing existing laws and contract guarantees helps to mitigate worker dissatisfaction that is at the bottom of such unrest. Continuing international pressure on the UAE regarding labor rights may also help to push progress in the right direction.

4. Enforce Equal Pay Laws

It is relatively well understood that there are wage differentials between the public and the private sectors, and between national and foreign workers due to the segmented nature of the UAE labor market.⁶³ But public/private and national/foreign are not the only segments in the UAE labor market. Within the foreign labor segment, further subdivisions can be seen between nationalities.⁶⁴ These national segments then map loosely on further vertical segmentation by class and skill level such that workers of specific nationalities are pushed towards certain types of jobs and are compensated on differing scales. Within this categorization, for example, American workers are assumed to be high-skilled and difficult to replace, and are generally well paid; while Filipinos are assumed to be mid- to low-skilled and easy to replace and are not well paid. Even

⁶¹ Ibid.

⁶² International Labour Organization, "Labour Inspection Country Profile".

⁶³ C.f. Ibrahim Mohamed Abdalla et al., "Labour Policy and Determinates of Employment and Wages in a Developing Economy with Labour Shortage," *LABOUR: Review of Labour Economics & Industrial Relations* 24, no. 2 (2010).

⁶⁴ Described in more depth in Chapters 3 and 5; see also: Longva, *Walls Built on Sand*.

within the same company and for the same position, then, Americans and Filipinos may be paid differently.

Equal pay for equal work is a fundamental human right. When companies are inspected or audited by the Ministry of Labour, one element that should be looked for is evidence of unequal pay. But there is very little that the UAE government is willing to do about unequal pay because it is one of the biggest offenders. Even government organizations will quite openly maintain two separate pay scales, one for nationals and one for expatriates. And, of course, there is the Emiratization drive, an explicit government initiative to replace expatriates workers with nationals in key arenas of the workforce. The UAE government does this in order to encourage its citizens to seek employment, but there is no denying that this violates the right to equal pay enshrined in the UDHR: “Everyone, without any discrimination, has the right to equal pay for equal work.”⁶⁵

Writ large, a national government exists to protect the interests of its citizens. There is nothing unusual or intrinsically inimical to human rights in a country desiring to maintain citizens in top positions in government and the economy. In the same vein, Emiratization as a goal is not objectionable, it may even be laudable for a government to seek the best possible employment situation for its citizens – surely the Philippine government would agree with that sentiment! As long as the government does not violate the rights of non-citizens, there is no particular problem with this. But in the UAE, support for the citizen population has crossed this line, infringing on guarantees against discrimination and for equal pay for equal work.

The first step to addressing this is to relocate many of the privileges that are currently associated with employment in the public sector to more straightforward government subsidies instead. This could be accomplished either through direct payments, something like the US state of Alaska’s oil royalty fund which issues annual payouts to state residents, or through increased social programs to support working Emiratis. By beginning the equal pay drive with public sector employment, the UAE government would be sending a powerful signal. This would not be an

⁶⁵ The Universal Declaration of Human Rights, Article 23 (2).

easy or a fast process, but there is hope: the UAE government is vocal about its desire to increase Emirati participation in the private sector. Forstenlechner has argued for this move from an economic perspective,⁶⁶ but I would like to add an ethical perspective: privileging nationals in public sector employment entrenches discrimination in the workforce at large.

Goal: Support for Domestic Workers

The situation of domestic workers in the UAE, as well as other Gulf countries, has received a lot of attention from human rights organizations. And for good reason. A constellation of circumstances has created a particularly perilous working situation for domestic workers in these countries. Similar to the violations described above, there is a specific set of expectations for domestic workers in the UAE, a kind of “business culture” for domestic labor. These circumstances are structured by a commonly-held perception that domestic workers occupy a liminal position between public and private, paid labor and familial responsibility. Domestic workers occupy the space of the home, privy to the life and affairs of their employers, yet they are not family members and (despite protestations to the contrary⁶⁷) are not treated like family members. They are paid employees of the family but, because they work and live in the home, they are expected to work under a different set of rules than all other workers in the UAE. The UAE Labour Law does not apply to domestic workers, the rules established by the Ministry of the Interior for their treatment are inadequate, and even those rules are regularly ignored by employers. Despite their vulnerable position and the many abuses, domestic workers have few options for legal redress.

⁶⁶ Forstenlechner and Rutledge, "The GCC's 'Demographic Imbalance.'"

⁶⁷ Employers of domestic workers often claim that their maids, nannies, drivers, etc. are treated like family because the workers live in the same house, eat the same food, and go to the same locations (ex. weekend homes, vacations, etc.) as the family. I have heard this myself several times in informal conversations and it is a common refrain in news articles (c.f.: Khalid Al Ameri, "We Are Too Reliant on Maids ... And That Has to Change," *The National*, 14 October 2014. Ruiz, "Families Urged to Give Maids a Day Off"). The fact that the domestic workers is working – cleaning the houses, cooking the meals, and caring for the children – during these weekends or family trips is generally not acknowledged.

Policy Path

1. Revise minimum contract requirements;
2. Include domestic workers under the Wages Protection System;
3. Increase the number of female labor inspectors; institute initial site visits and phone checks;
4. Include domestic workers under the Labour Law.

1. Revise Minimum Contract Requirements

In 2014 the UAE issued a new, standard Unified Contract for Domestic Workers. The new contract was supposed to cut down on the abuse of domestic workers as well as reduce contract bait and switch by guaranteeing viable minimum standards of work. The new standard contract specifies that domestic workers must be guaranteed eight continuous hours of sleep each day, one day off per week (or compensation), thirty days paid vacation annually, and health insurance; however, it does not address limits on working hours (other than the eight hours rest), overtime pay, or workers compensation.⁶⁸ Further, the contract allows employers to deduct from workers' salaries to pay for damage to goods or property with few restrictions.⁶⁹ Finally, the standard contract is the only contract that will be recognized by the UAE authorities, regardless of whether the worker agreed to other terms or signed a different contract while in the sending country. When the new Unified Contract for Domestic Workers was made public, it was met with criticism from sending countries such as the Philippines, which is now refusing to issue contract verifications (needed for the OEC) for domestic workers headed for the UAE,⁷⁰ as well as from human rights organizations.⁷¹

⁶⁸ "I Already Bought You" Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates.

⁶⁹ Liesl Gertholtz, *UAE: Protect Migrant Domestic Worker's Rights: Response Letter to the Minister of State for Foreign Affairs* (New York, NY: Human Rights Watch, 2014) accessed April 1, 2015, http://www.hrw.org/sites/default/files/related_material/Letter%20to%20UAE%20Minister%20of%20State%20for%20Foreign%20Affairs.pdf.

⁷⁰ Ramona Ruiz, "Philippine Officials Warn of Illegal Domestic Hiring," *The National*, 10 September 2014.

⁷¹ C.f.: "I Already Bought You" Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates.

Reforms are needed in order to bring the contract in line with human rights standards. Setting clear limits on allowable working hours along with guidelines regarding overtime pay are crucial first steps. While the new standard contract specifies eight hours of rest, it does not limit how many hours can be worked in a day, nor in a week, nor how many of those hours should be considered overtime. Eight hours of rest per day is necessary; but if the worker is working the remaining sixteen hours per day, six days a week, they are nonetheless being dramatically overworked and abused.

Contracts for domestic workers should specify not only working conditions, but living conditions as well. While domestic workers are often required to live in their employers' homes, they are rarely told what those conditions will look like ahead of time. Abu Dhabi municipal regulations do require that rooms for domestic workers be at least 2.1 meters square, but even that minimal requirement is often ignored.⁷² Moving this requirement to the standard employment contract would make both employers and workers more aware; this would also facilitate worker complaints.

Finally, domestic workers should be guaranteed a cell phone with local SIM. Currently it is not uncommon for employers, or even recruitment agencies, to confiscate domestic workers' phones, further isolating them within the realm of the employer's home.⁷³ As well as ensuring that domestic workers have a means of communicating with their families, providing a phone and SIM enables domestic workers to contact their agencies or the UAE authorities in case of need. SIM cards with prepaid calling plans are readily available in the UAE. Employers could be required to provide the SIM number as part of the application process for a domestic worker's visa.

The UAE already has the new standard contract; further revisions are likely to be slow in coming. A few elements are pushing in the right direction, though. First, in 2012 the UAE

⁷² Lindsay Carroll and Ola Salem, "Confusion Surrounds Enforcement of Maid Room Size Regulations," *The National*, 15 December 2014.

⁷³ C.f. Colin Simpson, "Agents Advise Paying Maids Less Than the Minimum Wage," *The National*, 14 September 2011. "*I Already Bought You*" Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates.

authorities claimed to have prepared a draft law regulating domestic workers.⁷⁴ Though this law has still not been finalized, it is one indication that the UAE is moving in the direction of increased regulation, though at a glacial pace. The UAE has also agreed in principle to a stricter Gulf Cooperation Council standard contract for domestic workers. This is a promising sign, but implementation of this GCC standard in domestic law and policy may similarly be a long time coming.⁷⁵ Perhaps more encouraging is the level of international pressure that is being put on the UAE by sending countries and human rights groups. Of particular note is the move by the Philippines to reject the UAE's new standard contract. While the Philippines acknowledges the UAE's right to draw that contract as it sees fit, the Philippine state reserves to itself the right to refuse to verify that contract; without contract verification, domestic workers destined for the UAE cannot receive an OEC and so cannot exit the Philippines legally. This refusal on the part of the Philippines government has caused some anger and frustration among potential employers of Filipino maids, but it has also driven up the wages and it has certainly highlighted the importance of Filipino domestic workers in UAE households.

2. Include Domestic Workers Under the WPS

The practice of wage withholding used to be common in the UAE, as it is in other Gulf countries. The UAE took a massive step to address this issue with the Wages Protection System (WPS). The UAE government now requires that all employers under the jurisdiction of the Ministry of Labour pay wages electronically through the WPS system with UAE Central Bank and Ministry of Labour oversight.⁷⁶ This means that there is easily available information for every worker on the payment, or non-payment, of wages. As soon as WPS was implemented, wage withholding in the UAE decreased. Interviewees paid through the system reported no current

⁷⁴ Gertholtz, *UAE: Protect Migrant Domestic Worker's Rights*.

⁷⁵ Simeon Kerr, "Gulf States to Reform Contracts of Domestic Workers," *Financial Times* 26 November 2014, accessed 18 December 2014, <http://www.ft.com/cms/s/0/82c820aa-756b-11e4-a1a9-00144feabdc0.html#axzz3MCRiRTk>.

⁷⁶ The employer deposits funds for all salaries into one general account for the company and gives information on individuals' salaries to the UAE Central Bank; the Central Bank then sends this information to the employer's agent/bank along with a request for salaries to be paid; workers may then collect their salaries and the agent confirms to the Central Bank that salaries have been paid.

problems with the payment of their regular salary. But WPS does not extend to everyone in the UAE. Domestic workers are excluded as they do not fall under the Ministry of Labour's jurisdiction, but under the Ministry of the Interior. Even so, there is no need to exclude these workers from WPS. A bank account in the worker's name can as easily be set up for a housemaid as for a construction worker and family employers can transfer wages electronically. The only real change that would have to be made is in coordination between the Central Bank and the Ministry of the Interior for enforcement purposes.

3. Increase the Number of Female Labor Inspectors; Institute Initial Site Visits and Phone Checks

Domestic workers are not covered by the UAE Labour Law, nor under the jurisdiction of the Ministry of Labour. One important reason for this deficiency is the fact that worksite checks within the home are not considered a viable option given the prevalent cultural and religious norms protecting the absolute privacy of the home and of women's space.

Currently, the General Directorate of Residency and Foreigners Affairs has a hotline that domestic workers can call to report violations. This is far from an ideal solution. The only way to make sure that regulations are followed in practice is to institute spot checks. But having inspectors enter local homes is culturally problematic. The home is supposed to be a protected, private space. Domestic workers occupy a liminal space between the private/family and public/social spaces: they live in the home yet are not family. Often domestic workers' access to public spaces, either through time off or through access to means of communication such as cell phones, is restricted by the employer as a means of ensuring that family matters remain private. Yet domestic workers are *workers*, under contract to perform labor in exchange for a wage. In the end, the idea that allowing a stranger to enter the home is culturally unacceptable does not hold water as an excuse for avoiding inspections: if you cannot let a stranger into the home, you should not have a domestic worker in the first place. There should be an initial site visit to inspect accommodations if the worker lives in the home and, thereafter, periodic phone calls to the domestic worker's local SIM card from a representative of the Ministry of the Interior to check on conditions. This type of assessment is common in au pair and live-in care worker programs in the

developed world and a similar framework could be instituted in the UAE. Home inspectors in the UAE should be female, however, in order to decrease cultural friction.

4. Include Domestic Workers Under the Labour Law

Finally, domestic workers should be brought under the UAE Labour Law. They are workers and should be afforded the full protection of the Labour Law without prejudice regarding the site of their labor. They deserve full respect under the law, full access to the rights and protections that it offers, and full access to mechanisms for complaint and redress.

Goal: Allow Migrants to Form Labor Organizations

In the UAE any type of group – social, political, or economic – must have permission from the government in order to function legally. The UAE authorities, however, do not permit all types of groups to form. Labor organization in particular is outlawed and strikes are illegal.⁷⁷ All migrants are affected by the lack of labor organization in the UAE and the impact of this prohibition is higher than it might first appear. In many developed economies today we tend to forget that labor organization had its roots in fighting for basic labor guarantees such as a livable wage, limited working hours, and basic worksite health and safety guarantees. These issues remain very much alive in the UAE today and preventing migrant workers, roughly 85 percent of the national workforce, from organizing prevents them from effectively advocating for change. Migrants in the UAE lack the ability to make their interests heard politically, they lack leverage in dealing with their employers. As a result, exploitation remains very much a part of normal business in the UAE.

Unfortunately, allowing for the formation of organized labor groups is one of the most intractable issues that migrant workers in the UAE face. This is largely due to the demographic composition of the population. Migrants make up roughly 85 percent of the workforce. Organized labor would control a potentially overwhelming demographic force, and one foreign to the state. This would have the potential to over set the UAE's existing ruling bargain based on the

⁷⁷ "Concerning Collective Labour Disputes," UAE Council of Ministers, Ministerial Resolution No. 307 (2003), Abu Dhabi, UAE, 2003.

exchange of political power for economic privileging of Emirati citizens (see Chapter Three). Options for reform in this area are extremely limited.

Policy Path

1. Create an ombudsman office to represent migrant labor issues within the UAE political system;
2. Allow strikes of non-essential industries and organized labor protests;
3. Continue with planned institution of a government labor union, with intent to slowly increase its independence.

1. Create an Ombudsman Office to Represent Migrant Labor Issues within the UAE Political System

While an ombuds office would not be a labor organization per se, it can be seen as the embryo of collective representation: vesting one individual with the responsibility of representing the rights of workers as a whole within the UAE political and economic system. As an appointed official representing the interests of workers, an ombudsman would be charged with addressing rights violations and bringing light to systemic problems.

An ombudsman should be an achievable step for the UAE. This role fits in well with the existing preference for mediation and working with public authority. As such it has the potential to demonstrate that the representation of labor interests can be accommodated within the UAE system. But this is also its greatest weakness. The effectiveness of an ombudsman depends on the effectiveness of the individual chosen, the authority vested in the office and, finally, the willingness of other offices to work with them. Each of these is questionable in the UAE, particularly the final element. The creation of such an ombudsman in the UAE may be achievable as a first step towards the political representation of labor in the UAE political system, but the office is unlikely to be particularly effective in bringing change.

2. Allow Strikes of Non-Essential Industries and Organized Labor Protests

Currently strikes and group labor protests are illegal in the UAE. There is a defined legal process for pursuing collective labor disputes through binding mediation by the Ministry of Labour. Protests outside of this process are not tolerated by the UAE authorities. Publically

protesting workers face arrest and deportation. Whether unionized or not, without the ability to protest, without the ability to make their grievances public and impact the daily routine of employers and workplaces, workers are hamstrung and lack sufficient leverage against their employers to effect change.

This is a difficult reform to urge on the UAE. From the current UAE government perspective, worker protests allow foreign elements to destabilize the domestic social order and undermine the citizenry's economic privilege upon which the existing domestic political bargain is based. Further, the number of workers who are actively engaged in protests is such a small percentage of the workforce that they are eminently replaceable: there are far more potential migrants eager for jobs in the UAE than there are available positions. Simply replacing protesting workers supports the political status quo without imposing any particular strain on the economic system. In fact, one of the major factors supporting the possibility of other reforms, such as the introduction of a minimum wage, is the fact that these can serve as alternatives, reducing the number and severity of politically unacceptable labor protests. So long as "worker" is synonymous with the eminently replaceable, politically marginalized migrant, allowing protests is a distant ambition.

Legalizing strikes is a reform whose time has not yet come in the UAE. Allowing organized labor protests such as strikes calls into question the larger political project in the UAE. This reform is not only implausible in the foreseeable future, but its promotion may undermine the more limited, but still desirable, policy reforms that are achievable.

3. Continue with Planned Institution of a Government Labor Union, with Intent to Slowly Increase its Independence

Labor unions have played a crucial role in organization for labor rights in many developed economies. And the truth is that labor unions in many countries, including the United States, have struggled with how to incorporate migrants in their organizations, fearing that migrant labor would drive down wages and working conditions in the receiving country.⁷⁸ In the end, though,

⁷⁸ Michael Kazin, "How Labor Learned to Love Immigration," *The New Republic*, 13 May 2013, accessed 1 April 2015, <http://www.newrepublic.com/article/113203/labor-and-immigration-how-unions-got-board-immigration-reform>.

increased membership in the labor union increases the union's political clout and so immigration and migrant workers by and large have been accepted by unions in the United States and other western economies. The UAE faces a different problem. This is not an attempt to include migrants into existing union structures; the UAE does not have labor unions at all.

Under most conditions, the individual workers is relatively powerless compared to employers and states. In the UAE this condition is exacerbated by the alignment between political and economic cleavages – citizens are employers, migrants are workers. This alignment places migrant workers in a particularly weak position, benefiting citizen employers. There is obviously a significant domestic constituency supporting the suppression of labor organization. Unions everywhere serve to increase the leverage of workers relative to employers and the state; in the UAE unions would give migrant workers, as workers, a strengthened voice in the political and economic structure of the country, allowing them to more effectively advocate for their rights and protect their interests. Allowing unions to form would necessarily give political clout to migrants, something the UAE has been loath to do. And, as roughly 85 percent of the labor force is composed of migrants, it would give those migrants substantial power, possibly revolutionary power, over the UAE economy. If allowing workers to strike is has the potential to undermine the ruling bargain of the UAE, allowing the formation of independent unions would almost certainly upset that bargain.

But the UAE has long intended to form a single, government-sponsored labor union representing the rights and interests of workers.⁷⁹ There is no clear evidence of why the initiative has been stalled at the upper reaches of the UAE government; concerns regarding the consequences of increasing workers' leverage relative to employers, as well as citizen reaction to such a policy – are likely causes. A better question is why the UAE would consider allowing such an organization in the first place, given these potential consequences. In order for the union to be a credible representative for workers, it would need to gain independence from the UAE

⁷⁹ "UAE Plans to Form Labour Unions, Legalise Collective Bargaining," *Khaleej Times*, 30 March 2006.

government. Without independence a state-run union would be, at best, a propaganda tool and, at worst, a tool of the state designed to discipline workers rather than help them.

As with the legalization of strikes, unionization is a desirable reform but one whose time has not yet come in the UAE. Its promotion may undermine those more limited, but still desirable, policy reforms that are achievable.

Goal: Create a Transnational Social Security Net

Basic social security guarantees are a fundamental human right. The existence of a functioning social security net also underlies the ability of the individual to make choices regarding their employment by ensuring that the fallback position is minimally secure, thus bolstering the full complement of human rights. Providing an adequate social security system is difficult for poor and developing countries, including the Philippines and most major migrant sending countries. The position of temporary emigrants from those countries is particularly precarious as they often do not fully contribute to state-sponsored systems and so rely disproportionately on private savings, the benefits that they hope will accrue from migration. When those resources are insufficient or when they fail to emerge as expected, many Filipinos rely on family networks for their social security, straining the larger social system. When all else fails, indigent individuals become the responsibility of the home country, despite the fact that that country may not have benefited from either their productive labor or from any material contribution to the relevant social security system.

Major receiving countries such as the UAE tend to be relatively better off. The UAE has a generous social security system in place for its citizens. However migrant workers have extremely limited access to this system. Despite the fact that they are passing their primary productive years in the UAE, migrants are not eligible for programs subsidizing the indigent, education, or unemployment, for example. Their healthcare and pension provision has been privatized, the responsibility transferred to the employer. Employers, however, often try to minimize or entirely avoid this expensive responsibility and workers as temporary members of the host society are not well-placed to advocate for their rights.

If sending and receiving countries cooperate, however, a social security system where costs and benefits are shared between sending and receiving countries can be designed and maintained.

Policy Path

1. Extend employer obligation to provide healthcare to all seven Emirates;
2. Reform membership fee structures for PhilHealth, OWWA and SSS;
3. Do not allow end of service gratuity to be withheld under any circumstances;
4. Repatriate indigent migrants at no cost;
5. Replace end of service gratuities with international pension fund contributions.

1. Extend Employer Obligation to Provide Healthcare to all Emirates

The Philippines provides all OFWs and their immediate families access to affordable health care through the PhilHealth system. However, PhilHealth coverage only applies within the Philippines. While living abroad, OFWs need to arrange alternate coverage. Currently Abu Dhabi and Dubai require employers to provide health care to all employees. Abu Dhabi's standard plan, for example, is basic but adequate. However, there is no such requirement in the five remaining emirates. It should be fairly easy to extend this requirement to all seven emirates in order to guarantee the basic right to health to all migrant workers in the UAE.

2. Reform Membership Fee Structures for PhilHealth, OWWA and SSS

The three major social security programs that the Philippines extends to its citizens abroad – SSS (pensions and retirement), PhilHealth (health insurance), and OWWA (OFW-specific welfare programs, from education loans to emergency repatriation funds) – are largely funded by member contributions. As OFWs tend to complain both that the fees are too high and that coverage is inadequate, the Philippine state has a dilemma on its hands. To some extent matters could be improved by cutting out corruption and bureaucratic waste, but the fundamental balance between these two priorities – cost versus coverage – still must be addressed. The state has tried to relieve the burden on workers by shifting the cost on to employers, requiring them to pay OWWA fees, for example. There are two additional options for addressing this balance. First, PhilHealth and OWWA could adopt the SSS model requiring membership in a basic, low cost

program but offering more robust coverage for an optional additional fee. Second, programs could scale membership fees according to the member's salary, subsidizing the membership fees of low-wage workers.⁸⁰

SSS functions relatively well and most migrants trust that it will continue to do so. However, the current minimum contributions are insufficient to fund workers' retirement. Without adequate savings, workers are pushed to continue relying on precarious small businesses and/or family support structures to fund retirement. The Philippines needs to consider reforming contribution schemes, increasing the minimum contribution for most workers.

3. Do Not Allow End of Service Gratuity to be Withheld Under Any Circumstances

In the UAE the end of service gratuity payment (roughly equal to one month's salary per year worked) is typically viewed as a replacement for employer contributions to a dedicated pension or retirement scheme. One problem with relying on the end of service payments to help fund a pension or retirement is that the worker does not always actually receive this payment. In contrast to a system where the employer contributes monthly, payment at the end means that the employer may be able to deduct from or withhold entirely the end of service gratuity for legally allowable reasons: if the worker is fired with cause, if she resigns before completing five years of service, or if she leaves without giving notice.⁸¹ This means that the worker may be deprived, possibly without notice, of what is essentially her pension fund. This should not be allowed; the end of service gratuity should not be withheld under any circumstances.

4. Repatriate Indigent Migrants at No Cost

In most cases the employer pays for the repatriation of workers at the end of their term of employment. Either there should be no circumstances under which employers can be divested of this responsibility (not even firing for gross negligence or if the worker ends up jailed for debt – when they are released, their return airfare should be paid), or the relevant states' authorities

⁸⁰ SSS already does this; PhilHealth offers a sliding scale based on salary for persons employed in the Philippines but not for OFWs.

⁸¹ United Arab Emirates Federal Law No. (8) of 1980.

should assume responsibility for the repatriation of stranded migrants. This already happens in an informal manner. The Philippines government helps workers who have fallen into substantial distress and the UAE government may pay for the return flight of migrants being deported. This should be formalized and it should not take deportation to trigger this obligation. An indigent migrant should have a mechanism for petitioning for repatriation support from the UAE government. As the Philippine state will assume the duty of supporting indigent citizens once they repatriate, the UAE should take on the responsibility of seeing that they repatriate safely. This repatriation should happen at no cost to the indigent worker.

This is in the interest of the UAE in particular. Indigent migrants with insufficient means to repatriate are one of the primary sources of illegal migrants in the country. The fact that fines for illegal residence accrue at a rate of 100 AED (\$27 USD) per day means that once a migrant falls into an illegal situation the fines quickly mount beyond the ability of the migrant to pay even if she was able to find a legitimate job. The UAE has periodically issued amnesties waiving these fines. The success of these amnesties shows that many illegal migrants do wish to repatriate; however, one element that may be constraining workers from taking advantage of amnesty programs is the continued inability to pay for repatriation flights. As the UAE does profess a strong preference for controlling illegal immigration and already does pay for repatriation of a significant number of migrant workers (either through deportations or through charitable programs), formalizing this obligation is a reasonable extension.

5. Replace End of Service Gratuities with International Pension Fund Contributions

The end of service gratuity is a peculiar institution in the Gulf countries. The Labour Law provides us with an indication of what purpose these payments are intended to serve when it establishes that the gratuity may be superseded by “pension or security schemes” offered by the employers if these are more favorable to the worker. In essence, the gratuity replaces a formal pension or social security system. Filipino temporary workers in the UAE need these savings, as they are excluded from UAE state pensions and other social security systems. As specifically *temporary* residents, they neither pay in to the UAE system, nor are eligible to receive any benefit.

However, the end of service gratuity is a poor replacement for social security coverage in old age. First of all, few workers actually save this money to support them in their old age; instead many use it to fund immediate needs such as bridging a period of unemployment. This leaves their retirement unfunded. Second, even if they did save the gratuity for retirement, the gratuity is unlikely to be sufficient to provide a decent retirement income.⁸² Finally, gratuity payments are not guaranteed; they may be withheld in certain circumstances (see Chapter Eight). The UAE should encourage employers to offer pension systems to their employees instead of relying on the end of service gratuity. Pensions funded throughout the duration of the worker's employment allow for a more transparent accumulation of funds for both employee and employer. Pensions would also remain with the employee regardless of when or why the worker exited a specific job. Encouraging pensions could be achieved by identifying acceptable public (sending country) or private pension schemes that operate internationally that the UAE government accepts as a viable replacement for end of service gratuities. The UAE state could even collect such pension contributions and hold them until the migrant repatriates at which point they would be transferred to the country of citizenship's corresponding social security system, as an additional incentive for return migration and to discourage illegal immigration.⁸³

This is an area where cooperation between the UAE and its major sending country partners is necessary. Portable pension schemes are a growing trend internationally and are increasingly established along major migration corridors via bilateral or multilateral treaty, allowing social security contributions and benefits accrued in one state-sponsored system to be maintained and transferred with the worker when she moves to another country or repatriates. In general, this applies to both withholding schemes (social security taxes) as well as government-sponsored savings (tax-free retirement accounts such as 401Ks in the United States); the

⁸² Mahmoud Kassem, "End of Service Gratuity Not Enough to Fund Retirement, UAE Residents Say, Amid Calls for Savings Culture," *The National*, 22 February 2015.

⁸³ This is not a new approach to dealing with social security portability. Since the late 1970s the United States, for example, has pursued "totalization" agreements allowing money paid into US Social Security and Medicare by/for migrant workers to be transferred to the country of citizenship's social security system should the individual repatriate. Currently the US has bilateral agreements in place with twenty five countries; for a list, see: <http://www.irs.gov/Individuals/International-Taxpayers/Totalization-Agreements>.

Philippines already has portability arrangements with several European countries and Canada. Portability is more difficult in the UAE and other Gulf countries where state social security systems are not funded by employer and employee contributions but rather through alternative state revenues. There is no income tax or social security withholding in the UAE, so there are no funds accumulated by a worker, foreign or domestic, in a state coffer; there is no preexisting fund to transfer when the migrant worker repatriates. This would have to be built. The most likely candidate would be to take the existing sending country systems and facilitate contributions by both workers and their employers.

The Philippine state has tried to extend some social security coverage to overseas Filipino workers, making contributions to the state-sponsored Social Security System (SSS) mandatory. Workers are covered in case of retirement, maternity, sickness, disability, and death.⁸⁴ However, payouts tend to be small. The average basic monthly pension in 2014 was 3,157 Php (\$72 USD)⁸⁵; that is not enough to live on. In addition, many Filipinos, finding it cumbersome to make SSS payments from abroad, allow their membership to lapse. Again, working to facilitate portability schemes between the UAE and the Philippines would help to alleviate this problem.

Conclusion

The UN estimates that there were 213,943,812 migrants in the world in 2012, over 3 percent of the global population. Migration today is a global phenomenon that both relies on the infrastructure (economic, technological, and socio-cultural) of globalization and reinforces globalization by facilitating the flow of people, languages, ideas, and culture. Migration networks connect every corner of the globe through trade and investment patterns but also through communications, transportation, and the flow of people. But migrants are not just units of

⁸⁴ Workers are covered from the time of first contribution. However, for retirement, maternity, and sickness, workers who do not meet certain qualifying conditions will only receive a lump sum payment equivalent to what was paid in plus interest. For retirement, workers must have made at least 120 monthly contributions in order to qualify for the minimum monthly pension of PH 1,200 (\$27 USD).

⁸⁵ "Facts and Figures as of September 2014," Social Security System, Quezon City, Philippines, 2014, accessed February 27, 2015, https://www.sss.gov.ph/sss/DownloadContent?fileName=Sept2014_FactsandFigures.pdf.

autonomous labor; they are men and women. With people come not just bodies of labor, but all of the messy, human aspects as well: hopes, expectations, habits of behavior, grievances, etc. And it is because of these messy aspects that migration is often viewed by the receiving country as a possible threat – it is not the economic challenge, but the perceived threats to governance, security, cultural identity and social values that migrants pose that are most difficult to manage globally. And the more migrants a country accepts, the greater this challenge.

One common response is to either limit the number of migrants that are allowed into a country and/or to integrate them as fully into the native population as possible. This is the challenge that most developed countries are currently engaged in. But this strategy has disadvantages for both sending and receiving countries. For sending countries and migrants the disadvantages are obvious: this strategy limits access to international labor markets and the development, personal or national, that might come with it. For receiving countries, limiting the number of migrants limits the economic benefits that could be derived from migration. Many countries try to compensate for these disadvantages by putting in place selection procedures to get the “right” migrants based on needed skills and desired cultural traits such as language. However this usually biases migrant selection towards skilled workers and individuals from developed countries. The cumulative effect is to reduce access to global labor markets to those who would derive the most benefit from it, thus limiting the potential global redistributive effects of international migration.

Alternatively, the migrant receiving state can allow high levels of migration but limit the ability of migrants to integrate into society and require that they repatriate after some specified period of time. This is the experiment that the Gulf countries are currently engaged in. The World Bank estimates that in 2010 the six GCC countries had over fifteen million migrants, roughly 7 percent of the global total.⁸⁶ A comparative advantage in oil and gas extraction (which requires a labor force on site) coupled with a small native population made importing migrant labor on a

⁸⁶ “International Migrant Stock: The 2012 Revision,” United Nations: Department of Economic and Social Affairs, Population Division, 2012, accessed May 9, 2015, <http://data.worldbank.org/indicator/SM.POP.TOTL>.

large scale a practical necessity. Faced with the very real possibility of being overwhelmed by a rising tide of migrant labor, the Gulf countries protect the native population and their sense of national identity by restricting the ability of migrants to integrate. The chosen strategy: temporary contract migration under sponsorship. Temporary contract migration has reemerged on the global agenda as a possible means of mediating between the interests of sending countries, receiving countries, and migrant workers.

Temporary contract migration programs are often seen by states as a means of mitigating challenges associated with managing this global flow. By encouraging circulation and return migration it is hoped that a virtuous cycle of opportunities for the global poor, flexible and inexpensive labor for receiving states, and increased development for receiving states can be established. Most nations today have some variation of a temporary labor migration scheme in place.

The bulk of this dissertation has focused on a comprehensive identification of the human rights challenges facing Filipino temporary contract migrants in the UAE. This case study has been particularly useful in illuminating the challenges and opportunities inherent in temporary contract migration. The sheer enormity of the economic and demographic situation that faces these countries brings temporary contract migration starkly to light. However, the categories of responsibility and the comprehensive identification of problems lend themselves to a broader comparative project. The problems are widespread. This is not just a problem of the GCC, though its particular economic and demographic situation make the problem so uniquely evident there. An in-depth comparison is beyond the scope of this project, though it is certainly an area for future research. Consider some of the issues and policy proposals addressed in this chapter:

Choice of employment: Canada's Live-In Caregiver program, which relies heavily on temporary Filipino workers, ties workers to a single employer – similar to the situation of workers under the sponsorship system in the UAE.

Recruitment: Israel has a complex system of state policy support for private brokers that “fuels trafficking practices and forced labor of legal labor migrants.”⁸⁷

Domestic workers: A 2014 report by Human Rights Watch documented abuse, forced confinement, excessive working hours, low salaries, non-payment of wages, passport confiscation, and denial of means of communication (cell phones) in the UK.⁸⁸ As of 2012, domestic workers in the UK receive “tied visas” and unable to change employers. This is a similar pattern of abuse as is seen in the UAE.

Labor organization: Amid growing violence targeting migrants, migrant workers threatening to strike in the Maldives (whose luxury tourism industry relies on migrant workers) were threatened with deportation by the Ministry of Economic Development who viewed the protests as “a premeditated attempt to undermine [the] Maldivian economy and businesses.”⁸⁹ Labor unions in western European countries, Belgium and the UK for example, are struggling with how to incorporate migrant workers.

Social security: Roughly half of Mexican migrants working in the United States are employed in positions that contribute to social security. But, without a totalization agreement between the two countries, they will not be eligible to receive those benefits should they repatriate to Mexico.⁹⁰

Understanding the gap in provision of rights as well as migrant strategies for coping with their precarious situation is a prerequisite for designing ethical and effective policies. The answers that we arrive at have immediate, significant implications for the lived experience of

⁸⁷ Adriana Kemp and Rebeca Rajman, “Bringing in State Regulations, Private Brokers, and Local Employers: A Meso-Level Analysis of Labor Trafficking in Israel,” *international Migration Review* 48, no. 3 (2014).

⁸⁸ *Hidden Away: Abuses against Migrant Domestic Workers in the UK* (United States: Human Rights Watch, 2014), accessed May 8, 2015, http://www.hrw.org/sites/default/files/reports/uk0314_ForUpload.pdf.

⁸⁹ Jason Burke and Zaheena Rasheed, “Maldives Threatens Migrant Workers with Expulsion over Planned Protest,” *The Guardian* (2015), accessed May 8, 2015, <http://www.theguardian.com/world/2015/mar/26/maldives-migrant-workers-protest>.

⁹⁰ Emma Aguila and Julie Zissimopoulos, “Retirement and Health Benefits for Mexican Migrant Workers Returning from the United States,” *international Social Security Review* 66, no. 2 (2013). Gary Burtless and Audrey Singer, *The Earnings and Social Security Contributions of Documented and Undocumented Mexican Immigrants* (Chestnut Hill, MA: Center for Retirement Research at Boston College, 2010), accessed May 8, 2015, http://crr.bc.edu/wp-content/uploads/2011/01/wp_2011-2_5081.pdf.

millions of temporary migrants around the world today. This dissertation has contributed to both theoretical and practical aspects of the human rights of temporary contract migrants. I have proposed a theoretical framework for allocating obligation for the protection and fulfillment of temporary migrant workers between both sending and receiving countries, specifying citizenship obligations, presence obligations and involvement obligations. These categories are used to first identify problems, illuminate the duty to address the problem, and propose possible avenues for reform.

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APPENDIX 1: INTERVIEWS

Ambassador Grace Relucio Princesa, interview with the author, 10/30/2013
Labor Attaché Angel Borjas Jr., interview with the author, 10/23/2013
Vice Consul Vice Consul Norman E. Padalhin, interview with the author, 10/22/2013
Adrian (Engineer), interview with the author, 9/10/2013
Alexandra (Food Service), interview with the author, 2/23/2013
Angelica (Office Worker), interview with the author, 9/12/2013
Angelo (Engineer), interview with the author, 10/21/2013
Arianna (Nurse), interview with the author, 8/3/2013.
Ava (HSW), interview with the author, 3/30/2013
Cassandra (HSW), interview with the author, 3/30/2013
Cherry (Office Professional), interview with the author, 9/12/2013
Coco (Assistant Teacher), interview with the author, 9/30/2013
Danielle (Office Worker), interview with the author, 9/15/2013
Dominic (Accountant), interview with the author, 10/7/2013.
Edward (Retail Supervisor), interview with the author, 8/28/2013
Ella (Food Service), interview with the author, 3/20/2013
Enzo (Chef), interview with the author, 9/12/2013
Fortunato (Architect), interview with the author, 3/23/2013
Gabriel (Nurse), interview with the author, 10/15/2013
Gloria (Doctor), interview with the author, 10/20/2013
Grace (Hotel Receptionist), interview with the author, 3/20/2013
Haley (Food Service), interview with the author, 2/23/2013
James (Food Service), interview with the author, 2/23/2013
Jasmine (Nurse), interview with the author, 8/3/2013
Joey (Engineer), interview with the author, 10/21/2013
Juliana (Receptionist), interview with the author, 9/8/2013
Justin (Engineer), interview with the author, 9/13/2013
Lissa (HSW), interview with the author, 10/7/2013
Maria Joy (Manager), interview with the author, 3/16/2013

Marjorie (Massage Therapist), interview with the author, 10/8/2013
Mark (Engineer), interview with the author, 9/13/2013
Mary Grace (Manager), interview with the author, 3/30/2013
Maxine (Receptionist), interview with the author, 9/3/2013
Mia (Professional), interview with the author, 9/17/2013
Moses (Financial Adviser), interview with the author, 3/18/2013
Nellie (HSW), interview with the author, 10/7/2013
Nicole (HSW), interview with the author, 9/18/2013
Nina (Personal Assistant), interview with the author, 10/26/2013
Princess (Office Professional), interview with the author, 3/16/2013
Rachelle (Office Worker), interview with the author, 10/22/2013.
Rika (HSW), interview with the author, 10/7/2013
Scarlet (Clerk/HSW), interview with the author, 10/7/2013
Sebastian (Engineer), interview with the author, 9/13/2013
Sophia (Nurse), interview with the author, 9/15/2013
Thomas (Airport Worker), interview with the author, 10/8/2013.
Victoria (Accountant), interview with the author, 9/28/2013
Zoe (Real Estate), interview with the author, 9/24/2013