

**The Saudi Arabian Obligations under the Palermo  
Protocol for the Prevention of the Trafficking of  
Domestic Workers**

Mohamd Ayed M Alassmari

MPhil

University of York

Law

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# ABSTRACT

When examining a large flood of migration into a country, an imperative consideration for the affected states is their respect for human rights values, the protection of vulnerable groups and the assurances for the implementation of those values. The case under scrutiny in this thesis is that of domestic workers who are vulnerable due to the nature of their work.

This thesis concentrates on one of the three Ps of human trafficking as outlined in the Palermo Protocol, namely prevention. In particular, the focus lies on two areas relating to the prevention of trafficking of domestic workers in the Kingdom of Saudi Arabia (KSA). These are, firstly, the disregard of national and international laws preventing trafficking in KSA, and secondly, the limited number of policies that specifically target the prevention of domestic workers trafficking generated in KSA after the issue of laws.

This research into the current circumstances in KSA shows that while anti-trafficking laws, labour laws and domestic workers' bylaws have been issued, the KSA government has disregarded, partially at least, the implementation of these laws in preventing trafficking. This research shows that the KSA government has not introduced any prevention elements into the anti-trafficking legislation. This is due to the fact that even though the KSA government have used an obfuscated method to implement their first anti-trafficking law, they have misinterpreted the goals that needed to be achieved.

The research also finds three main causes for the limited number of policies in KSA, which may explain why trafficking, is not prevented. These causes are: the lack of interaction between international treaties and KSA departments with regards to human trafficking, inconsistencies between different KSA departments in dealing with human trafficking, and finally, the lack of any policies specifically concerning the prevention of trafficking of domestic workers.

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# **Author's declaration**

Except where stated, all of the work contained within this thesis represents the original contribution of the author.

This work has not previously been presented for an award at this, or any other, University. All sources are acknowledged as References and any future publication arises from the thesis will be acknowledged.

# CHAPTER 1

## INTRODUCTION

### 1.1 Introduction

The country in question in this thesis is the Middle Eastern Kingdom of Saudi Arabia (KSA). Although there are three main elements in addressing the selling and sexual exploitation of vulnerable people according to the Palermo Protocol on Trafficking in Persons (protection, punishment and prevention) this thesis focuses on the role of the Saudi Arabian government in addressing the obligation to prevent trafficking, which is particularly important in the case of domestic workers. This does not serve, however, to reduce the importance of protection and punishment in terms of combating the phenomenon of human trafficking.

This chapter introduces the issues addressed in this thesis. Section 1.2 discusses United Nations efforts and the human trafficking in particular, the current definition of human trafficking provided, as agreed upon in the recent UN Convention against Transnational Organized Crime supplemented by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

Section 1.3 looks at the trafficking of women and the human rights into two parts where the first one explains the domestic workers in KSA shedding light on some of their vulnerabilities and how they become victims of human trafficking in KSA. The second part, argues on the fact is the human trafficking can be seen as the modern day slavery and whether it is a violations to the fundamental human rights.

Section 1.4 defines the research question addressed in this thesis in light of the problems described. Section 1.5 details the research methodology, providing information on data sources, methods of data collection and details of data analysis. It discusses why this area of research was chosen, lists the government departments from which the data was collected and presents the questions used during data collection. Section 1.6 looks at what are the repercussions of KSA's disregarding to their laws and at the same time outlines the limited number of policies that have been implemented in KSA. Section 1.7 provides an overview of the thesis.

## **1.2 The United Nations and the Human Trafficking**

Trafficking in persons, most of whom are women and children,<sup>1</sup> is widespread in the modern world, and many international conventions address a variety of such violation that take place in this context. The selling and sexual exploitation of vulnerable people, in the case of this thesis of domestic workers, has become one of the fastest-growing criminal enterprises in the global economy, but it is not a new phenomenon.

Traffickers tend to abduct or entice young victims away from their families with promises of well-paid jobs, education and training. In reality, testimonies from victims reveal that they have been kept in harsh conditions, sometimes deprived of food and water to keep them small, and often subjected to dangerous work. Consequently, victims have been seriously injured or even killed as a result of such horrific treatment.<sup>2</sup>

In 2000, the UN decreed that there should be a global response to address human trafficking and bring it to an end through the UN Trafficking in

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<sup>1</sup> U.S. Department of State, Trafficking in Persons Report (hereinafter Trafficking Report 2005)

<sup>2</sup> E Willemsen, 'A Safe Return for Victims of Trafficking' [2006] 25 Forced Migration 30-31

Persons Protocol,<sup>3</sup> which introduced the first internationally recognised definition of trafficking in persons.

The delay in producing this convention was due to the considerable differences in opinion between countries whose political interests were at odds.<sup>4</sup> The definition of trafficking in this Protocol is given in Article 3(a) and provides a comprehensive and wide definition of human trafficking.<sup>5</sup> This definition states that:

Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of [...] the exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>6</sup>

The UN Office on Drugs and Crime (UNODC) defines the three main basic elements of trafficking as the process or act of conducting trafficking, the means of trafficking and the purpose of trafficking. UNODC also states that

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<sup>3</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly

<sup>4</sup> T Obokata, *Trafficking of Human Beings from a Human Rights Perspective* (Koninklijke Brill 2006) 10-12

<sup>5</sup> Article 3, paragraph (a) of the United Nations Convention Against Transnational Organized Crime (2000); The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. The protocol entered into force on 25/12/2003

<sup>6</sup> Article 3 (a) of The United Nations Convention Against Transnational Organized Crime (2000); The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 5)

the process of trafficking includes all kinds of recruitment, transportation, harbouring or receipt of potential victims.<sup>7</sup>

The means of trafficking refers to all kinds of threat, coercion, abduction or fraud against the potential victim. The purpose of the act includes exploitation, prostitution, forced labour, slavery or similar practices, and servitude.<sup>8</sup>

While bearing that in mind, the Palermo Protocol has demonstrated that future work on the issues of human trafficking has to be centred on the three main Ps of combating human trafficking, which are protection, punishment and prevention. Recently, a fourth P was added as a leap of faith: a partnership between governments and non-governmental organisations and civil societies (Figure 1).



Figure 1. Human trafficking as explained by the four Ps.

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<sup>7</sup> Social Development Notes, 'Human Trafficking: A Brief Overview (Conflict, Crime and Violence, 2009) 1-15. See also The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 3)

<sup>8</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 3)

As an example of one of the Ps mentioned above, namely the protection of victims, the Trafficking Protocol asserts that any victim of trafficking needs to be able to gain sufficient access to remedies in the member state, along with the state providing any necessary protection. The Palermo Protocol affirms the rights of victims to gain access to local courts and obtain remedies from all responsible parties, along with the right to access appropriate rehabilitation treatment.<sup>9</sup>

The Protocol adds to the list of rights that victims should have, by stating that member countries should provide assistance for the protection of trafficked persons to the greatest extent possible under domestic law. The Protocol also asserts that States Parties need to consider the victim's views and concerns during criminal procedures against offenders.<sup>10</sup>

The Palermo Protocol outlines extra measures that all States Parties can adopt to fulfil their obligations. These obligations relate to the prevention of trafficking in persons, information exchange and training, border measures,

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<sup>9</sup> Provision III (Articles 9, 10) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. (see text to n 3)

<sup>10</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 3)

the security and control of documents, and the legitimacy and validity of documents.<sup>11</sup>

Article 9 of the Palermo Protocol explains the member countries' obligations in regard to the prevention of human trafficking,<sup>12</sup> which require the establishment of procedures and policies to prevent the practice and protect its victims.<sup>13</sup>

Measures also include the development of research and mass media campaigns, the establishment of policies that allow partnerships with non-governmental organisations,<sup>14</sup> the encouragement of bilateral agreements for

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<sup>11</sup> Sections 1-5 of Article 9 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly. Sections 1-3 of Article 10 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly. Sections 1-6 of Article 11 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by the resolution A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the UN General Assembly. Article 12 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly. Article 13 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly

<sup>12</sup> Article 9 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly (see text to n 30)

<sup>13</sup> Section 1 (a), (b) of Article 9 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly .

<sup>14</sup> Sections 2, 3 of Article 9 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 3)

vulnerable victims of human trafficking, and the adoption of reinforced punishment measures in Anti-Trafficking Laws.<sup>15</sup> More specifically:

1. States Parties shall establish comprehensive policies, programmes and other measures: (a) to prevent and combat trafficking in persons; and (b) to protect victims of trafficking in persons, especially women and children, from re-victimization.
2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.<sup>16</sup>

This cooperation can be seen in partnerships between states and NGOs to combat trafficking. For example, the Asia Regional Trafficking in Persons (ARTIP) project has facilitated a more resourceful approach to victims of trafficking in the criminal justice systems of governments in South East Asia.<sup>17</sup> Another example of collaboration can be found in the HRW report on the Japanese and Thai governments' drafting of an anti-trafficking agreement aimed at the protection of human rights and the physical safety of trafficking victims.<sup>18</sup>

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<sup>15</sup> Sections 4, 5 of Article 9 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 3)

<sup>16</sup> Sections 1, 2 of Article 9 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 3)

<sup>17</sup> 'Australia Anti Trafficking Activities' <<http://www.ausaid.gov.au/country/antitraffick.cfm#ARTIP>> accessed 03/8/2011. It should be acknowledged that the Australian government supports several programmes (such as poverty reduction) to minimise the vulnerability of people to traffickers and, simultaneously, funds the ARTIP program in order to increase capabilities and training in the areas of law enforcement, judicial and prosecutorial functions, input to policy, targeted research and outreach activities. The adoption of common standards and procedures should greatly enhance cross-border cooperation on trafficking issues

<sup>18</sup> Human Rights Watch, 'Thousands of Thai Women Trafficked to Japan' <<http://www.hrw.org/news/2000/09/21/thousands-thai-women-trafficked-japan>> accessed 05/8/2011

Similarly, the cooperation with non-governmental organisations strengthens measures alleviating the vulnerability that has been mentioned in the Palermo Protocol obligations, which state that:

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society. 4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.<sup>19</sup>

Finally, the last component of the obligations to prevent trafficking, which States Parties can apply, is what mentioned in the Palermo Protocol as to strengthen legislative measures, thus discouraging the demand on trafficking:

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.<sup>20</sup>

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<sup>19</sup> Sections 3, 4 of Article 9 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 3)

<sup>20</sup> Section 5 of Article 9 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 3)

In terms of criminalisation, Article 5 of the Protocol asserts two main ideas: the adoption of national legislation on human trafficking offences when committed intentionally, and the adoption of national legislation on attempting to commit or being an accomplice in the offence of human trafficking, or directing such crimes.<sup>21</sup>

### **1.3 Trafficking of Women and the Modern Day Slavery**

#### **1.3.1 The Trafficking of Women and KSA Domestic Workers**

As seen in the previous section, the phenomenon of human trafficking has re-emerged on the international community agenda recently, with the clear intention of combating and eliminating the problem. This phenomenon has been observed for centuries without much explanation as to why there is an increase in the number of people being trafficked.

Showing that the human trafficking is the second largest and fastest growing criminal industry in the world, the International Labour Organization (ILO) has stated that, traffickers made \$32 billion buying and selling humans.<sup>22</sup> The ILO estimates, as well, that at least 1.39 million are victim of commercial sexual servitude, both transnational and within countries. According to the

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<sup>21</sup> Article 5 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly. This Article states that: ‘1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Article 3 of this protocol, when committed intentionally. 2. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences: (a) Subject to the basic concept of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this Article; (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this Article; (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this Article.’

<sup>22</sup> ILO, ‘Actions Against Human Trafficking’ (Geneva, 2008). See Also, P. Belser: Forced Labour and Human Trafficking: Estimating the Profits (Geneva, ILO, Special Action Programme to Combat Forced Labour, 2005), DECLARATION/WP/42/2005.

ILO, 56 percent of all forced labour victims are women and girls.<sup>23</sup> Similarly, the U.S. State Department estimates that between 14,500 and 17,500 persons are trafficked into the U.S. each year.<sup>24</sup>

The country in question to this thesis is The Kingdom of Saudi Arabia, which is the preferred destination for many Asian migrant workers, mainly due to the absence of taxes and the potential to earn a high income. In a country, which was initially unprepared to receive a large influx of migrant workers, a lack of rules governing the relationship between employers and employees is likely to result in the violation of the human rights of the workers.

An estimated 10% of workers in KSA are women domestic workers, who work inside the home, without access to the outside world and in some cases with significant abuse of their rights.<sup>25</sup> Some domestic workers in KSA are forced to obey the house owner's rules, whether they agree with them or not, and have no way of reporting any threats or imminent violations of their rights.<sup>26</sup> In most cases of abuse, they have been held inside the house against their will.

It is the acknowledgment that trafficking could happen to male or women, however, trafficking of women have attracted the greatest amount of attention as it has resulted in a large variation in global estimates of the number of

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<sup>23</sup> ILO, 'Actions Against Human Trafficking' (Geneva, 2008). See Also, P. Belser: Forced Labour and Human Trafficking: Estimating the Profits (Geneva, ILO, Special Action Programme to Combat Forced Labour, 2005), DECLARATION/WP/42/2005. See also, U.S. State Dept., Trafficking in Persons Report (2009),

<sup>24</sup> U.S. Department of State, Trafficking in Persons Report 2010, 2010. P. 341.

<sup>25</sup> Antoinette Vlieger, *Domestic Workers in Saudi Arabia and the Emirates: A Socio-Legal Study on Conflict* (Quid Pro Books 2011)

<sup>26</sup> Antoinette Vlieger, *Domestic Workers in Saudi Arabia and the Emirates: A Socio-Legal study on Conflict* (see text to n 25)

trafficking victims.<sup>27</sup> That being said, this thesis intention is to focus on women trafficking within KSA and in particular on the women domestic workers due to the fact that it is impossible to calculate the real number of trafficking of women victims in KSA, because of differences in definition and methodology, together with a general lack of reliable data.

In 2011, the KSA Department of Labour indicated that in the previous five years, the government had issued over five hundred thousand entry visas to domestic workers. The accuracy of the number given by this Department is not under discussion now, as its significance is put to the test when examining the efforts of the Saudi government in regards to domestic workers' rights.

Additionally, this cannot be understood as the current number of domestic workers in the country, as there are domestic workers who have been present in KSA for more than five years.<sup>28</sup> The estimate provided by the Department of Labour shows a noticeable increase in the numbers of domestic workers in the five years up to 2011.

There has not been, however, any corresponding effort by the government to give this type of work any protection in order to bring it in line with international standards as issued by the United Nations (UN) and the International Labour Office (ILO). It has also been shown by Human Rights Watch (HRW) that some domestic workers in KSA face violence while performing their job.<sup>29</sup>

In addition to that, underage domestic workers are likely to be more vulnerable when facing violence during their stay in this country. Linking the

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<sup>27</sup> The Advocates for Human Rights, 'The Facts: Sex Trafficking', U.S. State department, Trafficking In Persons Report (2009), <[www.state.gov/documents/organizations/123357.pdf](http://www.state.gov/documents/organizations/123357.pdf)>

<sup>28</sup> Antoinette Vlioger, *Domestic Workers in Saudi Arabia and the Emirates: A Socio-Legal study on Conflict* (see text to n 25)

<sup>29</sup> Human Rights Watch, 'Exported and Exposed: Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates' [2007] 19 Human Rights Watch Report 43

above to exploitation by employers, trafficking becomes a real possibility, as when domestic workers in KSA are exploited or involved in forced labour some try to escape from their place of work/residence and fall into the hands of traffickers.<sup>30</sup>

These reports begin by emphasising the abuses a domestic worker may face, such as sexual harassment or exploitation, non-payment of wages or forced labour. HRW has reported that women in KSA ‘face pervasive workplace abuses: non-payment or underpayment of wages; wage exploitation; forced confinement in the work place; excessively long work hours; and no rest days.’<sup>31</sup> The domestic workers may then attempt to escape from the residence that they work in. In normal cases, escapees are housed in a small shelter provided by the domestic workers embassy until their employer complies with court procedures, which may take up to a year.<sup>32</sup>

If it is not possible to involve the embassy, escapees will face life on the street or trafficking by other persons for sexual purposes with the aim of providing money for immediate or extended family in their country of origin. In both cases, it is very clear that the responsibility falls on the KSA government for failure to provide measures of prevention or safety and protection, as they should act to safeguard such a vulnerable group. This can

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<sup>30</sup> Human Rights Watch, ‘Exported and Exposed: Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates’ (see text to n 29) 43

<sup>31</sup> Human Rights Watch, ‘Exported and Exposed: Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates’ (see text to n 29) 43

<sup>32</sup> Human Rights Watch, ‘Saudi Arabia: Bad Dreams, Exploitations and Abuses of Migrant Workers in Saudi Arabia’ [2004] Human Rights Watch Report. See also, Human Rights Watch, ‘Swept Under the Rug: Abuses against Domestic Workers around the World’ (Human Rights Watch) <<http://www.hrw.org/sites/default/files/reports/wrd0706webwcover.pdf>> accessed 01/8/2011. See also, The Human Rights Watch ‘2012: A year of Progress for Domestic Workers’ [2013] The Human Rights Watch, ‘Exported and Exposed: Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates’ (see text to n 29) 43. See also, Human Rights Watch, ‘As if I Am not Human: Abuses against Domestic Workers in Saudi Arabia’ [2008], Human Rights Watch Report 30

be clearly seen in the in the European Court of Human Rights ruling in the case *Rantsev v Cyprus and Russia*, as the court has stated ‘the State has to take appropriate steps to safeguard the lives of those within its jurisdiction’.<sup>33</sup>

The protection of such human rights, including the above vulnerable group, can be legally argued depending on the International Bill of Human Rights and the fact that other international instruments have been adopted reflecting the need to focus on human rights concerns and for providing mechanisms of protection.<sup>34</sup>

Destination countries, in this case KSA, can focus their efforts on sheltering domestic workers from any kind of abuse or sexual exploitation and on providing a clear litigation procedure that governs the relationship between them and their employers in order to avoid any paths that may lead to human trafficking.<sup>35</sup> That being said, it is essential to note that not all domestic workers in KSA are being exploited or trafficked. There are many examples of good employment relationships between domestic workers and employers.

### **1.3.2 The Women Trafficking as the Modern Day Slavery**

In the early part of the twentieth century, trafficking in persons was understood to have taken place for the purposes of prostitution and sexual exploitation.<sup>36</sup> The modern idea of trafficking in persons originated in the white slave trade of that period, but the origin of human trafficking can be found in slavery and slave trade practices dating back millennia; similarities

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<sup>33</sup> *Rantsev v. Cyprus and Russia*, App. No. 25965/04 (Eur. Ct. H.R. 2010),

<sup>34</sup> Renteln, Alison Dundes. *International human rights: universalism versus relativism* (Quid Pro Books, 2013)

<sup>35</sup> IOM, ‘Trafficking in Human Beings’ in IOM, *The World in Motion: Short Essays on Migration and Gender* (International Organization for Migration, Geneva 2004) 53-69

<sup>36</sup> W Phillips, *Slavery from Roman Times to the Early Transatlantic Trade* (Manchester University Press 1985) 3-16

can be identified in the strategies for selling people, controlling their freedoms and, thus, taking away their rights.<sup>37</sup>

Slavery practices were common among the early civilisations in the Middle East and the Mediterranean and became more widespread during the Roman Empire. The slavery legacy left by the Roman Empire included slavery practices in Europe and North Africa.<sup>38</sup> In the Middle East and North Africa, the practice of slavery was institutionally established under Sharia law during the Islamic revolutions, and the Muslim nations were among the first to acquire slaves from Africa.<sup>39</sup>

As shown in the definition of the human trafficking, it involves controlling a person through force, fraud, or coercion to exploit the victim for forced labour, sexual abuse, or both. Although human trafficking can occur at local levels, it has transnational implications, as recognized by the United Nations in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children which is an international agreement under the UN Convention against Transnational Organized Crime that entered into force on 25 December 2003.

An argument can be added at this stage, stressing that the human trafficking is to be considered as the modern day slavery. Goodey validate this argument stating that ‘human trafficking encompasses labour and sexual exploitation, and its victims can include men and women [...] Exploitation us[es] means such as fraud, force, threat; as such, human trafficking is often described as “modern day slavery”.’<sup>40</sup> The fact is that the slavery concept is as same as the

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<sup>37</sup> W Phillips, *Slavery from Roman Times to the Early Transatlantic Trade* (see text to n 36) 3-16

<sup>38</sup> W Phillips, *Slavery from Roman Times to the Early Transatlantic Trade* (see text to n 36) 3-16

<sup>39</sup> T Obokata, *Trafficking of Human Beings from a Human Rights Perspective* (see text to n 4)

<sup>40</sup> J Goodey, ‘Human Trafficking: Sketchy Data and Policy Responses’ *Criminology and Criminal Justice* 8.4 (2008): 421-442.

human trafficking concept including, buying and selling human, controlling the lives of human and using the same methodology in human exploitation.

Human trafficking differs from people smuggling, which involves a person voluntarily requesting or hiring another individual to covertly transport them across an international border, usually because the smuggled person would be denied entry into a country by legal channels. Though illegal, there may be no deception or coercion involved. After entry into the country and arrival at their ultimate destination, the smuggled person is usually free to find their own way.

The above discussion examines that reality of whether human trafficking can be seen as the modern day of slavery or not. This leads to deeper discussion on whether if the human trafficking is a human rights violations or if the human trafficking is simply crime that can happen to anyone.

The Universal Declaration of Human Rights as generally it is agreed to be the foundation of international human rights law. Adopted in 1948, the UDHR has inspired a rich body of legally binding international human rights treaties.<sup>41</sup>

The Declaration's Preamble focuses on to reaffirm the peoples of the United Nations faith in fundamental human rights. Based on this Declaration, all persons, regardless of nationality, race or legal residence, are entitled to the fundamental human rights set forth in the declaration such as right to life, liberty, not to be slaved, not to be tortured, equality before the law and remedies.<sup>42</sup>

Willemsen has explained more into those rights as in the right to equality before the law, the right to freedom from forced labour, the right to return home if they wish and the right to freedom from sexual harassment in the

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<sup>41</sup> The Universal Declaration of Human Rights, 10/12/1948

<sup>42</sup> Articles 2, 3, 4, 5, 7, 8 of The Universal Declaration of Human Rights, 10/12/1948

workplace. These rights are guaranteed to all human beings, including migrant workers in all international instruments, and as a result it is up to the state members who are party to those conventions and instruments to apply and implement them domestically.<sup>43</sup>

It has to be mentioned that this declaration is not a binding international document, as it is not a treaty itself, though it has a strong moral acceptance.<sup>44</sup> However, it should be noted as well, that it was adopted for the purpose of defining the fundamental freedom and Human Rights in the UN charter, which is binding to all member states. Additionally, this declaration can be seen as part of the international customary law and as powerful.<sup>45</sup>

*Namibi* case, for example, it was ruled that the provisions of the Universal Declaration of Human Rights can bind states on the basis of customary law.<sup>46</sup> Moreover, this declaration has served as a foundation for two main and binding UN human rights conventions; 1) the International Covenant on Civil and Political Rights; 2) the International Covenant on Economic, Social and Cultural Rights.<sup>47</sup>

Having established that human trafficking can be seen as the ‘Modern day Slavery’ and the Universal Declaration can be binding to States, the issue whether the human trafficking is a human rights violation or just simply a crime must be discussed.

Dealing with such a dilemma, two different opinions on how to deal with the victims of human trafficking based on the classifications of trafficking. The

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<sup>43</sup> E Willemsen, ‘A Safe Return for Victims of Trafficking’ (see text to n 2) 30-31

<sup>44</sup> Smith, Rhona KM. *Textbook on international human rights* (Oxford University Press, 2016) 39 - 40

<sup>45</sup> Office of the High Commissioner for Human Rights, ‘Digital record of the UDHR’ [2013] the United Nations.

<sup>46</sup> *Namibia case* (Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970) Advisory Opinion) 1971 ICJ

<sup>47</sup> The International Covenant on Civil and Political Rights (ICCPR), adopted by the United Nations General Assembly on 16 December 1966, and in force from 23 March 1976. See also, the International Covenant on Economic, Social and Cultural Rights (ICESCR 1966);

debate is whether THB could be classified as a form of human rights violation, or on the other hand, the subject itself shows that traffickers may tend use a criminal act such as abduct, lure or entice young victims with promises of well-paid jobs.

The European Court of Human Rights has reviewed a number of reports on the issue of human trafficking, and for example Cyprus. One case can be discussed in this area as to its relevance, which is the case *Rantsev v Cyprus and Russia*.<sup>48</sup> The Court has decided to look in to this case based on the interpretation of Article 4 that discusses the freedom from slavery and servitude and in the context of trafficking.<sup>49</sup>

The Court has discussed this case, in depth, and ruled on several elements and one of them is relevant to this topic. The court has concluded that the victim's of human trafficking in its context, had similarity to servitude and in the *Rantsev v Cyprus and Russia* case, the Court asserts on the victim's treatment as similar to trafficking. Similarly the Court has concluded that human trafficking as defined in article 3(a) of the Palermo Protocol falls within the scope of article 4 of the European Convention Against Human Trafficking.<sup>50</sup>

The Court statement is that, trafficking nature is prohibited by Article 4 of the European Convention on Human Rights and thus, it concluded that there had been a violation by Cyprus for not fulfilling their obligations under Article 4.<sup>51</sup> Similarly, The Court further stated that there had been a violation by,

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<sup>48</sup> Rantsev v. Cyprus and Russia - 25965/04 [2010] ECHR 22 (10 May 2010). See also, Allain, Jean. 'Rantsev v Cyprus and Russia: The European Court of Human Rights and Trafficking as Slavery' [2010] Human Rights Law Review 10: 546.

<sup>49</sup> Rantsev v. Cyprus and Russia - 25965/04 [2010] ECHR 22 (10 May 2010). See also, Allain, Jean. 'Rantsev v Cyprus and Russia: The European Court of Human Rights and Trafficking as Slavery' [2010] Human Rights Law Review 10: 546.

<sup>50</sup> Rantsev v. Cyprus and Russia - 25965/04 [2010] ECHR 22 (10 May 2010). See also, Allain, Jean. 'Rantsev v Cyprus and Russia: The European Court of Human Rights and Trafficking as Slavery' [2010] Human Rights Law Review 10: 546.

<sup>51</sup> Rantsev v. Cyprus and Russia - 25965/04 [2010] ECHR 22 (10 May 2010). See also, Allain, Jean. 'Rantsev v Cyprus and Russia: The European Court of Human Rights and Trafficking as Slavery' [2010] Human Rights Law Review 10: 546.

Cyprus in this case, to Article 2 of the Convention that concerns the right to life.<sup>52</sup>

Therefore, as the trafficking has been seen by the European Court of Human Rights as the ‘Modern day Slavery’ and the fact that this Court is looking into the issues of the human trafficking, shows that human trafficking on its own terms is a violation to the fundamental human rights. The trafficking industry is growing fast and states must pair large attention combating it especially for those victims of women and girls, which infringe upon their fundamental human rights that are guaranteed to them under the Universal declaration of Human Rights, such as individual freedom and human dignity.”<sup>53</sup>

#### **1.4 The Research Question**

The research question examined in this thesis addresses the state of domestic workers in KSA in connection with their potential status as victims of human trafficking. This thesis aims to answer the following question: *To what extent do Saudi Arabian laws and government policies fulfil the obligations to prevent the trafficking of domestic workers?* The phenomenon of human trafficking can be approached from a variety of angles.

However, focuses on Saudi Arabian governmental efforts in terms of its obligations to prevent the trafficking of domestic workers as a signatory to international treaties, and in particular the Palermo Protocol. In addition, this is due to the fact that the Saudi Arabian government has incorporated the Palermo Protocol in its anti-trafficking legislations to cover all types of trafficking (to Saudi Arabia, and within the Saudi Arabia).

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<sup>52</sup> Rantsev v. Cyprus and Russia - 25965/04 [2010] ECHR 22 (10 May 2010). See also, Allain, Jean. ‘Rantsev v Cyprus and Russia: The European Court of Human Rights and Trafficking as Slavery’ [2010] Human Rights Law Review 10: 546.

<sup>53</sup> Articles 2, 3, 4, 5 of The Universal Declaration of Human Rights, 10/12/1948. See also, Rantsev v. Cyprus and Russia - 25965/04 [2010] ECHR 22 (10 May 2010)

When domestic workers are faced with the choice between being exploited by their employer or escaping into the hands of traffickers, it is almost inevitable that the latter will happen. This research sheds light on how the Saudi Arabian government deals with the domestic workers trafficking. Most importantly, it aims to show how the KSA government can prevent human trafficking through the implementation of their current policies and laws.

It is essential to underline that the key element in this research is the exploration of KSA Laws and Policies and their application in preserving the rights of domestic workers and preventing human trafficking. In addition, a fundamental aim of this research is the creation of a comprehensive framework outlining what has gone wrong in the implementation of laws and policies up until now, in an effort to aid the government of Saudi Arabia in the prevention of future trafficking of domestic workers.

Finally, the Saudi Arabian Labour Law (SALL) and Saudi Arabian Basic Law (SABL) will be examined in this research in order to link the efforts of KSA in addressing the causes of sexual exploitation and forced labour of domestic workers, and determine whether they are indeed compatible with international human rights standards or not.

The way to answer this question is through understanding the differences between the implementation of the laws and the implementation of the policies in KSA. More importantly, identifying the misguided efforts of the KSA in protecting domestic workers from all kinds of abuse would most definitely shed light on governmental efforts in protecting their rights. The methodology adopted is discussed in the next section followed by an explanation of how the findings will be interpreted.

## **1.5 Methodology**

### **1.5.1 Why Study KSA and Domestic Workers?**

This focus of this thesis will be on the domestic workers in the Kingdom of Saudi Arabia where abuse and exploitation, some of which amounts to forced labour, trafficking, or slavery-like conditions have been documented. The responsibility lies also with the government's inability to prevent trafficking in the Kingdom of Saudi Arabia among those domestic workers.

The thesis will focus primarily on trafficking within Saudi Arabia as it is home for millions of domestic workers originated mostly from Asian and African countries. Those workers are largely employed and worked as household domestic servants where my thesis is primarily focused giving much emphasis to the exploited and trafficked women domestic workers.

There are approximately 1.5 millions women domestic workers, primarily from Indonesia, Sri Lanka, and the Philippines, work in Saudi Arabia. Vast majority of these workers are largely employed and worked as household domestic servants.

This thesis focuses on trafficking of women domestic workers due to the fact their vulnerabilities such as the absence of legislations that can assist them and protect them. Additionally, their vulnerabilities can be seen when they face at the destination countries, KSA for example, the cultural isolation for female domestic workers, the language differences and missing of information on their terms and conditions of employment. For the purpose of clarification, whenever used the term of trafficking of domestic workers in this thesis, it shall mean trafficking of women domestic workers.

They are mainly unskilled labourers and domestic workers, are inadequately protected by labour laws and are vulnerable to exploitation and abuse by their employers, including excessive working hours, wages withheld for months or years on end, forced confinement, food deprivation, and severe psychological

and physical abuse. Women domestic workers“ are also at particular risk of sexual violence and other abuses.”<sup>54</sup>

In order to answer the research question presented above, a particular methodology was carefully selected, bearing in mind key elements such as the country in question, its cultural perspective with regards to trafficking and the link between the prevention of trafficking through laws and policies.

This thesis examines the issue of the government’s obligations to prevent trafficking of domestic workers in KSA, which takes place for a variety of reasons, one of the main being the vulnerability of domestic workers due to the nature of their work. Domestic workers in KSA can be easily forgotten since they normally work behind closed doors and the government has not included them in current employment laws.

In this regard, when the context of human trafficking, domestic workers and the vulnerability factor are merged, trafficking refers to those whose job increases their exposure to being trafficked. In the case of KSA, the vulnerability of domestic workers leads to an increase in the numbers of victims of human trafficking despite the establishment of tough punishments.

### **1.5.2 Data Collection**

In a country such as KSA, the reach of a government official to secure responses on matters of human rights, distribute the questionnaire and access necessary materials is only possible through the using a strong ties with other officials that helped promote this research. If these were not in place, such research would take much longer and be less fruitful, draining available funds with no guarantee of results.

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<sup>54</sup> Antoinette Vlieger, *Domestic Workers in Saudi Arabia and the Emirates: A Socio-Legal Study on Conflict* (see text to n 25) 271-277

That being said, the first stage of the data collection was an open questionnaire that carefully prepared and the results were used to support the thesis during data analysis gathering. This questionnaire were to enable the use of large information gathered from the Saudi concerned departments in regards to their participation in drafting the Palermo Protocol, the remedies that the Saudi Arabian government provide for the victims and the process of legal courts in regards to trafficking cases.

Additionally, the questionnaire looks at the KSA legislation and its implementation methods within the departments, the measures of the Saudi government to implement the anti-trafficking legislations and the measures that have taken to reduce the vulnerability of domestic workers.

The second stage was an interview to the Saudi Arabian departments that related to the implementation of the international convections on human trafficking. This is significant to this research, due to the fact that the KSA officials, whom to be interviewed, have a direct impact on the creation or amendment of policies regarding domestic workers.

Having said this, it is crucial to include several members from a number of government departments, in order to understand the cooperation between the departments in preventing the trafficking of women. Those departments namely can be the Ministry of interior, the Ministry of Labour, the Ministry of Social Affairs, the Human Rights Authority, the National Committee to combat the human trafficking and the national society for human rights.

Through this approach, it will be attempted to obtain a response on how Saudi departments deal with national and international law in the area of trafficking of domestic workers. Additionally, it will be attempted to discover whether there are any future changes to the Saudi Arabian law that will affect domestic workers or lead to the prevention of human trafficking in the country. Finally, it will focus on exploring any future national or international

laws that might be implemented in Saudi Arabia to help prevent trafficking of domestic workers.

The third and final stage will be the materials and documents collections from the concern Saudi Arabian departments. This due to examine and to identify the occurrences of trafficking of domestic workers in Saudi Arabia and the possible methods that could be implemented by KSA government departments to fulfil their obligations to prevent it.

### **1.5.3 Data Analysis**

Data analysis was employed to gain an understanding of how Saudi departments deal with national and international laws in the area of trafficking of domestic workers.

Additionally, data analysis was used to reveal whether there were any plans for future changes to KSA law that would affect domestic workers or lead to an increase in human trafficking in the country. The data analysis focused on exploring the prospect of any national or international laws that might be implemented in Saudi Arabia in the future to help prevent trafficking of domestic workers.

This data analysis was conducted taking into consideration the advantages and disadvantages of using the questionnaire method in a PhD thesis. The use of this method was basically due to the sensitivity of the topic as far as the government of KSA was concerned and as the trafficking of domestic workers is part of the human rights violation that KSA is being accused of.<sup>55</sup>

In more detail, the use of the questionnaire method in this thesis was due to the fact that it can be practical, large amounts of information can be collected, it can be carried out by the researcher with limited effect to his safety, its

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<sup>55</sup> As shown by the critics of the Human Rights Watch earlier in this chapter.

validity and reliability, and also the fact that the results of a questionnaire can usually be quickly and easily quantified, and analysed more objectively.<sup>56</sup>

Some of the disadvantages of questionnaires, however, can be summarised as being arguably inadequate to understand some forms of information, lacking in validity, questioning the truthfulness of respondents, the fact that the memory of respondents may be impaired or not thinking in terms of the current research, and also the fact that different people may read differently into each question.<sup>57</sup>

That being said, the analysed data used in the research came mainly from two primary data sources gathered during a field trip to KSA. Firstly, the prepared questions that were submitted to the targeted Saudi Arabian departments were open questions for the purpose of revealing the approaches of the KSA departments towards human rights exploitations, human trafficking and the obligations to prevent the trafficking of domestic workers (see Appendix 1).

The analysed data was used to explore the views of all related KSA departments. The content analysis of the questionnaire data represented the views of some of the departments' officials that gave their opinion on the trafficking of domestic workers.

Secondly, the analysed data revealed the two aspects of the case studies focusing on the KSA departments' obligations before and after human trafficking cases have been reported. These aspects, namely the official KSA report on human trafficking and the new KSA domestic workers bylaw, were a result of data collected from the questionnaire.

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<sup>56</sup> K Popper, *The Logic of Scientific Discovery* (Routledge, reprinted 2004). See also, S Ackroyd and JA Hughes, *Data Collection in Context* (Longman 1981). See also, L Bryant, *Structured Questionnaires* (History Learning Site 2014)

<sup>57</sup> K Popper, *The Logic of Scientific Discovery* (Routledge reprinted 2004) (see text to n 39). See also, S Ackroyd and JA Hughes, *Data Collection in Context* (Longman 1981) (see text to n 39). See also, L Bryant, *Structured Questionnaires* (History Learning Site 2014) (see text to n 39)

Finally, as this focused is trafficking of domestic workers in the Kingdom of Saudi Arabia, the government has made to some extent, some limited progress in preventing the trafficking of domestic workers and in protecting victims. The overall efforts remain inadequate during the preparation period of this thesis as same as the unavailability of publication to support the claim of that the government did implement procedures to systematically prevent trafficking of domestic workers or to identify victims of trafficking among vulnerable populations.

Similarly, it has not seen any publications that showing the KSA government did make systematic efforts to proactively identify trafficking victims among runaway domestic workers nor official publication from the government showing the kind of arrest, detain, and prosecute victims of trafficking for unlawful acts committed as a result of being trafficked.

#### **1.5.4 Research Limitations**

Several problems have been experienced while conducting this research. Firstly, the collection of the required data and case studies was difficult due to the limited literature on this subject made available by the KSA government. Secondly, the KSA departments and officials thereof were, in most cases, not willing to participate in this research due to the sensitivity of the subject of this study and the restrictive nature of information and media in the country. Finally, the amount of extant literature and previous research on the prevention of human trafficking were not as expected.

In terms of the first limitation, the KSA government have no data centre that can allocate any materials on the prevention of human trafficking. Even though the KSA have established a national committee to combat human trafficking, to date the materials and documents are very limited and mainly concern the punishment and protection of victims. The fact is that the lack of a controlled centre dedicated to human rights values and standards in KSA,

with the exception of the KSA Human Rights Authority, which is a governmental entity, poses considerable challenges in gathering the needed information and materials.

In terms of the second limitation, the sensitivity of the phrase *human rights* in KSA is the biggest challenge that this research has faced. The fact is that even though the KSA have one governmental entity that concerns itself with human rights values and another one with no governmental affiliation, KSA government departments are unlikely to prioritise inquiries on such a topic. In other words, in order to complete such research, the thesis must be approved in advance and undertaken with direct supervision from the government itself.

In terms of the final limitation, it is a well-known fact that researchers over the past couple of decades have focused on the issue of human trafficking. The relevant literature has been presented above, with focus lying on the issuance of the Palermo Protocol from the UN and its importance. Yet, many of the materials and past research examined during the preparation for this thesis have focused on either the combating of human trafficking in general terms, the punishment of traffickers or the protection of victims.

While none of the above can be easily disputed and scholars consider the punishment of traffickers as part of prevention, there is an undeniable lack of focus on the prevention of human trafficking. In addition, a vital element of the prevention of human trafficking is the role of governments, which so far the evidence amassed has shown to be considerably limited.

### **1.5.5 Primary and Secondary Sources**

#### **1.5.5.1 Primary Sources A (The open questionnaire)**

The open questionnaire was designed to gather detailed responses from different government departments in KSA in order to answer the research question. The questionnaire shed light on how each department in KSA dealt

with, treated, understood and executed its knowledge of human trafficking, and in particular the prevention of trafficking of domestic workers.

Secondly, by undertaking content analysis of the answers to a list of questions on the issues of human trafficking, domestic workers' rights and the obligations to prevent trafficking, a gap in KSA laws and policies on the obligations to prevent trafficking of domestic workers was observed. The content analysis of the responses from the various KSA government departments explores any future changes to the current Saudi Labour Law or any laws that might affect domestic workers or lead to an increase in human trafficking in the country, such as the new domestic workers bylaw (case in point the primary sources B), which was created by the KSA government to protect domestic workers.

Finally, with regard to ethical considerations and risks associated with the questionnaire, this was structured according to the University of York's research guidelines, and the study took into account all prescribed ethical issues, such as controlling the collected data, preserving anonymity for the participants, identifying and mitigating any risks either to the researcher or the participants, as well as to the safe collection of data in KSA and their transport back to the UK.

#### **1.5.5.2 Primary Sources B (The Case Studies)**

Firstly, as explained earlier, this case study was the direct result of the questionnaire, the KSA officials whom being interviewed and the materials and documents that have been collected. The two aspects of the case study, as will be explained later in detail, centre on the sole objective of knowing how the KSA government fulfils their obligations to prevent the trafficking of domestic workers.

In regards to law, this KSA bylaw should represent the heart of protecting the rights of domestic workers and preventing them from being trafficked. In

regards to policy, the KSA national report on human trafficking is key in understanding how the KSA aims at combating human trafficking, including the prevention factor.

The two aspects of the case study that have been used in this research were, as explained above, the result of the data collection from the questionnaire (primary sources A). This will be the first instance of such case studies being used in academic research for the Middle East and in particular for the Kingdom of Saudi Arabia. It is through the case studies that the new Saudi Arabian domestic workers bylaw and the official Saudi Arabian government response to human trafficking are to be examined.

Secondly, the case study is based on the first ever Saudi Arabian domestic workers bylaw, which includes three main points of interest for the purposes of this thesis: the definition of domestic work; the contracts of domestic workers in Saudi Arabia; and the obligation of the Saudi Arabian government to prevent the trafficking of domestic workers.

This case study looks at the bylaw from the perspective of the Saudi Arabian government, which clearly addressed the vulnerabilities of domestic workers while preparing the bylaw. It also examines the objectives following the issuance of this law. The overarching objective of this case study is to show the standards used by the Saudi Arabian government in protecting domestic workers' rights, and in particular, all forms of human trafficking.

Finally, the second aspect of the case study examines the first ever report prepared by the Saudi Arabian government under the Human Rights Authority, a branch of the Saudi Arabian government, in regards to their efforts in combating human trafficking.

This unpublished report and KSA policies on the obligations to prevent human trafficking, and in particular domestic workers, can be viewed as a direct insight into the efforts of the Saudi Arabian government against

human trafficking and the possible forms of its prevention. As the KSA Human Rights Authority is the author of this report, their response does not necessarily represent all KSA departments.

The fact remains that efforts directed towards dealing with human trafficking, or its prevention, are not the remit of one department. Other important departments also have a role to play, such as the Department of Labour, the Department of the Interior and the Department of Justice. The present research took this into consideration by preparing a list of open questions for these departments, in order to elicit their points of view on measures required for the prevention of human trafficking.

Finally, it needs to be clarified that this thesis has been completed through the year 2013 with many reviews and discussions took shape with the current supervisors during the year 2014. It was submitted end of December 2014 and after its submission, it took almost one year to conduct the viva. All through 2015 year, nothing could be change or added in the thesis, especially in terms of updating the references.

### **1.5.5.3 Secondary Sources**

The most useful sources of information and materials were found in non-governmental organisations (HRW, Amnesty International, UN Office to Monitor and Combat Trafficking), as they have an interest in researching subjects such as human trafficking. Studies and reports about the Kingdom of Saudi Arabia were also very helpful to this research. More specifically, international bodies, such as the International Labour Organization (ILO), the International Organization of Migration (IOM) and the UN Human Rights Commission were all relevant to this research.

For example, the IOM has recently established a department whose main duty covers human trafficking. The ILO has also begun to investigate issues of forced labour and human trafficking around the world. Finally, published

articles and reports on human rights activities were very helpful in researching human trafficking in Saudi Arabia.

Those materials enhanced the author's current understanding of the nature of the treatment of domestic workers in this country, particularly the laws and policies that are meant to prevent the trafficking of domestic workers. These documents revealed more details on previous research methods, as well as new areas of research. The collection and analysis of human trafficking hotspots was an objective for the secondary sources literature review in order to examine the actions of legal systems as a response to the prevention of domestic workers traffickers in advanced countries.

Another aim of this research was to analyse the progress made by countries in modernising their laws according to their needs and society's acceptance of those laws. The meticulous study of human trafficking cases in Saudi Arabia was also vital to this research.

#### **1.5.5.4 Target sample**

As mentioned above, the role of KSA government departments in this research was significant, due to the fact that they have a direct impact on the creation and amendment of policies regarding domestic workers. The KSA departments that should work together in addressing human trafficking, as described in the KSA anti-trafficking law, are the Department of the Interior, the Human Rights Authority, the National Committee to Prevent Human Trafficking, the Department of Labour and the Department of Social Affairs.

It was crucial to include these governmental departments in order to probe the possibility of any cooperation between departments in terms of the obligations to prevent the trafficking of domestic workers. In addition, the data analysis usefully revealed the KSA government's views on methods of prevention, punishment, protection and working in partnership to prevent the trafficking of migrant women.

### **1.5.6 Data Collection Outline**

The above departments were approached through the Department of Labour in KSA, which invited them to participate in this research. This was followed up by a visit to their offices by the researcher, with the questionnaire. Upon completion of the fieldwork, four main departments had contributed to this research either through written answers in response to the questionnaire or through supplying relevant materials.

The Department of Labour, the Human Rights Authority and the Ministry of Justice contributed in various ways to the completion of this research. Unfortunately, the Department of the Interior and the Department of Social Affairs were not willing to take part in the research.

Initially, a list of open questions was prepared and the questionnaire was sent to a contact at the Department of Labour. As the KSA government was initially funding this research, approval was obtained from the Vice Minister and the Director General of the International Organisations Directorate in the Department of Labour to conduct this research.

The Department of Labour forwarded the questionnaire to the following departments, in order to make the collection of the questionnaire safer and quicker: the Department of the Interior, the Department of Social Affairs, the Human Rights Authority, the National Committee to Prevent Trafficking in Saudi Arabia, and the Human Rights Society in Saudi Arabia.

Once the questionnaires had been distributed, the researcher identified and visited the Saudi departments, explaining the purpose of this research and the data that needed to be collected. The researcher explained the aims and objectives of the research, along with answering all further questions and enquiries about the purpose of the research and its main goals and objectives. Finally, following collection, the researcher analysed the data and combined

with the secondary research, an attempt towards answering the research question was made.

### **1.5.7 Reflection on the Data Analysis**

It is important to realise that while conducting interviews with KSA government officials most respondents may tend to be discreet when engaging in any kind of discussion on human rights. Information gathering was the focus of this research, and was particularly aimed at any future plans to prevent trafficking, combat such violation and protect victims of trafficking.

In addition, the researcher focused on data that detailed any forthcoming strategies for applying human rights standards within Saudi society or on any future cooperation between the Saudi government and other international organisations targeting migrants' human rights. That being said, I cannot claim that the positives outweighed the negatives during this research. One year into the research, I lost my connection inside the Saudi Arabian government. This had deleterious effects for the progress of this research in many ways, such as funding and access to some of the needed data.

It is true that no one can know how to feel exactly about the violation of human rights values until they have experienced it. I was subjected to questioning many times, arrested by the police many times, banned from travelling and my family suffered harassment in regards to the purpose of my conducting such research. That experience was unpleasant, and at the same time, there is no doubt that it had an effect on my progress during data collection and afterwards. I was sent to prison in the KSA three times during the course of this thesis.

The first time was for over 34 days with an extensive questioning and interrogation on the reason for choosing this research topic. My second visit was for 67 days in solitary confinement. The final term of prison was over 27 days and ended with the KSA government charging me with leaking

classified documents. Yet, this is nothing compared to the worst experience that a person can have: being stripped of their life of freedom and allowed the time to think about what could have been done differently.

Eventually, I understood the fact that during my imprisonment most of the questions that were directed at me were on the issues of my collaboration with international agencies against my home country. Additionally, the view of the interrogators was that the KSA had no knowledge of any human trafficking cases, that they had been complying with international human rights standards and anything else was just my imagination.

## **1.6 Results: Laws and Policies**

### **1.6.1 Findings**

The findings of this research in terms of KSA laws and policies that fulfil the obligations to prevent trafficking of domestic workers will be discussed in Chapters 4 and 5 respectively. The first case study on the new Domestic Workers Bylaw will be presented in Chapter 4. The case study in Chapter 4 is designed to examine KSA obligations to prevent the trafficking of domestic workers through inspecting its anti-trafficking laws and international anti-trafficking legislation.

At the same time, the main goal is to look at the Palermo Protocol obligations and the KSA bilateral agreements that would prevent the trafficking of domestic workers, including the connection between Palermo Protocol and SAATL, KSA executive orders and any specific laws. The case study of the bylaw will add to the understanding of KSA obligations to prevent trafficking of domestic workers through the implementation of Saudi laws.

The second case study, presented in Chapter 5, examines the KSA national report on the prevention of human trafficking. It will take a closer look at the policies that were generated after the issuance of the bylaw. Through the

implementation of those policies, it is deemed that human trafficking and particularly the trafficking of domestic workers should have been alleviated.

The case study in Chapter 5 looks at KSA obligations to prevent trafficking of domestic workers through inspecting KSA policies in regards to departmental cooperation, understanding the risks and vulnerabilities of domestic workers and policies used in identifying victims of trafficking of domestic workers. Additionally, it examines KSA policies in national communications about the trafficking of domestic workers, policies to prevent trafficking and the potential victims in KSA. The case study on the national report on human trafficking explains KSA obligations to prevent trafficking of domestic workers through the implementation of Saudi policies.

### **1.6.2 Contribution to the knowledge**

Firstly, this thesis should contribute to the knowledge by using the first time in an academic publication, the case study of trafficking of female domestic workers in KSA. This case study is divided into two main aspects that are relevant to this topic of trafficking of domestic workers; 1) the KSA Domestic Workers' Bylaw, and; 2) the KSA National Report on Combating Human Trafficking.

Secondly, this thesis should contribute to the knowledge aiming the that the outcome of this thesis will aid in the prevention of trafficking of domestic workers in KSA by promoting a more accurate implementation of laws and policies and through amend the KSA anti-trafficking law to include a prevention of trafficking clause as a result of this thesis. Additionally, it is the hope and aims that following up with the direction of this thesis that the Saudi government would start the cooperation and bilateral agreement with another countries, especially the country of origin, in terms of the trafficking of domestic workers.

Finally, this thesis should contribute to the knowledge through identifying the roots and causes of trafficking of domestic workers in KSA especially the abuse and exploitations along with implementing the Palermo Protocol within KSA laws to fulfil their obligations would eventually, contribute to the knowledge.

## **1.7 Thesis Overview**

The structure of this thesis aims to highlight several main issues in the field of the prevention of trafficking of domestic workers. The main body of the thesis is divided into four chapters: Chapter 2 examines the literature review around the definition of prevention and the state's responsibility to prevent human trafficking. Chapter 3 focuses on a background overview of the key players and themes in this thesis, namely KSA, domestic workers, international laws and KSA national laws. Chapter 4 examines the disregard of the KSA government for national and international laws that could prevent the trafficking of domestic workers. Chapter 5 studies the inadequacy of KSA policies that fail to prevent the trafficking of domestic workers.

### **1.7.1 Literature Review**

This chapter identifies the two main debates at the core of trafficking of domestic workers definition of human trafficking and the meaning of prevention of human trafficking. The first section examines the vulnerability of women and children and the relevance of the gender of those being trafficked.

The second debate examines the discussion around whether sex work should be regarded as a form of consensual work or as part of trafficking coercion. It will be shown that the reference to sex work is an example of the discrepancy in states' perspectives and policies on one topic drawn out from the UN Palermo Protocol on Trafficking and the debates around the definition of sex

work and whether it should be considered as type of work or forced prostitution.

The second section identifies, firstly, the definition of the meaning of prevention in the context of trafficking deterrence, and as one of the three Ps of human trafficking. Secondly, considers state legislations in terms of respect for human rights, protecting human rights, fulfilling a country's duties in regards to human rights standards and, eventually, a state's legislations in preventing human trafficking.

### **1.7.2 Background and Context**

The third chapter dwells on the background and context for the prevention of trafficking of domestic workers. It examines the cultural, historical and legal background to human trafficking and the KSA. The cultural overview sheds light on the KSA as a cultural and political entity, including the establishment of the country and the rights of women. The historical context examines the international response to the phenomenon of human trafficking and, in particular, KSA's response to instances of human trafficking.

The final section examines the legal background of human trafficking, including international law on human trafficking, the background to the Palermo Protocol as linked to human rights principles in KSA, the background of the ILO as linked to human rights principles in KSA, and the background to the KSA Basic Law (SABL), KSA Labour Law (SALL) and executive orders on human trafficking.

### **1.7.3 Discussion (1) Laws in KSA**

Chapter 4 presents and discusses the finding that KSA is in effect disregarding the implementation of laws within its departments and, subsequently, creates an increase in trafficking of domestic workers. There is three main arguments put forward in this chapter: firstly, that the KSA

government does not have an anti-trafficking law that fully complies with an understanding of all of the three Ps, including the obligations to prevent.

In fact, this miss-approach has resulted in a conflict between international laws and KSA laws in terms of preventing human trafficking. This argument goes further by illustrating the fact that domestic work needs legislation that is both enforced and enforceable, while at the same time the dialogue between states in regard to domestic workers is continued.

Secondly, it argues that the KSA government have a concrete method of implementing SAATL, that it has been misinterpreted by the executive orders from KSA departments, and that they actually need to expand their collaboration in regards to human trafficking and domestic workers.

The third argument of this chapter is based on the fact that although the KSA government have created anti-trafficking laws and other targeted laws, such as the domestic workers bylaw, the judicial system in KSA has failed to produce the tools to eliminate the trafficking of domestic workers.

#### **1.7.4 Discussion (2) Policies in KSA**

The argument presented in Chapter 5 is that the KSA have a limited number of policies in place that are compatible with the obligations to prevent the trafficking of domestic workers. This theory is based on three premises: firstly, the failure to communicate international treaties to KSA departments has resulted in inharmonious laws; secondly, the various KSA government departments are contradicting each other in terms of anti-trafficking policies and, as a result, the risk to and vulnerability of domestic workers is increased.

In regards to collaboration, the KSA government has always lacked the appropriate training for its officials, as well as the capacity to raise public awareness for crimes of human trafficking. The third premise involves the absence of implementing any policies for the prevention of trafficking of domestic workers by the KSA government. This investigation has shown that

the KSA chose to implement some articles of the Palermo Protocol, which was made clear by the fact that they have not implemented any policies under the Palermo Protocol obligations in regards to potential victims, for example.

### **1.7.5 Conclusion**

The final chapter of this thesis will present some concluding remarks regarding the findings of this research, namely whether the KSA government do prevent trafficking or not. This chapter will begin by summarising the background and context chapters, followed by the findings in regard to the two main areas of enquiry in this thesis: the disregard of the laws in KSA (Chapter 4) and the limited number of policies (Chapter 5). Finally, the chapter will conclude by presenting recommendations for future study, as suggested by this research, and by highlighting the research limitations, the research reflections and the research suggestions of this thesis.

## CHAPTER 2

# Literature Review

### 2.1 Introduction

The literature in the subject of prevention of human trafficking is limited. The majority of literature is available in recent publications made by academic researchers, NGOs and agencies belonging to the UN on different aspects of trafficking, such as the sexual exploitation of women and children.

A common theme in these publications is placing stress on the importance of exploring the increase in human trafficking whether it involves sexual exploitation, child trafficking or organ trafficking. Recent research appears on the surface to discuss in depth the types and causes of human trafficking, without looking at the numbers of victims.

This literature review focuses on two main areas of controversy regarding the States obligations towards human trafficking. The aim is to outline the subject stated in my thesis where issues on human trafficking must be addressed along with its presence in the Kingdom of Saudi Arabia being a signatory to the Palermo Protocol. Those two main areas are the trafficking of women and the meaning of prevention of human trafficking.

Those two areas were selected due to the fact that, firstly, this thesis is to discuss the trafficking of domestic workers in KSA and the women vulnerabilities that goes alongside the trafficking. Secondly, this thesis is to look on the possible prevention of human trafficking and the State's obligations towards such violation. Hence, the selected two main areas were carefully discussed below to shed the light on the available literature.

In the first area, the first debate examines the particular vulnerability of women and children, the relevance of the gender of those being trafficked and

the definition of sex work. The second debate examines the discussion around whether sex work should be regarded as a form of consensual work or as part of trafficking coercion.

In the second area, the first debate looks at the definition of the meaning of prevention in the context of trafficking deterrence, and as one of the three Ps (protection, prevention and punishment) of human trafficking. The second debate, considers state legislations in terms of respect for human rights, protecting human rights, fulfilling a country's duties in regards to human rights standards and, eventually, a state's legislations in preventing human trafficking.

## **2.2 Women and Trafficking of Human Beings**

### **2.2.1 The Vulnerability of Women and Trafficking**

This section examines the issues of women and children as victims of human trafficking. It is argued here that the UN Palermo Protocol is a way that States Parties can combat human trafficking through imposing obligations and procedures, and requiring the implementation of the Protocol on a national level.

Those procedures could take into account all three phases of the human trafficking definition. Additionally, the Palermo Protocol imposes these requirements regardless of the gender of the potential victim. On the other hand, signatory states to the Palermo Protocol are under the obligation to enact measures to elevate women and children, in particular, from their position as easy targets for traffickers.

Goodey asserts that 'the UN Trafficking Protocol can be critiqued as an adjunct to a convention that seeks primarily to combat organised crime.'<sup>58</sup> It is

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<sup>58</sup> J Goodey, 'Human Trafficking: Sketchy Data and Policy Responses' [2008] *Criminology and Criminal Justice* <<http://crj.sagepub.com/content/8/4/421>> accessed 25/7/2011

arguable whether the UN and the States Parties could have reached a more explicit and direct Protocol that takes into consideration the crimes of trafficking committed by either individuals or organised crime groups.

It should be noted that while the Palermo Protocol on trafficking encompasses forced labour, the removal of organs and prostitution, the bulk of the international community's attention lies, in practice, as evidenced by the UN's Global Programme Against Trafficking (GPAT), disproportionately on sex trafficking.<sup>59</sup> As an example, a country of origin to migrant workers, Indonesia, issued its Anti-Trafficking Act 2007, which makes it clear that 'exploitation can include forced labour, forced service, slavery or practices similar to slavery, repression, extortion, physical abuse, sexual abuse, or the use of another person's labour for one's own profit.'<sup>60</sup>

In principle, the Palermo Protocol defines human trafficking explicitly. This alone should lead to an easy understanding of the nature and definition of trafficking, the straightforward implementation of laws and policies and eventually meet the obligations to prevent trafficking.<sup>61</sup> More specifically, using the definition of trafficking adopted by the UN in the Palermo Protocol,<sup>62</sup> Scarpa argues that 'three phases can be identified: a) the movement of the victims from one place to another; b) the achievement of

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<sup>59</sup> T Obokata, *Trafficking of Human Beings from a Human Rights Perspective* (see text to n 4)) 10-12

<sup>60</sup> The Indonesian Anti-Trafficking Act 2007

<sup>61</sup> S Scarpa, *Trafficking in Human Beings: Modern Slavery* (Oxford University Press 2008) 60

<sup>62</sup> The United Nations Convention Against Transnational Organized Crime (2000). The definition of trafficking in the Convention states that: 'Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of [...] the exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs', Chapter 1

their consent through improper means; and c) their final exploitation.’<sup>63</sup> In principle, States should be able to use this Protocol to address all kinds of activities, including trafficking and exploitation, especially in terms of women and children.

On the other hand, human trafficking has taken on different forms, fulfilling different purposes, and includes women and children in particular. The definitions, interpretations and public understanding of this complicated issue have diversified, whilst some efforts to control human trafficking have been put in place over the last decade.<sup>64</sup> Anti-Slavery International receives regular reports of women and children as young as four years old being trafficked and exploited in various countries.<sup>65</sup>

The victims often live in extreme poverty in their home countries and a family in desperate need of money may accept a trafficker’s offer without knowing the full nature and circumstances of the work that they or their children are called to do. ILO, for example, has repeatedly asked all governments to update their employment laws in accordance with ILO’s fundamental conventions. Recently, ILO adopted a convention, which is directed mainly at

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<sup>63</sup> S Scarpa, *Trafficking in Human Beings: Modern Slavery* (see text to n 61) 60. In this regard, some states preferred the definition of human trafficking to include the sexual exploitation of the victims, regardless of their consent, which had already been adopted by the 1949 Convention for the Suppression of the Traffic in Persons, which does not distinguish between voluntary and coerced prostitution. For the distinction between voluntary and coerced prostitution, see JG Raymond ‘The New UN Trafficking Protocol’ [2002] 25 Women’s Studies International Forums 490-491. See also AD Jordan, ‘The Annotated Guide to the Complete UN Trafficking Protocol’ [2002] International Human Rights Law Group Report 13-15. Jordan states that ‘domestic legislation should go further than the Trafficking Protocol to include all domestic and cross-border trafficking. Trafficking within some countries is as serious as, or more serious than, cross-border trafficking’, and criticises further the Protocol

<sup>64</sup> For example, the European Union has been very active in producing and supporting measures to combat human trafficking within its member states. Specifically, in November 1993 the Justice and Home Affairs Council passed five recommendations supporting further action to combat human trafficking for the purpose of sexual exploitation. In December 1995, the European Parliament accepted and passed a report tackling the issue of human trafficking

<sup>65</sup> IOM, ‘Trafficking in Human Beings’ in IOM, *The World in Motion: Short Essays on Migration and Gender* (see text to n 35) 59

protecting domestic workers without a distinction being made on gender grounds.<sup>66</sup> The Convention on Domestic Workers, formally the Convention concerning Decent Work for Domestic Workers is a convention setting labour standards for domestic workers.<sup>67</sup>

Initiatives focus on the fight against human trafficking, with particular regard to that of women and children. These initiatives consider women and children to be the most vulnerable groups for human trafficking and states have responded by concentrating on the protection of children against sexual exploitation and abuse, as well as child labour, within a framework of children's rights.<sup>68</sup> In addition to the victims' vulnerabilities, however, other key causes, such as poverty, lack of education and lack of awareness of the impact of trafficking should also be added and investigated further.

In particular, women can be seen as an easy target for trafficking and it can be argued that this is because female victims can be used for sexual exploitation, as well as for work.<sup>69</sup> This is not to say that men cannot be subject to human trafficking but rather to affirm that the social demand for women and children can make them easy victims.

Taking this into consideration, this practice was not new in regards to human trafficking; Goodey asserts that the white slave trade in women started at the beginning of the 20th century and since then children and women have been the preferred targets in the slave labour market.<sup>70</sup>

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<sup>66</sup> T Obokata, 'A Human Rights Framework to Address Trafficking of Human Beings' [2006] 24(3) Netherlands Quarterly of Human Rights 379-393

<sup>67</sup> Article 1 of the ILO Decent Work Convention No. 189 (Geneva, 2011).

<sup>68</sup> IOM, 'Trafficking in Human Beings' in IOM, *The World in Motion: Short Essays on Migration and Gender* (see text to n 35) 53-69

<sup>69</sup> J Goodey, 'Human Trafficking: Sketchy Data and Policy Responses' (see text to n 40)

<sup>70</sup> J Goodey, 'Human Trafficking: Sketchy Data and Policy Responses' (see text to n 40)

More specifically, Sanghera explains some key assumptions that inform the mainstream trafficking discourse, including the following: ‘1) [the] trafficking of children and women is an ever-growing phenomenon; 2) increasing numbers of victims of trafficking are younger girls; 3) most trafficking happens for the purpose of prostitution and the sex trade.’<sup>71</sup>

In general terms, the fact still remains that every gender can be subject to trafficking, yet women and children are more likely to raise the numbers of victims due to the social demand, and their potential for sexual exploitation as well. UNICEF, for example, considers female and child domestic workers to be among workers of the lowest status, and continues to report that female and child domestic workers are live-in workers directly under the control of their employers.<sup>72</sup>

An example showing the vulnerability of women and children at work as both migrants and domestic workers is the following. Many female domestic workers are alone and leave their children behind in their country of origin, which can be a traumatic experience for both the women and their families.

As quoted by the UN Special Rapporteur on Violence against Women states that “once the domestic workers have reached the home of their new employer, they are often engaged ‘in poorly remunerated labour that isolates and places them in a subordinate position in a private realm.’<sup>73</sup> Issues such as sickness, injury, the language barrier and pregnancy are common occurrences,

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<sup>71</sup> J Sanghera, ‘Globalization, Labour Migration and Human Rights’ in *Trafficking and Prostitution Reconsidered* (Paradigm Publishers 2005) 4-20

<sup>72</sup> UNICEF, ‘New Hope for Trafficked Children as Convention Comes into Force’ (UNICEF April 2009) <<http://www.unicef.org.uk/Archive/New-hope-for-trafficked-children-as-Convention-comes-into-force/>> accessed on 20/10/2011

<sup>73</sup> Global Commission on International Migration, ‘Migration in an interconnected world: new directions for action’ (The Commission, 2005) p. 62 No. 51,

giving rise to an urgent need to investigate the domestic workers' situation and give a voice to such vulnerable people.<sup>74</sup>

In general terms, the lack of a binding labour contract and lack of awareness of their rights, as well as the increase in unregulated work and the immediate government response to violence against domestic workers, make it difficult for domestic workers to obtain a job in a foreign country with the minimum human rights considerations.

This shows how the association of women and children, and the lack of human rights standards in some countries can be seen as a form of trafficking. Similarly, it also shows how women, children, and the practices of slavery and prostitution can all be entangled in trafficking.<sup>75</sup>

The Recommended Principles and Guidelines on Human Rights and Human Trafficking circulated by the UNHCHR emphasizes that 'the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and protect, assist and provide gender sex-work redress to victims.'<sup>76</sup>

The fact is that human trafficking could befall anyone in any society where the government is not doing its duty to make people aware of threats, and where the rights of migrant workers are not properly advocated, or where the

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<sup>74</sup> Global Commission on International Migration, 'Migration in an Interconnected World: New Directions for Action' (see text to n 73) 61

<sup>75</sup> The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was adopted by the member states of the Council of Europe in 1987. In an effort to oversee compliance with the provisions of the Convention, the European Union established a task Committee for the purpose of the prevention of torture. Article 1 of this Convention states that: 'The Committee shall, by means of visits, examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.' It can be argued that due to the results of this Convention for the Prevention of Torture, it has been widely accepted and has been ratified by all 47 member states of the Council of Europe

<sup>76</sup> Recommended Principles and Guidelines on Human Rights and Human Trafficking E/2002/86/ADD.1, 20/5/2002

government is not protecting migrant workers through issuing protective world-class anti-trafficking legislation. It is also a fact that human trafficking can occur when states are fulfilling their obligations, yet the matter in question in this thesis involves those states that are not fulfilling their obligations.

When linking the vulnerability of women and children and the definition of human trafficking, the literature shows that the immigration system is one of the many problems that affects migrants in general. Countries of origin also play a valuable role in creating the necessary awareness in their citizens about human trafficking.

Using the full extent of international law, as well as social and economic concepts, the legislation and treatment of women and children is in need of an urgent shift towards increased attention to the obligation of preventing trafficking, as women and children are vulnerable and exposed to numerous abuses.

There is, at least, one main reason for states to act on the Palermo Protocol and incorporate its articles, including the definition of trafficking, within national legislation. This reason is that the Palermo Protocol addresses trafficking in persons directly, with comprehensive articles that define and combat human trafficking, which have the capacity to be implemented in the national systems of law of state signatories.

Countries should act on the obligations that have been set out in all conventions and instruments for migrant and foreign workers. If a country fails to do so, unimpeachable challenges on its methods of protection of human rights will occur.

### **2.2.2 Sex Working and Trafficking of Human Beings**

The concept of human trafficking has changed considerably, becoming much clearer in the late 20<sup>th</sup> century. The negotiations leading up to the Trafficking

Protocol reveal the different viewpoints held by different actors involved in the process, as the debate on the definition of trafficking in persons shows.

This section will present the debate that surrounded the area of sex work, as an example of the discrepancy in states' perspectives and policies on one topic drawn from the UN Protocol on Trafficking and to know the differences in working conditions and employment situations in, ultimately, knowing whether sex work should be considered as type of work or forced prostitution for general female workers and in particular the female domestic workers.

On the one hand, there are those who argue that sex work is not sufficiently dissimilar to other work in order to require a specific exception. Their argument goes further by explaining that in any definition of trafficking, it is essential to include the element of physical force in the definition of coercion. On the other hand, the argument is that sex work is a form of trafficking regardless of consent. The language used in the title of the Trafficking Protocol shows the emphasis placed on women and children, which was explicitly sought and argued for by the Coalition Against Trafficking in Women (CATW) Network, under the assumption that victims of trafficking are usually women.<sup>77</sup>

These two main issues that rose during the UN drafting of the Trafficking Protocol, namely the nature of trafficking, and whether sex work should be defined as freedom of work or as forced prostitution, showcase the huge differences in opinions regarding whether prostitution can be equalled to trafficking.

Having said that, it is crucial to show prior to going into the debates, that Article 3(a) of the Trafficking Protocol defines the means of trafficking as '...the threat or use of force or other forms of coercion, of abduction, of fraud,

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<sup>77</sup> Melissa Ditmore, 'The Negotiation on the UN Protocol on Trafficking in Persons' [2003] Network for Sex Work Project 79-87

of deception [...] to achieve the consent of a person having control over another person...'<sup>78</sup> Ditmore argues that 'the elimination of this clause would define all sex work as trafficking in persons, while the inclusion of this clause still enables signatory states to address sex work as they see fit in their domestic law...'.<sup>79, 80</sup> Article 3(a) clearly explains the act of trafficking in this matter: 'Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude...'<sup>81</sup>

On the one hand, the Human Rights Caucus (HRC) supports the view that prostitution is work and that force is the decisive factor in defining trafficking.<sup>82</sup> They defend the right to self-determination, right to work, and the right to self-expression, believing that women can make informed choices about engaging in consensual commercial sex.<sup>83</sup> The HRC, with the endorsement of some governments, made the following argument:

Obviously, by definition, no one consents to abduction or forced labour, but an adult woman is able to consent to engage in an illicit activity [...] The Protocol should distinguish between adults, especially women, and children. It should also avoid

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<sup>78</sup> Article 3 (a) of The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 5)

<sup>79</sup> Melissa Ditmore, The Negotiation on the UN Protocol on Trafficking in Persons (see text to n 77) 79-87

<sup>80</sup> In regards to the sex working element, more details will follow in the next section (2.1.1)

<sup>81</sup> Article 3 (a) of The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children ((see text to n 5)

<sup>82</sup> Human Rights Caucus 'Recommendations and Commentary on the Draft Protocol to Combat International Trafficking in Women and Children Supplementary to the Draft Convention on Transnational Organised Crime' (1999) [www.hrlawgroup.org/site/programs/traffic](http://www.hrlawgroup.org/site/programs/traffic)

<sup>83</sup> E Gozdziaik and E Collett, 'Research on Human Trafficking in North America: A Review of Literature' [2005] 43(1-2) *International Migration* 103

adopting a patronizing stance that reduces women to the level of children, in the name of ‘protecting’ women.<sup>84</sup>

Bindman and Doezema argue in relation to sex working that ‘many of the problems faced by sex workers in their working lives are similar in nature to those experienced by others working in low status jobs.’ They add, however, that ‘the general predicament of sex workers is made much worse by the stigma, discrimination and criminal penalties widely attached to prostitution.’<sup>85</sup> If prostitution was regarded as “sex work”, then prostitutes could be brought directly under the auspices of international labour law.’<sup>86</sup>

Sullivan explains that those who asserted that prostitution should be regarded as work can be seen as adopting a feminist perspective on sex work. Sullivan continues: ‘[t]hey argued that a new domestic and international law was needed to both advance the labour rights of sex workers and to protect victims of forced labour (for example in trafficking for the purposes of prostitution).’<sup>87</sup>

At the other end of this debate, a different approach, supported primarily by CATW as an NGO that works to end human trafficking and the commercial sexual exploitation of women and children worldwide,<sup>88</sup> questions the wider socio-economic and cultural context within which such ‘choices’ are made.

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<sup>84</sup> Jo Domezama, ‘Who Gets to Choose? Coercion, Consent, and the UN Trafficking Protocol’ [2002] *Gender and Development* 20-27; Melissa Ditmore, ‘The Negotiation on the UN Protocol on Trafficking in Persons’ (see text to n 77) 79-87

<sup>85</sup> Jo Bindman and Jo Doezema, ‘Redefining Prostitution as Sex Work on the International Agenda’ [1997] *Anti-Slavery International* 6

<sup>86</sup> Jo Bindman and Jo Doezema, ‘Redefining Prostitution as Sex Work on the International Agenda’ (see text to n 85) 6

<sup>87</sup> Barbara Sullivan, ‘Trafficking in Women’, *International Feminist Journal of Politics* <<http://www.tandfonline.com/loi/rfjp20>> accessed 01/5/2012

<sup>88</sup> The Coalition Against Trafficking in Women (CATW), [catwinternational.org](http://catwinternational.org)

The CATW argue that trafficking should include all forms of recruitment and transportation for prostitution, regardless of consent.<sup>89</sup>

CATW's main argument is that 'prostitution victimizes all women, justifies the sale of any woman and reduces all women to sex.' They stress that the international call for an economic recognition of the sex industry will widen further gender inequality, compromising the status of women. Dismissing the reasoning that options for women might be limited and prostitution often a survival tactic, CATW questions the social utility of prostitution and the difficulty of resisting the lucrative appeal of the sex industry that flourishes at the cost of disadvantaged women.<sup>90</sup>

It is very important to understand that the Palermo Protocol takes a different approach to trafficking from any other convention. This point can be seen in the Palermo Protocol when it does not define the distinction between voluntary prostitution and forced prostitution, instead shying away from defining the phrase.<sup>91</sup> Conversely, however, Barry argues that men dominating women is pervasive, so that it actually breaks the consent. She adds that 'any expressions of women's consent to prostitution should be disregarded because choice and consent is not possible for women under conditions of male domination.'<sup>92</sup>

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<sup>89</sup> JG Raymond, 'Sex Trafficking is Not "Sex Work"' [2005] 26(1) The Coalition Against Trafficking of Women <<http://action.web.ca/home/catw/readingroom.shtml?x=74355>> accessed 15/10/2011

<sup>90</sup> JG Raymond, 'Sex Trafficking is Not "Sex Work"' (see text to n 89)

<sup>91</sup> JG Raymond, 'Sex Trafficking is Not "Sex Work"' (see text to n 89)

<sup>92</sup> Kathleen Barry, *Female Sexual Slavery* (New York Press 1984) 4-25

## **2.3 The Prevention of Human Trafficking**

### **2.3.1 The Meaning of Prevention**

The ILO states that human trafficking, including both sex trafficking and labour trafficking, is the second largest criminal industry in the world.<sup>93</sup> The discussion in this section will show that, firstly, the Palermo Protocol acknowledges the three main areas of attention outlined in its articles as Prevention, Punishment and Protection. It explains that while enforcing the three Ps, states can bear in mind the type of victims they are dealing with in order to treat them in the best possible way, whether they are legal or illegal migrants.

Secondly, it shows the debate on the meaning of the prevention of human trafficking as, on the one hand, it needs to target the vulnerability issue of its victims. This area of the debate shows that the UNICEF definition of the prevention of human trafficking explains that even though some NGO reports have attempted to define prevention, they have not yet provided a clear definition of trafficking. Rather, they provide a methodology for implementing prevention.

On the other hand of this debate, it illustrates how any initiatives must at least engage with the victims of human trafficking and not only focus on the causes of the phenomenon, or just the origin and numbers of trafficking victims. The prevention element should include legal, political, economic and social measures.

Anti-trafficking laws are made to combat human trafficking. Much of what has been written through NGOs has asserted the importance of enforcing laws that could prevent trafficking or focus on the victims of human trafficking and

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<sup>93</sup> JM Ramirez-Machado, *Domestic Work, Conditions of Work and Employment: A Legal Perspective* (ILO, Geneva 2003)

their remedies.<sup>94</sup> The IOM states that ‘illegal migration remains a considerable cross-border challenge, particularly in the highly exploitative context of human trafficking...’<sup>95</sup> This statement by the IOM equates to a call for all states to value all of their obligations, either by protecting, punishing or preventing acts of trafficking, and to bear in mind whether victims are legal or illegal.

Dealing with human trafficking can vary from one country to another, especially when engaging with victims, and the three main elements of trafficking need to be taken into consideration. Goodey adds that ‘the three approaches are: prevention of trafficking, protection and support of victims and prosecution of traffickers; and two of them (prevention, and protection and support) are firmly rooted in a victim-centred response to trafficking.’<sup>96</sup>

Goodey also states that ‘[a] three-pronged response to human trafficking is now well established in inter-governmental and NGO circles, from which policy and practical initiatives variously emanate.’<sup>97</sup> In addition to prevention, the protection and punishment elements complete the triangle of combating human trafficking. The most fertile ground to initiate and develop these facets includes public awareness, the training of government officials, law enforcement cooperation, victim protection, the integration of victims and legislation reform.<sup>98</sup>

Having established above the triadic elements of trafficking, a brief explanation of protection and punishment is needed, in order to explain the meaning of prevention. In terms of protection, the Palermo Protocol asserts that any victim of trafficking needs to be able to gain sufficient access to

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<sup>94</sup> International Organization of Migration, ‘Middle East: Migration Issues’ (IOM) <<http://www.iom.int/jahia/Jahia/activities/africa-and-middle-east/pid/258>> accessed 30/8/2011

<sup>95</sup> International Organization of Migration, ‘Middle East: Migration Issues’ (see text to n 94)

<sup>96</sup> J Goodey, ‘Human Trafficking: Sketchy Data and Policy Responses’ (see text to n 40);

<sup>97</sup> J Goodey, ‘Human Trafficking: Sketchy Data and Policy Responses’ (see text to n 40);

<sup>98</sup> H Konrad, ‘Trafficking in Human Beings: The Ugly Face of Europe’ [2002] Helsinki Monitor 267

remedies from the State Party, along with the necessary protection. Also, States Parties can provide assistance for the protection of trafficked persons to the greatest extent possible under domestic law, while they are also required to protect the privacy and identity of trafficking victims, ensuring that they are given the required information on any legal proceedings.<sup>99</sup>

Dealing with victims of trafficking, States need to bear in mind the different types of victims of trafficking, in order to facilitate possible ways to combat and maybe put an end to trafficking. In principle, this statement is to illustrate on what and how states can deal with victims of human trafficking.

It could be argued that human trafficking has been very often at the crossroads of prostitution and illegal migrants, and therefore the UN tended to try and eliminate the sources of illegal migrants and prostitution, rather than focusing on the wider concept of human trafficking.<sup>100</sup>

In principle, whether people are regularly or irregularly situated in a country, it does not change the fact that they might be vulnerable to being trafficked, their rights as human beings can be violated and action by the enforcement agencies is needed to prevent such abuses from occurring.

The Council of Europe supports this argument by adopting the following definition of trafficking in persons ‘The procurement by one or more natural or legal persons... migration – legal or illegal – of persons’.<sup>101</sup> This definition by the CE does not differentiate between regular victims or irregular victims, on the contrary, it illustrates the fact that whether they are regularly or irregularly situated in the country they are victims of trafficking and in need of urgent attention. That being said, it is imperative to know the importance of

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<sup>99</sup> A Gallagher, ‘Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis [2001] 23 Human Rights Quarterly 17

<sup>100</sup> K Kempadoo, ‘From Moral Panic to Global Justice: Changing Perspectives on Trafficking’ in *Trafficking and Prostitution Reconsidered* (Paradigm Publishers 2005) 11

<sup>101</sup> Adopted by the Committee of Ministers on 19/5/2000 at the 710<sup>th</sup> meeting of Ministers’ Deputies

enforcing laws that could prevent trafficking or focus on the victims of human trafficking and their remedies.

Conversely, in terms of enforcement, Goodey argues that although ‘migration and law enforcement approaches dominate current responses to trafficking in Europe [...] it is apparent too, as evidenced by the focus on prevention and protection, that the victim’s place in trafficking policy and practice has become important.’<sup>102</sup> The UN is very clear on this and argues vehemently that comprehensive laws of prevention, protection and punishment should be implemented in States Parties’ legislation.

Prevention, however, does consist of some measures that States can take into consideration. As Gallagher explains: ‘with respect to “prevention” efforts, states are to endeavour to undertake measures such as information campaigns, social and economic initiatives to prevent trafficking [...] to discourage demand for trafficking’,<sup>103</sup> while Shinkle affirms that ‘the use of carrots and sticks to encourage countries of origin and transit to take measures to prevent trafficking is another technique.’<sup>104</sup> She adds, as an example, that the United States Trafficking in Person Report (TIP) details the efforts of countries to prevent trafficking, protect the victims and prosecute traffickers.<sup>105</sup>

Further, in terms of the meaning of prevention, it is crucial to look at the obligations to prevent trafficking offered by the UN Trafficking Protocol and the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking. Article 9(1) of the UN Trafficking Protocol asserts that: ‘States Parties shall establish comprehensive policies, programmes and other

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<sup>102</sup> J Goodey, ‘Human Trafficking: Sketchy Data and Policy Responses’ (see text to n 40);

<sup>103</sup> A Gallagher, ‘Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis (see text to n 99)

<sup>104</sup> W Shinkle, ‘Prevention of Human Trafficking: An Evaluation of Current Efforts’ (The Institute for the Study of International Migration, Walsh School of Foreign Service, Georgetown University) <<http://www12.georgetown.edu/sfs/isim/Publications/GMF%20Materials/PreventionofHumanTrafficking.pdf>> accessed 01/8/2011

<sup>105</sup> W Shinkle, ‘Prevention of Human Trafficking: An Evaluation of Current Efforts’ (see text to n 104)

measures: (a) to prevent and combat trafficking in persons...'<sup>106</sup> In this regard, Article 9(2) of the UN Trafficking Protocol declares that 'States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.'<sup>107</sup>

Similarly, Article 9(4) of the UN Trafficking Protocol states that 'States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.'<sup>108</sup>

The Recommended Principles and Guidelines on Human Rights and Human Trafficking<sup>109</sup> issued by the UNHCHR in 2002 assert that: 'States have responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.'<sup>110</sup> In addition, the Recommended Principles and Guidelines emphasise that 'the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and protect, assist and provide redress to victims.'<sup>111</sup>

In order to understand the meaning of prevention, Gallagher asserts that 'prevention can be seen to include a wide range of measures, from providing

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<sup>106</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 3)

<sup>107</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 3)

<sup>108</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 3)

<sup>109</sup> Recommended Principles and Guidelines on Human Rights and Human Trafficking E/2002/86/ADD.1, 20/5/2002 (see Text to n 76)

<sup>110</sup> Joint Committee, *Human Trafficking* (The Stationary Office 2006) 12

<sup>111</sup> Recommended Principles and Guidelines on Human Rights and Human Trafficking E/2002/86/ADD.1, 20/5/2002 (see Text to n 76)

women with fair and equal migration opportunities, to strengthening the criminal justice response in order to end impunity and deter future trafficking related crime.’<sup>112</sup> UNICEF define prevention of human trafficking in a report on the prevention of trafficking in South Eastern Europe as follows:<sup>113</sup>

Trafficking in persons has its roots in the social and economic conditions in the countries of origin. For prevention, the emphasis needs to be on economic regeneration and the need to reduce the numbers of persons in vulnerable groups through economic empowerment...<sup>114</sup>

It is important to understand what is meant by prevention in the context of human trafficking and, at the same time, how the element of prevention can be interpreted in human rights standards. Mantle and Backwith argue that ‘the meaning of prevention is often tacitly assumed, rather than closely defined. For example, the prevention of poverty is obviously better than dealing with the effects that come after.’<sup>115</sup>

UNICEF’s report adds that ‘the SPTF pointed out that prevention should be one of the priority areas when addressing trafficking; it was never able to engage in the development or implementation of prevention programmes.’<sup>116</sup> Further discussions define the meaning of prevention in relation to the protection of vulnerable adults from abuse.<sup>117</sup> For example, John takes prevention, in general, ‘to mean action to prevent disputes from arising

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<sup>112</sup> Anne T Gallagher, *The International Law of Human Trafficking* (Cambridge University Press 2010) 414

<sup>113</sup> UNICEF, ‘Trafficking in Human Beings in South Eastern Europe’ (UNICEF 2005) 9

<sup>114</sup> UNICEF, ‘Trafficking in Human Beings in South Eastern Europe’ (see text to n 113) 9

<sup>115</sup> G Mantle and D Backwith, ‘Poverty and Social Work’ [2010] 40 *British Journal of Social Work* 2380-2397 <<http://bjsw.oxfordjournals.org/content/40/8/2380.full.pdf+html>> accessed 25/10/2011

<sup>116</sup> UNICEF, ‘Trafficking in Human Beings in South Eastern Europe’ (see text to n 113) 9

<sup>117</sup> P Salter, *Preventing the Abuse of Vulnerable Adults: Social Policy and Research* (Cambridge University Press 2001) 667

between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur.’<sup>118</sup>

On the other hand of this debate, the meaning of prevention is considered to be one of three important elements in combating trafficking, as established earlier. Vandergrift argues that the need to define prevention and the importance of prevention should include a range of legal, political, economic and social measures.<sup>119</sup> Additionally, the Conference for War Affecting Children attempted to create a general definition of prevention; however, it only provides a methodology for implementing prevention. For more clarification, this conference defines prevention by stating that:

...We commit to integrating practical and comprehensive conflict prevention measures within humanitarian assistance and development agendas, including conflict prevention initiatives, mediation, child protection networks, early warning and response systems, alternatives for adolescents at risk, and the promotion of conflict resolution skills and education.<sup>120</sup>

Similarly, when Bellamy argues that there is no agreement about just how comprehensive the ‘responsibility to prevent’ needs to be, he shows that even politicians, NGOs and the private sector could not reach an agreement on their responsibilities or on how to define prevention.<sup>121</sup> Bellamy adds that ‘the engagement with conflict prevention can involve everything from mediation

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<sup>118</sup> M Stephen John, ‘The Concept and Practice of Conflict Prevention: A Critical Reappraisal [2005] 3 International Studies <<http://isq.sagepub.com/content/42/1/1.full.pdf+html>> accessed 01/11/2011

<sup>119</sup> K Vandergrift, ‘Preventative Strategies for Children and Armed Conflict: Implementation of Security Council Resolution 1612 and Other Policies (Ontario 2008) 6

<sup>120</sup> ‘Agenda for Action’, adopted by 132 countries at the First International Conference for War-Affected Children, (Winnipeg September 2000)

<sup>121</sup> AJ Bellamy, ‘Realizing the Responsibility to Protect’ [2009] 10(2) International Studies Perspective 11 <<http://onlinelibrary.wiley.com/doi/10.1111/j.1528-3585.2009.00365.x/full>> accessed 25/10/2011

to coercive diplomacy; economic measures; military measures; and a variety of legal measures.’<sup>122</sup>

Furthermore, when addressing the prevention of human trafficking and its roots, the background of victims must be taken into consideration. Domestic workers come from poverty background and with no educational experience, which makes them easy victims of trafficking. This concept is in line with the approach that has been taken supported by the UNODC in defining prevention, in which they state that ‘prevention of trafficking is interlinked with all other responses to trafficking and therefore must be undertaken in a concerted, holistic way which acknowledges the complexity of trafficking in persons.’<sup>123</sup>

The UNODC went further on the definition and understanding of prevention by adding that ‘[o]ften, efforts to prevent trafficking only address the so-called root causes of trafficking, such as poverty, lack of (equal) opportunity and lack of education.’<sup>124</sup>

Gallagher confirms this argument and states that ‘in the context of trafficking in persons, prevention refers to positive measures to stop future acts of trafficking from occurring. Policies and activities identified as “prevention” are generally those considered to be addressing the causes of trafficking.’<sup>125</sup> She shows that ‘factors that shape vulnerability to trafficking tend to impact differently and disproportionately on groups that already lack power and status in society, including women, children, migrants...’<sup>126</sup> Gallagher explains this further by stating that: ‘[c]ertain occupations such as prostitution and domestic service can produce, nurture, or exacerbate vulnerabilities

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<sup>122</sup> AJ Bellamy, ‘Realizing the Responsibility to Protect’ (see text to n 121)

<sup>123</sup> United Nations Office on Drugs and Crime, *Toolkit to Combat Trafficking in Persons* (New York 2008) 419

<sup>124</sup> United Nations Office on Drugs and Crime, *Toolkit to Combat Trafficking in Persons* (see text to n 105)

<sup>125</sup> Anne T Gallagher, *The International Law of Human Trafficking* (see text to n 112) 414

<sup>126</sup> Anne T Gallagher, *The International Law of Human Trafficking* (see text to n 112) 415

through factors such as low visibility, lack of legal protection, or inappropriate regulation.’<sup>127</sup>

One exception in this area can be discerned in Campbell’s discussion on human rights’ values and implementation. He asserts that ‘it could be misplaced, the protection of human rights through the emphasis on the human rights itself.’<sup>128</sup> He adds that ‘the emphasis on these rights has skewed the debate from the actual interests in dealing with government.’<sup>129</sup>

It is understood from the above arguments that the meaning of prevention includes preventing the worst outcomes from occurring. It does not matter whether the worst outcomes involve the abuse of vulnerable adults or conflicts or disputes between two different parties. Similarly, the type of employment the victim is doing or whether they are migrant workers or domestic workers, does not matter; they could all be victims of trafficking and states should act in order to prevent such abuses.

In fact, it can be argued that despite efforts to include a broad and extensive definition of prevention, states have taken a step backward by using their own strategies to prevent trafficking. In the context of human trafficking the meaning of prevention, and therefore its definition, should target the deterrence of victims from being trafficked by taking various actions, such as combating poverty, raising public awareness, engaging law enforcement cooperation and restructuring current legislation, as explained further in the second argument of this section. It is quite clear from the literature that the enforcement of laws to protect certain groups of migrants is in need of a comprehensive review and investigation, leading to the prevention of trafficking and human rights abuses.

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<sup>127</sup> Anne T Gallagher, *The International Law of Human Trafficking* (see text to n 112) 415

<sup>128</sup> T Campbell, *Protecting Rights without a Bill of Rights: Institutional Performance and Reform in Australia* (Ashgate Publishing Limited 2006) 106

<sup>129</sup> T Campbell, *Protecting Rights without a Bill of Rights: Institutional Performance and Reform in Australia* (see text to n 128)

### **2.3.2 State Legislation and the Prevention of Trafficking**

In the debate presented in this section, it is argued on the one hand that it is important for states to enact and issue legislation that would ensure that protective measures are taken for victims. The argument goes further towards showing that the implementation of anti-trafficking legislation is necessary to meet the obligations to prevent trafficking. At the same time, it highlights how officers need to be able to enforce this legislation correctly.

On the other hand, the debate revealed that some states tend to focus their efforts on strengthening punishment for trafficking when implementing international instruments domestically. It is also shown that anti-trafficking legislations are problematic to enforce locally, because victims of trafficking fear the consequences of identifying their traffickers.

Initially, it has to be noted that the purpose of the UN in combating organised crime is to provide a legal reference point for an international definition on matters such as human trafficking, find possible ways to combat trafficking, and protect those victims who are already in need of assistance. A UN goal becomes evident from this organised crime convention, namely that any state can become party to any one Protocol without any obligation to endorse all three Protocols together.<sup>130</sup>

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<sup>130</sup> M Floor, 'UNHCR's Role in Combating Human Trafficking in Europe' [2006] 25 *Forced Migration*, 23-24. In principle, there are many articles and conventions that have been enforced to protect humans', including migrants' free departure and return to their home country or their having identity documents, and which in general promote all aspects of human rights. In this regard, see S Green, 'Trafficking: Immigration or Human Rights Concern?' [2006] 25 *Forced Migration* 39-40. Note that the Convention against Transnational Organized Crime is a United Nations multilateral treaty against transnational organised crime adopted in 2000, as explained in previous notes. This Convention is also called the Palermo Convention and consists of three protocols: 1) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; 2) the Protocol against the Smuggling of Migrants by Land, Sea and Air; and 3) the Protocol against the Illicit Manufacturing and Trafficking in Firearms. All three Protocols contain articles on human trafficking, arms trafficking and money laundering. The Convention and its Protocols fall under the jurisdiction of the United Nations Office on Drugs and Crime

The idea of endorsing one or two Protocols from the UN organised crime convention, without an obligation to endorse all three, gives States Parties that are willing to promote human rights values more space to act and implement the laws. Further, the concept of associating cross-border movement and trafficking together might not be the right choice, due to the fact that the UN has adopted a separate instrument for cross-border movement transgressions under the Smuggling Protocol.<sup>131</sup>

The UN have designed two separate protocols for the purpose of keeping different phenomena distinct and, at the same time, focusing efforts on each to get the best results.<sup>132</sup> This due to the fact that, the purpose of protocol on trafficking is to prevent and combat trafficking in persons, especially women and children with main emphasis is on strengthening cooperation between countries. In contrast with trafficked persons, smuggled migrants are assumed to be acting voluntarily with emphasis on strengthened border controls especially smuggling by sea.<sup>133</sup>

The protocol commits ratifying states to prevent and combat trafficking in persons, protecting and assisting victims of trafficking and promoting cooperation among states in order to meet its objectives. Additionally, when it comes to victims of human trafficking and the Palermo Protocol, Dauvergne asserts that ‘the Trafficking Protocol plainly shows that it has been difficult for negotiating parties to address the needs of victims, especially in the migrant law context.’<sup>134</sup>

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<sup>131</sup> UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, Palermo 2000

<sup>132</sup> C Dauvergne, *Making People Illegal: What Globalization Means for Migration and Law* (Cambridge University Press 2008) 61-83

<sup>133</sup> Gallagher, Anne. ‘Trafficking, smuggling and human rights: tricks and treaties’ [2002] *Forced Migration Review* 8-36.

<sup>134</sup> C Dauvergne, *Making People Illegal: What Globalization Means for Migration and Law* (see text to n 132) 61-83

The Palermo Protocol affirms in some of its articles the obligations that States Parties have towards this Protocol and, at the same time, towards the victims of trafficking. Two of the main obligations that are mentioned in the Palermo Protocol are the obligation to implement the Protocol into domestic law and the obligation for the state to cooperate in the prevention of human trafficking.

Dauvergne argues that these obligations are laid out in Articles 5 and 10 of the Palermo Protocol and ‘States that adopt the Protocol are obliged to enact legislation criminalising all aspects of trafficking’ as well as being ‘obliged to cooperate with other signatories.’<sup>135</sup>

The Palermo Protocol includes instruments for the implementation process to be used by States Parties. This is affirmed in the Palermo Protocol by indicating that states should consider implementing a range of measures to

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<sup>135</sup> C Dauvergne, *Making People Illegal: What Globalization Means for Migration and Law* (see text to n 132) 61-83. Note also that Article 5 of The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children states that: ‘Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Article 3 of this Protocol, when committed intentionally. 2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences: (a) subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article; (b) participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and (c) organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article’. In Article 10, it states that: ‘1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine: (a) whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons; (b) the types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and (c) the means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.’

provide for the physical and psychological recovery of victims of trafficking, for example.<sup>136</sup>

Even if the Palermo Protocol, however, omits some issues, national legislation produced by States Parties for this Protocol is needed. Jordan asserts that ‘even if the UN Trafficking Protocol restricts trafficking in persons and criminalises transnational crimes [...] countries should still adopt national legislation to combat both internal and transnational trafficking in persons.’<sup>137</sup>

As shown earlier, the response to human trafficking can vary from one country to another. Yet, establishing a task force that is dedicated to trafficking, joint actions by states and learning from previous countries’ experiences in human trafficking can make a difference in the fight against

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<sup>136</sup> A Gallagher, ‘Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis’ (see text to n 99);

<sup>137</sup> AD Jordan, ‘The Annotated Guide to the Complete UN Trafficking Protocol’ (see text to n 63);

trafficking.<sup>138</sup> Not all states have had the same response towards human trafficking and in fact some of them direct their efforts towards other human rights issues such as equality right for life, before the law and other human rights standards.<sup>139</sup>

The argument could be made that the focus should be directed towards trafficking as a process and against the trafficking of women and children in particular. It should be directed, for example, on how States should act. In this respect, the HRW stress the importance of issuing and implementing protective legislations in order to protect migrant workers and particularly domestic workers.<sup>140</sup>

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<sup>138</sup> Note that the adoption of some of the treaties should have led to the formulation of government policies to prevent conditions leading to trafficking and to protect foreign workers from discrimination and degrading treatment, especially after they were signed and ratified. The Human Rights Watch reports that, according to Saudi officials, international treaties are automatically incorporated into domestic law. As a result, international standards have the same legal status as domestic legislation and can be directly invoked in domestic court proceedings; Human Rights Watch, 'As if I Am not Human: Abuses against Domestic Workers in Saudi Arabia' [2008] Human Rights Watch Report (see text to n 32) 30. The report also adds that the government of Saudi Arabia has incorporated sweeping reservations to some treaties. For example, the Saudi Arabian government included the following reservation to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW): 'In cases of contradiction between any terms of the Convention and the norms of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention.' According to the Vienna Convention on the law of treaties, however, '[r]eservations that are incompatible with the object and purpose of a treaty violate international law and are unacceptable precisely because they would render a basic international obligation meaningless.' Regarding the terms of the treaties, a government is still required to insert any law that shows they would protect their citizens and endorse human rights principles according to their point of view, whether it be based on religious ideas or traditional concepts. They are also, however, under strict obligations towards the international community if they ratify and sign a treat. For that, see the Vienna Convention on the Law of Treaties, 23/5/1969, entered into force on 27/1/1980, 1155 United Nations Treaty Series 331

<sup>139</sup> M Ladan, *Migration, Trafficking, Human Rights and Refugees under International Law: A Case Study of Africa* (Ahmadu Bello University Press Ltd 2004). Note that Mr Mohammed Laden affirms that the Rome Statute of the International Criminal Court asserts that non-state actors are duty-bound to promote and protect human rights

<sup>140</sup> Human Rights Watch, 'Swept Under the Rug: Abuses against Domestic Workers around the World' (see text to n 32)

The HRW assert that ‘comprehensive and proactive strategies are needed to provide an oversight of labour agencies and recruiters, monitor working conditions, detect violations, and impose civil and criminal sanctions on abusive agencies and employers.’<sup>141</sup> The HRW argument cannot be disputed; however, it would be more valuable to show possible techniques for drafting comprehensive strategies, which could help in the prevention of trafficking. The fact still remains, however, that different states need different legislations and subsequently different methods for implementing them nationally.

The HRW report concludes by stating that ‘governments’ responses to abuses against domestic workers have largely been piecemeal and reactive.’<sup>142</sup> All treaties and international conventions under international law create binding obligations for the state that has become party to this instrument. The ratification of international treaties is one way of becoming a State Party to this treaty and creates additional relationships between the respective state members in terms of respecting the rights that are guaranteed by the international instrument.<sup>143</sup>

Cooperation between two or more states in combating human trafficking, either by enacting treaties or by any other means, is emphasised at the heart of the Trafficking Protocol. The purpose of this collaboration is to encourage

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<sup>141</sup> Human Rights Watch, ‘Swept Under the Rug: Abuses against Domestic Workers around the World’ (see text to n 32). The report highlights some major problems in the treatment of workers and domestic workers in particular in regard to the implementation of labour laws by stating that: ‘[...] in an overall context of discrimination against domestic workers by excluding those from labour laws, efforts to detect and sanction workplace abuse are severely limited. Laws that should protect child domestic workers are poorly enforced and although countries of workers’ origin and countries of employment have adopted initiatives to address abuse of migrant domestic workers, much needed legal reform, enhanced oversight and regulation of employment agencies, and improved access to mechanisms for redress and rehabilitation for abuse are still lacking.’

<sup>142</sup> Human Rights Watch, ‘Swept Under the Rug: Abuses against Domestic Workers around the World’ (see text to n 32)

<sup>143</sup> NORAD, *Handbook in Human Rights Assessment: State obligations, Awareness and Empowerment* (Oslo 2001) 14

states to deal with each other or with any NGO, and combine their efforts to end trafficking, or at least limit it as much as possible, as this is one of the states' obligations with regards to human trafficking.<sup>144</sup>

The prevention of trafficking has not been at the top of state agendas, but some countries have proven themselves to take measures detrimental to this cause. A very clear example of this comes from a popular destination country for migrant workers, Malaysia, which amended its Anti-Trafficking Act in October 2010. HRW state that 'amendments will harm trafficking victims by making it more likely that they will be treated as undocumented migrants [...]' The revised law also narrows the legal definition of "human trafficking".<sup>145</sup>

Additionally, the Global Alliance Against Traffic in Women (GAATW) has adopted a rights-based approach, which is mainly anchored on the universal principle that every human has equal rights before the law and a right to personhood, safety, security, dignity and integrity, and is applicable to all regardless of one's circumstances.<sup>146</sup> This framework is grounded in the core human rights treaties, which states are obliged to respect, including any anti-trafficking initiatives.<sup>147</sup>

The GAATW adds to these standards by establishing a list of human rights standards for the treatment of trafficked persons, alongside the human rights-based approach. The standards include other anti-trafficking measures, which have been taken up by states and NGOs.

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<sup>144</sup> Sections 4, 5 of Article 9 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 30)

<sup>145</sup> Human Rights Watch, 'Malaysia: Revised Law Threatens Anti-Trafficking Efforts' <<http://www.hrw.org/news/2010/09/08/malaysia-revised-law-threatens-anti-trafficking-efforts>> accessed 05/8/2011

<sup>146</sup> 'Roundtable on Using CEDAW to Protect the Rights of Women Migrant Workers and Trafficked Women in South and Southeast Asia' (Kuala Lumpur, 2009) <[http://www.iwraw-ap.org/publications/doc/Roundtable\\_on\\_Migration\\_and\\_Trafficking\\_report.pdf](http://www.iwraw-ap.org/publications/doc/Roundtable_on_Migration_and_Trafficking_report.pdf)> accessed 05/8/2011

<sup>147</sup> 'Roundtable on Using CEDAW to Protect the Rights of Women Migrant Workers and Trafficked Women in South and Southeast Asia' (see text to n 146);

These can be categorized into (1) the crime control approach; (2) the violence against women approach; (3) the migration approach; and (4) the labour approach.<sup>148</sup> HRW agree with these measures while stating that ‘one method for receiving complaints from victims that has proved effective in other countries is the establishment of 24-hour hotlines [...] to extract victims from abusive situations, provide safe shelter, medical treatment, and counselling.’<sup>149</sup>

Conversely, in an effort to meet some of the obligations that have been listed in the international instruments on combating human trafficking to implement the anti-trafficking legislation and other less expensive types of support, resources are needed to ensure that officers are able to enforce Anti-trafficking laws properly. Akee explains that some states are in urgent need of help to enforce their anti-trafficking laws either by giving the required training materials to their enforcement agencies or by promoting the necessary awareness among the public.<sup>150</sup>

One of the goals of the UN Global Initiative to Fight Human Trafficking (UNGIFT) is to help build awareness on the issue and provide technical assistance, which would include: draft legislation; manuals for various law enforcement agencies and victims; and, fact-sheets for raising awareness, such as those used in the United States, which has already begun implementing awareness programmes for law enforcement officers.<sup>151</sup>

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<sup>148</sup> ‘Roundtable on Using CEDAW to Protect the Rights of Women Migrant Workers and Trafficked Women in South and Southeast Asia’ (see text to n 146)

<sup>149</sup> Human Rights Watch, ‘Working in the Shadows’  
<[http://www.hrw.org/sites/default/files/reports/indonesia0209\\_web.pdf](http://www.hrw.org/sites/default/files/reports/indonesia0209_web.pdf)> accessed 05/8/2011

<sup>150</sup> Akee, Randall, et al, Transnational trafficking, law enforcement, and victim protection: A middleman trafficker’s perspective’ (Journal of Law and Economics, 2014) P 349-386.

<sup>151</sup> Akee, Randall, et al, Transnational trafficking, law enforcement, and victim protection: A middleman trafficker’s perspective’ (Journal of Law and Economics, 2014) P 349-386.

Other NGOs are encouraging states to respect and show the world their obligations concerning human trafficking using specific, clear and acceptable legal methods. The International Women's Rights Action Watch (IWRAP) sum up their arguments by recommending that states:

- 1) Enact anti-trafficking measures;
- 2) ratify the Palermo Protocol;
- 3) engage in bi-lateral or multi-lateral cooperation;
- 4) address the root causes of exploitative and abusive migration of women as workers and as trafficked persons through programs aimed at poverty-reduction and expanding educational and employment opportunities for women and girls;
- 5) take all appropriate measures to suppress the exploitation of women through prostitution;
- 6) provide for trafficked women's rehabilitation and reintegration;
- 7) increase efforts to collect and analyse data on trafficking of women and girls.<sup>152</sup>

All member states has their obligations under the Palermo Protocol to cooperate with non-governmental organizations (NGOs), other relevant organizations and members of civil society with the aim of achieving the purpose of the UN Convention.<sup>153</sup>

This means that civil society plays an important role in the implementation the Palermo Protocol, through awareness raising and cooperations with all

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<sup>152</sup> 'Roundtable on Using CEDAW to Protect the Rights of Women Migrant Workers and Trafficked Women in South and Southeast Asia' (see text to n 146). Also, the International Women's Rights Action Watch (IWRAP) states that 'Asia Pacific uses CEDAW as an interpretative tool in promoting the rights of migrant domestic workers and trafficked persons, including through the processes and mechanisms of the CEDAW Committee.'

<sup>153</sup> Article 6 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly

non-governmental organizations. The input of civil society in evaluating the implementation of the Convention is therefore crucial and vital for protecting and prevention the trafficking.

It is clear that State Parties to the Palermo Protocol have an obligation with regard to human trafficking. This can be summarised as follows: it is an imperative for states to protect victims of trafficking, prevent human trafficking and punish traffickers. Yet, for the purposes of this research, there is a need to elaborate further on states' obligation towards human trafficking. While the argument has been made that states need to respect their obligations concerning human trafficking, states also could encourage and promote the importance of collaborating with the UN and any NGOs to combat trafficking.<sup>154</sup>

## **2.4 The Literature Review and KSA**

The main goal of this thesis, according to the research question (i.e. to what extent do Saudi Arabian laws and government policies fulfil the obligations to prevent the trafficking of domestic workers) is to identify gaps of interest in the field of trafficking of domestic workers in KSA and the actual extent of laws and policies in place to prevent the practice.

This literature review contains two main sections: the definition of trafficking and the meaning of prevention. The debates on those two sections have revealed some relevant facts about KSA, which help to answer the research question.

The first debate shows that the vulnerability of women and children is an essential fact that countries, such as KSA, should take into account when meeting their obligations of prevention under the Palermo Protocol. Another observed fact is that linking women and children to the lack of human rights

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<sup>154</sup> NORAD, *Handbook in Human Rights Assessment: State Obligations, Awareness and Empowerment* (see text to n 143) 14

standards is a practice of traffickers, and countries like the KSA should consider both factors.

Secondly, this section has shown that trafficking can include forms such as recruitment and transportation regardless of the consent of victims. State legislation could meet the Palermo Protocol obligation to prevent trafficking, including disregarding the consent of women and children victims, as the choice to consent is not possible for domestic workers, who are under conditions of male domination.

The second debate shows that, firstly, the meaning of prevention of human trafficking should focus on the causes of human trafficking in order to meet the obligations of the Palermo Protocol. Moreover, measures can include comprehensive policies, programmes and other means to prevent trafficking. Secondly, the prevention efforts made by States should consider all kinds of initiatives to discourage the demand for trafficking.

Finally, strengthening the punishment for trafficking by states through anti-trafficking laws cannot be considered as meeting all of the obligations under Palermo Protocol. The fact is that states can simultaneously be in the position to protect victims of trafficking, prevent human trafficking and punish traffickers.

## **2.5 Conclusion**

The first section of this literature review has shown that States Parties to the Palermo Protocol are encouraged to focus on vulnerable groups (women and children) and to enact measures that uphold their obligations. Those measures can be through bilateral or multilateral cooperation in order to alleviate the factors that make persons vulnerable to trafficking.

The second section in this literature review argues that the prevention of human trafficking needs to target the root causes of the phenomenon, as well

as the vulnerability of its victims. The examples provided by UNICEF show that the current definition provides a methodology for implementing the prevention of human trafficking. The responses to human trafficking should include all of the three Ps. The expected response from the KSA government, as the area of focus in this research, is that they can not disregard any of those elements, especially prevention.

Further, the states' legislation, as in the case of anti-trafficking laws, ensures that protective measures are taken, such as the implementation of laws in order to prevent human trafficking. This should also be the case in KSA, where laws need to be implemented in order to prevent trafficking of domestic workers. Disregarding the implementation of laws by the KSA government would create an increase in trafficking of domestic workers, as will be shown in Chapter 4, in which the effects of the KSA Domestic Workers Bylaw are examined.

The view that the KSA has inadequate policies in place to prevent trafficking of domestic workers is argued and supported in Chapter 5 through the second case study of this thesis, namely the KSA National Report on Human Trafficking.

## CHAPTER 3

### BACKGROUND AND CONTEXT

#### 3.1 Introduction

The research question this thesis addresses examines *the extent to which KSA laws and government policies fulfil the obligations to prevent the trafficking of domestic workers*. In order to answer the research question, and understand the findings as it will be presented in Chapters 4 and 5, it is necessary to comprehend the context within which this research takes place. This chapter examines the cultural context of KSA, the historical context of human trafficking and the legal background to human trafficking.

Section 2 presents the cultural background of Saudi Arabia. This consists of four main areas: the founding of KSA, the legal system in KSA, the rights of women and the rights of domestic workers in KSA. As far as domestic workers are concerned, this Section introduces the situation regarding domestic workers in Saudi Arabia, examining the number of domestic workers and the kind of treatment they face in this country.

It explains how domestic workers could be underage and not suitable for heavy domestic work because of their age. It discusses the common difficulties that domestic workers face during their work and also examines the sexual exploitation that they can face in Saudi Arabia.

Section 3 examines the historical background of human trafficking from the beginning of the 20<sup>th</sup> century. It explains the nature of human trafficking, looks at the history of the UN in this area and discusses two main subjects, international responses to human trafficking and state responses to human trafficking.

The Section 4 of this chapter examines the legal background to human trafficking by the KSA government. This section discusses three main topics, the Palermo Protocol and its links to human rights principles in KSA, the background of the ILO linked with human rights principles in KSA, and the SABL, SALL and executive orders on human trafficking.

## **3.2 Cultural Context of Saudi Arabia**

### **3.2.1 The Establishment of the Kingdom of Saudi Arabia**

At the start of the 20<sup>th</sup> century, the kingdom of Saudi Arabia was one of the poorest countries in the world, reliant on limited agriculture and pilgrimage revenues.<sup>155</sup> In 1938, however, vast reserves of oil were discovered in the east part of KSA along the coast of the Arabian Gulf. This discovery was followed by a full-scale development of the oil fields, which provided KSA with economic prosperity and substantial political leverage internationally.

The government of KSA saw economic and social development progress at an extremely rapid rate, transforming the infrastructure and educational system of the country.<sup>156</sup> The vast wealth generated by oil revenues along with the presence of increasingly large numbers of foreign workers greatly affected traditional Saudi laws and values.

In March 1992, the government of KSA introduced the Basic Law, which emphasised the duties and responsibilities of a ruler. In December 1993, the Consultative Council was inaugurated. It is composed of a chairman and 60 members all chosen by the King. In April 2005, the first-ever nationwide

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<sup>155</sup> Mohamad Riad El Ghonemy, 'Affluence and Poverty in the Middle East' (Saudi National Library, 2014) 56.

<sup>156</sup> Alghamdi, Mohammed G., and Linda D. Urden, 'Transforming the nursing profession in Saudi Arabia' (Journal of nursing management, 2016) P 95-100.

municipal elections were held in KSA, however women were not allowed to take part in the poll.<sup>157</sup>

In February 2009, King Abdullah announced a series of government changes to the judiciary, armed forces, and various ministries to modernize these institutions, including the replacement of senior appointees in the judiciary with more moderate individuals and the appointment of the country's first female deputy minister.<sup>158</sup>

### **3.2.2 The Legal System In Saudi Arabia**

As the chosen country of this research is Saudi Arabia, the Saudi Arabia Labour Law includes provisions for more than 6 million male and female migrant workers in the Kingdom. The most significant of these provisions are articles 37, 38 and 40.<sup>159</sup> It has to be noted that the protection of human rights and the battle to combat trafficking in persons are two sides of one coin.

This means that if the state wants to protect its citizens and migrants from being trafficked, it has to promote human rights principles as a first step. The primary source of law in KSA is the Islamic Sharia derived from the teachings of the Holy Qu'ran and the Sunnah.<sup>160</sup> As such, the Sharia law is not codified and there is no system of judicial precedent.<sup>161</sup>

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<sup>157</sup> Alghamdi, Mohammed G., and Linda D. Urden, 'Transforming the nursing profession in Saudi Arabia' (Journal of nursing management, 2016) P 95-100.

<sup>158</sup> Alghamdi, Mohammed G., and Linda D. Urden, 'Transforming the nursing profession in Saudi Arabia' (Journal of nursing management, 2016) P 95-100.

<sup>159</sup> Article 37 of the Saudi Arabian Labour Law (Royal Decree No. M/51, 27/9/2005). This article states that 'employment contracts for non-Saudis must be in writing and must be for a definite period of time.' In addition, Article 38 of the Saudi Arabian Labour Law (Royal Decree No. M/51, 27/9/2005) prohibits employers from employing workers in jobs other than those mentioned in their work licenses. Article 40 of the Saudi Arabian Labour Law (Royal Decree No. M/51, 27/9/2005) binds any employer to pay the charges of recruitment, residence permits, work licences and the renewal of residence permits, as well as charges of job title change, re-entry visas and sponsorship transfers, in addition to tickets for returning to their home country after the expiry of the contractual relationship.

<sup>160</sup> Christian Campbell, 'Legal Aspects of Doing Business in the Middle East' (2007) 268–269

Nevertheless, because the judge is empowered to disregard previous judgments (either his (all judges are male) or that of other judges) and apply his personal interpretation of Sharia to any particular case, divergent judgements arise even in apparently identical cases.<sup>162</sup>

Royal decrees are the other main source of law, but are referred to as regulations rather than laws because they are subordinate to the Sharia.<sup>163</sup>

Royal decrees supplement Sharia in areas such as labour, commerce and corporate law.<sup>164</sup>

The Sharia court system constitutes the basic judiciary of KSA and the country's religious leadership.<sup>165</sup> Final appeal from both Sharia courts and government tribunals is to the King and all courts and tribunals follow Sharia rules of evidence and procedure.<sup>166</sup>

In 2007, King Abdullah issued royal decrees reforming the judiciary and creating a new court system.<sup>167</sup> International organisations such as Amnesty International and HRW condemn both the KSA criminal justice system and its severe punishments. In the KSA court system, there are no jury trials and the courts observe few formalities.

In a 2008 report, HRW noted that a criminal procedure code had been introduced for the first time in 2002, but it lacked some basic protections and, in any case, had been routinely ignored by judges.<sup>168</sup><sup>169</sup>

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<sup>161</sup> Buskens, Léon, *Sharia and the Colonial State* (The Ashgate Research Companion to Islamic Law, 2016) P 209.

<sup>162</sup> John L Esposito, 'Islam and Politics' (1998) 110-112

<sup>163</sup> Library of Congress, 'Country Profile: Saudi Arabia' (Federal Research Division 2006), accessed 20/6/2011

<sup>164</sup> John L Esposito, 'Islam and Politics' (1998) 110-112

<sup>165</sup> John L Esposito, 'Islam and Politics' (1998) 110-112

<sup>166</sup> Christian Campbell, 'Legal Aspects of Doing Business in the Middle East' (2007) 268-269

<sup>167</sup> John L Esposito, 'Islam and Politics' (1998) 110-112

<sup>168</sup> Human Rights Watch 'Precarious Justice' [2008] Human Rights Watch, 3, 4, 101, 102, 108-115

<sup>169</sup> John L Esposito, 'Islam and Politics' (1998) 110-112

Human rights issues that have attracted strong criticism include the extremely disadvantaged position of women, religious discrimination, the lack of religious freedom and the activities of the religious police.<sup>170</sup> In 2004, the KSA government approved the establishment of the National Society for Human Rights (NSHR), staffed by government employees, to monitor their implementation. In response to the continuing criticism of its human rights record, the Saudi government points to the special Islamic character of the country, and asserts that this justifies a different social and political order.<sup>171</sup>

### **3.2.3 The Rights of Women in Saudi Arabia**

A UN special report on domestic abuse in 2008 noted that the violence against women in KSA is due to the absence of laws that criminalizing violence against women.<sup>172</sup> Similarly, the U.S. State department considers that the KSA government's 'discrimination against [is] women a significant problem' and adds that women have few political rights due to the government's discriminatory policies.<sup>173</sup>

Violence against women and children in Saudi Arabia, in particular the domestic workers, was traditionally not seen as a criminal matter in Saudi Arabia until 2013. However, the social protection units, the Saudi Arabian version of women's shelters, were ordered by the Prime Minister in 2008 to expand in several large Saudi cities.<sup>174</sup>

The government gave an order to draft a national strategy to deal with domestic violence having in mind some Saudi royal foundations, such as the King Abdulaziz Center for National Dialogue and the King Khalid

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<sup>170</sup> John L Esposito, 'Islam and Politics' (1998) 110-112

<sup>171</sup> John L Esposito, 'Islam and Politics' (1998) 110-112

<sup>172</sup> Suzan Zawawi, 'Abuse of Female Domestic Workers Biggest Problem' [24/1/2006] The Saudi Gazette

<sup>173</sup> Howard Schneider, 'Evidence of Inbreeding Depression: Saudi Arabia at the Wayback Machine' (archived 11/12/2003)

<sup>174</sup> Suzan Zawawi, 'Abuse of Female Domestic Workers Biggest Problem' [24/1/2006] The Saudi Gazette

Foundation. They have led education and awareness efforts against domestic violence and five years later, Saudi Arabia launched its first major effort against domestic violence, the "No More Abuse" ad campaign.<sup>175</sup>

In August 2013, the Saudi cabinet approved a law making domestic violence a criminal offence for the first time. The law calls for a punishment of up to a year in prison and a fine of up to 50,000 Riyals (US\$13,000) with a maximum punishments that can be doubled for repeat offenders. The law criminalizes psychological and sexual abuse, as well as physical abuse and includes a provision obliging employees to report instances of abuse in the workplace to their employer.<sup>176</sup>

As this law was welcomed, some expressed concerns that the law could not be implemented successfully without new training for the judiciary. The fact is the tradition of male guardianship would remain an obstacle to prosecutions and under KSA law every adult female must have a male relative as her "guardian".<sup>177</sup> In more details, while the issuance of this law from the Saudi Cabinet means it should be implemented within the judiciary system, yet, until September 2016, no cases has been filed or discussed in the Saudi courts. Thus, the implementation mechanism of this law in Saudi Arabia is to be unknown.

As a result, HRW has described the legal position of Saudi women as like that of minor, with little legal authority over their own lives. Government authorities can force women to obtain the legal permission of a male guardian in order to travel, study or work.<sup>178</sup> The guardian is legally entitled to make a number of critical decisions on a woman's behalf.<sup>179</sup> On 25 September 2011,

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<sup>175</sup> Alahmad Saad, 'king Abdulaziz Dialogue: Practice and theories' (Saudi National Library, 2014) P 29.

<sup>176</sup> Alahmad Saad, 'king Abdulaziz Dialogue: Practice and theories' (Saudi National Library, 2014) P 22

<sup>177</sup> Alahmad Saad, 'king Abdulaziz Dialogue: Practice and theories' (Saudi National Library, 2014) P 29. See also, Suzan Zawawi, 'Abuse of Female Domestic Workers Biggest Problem' [24/1/2006] The Saudi Gazette

<sup>178</sup> 'Saudi Arabia Awakes to the Perils of Inbreeding' [01/5/2003] New York Times

<sup>179</sup> Suzan Zawawi, 'Abuse of Female Domestic Workers Biggest Problem' [24/1/2006] The Saudi Gazette

King Abdullah announced that Saudi women would gain the right to vote and to be candidates in municipal elections, following the next round of these elections.<sup>180</sup>

### **3.2.4 The International Perspective on Domestic Workers in KSA**

Saudi Arabia is one of the leading destination countries for men, women, and children subjected to human trafficking and forced labour. Migration and trafficking processes are oftentimes interlinked in Saudi Arabia, as traffickers often exploit the methods by which individuals willingly travel into the country. For example, employment recruiters often deceive prospective domestic workers about their actual working conditions or issue fake passports to smuggle workers into the country.<sup>181</sup>

Moreover, the domination of women by men have been repeatedly asked to be taken into consideration while studying the concepts of domestic worker trafficking. Barry argues that men dominating women is pervasive to the point where it breaks any consent or collusion.<sup>182</sup> She adds that ‘any expressions of women’s consent to prostitution should be disregarded because choice and consent is not possible for women under conditions of male domination’.<sup>183</sup>

In Saudi Arabia, men are the only gender who is allowed to recruit domestic workers. Also, only men are allowed to receive domestic workers when they arrive in Saudi Arabia and apply for a resident’s permit and any other necessary legal documents.

When domestic workers have to choose between either traffickers or exploitation this means the consent element is not available. In this argument

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<sup>180</sup> Harry R Dammer and Jay S Albanese, ‘Comparative Criminal Justice Systems’ [2013] changing learning 106

<sup>181</sup> Antoinette Vlieger, *Domestic Workers in Saudi Arabia and the Emirates: A Socio-Legal Study on Conflict* (see text to n 25) 271-277

<sup>182</sup> Kathleen Barry, *Female Sexual Slavery* (see text to n 76);

<sup>183</sup> Kathleen Barry, *Female Sexual Slavery* (see text to n 76);

the KSA government acknowledges what was argued by the CATWs as they partially implemented the Palermo Protocol by inserting the consent clause.<sup>184</sup>

The situation of domestic workers in KSA becomes clear when looking at the fact that the majority of domestic workers in KSA are female house servants.<sup>185</sup> It does not exclude male domestic workers in KSA from being guards, gardeners and drivers, but it shows that the majority and the focus of this research is on female domestic workers.

Similarly, as shown by the international NGOs, the majority of cases of violations against domestic workers fall under the no movement situation. The KSA government is under the spotlight while looking deeply into the definition of human trafficking, its three phases and their application to it.<sup>186</sup>

Those cases identify exploitation, forced labour and non-payment of wages, as horrible as those crimes are, still does not fall under the definition of human trafficking. In some cases domestic workers, either knowingly or

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<sup>184</sup> JG Raymond, 'Sex Trafficking is Not "Sex Work"' (see text to n 73); see also section 2.2.2 of this thesis

<sup>185</sup> Human Rights Watch, 'Saudi Arabia: Bad Dreams, Exploitations and Abuses of Migrant Workers in Saudi Arabia' [2004] Human Rights Watch Report (see text to n 32); Human Rights Watch, 'Swept Under the Rug: Abuses against Domestic Workers around the World' (see text to n 32); Human Rights Watch '2012: A Year of Progress for Domestic Workers' (see text to n 32); Human Rights Watch, 'Exported and Exposed: Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates' (see text to n 29) 43; Human Rights Watch, 'As if I Am not Human: Abuses against Domestic Workers in Saudi Arabia' [2008], Human Rights Watch Report (see text to n 32) 30

<sup>186</sup> S Scarpa, *Trafficking in Human Beings: Modern Slavery* (see text to n 61) 60; Scarpa argues that 'from this definition three phases can be identified: a) the movement of the victims from one place to another; b) the achievement of their consent through improper means; and c) their final exploitation.' In this regard, some states preferred the definition of human trafficking to include the sexual exploitation of the victims, regardless of their consent, which had already been adopted by the 1949 Convention for the Suppression of the Traffic in Persons, which does not distinguish between voluntary and coerced prostitution. For voluntary and coerced prostitution, see JG Raymond 'The New UN Trafficking Protocol' (see text to n 47) 25; see also section 2.2.1 of this thesis. See also AD Jordan, 'The Annotated Guide to the Complete UN Trafficking Protocol' (see text to n 63) 25; Jordan further criticises the Protocol by stating that 'domestic legislation should go further than the Trafficking Protocol to include all domestic and cross-border trafficking [...] Trafficking within some countries is as serious as, or more serious than, cross-border trafficking.'

unknowingly, might face trafficking, but only when they leave the residence where they work. The KSA government is still responsible for this due to their lack of a comprehensive law covering domestic workers, which prevents them from being trafficked.

Taking the above arguments into consideration, another question arises why there are victims of trafficking who are domestic workers below the age of 18 and vulnerable at the same time.<sup>187</sup> Allegations from international NGOs, for example HRW, are convincing to the extent that one could approve extreme measures in this area, while international agencies are still specifying facts on trafficking for the same groups of workers in KSA.

Yet, the KSA government have laws that strengthen the punishments when vulnerable people are in danger and there is a law in place, which specifies the minimum age of working children. To an extent both argument could be right and at the same time, both argument could be wrong. The most convincing argument at present, however, is that KSA should demonstrate their implementation process; as the numbers of victims are increasing an error in implementation has become obvious.

In order to give rights to domestic workers, in this case women or children who work as domestic workers, and prevent them from being trafficked, it is absolutely necessary to look at the above cause as well as other causes that the data has shown; such as the lack of a binding labour contract, the lack of a strong law for domestic workers and a lack of awareness of the rights of domestic workers.

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<sup>187</sup> Human Rights Watch, 'Saudi Arabia: Bad Dreams, Exploitations and Abuses of Migrant Workers in Saudi Arabia' [2004] Human Rights Watch Report (see text to n 32); Human Rights Watch, 'Swept Under the Rug: Abuses against Domestic Workers around the World' (see text to n 32); Human Rights Watch '2012: A Year of Progress for Domestic Workers' (see text to n 32); Human Rights Watch, 'Exported and Exposed: Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates' (see text to n 29) 43; Human Rights Watch, 'As if I Am not Human: Abuses against Domestic Workers in Saudi Arabia' [2008] Human Rights Watch Report (see text to n 32) 30

There is no doubt that those domestic workers are in need of special laws and the intention to implement that law to avoid the situation described by the UN Special Rapporteur on Violence against Women in which domestic workers, once inside the home of their new employer, are often engaged ‘in poorly remunerated labour that isolates them and places them in a subordinate position in a private realm’.<sup>188</sup> He added that, issues such as sickness, injury and pregnancy are common occurrences, giving rise to an urgent need to look at the domestic workers’ situation and give a voice to these vulnerable people.<sup>189</sup>

### **3.2.5 The Vulnerability of Domestic Workers in KSA**

An argument emerged concerning migrant workers, in particular the domestic workers in Saudi Arabia, that they are in fact facing unfamiliar, unjustified and biased laws and policies. Vlieger asserts that ‘[t]he sponsorship system provides substantial financial means to both governments and several other parties. Moreover, it is perceived by Saudi and the Emirates as providing safeguards against the dangers of large migration flows.’<sup>190</sup>

The argument made by Vlieger on the current statutes of the legal laws in Saudi Arabia and the United Arab Emirates regarding the situation of domestic workers were made to criticise the legal laws rather than to provide the analytical argument about the causes and reasons for domestic worker trafficking in both countries. It is understandable, to some extent, that the

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<sup>188</sup> Global Commission on International Migration, ‘Migration in an Interconnected World: New Directions for Action’ (see text to n 73) 71

<sup>189</sup> Global Commission on International Migration, ‘Migration in an Interconnected World: New Directions for Action’ (see text to n 73) 71

<sup>190</sup> Antoinette Vlieger, *Domestic Workers in Saudi Arabia and the Emirates: A Socio-Legal Study on Conflict* (see text to n 25) 271-277

laws in Saudi Arabia do not prevent or combat such violation at the moment.<sup>191</sup>

Yet, this argument could be contradicted by the implementation of the law in Saudi Arabia. Therefore, concentrating on the law is the wrong element in this argument. It has been shown that the laws have already been made in Saudi Arabia, and are available to the judges.

That being said, the situation that this research is investigating is when domestic workers are trafficked, through escape from their residence and falling into the hands of traffickers. The response from the KSA government to this particular situation and their methods of meeting their Palermo Protocol obligations to prevent such incidents is the core element of this thesis.

This is not to disregard other types of trafficking of domestic workers in KSA such as trafficking from destination countries or trafficking by recruitment agencies, as it sheds light on particular types of trafficking that have not been discussed in previous research and the KSA government attention to this type.<sup>192</sup>

The situation after that could be working illegally in different houses with higher salaries for the trafficker, or sexual exploitation and forced prostitution. The implications of leaving the house where the domestic workers has been employed in a country such as Saudi Arabia, with strict rules for freedom of movement of women, can make them subject to vulnerability. Although the KSA government ratified the Palermo Protocol in late 2007, it is useful to look at KSA obligations toward the PP.

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<sup>191</sup> Antoinette Vlieger, *Domestic Workers in Saudi Arabia and the Emirates: A Socio-Legal Study on Conflict* (see text to n 25) 184

<sup>192</sup> Antoinette Vlieger, *Domestic Workers in Saudi Arabia and the Emirates: A Socio-Legal Study on Conflict* (see text to n 25) 184

From the Palermo Protocol it is obvious that all states have obligations, including the KSA government, which can be divided into three main aspects, criminalization; protection of victims of trafficking in persons; and prevention, cooperation and other measures.<sup>193</sup> In this case, it is a known fact from earlier arguments, that the KSA government lacks prevention measures when dealing with issue of human trafficking and especially in the matter of trafficking of domestic workers.

Another argument in the trafficking of domestic workers, that organized crime only traffics people for purposes other than domestic work, at a minimum could be described as a misleading argument. The KSA government has not linked human trafficking in general with organized crime.

On the contrary, they established their first anti-trafficking law specifically focusing on the concept of punishing the traffickers that have any kind of affiliation or even independent traffickers.<sup>194</sup>

It suggests that this country has played a role in creating a platform of trafficking through not protecting domestic workers. Eventually, trafficking of domestic workers could happen to anyone in any society where the government is not doing its duty to make people aware and advocating for the rights of domestic workers, or where the government is not doing what it should in terms of protecting domestic workers.

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<sup>193</sup> United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly

<sup>194</sup> J Goodey, 'Human Trafficking: Sketchy Data and Policy Responses' (see text to n 40); the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly. See also Ministries Council, *The Basic Law of the Kingdom of Saudi Arabia* (Multimedia House Press 1992) 64; the Basic Law was issued on Royal Decree No. A/90: 27/8/1412 (1992) and contains 88 Articles; Saudi Arabian Anti-Trafficking Law, issued 2009; Saudi Arabian Labour Law (Royal Decree No. M/51, 27/9/2005)

It is essential that the KSA government deal with the increase in the number of domestic workers in the country by implementing the concept of human rights being for everyone, as stated in the SABL.<sup>195</sup> In addition, the increase in the number of the domestic workers in KSA means that this government must, at the same time, intensify their efforts in several related areas, such as public awareness, training of government officials and revising current laws and policies.

### **3.2.6 The KSA Government and Domestic Workers**

For the purposes of this research, it is essential to understand the means of trafficking of domestic workers in KSA. Essentially, there is a need to further describe and highlight the issue of abuse and exploitation of domestic workers in Saudi Arabia. As explained earlier, trafficking consists of two main elements, movement and exploitation.<sup>196</sup> However, the data that were collected in KSA does not reveal anything in regards to this area, although it was explained that the KSA government have not met the Palermo Protocol

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<sup>195</sup> Ministries Council, *The Basic Law of the Kingdom of Saudi Arabia* (Multimedia House Press 1992) 64; the Basic Law was issued on Royal Decree No. A/90: 27/08/1412 (1992) and contains 88 Articles

<sup>196</sup> T. Obokata, 'EU Council Framework Decision on Combating Trafficking in Human Beings: A Critical Approach' (see text to n 281) 924

obligations to prevent the trafficking of domestic workers in regards to the law part.<sup>197</sup>

In fact, the KSA government should have indicated from the beginning the means and the purposes of trafficking. It is the belief of this thesis that they have not considered the Palermo Protocol obligations in regards to prevention at the moment; this could be because the five departments questioned have not yet defined the means of human trafficking as a starting point, even though it has to be said that the KSA government included a definition to the means of human trafficking in the Anti-Trafficking Law.<sup>198</sup>

This contradiction leads to the strong indication, that the KSA departments questioned in this research have no knowledge or studies about human trafficking and doubtably knows their obligations under the Palermo Protocol.

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<sup>197</sup> It has been explained earlier that the Saudi Arabian government issued an Anti-Trafficking Law and established a permanent committee to combat human trafficking. Surprisingly, the five KSA departments questioned were not able to provide an answer on the means of human trafficking in Saudi Arabia. All forms of human trafficking have to have a means, as defined in the United Nations Protocol. The Saudi Arabian departments focused on the idea of legislation and no other sections of the Protocol, which shows that the intent to combat human trafficking is there, but without the knowledge of where to start or what to do. Initially the Saudi Arabian government have not complied with all of the protection, prevention and punishment elements of the Palermo Protocol. This can be seen in their anti-trafficking law where it focuses on only punishment. Yet, this thesis has not looked into the Saudi Arabian violations of the international laws. This thesis has focused on answering the question of “To what extent do Saudi Arabian laws and government policies fulfil the obligations to prevent the trafficking of domestic workers?”. Thus, it is believed that this would be considered as new area of research that does not fall under the main topic of this thesis.

<sup>198</sup> Article 1(a) of the Saudi Arabian Anti-Trafficking Law, issued 2009, states: ‘Human trafficking is prohibited in all of its kinds including the means of threats or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve consent of a person to have control over another person for the purposes of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs or medical experiments.’ ILO, ‘Human Trafficking and Forced Labour Exploitation’ (ILO, Geneva 2005) 11. An example from another country is the Brazilian government’s adoption of new sanctions for forced labour and trafficking exploitation crimes in their Act No. 9777. The Brazilian Department of Labour also took action to raise the number of prosecutions and reinstate the rights of forced labourers and human trafficking victims

This adoption of measures to prevent the lives of domestic workers and the elimination of human trafficking means is what is missing from the KSA departments. They need to adopt, amend and en-act the policies regarding human trafficking, and especially in regards to the prevention.

A further point is that every department needs to have a specialist section within it, with people who are knowledgeable on the subject of human trafficking. It is not acceptable to assign people who do not have a basic understanding of human trafficking and ask them to draft or investigate trafficking crimes.

The relevant KSA committee shows in Section 10 Article 5 of the procedures to combat human trafficking that staff shall 'prepare studies and collect information continually to combat human trafficking.'<sup>199</sup> They also state that it is their duty to continue focusing on the nature of human trafficking in KSA in order to develop comprehensive knowledge on the evolution of human trafficking in KSA.

This shows that some of the KSA departments have already established the needed definition of the means of human trafficking. Yet, as it is said in Arab countries, you cannot clap with one hand. This means that KSA departments need to act collectively and in cooperation with each other to reach the maximum effort to combat human trafficking.

Specifically, for example, Department labour should have at least the knowledge to define the means of human trafficking. They cannot participate in committees allocated by the SAMC to combat human trafficking and at the same time not know what the means of human trafficking are.

In regards to the KSA policies under the Palermo Protocol obligations to prevent the trafficking of domestic workers, requires the needs to examine the policies prepared to face the causes of domestic workers trafficking. The

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<sup>199</sup> The KSA Human Rights Authority, as evidenced from the data collection

HRW has listed all possible abuses that domestic workers, around the world, including in KSA, might face from the kind of exploitations and abuses that happen behind closed doors. This list contain some exploitations such as wage exploitation, excessive work hours, no rest days, no health care, termination of contract, inadequate living conditions, sexual abuse, forced labour, food deprivation and human trafficking.<sup>200</sup>

It is more than certain that most of the conditions listed above do not need to have both main elements of trafficking, which are movement and exploitation.<sup>201</sup> Since the movement part is not included in the abuse and exploitation that domestic workers are facing in KSA, it is most definitely to be considered as abuse of the domestic workers and not trafficking.

Yet, as shown previously, those causes and abuses are considered as the easy road to trafficking of domestic workers in KSA, and the policies can be in line with the Palermo Protocol obligations to prevent the trafficking. This is not a case of giving an excuse for this abuse, but showing it needs a different approach to end such abuses and exploitation then domestic workers trafficking.

The issue of the cooperation between KSA government departments is crucial, especially when the number of domestic workers is increasing. In order to enact current laws and policies, full cooperation is needed at this stage. There is no purpose to issuing laws and policies without having them implemented into current domestic law unless it is for propaganda purposes.

The laws and policies prepared by a government should be enacted, enforced and implemented appropriately into the laws in KSA in order to get the full

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<sup>200</sup> Human Rights Watch, 'Domestic Work for Domestic Workers: The Case for Global Labour Standards' [2005] Human Rights Watch 4-12

<sup>201</sup> Human Rights Watch, 'Saudi Arabia: Bad Dreams, Exploitations and Abuses of Migrant Workers in Saudi Arabia' (see text to n 32); Human Rights Watch, 'Swept Under the Rug: Abuses against Domestic Workers around the World' (see text to n 32)

benefits from them as those laws and policies without implementation can be seen as ink on paper only. The benefits of implementing the laws and the policies can be seen as protecting the victims of human trafficking, punishing the traffickers and most importantly preventing the trafficking of domestic workers from occurring.

Another point that needs to be addressed in this issue, is that the KSA government needs to learn from the past experiences of countries with the same or similar issue. Such lessons are crucial at this stage as they could then start from where other countries have ended.

An example could be seen from the experience of the United States and its widely known TVPA law. This law has been amended three times since it was enacted for the purpose of decreasing the number of trafficking victims and defeating the traffickers' methods and it clearly shows that the work of improving the laws would most defiantly improve the human rights and preventing human trafficking does not stop with issuing laws or policies.<sup>202</sup>

A country's strategies should start from the point of issuing laws and go through the point of studying the current performance of their laws to the end of improving it toward the best standards. This strategy main objective should end by reaching a balanced legal system that protects the victims of trafficking, prevents future trafficking and punishes traffickers.

### **3.3 Historical Context of Trafficking**

#### **3.3.1 The International Response to Human Trafficking**

This section discusses inter-state cooperation in the 20<sup>th</sup> century, the inadequate measures taken by the League of Nations to end white slavery and the incorrect assumptions held by the UN about the sources of trafficking. It

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<sup>202</sup> In 2000, the U.S. Congress passed the Trafficking Victims Protection Act (TVPA). This was done in order to acknowledge the problem and at the same time institute the penalisation of traffickers. In 2008, the Congress passed the re-authorisation of this act

begins by looking at how an agreement was made between states to cooperate in terms of ending trafficking during the League of Nations period.

It also considers international conventions on the white slave trade, starting with the League of Nations' accomplishments in this area, and examines the work of UN conventions in promoting and protecting human rights and the conventions that addressed trafficking.

Women, in particular are recruited in a source country and subsequently either forced to work for employers, sexually exploited or made to carry out different kinds of jobs in a destination country.<sup>203</sup> Trafficking causes more serious harm to people because the victims often need long-term treatment to help them recover, along with a committed programme to help their reintegration into society, allowing them to readjust to a normal life.

It is necessary to investigate how the rights of such people are being violated in being trafficked and how they can become caught up in the fraud net. For instance, although victims in poor countries are sometimes deceived by false promises of a good job or in the case of children, an education,<sup>204</sup> Robinson states that the victims are more likely to be threatened, forced, deceived or abducted by members of organised criminal networks.<sup>205</sup>

Robinson adds that the victims are likely to be taken far away from their homes without identity documents and treated like slaves, in jobs such as prostitution, working in sweatshops, begging, domestic service and forced marriage.<sup>206</sup>

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<sup>203</sup> S Cameron and E Newman, *Trafficking in Humans: Social, Cultural and Political Dimensions* (United Nations University Press 2008)

<sup>204</sup> K Robinson, *Living in the Shadows: A Primer on the Human Rights of Migration* (Amnesty International Publications 2006)

<sup>205</sup> K Robinson, *Living in the Shadows: A Primer on the Human Rights of Migration* (see text to n 204) 47

<sup>206</sup> K Robinson, *Living in the Shadows: A Primer on the Human Rights of Migration* (see text to n 204)

Writing in the early 20<sup>th</sup> century, Goldman describes the belief that prostitution was only recently viewed as wrong, as the practice had existed for a long time and would continue to do so in the future.<sup>207</sup> She adds that the world had been dealing with prostitution as if it were a commercial business, without looking into the suffering of the victims.<sup>208</sup>

However, in 1904, the League of Nations had initiated the fight against the white slave trade, with the first piece of legislation being the International Agreement for the Suppression of the White Slave Traffic.<sup>209</sup> All members of the League of Nations agreed on this convention concerning the white slave trade, even though it was not fully adopted by all States parties.

The adoption of this instrument shows that there was some interest about the issue of the white slave trade. It can be argued that this concern was motivated by the political and economic difficulties of European countries; Beckman states that the agreement was adopted primarily because of the stagnant economic conditions in Europe, which had led to the sale of women into prostitution.<sup>210</sup> However, it can also be seen as a sign of the willingness to combat trafficking at that time.

Although attempts were made by some states and international agencies to end or eliminate white slave trade, efforts were largely inadequate. Historically, the League of Nations dealt with the issue of slavery, and the white slave trade in particular, by taking on other measures.<sup>211</sup>

In 1922, a commission was established by the League of Nations to examine all aspects of slavery. In 1924, this commission reported on eight areas

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<sup>207</sup> E Goldman, *Anarchism and Other Essays* (Mother Earth Publishing Association 1911) 183-200

<sup>208</sup> E Goldman, *Anarchism and Other Essays* (see text to n 207) 184

<sup>209</sup> International Agreement for the Suppression of the White Slave Traffic (1904); T Obokata, 'Trafficking of Human Beings from a Human Rights Perspective' (see text to n 21) 10-12

<sup>210</sup> M Beckman, 'The White Slave Traffic Act: The Historical Impact of a Criminal Law Policy on Women' [1984] 72 *Georgetown Law Journal*, 1113

<sup>211</sup> International Agreement for the Suppression of the White Slave Traffic (1904)

concerning slavery: the legal status of slavery, slave raiding and similar acts, slave acts, slave dealing, restrictive practices of the liberty of the person, domestic slavery, compulsory labour, and the transition from compulsory labour to free wage.<sup>212</sup>

In 1926, the efforts of the commission were assisted by the adoption of the Slavery Convention by the League of Nations and States parties. However, as the problem of the white slave trade came under discussion in the early 20<sup>th</sup> century, the League of Nations did not do enough to deal with it in its early years. For example, while adopting a convention to deal with the white slave trade the League of Nations did not add a clear definition of trafficking.<sup>213</sup>

On the other hand, the UN's efforts to promote a better understanding of human rights, and combat and eliminate the white slave trade were very strong in its early years. The UDHR (1948), with regards to eliminating all types of slavery practices, states that '[n]o one shall be held in slavery or servitude...'<sup>214</sup>

The UDHR Article 13 Section 2 states that 'everyone has the right to leave any country, including his own, and to return to his country.'<sup>215</sup> This article has been asserted in many other UN conventions and is intended to abolish the idea of controlling the freedom of human beings.<sup>216</sup> Similarly, the UDHR includes several provisions to promote and protect human rights standards, such as the freedom from torture, as can be seen in Article 4.<sup>217</sup>

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<sup>212</sup> MC Bassiouni, *Slavery and Slave Trade: Steps toward Eradication* (Nanda 1972) 429

<sup>213</sup> K Kempadoo, 'From Moral Panic to Global Justice: Changing Perspectives on Trafficking' in *Trafficking and Prostitution Reconsidered* (Paradigm Publishers 2005) 3-10

<sup>214</sup> Articles 4, 20, 23, 24 and 25 of The Universal Declaration of Human Rights, 10/12/1948

<sup>215</sup> Article 13(2) of The Universal Declaration of Human Rights, 10/12/1948

<sup>216</sup> Such as the International Covenant on Civil and Political Rights article 12(2) and (4), the Migrant Workers' Convention Article 8(1) and (2)<sup>216</sup> and the Convention on the Rights of the Child Article 10(2)

<sup>217</sup> Articles 4 and 5 of the United Nations Declaration of Human Rights

In 1949, an agreement was reached by the majority of UN states to launch a convention on human trafficking, the Convention of the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others which holds one of the earliest definitions of trafficking.<sup>218</sup> The main focus of this convention was the punishment of the procurers, persons exploiting those forced into prostitution and brothel owners, but it did not concentrate on prevention measures.<sup>219</sup>

During this time, the UN attempted to promote and protect human rights, producing a number of international conventions addressing including human trafficking.<sup>220</sup> Kempadoo, however, argues that ‘between the two World Wars in the twentieth century, the moral panic over trafficking subsided, and in the

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<sup>218</sup> Convention for the Suppression of the Traffic in Persons and Exploitation of the Prostitution of Others, (1949). See also S Farrior, ‘The International Law on Trafficking in Women and Children for Prostitution: Making It Live up to its Potential’ [1997] 10 Harvard Human Rights Journal 213-256. The author also states that it is significant that the 1949 Convention does not disregard the existence of brothels, even those regulated by the state

<sup>219</sup> IOM, ‘Focus on Smuggling and Trafficking in South Korea’ in IOM, *Managing Migration: Challenges and Responses for People on the Move* (International Organization for Migration 2003) 202-204. In regards to promoting some of the rights of migrants and increasing their protection methods, the United Nations Human Rights Committee has asserted that ‘since international travel usually requires appropriate documents, in particular a passport, the right to leave a country must include the right to obtain the necessary travel document’. Identification documents are a very important issue for migrants who become trapped in countries of transit or destination but have been denied the right to enter and remain legally in these countries. There are many international conventions on human rights law, which guarantee the human rights of migrant workers and their families. Those conventions have been signed and ratified by states and members of the United Nations who are therefore required to implement the conventions accordingly in their domestic/national laws

<sup>220</sup> Instruments that contain prohibition of some forms of trafficking, such as the International Covenant on Civil and Political Rights (ICCPR 1966); the International Covenant on Economic, Social and Cultural Rights (ICESCR 1966); the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (1979); the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment (1984); the Slavery Convention (1926); the Convention on the Protection of the Rights of all Migrant Workers and their Families (1990); and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), also contain legal denouncements on the trafficking of humans

new surge of globalization in the post-World War II era, labour and immigration were regulated and organised under state supervision.<sup>221</sup>

At that time, the 48 countries that are the main signatories to Universal Declaration of Human Rights, began to deal with the issue of human trafficking at a national level and seeing it as an issue of prostitution. Some countries then started to establish laws that could, at least, be seen as tools towards either criminalising prostitution or regulating the sex trade.

It seems that neither the League of Nations nor the UN, in its early years, considered different kinds of trafficking, concentrating instead on prostitution and brothel owners. Obokata criticises the 1949 convention stating that ‘it urged State Parties to suppress trafficking and to punish those who owned brothels; nonetheless, it did not specifically require States to prohibit prostitution’.<sup>222</sup>

Obokata continues to state that ‘drafters of the 1949 Convention feared that prohibition would drive prostitution underground, and that laws designed to punish both the clients and the prostitutes, in practice, would be selectively enforced only against prostitution.’<sup>223</sup> Pearson also discusses criticism of the Convention by stating that:

It consolidated previous conventions regarding trafficking and exploitation of prostitution. However, this treaty was not widely ratified and has been criticised for its lack of clarity in its definition of trafficking, lack of enforcement mechanisms and for

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<sup>221</sup> K Kempadoo, ‘From Moral Panic to Global Justice: Changing Perspectives on Trafficking’ in *Trafficking and Prostitution Reconsidered* (see text to n 100) 11

<sup>222</sup> T Obokata, *Trafficking of Human Beings from a Human Rights Perspective* (see text to n 4) 10-12

<sup>223</sup> T Obokata, *Trafficking of Human Beings from a Human Rights Perspective* (see text to n 4) 10-12

addressing trafficking exclusively, without looking to the cross-border movement of persons in prostitution.<sup>224</sup>

Similarly, Fariior adds to this argument: ‘the enforcement clauses are weak; it affords little protection of the rights of women who are trafficked [...] therefore, it takes a limited approach in its measures to stop trafficking.’<sup>225</sup> Only fifty-eight States Parties ratified the 1949 Convention Treaty, which suggests that it was unacceptable to the majority of the international community.

Today, the UN is keen to implement freedom from slavery as worldwide human rights standard. This can be seen in the first category of the violations of civil and political rights, which includes the right to life, liberty and security.<sup>226</sup> Those standards have been recognised at the international level in the International Covenant on Civil and Political Rights (Articles 7 and 8) and the International Covenant on Economic, Social and Cultural Rights.<sup>227</sup>

It should be noted that the ICCPR enables countries to derogate from human rights in the event of public emergencies that threaten the life of the nation,

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<sup>224</sup> E Pearson, *Human Traffic, Human Rights: Redefining Victims Protection* (The Printed World 2002) 13-17; see also the United Nations Economic and Social Council, ‘Integration of the Human Rights of Women and the Gender Perspective: Report of the Social Rapporteur on Violence against Women, its Causes and its Consequences’ (2000), submitted in accordance with the commission on Human Rights Resolution 1997/44

<sup>225</sup> S Fariior, ‘The International Law on Trafficking in Women and Children for Prostitution: Making It Live up to its Potential’ (see text to n 218) 213-256

<sup>226</sup> S Opotow, J Gerson and S Woodside, ‘From Moral Exclusion to Moral Inclusion: Theory for Teaching Peace’ [2010] *Theory into Practice*

< [http://www.tandfonline.com/doi/pdf/10.1207/s15430421tip4404\\_4](http://www.tandfonline.com/doi/pdf/10.1207/s15430421tip4404_4) > accessed 01/11/2011

<sup>227</sup> Articles 7 and 8 of the International Covenant of Civil and Political Rights; Tasmania Law Reform Institute, ‘A Charter of Rights for Tasmania?’ (Tasmania Institute, 2006) issue 11, 5

although public emergencies cannot justify derogations from the right to life or freedom from slavery.<sup>228</sup>

In the same way, it should be understood that there is no significant difference in the right to freedoms between the standards of the UN and those of other regional agreements, such as the Council of Europe, as in both, for example, there is a clause stating that rights should be secured without discrimination based on association with a national minority.<sup>229</sup>

While acceding that the KSA is not party to the ICCPR, still the reference provided by this international treaty on its article 8, gives a wide context to the KSA present approach to human rights standards.<sup>230</sup> Other examples can be seen in the prohibition of all kinds of trafficking practices in some of the International Labour Organisation (ILO) instruments.<sup>231</sup>

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<sup>228</sup> L Forman, 'Incentivizing Justice: Linking Human Rights, Trade and Access to Medicines' (University of Toronto, 2006) 141. Please note that the ICCPR is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and in force from 23 March 1976. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial and as of April 2014, the Covenant has 74 signatories and 168 parties.

[http://webapp.mcis.utoronto.ca/resources/MCIS\\_Briefings/Oct2006-LupinaBriefing.pdf#page=143](http://webapp.mcis.utoronto.ca/resources/MCIS_Briefings/Oct2006-LupinaBriefing.pdf#page=143)  
accessed on 05/11/2011

<sup>229</sup> A Alcock, 'A New Look at Protection of Minorities and the Principle of Equality of Human Rights' [1977] 12(2) Community Development Journal 89

<sup>230</sup> Articles 8, 13, 14, 21, 22, 26 and 27 of the International Convention on Civil and Political Rights 16/12/1966; the reference to slavery can be seen by looking at the ICCPR statement: 'No one shall be held in slavery. No one shall be required to perform forced or compulsory labour.' Also, the Convention on the Elimination of all Forms of Discrimination Against Women (1979), the Convention on the Elimination of all Forms of Racial Discrimination (1965), and the Convention on the Rights of Child (20/11/1989) contain a number of instruments that prohibited the practices of slavery

<sup>231</sup> The ILO Forced Labour Convention (No. 29) Article 1 states that '[e]ach Member undertakes to suppress the use of forced or compulsory labour in all its forms...' Articles 1, 2 and 3 of the ILO Minimum Age Convention (No. 38) states that '[e]ach Member undertakes to pursue a policy to ensure the effective abolition of child labour [...] to a level consistent with the fullest physical and mental development of young persons' rights'

These actions and instruments have been in place since the start of UN activities and were in the interests of combating trafficking practices. An argument, however, could be made about whether efforts by the UN were enough to eliminate trafficking or were they below the minimum standard that was urgently needed to establish the elimination process.

It could also be argued that UN States Parties could have achieved more from the legislation by stressing the implementation element, or at least by following up with states who adopted those conventions. Gallagher asserts that ‘in principle, there is a strong relation between human rights law and human trafficking.’<sup>232</sup> She also states, however, that ‘this comprehensive prohibition of trafficking could not be found in any international human rights instruments.’<sup>233</sup>

Looking at human trafficking, various things need to be considered in drafting a convention, such as the definition, prevention methods, implementation monitoring and the victims of trafficking. They are victims of abuse and exploitation and their basic human rights have been violated through actions such as forced labour, child beggary and sexual exploitation. These are the

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<sup>232</sup> A Gallagher, ‘Using International Human Rights Law to Better Protect Victims of Trafficking: The Prohibitions on Slavery, Servitude, Forced Labour, and Debt Bondage’ (Selected works of Anne T Gallagher) <[www.works.bepress.com/anne\\_gallagher/5](http://www.works.bepress.com/anne_gallagher/5)> accessed 02/10/2011

<sup>233</sup> A Gallagher, ‘Using International Human Rights Law to Better Protect Victims of Trafficking: The Prohibitions on Slavery, Servitude, Forced Labour, and Debt Bondage’ (see text to n 205)

main topics that such conventions should focus on, as the victims are often left with little recourse to justice.<sup>234</sup>

The UNGA created the Ad Hoc Committee on the Elaboration of Conventions against Transnational Organised Crime to combat trafficking in persons. More than fifty years after the founding of the UN, the committee saw the adoption by the UNGA of a new convention concerning transnational organised crime, supplemented by three main additional protocols.<sup>235</sup>

These protocols deal with smuggling migrants, trafficking in people (especially women and children) and trafficking in firearms.<sup>236</sup> The UN state that the purpose of the Trafficking in People Protocol was to prevent and combat trafficking, paying close attention to the protection of women and

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<sup>234</sup> With regards to promoting some of the rights of migrants and increasing their protection methods, the United Nations Human Rights Committee has asserted that ‘since international travel usually requires appropriate documents, in particular a passport, the right to leave a country must include the right to obtain the necessary travel document.’ Identity documents are a very important issue for migrants who become trapped in countries of transit or destination but have been denied the right to enter and remain legally in these countries. There are many international conventions on human rights law, which guarantee the human rights of migrant workers and their families. Those conventions have been signed and ratified by states and members of the United Nations who are therefore required to implement the conventions accordingly in their domestic/national laws; IOM, ‘Focus on Smuggling and Trafficking in South Korea’ in IOM, *Managing Migration: Challenges and Responses for People on the Move* (see text to n 191) 202-204

<sup>235</sup> S Hoff and M Doorninck, ‘Compensation: An Instrument for Empowerment of Trafficked Persons’ [2007] 27 *Alliance News* 30-35. See also the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. This Convention shows that ‘States Parties undertake to respect and to ensure all migrant workers and their families within their territory rights without distinction of any kind such as sex, race, colour, language, religion, national, ethnic or social origin, nationality or other status’. It also states that ‘[m]igrant workers and members of their families shall be free to leave any State, including their State of origin’ and ‘[s]hall have the right at any time to enter and remain in their State of origin’

<sup>236</sup> C Anker and J Doorninck, *Trafficking and Women's Rights* (Basingstoke and Palgrave Press 2006) 1-24; S Cameron and E Newman, *Trafficking in Humans: Social, Cultural and Political Dimensions* (see text to n 203)

children, and to promote and encourage cooperation among States Parties in order to meet this objective.<sup>237</sup>

Further investigation is required on the relationship between victims of trafficking and enforcement agencies, in order to identify possible prevention methods. The striking bureaucracy introduced by some states makes it necessary for people who have been identified as victims of trafficking to cooperate with the enforcement authorities and testify in court. If those victims do not cooperate, they will be treated as illegal immigrants and criminals and possibly even face the danger of becoming a threat to national security.<sup>238</sup>

This is not the behaviour of all states; however, Italy for example, which has long been praised for granting residence permits to trafficking victims, does not require cooperation with the authorities to acknowledged victim of trafficking status to an individual.<sup>239</sup> On the other hand, it is necessary to acknowledge the need to ignore the differences between victims of regular migration and victims of irregular migration, while dealing such issues. However, the United States and the International Organizations of Migration (IOM) also share the view that human trafficking involves both regular and irregular migration.<sup>240</sup>

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<sup>237</sup> International Organization of Migration, 'Trafficking in Persons: Update and Perspectives' IOM Eightieth session document number MC/INF/245

<sup>238</sup> E Pearson, *Human Traffic, Human Rights: Redefining Victim Protection* (see text to n 224) 13-17; see also United Nations Economic and Social Council, 'Integration of the Human Rights of Women and the Gender Perspective: Report of the Social Rapporteur on Violence against Women, its Causes and its Consequences' (2000) submitted in accordance with the commission on Human Rights Resolution 1997/44

<sup>239</sup>J Goodey, 'Human Trafficking: Sketchy Data and Policy Responses' (see text to n 40); There is criticism of this process in Italy, where these rights exist on paper only while in practice they are not meted out to those in need

<sup>240</sup> Victims of Trafficking and Violence Protection Act 2000, S 102 (b)(5)

### **3.3.2 State Response to Human Trafficking**

In the area of legislation and combating human trafficking, arguments emerged focusing on measures used by regional authorities, and even some states, to control sources of human trafficking, which had been in place for a long time.

The discussion in this section explains how the United States Trafficking Victims Protection Act, (USTVPA), for example, focuses on protecting victims of trafficking and preventing future human trafficking, while the EU Decision focuses on criminalising trafficking, outlining penalties for punishing trafficking offences.

The subject of human trafficking has received increasing attention from some countries in the past two decades while the first legislation on human trafficking date back to the end of the nineteenth century when the first international agreement was drafted. It is important to issue and implement protective laws for the purposes of protecting migrant workers, and particularly domestic workers, from being victims of trafficking actions.

Some states have issued an anti-trafficking legislation in an effort to control and combat the phenomenon of human trafficking. Some of those states have gone further than others in issuing comprehensive legislation, for example the USTVPA. An examination of the USTVPA and its reauthorizations 2003 and 2005 will give a better idea of how state legislation can protect victims of trafficking and prevent future human trafficking.

The TVPA provides a comprehensive anti-trafficking law that aims to prevent human trafficking protect victims and punish traffickers. Shinkle sees the TVPA as departing from the prior patchwork legislative approach, which attempted to address trafficking using a variety of other related laws. The most basic change wrought by the TVPA was to acknowledge that those caught up in human trafficking, although often illegally present in the country

of destination, were victims to be protected, not criminals to be punished and deported.<sup>241</sup>

Similarly, in the prevention area of this Act, Shinkle adds that the multi-faceted TVPA and its reauthorizations create a policy and mechanisms for preventative measures to forestall trafficking across US borders and increase protection and services to trafficking victims already in the United States.

This includes access to the T-Visa, allowing victims to stay in the United States in exchange for assisting the investigation or prosecution of their trafficker, enhanced prosecution of traffickers and their accomplices and monitoring other nations' anti-trafficking activities. It also distinguishes between smuggling and trafficking, which violates the rights of the victim.<sup>242</sup>

Other regional bodies have taken into consideration the causes and the serious harm that trafficking does to people. European legislation focuses on criminalising trafficking, outlining penalties for punishing trafficking offenses and mandates the protective measures that states need to consider. It should be noted that this Decision was binding on all EU member states from August 2004.

In addition, in an effort to show the importance of the issue of human trafficking, some EU countries have passed legislation explicitly criminalising trafficking, while other countries continue to address it through other related instruments either nationally or internationally.<sup>243</sup>

Focusing on the European Legislation, Article 2 of the EU Directive on the Prevention and Combating of Trafficking in Human Beings and Protecting the Victims declares that 'Member States shall take the necessary measures to

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<sup>241</sup> W Shinkle, 'Prevention of Human Trafficking: An Evaluation of Current Efforts' (see text to n 104);

<sup>242</sup> W Shinkle, 'Prevention of Human Trafficking: An Evaluation of Current Efforts' (see text to n 104);

<sup>243</sup> W Shinkle, 'Prevention of Human Trafficking: An Evaluation of Current Efforts' (see text to n 104);

ensure that the following intentional acts are punishable...’<sup>244</sup> Also, Article 4 states that:

1) Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least five years of imprisonment; 2) Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment...<sup>245</sup>

There are other arguments, however, that discourage EU efforts to combat human trafficking by States Parties and the methods used to implement those laws. As Goodey argues, ‘in the ten years following the 1997 joint action by the Council of the EU, it serves to remind us that legislation that purports to be “for” trafficking victims is sometimes more focused on the needs of law enforcement in acquiring victim testimonies.’<sup>246</sup>

Equally, Shinkle asserts that ‘on the side of adopting legislation in regards to human trafficking [...] these improvements consist of regulations and while these laws provide a credible framework, they and others are more limited reforms and their implementation remains in question.’<sup>247</sup>

These strategies raise a question about the purpose of adopting legislation with no intention of implementing it domestically, or without knowing how to implement it in the first place. A country, which is able to adopt laws to combat human trafficking, should have a strategic plan that will help the

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<sup>244</sup> The EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and Replacing Council Framework Decision 2002/629/JHA

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF> accessed 05/8/2011

<sup>245</sup> The EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and Replacing Council Framework Decision (see text to n 219)

<sup>246</sup> J Goodey, ‘Human Trafficking: Sketchy Data and Policy Responses’ (see text to n 40); Note that in 2004, legislation covering trafficking for labour exploitation was introduced under the Asylum and Immigration Act 2004

<sup>247</sup> W Shinkle, ‘Prevention of Human Trafficking: An Evaluation of Current Efforts’ (see text to n 104);

immediate implementation of these laws or within an acceptable period of time.

While some argue that EU efforts to combat trafficking were not enough, others assert that EU efforts were clearly shown by adopting the Brussels Declaration on Preventing and Combating Trafficking in Human Beings. Efforts were also shown subsequently through the establishment of a Commission made up of a group of experts on trafficking in human beings, with the remit to write a report containing concrete proposals for implementing the Brussels Declaration.<sup>248</sup>

Goodey criticises the sum of legislation that the EU has passed in the last ten years, stating that ‘it is clear that there has been a great deal of activity in recent years in recognition of legal responses to human trafficking, however, the information which has served to inform these legal developments, and the extent and nature of human trafficking is not clear.’<sup>249</sup>

None of the research is able to argue that the EU has made a great effort to combat trafficking; however, equally, the opposite cannot be argued either. It should be admitted that the EU did something at the end of the last century to combat human trafficking, whether by holding conferences or by initiating regional statutes on human trafficking. Yet, one must add to this statement that even with all this effort from the EU, a clear plan to implement laws domestically, or to prevent human trafficking was not given.

A very clear statement made by Goodey shows that the UK as an EU member state comes under certain European legislative obligations, and as a signatory to the UN trafficking protocol has since 2000 been actively incorporating the

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<sup>248</sup> T Obokata, *Trafficking of Human Beings from a Human Rights Perspective* (see text to n 4) 10-12. Note that this declaration was a result of the European Conference on Preventing and Combating Trafficking in Human Beings 2002, which was organised under the framework of the European Commission’s STOP programme with the co-operation of IOM, the European Commission, the Parliament and EU Member States.

<sup>249</sup> J Goodey, ‘Human Trafficking: Sketchy Data and Policy Responses’ (see text to n 40);

anti-trafficking measures into its domestic law.<sup>250</sup> More specifically, in 2002 an explicit offence of human trafficking in relation to prostitution was introduced for the first time into UK legislation, as part of the Nationality, Immigration and Asylum Act 2002.

In addition, this action was followed by the Sexual Offences Act 2003, which went further than the UN protocol by stating that trafficking would be identified without any use of coercion, deception or force from the traffickers during the recruitment process.<sup>251</sup> It can be said; that the efforts that have been made by the UK government in response to human trafficking are well organised and in time will show the required results.

The step of moving beyond the UN protocol definition on human trafficking is the kind of step that human rights defenders are looking for to end human trafficking. It shows the state's willingness and efforts to combat the issues and could persuade other states to act in a similar way.

An example on how states willingness to combat the human trafficking can be seen in the EU directives that lay down certain end results, which can be achieved in every EU Member State. All EU National authorities can adapt their laws to meet these goals and the Directives may concern one or more Member States, or all of them. Each EU directive specifies the date by which the national laws might adapt within the deadlines necessary to take account of differing national situations. Directives are used to bring different national laws into line with each other.<sup>252</sup>

The EU Anti-Trafficking law was made up of 3 instruments; 1) Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking who co-operate with competent

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<sup>250</sup> J Goodey, 'Human Trafficking: Sketchy Data and Policy Responses' (see text to n 40);

<sup>251</sup> J Goodey, 'Human Trafficking: Sketchy Data and Policy Responses' (see text to n 40);

<sup>252</sup> Krieg, Sarah H. "Trafficking in human beings: The EU approach between border control, law enforcement and human rights." *European Law Journal* 15.6 (2009): 775-790.

authorities; and 2) Council Framework Decision 2002/629/JHA on combating trafficking in human beings; and 3) Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings (The UK opted out of this Framework Decision).<sup>253</sup>

Van der Leun argues that, these three instruments lacked the application, enforcement and comprehensive approach necessary to prevent trafficking and protect victims.<sup>254</sup> The argument goes further by stating that, the EU took steps towards codifying its trafficking law into a binding Directive 2011/36/EU, which incorporates and replaces Framework Decision 2002/629/JHA.<sup>255</sup>

Francesca Ferraro, argues as well that, with the entry into force of the Treaty of Lisbon in December 2009, Article 34 of the Treaty on the European Union was repealed and Framework Decisions can no longer be adopted and any legislation can now be adopted in the form of either Directives or Regulations.<sup>256</sup> These Directives on Preventing and Combating Trafficking in Human Beings and Protecting its Victims sets out minimum standards to be applied throughout the European Union in preventing and combating trafficking in human beings and protecting victims.

Similarly, the Convention on Action against Trafficking in Human Beings was adopted by the Council of Europe Committee of Ministers on 3 May 2005, following a series of other initiatives by this council in the field of

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<sup>253</sup> Krieg, Sarah H. "Trafficking in human beings: The EU approach between border control, law enforcement and human rights." *European Law Journal* 15.6 (2009): 775-790.

<sup>254</sup> Van der Leun, Joanne, and Anet van Schijndel. "Emerging from the shadows or pushed into the dark? The relation between the combat against trafficking in human beings and migration control." *International Journal of Law, Crime and Justice* 44 (2016): 26-42.

<sup>255</sup> Van der Leun, Joanne, and Anet van Schijndel. "Emerging from the shadows or pushed into the dark? The relation between the combat against trafficking in human beings and migration control." *International Journal of Law, Crime and Justice* 44 (2016): 26-42.

<sup>256</sup> FERRARO, Francesca, and J. Carmona. "Fundamental Rights in the European Union: The role of the Charter after the Lisbon Treaty." (2015).

combating trafficking in human beings.<sup>257</sup> This Convention entered into force on 1 February 2008, following its 10th ratification. While building on existing international instruments, the Convention goes beyond the minimum standards agreed upon in them and strengthens the protection afforded to victims.<sup>258</sup>

Going through this Convention, it has a comprehensive scope of application, encompassing all forms of trafficking and taking in all persons who are victims of trafficking. It has to be noted that, the forms of exploitation covered in this Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

The main added value of the Convention is its human rights perspective and focus on victim protection.<sup>259</sup> Its Preamble defines trafficking in human beings as a violation of human rights and an offence to the dignity and integrity of the human being.<sup>260</sup> The Convention provides for a series of rights for victims of trafficking, in particular the right to be identified as a victim, to be protected and assisted, to be given a recovery and reflection period of at least 30 days, to be granted a renewable residence permit, and to receive compensation for the damages suffered.<sup>261</sup>

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against

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<sup>257</sup> Nestorova, Petya. "Trafficking in Human Beings and Human Rights: The Role of the Council of Europe Convention on Action against Trafficking in Human Beings." *International Journal of Refugee Law* 27.1 (2015): 207-209.

<sup>258</sup> Nestorova, Petya. "Trafficking in Human Beings and Human Rights: The Role of the Council of Europe Convention on Action against Trafficking in Human Beings." *International Journal of Refugee Law* 27.1 (2015): 207-209.

<sup>259</sup> The Convention on Action against Trafficking in Human Beings, adopted by EU council 03/05/2005, Warsaw 2005

<sup>260</sup> The Convention on Action against Trafficking in Human Beings, adopted by EU council 03/05/2005, Warsaw 2005

<sup>261</sup> The Convention on Action against Trafficking in Human Beings, adopted by EU council 03/05/2005, Warsaw 2005

Trafficking in Human Beings and the Committee of the Parties. The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.

### **3.4 Legal Context of Trafficking**

#### **3.4.1 Human Trafficking, International Law and KSA**

As shown, the KSA government has an obligation towards domestic workers, as migrant workers. It has also been explained that the KSA government has international obligations according to the treaties it has signed and ratified. Some of the main KSA obligations that are relevant to this thesis are implementing the Palermo Protocol on trafficking and helping the victims of trafficking.

A fact has to be illustrated that the KSA government signed and ratified the Palermo Protocol as part of their efforts to promote the human rights standards and as part of their international obligations towards the migrant workers whom comes to Saudi Arabia for better work.

In monist systems, national and international law are regarded as one legal system. The act of ratification (by itself, or ratification plus approval by the national parliament if required) immediately incorporates the rules concerned into national law and citizens can directly invoke them in court as national law. On the other hand, dualist systems emphasize the difference between national and international law and require the translation of the latter into the former. Without conversion into national laws, citizens cannot invoke the rules of the ratified treaty and judges cannot apply them.<sup>262</sup>

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<sup>262</sup> Antoinette Vlioger, *Domestic Workers in Saudi Arabia and the Emirates: A Socio-Legal Study on Conflict* (Quid Pro Books 2011) page 145

Antoinette Vlieger has stated, in this regards that although Saudi Arabia has ratified several ILO treaties, most interviewed government officials claimed to have a monist system (one official added that it is not monistic when someone is in conflict with the government), whereas others considered it dualist.<sup>263</sup> The reality is that, the Saudi government is a pure monist state as the basic law in its articles 70 and 81, states that all international treaties that signed by the government should be incorporated in the domestic law automatically.

For example, the KSA government entered a reservation to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW): ‘In case of contradiction between any terms of the Convention and the laws of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention’.<sup>264</sup> They are, however, under important obligations towards the international community if they ratify and sign a treaty.

In addition, it is essential to understand that the government of Saudi Arabia has ratified five major conventions at the ILO concerning the work of women.<sup>265</sup> Saudi Arabia, however, still needs to implement these conventions, if they want to safeguard and prevent any human trafficking cases.

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<sup>263</sup> Antoinette Vlieger, *Domestic Workers in Saudi Arabia and the Emirates: A Socio-Legal Study on Conflict* (Quid Pro Books 2011) page 145

<sup>264</sup> Human Rights Watch, ‘As if I Am not Human: Abuses against Domestic Workers in Saudi Arabia’ [2008], Human Rights Watch Report (see text to n 32) 31. According to the Vienna Convention on the Law of Treaties, however, ‘[r]eservations that are incompatible with the object and purpose of a treaty violate international law and are unacceptable precisely because they would render a basic international obligation meaningless.’ See the Vienna Convention on the Law of Treaties 23/5/1969, entered into force on 27/1/1980, 1155 United Nations Treaty Series, 331

<sup>265</sup> These conventions are: Convention No. 29 Forced Labour Convention 1930; ILO Convention No. 45 Underground Work (Women) 1935; ILO Convention No. 89 Night Work (Women) 1948; ILO Convention No. 105 Abolition of Forced Labour 1957; and ILO Convention No. 123 Minimum Age (Underground Work) 1965

Saudi Arabia has an important obligation towards its citizens and its foreign workers as a member of the ILO, and a party to ILO Convention No. 111 dealing with discrimination in employment.<sup>266</sup> HRW reports that ‘since 1991 ILO’s Committee of Experts has repeatedly expressed concern about the government’s policy on sex segregation in the workplace, codified in section 160 of the 1969 Labour Code.’<sup>267</sup>

In short, HRW states that the government of Saudi Arabia has a legal obligation to protect everyone in the Kingdom, citizens and skilled foreigners, from all illegal practice, discrimination, and human rights abuses.<sup>268</sup>

While looking at the area of legislation in regards to trafficking of women and children in a country such as Saudi Arabia, it is important to look at the country’s response to this issue. The first area to look at is forced labour as Saudi Arabia has signed and ratified ILO Convention (No. 29), and it is obliged to execute this convention within its own domestic law. Not only that, it is obliged to eliminate all causes that lead to forced labour, of women and children in particular, whether they are domestic workers or migrant workers in general.<sup>269</sup>

The KSA government have focused their efforts on eliminating any forced labour within KSA and as required by the International standards. Yet, the

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<sup>266</sup> ILO Convention No. 111 concerning Discrimination in Respect to Employment and Occupation, adopted 25/6/1958 and entered into force in 15/6/1960

<sup>267</sup> Human Rights Watch, ‘Perpetual Minors: Human Rights Abuses Stemming from Male Guardianship and Sex Segregation in Saudi Arabia’ [2008] 37 Human Rights Watch

<sup>268</sup> Human Rights Watch, ‘Saudi Arabia: Bad Dreams, Exploitations and Abuses of Migrant Workers in Saudi Arabia’ (see text to n 32) 14

<sup>269</sup> The ILO Forced Labour Convention (No. 29) Article 1 states that ‘[e]ach Member undertakes to suppress the use of forced or compulsory labour in all its forms...’ Articles 1, 2 and 3 of the ILO Minimum Age Convention (No. 38) states that ‘[e]ach Member undertakes to pursue a policy to ensure the effective abolition of child labour [...] to a level consistent with the fullest physical and mental development of young person’s rights

data have shown no efforts to eliminate those causes for domestic workers, in particular, neither the data has shown any expression of concern in this area.

It will be explained in the following chapter, that the KSA government have recently issued their first domestic workers bylaw, while they have signed and ratified the ILO convention (No. 29) almost 40 years ago. It is rather an important factor in the fight against the trafficking of domestic workers to eliminate all causes of trafficking. As explained earlier, women can be seen as an easy target for trafficking as they can be used for sexual exploitations, forced labour and abuse as well as work.<sup>270</sup>

### **3.4.2 Human Rights and KSA Laws**

This section will discuss the KSA Basic Law (SABL)<sup>271</sup>, which was enacted to protect the human rights of everyone in the Saudi territory as stated by the Saudi government. It will explain the problems involved in ensuring human rights values in Saudi Arabia due to their implementation process by Saudi officials, as explained in some of the HRW reports.

Finally, it discusses the Saudi Arabian Labour Law (SALL) and the relevance of its articles in promoting human rights standards for migrant workers. It will explain also the ministerial executive orders that have been issued previously in any matter that have a relevancy to the topic of this thesis which is the trafficking of domestic workers or the human trafficking in general.

Furthermore, the treaties that have been mentioned earlier, should guarantee government policies to prevent conditions leading to trafficking and to protect foreign workers from discrimination and degrading treatment, especially when they have been signed and ratified by a country.<sup>272</sup>

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<sup>270</sup> J Goodey, 'Human Trafficking: Sketchy Data and Policy Responses' (see text to n 40);

<sup>271</sup> Ministries Council, *The Basic Law of the Kingdom of Saudi Arabia* (Multimedia House Press 1992) 64; the Basic Law was issued on the Royal Decree No. A/90: 27/8/1412 (1992)

<sup>272</sup> Joint Committee, Human Trafficking (see text to n 110) 26

HRW has reported that, according to Saudi officials, international treaties are automatically incorporated into the country's domestic law. As a result, these international standards have the same legal status as domestic legislation and can be directly invoked in domestic court proceedings.<sup>273</sup> The report also adds that the government of Saudi Arabia entered a sweeping reservation to some of the treaties.

For example, the KSA government entered a reservation to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW): 'In case of contradiction between any terms of the Convention and the laws of Islamic law, the Kingdom is not under obligation to observe the contradictory terms of the Convention'.<sup>274</sup> However, they are under important obligations towards the international community if they ratify and sign a treaty.

#### **3.4.2.1 The SABL and Human Rights Principles**

Article 26 of the SABL explains that 'The state shall protect human rights in accordance with the Islamic Sharia law.'<sup>275</sup> Similarly, Article 37 states that '[t]he State shall ensure the security of all its citizens and expatriates living within its domains. No individual shall be detained, imprisoned or have his actions restricted except under the provision of law.'<sup>276</sup>

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<sup>273</sup> Human Rights Watch, 'As if I Am not Human: Abuses against Domestic Workers in Saudi Arabia' [2008], Human Rights Watch Report (see text to n 32) 30

<sup>274</sup> Human Rights Watch, 'As if I Am not Human: Abuses against Domestic Workers in Saudi Arabia' [2008], Human Rights Watch Report (see text to n 32) 31. According to the Vienna Convention on the Law of Treaties, however, '[r]eservations that are incompatible with the object and purpose of a treaty violate international law and are unacceptable precisely because they would render a basic international obligation meaningless.' See the Vienna Convention on the Law of Treaties, 23/5/1969, entered into force on 27/1/1980, 1155 United Nations Treaty Series, 331

<sup>275</sup> Ministries Council, *The Basic Law of the Kingdom of Saudi Arabia* (Multimedia House Press 1992) 64; the Basic Law was issued on the Royal Decree No. A/90: 27/8/1412 (1992)

<sup>276</sup> Ministries Council, *The Basic Law of the Kingdom of Saudi Arabia* (Multimedia House Press 1992) 79; the Basic Law was issued on the Royal Decree No. A/90: 27/8/1412 (1992)

Consequently, it seems that the major error in the KSA treatment of foreign workers, intentionally or unintentionally, is the implementation and execution of its Basic Law.<sup>277</sup> The true principles and values of the Islamic Sharia, which is the main source of legislation in the Kingdom, prohibit trafficking in persons or causing harm to migrant workers.

However, just enacting laws and articles cannot eliminate the causes and reasons for trafficking in persons; it also needs support from all the government departments and Ministries concerned. At the same time, the government needs to understand that the help and advice it has from international organisations that are concerned with trafficking in persons, could lead to a change and improvement in the traditional idea about the treatment of foreign workers.

If the belief that Saudi citizens are the ones whose human rights should be protected and migrant workers do not enjoy the same privileges, then the KSA government should amend this belief. The data has shown that the establishment of the SABL is designed to protect fundamental human rights and at the same time the KSA government is a party to several conventions on the protection of human rights. Therefore, it is clear that the crucial point is how and to whom the laws should apply.<sup>278</sup>

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<sup>277</sup> Ministries Council, *The Basic Law of the Kingdom of Saudi Arabia* (Multimedia House Press 1992) 101; the Basic Law was issued on the Royal Decree No. A/90: 27/8/1412 (1992). Please note that the Saudi Arabian Basic Law illustrates a fundamental issue in that the rights guaranteed in the Basic Law are supplemented by additional rights that Saudi Arabia had pledged to uphold as a state party to international human rights treaties. These include the Slavery Convention; the Vienna Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Elimination of all Forms of Racial Discrimination; and the Convention on the Elimination of all Forms of Discrimination Against Women. The provisions of these treaties are part of the Kingdom's domestic law and, therefore, can be invoked before Sharia's courts and other judicial and administrative bodies

<sup>278</sup> Note that the KSA is not a party to two essential international conventions: the International Covenant on Civil and Political Rights; and the International Covenant on Economic, Social and Cultural Rights

### 3.4.2.2 The SALL and Human Rights Standards in KSA

The Department of Labour in Saudi Arabia has established binding regulations to regulate the rights and obligations of domestic workers, with the purpose of ensuring good treatment for them and enabling them to obtain their human rights legally.<sup>279</sup>

It is necessary to mention that these regulations have been submitted to the Council of Ministries in the Kingdom for final approval. In addition, the Department of Labour has made firm binding procedures to ensure more protection for expatriates, and to ensure that they obtain their rights through the Labour Law and its regulations.

This includes the Ministerial Decree which prohibits all forms of trafficking in human beings, including selling KSA entry visas, collecting money from workers for employment, rendering entry or re-entry visas, exploitation of children and recruitment of children for beggary.<sup>280</sup>

This Decree stipulates that the punishment for committing any of the above offences is to be banned from recruitment of expatriate workers for a five-year period, in addition to the penalties mentioned in the relevant laws. The punishment for those who commit trafficking in persons offences should not only forbid the offenders to recruit foreign workers, but also include a custodial sentence, in order to underline the seriousness of the government in combating such offences.

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<sup>279</sup> Ministry of Labour, Guidebook for expatriates recruited for work in the Kingdom of Saudi Arabia (Ministry of Labour Press, 2006)13; see also Anne Elizabeth Mayer, Islam and human rights (Westview and London Publishers, 2006) 96. Please note that, the Saudi Arabian Domestic Workers Bylaw (discussed in Chapter 4, section 4.5) explains some of those regulations that with direct impact on the situation of domestic workers and on their becoming a victims of human trafficking or not. Those selected areas are: Definition, Type of Work and Contract; Fundamental Rights and Principles at Work; and Violence, Living Conditions and Working Times.

<sup>280</sup> Ministry of Labour Decree No 738/1 dated 16/5/1425h.

One of the main duties of the KSA Department of Labour is to safeguard the relationship between employers and employees.<sup>281</sup> This relationship cannot be governed merely by the issue of an entry visa to employees or by ignoring the fact that employee rights, especially those of domestic workers, need to be protected through the issuing and implementing of legislation in accordance to international laws and standards, and especially those that this government have ratified.

Additionally, the KSA Department of Labour should take the issue of the human rights of domestic workers seriously by initiating a comprehensive strategic plan on the implementation of a new recruitment company, the training available to the domestic workers prior to their arrival and national campaigns educating people on the prevention of human trafficking. Those measures are essential to understand the assessment of domestic workers by the KSA government and at the same time to assess how the effects of the implementation could reach the domestic workers.

Another important issue in this area is the responsibility of the KSA departments especially the Department of Labour towards domestic workers. This Department can intensify their work, as they represent the KSA government in controlling and measuring the relationship between employers and employees, with regards to international laws and standards, international human rights and the bilateral agreements.<sup>282</sup> The bilateral agreements, for example, between the sending countries and the destination countries of domestic workers are necessary in improving the conditions of life and work and subsequently significantly reducing the vulnerability element.

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<sup>281</sup> The job description that has been provided by the department of labour, while conducting the data analysis that they are the link between the workers and the employers.

<sup>282</sup> As evidenced by the data collected, the Department of Labour in Saudi Arabia is holding talks with countries of origin to enact bilateral agreements concerning domestic workers. Specifically, this Department has indicated that talks were currently taking place between themselves and Departments of Labour in the Philippines, India, Sri Lanka and Indonesia

Knowing that the number of the domestic workers is increasing, questions should be asked of the Department of Labour on current and future cooperation between them and the domestic workers' sending countries. It is not enough to issue a working visa for domestic workers; the KSA government should also do its best to protect such vulnerable people for the purpose of complying with international laws and standards and especially the international conventions that this government has signed.

Furthermore, by establishing the National Recruitment Office, the KSA government is taking into account that some individuals or groups might use the facilities for recruiting employees as a chance to traffic them for their own interests. It has to be noted that all these efforts go a long way towards establishing a foundation to eliminate any possibilities of trafficking in persons.

Prior to issuing this Anti-Trafficking Law in Saudi Arabia, the regulations of the SALL<sup>283</sup> contain provisions in regards to the protection of expatriate workers. Regulation no. 13 of Article 14 contains an important paragraph about the National Recruitment Office, which states that 'any contract which is concluded with a worker in the place from which he is recruited, shall include the necessary elements such as wage, other benefits, the type of place of work and the contract period'.<sup>284</sup>

In addition, paragraph no. 14 of the same Article states that the Recruitment Office should not collect any money from workers for any settlement against the workers' recruitment, and that the Recruitment Office may collect the costs from the employers.<sup>285</sup>

Also, paragraph no. 17 of Article 14 binds any Recruitment Office to inform the worker about the living conditions, traditions of the Kingdom and the

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<sup>283</sup> The Saudi Arabian Labour Law (Royal Decree No. M/51, 27/9/2005)

<sup>284</sup> Paragraph 13 of Article 14 of the Regulation on National Recruitment Office in Saudi Arabia

<sup>285</sup> Paragraph 14 of Article 14 of the Regulation on National Recruitment Office in Saudi Arabia

regulations concerning recruitment and hiring of non-Saudis in the Kingdom, before concluding a contract with them.<sup>286</sup>

### **3.4.2.3 KSA Ministries and Non-governmental Organizations**

In this regard, the KSA government has issued numerous ministerial rules to increase the protection of migrant workers, according to the explanation provided by the KSA government. One of those ministerial rules is the establishment of an electronic mechanism that to protect the wages of all migrant workers and to include a database, updated automatically, on the number of workers, salary payments in the private sector and the commitment of employers to fulfil their duty.<sup>287</sup>

To an extent, the establishment of the database can be seen as the line that protects migrant workers' wages and their basic human rights standards. Yet, this mechanism needs to be transparent to national NGOs, international NGOs, employers and most importantly the employees themselves. The reason for that is, as well as protecting the basic human rights for the migrant workers, the KSA government would be able to share this practice openly and show the world how they are keen to protect the rights of migrant workers.

Another ministerial rule that was issued concerns the establishment of international recruitment agencies in Saudi Arabia, which work as a broker between employers and employees when recruitment occurs.<sup>288</sup> They have added also, that those companies should be able to provide recruitment to professional, well-educated, vocationally trained and experienced migrant workers to the Saudi national labour market.<sup>289</sup>

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<sup>286</sup> Paragraph 17 of Article 14 of the Regulation on National Recruitment Office in Saudi Arabia

<sup>287</sup> The Saudi Arabian National Report for the United Nations Human Rights Commission

<sup>288</sup> The Saudi Arabian National Report for the United Nations Human Rights Commission

<sup>289</sup> The Saudi Arabian National Report for the United Nations Human Rights Commission

Indeed, the idea of establishing recruitment agencies that are supervised and audited by the KSA government represented by a concerned department, such as the Department of Labour, would help in cutting off some of the recruitment companies which use their licenses to manipulate and traffic domestic workers into Saudi Arabia.<sup>290</sup>

Another ministerial rule issued very recently is the KSA domestic workers bylaw, whose main objective is to protect domestic workers from all kinds of abuse, exploitation and ultimately human trafficking. The KSA national report on human rights conditions in Saudi Arabia explains this point in detail, stating that this bylaw should regulate the relationship between employer and employee by clarifying the duties and rights of both parties.

This report states that “this bylaw forces employers not to change the type of work that domestic workers should do, not to degrade or insult the humanity of the domestic worker, to pay the wages of the domestic worker without delay and to provide a decent living place for the domestic worker.”<sup>291</sup>

Although the KSA government has explained this, it has to be noted that all the above rights mentioned in this bylaw fall under the minimum human rights standards that any government would implement. In principle, this bylaw can not contain minimum human rights standards, as it should contain standards that are beyond the idea of minimum human rights values and goes further to the extent of increasing the human rights standards.

Through stating some of the SAMC rules, it cannot be the only effort that to be taken to protect domestic workers and eliminate the violence against them. However, it is unnecessary to state clearly that laws, bylaws and SAMC rules

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<sup>290</sup> The process of trafficking domestic workers to Saudi Arabia and the United Arab Emirates, as well as some of the methods that the recruitment agencies use are explained in the research of Antoinette Vlieger; Antoinette Vlieger, *Domestic Workers in Saudi Arabia and the Emirates: A Socio-Legal Study on Conflict* (see text to n 25)

<sup>291</sup> The Saudi Arabian National Report for the United Nations Human Rights Commission

without enforcement mechanisms or a process to implement them in domestic law are to be seen as useless tools.

It also states that one of the KSA departments have signed a bilateral agreement with national NGOs to provide hosting services for victims of such violence. Yet, none of the laws or the SAMC or even the KSA National Report explains such procedures or says who is eligible to enter those facilities.

For example, pursuant to Article 35 of the Convention on Action against Trafficking in Human Beings, states that:

“Each Party shall encourage state authorities and public officials, to co-operate with non-governmental organisations, other relevant organisations and members of civil society, in establishing strategic partnerships with the aim of achieving the purpose of this Convention”.<sup>292</sup>

This means, the encouragement to all state authorities and public officials to co-operate with non-governmental organisations or any other relevant organisations and members of civil society to establish the needed strategic partnerships aiming to achieve the purpose of such Convention, which from that data that has been collected, KSA are not applying fulfilling their Palermo Protocol.<sup>293</sup>

Taking, for example, the GRETA convention and the EU NGO's, the fact is NGOs continued to provide information in the context of the preparation of each EU country evaluation reports and they are progressively increased since

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<sup>292</sup> The Convention on Action against Trafficking in Human Beings, adopted by EU council 03/05/2005, Warsaw 2005. See also, Cornell, Anna Jonsson. "Human trafficking as a result of global imbalances: the role of the European Union." *The EU's Role in Fighting Global Imbalances* (2015): 109.

<sup>293</sup> The Convention on Action against Trafficking in Human Beings, adopted by EU council 03/05/2005, Warsaw 2005. See also, Cornell, Anna Jonsson. "Human trafficking as a result of global imbalances: the role of the European Union." *The EU's Role in Fighting Global Imbalances* (2015): 109.

the beginning of the first monitoring round.<sup>294</sup> This indicates that, working with NGO's in partnership is needed, not only to fulfil the country's obligations, but to prevent the human trafficking.

Needs to know that, NGOs on the case of GRETA's convention, did provide feedback reports and applied the follow-up given to them. In particular, NGOs participated actively in the round-table meetings on the follow-up to be given to GRETA's report and the Committee of Parties recommendations on the implementation of the Convention.<sup>295</sup>

The fact is, there is no publications at the time of writing this thesis that explain the above concerns either positively or negatively. In fact, this shows that of the KSA laws and SAMC rules can be implemented within the domestic law as it can be seen from the increase number of proposed victims.

### **3.5 Conclusion**

The number of domestic workers in KSA is increasing and as such a few facts are necessary at this stage, firstly once the number of domestic workers increases; the efforts from the KSA government should increase as well, in order to protect the rights of this group and prevent the trafficking of domestic workers. This is without a doubt one of the main duties of the Department of Labour as they are supposed to govern the relationship between employers and employees, in this case, domestic workers.

Another argument is about what exposes domestic workers to violence inside Saudi Arabia. It goes through the processes of the KSA government, represented by the Department of Labour, in abolishing some of the vulnerabilities that lead to such violence. One of the processes that the Department has adopted recently is the establishment of an e-mechanism

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<sup>294</sup> Angeli, Danai. "Demand in the context of trafficking in human beings in the domestic work sector in Cyprus." (2016).

<sup>295</sup> Angeli, Danai. "Demand in the context of trafficking in human beings in the domestic work sector in Cyprus." (2016).

procedure for the wages of all migrant workers in Saudi Arabia, including domestic workers.

This shows that such procedures are required to be more transparent and open to both national and international NGOs and employees, to avoid the misunderstanding of why it has been established. The Department of Labour also established another process, under which recruitment companies are supervised and audited by the KSA government.

Additionally, it has been showed and explained the vulnerabilities of domestic workers into two main areas. The first discussed the area of sexual exploitation, forced labour and coercive prostitution of domestic workers in Saudi Arabia. This argument looked at the process that the domestic workers have to go through if any disputes with the employer arise.

It emerged that when domestic workers get into disputes or are exploited or abused, the court system in Saudi Arabia has failed to do its job. The domestic worker came a long way to do decent work and support their dependents back home. However, under this formula, the domestic worker would not be able to consent to either being exploited or being trafficked.

The KSA government, on the other side of this argument, looked at the area of consent in the Palermo Protocol and implemented a *no-consent clause* in their anti-trafficking law, which is to be considered as a step forward for them. Yet, as stated previously, a law without implementation does not help the victims, does not prevent future crimes and does not add value to human rights standards. Adding to that, the domination of men over women in Saudi Arabia and the fact that all domestic workers are women in this country, results in increasing the violation of domestic workers' rights.

The second argument in this section goes straight to the point of domestic workers in Saudi Arabia and human trafficking. The arguments have shown that in most cases, when the domestic worker escapes from the household due

to exploitation, abuse or forced labour they either go back home through their embassies or they fall into the hands of the traffickers.

This argument discusses the possibility of women and children domestic workers being victims of trafficking in Saudi Arabia. In this area, it was shown that the KSA government strengthened the laws, in regards to human trafficking, if the victim is a child.

However, at the same time, it shows that international organisations have explained repeatedly that children are still trafficking victims in Saudi Arabia. Both of the statements illustrate one of the theories in this thesis, that the implementation of laws and policies in Saudi Arabia are either missing or inappropriate.

## **CHAPTER 4**

### **DISCUSSION (1) KSA LAWS**

#### **4.1 Introduction**

A core area of this research is anti-trafficking legislation and its implementation in Saudi Arabia. After explaining the problem of human trafficking in Saudi Arabia and the vulnerabilities of domestic workers earlier, it is clear that a discussion on the anti-trafficking legislation is needed.

The SAATL was issued in 2006, and it is now timely to study the effects of that legislation. At the same time, legislation without implementation is similar to not having legislation. It is important to know how the KSA government implemented the anti-trafficking legislation within its departments in order to assess the outcomes.

Section 2 gives an explanation of the primary data that was acquired in the course of preparing this research. Following that there are three main sections, which are necessary to understand the link between the international obligations to prevent according to the Palermo Protocol and the KSA laws.

Section 3 discusses the KSA approach towards anti-trafficking legislation, including the discussions surrounding the conflict between international law, the current KSA national law and any bilateral agreements in terms of trafficking. Finally, it will discuss the enactment of the legislation to prevent trafficking of domestic workers.

Similarly, to uncover the true purpose of converting the Palermo Protocol obligations to prevent trafficking, Section 4 examines the KSA implementation and enforcement of the Palermo Protocol and its obligations to prevent the trafficking in the SAATL and the final part of this section will cover in detail all the measures that the KSA government is taking to ensure

the proper implementation of those laws, with a particular focus on departmental executive orders.

Section 5 of this chapter is a case study of the first KSA domestic workers bylaw that was recently approved by the SAMC and is now in force. This case study supports the first theory of this thesis, which is while the KSA government neglects the implementations of the law, it increases the vulnerability of domestic workers in many areas such as forced labour, exploitation and sexual harassment which subsequently can lead to human trafficking.

## **4.2 The KSA Laws and the Primary Data**

The primary data on this chapter is divided on to two main parts where the first one is the results of the quantitative field research that has been taken in KSA for the purpose of this research. The fact is, the data that has been collected importance comes from the perspective of the length on the actual KSA implementation to the national and international laws to prevent the human trafficking and domestic workers trafficking.

Initially, the data in this section are shown and represented by the KSA laws that are relevant to this thesis such as the SAATL, SLL and the SABL. Those laws are essential while analysing the progress, if there is any, of the KSA implementation to prevent the trafficking.

Additionally, the data of this chapter comes from the point of view of the KSA targeted department that have been the subject of this research and the engagement with needed information. This can be seen, as for example, in the part where the Department of Labour transformation to the SALL on issues such as the prohibition of the human trafficking, forced labour or the promotion of the tights of the migrant workers.

Similarly, the data can be seen while analysing the role of the targeted departments in enforcing and implementing the SAATL. A further step, of this data, can be seen while looking at the international laws that the KSA government is member to and their national laws. This fact can be studied in this part and seen in the clear conflict between both laws.

Furthermore, the data will focus on the role of the KSA departments in elimination of the causes of domestic workers trafficking through the same international and national laws and their methods of interpreting them. Those methods can be seen in any bilateral agreement that any KSA department is conducting with another country of origin that has the concern on wellbeing of the domestic workers. The primary intention from those bilateral agreements, beside than protecting the domestic workers and prevent them from being trafficked in this case, is the deeper look into the fulfilment of the Palermo Protocol.

Once those data have been allocated and analysed in the next few section, it is vital to examine the results of the KSA implementation to those laws through the SAATL and more importantly through the prevention of domestic workers in the SAATL. The fact is the data have shown clearly that while the KSA government have adopted the Palermo Protocol and initiated their first anti-trafficking law, still their implementation would be seen as at least under further discussion.

The fact come into the lights due to the prevention element that have been asserted upon in the Palermo Protocol is found missing from the SAATL. Not only that, the KSA department have shown in the data that the SAATL is in fact created for the protection, punishment and prevention of human trafficking, which contract the above statement. The last area in this part was the KSA department's executive orders and the specific law, such as the domestic workers bylaw, in the implementation process in the national laws, such as the SALL and the domestic workers bylaw, to prevent the trafficking.

The second main part is case study of this chapter, which is the KSA domestic workers bylaw. This case study is, for in fact, the first case study to prepared on the KSA domestic workers bylaw from the perspective or preventing the trafficking of domestic workers.

The case study focused on issue that clearly are the leads on the vulnerability of the domestic workers and what could make them subjective to trafficking. Those vulnerability was studied in this case study in the forms of the definition of the domestic workers, their type of contracts that supposedly protecting them, the consideration on their fundamental human rights and, finally, the deeper discussion on the violence and living conditions that victims of domestic workers trafficking might face.

### **4.3 The KSA Legislations and the Human Trafficking**

#### **4.3.1 The KSA Approach to Human Trafficking Legislations**

The link between human trafficking issues and Saudi Arabia is crucial to understanding this problem and hopefully getting nearer to a solution. As established in earlier chapters, human trafficking consists of two main elements, movement and exploitation. The laws that the Department of Labour is implementing in their efforts to combat trafficking are in fact not related to any concepts of human trafficking. All of the above efforts are to combat different kinds of exploitation, forced labour and child labour.<sup>296</sup>

Similarly, other relevant anti-trafficking legislation in the KSA can be found in the Saudi Arabian Labour Law.<sup>297</sup> This Law states that it is absolutely not allowed for expatriates to work in any form of forced labour, employers

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<sup>296</sup> Refer to ILO Convention No. 189 Worst Forms of Child Labour Convention 1999; ILO Convention No. 29 Forced Labour Convention 1930; ILO Convention No. 45 Underground Work (Women) 1935; ILO Convention No. 89 Night Work (Women) 1948; ILO Convention No. 105 Abolition of Forced Labour 1957; ILO Convention No. 123 Minimum Age (Underground Work) 1965

<sup>297</sup> The Saudi Arabian Labour Law (Royal Decree No. M/51, 27/9/2005)

cannot in any way restrict the movement of an employee under any circumstances, the decent treatment of employees by employers is encouraged and children under the age of 15 are not allowed to work in any kind of hazardous work.<sup>298</sup>

Additionally, the Department of Labour issued an executive order prohibiting all kinds of human trafficking, the selling of all entry visas, collecting money from expatriates for work permits and collecting money from expatriates for exit and re-entry visas.<sup>299</sup> That being said, it is clear that the Department of Labour in Saudi Arabia is approaching the idea of human trafficking from the wrong prospective.

At the same time, the collected data shows that KSA border control legislation and efforts are combating human trafficking. The Border Control Agency legislation, Article 4 states that smuggling people into KSA is an offence punishable by law.<sup>300</sup> It also states, that the following punishments are to be enforced as a whole or separately, jail for five years, penalty of fifty thousand riyals, removal of licence and temporary suspension from work.<sup>301</sup>

What cannot be understand from the above is why the government of Saudi Arabia is not looking at the issue of human trafficking from the point of view of the Palermo Protocol, which they have signed and become party to. Similarly, the Anti-Trafficking Law in Saudi Arabia forms a clear point of differentiation between smuggling, forced labour, child labour and human trafficking.

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<sup>298</sup> The Ministry of Labour in Saudi Arabia, in answer to one of the data questions

<sup>299</sup> The Ministry of Labour executive order No. 1/738 dated 04/7/2004. This executive order states ‘the prohibition of all kinds of human trafficking, such as the selling of entry visas to KSA, charging fees for working in KSA, charging fees for issuing re-entry visas, charging fees for issuing permit documents, as well as the non-upholding of contract agreements, degrading the humanity of a worker or the exploitation of children for the purpose of beggary.’ Author’s translation

<sup>300</sup> Article 4 of the Saudi Arabian Border Control Agency, issued 1974

<sup>301</sup> The Saudi Arabian Department of Interior

The Human Rights Authority explained that the KSA government is looking at the facts of joining some of the international agreements with relevancy to human trafficking.<sup>302</sup> They also explained that the government of Saudi Arabia has joined and ratified some of the main international treaties related to human trafficking.<sup>303</sup>

The first treaty on their list was the Palermo Protocol to prevent the trafficking of humans, especially women and children, secondly, the Geneva Convention on the abolition of slavery and all its related patterns.<sup>304</sup> They added that the KSA government has also joined and ratified the ILO Convention on the Worst Forms of Child Labour, the Convention on the Elimination of All Kinds of Discrimination against Women, and the Convention against Torture and Any Cruel Treatment.<sup>305</sup>

These initiatives should be highly praised as attempts to protect at least some human rights standards. Yet, they cannot be classified as an obligation to prevent trafficking due to the fact that all those conventions, with the exception of the Palermo Protocol, are dated and do not make reference to human trafficking.

It has been mentioned that the KSA government ratified the UN Palermo Protocol and during the data collection a question comes up about whether the

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<sup>302</sup> The KSA Human Rights Authority has stated that ‘the KSA is studying to join some international agreements and treaties, such as the Optional Protocol for Children’s Rights in Armed Combat; the Optional Protocol for Children’s Rights and the Prohibition of Child Pornography; and the Optional Protocol to Combat Organised Crime across National Borders.’ Author’s translation

<sup>303</sup> Department of Human Rights Authority

<sup>304</sup> Instruments that contain prohibition against some form of trafficking, such as the Slavery Convention 1926 and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956

<sup>305</sup> Instruments that contain prohibition against some forms of trafficking, such as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) 1979; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment 1984; the Convention on the Protection of the Rights of all Migrant Workers and their Families 1990, contain legal denouncements on the trafficking of humans.

KSA officials participated in the drafting of the Palermo Convention, none of the five participating KSA departments answered negatively or positively.<sup>306</sup>

If the answer were that they did participate in drafting this widely ratified protocol, it would be assumed that the KSA government had knowledge of the debates that occurred during the drafts and most importantly, knows the obligations to prevent the trafficking.

For example, the initial drafters had a preliminary proposal of preparing three separate protocols on smuggling migrants by sea, smuggling and trafficking of migrants and trafficking of migrants and children.<sup>307</sup> As the KSA government is a member of the UN, it would be safe assumption that they did participate in the UNGA meeting to draft the Palermo Protocol.

Yet, those who participated in this discussion failed to transfer the conclusions of this committee to the proper departments in the KSA government in order to start prepare that needed policies on prevention of trafficking.

On an international level, any state could participate in any of the five stages that concern the treaty creation; 1) norm emergence; 2) negotiation and drafting; 3) signature; 4) ratification; 5) implementation and compliance.<sup>308</sup> Additionally, Sirini argues that, “ typically, the negotiating states parties are some of the first states to sign and ratify the treaty [...] States primarily join treaty negotiation and drafting to influence the institutional structure, treaty language, rules, jurisdiction, expectation and states commitments at the drafting state”<sup>309</sup>

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<sup>306</sup> This point is in reference to the first question on the questionnaire that was sent to the targeted Saudi Arabian departments. See also, deeper analysis to this area in section 4.3.2 of this thesis.

<sup>307</sup> Anne T Gallagher, *The International Law of Human Trafficking* (see text to n 112) 25;

<sup>308</sup> Srinivasa Srinivasan ‘State participation in international treaty regimes’ (Routledge, 2016) P 35 - 37

<sup>309</sup> Srinivasa Srinivasan ‘State participation in international treaty regimes’ (Routledge, 2016) P 35 - 37

Thus, having in mind the benefits to states parties in drafting and negotiating the international treaty, KSA are totally not engaged fully in such activities, as from the data that has been collected, which they should do.

Yet, the government of Saudi Arabia has chosen to ratify only the slavery conventions and the Palermo Protocol. As such, thinking of joining the optional protocol for children in armed conflicts, the optional protocol on the sale of children, child prostitution and child pornography and the Arabic Protocol on Combating Organized Crime across National Borders<sup>310</sup> is not enough and this strategy needs to be changed.

Examining the KSA government's national approach to the human trafficking phenomenon, it has to be noticed that in 1991 the Basic Law of Saudi Arabia included in Article 26 that 'the state shall protect human rights in accordance with Sharia law.'<sup>311</sup> Eighteen years after issuing the SABL, the KSA government issued its first and last anti-trafficking legislation to date.<sup>312</sup>

This legislation could be identified as the government's best approach to human trafficking and its obligations, yet the question of why it took the government nearly two decades to acknowledge the human trafficking problem should be asked, especially as migrants started flowing into the country from the early 1980s, to help in the development of the country.

One answer to that question is that the UN only started looking at this phenomenon seriously at the end of the nineteenth century, and so from a historical perspective, KSA is not that far behind. Another answer, is that the KSA government lacked the intent to protect human rights principles in the

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<sup>310</sup> The KSA Human Rights Authority has stated that 'the KSA is studying to join some international agreements and treaties, such as the Optional Protocol for Children's Rights in Armed Combat; the Optional Protocol for Children's Rights and the Prohibition of Child Pornography; and the Optional Protocol to Combat Organised Crime across National Borders.' Author's translation

<sup>311</sup> Ministries Council, *The Basic Law of the Kingdom of Saudi Arabia* (Multimedia House Press 1992) 64; the Basic Law was issued by Royal Decree No. A/90: 27/8/1412 (1992) and contains 88 Articles

<sup>312</sup> Chapter 3 & 4 of this thesis discusses anti-trafficking legislation in Saudi Arabia in full detail

early 80s and 90s, as if they did have that intent, there would not have been two decades' delay in starting to look at this issue. Additionally, just recently, the KSA government has in fact established a Labour Law that protects the rights of domestic workers from violations that called the domestic workers bylaw.<sup>313</sup>

Additionally, states can approach human trafficking through explaining any human trafficking that occurs within their jurisdiction. This means that states need to explain who they think is going to be trafficked, how they think they are going to be trafficked and the forms the trafficking might take. However, in a report published by the Arab League Council, the Prevention section gives no encouragement to members of the League in regards to the obligations of prevention to who might be vulnerable to being trafficked.<sup>314</sup>

Another report from the Naif Arab University for Security and Science in KSA gives a clear definition of the people targeted by traffickers in Saudi Arabia as well as the purposes of them being trafficked, but not of the obligations of KSA to act on prevention.<sup>315</sup>

It would be better if the KSA government had explained in detail that human trafficking could happen when people are moved from one place to another

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<sup>313</sup> The KSA government has clearly stated that the Anti-Trafficking Law in all crimes related to trafficking protects domestic workers; yet, other violations are not protected. Domestic worker violations may involve such abuse as confiscation of travel documents, withholding of wages, confinement, no time off, isolation from the community, physical and sexual abuse, degrading treatment and the threat of harm including the threat of arrest and deportation. These are some of the violations that domestic workers could face while working far away from their homes and families. Despite the list of possible violations, the Saudi Arabian government has yet to show that they can protect domestic workers by establishing a specific legal document guaranteeing to protect their rights or at least adding them to the current Labour Law. The Domestic Workers Bylaw will be discussed in chapter 6 of this thesis and in the specific case studies

<sup>314</sup> Arab League, The Comprehensive Arabic Strategy to Combat Human Trafficking (The Legal Department in the General Council, 2012)

<sup>315</sup> It has to be noted that this definition and acknowledgment are considered a step forward, as far as the Saudi Arabian government is concerned, despite the fact that this University is a known educational establishment

within a country or across a border and into a situation in which they are exploited <sup>316</sup> as this is an essential part of the definition of trafficking according to the Palermo Protocol on trafficking.<sup>317</sup>

Furthermore, an approach to human trafficking can be achieved through consistently review the legal status of the government. For example, in previous chapters it has been explained that TVPA and its reauthorizations 2003 and 2005 give a better idea of how state legislation can protect victims of trafficking and prevent future human trafficking.

In this regard, the data that have been collected for the purposes of this research show that since the issuance date of the Anti-Trafficking Law, there have not been any reviews or amendments. However, it also showed that the KSA government established a permanent committee to combat all kinds of human trafficking two years after the Anti-Trafficking Law was issued.

From the data, this committee should consist of members from the following Saudi departments, the Human Rights Authority, the Department of the Interior, the Department of Foreign Affairs, the Department of Justice, the Department of Social Affairs, the Department of Labour and the Department of Culture and Information.<sup>318</sup>

There is no doubt that the establishment of this committee is considered to be a move towards acknowledging the problem of human trafficking in Saudi

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<sup>316</sup> Article 3(a) of The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 5). The movement aspect of trafficking accompanied by the action of someone who intends to exploit a person on the move for profit is essential to understanding the nature of this crime. The movement away from home and local community into an environment where a person is isolated and manipulated by others increases their vulnerability and makes trafficking a despicable crime and a violation of individuals' fundamental human rights. Exploitation and its intent is the other essential aspect of human trafficking, alongside movement. If there is only movement and no intent of exploitation, then this is not trafficking. If there is exploitation but no movement, then this is not trafficking either

<sup>317</sup> T. Obokata, 'EU Council Framework Decision on Combating Trafficking in Human Beings: A Critical Approach' [2003] 40 Common Market Review 924

<sup>318</sup> The KSA Human Rights Authority of the KSA government

Arabia. The idea of gathering all departments concerned in one committee to combat human trafficking shows how communication is needed at this stage as an important factor to combat trafficking.

#### **4.3.2 KSA Main Laws and the Obligations to Prevent Trafficking**

There are three main laws related to human trafficking and domestic workers. The first law is the Saudi Basic Law (SABL), which governs all relations between the government and anyone living in the country, whether a citizen or a foreigner.<sup>319</sup> The second is related directly to the issue of human trafficking and is the Saudi Anti-Trafficking Law (SAATL).<sup>320</sup> Finally, the third instrument related to human trafficking is the Saudi Arabian Labour Law (SALL).<sup>321</sup>

These three instruments are crucial in the issue of human trafficking, as it will show whether the KSA government has thought about the progress of KSA in regards to their obligations of trafficking. Similarly, it will show the process of amending the laws in accordance with the new international instruments that the government have become a party to.

It should be noted that, there is comparatively little information available on laws in Saudi Arabia. However, in 2009 the Saudi Arabian government took steps towards reducing the problem by enacting the Anti-Trafficking in Persons Law. Until recently, protections law provided were not available in languages other than Arabic and therefore were not useful to exploited migrants.

It is a fact, that such information in Arabic might be useful to their representatives, if available. However, Domestic workers and their embassies

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<sup>319</sup> Ministries Council, *The Basic Law of the Kingdom of Saudi Arabia* (Multimedia House Press 1992) 64; the Basic Law was issued on Royal Decree No. A/90: 27/8/1412 (1992) and contains 88 Articles

<sup>320</sup> Saudi Arabian Anti-Trafficking Law, issued 2009

<sup>321</sup> Saudi Arabian Labour Law (Royal Decree No. M/51, 27/9/2005)

do not speak the language, which KSA can provide assistance as such, as part of the awareness campaign.

The SABL contains 83 articles and was issued in 1992 and since then, the Saudi government has joined numerous regional and international conventions such as the UN, ILO and the Arab League, one of which is the Palermo Protocol.<sup>322</sup> Yet, the Basic Law remains without changes to any of its articles, especially those concerning the obligations to prevent the human trafficking.

Looking at Article 37 of the Basic Law, it states “The home is sacrosanct and shall not be entered without the permission of the owner or be searched except in cases specified by statute”.<sup>323</sup> This Article will not allow any rescue of victims of trafficking of domestic workers. It insists on the nature of the privacy of the home and any searches have to be approved in advance. The Palermo Protocol indicates in Article 9 (4) the need to illuminate all causes of vulnerabilities that may lead to trafficking. One of the vulnerabilities of domestic workers is working behind closed doors, without being able to be rescued if they face exploitation.<sup>324</sup>

Secondly, the SAATL is relatively new as it was established in 2009.<sup>325</sup> There is no doubt that the government of Saudi Arabia needs to examine the effectiveness of this law in accordance with Palermo Protocol obligations to prevent the trafficking.

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<sup>322</sup> Saudi Arabian Anti-Trafficking Law, issued 2009

<sup>323</sup> Article 37 of the Saudi Arabian Basic Law

<sup>324</sup> Section 4 of Article 9 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly states that: ‘States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.’

<sup>325</sup> The Saudi Arabian Anti-Trafficking Law, issued 2009

The KSA government ratified the Palermo Protocol in late 2008 and the following year after they published the first anti-trafficking legislation. In this anti-trafficking legislation, the KSA government listed its obligations towards the victims of human trafficking, the public and any other obligations.

This law, when comparing the goals of the Palermo Protocol to it, it can be easily seen that it shares some of the Protocol's goals. However, the Saudi Anti-Trafficking Law consists of 17 articles concentrating on the idea of definition, protection and punishment only; none of the articles explains any kind of method focusing on the obligations to prevent human trafficking in Saudi Arabia.<sup>326</sup>

In the area of the obligation to protect victims of trafficking of persons, the Palermo Protocol asserts some comprehensive measures that all member state signatories need to comply with.<sup>327</sup> Article 6 covers the need to provide assistance and protection to those who have been identified as victims of human trafficking.<sup>328</sup>

Article 7 asserts the rights of victims of human trafficking in countries of destination by ensuring that all States parties shall adopt specific legislation to provide the victims with residence permits to remain temporarily or

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<sup>326</sup> Articles 1-17 of the Saudi Arabian Anti-Trafficking Law, issued 2009. Articles 3, 6, 7, 8, 9, 10, 11, 13 of the Saudi Arabian Anti-Trafficking Law, issued 2009, explain the punishment of traffickers. Article 4 of the Saudi Arabian Anti-Trafficking Law, issued 2009, explains the kind of protection available to victims of trafficking in Saudi Arabia. Article II of the Saudi Anti-Trafficking Law, in particular, (Appendix 3 of this thesis) explains the definition, the means and the purpose of human trafficking.

<sup>327</sup> Further explanation to the implementation of Palermo Protocol Article 6, 7 is shown in later chapter (section 5.4.2 page 219 – 223)

<sup>328</sup> Article 6 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly

permanently.<sup>329</sup> Article 8 of the Protocol explains that all States parties shall ensure, in their legislation, the rights of those victims to seek repatriation to the destination of their choice.<sup>330</sup>

Furthermore, the above treaties can guarantee government policies to prevent conditions leading to trafficking and to protect foreign workers from discrimination and degrading treatment, especially when they have been signed and ratified by a country.<sup>331</sup> HRW has reported that, according to Saudi officials, international treaties are automatically incorporated into the country's domestic law.

As a result, these international standards have the same legal status as domestic legislation and can be directly invoked in domestic court proceedings.<sup>332</sup> The report also adds that the government of Saudi Arabia entered a sweeping reservation to some of the treaties.

The adaption of the KSA anti-trafficking law and its implementation mechanisms should not come from the point of view of Palermo Protocol, protecting victim, preventing human trafficking, the effects of human trafficking and the damage to society only.<sup>333</sup> In principle, the KSA government can look at this from the main causes, which are the vulnerabilities of the victims of human trafficking.

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<sup>329</sup> Article 7 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly

<sup>330</sup> Article 8 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly

<sup>331</sup> Joint Committee, Human Trafficking (see text to n 110) 12

<sup>332</sup> Human Rights Watch, 'As if I Am not Human: Abuses against Domestic Workers in Saudi Arabia' [2008], Human Rights Watch Report (see text to n 32) 30

<sup>333</sup> ILO request on clarification of Articles 1, 2, 25 of the Saudi Arabian Anti-Trafficking Law and the measures of implementations

This fact came to light because one of the departments stated that, the concerned departments are studying some of the key vulnerabilities in human trafficking. The vulnerabilities that the KSA government are intending to eliminate can be seen in some parts of the KSA domestic workers bylaw, which will be discussed in the case study of this chapter, in order to protect domestic workers in the country, the proposed law to guide recruitment companies, the proposed law on child protection and the proposed law to eliminate harm to people.<sup>334</sup>

As explained above, the Anti-Trafficking Law concentrates on the idea of definition, protection and punishment only and none of the Anti-Trafficking Law Articles explain in any way the obligation to prevent human trafficking in KSA.<sup>335</sup> Human trafficking should be dealt with as an issue, which affects the rights of the victims and subsequently deprives them, in this case the domestic workers, of working properly.

Yet, the Anti-Trafficking Law in KSA does not share the same values. Rather, it has strengthening the punishment for the crime of trafficking, without looking towards either the organised criminal aspect or the other elements obligations of trafficking, such as the prevention.

For unknown reasons, none of the departments involved in the data collection were able to comment in detail on the role of organised crime in increasing the amount of human trafficking and in particular the trafficking of domestic workers. Although, one of the departments made a vague comment that most

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<sup>334</sup> The KSA Human Rights Authority has stated that ‘the specialised departments in KSA are in fact studying several proposed laws and bylaws that are actually relevant to human trafficking. Those proposed laws are the Domestic Workers Bylaw; the Recruitment Companies Bylaw; the Protection of Children Bylaw; and the No Harm Bylaw.’ Author’s translation

<sup>335</sup> Also, see Articles 1-17 of the Saudi Arabian Anti-Trafficking Law, issued 2009. Articles 3, 6, 7, 8, 9, 10, 11, 13 of the Saudi Arabian Anti-Trafficking Law, issued 2009, explain the punishment of traffickers. Article 4 of the Saudi Arabian Anti-Trafficking Law, issued 2009, explains the kind of protection provided to victims of trafficking in Saudi Arabia

cases of domestic workers are as a result of escaping from a household to work illegally for higher expected wages.<sup>336</sup>

Whether this comment is the official or unofficial response from the government on this area, the supposed efforts should go towards the KSA obligations of prevention of trafficking, whether it caused by organised crime or other parties.

There is no hidden agenda in the UN adopting the Palermo Protocol, which are mainly to combat organised crime.<sup>337</sup> Parallel to this statement, it has been argued that even if this Protocol neglects some aspects in regards criminalising the individual crimes of human trafficking, the state parties can initiate legislation that covers all the neglected aspects.<sup>338</sup>

An example made earlier in this regard when explaining that the European legislation focuses on criminalising trafficking, outlining penalties for punishing trafficking offenses and mandates the protective measures that states need to consider.<sup>339</sup> The point illustrated above is that even when the UN chooses to establish an international world-recognised convention for some specific reason, state parties to this convention can develop their own national legislation for the greater-good which in this case, combating the human trafficking.

Looking at a similar Anti-Trafficking Law in the US, for example, Section 202 of this Act explains the availability and responsibilities of the consular

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<sup>336</sup> Comments by the KSA Human Rights Authority on the question about organised crime

<sup>337</sup> J Goodey, 'Human Trafficking: Sketchy Data and Policy Responses' (see text to n 40);

<sup>338</sup> AD Jordan, 'The Annotated Guide to the Complete UN Trafficking Protocol' (see text to n 63);

<sup>339</sup> W Shinkle, 'Prevention of Human Trafficking: An Evaluation of Current Efforts' (see text to n 104);

officer of the Departments of State and the definition that should be used for the protection of domestic workers and other non-immigrants.<sup>340</sup>

Thirdly, the SALL, which in Article 7 excludes the domestic workers from being bound by this law.<sup>341</sup> It has been explained earlier that countries should act on their legislation to help and promote their laws along with international standards to protect workers. One thing that has been noticed from the data collection is that the previous Saudi Labour Law was in force from 1969 until the new law was published.<sup>342</sup> It can be seen that it took the government 36 years to change the Labour Law, and when they did they excluded the domestic workers from its provisions.

Most of the articles are designed in particular to create powers to punish the traffickers, whether they are working in an organized group or individuals.<sup>343</sup> In this legislation, it can be seen that there is only one article, which is designed to protect the victims of trafficking, and no article covers the prevention aspect, which is mentioned in the Palermo Protocol.<sup>344</sup>

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<sup>340</sup> Section 202 of the 2008 re-authorization of the United States of America Congress Trafficking Victims Protection Act, widely known as TVPA. The Definitions in this section state that: '(1) The term employment, or education-based non-immigrant visa, means (A) a non-immigrant visa issued under subparagraph (A)(iii), (G)(v), (H), or (J) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)); and (B) any non-immigrant visa issued to a personal or domestic servant who is accompanying or following to join an employer.'

<sup>341</sup> The TIP report states that 'domestic workers remain excluded from general labour law protections. Saudi Arabia did not take actions to reduce the demand for prostitution or child sex tourism by Saudi nationals or acknowledge that trafficking for commercial sexual exploitation was a problem affecting the Kingdom.' See U.S. Department of State, Trafficking in Persons Report [2009] TIP Report

<sup>342</sup> The new Saudi Arabian Labour Law issued by Royal Decree No. M/51, 27/9/2005

<sup>343</sup> Articles 3, 6, 7, 8, 9, 10, 11, 13 of the Saudi Arabian Anti-Trafficking Law, issued 2009

<sup>344</sup> Article 4 of the Saudi Arabian Anti-Trafficking Law, issued 2009

### **4.3.3 KSA Bilateral Agreements and the Palermo Protocol**

#### **Obligation to Prevent Trafficking**

It is also important in this research to link the government's perception of this phenomenon locally and internationally. As regards human trafficking, there are many factors controlling the element of the victims. Some of those elements can be listed as the countries of destination, the countries of transit and the countries of origin.

Those circumstances are essential when combating human trafficking. Yet, the research question of this thesis is not combating human trafficking across borders, but rather within. Article 2 (c) of the Palermo Protocol, Statement of Purpose, states that “ (c) To promote cooperation among States Parties in order to meet those objectives.”<sup>345</sup> Therefore, this indicates that the obligations to prevent trafficking of domestic workers in Saudi Arabia can be met through promoting the cooperation between countries of origin and countries of destination to prevent the trafficking.

That being said, it is necessary to understand the element of the home country of the domestic workers. The domestic workers come from different nations, as explained earlier, they have different cultures and different languages. It is also necessary to understand the element of cooperation between the KSA government, and the countries of origin, even if the trafficking occurs internally. For example, that necessity comes from the fact that the countries of origin should educate the domestic workers about the causes and signs of trafficking at an early stage.

The data that has been collected shows strong indicators of there not being any bilateral agreements between the KSA government and any other

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<sup>345</sup> Article 2 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly. This article is about the Statement of purpose of the Palermo Protocol, which states that, The purposes of this Protocol are: (a) To prevent and combat trafficking in persons, paying particular attention to women and children; (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and (c) To promote cooperation among States Parties in order to meet those objectives.

government.<sup>346</sup> One department expressed their views in this vital area, stating that they have not applied a bilateral agreement in regards to the trafficking issue, which in direct contradict to the obligations to prevent trafficking. However, they have signed ministerial agreements with another country guiding the recruitment of domestic workers into Saudi Arabia.<sup>347</sup>

An example of effective engagement in this area can be seen in the US Department of State, which has been actively engaging in multilateral efforts over the past few years.<sup>348</sup> They have shown huge efforts in leading the world in delegations and bilateral talks with other countries and sharing their views on the matter of human trafficking.<sup>349</sup>

The US government have participated in many bilateral talks such as the inter-agency delegation to the UN Vienna forum in 2008, the International Conference on Human Trafficking, the delegation to the UN Committee on the Rights of the Child, the national conference on the TIP rapporteurs in Vienna and many other international activities.<sup>350</sup>

However, the data collected does not show any activities similar to those of the US government, which indicates that the KSA government has a long way to go fulfilling their obligation of prevention, and immediate action is needed. For instance, when the KSA government starts bilateral talks and agreements with other countries, especially the countries of origin, they will can share knowledge about the domestic workers and similarly, they will would accept

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<sup>346</sup> The Department of Justice in answer to Question 37

<sup>347</sup> The Department of Labour in answer to Question 37. They also added that bilateral agreements are needed when establishing a new line of recruitment for domestic workers

<sup>348</sup> Attorney General's Report to Congress, 'Assessment of U.S. Government Activities to Combat Trafficking in Persons' (U.S. Department of Justice 2009) 66

<sup>349</sup> Attorney General's Report to Congress, 'Assessment of U.S. Government Activities to Combat Trafficking in Persons' (U.S. Department of Justice 2009) 66

<sup>350</sup> Attorney General's Report to Congress, 'Assessment of U.S. Government Activities to Combat Trafficking in Persons' (U.S. Department of Justice 2009) 66

the backgrounds of those domestic workers and subsequently, amend laws and policies accordingly.

The main aim of the bilateral agreements as it has been explained in Palermo Protocol and the obligation to prevent, is to find suitable understanding and cooperation between countries, destination and origin, for the sake of the domestic workers. Some of the means and purposes of human trafficking in Saudi Arabia have been shown earlier and if the KSA government is keen to fulfil their obligations, it should negotiate on those factors with the countries of origin. Essentially, such dialogue will result in sending domestic workers to Saudi Arabia with more capability of understanding how trafficking occurs than previous domestic workers, and simultaneously, the KSA government will know which line to focus on.

#### **4.3.4 KSA Ministerial Orders and the Prevention of Trafficking**

The Department of Labour issued an executive order prohibiting all kinds of human trafficking, the selling of all entry visas, collecting money from expatriates for work permits and collecting money from expatriates for exit and re-entry visas as part of the obligations to prevent the trafficking.<sup>351</sup>

One could argue that executive orders could be made as part of KSA legislation to interpret and implement international law into KSA domestic law. However, targeting specific Articles from the international conventions and implementing them without looking at the rest of the Articles could be seen as an attempt to not fully implement the entire international convention.

An example could be made here, through inspecting the cooperation between the KSA government, represented by the Department of Labour, and the ILO.

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<sup>351</sup> The Ministry of Labour executive order No. 1/738 dated 04/7/2004. This executive order states ‘the prohibition of all kinds of human trafficking, such as selling entry visas to KSA, charging fees for working in KSA, charging fees for issuing re-entry visas, charging fees for issuing permit documents, as well as the non-upholding of contract agreements, degrading the humanity of a worker or the exploitation of children for the purpose of beggary.’ Author’s translation

The ILO has expressed deepest concerns about the enforcement of Article 25 of the ILO Forced Labour Convention, which asked all ratifying governments to enforce and criminalize all kinds of forced labour actions.<sup>352</sup>

Similarly, the ILO has sent an enquiry to the KSA government asking for a clarification on the implementation of the Anti-Trafficking Law in KSA including details on current cases and more information on measures of prevention, protection and punishment.<sup>353</sup>

For example, the current KSA sponsorship system has to be addressed and whether it has an effect on the growing number of victims of human trafficking and whether it links with organised crime in the country. The ILO stated that sponsorship in the Gulf countries could be seen as an unfair system, which may provoke sponsors to violate the human rights of foreign workers.<sup>354</sup>

They added in regards to the current situation of domestic workers in this region in particular, that they lack an inspection mechanism, which maintains the isolation of domestic workers in private businesses and heightens their vulnerability to mistreatment.<sup>355</sup>

This recent report by the ILO shows that the KSA sponsorship system could be seen as a tool to increase the number of migrant workers, and domestic workers in particular, which ends up in the trafficking cycle. Without a doubt

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<sup>352</sup> The National Committee to Combat Human Trafficking with regards to ILO convention No. 29 on Forced Labour; Article 25 of the C029 - Forced Labour Convention 1930 (No. 29), which states that '[t]he illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced.'

<sup>353</sup> ILO request on clarification of Articles 1, 2, 25 of the Saudi Arabian Anti-Trafficking Law and the measures of implementations

<sup>354</sup> ILO, 'Tricked and Trapped Human Trafficking in the Middle East' (The International Labour Office, Geneva 2013). Note that the Gulf Countries include Saudi Arabia, Kuwait, Bahrain, Qatar, the United Arab Emirates and Oman)

<sup>355</sup> ILO, 'Tricked and Trapped Human Trafficking in the Middle East' (see text to n 354)

it increases the chances of violating the principles of human rights, and at the same time increases the vulnerabilities of potential victims.

One of the KSA departments explained this by stating that the KSA government was advised to abolish the current sponsorship system, but at the current time it is impossible for several reasons. KSA has a large land area and there are many foreign workers and people seeking workers, which require a system to organise relations between the two parties.<sup>356</sup> This department asserted that the KSA sponsorship controlled the jurisdiction of the SALL and the reinforcement of the removal of the vulnerabilities of migrant workers as well.<sup>357</sup>

HRW has documented abuses against migrant domestic workers in the Gulf countries, including KSA, which involve beatings, confiscation of passports, confinement to the home and overlong working hours with no days off.<sup>358</sup>

That being said, it is the view of this thesis that the KSA government is not enforcing international conventions into domestic law. It is the practice that the departments concerned can issue an executive order just to show the implementation process. The only exception, from those executive orders, is the issuance of the SAATL by the SAMC and not a specific department.

## **4.4 Saudi Arabian Implementations of Legislation**

### **4.4.1 Obfuscated Implementation of The Palermo Protocol in the SAATL**

The Palermo Protocol sets resolution for the implementation of legislation in regards to the protection, punishment and prevention of human trafficking.

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<sup>356</sup> The National Committee to Combat Human Trafficking in Saudi Arabia in an answer to one of the data questions

<sup>357</sup> The National Committee to Combat Human Trafficking in Saudi Arabia in an answer to one of the data questions

<sup>358</sup> Human Rights Watch '2012: A Year of Progress for Domestic Workers' (see text to n 32)

Each State Party shall implement such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Article 3. This statement can be seen in the Palermo Protocol emphasising the needs to adopt, implement, endeavour and strengthen any measures in regards to human trafficking.<sup>359</sup>

In more detail, the Palermo Protocol, the most approved treaty to combat trafficking, asserts the need to adopt measures laws, which intended to criminalize the act of trafficking.<sup>360</sup> Another Article shows that states are obliged to implement information exchange and official training within the country or with other State party.<sup>361</sup> Similarly, the protocol did not neglect to emphasise on implementation of those laws that should protect the State party borders.<sup>362</sup>

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<sup>359</sup> The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly.

<sup>360</sup> Section 1 of Article 5 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly states that '[e]ach state shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Article 3 of this protocol, when committed intentionally.' Also, Section 2 of Article 5 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly states that '[e]ach state shall adopt such legislative and other measures as may be necessary to establish as criminal: a) subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this Article; b) participating as an accomplice in an offence established in accordance with paragraph 1 of this Article; and c) organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this Article.'

<sup>361</sup> Article 10 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly

<sup>362</sup> Article 11 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly

Additionally, as established earlier, the KSA government joined some international conventions related to human trafficking. Article 70 of the SABL states on all international agreements and conventions must be approved via the SAMC prior ratifications.<sup>363</sup> The data collected shows that as long as an international convention has been issued by an approval from the SAMC, subsequently, those conventions will be interpreted immediately as part of KSA law.<sup>364</sup>

Yet, as explained before, this cannot be seen in the KSA implementation to the Palermo Protocol, as it has not implemented the obligation of prevention section in its laws. The Department added that, because the same national instrument that issues the Basic Law, all national courts, issued the conventions and departments are obliged to implement them into laws without hesitation.

That being said, when inspecting the international conventions signed by the KSA government, which are relevant to human trafficking, it can be seen that as far as meeting the obligations of preventing of human trafficking, the

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<sup>363</sup> Article 70 of *The Basic Law of the Kingdom of Saudi Arabia* (Multimedia House Press 1992) 101; the Basic Law was issued on Royal Decree No. A/90: 27/8/1412 (1992)

<sup>364</sup> The KSA Human Rights Authority

government of KSA have not done enough in implementing the international conventions internally.<sup>365</sup>

The Basic Law should explain international convention procedures, however, since it was issued in 1992, there have been no amendments to the Law. Additionally, the SALL has been amended recently, yet the amendments did not meet all expectations in terms of the obligations of preventions. The data that has been collected shows that KSA government have not implemented, fully, any of the international convention that they have joined.

However, it was asserted that the Head of Departments frequently issues executive orders, which will be discussed in later sections, implementing some of the ILO conventions into the Labour Law.<sup>366</sup> One exception to the

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<sup>365</sup> Those conventions that the Saudi Arabian government have signed and are related to human trafficking are: the Convention on the Prevention and Punishment of the Crime of Genocide, Paris, 9/12/1948; the International Convention on the Elimination of all Forms of Racial Discrimination, New York, 7/3/1966; the International Covenant on Economic, Social and Cultural Rights, New York, 16/12/1966; the Convention on the Elimination of all Forms of Discrimination against Women, New York, 18/12/1979; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10/12/1984; the Convention on the Rights of the Child, New York, 20/11/1989; the Optional Protocol to the Convention on the Rights of the Child, on the Involvement of Children in Armed Conflict, New York, 25/5/2000; the Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography, New York, 25/5/2000; the Optional Protocol to the Convention on the Rights of the Child, on a Communications Procedure, New York, 19/12/2011; the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, New York, 18/12/1990. See also, the ILO conventions: C029: Forced Labour Convention 1930 (No. 29); C105: Abolition of Forced Labour Convention 1957 (No. 105); C111: Discrimination (Employment and Occupation) Convention 1958 (No. 111); C182: Worst Forms of Child Labour Convention 1999 (No. 182); C089: Night Work (Women) Convention (Revised) 1948 (No. 89); and C123: Minimum Age (Underground Work) Convention 1965 (No. 123)

<sup>366</sup> The KSA National Committee on Combating Human Trafficking has explained that orders Nos. 1/738, 1/256 1998 can be seen as examples of executive orders issued as an implementation towards international conventions

above statement can be seen in the Anti-Trafficking Law,<sup>367</sup> which implements Article 5 of the Palermo Protocol.

The data collected shows that the department of labour clearly explained that the laws in KSA, including the Anti-Trafficking Law, are implemented within the departments concerned in KSA. They added that there are no difficulties in the implementation, as the tools are available to all departments and there are no reasons for not executing them.<sup>368</sup>

The Head of Department had asserted, as an implementation method, on the necessity of eliminating all human trafficking in regards to employee matters by issuing two executive orders punishing persons who commit such an offence.<sup>369</sup>

The action of this department shows the intent and implementation of some of the laws in KSA. However, an explanation is needed at this stage to determine whether this implementation comes along with the Palermo Protocol obligations to prevent.

The explanation that is needed, is not about what sort of laws any department would implement, rather it is about whether the Anti-Trafficking Law issued by the SAMC is actually meeting the obligations of prevention and its guides that has been cleared in the Palermo Protocol.

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<sup>367</sup> Article 5 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly; the Saudi Arabian Anti-Trafficking Law, issued 2009

<sup>368</sup> The KSA Department of Labour has asserted that 'any implementation of laws in KSA is actually ready and integrated within KSA departments. In fact, there are no difficulties in implementing the laws as the tools have been established.'

<sup>369</sup> The KSA Department of Labour has asserted that the Ministry has issued executive order No. 738/1: 16/5/1425 to prohibit all kinds of human trafficking and exploitation or mistreatment of workers. The Ministry also issued executive order No. 256/1: 19/1/1426 to strengthen punishments on traffickers through denying them, as a company or as individuals, the use of recruitment for at least five years

None of the collected answers has shown this. In contrary, they show that in most cases, the KSA government issued laws, for example the Anti-Trafficking Law, without, specifying the obligations of prevention to be taken in KSA in regards to human trafficking.

This can be seen clearly in the data collected from the department of the labour. This department was not able to establish any facts about the process of the implementation of the laws or the obligation to prevent the trafficking in KSA, even though that they are one of the main departments that are relevant to the legal and judiciary system.

This fact leads an assumption that, in reality, neither the SAATL has been fully implemented nor being fully integrated in a line with the Palermo Protocol obligations to prevent the trafficking within the KSA.

Yet, one could argue that there are obligations under those laws that lay out in the Anti-Trafficking Law, as seen from another of the departments.<sup>370</sup> This department lists some of the obligations as convictions of offenders that are listed under crimes relating to the trafficking of domestic workers, which shows that the Anti-Trafficking Law is partially following the Palermo Protocol obligations in terms of punishment only (Figure 2).

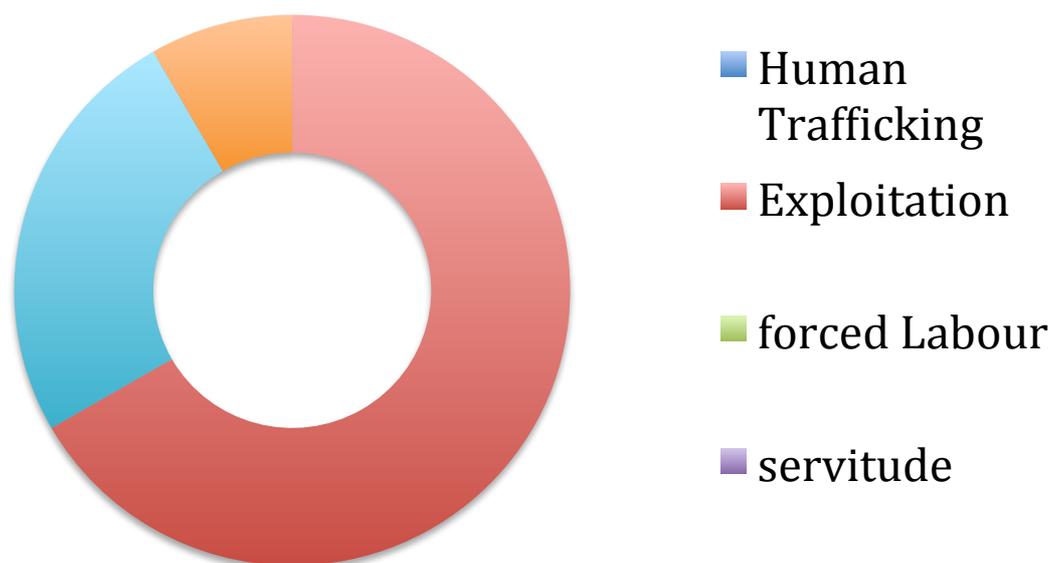
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<sup>370</sup> The KSA Human Rights Authority indicated that they are prosecuting some of the offenders for crimes relating to human trafficking

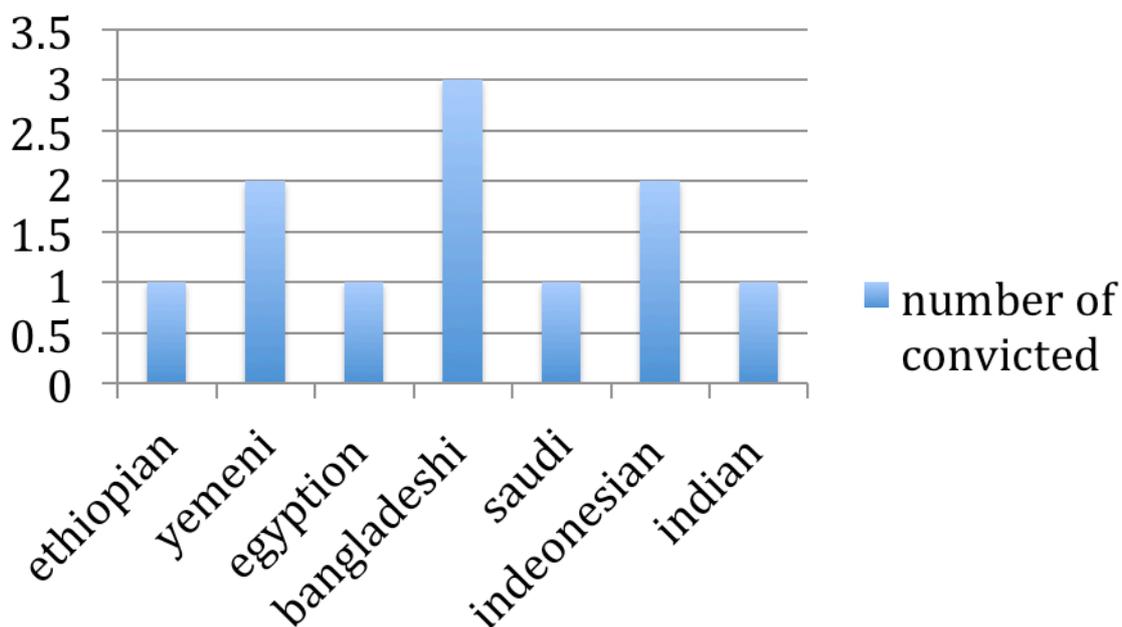
Figure 2. List of convictions for offenders on crimes of trafficking in KSA

<b>Number</b>	<b>Date</b>	<b>Nationality</b>	<b>Description</b>	<b>Punishment</b>
6/111	06 July 2009	Ethiopian	Exploitation and prostitution	1.5 years prison
6/104	08 June 2009	Yemeni	Prostitution	4 years prison
6/31	18 Feb. 2009	Yemeni	Extortion	4 months prison
12/393	27 July 2009	Egyptian	Exploitation	2.6 year prison
4/108	19 Feb. 2009	Bangladeshi	Exploitation	1.6 years prison
19/377	30 Sep. 2009	Indian	Exploitation	2 years prison
11/51	18 Feb. 2009	Bangladeshi	Exploitation and prostitution	2 years prison and deportation
13/85	14 March 2009	Nepali	Keeping a brothel	1.7 years prison
13/28	26 January 2009	Saudi	Exploitation	2 months prison
11/344	18 July 2009	Indonesian	Exploitation	7 months prison
11/342	18 July 2009	Indonesian	Exploitation	11 months prison

## Cases of Human Trafficking, 2009



## number of convicted



### 4.4.2 Doubtable Implementation of the Palermo Protocol

#### Obligations to Prevent in the SAATL

There are four main provisions in the Palermo Protocol, general provisions, protection of victims of trafficking in the person's provision, the prevention

and other measures provision and the final provisions.<sup>371</sup> The KSA government to some extent copied the Palermo Protocol into national anti-trafficking legislation.

The Human Rights Authority in KSA stated that there are some main provisions in the SAATL, the definition of human trafficking, the punishment of the traffickers, and illustrations on strengthening the punishment when the victims are women, disabled persons or children.<sup>372</sup> They also asserted that it does not matter whether the trafficker has knowledge about the situation of the victims, and whether they are women, children or disabled people, as their knowledge in this issue does not count.

Equally, it does not matter if the victims gave their consent to be trafficked.<sup>373</sup> However, as shown earlier, the criticism of the Palermo Protocol is that it overlooks some issues and the national legislation produced by the States parties should complete the omitted parts.<sup>374</sup> In the case of KSA, the SAATL have not completed the omitted parts in the Palermo Protocol, but, they have not included any of the obligations of prevention.

For example on the obligations in the Palermo Protocol that applied by the KSA, is the strengthening the punishment of crimes of human trafficking. However, the KSA enforcement to the Anti-Trafficking Laws, needs to be a collaborative effort from all concerned departments including the Department of the Interior, the Department of Labour, the Department of Social affairs, the Department of Justice and the Human Rights Authority.

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<sup>371</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 3)

<sup>372</sup> The Saudi Arabian Anti-Trafficking Law, issued 2009. Information provided by the KSA Human Rights Authority under question number 1 in the questionnaire that was sent to them in preparation for this thesis

<sup>373</sup> Information provided by the KSA Human Rights Authority in the questionnaire that was sent to them in preparation for this thesis

<sup>374</sup> AD Jordan, 'The Annotated Guide to the Complete UN Trafficking Protocol' (see text to n 63) 13-15;

This shows that the KSA government has not yet reached the point of enforcing the Anti-Trafficking Law mechanisms as a starting point. They have not reached the point where the enforcement authorities can understand the critical concepts of the phenomenon of human trafficking, rather than establishing the new Anti-Trafficking Law between the KSA departments, and they have not reached the point where they have allocated a special and dedicated national task force that concentrates on the prevention, punishment and protection of the victims of human trafficking.

The Palermo Protocol addresses the States Parties obligations towards trafficking focusing on three main elements; yet, the KSA government strengthened the punishment of human trafficking without taking into consideration the obligation to prevent.<sup>375</sup>

The KSA government also commented on the fact that maximum sentencing should be handed out when the trafficker is a government employee or when the victims are women, children or disabled persons.<sup>376</sup> It is explained above that the Palermo Protocol provides a legal reference to human trafficking and at the same time encompasses items of forced labour, the removal of organs and prostitution, in the international community.<sup>377</sup>

Specifically, the department of Interior explained that the three Ps of human trafficking, protection, punishment and prevention are all very important to combat human trafficking. They also discussed the fact that the KSA government cannot depend on any of those elements alone, without the other elements.<sup>378</sup> Similarly, the Human Rights Authority talked about how they

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<sup>375</sup> Chapter 4 will go into more detail about the Saudi Arabian Anti-Trafficking Law

<sup>376</sup> Information provided by the KSA Human Rights Authority in the questionnaire that was sent to them in preparation for this thesis

<sup>377</sup> T Obokata, 'Trafficking of Human Beings from a Human Rights Perspective' (see text to n 21) 10-12

<sup>378</sup> The KSA Department of Interior stated that 'the elements of protection, prevention and punishment are all important as combating human trafficking depends on them.' Author's translation

have focused on the three main elements in all their internal procedures and publicity.<sup>379</sup>

As stated earlier, there are many examples of countries applying the concept of prevention, punishment and protection of human trafficking at the same time.<sup>380</sup>

From the data, it is very clear that the KSA government applied some of the Palermo Protocol obligations towards trafficking in their SAATL, such as the punishment and protection only and not the prevention. In such cases, these efforts look encouraging for them, as they have started their role on combating the human trafficking.<sup>381</sup>

The government should continue these efforts along with the development of migration in the country and the international focus on trafficking. It has been asserted previously that the Anti-Trafficking Laws are, in fact, made to combat and prevent trafficking. Looking at the issue of the obligation of preventing of human trafficking, they cannot come only through producing Anti-Trafficking Laws or publishing department efforts in combating human trafficking as in the case of KSA. Many factors are involved when developing efforts to meet the obligation of prevention of human trafficking.

The explanation from the Human Rights Authority was that the KSA government decided in its international efforts to join some of the international conventions and protocols with relevancy to human trafficking

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<sup>379</sup> More specifically: ‘1. following up with the victims of human trafficking to be sure that no further harm was being done to them; 2. coordinating with the relevant departments to return victims back to their original home country, whenever asked; 3. resettling victims in KSA according to national laws and policies; 4. implementing national procedures in training KSA officials on human trafficking. Author’s translation

<sup>380</sup> W Shinkle, ‘Prevention of Human Trafficking: An Evaluation of Current Efforts’ (see text to n 104); see also, Child Trafficking in Africa, ‘Child Trafficking situation’

<sup>381</sup> The Saudi Arabian government have established a national committee to combat human trafficking in 2010. Also, the government have produced their Anti-Trafficking Law in late 2009. Both indicate that the government’s efforts in this matter are relatively recent

to meet their obligation of prevention. In regards to international efforts the Department Interior stated that any international convention or international protocol that the KSA government had signed, or intended to sign, would be considered part of the KSA law that all departments need to implement, and once they have signed, it will be circulated to all departments from the SAMC.<sup>382</sup>

From both answers, it is clear that in the KSA government, there is a standard and a procedure, and it is undeniably clear that once the KSA government have become a party to those international instruments, they are part of KSA law and should be implemented, which covers the area of implementation but not necessarily for meeting the obligations of prevention that the KSA needed.

Another issue is, the delay in following up with the relevant international instrument has to be explained and at the same time, why some departments know about the international instruments that the government has signed and the other departments do not know.

## **4.5 The Trafficking of Domestic Workers case study (first aspect – Domestic Workers Bylaw)**

### **4.5.1 Background and Introduction to the Case Study**

It is through this case study that the new Saudi Arabian domestic workers bylaw shows the official Saudi Arabian government response to human trafficking. This study is based on the first ever Saudi Arabian domestic workers bylaw, which includes three main points of interest for the purposes of this thesis: the definition of domestic work; the contracts of domestic

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<sup>382</sup> The KSA Department of Interior stated that ‘any international treatment that the KSA has joined or is willing to join is to be considered a part of the national basic law, as the approval of joining such instruments can be made by the Ministerial Council alone. Article 70 of the Basic Law states that any national law or joining international instruments is part of Ministerial Decrees only.’ Author’s translation

workers in Saudi Arabia; and the obligation of the Saudi Arabian government to prevent the trafficking of domestic workers.

The KSA government, as explained earlier, has signed and ratified many international conventions that stipulate the basic fundamental human rights. In KSA, those rights should not be subject to negotiation and whether they are to be implemented or not. To the contrary, the KSA government can stipulate the core of the Palermo Protocol in, for example, the recruitment agency ordinance rather than stipulate basic human rights, which should be implemented in the constitution of the country.

Furthermore, since the start of this thesis, one of the main core areas of this research has been that the KSA government have no laws that govern the relationship between domestic workers and their employers or between domestic workers and the government. Similarly, this supposedly law can contain the elements of the KSA obligations to prevent the trafficking of domestic workers in accordance with the Palermo Protocol obligations.

Subsequently, in the absent of a protecting law some domestic workers might face the risk of sexual exploitation, forced labour and human trafficking. In July 2013, the KSA government finally produced their first domestic workers bylaw consisting of 23 articles that are supposed to govern the relationship between domestic workers and their employers and theoretically should meet the KSA obligations towards the international standards and in particular the Palermo Protocol.<sup>383</sup> It is also supposed to protect the domestic workers from all kind of abuse, sexual exploitation, forced labour and human trafficking.

As explained above, previously the KSA government applied the Labour Law to all migrant workers except domestic workers, because of their unique type of work. This case study will discuss and analyse the KSA domestic workers bylaw, including all the bylaw articles, the discussion that occurred during the

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<sup>383</sup> Ministries Council, *The Kingdom of Saudi Arabia Domestic Workers Bylaw* (Multimedia House Press 2013)

debate while preparing the bylaw. It will conclude by stating the facts behind establishing this bylaw and discussing whether this bylaw is going to be effective in meeting the KSA obligations of preventing the trafficking of domestic workers.

#### **4.5.2 Discussion and Analysis of the Case Study**

This section will discuss and analyse the main areas of the 23 Articles of the KSA domestic workers bylaw in detail, taking into consideration, some of the regional instruments and some of the international instruments on domestic workers and the discussion that surrounded the debates during its preparation.

Firstly, the case study will show the debates and the data on the issue of the definition of domestic workers, type of work and the contract elements in the KSA domestic workers bylaw. Secondly, this case study will go through the fundamental rights and principles at work that are giving by the ILO and whether those rights are being implemented in the KSA domestic workers bylaw or being ignored. The final section will focus on the rights of domestic workers to not be exposed to violence and the right to live in decent living conditions with decent working hours according to international standards.

The choosing of the above main areas of discussion in this case study was due to the fact the above areas are the first steps of the violated rights that leads to trafficking. Similarly, the fact is that those rights can be seen as the signed of exploitations that the domestic workers are facing which eventually would lead them to escape from the residence house and falls into the hands of traffickers.

##### **4.5.2.1 Definition, Type of Work and Contract**

Article one explains the terminologies that have been used in this bylaw, including the definition of domestic workers, employer, wage, household,

domestic work and the committee.<sup>384</sup> The important part in this article is the definition of the domestic worker as it states “everyone who does an act of domestic work, directly or indirectly, within a household... such as a servant, driver, landscaper or watch guard”.<sup>385</sup>

Compared to some regional instruments, this definition is very specific and would include all types of housework that are supposed to be performed by the domestic worker.<sup>386</sup> For example, the Omani Domestic Worker bylaw defines the domestic worker in Article 1 as ‘anyone who does an act of domestic work inside a private house.’<sup>387</sup> Specifying the type of domestic worker is one way to protect domestic workers, providing it complies with international standards.

For example, the ILO convention No. 189 defines domestic work as ‘work to be performed in or for a household or households’ to protect the relationship

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<sup>384</sup> Article 1 of The Kingdom of Saudi Arabia Domestic Workers Bylaw

<sup>385</sup> Article 1 of The Kingdom of Saudi Arabia Domestic Workers Bylaw. Another example can be found in the Austrian government, which used the domestic workers definition to emphasise the issue of the residence of domestic workers as shown in their Federal Act Governing Domestic Help and Domestic Employees, section 1(1), which reads: ‘The provisions of this Federal Act shall apply to the employment relationship of employees who provide domestic services for their employer or members of such employer’s household, regardless of whether or not they are residing in the employer’s household.’ In the same Federal Act, they added a provision to include all companies that provide any services of domestic work, thereby covering all the bases of domestic workers definitions. Section 1(3) states that “no difference shall be made whether the household is managed by a natural person or a legal person for its members or for a third party.’ See also, Article 1(3) of the Australian Federal Act Governing Domestic Help and Domestic Employees; Article 1(1) of the Australian Federal Act Governing Domestic Help and Domestic Employees

<sup>386</sup> This regional instrument denotes the Sultanate of Oman’s Domestic Worker bylaw. Another example can be seen in the Belarus Labour Code of 1999, which deals with the specific conditions of employment of domestic workers. Chapter 26, Articles 308 to 314 of this Labour Law state that domestic workers are defined as persons who, under a contract of employment, work in a household of people, by providing services foreseen by law. More specifically, Article 308(2) shows that certain people who are taking care of persons with a disability, people over 80, children under 18 and people with HIV/AIDS are not domestic workers and they are covered by a separate regulation; Articles 308-314 of the Belarus Labour Code 1999; Articles 308(2) of the Belarus Labour Code, 1999

<sup>387</sup> Sultanate of Oman Domestic Workers bylaw

between domestic workers and their employers.<sup>388</sup> The ILO explains further the definition of the type of domestic workers through ensuring that any national legislation designed to protect domestic workers will cover different groups of work through different laws or policies and at the same time ensuring clarity as regards legal terminologies, definition of terms and the scope of the specific laws concerned.<sup>389</sup>

That being said, it is clear that the definition of domestic workers in the KSA bylaw almost copies international standards, with a small condition that this definition is to be implemented accurately. Additionally, this similarity comes with the ILO, and as explained above, the ILO is one of the UN agencies concerned with the rights of workers, including the migrant domestic workers.

Article two of the KSA bylaw states ‘the employer should not give any other type of work to the domestic worker other than the work in the contract.’<sup>390</sup>

Article three contains two main sections: section (a) states that ‘the relationship between domestic workers and the employer should be governed by a contract in the Arabic language’; and section (b) states that ‘the contract and its translation should have three copies, of which each party gets one copy and the third copy should be deposited with the recruitment agency.’<sup>391</sup>

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<sup>388</sup> Article 1 of the ILO Decent Work Convention (No. 189). In this article, the words ‘in or for’ refer to the actual work services that are sometimes delivered outside the household. The terms ‘a household or households’ refer to the fact that domestic workers may work for multiple employers or be employed to perform a domestic work in more than one household as in ‘domestic workers employed by agencies.’

<sup>389</sup> ILO, ‘Effective Protection for Domestic Workers: A Guide to Designing Labour Laws’ [2012] 11

<sup>390</sup> Article 2 of The Kingdom of Saudi Arabia Domestic Workers Bylaw

<sup>391</sup> Article 3 of The Kingdom of Saudi Arabia Domestic Workers Bylaw. Note that the Omani bylaw, for example, also states in Article 3 that the contract must be written in the Arabic language and signed by both parties. It also adds that if the contract is written in a language other than Arabic, then the Arabic version must be attached; Article 3 of the Sultanate of Oman Domestic Workers bylaw. Another example can be found in Article 310 of the Belarus Labour Code, which gives further details that the contract of employment for domestic services with close family members is to be prohibited; Article 310 of the Belarus Labour Code 1999

That being said, it is necessary to keep in mind the ILO explanation on the contract, as they stated that the written contract is an important matter as it shows the existence of a relationship between the domestic worker and the employer and its agreed terms.<sup>392</sup> In other words, the contract is an essential element of the relationship between the domestic worker and the employer especially when a dispute over wages, types of work or any other issue arises.

Therefore, the contract should be in a language that the domestic worker can read or understand, as a matter of dispute could arise at any time. However, the KSA government chose to neglect this element in the final draft of the bylaw and more importantly, the changes to this article can be seen clearly as the main argument was to include the Arabic language in the contract without looking at the nationality of the domestic worker. The KSA domestic workers bylaw shows that they ignored the understanding of the contract language from the domestic workers.

Article four of the KSA bylaw indicates an emphasis on having the main elements that any contract should include, such as the type of work, the wage, the duties of both parties, any trial period, the contract length and the extension of the contract.<sup>393</sup> Although this thesis has criticised article two and article three of the bylaw, the preparation of this article is to be complemented. Emphasising the need to include in the contract the rights and duties of both parties, the agreed wage, the trial period and all other terms, is one step forward towards the protection of domestic workers in KSA.

Protection should necessarily stem from the basics of a contract, as the ILO Convention on Decent Work confirms. In this regard, article 7 of the ILO

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<sup>392</sup> ILO, 'Effective Protection for Domestic Workers: A Guide to Designing Labour Laws' [2012] 16

<sup>393</sup> Article 4 of The Kingdom of Saudi Arabia Domestic Workers Bylaw

Convention on Decent Work states the need to include in the contract the job description, sick leave time, the rate of pay and the accommodation type.<sup>394</sup>

Article 5 of the KSA bylaw brings three main areas to attention. The first is that any trial period should not be more than ninety days; the second, the employer can terminate the contract during this ninety days without giving any reason to the domestic worker. The third states that, the trial period is to be enacted only once and the domestic worker may not accept another trial.<sup>395</sup>

The ILO Convention on Decent Work gives a clear statement on the trial period and that it can include any contract between the domestic workers and the employer.<sup>396</sup> For example, Article 7 of the National Collective Agreement of Employees of Individual Employers of France shows that: “The agreement between the employer and the worker is laid down in a written contract,

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<sup>394</sup> Article 7 of the ILO Decent Work Convention (No. 189). Note that this Article states that ‘[e]ach member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements, in particular: a) the name and address of the employer and of the work; b) the address of the usual workplace or workplaces; c) the starting date and, where the contract is for a specific period of time, its duration; d) the type of work performed; e) the remuneration, methods of calculation and periodicity of payments; f) the normal hours of work; g) paid annual leave, and daily and weekly rest periods; h) the provision of food and accommodation, if applicable; i) the period of probation or trial period, if applicable; j) the terms of repatriation, if applicable; k) the terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.’ An example can be found in the Omani Domestic Workers bylaw, which states that any contract must include the amount of monthly wages that should be paid to the domestic worker; the employer must indicate that room and board is available to the domestic worker; and finally the employer must inform the Omani government when the domestic worker leaves the place of work; Article 5 (1)(2)(3) of the Sultanate of Oman Domestic Workers bylaw

<sup>395</sup> Article 5 of The Kingdom of Saudi Arabia Domestic Workers Bylaw

<sup>396</sup> Article 7 of the ILO Decent Work Conventions (No. 189). Note that this Article states that ‘[e]ach member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment [...] i) the period of probation or trial period, if applicable; j) the terms of repatriation, if applicable; [...]’

which is established either at the time of recruitment or at the end of the probation period at the latest.”<sup>397</sup>

The KSA domestic workers bylaw mentions the necessity of including the trial period in the contract, as the ILO requested and also as most other international governments have included in their laws. Yet, the fact is, it is a first to see that such a law can give one party the right to terminate the contract during the trial period without going to the other party.

This means, if the employer would not require the service of the domestic workers during the trail period, he can terminate the contract without having the approval of the domestic worker. The definition of this act can at minimum be seen as that the KSA government is opening the door to unknown interpretations and the exploitation of domestic workers through terminating their contract without valid reason, as well as the misuse of this bylaw by recruitment agencies and employers.

#### **4.5.2.2 Fundamental Rights and Principles at Work**

According to the ILO there are four main fundamental rights and principles at work that are to be incorporated in their conventions and subsequently in the member countries national laws.<sup>398</sup> Those rights are referred to in the ILO Declaration on Fundamental Principles and Rights at Work, adopted in June 1998, highlights this set of core labour principles endorsed by the

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<sup>397</sup> Article 7 of the National Collective Agreement of Employees of Individual Employers of France

<sup>398</sup> Those fundamental rights can be seen in ILO Conventions Nos. 29, 87, 98, 100, 105, 111, 138 and 182. Those conventions are as follows: The Freedom of Association and Protection of the Right to Organize Convention 1948 (No. 87); the Right to Organize and Collective Bargaining Convention 1949 (No. 98); the Forced Labour Convention 1930 (No. 29); the Abolition of Forced Labour Convention 1957 (No. 105); the Equal Remuneration Convention 1951 (No. 100); the Discrimination (Employment and Occupation) Convention 1958 (No. 111); the Minimum Age Convention 1973 (No. 138); and the Worst Forms of Child Labour Convention 1999 (No. 182)

international community.<sup>399</sup> The Declaration covers four main areas for the establishment of a social “floor” in the world of work. These rights are the freedom of association along with the collective bargaining, the elimination of child labour, the effective abolition of forced labour and the elimination of discrimination in employment.

Additionally, in relation to the topic of this thesis, the trafficking of domestic workers, those principles and rights are embodied in ILO Convention on decent work for domestic workers, which can be seen clearly in Article 3(2).<sup>400</sup>

A question should now arise in relation to the KSA domestic workers bylaw and whether the KSA government have taken into consideration the above fundamental rights and principles while drafting this bylaw or have they been ignored. Needless to say, it is the privilege of each country to insert those fundamental rights into their laws, within the guidelines and standards of the international human rights principles.

Yet, those principles can be included somewhere in any future laws and the past laws. Accordingly, analysing the KSA domestic workers bylaw, it is clearer that there is no mention of the above principles such as the right to freedom of association and collective bargaining or of the right to eliminate the child labour.

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<sup>399</sup> ILO, the ILO Declaration on Fundamental Principles and Rights at Work, ILC, 86th Session, Geneva, 18 June 1998. See also, Internationale du Travail, Organisation. "ILO Declaration on Fundamental Principles and Rights at Work." (1998).

<sup>400</sup> Article 3(2) of the ILO Convention No. 189 states that '[e]ach Member shall, in relation to domestic workers, take the measures set out in this Convention to respect, promote and realize the fundamental principles and rights at work, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.'

The ILO convention on decent work article 3 (3) clearly advocates for the rights of domestic workers, and of those rights as an example is the right to form a union and freedom of association.<sup>401</sup> In some countries' laws and policies the freedom of association and the right to collective bargaining are embodied in legislation, which excludes domestic workers; in such cases, those countries should amend their legislation in order to cover domestic workers.

The second example of the fundamental rights in this case study is the elimination of child labour. This right currently, is not being seen in the domestic workers bylaw or in any documents from the data that has been collected. Some governments have indicated their willingness to protect domestic workers and to eliminate child labour and children from being exploited at work.

Article 4(1) of the ILO Convention on decent work explains the necessity to include the minimum age of domestic workers in all future and past laws in

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<sup>401</sup> Article 3 (3) of the ILO Convention on Decent Work (No. 189). This article states that 'in taking measures to ensure that domestic workers and employers of domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members shall protect the right of domestic workers and employers of domestic workers to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing.' An example can be found in the national legislation section 5.12 of Ireland's Code of Practice for Protecting Persons Employed in Other People's Homes, which states that: '[i]n accordance with Irish law, the employer shall not restrict the employee's right to trade union membership consistent with the employee's Constitutional right to join or not to join a trade union.' Another example can be seen in article D. 86-1 of the Mali Labour Code, which states: '[p]ersonnel employed in households enjoy freedom of opinion and of the full exercise of the right to organize, in accordance with the provisions of the Labour Code.'

order to increase the protection of children from being exploited.<sup>402</sup> None of the 23 articles in the domestic workers bylaw mention a minimum age for domestic workers to be recruited or allowed in the country.

It is not a case of only listing other countries' laws and policies in regards to the minimum age of domestic workers, it is also the intention to show that the KSA government have neglected to include any references to such an important issue while other countries do so. Additionally, this matter is clearly not what the ILO is advocating for and especially in the situation where the KSA government joined the ILO and ratified some of the major ILO conventions.

The third fundamental right in this topic is the abolishing of forced labour, which in this case should be done in the KSA domestic workers bylaw. The ILO convention on decent work includes many articles advocating for the need to abolish all kind of forced labour and its components such as servitude and acts of slavery.<sup>403</sup> Those measures can be seen in both this important

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<sup>402</sup> Article 4(1) of the ILO Convention on Decent Work (No. 189) states that '[e]ach Member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention 1973 (No. 138) and the Worst Forms of Child Labour Convention 1999 (No. 182), and not lower than that established by national laws and regulations for workers generally.' An example of this in legislation can be found in the Côte d'Ivoire's, Decision No. 009 MEMEASS/CAB, which prohibits the employment of children under 16 years of age in domestic work. In special circumstances, the law states that where domestic work is performed as part of vocational training, children may perform it from their 14<sup>th</sup> year; Decision No. 009 MEMEASS/CAB of the Côte d'Ivoire law protection on minimum age of domestic workers. Another example can also be seen in section 11 of Uruguay's Act No. 18.065, which establishes a minimum age of 18 for domestic service, while permitting a competent authority to authorise employment from 15 years of age in individual cases. Section 11 of Uruguay's Act No. 18.065 on domestic workers minimum age states that '[t]he minimum age for employment as a domestic worker is set at 18 years. Without prejudice to the foregoing, the Uruguayan Institute for Children and Adolescents (INAU) may authorize the employment of young people aged 15 or above, where there are justified grounds for doing so.'

<sup>403</sup> ILO Convention on Decent Work No. 189

convention and its recommendation.<sup>404</sup> Similar to the discussion on the second fundamental right, the KSA government have deliberately ignored the right of abolishing force labour from the domestic workers bylaw.

The fact is that once the KSA government have ratified a convention, or signed a bilateral agreement; there is a lack of communication between government departments in implementing their responsibilities nationally. An example can be seen in the KSA government ratification to the ILO convention no (29) on forced labour and the lack of the present of the fundamental rights, as in the forced labour, in the domestic workers bylaw. This example draws the attention to one of the important theories of this thesis, which is that the KSA government has no mechanism for implementing international or national laws in their polices or future laws.

The final fundamental right and principle is the elimination of discrimination in employment. This discrimination can be seen in different forms and two of the major forms of discrimination that the ILO is advocating for through their Convention on decent work are sexual harassment and sexual discrimination

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<sup>404</sup> Articles 7 and 8 of Convention No. 189 and Para. 6 of Recommendation No. 201; see also, Article 5 of Convention No. 189 and Para. 7 of Recommendation No. 201. See also, Articles 12 and 15(1)(2) of Convention No. 189 and Paras. 14 and 15 of Recommendation No. 201; Article 9(b) of the Convention No. 189; Article 9(c) of Convention No. 189. Article 15 of Convention No. 189. A government example can be found in article 15 of the Cambodian Labour Code, which explicitly states the prohibition of forced and compulsory labour applying to everyone, including domestic workers. Another example can be found in paragraph B-6 of the United Republic of Tanzania's Employment and Labour Relations Act, which applies to foreign workers, as well as domestic workers from the same country, and treats forced labour as an offence

based on pregnancy.<sup>405</sup> Protection against sexual harassment should be part of the legal protection that domestic workers, in particular and the migrant workers in general, should have. This is due to the unknown element of the nature of their work as very often they work behind closed doors, the living

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<sup>405</sup> ILO Convention No. 189 on Decent Work. On the issue of sexual harassment, an example of legislation prohibiting this issue can be seen in the New York State 2010 Domestic Workers Bill of Rights, which recognises the right to protection for these workers and at the same time introduces protection from sexual harassment and any other kind of harassment; New York State Domestic Workers Bill of Rights 2010. Section S 296-B states that ‘1. It shall be an unlawful discriminatory practice for an employer to: (a) Engage in unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature to a domestic worker when: (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment; (ii) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (iii) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance by creating an intimidating, hostile, or offensive working environment. (b) Subject a domestic worker to unwelcome harassment based on gender, race, religion or national origin, where such harassment has the purpose or effect of unreasonably interfering with an individual’s work performance by creating an intimidating, hostile or offensive working environment.’

arrangements that does not secure their own privacy and in many cases the absence of co-workers.<sup>406</sup>

#### **4.5.2.3 Violence, Living Conditions and Working Times**

As shown previously and from the collected data, the main factors that lead to trafficking of domestic workers in KSA are violence, exploitation and abuse, poor living conditions, long working hours and forced labour.

The vulnerability of domestic workers would be caused through the unfair labour treatment, abuse and neglect that lead to the exploitation of domestic workers. Migrant workers make up a third of the population and over half the workforce in Saudi Arabia. That being said, subjecting the domestic workers to the above conditions would leave them to particular risk of sexual violence and other abuses from their employers.

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<sup>406</sup> The other issue of discrimination, which is not included or even hinted at in the KSA Domestic Workers Bylaw, is discrimination based on pregnancy. It is a known fact, as the data has shown, that some of the termination of employment cases of domestic workers in Saudi Arabia are due to the domestic worker's pregnancy. Two main conventions of the ILO are relevant in this respect. The first is the Convention on the Termination of Employment (158) and the second is the Maternity Protection Convention (183); the ILO Termination of Employment Convention 1982 (No. 158). In Article 5(d), it is explicitly declared that pregnancy is an invalid reason for dismissing a worker. See also, the Maternity Protection Convention 2000 (No. 183). This Convention provides guidance on legislation protecting domestic workers from discrimination through employment termination and exclusion, including through a prohibition of pregnancy testing (Articles 8 and 9). Another national example on the protection of domestic workers from this kind of discrimination can be found in South Africa. Determination 7, Section 22 contains detailed provisions in regard to maternity leave for domestic workers, as well as giving attention to the applicable provisions of their Labour Act regarding unfair dismissals. Section 187(1)(e) of the Labour Relations Act 1995 states that 'the dismissal of an employee on account of her pregnancy, intended pregnancy, or any reason related to her pregnancy, is automatically unfair.' The definition of dismissal can be seen in section 186 of the Labour Relations Act 1995, which includes 'the refusal to allow an employee to resume work after she has taken maternity leave in terms of any law, collective agreement or her contract.' Additionally, in April 2003, the domestic workers in South Africa were covered by the Unemployment Insurance Act 2001 and will be entitled to claim maternity benefits in terms of that Act. Another example can also be seen in section 4(a) of Brazil's Act that prohibits the dismissal of a domestic worker without proper cause from the time a pregnancy is discovered until five months after delivery; Section 4(a) of Brazil's Act No. 11.324 on the protection of domestic workers from discrimination based on pregnancy

Linking this argument with the KSA domestic workers bylaw, the discussion is split into three separate parts. Firstly, it is necessary to look at violence towards domestic workers in KSA and the domestic workers bylaw. Article 7 (2) of the bylaw emphasises the importance that a domestic worker should not have to do any hazardous work that could lead to a danger to their health and should not work in any kind of work that could degrade the humanity of the domestic worker.<sup>407</sup> In all 23 articles of this bylaw, this is the only reference to the prohibition of abuse or violence against domestic workers.

The Domestic Workers Bylaw should have been more forthcoming on this issue and at the same time it should have set out more detailed actions against such violence. This article should have at least included a definition of what constitutes abuse, harassment and violence; the prohibition of the abuse or violent conduct; assignment of prevention and protection measures and a detailed action plan for monitoring and enforcement.

The ILO Convention on Decent Work states that '[e]ach Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence.'<sup>408</sup> Other countries have gone beyond this article in establishing protective measures from violence and abuse for domestic workers. For example, section 22 of Austria's Federal Act Governing Domestic Help and Domestic Employees prohibits employers

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<sup>407</sup> Article 7(2) of the Saudi Arabian Domestic Workers Bylaw 2013

<sup>408</sup> Article 5 of the ILO Convention No. 189 on Decent Work 2011

from having under age domestic workers if they have been convicted of a violent criminal act.<sup>409</sup>

Another example can be seen in the Singapore regulations, which emphasise the importance of protecting domestic workers from all kinds of abuse, violence and sexual harassment or causing any kind of injuries.<sup>410</sup> The above two examples clearly show how other countries' laws concerning domestic workers are more detailed in protecting them from all forms of abuse and violence. Any laws need to give a definition of the abuse or violence, the type of protecting measures in such cases and the actions against the offenders.

The second part of this section examining the KSA domestic workers bylaw concerns living conditions inside the household and the obligations to prevent

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<sup>409</sup> Section 22 of Austria's Federal Act Governing Domestic Help and Domestic Employees. This section states that '(1) [i]f a person has been finally convicted of a criminal act directed against the life, health or physical safety of people or offending against morality, the district administrative authority may forbid the convicted person and the persons living in the same household with such persons for a specified period or forever to employ persons under age if, given the circumstances of the case, it is feared that such persons may be at risk. (2) An employer against whom a ban within the meaning of paragraph (1) above is imposed shall be obliged to promptly terminate any existing employment relationship with an employee who is under age.'

<sup>410</sup> Section 10 of the Singapore Employment and Foreign Manpower Regulation. This section states: 'The employer shall not ill-treat the foreign employee, and shall not cause or knowingly permit the foreign employee to be ill-treated by any other person. A foreign employee is ill-treated if (a) the foreign employee is subjected to physical or sexual abuse, or to criminal intimidation; (b) the employer or other person does, or causes the foreign employee to do any act which causes or is likely to cause injury to the health or safety of the foreign employee; (c) the employer or other person neglects or abandons the foreign employee in circumstances which cause or are likely to cause injury to the health or safety of the foreign employee; or (d) the employer or other person commits an act detrimental to the welfare of the foreign employee.' In addition, Section 72 of the Singapore Penal Code outlines specific offences against the integrity of domestic workers, such as causing hurt or grievous hurt, wrongful confinement, assault or using criminal force, or acts intended to insult the worker's modesty. It also demonstrates that the penalties imposed on employers or other household members for such crimes can be severe as they would have been had that offence been committed against a person other than a domestic worker. Any employers found guilty of psychological or physical abuse, exploitation or abuse or violence or other criminal offences against domestic workers will be barred from employing further domestic workers.

the trafficking of domestic workers. Article 7 (5) of the KSA domestic workers bylaw states that the employer should provide a “*decent work place*” for the domestic worker.<sup>411</sup> Similar to the previous argument, this article is the only reference to domestic workers’ living conditions in the bylaw.

The argument goes further by establishing a pattern of drafting laws in KSA without looking into any international or national obligations. This pattern may be seen as the weak link in this law as, in principle, this law is made to protect domestic workers and avoid any future misconduct or exploitation. What has been seen so far is that this bylaw was established either without considering the rights of domestic workers or with the focus on strengthening only the punishment of offenders, without implementing any protective or preventive measures.

It has been asserted internationally that domestic workers can have the right to decent living conditions, as shown in the ILO Convention on Decent Work. Articles 6 and 9 of this convention, stress the fact that that the rights of domestic workers to decent living conditions must be given to them in full, including the right to retain their passports, the right to freedom of movement in their times of rest and days off and most importantly the enjoyment of their own privacy.<sup>412</sup> More details can be seen in paragraph 17 of the ILO

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<sup>411</sup> Article 7(5) of the Saudi Arabian Domestic Workers Bylaw 2013

<sup>412</sup> Articles 6 and 9 of the ILO Convention on Decent Work No. (189). Article 6 states that ‘[e]ach Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.’ Article 9 states that ‘[e]ach Member shall take measures to ensure that domestic workers: (a) are free to reach agreement with their employer or potential employer on whether to reside in the household; (b) who reside in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave; and (c) are entitled to keep in their possession their travel and identity documents’ (see text to n 30)

Recommendation No. 201, which stresses, similarly, the right to adequate food, adequate room and privacy for domestic workers.<sup>413</sup>

The final part in this section looks at the working hours of domestic workers as shown in the KSA bylaw. In this area, several things need to be looked at, such as working hours, the weekly rest day and the amount of yearly holiday. Article 7 (6) of the KSA domestic workers bylaw states clearly that the domestic worker should get a minimum of nine hours a day as a rest period.<sup>414</sup> Additionally, article 8 of the same bylaw explains that the domestic worker is entitled to a one day per week as a weekly rest day, but only if the two parties agreed on such matter.<sup>415</sup>

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<sup>413</sup> Paragraph 17 of the ILO Recommendation No. 201. This paragraph states that '[w]hen provided, accommodation and food should include, taking into account national conditions, the following: (a) a separate, private room that is suitably furnished, adequately ventilated and equipped with a lock, the key to which should be provided to the domestic worker; (b) access to suitable sanitary facilities, shared or private; (c) adequate lighting and, as appropriate, heating and air conditioning in keeping with prevailing conditions within the household; and (d) meals of good quality and sufficient quantity, adapted to the extent reasonable to the cultural and religious requirements, if any, of the domestic worker concerned.' The Austrian Domestic Workers Law example shows how countries can prepare an adequate, detailed and comprehensive law for the protection of domestic workers. This law has preventive measures to stop any future disputes or misconduct on the part of the employer towards the domestic worker. Section 4 of this law gives a clear example of what rights domestic workers should have in terms of living conditions, such as giving them a separate room, compliant with health and safety conditions, heated/cooled to an acceptable room temperature and lockable by the domestic worker. Section 4 of the Austria Act Governing Domestic Help and Domestic Employees of 1962 states that: '(1) If the employee resides in the household and is assigned a separate [room] of his/her own, such room shall comply with the health, construction and fire regulations and shall be designed so as not to harm the employee's morals; it shall be possible to heat such room during the period when outdoor temperatures require heating, also to lock it from in- and outside, and it shall have the requisite fittings, including, in particular, a cupboard with a lock. (2) If the employee cannot be assigned a separate living room of his/her own but is only given a bed, the provisions of paragraph (1) above shall apply to the room in which such bed is placed; except that it is only necessary to make provision for locking such room from inside. (3) Employees whose compensation also includes the board shall be given healthy and adequate food which generally corresponds to the food given to the adult healthy family members.'

<sup>414</sup> Article 7(6) of the Saudi Arabian Domestic Workers Bylaw 2013

<sup>415</sup> Article 8 of the Saudi Arabian Domestic Workers Bylaw 2013

Finally, this bylaw states in article 10 that the domestic worker is eligible for a one-month holiday if they renew their contract.<sup>416</sup> One could argue that this bylaw is biased towards the employer as it states the rest hours per day and not the working hours.

Bias can also be seen in stating that the weekly rest day is upon the agreement of both parties, without looking at the importance to domestic workers of getting a day off per week according to international standards. Saudi Arabia's restrictive kafala (visa-sponsorship) system, which ties migrant workers' legal residency to their employers, grants employers' excessive power over workers and facilitates abuse.<sup>417</sup> Over the past decade, Human Rights Watch has documented rampant employer abuses of migrant workers, including forcing them to work against their will.<sup>418</sup>

The ILO convention on decent work, clearly gave this matter a great deal of attention as can be seen from their draft of article no 10. According to the ILO, domestic workers should enjoy the same treatment as general workers including set weekly working hours, a weekly day off and yearly holidays. Article 10 of this convention gives a clear statement in paragraph one that domestic workers should enjoy the same treatment as general workers. It goes

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<sup>416</sup> Article 10 of the Saudi Arabian Domestic Workers Bylaw 2013

<sup>417</sup> Ministry of Labour in Saudi Arabia 'New sponsorship rules and guides' (Riyadh MOL, 2014) 6

<sup>418</sup> The Human Rights Watch '2012: A year of Progress for Domestic Workers' [2013] The Human Rights Watch, 'Exported and Exposed: Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon, and the United Arab Emirates' (see text to n 29) 43. See also, Human Rights Watch, 'As if I Am not Human: Abuses against Domestic Workers in Saudi Arabia' [2008], Human Rights Watch Report 30

further in paragraph two, emphasising the importance of having twenty-four hours consecutively per week as weekly rest time.<sup>419</sup>

## **4.6 Summary and Conclusion**

The anti-trafficking legislation lists the rules on how and when to protect the victims. Additionally, the KSA departments that have cooperated with this research indicated their intentions and knowledge on this gap, which shows that the government, to some extent, has legislation on the protection of victims.

The final obligation that was discussed is the obligation to prevent trafficking. It has been shown that the obligation to prevent human trafficking is to establish laws and policies to prevent human trafficking, which the KSA government has complied with by issuing anti-trafficking legislation.

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<sup>419</sup> Article 10 of the ILO Convention on Decent Work No. 189; this article states that ‘1. Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work. 2. Weekly rest shall be at least 24 consecutive hours. 3. Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws, regulations or collective agreements, or any other means consistent with national practice.’ There are some examples of countries, which have passed laws to protect the rights of domestic workers to normal working hours similar to those of general workers and according to international standards. These examples are a clear message of the willingness of countries to protect vulnerable workers from the abuse that some of them face behind closed doors. In France, for example, the Domestic Workers Law clearly asserts the importance of not giving domestic workers more than forty hours of work per week. Article 15(a) of the National Collective Agreement of Employees of Individual Employers, France, sets the normal work hours for domestic workers at 40 per week. Another example can be seen in the Kazakhstan Labour Code section 215(1), which states: ‘The working time and rest time duration standards set by this Code shall apply to domestic staff’. See also Sections 77 and 82 of this Labour Code explaining that ‘[a]mongst other working time rules, normal working hours must not exceed 40 hours per week and eight hours a day.’ A final example can be found in Portugal, who set out that weekly working hours for domestic workers are not to exceed forty-four hours a week; Article 13(1) and (3) of the Portuguese Legislative Decree, 1992. This decree sets the total weekly hours for domestic workers at 44 per week and any additional permits that are required for weekly hours of work to be achieved through an average over different weeks

There is also an obligation to include measures of research, mass media campaigns and partnership with NGOs to educate people on trafficking. It can be seen, in this thesis that the KSA government have complied with some of the above obligations. However, some of the obligations that are necessary for prevention are still required. Those obligations can be summarised as establishing a research centre, starting partnerships with national NGOs and encouraging bilateral agreement.

This chapter has also shown that legislation in KSA concerning women and children in the domestic work sector is not enough to protect them or prevent them from being trafficked. It has been shown that, until recent years, the KSA government did not provide for domestic workers, which was reflected in previous legislation.

In order to eliminate the causes of trafficking of domestic workers, the KSA government needs to change their agenda in terms of abuse, sexual exploitation and forced labour as a first step. The KSA government needs to give clear thought on how to establish procedures for creating binding labour contracts, strengthening the laws protecting domestic workers and creating a mechanism to make the public aware of the rights of domestic workers.

In addition, this discussion showed that while drafting the anti-trafficking law the KSA government did not link trafficking with organized crime. However, they linked trafficking with the concept and the nature of crime regardless of whether the trafficker is an individual or has an affiliation to organized crime.

This move by the KSA government on the concept of human trafficking is the only good point in this anti-trafficking law. As it has shown that when this crime happens to domestic workers, it comes from individual traffickers in KSA and the main element now should be the implementation of this law to help prevent the trafficking of domestic workers.

No argument could be made in favour of not updating the current KSA laws, which may eliminate, at least, some of the vulnerabilities that domestic workers are facing. A government should not join up to any international instruments without amending their laws to be both instruments compatible and consistent.

The case of the KSA government has shown that even though the country has signed up to many international instruments, some of them may have been to remove political pressure, because they have not amended any of their national laws. This indicates either there is no willingness to join the campaign for combating and preventing human trafficking or they are walking towards this concept with political motivation only.

All governments are required, but are not necessarily motivated, to apply fundamental human rights concepts, including the right not to be a victim of trafficking. Similarly, the SALL excludes domestic workers' legal concerns from any provisions in the law, which indicates that either the Department of Labour is required urgently to amend the law and include domestic workers or to establish an executive law to protect that sector. It is unquestionably required to establish a law to govern the relationship between the domestic workers and their employers in KSA and not subject them to working without labour laws to protect them.

Having established in the second section the need to provide anti-trafficking legislation, the need to establish the basis of bilateral agreements and the need to update the current laws, the second section discusses the subject of implementing, enforcing and establishing measures for those laws.

The third point that this chapter discusses is that KSA government departments needs to show real cooperation in terms of implementing laws and policies relevant to the domestic workers. The accurate implementation of laws and policies, as shown in this section, along with the continuous need to

update those laws and polices will definitely lead to promoting the rights of domestic workers, protecting the victims in vulnerable groups of domestic workers and ultimately preventing the trafficking of domestic workers.

The implementation of the Anti-Trafficking Laws or the international conventions in KSA can never be about the law itself without looking into the people that that laws should be implemented for, the prevention and their protection. The implementation of the law does not only require getting the acknowledgement by a department or a country. It requires the department to establish stages with steps to be taken in recognising the law, updating the current law and executing new laws.

In short, this research has revealed that some of the KSA departments have not been able to show an Anti-Trafficking Law or international conventions implementation process, which indicates that the implementation is actually not available. If, however, the KSA departments were recognising the law, continually updating their laws and in the final stage, executing the new law, then they would be considered to have completed the circle of implementation process. The fact is, some of the departments in KSA are lacking one of the most important steps of that circle which is executing new laws and international conventions.

Another major error in the KSA government is lacking the enforcement mechanism that guides the departments in how to prevent human trafficking, especially of domestic workers. One could argue that, they could have chosen another country's methods of enforcing the anti-trafficking legislation and applied them to KSA. Yet this is not the case, as the KSA government chooses to create their own method of enforcing the legislation, but whatever way it uses, it has shown its wrongness. Similarly, the KSA officials' training and public awareness lack the proper knowledge and structure.

The process that has been taken to train those officials and create the needed public awareness is not enough nor is it capable of removing the gap of not knowing how to deal with trafficking issues. Lastly, the efforts by one KSA departments to create some shelters for victims of human trafficking should be acknowledged. As this research has criticised the implementation process and the enforcement mechanism, this research should also acknowledge the steps that have been taken to establish some urgently needed shelters for those victims.

To some extent, this decision from the KSA government has shown their willingness to combat this violation. However, they have wrongly decided to neglect the current Saudi sponsorship system, which promotes the idea of human trafficking. Yet, as explained earlier, sponsorship does not guide the working relationship of domestic workers in KSA, as they are not included in the SALL.

The only law to protect and prevent trafficking against domestic workers in KSA is the Anti-Trafficking Law and through the Department of Justice. In this case, there is no doubt that the Anti-Trafficking Law in KSA is the main tool that strongly needs to be implemented, at the same time as looking at other relevant labour laws for domestic workers.

The role of organised crime in KSA in increasing the numbers of domestic workers being trafficked is unclear. This fact is because of the unavailability of the needed data and information from either the KKSA government or secondary sources.

That being said, it is essential to acknowledge the fact that the Palermo Protocol, which the KSA government is party to, and the SAATL are playing a role, theoretically, in combating the trafficking of domestic workers. In reality, the above statement is missing the implementation process of either the SAATL or to the Palermo Protocol. It is also missing the insertion of the

necessary articles in the Saudi anti-trafficking legislation, which would emphasise the prevention and protection elements along with the punishment element.

If that is being done, one could argue that it will not matter whether the offender is part of an organised crime gang or an individual offender, as both will be under the implemented law. Similarly, the SAAL should not exclude domestic workers from its protection. The relation between domestic workers and the employers is in fact, a work relation and subsequently, should be governed by the Labour Law.

## **CHAPTER 5**

### **DISCUSSION (2) KSA POLICIES**

#### **5.1 Introduction**

Another core area that should be covered by this research is understanding and analysing the KSA policies and the trafficking of domestic workers. As has been shown earlier, disregarding the laws in KSA and not meeting the obligations to prevent the trafficking increases the vulnerability of domestic workers and leads to trafficking in this country. Linking that with efforts of the host country to develop a policy that is combatable with the international laws and standards to prevent the trafficking of domestic workers, this chapter is divided into main four parts.

The third section discusses the KSA insufficient policies of the KSA that concerns the domestic workers and the KSA obligations of preventions. It will discuss the KSA department's obligations and understanding of the trafficking, obligations of prevention of trafficking of domestic workers, their domestic workers risk and vulnerability, the insufficient policies to identify the victims of trafficking and the KSA obligations of preventions in terms of the training and public awareness.

The forth section explains the development of the KSA policies on the obligations of prevention. It will go further through explaining the concept of beyond the current policies in KSA and the potential victims of trafficking. The fifth section of this chapter details the case study in this chapter that supports the second theory of this chapter, a discussion of the first KSA report on human trafficking. This report should be considered one of the main materials and data that have been collected for the purpose of preparing this thesis.

## **5.2 KSA Policies and Primary Data**

The link between human trafficking issues and Saudi Arabia is crucial to understanding this problem and hopefully getting nearer to a solution. One piece of recent KSA legislation mentioned earlier is the Anti-Trafficking Law. When comparing the goals of the Palermo Protocol and the SAATL, it can be easily seen that it shares some of the Protocol's goals.

The KSA Human Rights Authority has stated that the government is looking at joining some of the international agreements relevant to human trafficking. They also explained that the government of Saudi Arabia has joined and ratified some of the main international treaties related to human trafficking.

The Basic Law in Saudi Arabia should explain international convention procedures; however, since it was issued in 1992, there have been no amendments to the Law. Additionally, the Saudi Arabian Labour Law has been amended recently, yet the amendments did not meet all expectations in terms of the obligations towards prevention.

The data that have been collected shows that the KSA government has not implemented fully any of the international conventions that they have joined. This shows that the KSA government has not yet reached the point of enforcing the Anti-Trafficking Law mechanisms as a starting point.

They have not reached the point where the enforcement authorities can understand the critical concepts of the phenomenon of human trafficking, rather than establishing the new Anti-Trafficking Law between the KSA departments, and they have not reached the point where they have allocated a special and dedicated national task force that concentrates on the prevention, punishment and protection of the victims of human trafficking.

The government can continue these efforts along with the development of migration in the country and the international focus on trafficking. It has been

asserted previously that the Anti-Trafficking Laws are, in fact, made to combat and prevent trafficking.

Looking at the issue of the obligation of preventing human trafficking, this cannot stem only through the introduction of Anti-Trafficking Laws or publishing department efforts in combating human trafficking as in the case of KSA.

Similar to the previous chapter, the primary data on this chapter is divided on to two main parts that encounter the period after introducing the law in KSA or after joining any international norm as in the policies that needed to implement that law. These data should elaborate on the fact of once the KSA government have established the law and implemented them, the serious of policies and measures that they should enact.

The first part of the data, showed undisputable fact, which is the lack of the internal collaboration between the KSA government after the laws are being issued such as the lack of finding a unified definition to the human trafficking between the KSA departments. Even if the KSA government are intended to join an international treaty, the data has revelled in unquestionably facts that they cooperation is not on the agenda.

The specific of this thesis is the obligation of prevention of trafficking of the domestic workers, hence, in the area of the risk and vulnerability of the domestic workers, especially after the Palermo Protocol and the KSA domestic workers bylaw, the data in the chapter have elaborated on the fact that the focus of the KSA government was on the elimination of aspects of the abuse that the domestic workers are facing.

On the other hand, the data have not revelled any process to the repercussion of trafficking of domestic workers, and more precisely the process to identify the victims of trafficking. The concerned departments in this matter have shown the definite fact, which are the KSA departments does know about the

risks of domestic workers and does not know the process of identifying the victims of trafficking.

On the issue of official training and public awareness, this data has show some facts such as that the KSA government are lacking the needed training for their officials in all aspects of trafficking starting from the point of knowing what is the human trafficking, its definition, its causes and how to know the victims of human trafficking. The public awareness is not far from the above statement as the data have shown the undeniable fact, which is the shortness in producing materials to aware people from the trafficking.

The next section will discuss the core of this research, which is the prevention, and in this chapter the meaning of prevention will guide to the prevention policies and measures that have being taken by the KSA government. The data on this matter has revelled without doubts the lack of the prevention measures and policies within the KSA government as form the start the KSA government did not include the prevention in their anti-trafficking law, and subsequently all measures are not on ground.

In the area of the victims of trafficking the fact is, while the KSA government have established the permanent committee to combat the human trafficking, yet the data have revelled that they have not shown an interest in the term of potential victims and therefore, all the data showed that all the KSA department lacks the proper term definition along with the actual policy to protect the potential victims through the initiation of prevention measures.

The second main part is case study of this chapter, which is the first KSA national report on combating the human trafficking. This report was made by the concern department that have the concern on issues of trafficking which is the KSA national committee to combat the human trafficking.

The data on this case study is divided into four main areas where the first one will discuss the policy of this committee in terms of their perspective on the

issue of the national legislations and the prevention of trafficking. In terms of this area the report detail extensively the KSA government role on preventing the human trafficking through their laws.

This area have shown without doubts the fact that the KSA government might have laws to combat the human trafficking, yet the lack the mechanism to implement those laws. That mechanism would be the core of this chapter, which is the policy that the KSA government should enact after the math of establishing laws.

The second area on this report discusses the policy of the KSA government in, what have been established in the first part, the national mechanism to combat the human trafficking. The data on this part will show the role of the KSA department collaboratively in combating the human trafficking, such as the role of Department of Labour with the migrant workers. Not only that, the data will explore different steps that have been taken by the KSA government, which are not related to issues of human trafficking.

The third area on this report discusses the policy of the KSA government on the issue of officials training and public awareness. The data on this area will show the role of the ministerial council on combating the human trafficking and their encouragement including the symposiums that have been prepared in 2010.

Unquestionably, the data have shown clearly that the KSA government did not raise the awareness on human trafficking or its causes and especially on matters that concern the domestic workers. On the issues of the official training, the data will revel that while the KSA government has prepared training sessions, however, the data have revelled the lack of appropriate preparation for those training sessions in terms of the beneficiaries of those sessions.

Finally, the last area will discuss the issue of the policy of the KSA government cooperation internationally, as per the Palermo Protocol, on human trafficking. In this area, the data will explain that as part of the KSA cooperation is what seems to be the participation from some of the KSA officials in the international forums.

While that could not be seen understandable as in the relevancy to the international cooperation to prevent the human trafficking, the data extends further to explain the lack of cooperation between the KSA government and the international agency such as the ILO, IOM and the UNODC.

## **5.3 The KSA Limited Policies on Domestic Workers**

### **5.3.1 Policies to Enforce The Palermo Protocol in KSA**

Another area of the KSA policies under its Palermo Protocol obligations is, the lack of communication between the departments on the government policies and obligations, yet, is not part of the problem in the analyses as it is very clear that all departments receive a copy of any international instruments that have been ratified from the SAMC.

In such case the question should be whether KSA government employees have the appropriate training to follow up such instruments. A theory proposed by the researcher, is that the lack of a national centre inside the KSA government that deals with international issues results in not updating national and international efforts on international instruments that the government have ratified or intend to ratify.

Communication should continue between all relevant departments must be at the highest level in drafting recommendations or policies.<sup>420</sup> At this stage an integrated response to human trafficking is needed, which leverages the

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<sup>420</sup> The following sections will discuss the cooperation between KSA departments in more detail

resources of the coordination efforts and at the same time, fulfilling the Palermo Protocol obligations to prevent trafficking.<sup>421</sup>

Earlier, the collected data shows that some departments are not enforcing anti-trafficking legislation within their own departments. They have also asserted that there are no reasons for not being able to enforce and implement the KSA policies under the same procedures.<sup>422</sup>

However, other arguments have emerged against this statement by stating that ‘Contrary to popular belief [...] [i]t is the State and its law enforcing authorities who create the greatest barrier.’<sup>423</sup> They added that “DMSC has faced some challenges including strong opposition from law-enforcing authorities who criticise DMSC for taking the law into its own hands...”<sup>424</sup>

Jana et al, in this regard, assert that the problem of enforcing Anti-Trafficking Laws normally comes from the enforcement authorities in the targeted country. The data collected for this thesis contradicts the research of

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<sup>421</sup> The KSA government has to appreciate that combating human trafficking requires participation and coordination among agencies and departments with responsibilities for criminal enforcement, labour enforcement, victim outreach, public awareness, education, trade policy, international development and programmes, immigration, intelligence and diplomacy. At the same time, the KSA government should focus on cooperation with international organisations such as ILO, UNHRC and IOM. In dealing with human trafficking, it is also necessary to establish cooperation between the country of destination (Saudi Arabia) and the countries of origin. Cooperation between the Saudi Arabian government and all concerned countries is now needed to acknowledge the problem and make this a starting point in combating and ultimately preventing the practice

<sup>422</sup> The KSA National Committee to Combat Human Trafficking has asserted that ‘the implementation of the law in KSA departments is actually available and there are no difficulties in implementation as the tools are available.’ Author’s translation

<sup>423</sup> S Jana, N Bandyopadhyay, M Kanti Dutta and A Saha, A Tale of Two Cities: Shifting the Paradigm of Anti-Trafficking Programmes [2002] 10(1) Gender & Development 69-79. This paper comes from the Durbar Mahila Samanwaya Committee (DMSC) in Kolkata, which is one of the largest organised groups for sex workers. It defines trafficking as an outcome of a process where people are recruited and moved within or across national borders without informed consent, and coerced into a ‘job’ or occupation against their will; as a result, the trafficked individual loses control over his/her occupation and life

<sup>424</sup> S Jana, N Bandyopadhyay, M Kanti Dutta and A Saha, ‘A Tale of Two Cities: Shifting the Paradigm of Anti-Trafficking Programmes’ (see text to n 423) 69-79

Jana et al, as the fact is that the KSA government ignores the reality of the policies, which lacks an enforcement mechanism. The Saudi Arabian government made limited law enforcement efforts against human trafficking. They have shifted their focus towards criminals and the punishment but not towards the victims or doing extra measures to prevent such activities.

Looking at the steps that the KSA government have indicated to enforce their laws, from the policies creation point of view, the government of KSA listed some steps for that matter. Those steps start with establishing a permanent committee to combat human trafficking inside the Human Rights Authority.<sup>425</sup>

They also include, following up the victims of trafficking to guarantee their safety and coordination with other countries to return victims to their home countries. According to the data, the permanent committee can recommend not returning the victims of trafficking to their home countries if they see they are in danger back home.

Another step is to prepare a policy of relocating the victims of trafficking along with providing adequate training on this issue and arranging research, media campaigns, and social and economic measures to prevent trafficking. The data shows that the KSA departments are encouraged to cooperate with each other in exchanging information and statistical data on the human trafficking.<sup>426</sup>

### **5.3.2 Domestic Workers Facing the Limited Policy and the KSA Palermo Protocol Obligations**

Understanding the methods of human trafficking and how a government deals with it within its borders are important to the core of this research. As

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<sup>425</sup> The Ministerial Council order number 244 dated 13/7/1999 to establish a permanent committee to combat human trafficking.

<sup>426</sup> The KSA Human Rights Authority addressing the steps necessary to enforce the Anti-Trafficking Law

explained before, in normal conditions domestic workers perform household tasks in private houses in exchange for a room, food and an allowance.

Due to working behind closed doors, and because of national legislation that protects the privacy of the house owner and the lack of national policies that prevent the exploitations, they often become unprotected workers who do not appear in any official statistics, which makes them more vulnerable to being abused.

This section will shed the light on the Convention on Domestic Workers, adopted by the ILO in 2011, in relation to domestic workers' rights, even though the KSA is not party to it, but it should reference the definition of domestic workers and the kind of work.

This section will show the arguments about the relationship between children and trafficking, the situation of domestic workers, the vulnerability of domestic workers and national policies in terms of domestic workers, which are relevant to this research. It will then argue that children who are forced to work as domestic workers could be deprived of the right to education and the right to live a normal family life.

Secondly, it will look at the unknown conditions faced by domestic workers in new jobs. In some cases the work is well paid and does not violate any of their rights, but in other cases they face the worst kind of exploitation. The final point will argue that the principle of protection dictates that countries should act on domestic policies fulfilling the Palermo Protocol obligations, in particular, of prevention.

In order to give a reference to the definition of domestic workers and because of the KSA was member of the ILO that adopted the Convention on Domestic Workers (C189), the definition of domestic workers must be stated at first.

Article 1 (a) of the ILO convention on domestic workers defines domestic work as ‘work performed in or for a household or households’.<sup>427</sup>

Article 1 (b) of the same convention defines a domestic worker as ‘any person engaged in domestic work within an employment relationship’.<sup>428</sup> According to this convention, the main rights that should be given to domestic workers are daily and weekly rest periods, entitlement to a minimum wage and entitlement to choose the place where they live and spend their leave.<sup>429</sup> Ratifying state parties should also take protective measures to prevent violence against domestic workers and should enforce a minimum age, which is consistent with the minimum age of other types of employment.<sup>430</sup>

Bearing in mind the definition of domestic work, many arguments can be made against violating the rights of domestic workers. Akhtar argues that ‘the use of children as domestic servants continues to be common in many parts of the world, such as Latin America and Asia.’<sup>431</sup> Such children are very vulnerable to exploitation and often they are not allowed to take breaks or are required to work long hours.

In addition, many of them suffer from a lack of access to education, which can contribute to their social isolation and a lack of future opportunities. Akhtar adds that ‘domestic work is the most common form of employment...It has been estimated that globally, at least 10 million children work in domestic labour jobs.’<sup>432</sup>

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<sup>427</sup> Article 1(a) of ILO Convention (No. 189) on domestic workers

<sup>428</sup> Article 1(b) of ILO Convention (No. 189) on domestic workers

<sup>429</sup> ILO Domestic Workers Convention (No. 189)

<sup>430</sup> ILO Domestic Workers Convention (No. 189)

<sup>431</sup> S Akhtar and S Razzaq, ‘Child Domestic Labour in Pakistan: Overview, Issues and Testable Hypothesis’ (Centre for Research on Poverty June 2005)

<sup>432</sup> S Akhtar and S Razzaq, ‘Child Domestic Labour in Pakistan: Overview, Issues and Testable Hypothesis’ (see text to n 431)

With respect to the KSA obligations to prevent the trafficking of domestic workers, the Department of Labour in KSA stated that in an effort to eliminate some of the causes of domestic workers trafficking and exploitation, an executive decision was made. The full contexts of this decision were seen and its principal aim is to establish large specialised recruitment companies.

The companies' main duties were to recruit workers, whether domestic workers or in other sectors, and offer them for hire to Saudi employers, having in mind the main the protection of migrant workers and in particular the domestic workers and meeting the international obligations.<sup>433</sup>

In terms of domestic workers working conditions, there is the caveat that in some cases their work is well paid and does not violate any of their rights. In other cases, however, they might face the worst kind of exploitation. ILO summarises the main abusive conditions as:

- 1) Long hours of work and heavy workloads, limiting rest and leisure time;
- 2) inadequate accommodation either with small rooms, poor lighting or lack of furniture or inadequate food;
- 3) the lack of privacy and interference in personal matters, the close supervision of household members;
- 4) arbitrary changes of work contracts, pay cuts or even non-payment of salaries;
- 5) the lack of working benefits.<sup>434</sup>

The ILO argues that 'although the number of domestic workers who have joined the ranks of this army is considerable, they remain hidden and invisible

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<sup>433</sup> The KSA Human Rights Authority have stated that the Saudi Arabian government have agreed to establish large specialised companies, that would be responsible for recruitment, protection of the rights of expatriates and their supervision. They have also stated that these companies are going to be the contract hub for domestic workers

<sup>434</sup> José Maria Ramirez-Machado, 'Domestic Work, Conditions of Work and Employment: A Legal Perspective' (see text to n 93) 8

to society’.<sup>435</sup> It adds that ‘to give a rough estimate of the number of domestic workers worldwide are made highly problematic by the lack of available and accurate data and the prevalence of unregulated or clandestine work relationships’.<sup>436</sup>

Furthermore, domestic workers have a right to clear communication of employment conditions, which should, in the case of international recruitment, be communicated prior to immigration. In addition, they are not required to reside in the house where they work, or stay at the house during their leave or rest hours.<sup>437</sup>

In their obligations towards the prevention of domestic workers trafficking the KSA government should recognise the former’s vulnerability due to the nature of their work and the fact that they need protection, as mentioned above, of a national policy on the prevention of trafficking of domestic workers that would be sensitive to their particular work situation.

The Palermo Protocol, in its Article 6, that relates to protection of people from being trafficked asks that, countries shall introduce policies for victims to help them along with international standards to prevent those workers from

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<sup>435</sup> José Maria Ramirez-Machado, ‘Domestic Work, Conditions of Work and Employment: A Legal Perspective’ (see text to n 93) 1

<sup>436</sup> José Maria Ramirez-Machado, ‘Domestic Work, Conditions of Work and Employment: A Legal Perspective’ (see text to n 93) 3

<sup>437</sup> ILO, Conference Adopts Historic Labour Standard for Domestic Workers (ILO June 2011) <[http://www.ilocarib.org.tt/index.php?option=com\\_content&view=article&id=1573:conference-adopts-historic-labour-standard-for-domestic-workers&catid=117:news-room&Itemid=1035](http://www.ilocarib.org.tt/index.php?option=com_content&view=article&id=1573:conference-adopts-historic-labour-standard-for-domestic-workers&catid=117:news-room&Itemid=1035)> accessed 20/10/2011

being trafficked.<sup>438</sup> HRW asserts the importance of issuing and implementing protective laws and in its report on the abuse of domestic workers, HRW emphasizes that the ‘laws that should protect child domestic workers are poorly enforced...’<sup>439</sup>

The report concludes that ‘Governments’ responses to abuses against domestic workers have largely been piecemeal and reactive... domestic workers are often in situations that prevent them from reporting abuses’.<sup>440</sup> The fact is, the issuance of laws to protect the domestic workers and meets the obligations of Palermo Protocol, would be mostly considered as a policy that is need in KSA.

Domestic workers are also entitled to certain policies concerning their human rights and protections specifically linked to their vulnerable status. These include, policies can assure them from being exploited. It will assure them the rights to freedom from sexual harassment in the workplace and the right of protection which are basically guaranteed to all migrant workers including domestic workers.

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<sup>438</sup> Article 6 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly. For example, in a country such as KSA when the TIP report states that ‘domestic workers remain excluded from general labour law protections’, KSA did not take any action to reduce the demand for prostitution or child sex tourism by Saudi nationals or acknowledge that trafficking for commercial sexual exploitation was a problem affecting the Kingdom. See U.S. Department of State, Trafficking in Persons Report [2009] TIP Report

<sup>439</sup> Human Rights Watch, ‘Swept Under the Rug: Abuses against Domestic Workers around the World’ (see text to n 32)

<sup>440</sup> Human Rights Watch, ‘Swept Under the Rug: Abuses against Domestic Workers around the World’ (see text to n 32)

### **5.3.3 The KSA Limited Policy and Palermo Protocol Obligations of Prevention on Vulnerabilities**

The important factor the human trafficking is to know the purpose for which the victims have been trafficked. The main elements of trafficking have been established, previously, in regards to trafficking domestic workers in KSA and, yet, the policy that the KSA government is using is in need of further discussion.

Keeping in mind Article 3 (a) of the Palermo Protocol, which defines the purpose as: ‘... the exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.’<sup>441</sup> It is clear that exploitation leads the way in the purposes of trafficking of domestic workers, which can vary depending on the nature of work.

As established earlier, the exploitation of domestic workers needs to be associated with the movement of the victims so it can be considered as domestic worker trafficking. Subsequently, it is unquestionably the movement of domestic workers to sexually abuse them, to force them to work, to force them into acts of beggary or to enslave them that would be considered as human trafficking.<sup>442</sup> On the one hand, the KSA Human Rights Authority has explained some of the reasons for the purpose of trafficking of domestic workers in KSA.

The first is the lack of knowledge on how to deal with such workers by their employers. Many employers are letting their domestic workers work more than the maximum of ten hours per day without financial compensation. The

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<sup>441</sup> Article 3(a) of The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 5)

<sup>442</sup> As has been explained, there are many types of abuses towards domestic workers, yet trafficking is defined by and needs to be associated with movement. Despite the focus on sexual abuse and forced labour as the main factors in the current human trafficking situation these are not the only factors responsible for the trafficking in domestic workers

law was unknown or unclear to many, and yet it was also not enforced. There were no inspections from the Ministry of Labour in Saudi Arabia arranged and prosecution was only possible after repeated infringements and upon complaint by the domestic worker.

Secondly, it is very hard to enter private houses to conduct an inspection about the safety of domestic workers because of, the privacy of the household. Thirdly, the lack of public awareness or education from the KSA government to the employers of domestic workers and the appropriate way to deal with the domestic workers.

The Department of Interior explained, also, that they have precluded some of the purposes of trafficking such as recruitment for the purposes of beggary, selling entry visas, collecting money for work, collecting money for exit and re-entry visas, child labour and their exploitation.

The Human Rights Authority asserted that those measures had been taken to avoid the causes of trafficking and in accordance with the new SALL. Those answers were collected from two KSA departments who should have shared the same opinion on the purposes of domestic worker trafficking in KSA knowing the country obligations under the Palermo Protocol.

Regarding the explanations of the purposes of trafficking domestic workers in KSA provided by the Human Rights Authority, it is clear that none of the data explains the purpose of trafficking domestic workers, although it explains some aspects of abuses to domestic workers. No doubt that the lack of knowledge is to be looked on as a major factor in increasing the trafficking, yet the department should elaborate more on the purposes and, similarly, increase public awareness about trafficking.

The ILO asserted this hypothesis by stating that: '[i]t is vital to understand risk and vulnerability, and to put in place processes to identify it and keep

track of it...'<sup>443</sup> Additionally, an absence of policies in regards to the household inspections is also a major risk factor, even though it does not relate to individual domestic workers. Lack of such inspections may allow exploitative workplaces and practices to increase the possibility of exploitation and trafficking for domestic workers.

There is a range of risk factors that creates vulnerability for domestic workers becoming victims of trafficking and that the KSA needs to address under their Palermo Protocol obligations to prevent trafficking. Normally, domestic workers experience several risk factors at the same time, including vulnerabilities, such as forced labour, excessive working hours etc.

In details, the statement provided by the KSA departments is that the risk and vulnerability of domestic workers becomes a reality when they run away from their employers or from the household they reside in and then run out of money or lose their identity papers.

If the KSA government knew that those were the reasons behind the trafficking of domestic workers, they would focus their efforts on preparing policies that targeted the work situation of domestic workers. If that is done, the risk factors that create vulnerability for domestic workers becoming victims of trafficking would be eliminated and the KSA would meet its Palermo Protocol obligations to prevent trafficking.

Such risk factors make those domestic workers very vulnerable to being lured into exploitation and subsequently, the host country, in this case KSA, might provide clear policies in order to prevent such vulnerability in accordance with the Palermo Protocol obligation to prevention.

It is imperative to address these risk factors, along with the KSA policies towards them, to prevent domestic workers and vulnerable people in general

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<sup>443</sup> ILO, 'Trafficking for Forced Labour: How to Monitor the Recruitment of Migrant workers' (ILO, Geneva 2006)

from being trafficked once and again. By addressing the abuse factors, risk factors and vulnerability factors, it is possible to say that the government is in the process of meeting the Palermo Protocol obligations towards the prevention of domestic workers being trafficked in KSA.

Taking into consideration the above, recruiting brokers may make the domestic workers more dependent on them by introducing them to drugs or sexual favours for money, so that they become more addicted or dependent on them. But till then, the KSA government, in the absence of a clear policy that addresses the above concerns, are not meeting their Palermo Protocol obligations on prevention.

Regarding the explanations given by Department of Interior about the purpose of domestic worker trafficking in KSA, the ideal situation is to target those who abuse and exploit the migrant workers in the country. However, one could not understand the measures and policies that have been taken to identify the purposes of domestic worker trafficking in KSA and whether they meet the obligations or not.

This is because the Department of Labour asserted in Article 7 of the Labour Law that ‘the following shall be exempted from the implementation of the provision of this law [...] 2) domestic helpers and the like.’<sup>444</sup> The Department of Labour cannot exempt domestic workers from all provisions of the Labour Law, and then identify the purposes of trafficking.

The action of this Department shows a lack of understanding of the concept given by the UN of protecting, punishing and preventing human trafficking and most importantly the obligations of prevention. The introduction of the SAATL does in fact apply to all nationals and migrant workers in the country including domestic workers. All KSA department can understand that the emphasises on the purposes of trafficking is on sexual exploitation, forced

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<sup>444</sup> Article 7 of the Saudi Arabian Labour Law (Royal Decree No. M/51, 27/9/2005) 11

labour, beggary, slavery, acts similar to slavery, servitude, removal of organs and medical experiments and they should act accordingly.<sup>445</sup>

On the other hand, it is necessary to acknowledge the fact that the Department of Labour issued a prohibition on children working in sales points on any street in 2002 as a policy aimed at the prevention of children trafficking. Furthermore, the SAMC suggested some legal actions and policies regarding the purposes of trafficking, which allowed KSA to fulfil its obligations of prevention.

Those actions, as stated earlier, include a domestic workers bylaw in the country, a legal framework for the recruitment agencies, a legal framework for the protection of children and a legal framework to end exploitation. Those legal frameworks, as understood from the data collection, are under process of research and studies within the KSA government and in the future may be functional.

#### **5.3.4 The KSA Limited Policy and the Victims**

The limited policies on preventing the trafficking can be seen in the absence of a clear direction from the Saudi Arabian government towards the crimes it self and whether the efforts are targeting the vulnerable people and victims of trafficking in KSA. Having established the risk and vulnerability of domestic workers and possible policies that would most certainly meets the KSA obligations to prevent the trafficking, it is imperative to look at the other side of this fact, which is the victims of domestic workers trafficking. In KSA, domestic workers work on a temporary contract, which means their rights are

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<sup>445</sup> Article 1(a) of the Saudi Arabian Anti-Trafficking Law, issued 2009 states that ‘human trafficking is prohibited in all of its kinds including the means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve consent of a person to have control over another person for the purposes of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs or medical experiments.’

limited and those migrant workers' rights are at a minimum if the contracts are negotiated from one party only.

Domestic workers are completely dependent on their sponsor in all matters such as obtaining work permits, renewal of such permits and exit and re-entry visas. Domestic workers cannot change their employers without leaving the country or applying for government approval. However, they cannot leave the country without approval from their employers.

It is known in KSA that domestic workers need to submit their passports and identification documents to their employers on their first day of arrival. With such limited rights, it is not enough to publicise the policies publicly to promote their rights or at least to identify the victims of trafficking. The National Committee to combat the Human Trafficking in KSA, indicated that policies of identification of the victims of human trafficking has to be through the investigative authority in KSA and through following up with their method.<sup>446</sup>

One of the measures that fall under the Palermo Protocol obligations of prevention that has direct relevancy to this section is the policy of arranging for shelters for the victims of human trafficking. Under Provision II, Protection of victims of trafficking in persons embodied in Article 6 (3a), the shelters should be able to host the victims of human trafficking as well as supporting victims socially and medically. The data reveals that the Department of Social Affairs established nine shelters in the major cities in the country.<sup>447</sup>

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<sup>446</sup> The KSA National Committee to Combat Human Trafficking stated that: 'the allocation and identification of trafficking victims is part of the investigation unit in KSA'. Author's translation

<sup>447</sup> Article 6 (3a) of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly. The KSA Department of Social Affairs has established nine shelters in Riyadh, Jeddah, Makah, Dammam, Medina, Qaseem and Abha

Yet, the numbers of those coming into the shelters were unavailable, which indicates the need for transparency of information in this area. It is not enough to state that a department has established shelters for the victims of the human trafficking, including domestic workers, without elaborating in detail on the numbers, the treatment that provided to those victims, their current legal situation and the nationalities of the victims that the shelters are hosting. Those facts are essentials to meet the Palermo Protocol obligations of prevention of trafficking of domestic workers in KSA.

The data shows that some of the participant departments in KSA listed steps for punishing those who committed such acts without exploring the idea of how to recognize the victims. As explained earlier, it is not enough to establish a committee to combat human trafficking if you do not know or understand how to identify the victims of this violation.<sup>448</sup>

Therefore, it is the belief of this thesis that the KSA government needs to follow four consecutive steps, creating a start up policy under the Palermo Protocol obligations that its main goal is to identify the victims of human trafficking.

Firstly, there needs to be immediate home inspections from Department of Interior for those with domestic workers. Secondly, an emergency hotline needs to be established to identify the victims of trafficking. Thirdly, it is essential to allow Non-Governmental Organisations to participate in identifying and helping the victims of trafficking. Finally, a national task force needs to be established, with the priority of identifying, rescuing and protecting victims of trafficking.

In regards to the first step, immediate home inspections from Department of Interior to those with domestic workers, several elements could be taken into account. Firstly, the data shows that neither Department of Interior nor

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<sup>448</sup> The KSA National Committee to Combat Human Trafficking

Department of Labour, which are the main departments concerned with foreign migrants, has accurate statistics on the number of domestic workers in the country. This information is needed to establish a national database on where domestic workers are located and who is responsible for them.

Department of Interior could take into consideration traditional KSA cultural behaviour when carrying out inspections on homes, which means, ideally the Department of Labour need to recruit female inspectors and, at the same time, train them on the signs of trafficking. The ILO Decent Work Convention 2011 states in Article 17 the urgent need to start home inspections for domestic workers.<sup>449</sup>

In regards to the second step, the KSA National Committee to Combat Trafficking should have established a hotline to identify victims of trafficking from day one.<sup>450</sup> The purpose of this committee in the first instance is to combat trafficking.

However, as they did not act on identifying victims as a first step, it is highly unlikely that they succeeded in combating trafficking. For example, Department of Interior listed their efforts in combating human trafficking

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<sup>449</sup> Article 17 of the ILO Decent Work Convention (No. 189). Note that this Article states that: ‘1. Each Member shall establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers. 2. Each Member shall develop and implement measures for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work, in accordance with national laws and regulations. 3. In so far as compatible with national laws and regulations, such measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.’ The counter-argument to this is not having regular inspections of domestic workers, which means that domestic workers will still be vulnerable, due to working behind closed doors. ILO Convention No. 81 ‘Labour Inspection’ is particularly important in this respect. This Convention mainly allows for the inspection of industrial work places, neglecting domestic workers or at least excluding them from the formula of protection

<sup>450</sup> The KSA Human Rights Authority explained that they had a dedicated emergency telephone number (1919) for victims to call in cases where they needed help

nationally, which did not include establishing a hotline or encouraging domestic workers to contact them if they were victims of trafficking.<sup>451</sup>

Additionally, it is the suggestion of this thesis that the committee should act fast in the hotline procedures and simultaneously, recruits a team of translators of different languages according to the latest domestic worker statistics and their nationalities. Combining the first two steps of identifying victims of trafficking, inspections and a hotline, if they have been established truthfully, the number of victims of domestic worker trafficking will decrease sharply.

In regards to the third step, the twenty-first century dictates, in the matter of combating human trafficking, cooperation or partnership with civil organisations. NGO participation in identifying and helping victims of trafficking is to be considered the help that a government needs from society. Nonetheless, this partnership could work both ways, helping to identify victims of domestic worker trafficking and at the same time to cast a third eye on government performance on combating trafficking.

Finally, a national task force with the sole priority of identifying, rescuing and protecting victims of trafficking is functional in some countries such as the United States and some regional organisations, such as the EU. The United States Task force, for example, includes the Department of Health and Human Services, the Department of Justice, the Department of Homeland Security, the Department of Labour, the Department of State, the Department of Education and the Legal Services Corporation.<sup>452</sup>

The Attorney General of the United States reported “on August 2005, the FBI began its Human Trafficking initiative. The initiative involved the FBI’s field

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<sup>451</sup> Ministry of Labour, ‘The Efforts of the Ministry of Labour in Combating Human Trafficking and Protecting the Rights of Foreign Workers’ (Ministry of Labour, Riyadh 2010)

<sup>452</sup> United States Attorney General, ‘Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons’ (New York 2009) 8-29

offices determining, via a threat assessment the existence and scope of the trafficking problem in their region; participating in an anti-trafficking task force...”<sup>453</sup>

The data reveal that only one department has initiated a “so-called” task force, but without clear objectives and structure.<sup>454</sup> Needless to say, as shown above, a task force is necessary to identify victims of trafficking and subsequently, move towards prevention. However, one department cannot work alone in this matter, and it is essential to initiate a national task force for this purpose.

Nonetheless, countries that apply a good faith element in combating trafficking and considering the policies under the Palermo Protocol obligations of prevention, need to have in mind the down side of such a task force, as stated earlier. The down side comes from a task force failing to achieve its goals, or some of its goals.

Then it is vital for the government to pause the implementation of this task force, and think about what might have gone wrong. It could be the responses or the engagement with this task force from other essential parts such as NGOs, officials in the government or even the public.<sup>455</sup> These are the aims and the objectives that such a task force should follow, and one of those objectives should be prevention.<sup>456</sup>

### **5.3.5 The KSA Official Trainings, Public Awareness under Palermo Protocol Obligations**

Through the KSA permanent committee to combat human trafficking, the government could start more focused, national training to the enforcement

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<sup>453</sup> United States Attorney General, ‘Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons’ (see text to n 416)

<sup>454</sup> In the data, the KSA Human Rights Authority confirmed its intent to establish a task force for combating human trafficking

<sup>455</sup> UNICEF, ‘Trafficking in Human Beings in South Eastern Europe’ (see text to n 95) 9;

<sup>456</sup> UNICEF, ‘Trafficking in Human Beings in South Eastern Europe’ (see text to n 95) 9;

authorities. This should result in enforcement authorities having the appropriate knowledge, skills, understanding and consideration of people in the matter of human trafficking.

The growth of migration in the country per year, the number of victims of trafficking per year, the number of officials that have been trained and the level of cooperation between the country and the international community or other relevant countries, are all essential elements in assessing the necessary measures.

In terms of creating policies that would most efficiently enforce the Anti-Trafficking Law, the KSA government can study the experience of the U.S. The KSA government could learn from the U.S. experiences as the laws reflect the human rights standards.<sup>457</sup> In this regards, Alison Brysk argues that “the U.S. government has positioned itself as the global promoter and protector of human rights...”.<sup>458</sup>

Additionally, the selection of U.S. as a comparator to the Saudi Arabian government was due to the U.S. work on their policies and law enforcement. That can be seen in Soderlund arguments stating that ‘[s]purred on by Miller’s office, the TVPA became one of Attorney General John Ashcroft’s most heavily enforced legislative acts.’<sup>459</sup>

She added that ‘[i]n 2003, Ashcroft allocated 91 million dollars in appropriations for anti-trafficking initiatives...’<sup>460</sup> The KSA government could learn from the U.S. experience that substantial investment is needed in order to address the problem and enforce anti-trafficking legislation.

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<sup>457</sup> Alison Brysk and Austin Choi-Fitzpatrick, eds. *From human trafficking to human rights: Reframing contemporary slavery* (University of Pennsylvania Press, 2012) P 98

<sup>458</sup> Alison Brysk and Austin Choi-Fitzpatrick, eds. *From human trafficking to human rights: Reframing contemporary slavery* (University of Pennsylvania Press, 2012) P 98

<sup>459</sup> G Soderlund, ‘Running from the Rescuers: New U.S. Crusades against Sex Trafficking and the Rhetoric of Abolition’ [2005] 17(3) NWSA 64-87

<sup>460</sup> G Soderlund, ‘Running from the Rescuers: New U.S. Crusades against Sex Trafficking and the Rhetoric of Abolition (see text to n 459) 64-87

None of the above statements indicates that the US policy for combating trafficking is perfect or it meets the Palermo Protocol obligations to prevent trafficking; the model has some flaws, but it is regarded as a method for starting the needed policy under the Palermo Protocol obligations to combat human trafficking and enforce Anti-Trafficking Laws. Srikantiah discusses some of the flaws of the USTVPA model:

Despite the availability of T visas since the enactment of the TVPA in 2000, only 616 victims have successfully obtained relief. Existing critiques have focused cooperation requirement of the T visa and the TVPA's trafficking definition on the law enforcement<sup>461</sup>

The Palermo Protocol addresses the obligations of prevention of trafficking through insisting on measures to be addressed by countries.

Being a State Party to the Palermo Protocol, Saudi Arabia shall exercise full efforts to undertake measures such as research, information and mass media campaigns including social and economic initiatives to prevent and combat trafficking in persons.

The government might adopt or strengthen legislative measures, such as educational, social or cultural measures, including bilateral and multilateral cooperation, continue and expand judicial training and public awareness campaigns on recognizing cases of forced labour and trafficking.<sup>462</sup>

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<sup>461</sup> J Srikantiah, 'Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law [2007] Boston University Law Review 157-209; Joyce Koo Dalrymple, Human Trafficking: Protecting Human Rights in the Trafficking Victims Protection Act, 25 451, 454-56 Also, Hussein Sadruddin et al., Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses, 379, 381. See also, Wendy Chapkis, 'Trafficking, Migration, and the Law: Protecting Innocents, Punishing Immigrants' 17

<sup>462</sup> Section 1 (a), (b) of Article 9 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly (see text to n 30)

This due to the fact that at the moment, and from the data they have been collected, the focus has not been directed to such efforts.<sup>463</sup> The question that should be asked of the KSA government is on the allocating of separate departments which act separately on the issue of public awareness and not collectively. Similarly, the role of other departments is absent on this issue, especially the Department of the Interior and the Department of Justice.

The prevention measures, above, to be taken by the ratifying states as the Palermo Protocol, did not neglect cooperation between states in order to encourage the prevention of trafficking. This is clearly shown in Article 9 of the Palermo Protocol, emphasising bilateral cooperation.<sup>464</sup>

As the KSA government is a party to the Palermo Protocol, they are obligated to start applying extra measures such as campaigns and social and economic initiatives that are needed to promote the idea of prevention of trafficking have been illustrated in earlier.<sup>465</sup> It should also apply policies that focus on bilateral agreements with other countries. Those agreements should include, as stated by the Protocol, the application of necessary measures to establish bilateral and multilateral talks between countries in regards to human trafficking.<sup>466</sup>

On the training of the KSA officials, one of the KSA departments indicated that the temporary national plan to combat human trafficking in KSA had

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<sup>463</sup> Further discussion on this area can be seen in the analysis of the KSA report on combating the human trafficking in Saudi Arabian at subsection 5.5.3 of this chapter

<sup>464</sup> Section 4 of Article 9 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly (see text to n 30)

<sup>465</sup> A Gallagher, 'Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis' (see text to n 99);

<sup>466</sup> Section 5 of Article 9 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly (see text to n 30)

established a policy procedure to train KSA officials. This plan includes raising qualifications and the understanding of the implications of human trafficking to society and the rights of the victims.

The targeted officials are labour inspectors, detectives, judges and officials in the Department of Justice, Department of the Interior, Department of Labour and the Department of Social Affairs.<sup>467</sup> According to the KSA department, the purpose of the training is to increase knowledge about human trafficking, give the necessary experience of how to treat the victims of trafficking and increase cooperative participation in implementing the laws combating human trafficking.<sup>468</sup>

In theory, the ideas listed by this department can be looked at as a starting point in combating human trafficking. In fact, any efforts to combat human trafficking need to start from some point as in the policy of officials training. Therefore, looking at their starting point shows the interested parties that the government of KSA is on the right path to start combating human trafficking.

Yet, knowing how the theory works and executing it is the other crucial part of the training of the officials. Needless to say, the steps that have been listed above can be executed accurately and, at the same time, in the good faith that would create the policy that meet the Palermo Protocol obligations on prevention.

The same department assert that they organised five national training sessions for KSA officials between 2004 and 2009. However, each training session was for a maximum of four days and it is doubtful that twenty days of training in four years is capable of increasing the lack of knowledge about human trafficking, especially when the trainees were different each time.

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<sup>467</sup> The KSA Human Rights Authority in response to the measures that have been taken in training Saudi officials

<sup>468</sup> The KSA Human Rights Authority in response to the measures that have been taken in training Saudi officials

Furthermore, another department explained that in late 2009 they randomly visited the Riyadh court, investigation office and the Riyadh shelter, conducting an investigation into the situation of the victims of trafficking.<sup>469</sup> Those visits were reported as showing that some of the cases they had seen were human trafficking such as domestic workers escaping from households due to non-payment of wages and sexual exploitation.<sup>470</sup>

However, the fact is that those officials have not differentiated the exploitations from the human trafficking, which strongly suggest that the urgent needs of the policy on officials training.

This is one of the reasons for the need create policies and measures of training officials so that they can explain the differences between exploitation, forced labour and human trafficking. Without understanding the differences between the above three categories, officials will remain mistaken in identifying cases of human trafficking, and subsequently will implement the wrong measures in preventing human trafficking.

The data collected shows that the department of Labour in KSA has focused on raising awareness of trafficking of domestic workers in KSA in the last few years. They indicated that they have established many campaigns in order to inform employers about their employees' rights.<sup>471</sup>

They have also explained that they have strongly affirmed the principle of domestic workers' rights among other workers. This department showed that

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<sup>469</sup> The KSA Human Rights Authority on other measures needed to be taken in regards to the implementation of human trafficking measures in Saudi Arabia

<sup>470</sup> The KSA Human Rights Authority on other measures needed to be taken in regards to the implementation of human trafficking measures in Saudi Arabia

<sup>471</sup> The National Committee to Combat Human Trafficking in an answer to the question regarding public awareness efforts

they have published ‘The Labour’s Rights Guide’ in 2006 and ‘The Department of Labour Efforts in Combating Human Trafficking’ in 2008.<sup>472</sup>

They added that they had also started issuing the first procedures and guides that govern the relationship of recruitment agencies with incoming foreign workers.<sup>473</sup> Recently this Department published a book entitled *Human Rights Culture*, which includes the distribution of the laws and policies protecting human rights in KSA, and the implementation of those laws in the work environment.

The Department of Information started a mass media campaign using 6 national TV and radio stations, broadcasting in both Arabic and English.<sup>474</sup>

They advocated the need to combat human trafficking, and gave information on the Anti-Trafficking Laws and policies in KSA, the rights of domestic workers in KSA and methods of combating human trafficking.<sup>475</sup>

## **5.4 Current KSA Policies of Prevention and Beyond**

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<sup>472</sup> The National Committee to Combat Human Trafficking in an answer to the question regarding public awareness efforts

<sup>473</sup> This guide was issued to govern the relationship between recruitment agencies and labourers by Ministerial Decree No. 800628: 24/10/1430.

<sup>474</sup> The KSA Human Rights Authority explained that they started the media campaign on 26/12/2009, using 6 national TV and radio programs. They also stated that they had a dedicated emergency telephone number (1919) for victims to call in cases where they needed help

<sup>475</sup> The Department of Information indicated that since 2005 they have broadcast seven TV programmes, two of them on the English Channel, concentrating on human trafficking in the following TV shows: 1) the Saudi Radio Channel show (Security and Life) dated 26/12/2009 on human trafficking and the abuse of domestic workers. 2) The Saudi Radio Channel show (Security and Life) dated 09/1/2010 on the rules of the Anti-Trafficking Law in Saudi Arabia. 3) The Saudi TV English Channel (Good Morning KSA) dated 04/3/2008 on the rights of domestic workers in Saudi Arabia. 4) The Saudi TV English Channel (Good Morning KSA) dated 26/5/2009 on the dangers of begging in Saudi Arabia. 5) The Saudi TV panel dated 22/6/2005 on child exploitation and kidnapping. 6) The Saudi TV panel dated 18/1/2007 on foreign workers rights. The Saudi TV show (News Lights) dated 09/8/2007 on the possible methods to combat human trafficking and eliminate them in Saudi Arabia.

### **5.4.1 Applying Current KSA Policies on Prevention under the Palermo Protocol**

The obligation to prevention was previously discussed using ideas from international instruments, such as the Palermo Protocol, which define those obligations according to their actual job performance. The relevant instruments to this thesis can be seen clearly in Article 9 (1), (2), (4) of the United Nations Trafficking Protocol.<sup>476</sup> This is due to the fact that the KSA has ratified the Palermo Protocol in 2007 and established their first anti-trafficking law accordingly.<sup>477</sup>

The data that has been collected shows that the prevention element has not been included in the SAATL and this is one of the main areas of un-implementation of the Palermo Protocol obligations in regards to the topic of this thesis the prevention.<sup>478</sup> This thesis principally argues for creating policies to prevent the trafficking of domestic workers and under the Palermo Protocol obligations of prevention, while the fact is at the moment the KSA government does not mention prevention or any of its obligations in the anti-trafficking law.

This law needs to be amended accordingly to include a new articles or clause concerning the prevention of human trafficking, in order to make it compatible with the international instrument that was ratified by the KSA

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<sup>476</sup> Article 9 (2) of The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 30). See also, Article 9 (1) of The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 30). See also, Article 9 (4) of The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 30)

<sup>477</sup> Saudi Arabian Anti-Trafficking Law, issued 2009

<sup>478</sup> Section 5.2.1 of this thesis; articles 1-17 of the Saudi Arabian Anti-Trafficking Law, issued 2009. Articles 3, 6, 7, 8, 9, 10, 11, 13 of the Saudi Arabian Anti-Trafficking Law, issued 2009 explain the punishment of traffickers. Article 4 of the Saudi Arabian Anti-Trafficking Law, issued 2009, explains the kind of protection available to victims of trafficking in Saudi Arabia.

government and as stated in the section on states' obligation in the Palermo Protocol.

As mentioned earlier, the obligation of prevention shall be included in the SAATL along with more specific measures and guidelines, as shown by the past experience of other countries such as the USA, UK and other States member to EU.<sup>479</sup> Similarly, the KSA government should take into consideration while drafting or preparing a new obligation of prevention clauses the different types of people covered by the clause.

This means, these clauses should not be limited to children, women, or domestic workers only rather than to include all migrants and including domestic workers, as they are most vulnerable to abuse and trafficking and citizens as well. The KSA anti-trafficking law, should include a prevention clause for example and to capture all the Palermo Protocol provisions. It has to be noted that, as of September 2016, no publications or decrees that relates to enforcing the Saudi Anti-Trafficking law is being issued or announced.

In this regard, looking at the argument of Mantle and Backwith, mentioned earlier, it is clearly acknowledged that prevention should not be seen as a tactic, but it should be defined and implemented.<sup>480</sup> More specifically, the data that was collected in relation to the prevention of trafficking of domestic workers, the topic of this thesis, shows that the KSA government has not made any provisions to prevent trafficked which leads to the KSA point of view on prevention as tactical measures.

Showing this point clearly could be seen in the previous chapter, a case study on the new KSA domestic workers bylaw was presented. It shows that the KSA government have not inserted the term, the definition or the

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<sup>479</sup> Anne T Gallagher, *The International Law of Human Trafficking* (see text to n 112) 414;

<sup>480</sup> G Mantle and D Backwith, 'Poverty and Social Work' (see text to n 97);

implementation of the obligations of prevention from any kind of abuse, exploitation and forced labour in that bylaw.<sup>481</sup>

A very clear example comes from the United Nations Children’s Emergency Fund “UNCIEF” definition of the prevention of human trafficking which makes it clearer that the development and increase of measures should go beyond those of just preventing trafficking to emphasising the need to reduce the numbers being trafficked, especially among vulnerable people, through empowering them.<sup>482</sup> At this stage, other countries and organisations have gone further in the area of prevention, including adding clauses or articles; they have asked to increase measures for empowering vulnerable groups in order to prevent trafficking.

The opposite to the above statement, can be seen in the KSA policies which does not include clauses on the prevention of human trafficked, either in the anti-trafficking law or in the domestic workers bylaw or any other policies. Ultimately, it is not possible to define the prevention of trafficking in KSA if it has not been included or expressed clearly in their policies or laws. Identifying the error could be seen as one of the steps to improve or update the current policies in KSA and would show that the will to prevent the trafficking of domestic workers was actually present and to fulfil the Palermo Protocol obligations of prevention.

#### **5.4.2 Beyond the Current Policies in KSA Under The Palermo Protocol Obligations**

While explaining in the previous section the KSA current policies under the Palermo Protocol obligation of prevention, in particular to the trafficking of domestic workers, it is necessary to go through the remedies for victims of trafficking made available by the KSA government. It is also necessary to

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<sup>481</sup> The Kingdom of Saudi Arabia Domestic Workers Bylaw

<sup>482</sup> UNICEF, ‘Trafficking in Human Beings in South Eastern Europe’ (see text to n 95) 9;

look at the steps that have been taken to include remedies policies and procedures in the KSA government work plane, the SAATL and the domestic workers bylaw.

This is due to the fact that international instruments, especially the Palermo Protocol, emphasise the need for remedies for victims to be provided by each member state signatory to this instrument.<sup>483</sup> As explained earlier in the thesis, this Protocol has asserted the importance of victims gaining sufficient access to remedies in the States parties, and the state providing any necessary protection for the victims of trafficking.<sup>484</sup>

Initially, this section looks at the steps that have been taken in regards to remedies and policies for the victims of trafficking in general in KSA. It will then look at the remedies that are provided for particular victim groups of trafficking, such as domestic workers.

In regards to victims of trafficking in general, the data showed that a permanent committee to combat human trafficking in KSA had been established.<sup>485</sup> The main duties of this committee, beside the monitoring part, are 1) to follow up victims of trafficking to ensure their safety and ensure they do not become victims again; 2) coordination with other countries such as the victims' countries of origin to guarantee the safe return of the victims to their homes; and 3) the recommendation to the KSA authorities of allowing some victims to stay in the country if needed.<sup>486</sup>

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<sup>483</sup> Articles 6, 7 and 8 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking of Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly

<sup>484</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 3)

<sup>485</sup> The Ministerial Council order number 244 date 13/7/2009 to establish a permanent committee to combat human trafficking

<sup>486</sup> The Ministerial Council order number 244 date 13/7/2009 to establish a permanent committee to combat human trafficking.

Additionally, the collected data shows that this committee coordinated the establishment of nine governmental shelters that actually are funded, by the Department of Social Affairs and another twelve non-governmental shelters for victims of trafficking. Similarly, the SAATL stated in article 15 several measures that concern the victims of trafficking and remedies.<sup>487</sup>

The measures in this article come under seven main points that include informing the victims of trafficking of their rights in a language he/she can understand; providing medical services if needed; providing physical or social shelter if needed; providing secure protection; and an over stay in the country if the victims is non-KSA.<sup>488</sup>

As it has stated in the Palermo Protocol and as the KSA government is member to this international treaty, it is the state's responsibility to provide all victims of trafficking with the protection and assistance they need according to international instruments has been mentioned earlier.

That being said, while the KSA government have included an article with seven clauses on methods of protecting the victims of trafficking, the collected data showed a lack of policies to implement those clauses of the article. Stating what should be done according to the national law is not nearly enough, as it should go beyond by preventing the potential victims from being trafficked.

In regards to the events after of being victim to human trafficking, the remedies that have been provided for the victims of domestic worker trafficking, the collected data did not show any steps or measures or policies by the KSA government in this area. One could argue that the measures that the KSA government have taken in the anti-trafficking law cover all victims of trafficking without any specification of groups.

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<sup>487</sup> Article 15 of the Saudi Arabian Anti-Trafficking Law, issued 2009

<sup>488</sup> Article 15 (1), (2), (3), (4), (5), (6) and (7) of the Saudi Arabian Anti-Trafficking Law, issued 2009

Yet, this argument could be dismantled as the KSA government have recognised one group in a specific law, which is the KSA domestic workers bylaw. At the same time, it has been shown that domestic workers are to be considered a vulnerable group due to the nature of their work, and because of that, special consideration by the government is needed in this area.

The Palermo Protocol asserted that the necessary measures, explained earlier, that allow partnerships with NGOs<sup>489</sup> and the encouragement of bilateral agreements for vulnerable victims of human trafficking and the adoption of strengthened punishment measures in Anti-Trafficking Laws.<sup>490</sup>

That being said, one could argue that this protocol gives a reference to the method that it is to be followed by States parties in the area of cooperation with NGOs. This argument can also be seen in the yearly report of the Department of State in the USA, which affirms the urgency of partnership with NGOs.<sup>491</sup>

For example, the Global Alliance against Trafficking Women (GAATW) while using a rights-based approach method to advocates a universal principle that every human has equal rights before the law and a right to personhood, safety, security, dignity and integrity, and this is applicable to all, regardless of a person's circumstances.<sup>492</sup>

The literature review gives an example of the kind of methods that NGOs are using to show how their work is in the best interest of victims of trafficking and their rights and equality. Another example from the same organisation shows a willingness to promote human rights standards and to continue to

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<sup>489</sup> Sections 2, 3 of Article 9 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 30)

<sup>490</sup> Sections 4, 5 of Article 9 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 30)

<sup>491</sup> U.S. Department of State, Trafficking in Persons Report (see text to n 1) 6

<sup>492</sup> 'Roundtable on Using CEDAW to Protect the Rights of Women Migrant Workers and Trafficked Women in South and Southeast Asia' (see text to n 129);

develop them with regards to the human trafficking in particular. This organisation went beyond establishing the laws of the anti-trafficking through the partnership with different states and other NGOs.<sup>493</sup>

That being said, the data that has been collected has clearly shown that there is no cooperation between the KSA government and any of its departments with any local or international organisations. In fact, this contradicts the principle of article 9 (3) of the Palermo Protocol, which the KSA government has signed, which states ‘Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society’.<sup>494</sup>

That being KSA, the aim in this part is to show from the data that has been collected how the KSA government is partnering with national and international organisations in the area of trafficking of domestic workers.

Three main areas are discussed above, the first is the importance of partnering with NGOs; second is the KSA government ratifying the Palermo Protocol and therefore being bound by it, including article 9; and third the fact that the KSA government is not partnering up with any local or international organisations.

Ultimately, it is clear from what has been shown that despite their efforts at implementing the Palermo Protocol, the KSA government are still missing the full implementation of all of the protocol articles in their laws. Studying the KSA policies, which has no references on NGO partnerships, leads to the conclusion of the importance of partnering with NGOs in KSA. Even more

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<sup>493</sup> ‘Roundtable on Using CEDAW to Protect the Rights of Women Migrant Workers and Trafficked Women in South and Southeast Asia’ (see text to n 129); see also section 2.3.2 of this thesis

<sup>494</sup> Article 9 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (see text to n 30)

important that, KSA is bound by the Palermo Protocol as stated earlier and they can implement article 9 fully.<sup>495</sup>

## **5.5 The Trafficking of Domestic Workers case study (second aspect – KSA government Report on Human Trafficking)**

### **5.5.1 Background to the case study**

This case study is about the first KSA government report on human trafficking, the “Annual Report on the Suppression of Crimes of Trafficking in Person in the Kingdom of KSA in the years 2010 – 2011”. As this is the first annual report on human trafficking, this case study will look deeply at four main sections of this report firstly, the general legislative framework for the prevention and suppression of crimes of trafficking in persons secondly, the national mechanism to combat trafficking in persons in KSA.

The third section of the report is about awareness and training programmes and activities to combat trafficking in persons, and the final section of the report is about the international cooperation between the KSA government and all government and international agencies in regards to the trafficking in persons.<sup>496</sup>

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<sup>495</sup> Articles 1-17 of the Saudi Arabian Anti-Trafficking Law, issued 2009

<sup>496</sup> In regards to more references to good/better practices, those were applied in the previous case study as it aims to explain the availability of better laws and practices (FF: 361, 362, 363, 367, 373, 377, 378, 380, 381, 382, 385, 386, 393). In this case study, the aim is to discuss four main sections of the KSA report which is the general legislative framework for the prevention and suppression of crimes of trafficking in persons secondly, the national mechanism to combat crimes of trafficking in persons in KSA, the awareness and training programmes and activities to combat crimes of trafficking in persons, and finally the international cooperation between the KSA government and all government and international agencies (comparing the KSA efforts with the Palermo Protocol, as the main international legislative). The above discussion is in fact to support and explain the role of the Saudi Arabian government dealing with the issue of trafficking of human beings and not as comparative models with other countries.

## **5.5.2 Discussion and analysis of the case study**

### **5.5.2.1 Part I: The KSA general legislative framework for the prevention and suppression of trafficking.**

Part I shows the concerns with the legislation and a framework for prevention and suppression of trafficking. It consists of two main sections, section one is about the KSA national legislation and section two explains international legislation that the KSA government is party to, including regional and international legislation.

Firstly, the national legislation in this report explains the four KSA main acts that are relevant to the prevention of human trafficking beside with any another ministerial rules. Article 26 of the KSA basic law and its meaning in promoting human rights standards. The report does not provide any further explanation or new laws that could be interpreted as guides for promoting human rights values in the KSA basic law.<sup>497</sup>

Yet, the report provides extensive studies that are linked directly to the situation of migrant workers in KSA. The report provides detailed explanations for articles 61, 161 and 162 of the labour law, which are to be considered as the ‘principal provisions concerning the need to combat trafficking in persons.’<sup>498</sup> Those articles explain in detail, as provided by the report, that the labour law in KSA prohibits any kind of forced labour and

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<sup>497</sup> Please see full explanation to this article in section 3.4.2.1, page 113 of this thesis. Article 26 of the SABL is to be considered as the only reference to human rights protection in the country only constitution law. Article 26 states that: ‘The state shall protect human rights in accordance with the Islamic Sharia law.’

<sup>498</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 14

prohibits the unlawful deduction of wages.<sup>499</sup> They also explain the prohibition of children working in any kind of hazard work in KSA and they set out the minimum age of children to be working.<sup>500</sup>

This report also explains the role of the Department of Labour in combating human trafficking by showing recent steps in this area. One step that has been reaffirmed several times is the recruitment agencies ordinance, which shows that it has a number of articles designed to combat trafficking. The explanation reveals that the Department of Labour has included in this ordinance that:

any natural person wishing to participate in the establishment of a recruitment agency must not have been convicted of any offence prejudicial to honour or integrity.<sup>501</sup>

In reality, there is no direct connection between what is quoted above in the annual report and the concept of combating human trafficking. The annual

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<sup>499</sup> Article 61 of the Saudi Arabian Labour Law. This article states that '[i]n addition to the obligations specified in this law and in the regulations and ordinances issued pursuant thereto: 1) the employer shall not require a worker to perform forced labour, nor shall he withhold all or part of worker's wage without judicial authorization. The employer shall treat his worker with due respect and shall refrain from any act or utterance prejudicial to their dignity or their religion. 2) The employer shall allow workers the time needed to exercise their right provided for in this law without any deduction from their wages in respect of such time. The employer shall be entitled to regulate the exercise of this right in a manner non-detrimental to the progress of their work. 3) The employer shall provide officials of the competent authorities with every facility to fulfil their task of enforcing the provision if this law.'

<sup>500</sup> Article 161 of the Saudi Arabian Labour Law. This article states that "[j]uveniles shall not be employed in hazardous operations, harmful industries or occupation or activities which, due to their nature or the circumstances that they entail, are likely to endanger the juvenile's health, safety or morals. The Saudi operations, industries and occupations shall be determined by decision of the Minister.' Article 162 of the Saudi Arabian Labour Law. This article states that: '1) no person under 15 years of age shall be employed or permitted to enter the workplace. The Minister may decide to raise this age limit in some industries or areas or for certain categories of juveniles. 2) By way of exception to paragraph 1 of this article, the Minister may allow persons between 13 and 15 years of age to be employed, or engage, in light work on the following conditions: 2.1) such work should not be potentially harmful to their health or development...'

<sup>501</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 15

report represents the full statement of the Saudi government with regards to human trafficking in the Kingdom of Saudi Arabia. Hence, in the absence of securing clear information from the government, this should be considered as official responses in support of this thesis.

It is true that owners of recruitment agencies should have honour and integrity, but there are more important terms that are relevant to human trafficking. Those terms should at least include that the participant has not been involved in matters of trafficking or violating the rights of workers previously. The terms can go further and demand a policy is implemented and supervised by the KSA government insuring that no workers will be violated.

Additionally, the report lists some major conditions and obligations to be eligible as a recruitment agency director, such as not practicing human trafficking, not to be aggressive towards workers and not to be involved in child labour.<sup>502</sup> Whilst it is vital that those conditions and obligations are in the criteria for recruitment agency personnel behaviour, basic human rights should not be negotiated on.

The KSA government, as explained earlier, has signed and ratified many international conventions that stipulate the basic fundamental human rights. That being KSA, those rights should not be subject to negotiation and whether they are to be implemented or not. On the contrary, the KSA government should stipulate the core of the Palermo Protocol in, for example, the recruitment agency ordinance rather than stipulate basic human rights, which should be implemented in the constitution of the country.<sup>503</sup>

Secondly, the regional and international laws and conventions, as quoted, section includes several parts that are related to the issue of human

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<sup>502</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 15-16

<sup>503</sup> In the case of Saudi Arabia, the constitution refers to the Basic Law. The fundamental human rights that have been explained in article 26 of the Basic Law affirm the importance of human rights.

trafficking. The start of this section in the report, explains that once the KSA government has signed an international treaty it will be part of KSA law. As the report states, ‘once they have been so promulgated, constitute part of the kingdom’s domestic law by which court and other government authorities are bound.’<sup>504</sup>

So far, the explanation of ratifying an international or regional treaty has been provided by this report in a clear way. This explanation suggests that any international treaty approved by the KSA government should be considered part of the domestic law of KSA; yet, the missing part is the implementation process into the domestic law.

As explained earlier, the KSA government might have the best drafts of laws, but they do not have the best implementation mechanism for those laws. This conclusion is clear based on the report listing sixteen international and regional conventions related to human trafficking, as the report stated, and with different understandings to the definition of human trafficking in the targeted KSA departments.<sup>505</sup>

Going back to the international and regional treaties in the report, the KSA government signed and ratified the major conventions that are related to the

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<sup>504</sup> Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 19

<sup>505</sup> Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 19-22

area of human trafficking.<sup>506</sup> Yet, it is also a fact that this report shows nothing related to the implementation process rather than what have been shown at the beginning of the report which can be seen as a description section to the international and regional laws.

The section in which the report lists the regional and international treaties that the KSA government has joined is rich with descriptive pages of which international instruments have been signed. Neither the data that has been collected nor this report shows how the KSA government is supposed to implement the international instruments domestically.

Although the basic law states that when the Ministerial Council agree on an international instrument, it is automatically to be implemented domestically.<sup>507</sup> The fact is, it lacks an explanation of how the KSA government has implemented it or how they intended to implement those international instruments domestically.

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<sup>506</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 14. The report presented the following list of international and regional conventions that the KSA government have signed,, including The Protocol to Prevent, Suppress and Punish Trafficking of Persons, especially Women and Children' (see text to n 22); the Abu Dabi document on Uniform Law to Combat the Trafficking in Persons of 2006; the comprehensive Arab Strategy to Combat Crimes of Human Trafficking of 2012; the Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography of 2000; the Arab Model Law to Combat Crimes of Trafficking in Persons of 2004; the ILO Forced Labour Convention no 29 of 1978; the Slavery Convention of 1926; the Universal Declaration of Human Rights of 1948; the Arab Charter on Human Rights of 2004; the ILO Convention no 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour of 1999; the Convention on the Elimination of all Forms of Discrimination against Women of 1979; the Convention on the Rights of the Child; the International Convention on the Elimination of all Forms of Racial Discrimination of 1965; the United Nations Convention against the Transnational Organized Crimes of 2000; the Protocol against Smuggling of Migrants by Land, Air and Sea of 2000; the Covenant on the Rights of the Child in Islam of 2006.

<sup>507</sup> Ministries Council, *The Basic Law of the Kingdom of Saudi Arabia* (Multimedia House Press 1992) 64; the Basic Law was issued on the Royal Decree No. A/90: 27/8/1412 (1992) and contains 88 Articles. See also article 70 of the Basic Law, article 20 of the statutes of the Council of Ministries and article 18 of the consultative council.

### **5.5.2.2 Part II: The KSA national mechanism to combat trafficking in persons**

Part II of this report explains the KSA national mechanism to combat the trafficking in persons in five main sections. The national mechanism, according to this report, consists of the Human Rights Commission's Standing Committee to Combat the Trafficking in Persons, the Anti-begging Department at the Department of Social Affairs, the Expatriate Worker's Welfare Department at the Department of Labour, the National Commission of Childhood and the National Family Security Programme.<sup>508</sup>

The introduction of this part, in the report, explains a very relevant idea to this thesis which is the implementation of the international laws to combat the trafficking in persons by stating 'in view of the evident obligation to address the problem of human trafficking in persons [...] there was a need to establish governmental and non-governmental bodies to monitor the implementation of national legislation...'<sup>509</sup>

It goes further by stating that 'in addition to a national mechanism to help to coordinate and improve the effectiveness of the endeavours of the competent authorities...'<sup>510</sup> In brief, the above sentences give the introduction of this part the strong message that the KSA government are following up with their laws and the implementation process. It goes beyond this point by illustrating the fact they have the authority to supervise and monitor the KSA government departments to see the effectiveness of their implementation of the laws.

In the section where the report explains the establishment of the Human Rights Commission Standing Committee To Combat The Crimes Of

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<sup>508</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 29-32

<sup>509</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 29

<sup>510</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 29

Trafficking In Persons, it is similarly explains the functions of the members of this committee.<sup>511</sup> Those members should consist of representatives from the Department of Interior, Department of Social Affairs, Department of Labour, Department of Foreign Affairs, Department of Justice and the Department of Culture and Information.<sup>512</sup>

The functions of those representative should fall into monitoring trafficking, coordinating between all KSA departments, submitting recommendations for the victims of trafficking, making policy as well as doing research and running media campaigns.<sup>513</sup> That being said, the report lists the functions of the committee without mentioning the implementation of the laws, as stated in the introduction of this part.

It would be more proactive and effective if those representatives could be allowed the supervision of the implementation process. The simple reason for that is they worked within the departments that are concerned with trafficking and at the same time, they have easy access to the needed supervision materials such as the laws, policies and the government coordination.

In the section where the report shows the role of the Anti-Begging Department at the Department of Social Affairs, the report shows evidence that begging is becoming a phenomenon in KSA. The report explains in brief way, the role of this department goes beyond the begging industry and there role is looking at the process of exploitation of women and children into the begging industry<sup>514</sup> Similar to the first discussion above on the implementation process, this report does not provide any details on how to

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<sup>511</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 29

<sup>512</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 29

<sup>513</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 29

<sup>514</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 30

implement the law. Relevant to this thesis is the need to explain the implementation process for KSA legislation by the government departments.

On the other hand, the main duty of the Expatriate Worker's Welfare Department at the Department of Labour is to ensure that employers comply with the SALL and all its provisions when they deal with the migrants.<sup>515</sup> In short, they should make sure that the law is being executed, and not to make their job to ensure that the law is implemented in this process.

The report in this area aims to 'ensure that employers comply with the provision of the labour law [...] to prevent any violation of their rights and in particular trafficking in persons.'<sup>516</sup> This statement could be true, if this department was to be solely responsible for implementing the law inside the Department of Labour and within the KSA government and not act as just an observer of the treatment between employers and employees.

The area where the report explains the role of the National Commission For Childhood includes a vague statement. The report indicates that the name of this committee was changed to the current name in 2005 and this committee is to report directly to the Department of Education.<sup>517</sup> The report states clearly that 'safeguarding the rights of all children and its functions include proposing general policies and strategic plans to the government for the care and protection of the children from all forms of exploitation...'<sup>518</sup>

That being said, the duties of this Committee are to ensure the safeguarding of children in KSA from falling into the hands of the exploiters and to protect

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<sup>515</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 31

<sup>516</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 31

<sup>517</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 31

<sup>518</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 31

them from being forced labourers, along with cooperation from the Anti-Beggary Department and other concerned departments.<sup>519</sup>

The role of this committee could be one of the most important rules in the government in the area of protecting the rights of children. Yet, instead of mentioning their importance in combating the human trafficking they have asserting on listing all the other accomplishments that have no relevance to the implementation of the laws, anti-trafficking law or policies in KSA.

The final area of this part of the report explains the national family security programme in the national mechanism to combat the trafficking in persons in KSA.<sup>520</sup> The main duty of this national programme is protecting the welfare of children in families from any kind of violence, abuse or exploitation that could lead to potential human trafficking cases.<sup>521</sup>

The report states that ‘the programme is seeking to ensure full public awareness of this phenomenon [...] while at the same time taking measures to provide care for victims and relieve their suffering.’<sup>522</sup> While it is clear that this national programme is important and a way to help in protecting children and their families, it is not clear what its intentions are in the area of human trafficking. It is true that protecting families from abuse is vital to creating a safe society, but the report fails to link this programme with trafficking cases.

The analysis of this part can include a wide range of discussions about the relevancy, duties of all areas, implementation of the laws inside those areas and most importantly the link between their work and the domestic workers.

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<sup>519</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 31

<sup>520</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 31-32

<sup>521</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 31-32

<sup>522</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 32

The most important areas of the discussion, which are relevant to the topic of this thesis, are the implementation of the laws inside those areas and the domestic workers' connections.

Whilst the report lists the departments' main duties and jobs in all of the above areas, it is clear that the report has neglected the most important point. At the same time, none of those areas have an actual law-drafting function nor do they have an actual role in implementing the law itself. It is clear for now that the idea of listing the above five areas in the report as the KSA mechanism to combat trafficking can be seen as an attempt to show something not available, using the wrong path.

The second most important point that this part has missed is the link between the above five areas and the trafficking of domestic workers in KSA or even the link between domestic workers and the KSA mechanism to combat the trafficking. While it is agreed that human trafficking can happen to anyone, whether a KSA national, a migrant worker or a domestic worker, this part neglects to include domestic workers.

The fact is, the preparation of this report focused on the issue of trafficking of migrant workers and KSA nationals as a strategy of showing their accomplishments. Nonetheless, if the intention of combating human trafficking in KSA while preparing the report was really there, there would be a clear definition of human trafficking, a method of combating human trafficking and a description of the efforts that have been taken, including all types of migrants and nationals, in the prevention of trafficking section.

### **5.5.2.3 Part III: KSA awareness and training programmes to combat trafficking in persons**

Part III of this report shows KSA efforts in the area of awareness and training programmes to combat the trafficking in persons. The report has divided the

part into three vocal points, which are the awareness programmes, information programmes and training programmes.<sup>523</sup>

It has been illustrated at the start of this part that ‘close attention is being paid to issues involving trafficking in persons in all its forms and manifestations in order to raise awareness among all categories and sections of the public...’<sup>524</sup>

The idea from adding this section in the report is to inform the reader of this report by the efforts of the KSA department in combating the trafficking through the above zones.

The first section of this report discusses the awareness programmes that the KSA government has run to increase public knowledge of the causes of trafficking in KSA. The report states that the Ministerial Council approved the promotion of the human rights culture in prepared programmes in order to help with ‘familiarizing the public with the legislation, directives and measures for the protection of human rights, in addition to raising awareness of the provisions of the suppression of trafficking in persons...’<sup>525</sup>

The awareness programmes have been focused on publications on the issue of combating human trafficking and increasing knowledge of the rights of migrant workers in KSA.<sup>526</sup> Additionally, the report explains that the awareness campaign was not just limited to publications. They also included the preparation of several symposiums and seminars on trafficking in persons designed for KSA officials.<sup>527</sup> According to the report, the KSA government

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<sup>523</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 32-36

<sup>524</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 32

<sup>525</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 32

<sup>526</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 33

<sup>527</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 33-34

organized five different symposiums and seminars in 2010, focusing on increasing the knowledge and understanding of judges, security officials and inspection officials of trafficking in persons.<sup>528</sup>

However, despite all of the efforts shown towards raising public awareness by the KSA government, the idea of public awareness is at least to be seen as mishandled. It would be more official if the KSA government had approached each specific group of judges, security officials and inspection officials with a specific awareness programme designed for their needs and their work.

Different job obligations need different awareness programmes that allow the easy identification, easy treating and easy procedures of cases of trafficking. For example, the report states that a symposium entitled ‘Introduction to Crimes of Trafficking in Persons and Ways to Combat them’ was giving to several judges and inspection officials with the goal of promoting a culture of human rights and protection among officials engaged in the area of prevention.<sup>529</sup> This example clearly shows that this type of training for officials is not suitable for judges; however, it suits the frontline officials that deal with human trafficking.

The second area in this part contains an explanation about information programmes in combating trafficking in persons in KSA.<sup>530</sup> The mission statement of this area ‘reflects the seriousness of the Kingdom’s rejection of such trafficking and the importance that it attaches to respecting human rights...’<sup>531</sup>

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<sup>528</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 33-34

<sup>529</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 33

<sup>530</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 34-36

<sup>531</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 34

The application of this statement is clear in this area through the clear focus on increasing information programmes through television broadcasts, radio broadcasts and the local press, as stated in the report.<sup>532</sup> The fact is, this area has the most focus and direct attention in the area of trafficking in the report. Not only that, the broadcasts have focused the attention into the area where it was most needed at this stage, which is public knowledge of what human trafficking is, how to identify victims of trafficking and ways of reporting trafficking.

The information programmes did not neglect the presence of migrant workers in KSA. The topics of the broadcasts and the press campaign were the coercion of women and children, the exploitation of migrant workers and treating migrant workers with the utmost respect in terms of human rights values.<sup>533</sup> The report states ‘...and in particular their right to be treated with respect as human beings...since this will help to combat and prevent trafficking in persons.’<sup>534</sup>

As long as the goals and aims of the information programmes present the concepts and definition of human trafficking that were set out in the Palermo Protocol and the three P’s, the information programmes will eventually succeed in creating the needed awareness. Additional points to be noted are that the information programmes directed attention to the combating and prevention of human trafficking at the same time. They did not focus on only one of the three P’s ignoring the other two, nor did they direct the attention to unnecessary broadcasts, which in theory makes the information programmes better and more effective in terms of their efforts.

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<sup>532</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 34-36

<sup>533</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 34

<sup>534</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 34

The third and final area of this part, explains the efforts that were taken in regards to the training programmes run by the KSA government.<sup>535</sup> The main statement in this area is that they ‘participated in numerous training and promotion awareness activities designed to ensure closer familiarity with trafficking in persons in all of its forms and manifestations...’<sup>536</sup>

In principle, as long as this statement is being taken into consideration in all of the KSA government’s management of the concept of trafficking, whether public awareness programme information or training programmes, they will be heading in the right direction in preventing human trafficking.

The fact that they have been stated in this section speaks clearly about the good strategic plans provided by the KSA government in regards to training programmes. However, as mentioned above, it is not enough to have perfect plans or even perfect strategies without having a strategy for implementing them.

The report provides a list of the four main training courses that ran in the year of preparing the report, with a goal of training in anti-beggary, five sessions on prevention of trafficking in persons and protection of female and child victims of trafficking.<sup>537</sup> The noticeable part, which is relevant to this thesis, is that the KSA government conducted two out of four training sessions focusing on the prevention of trafficking element.

The first training session on the prevention of trafficking in persons occurred in January 2011, as collaboration between two main KSA departments to

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<sup>535</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 36

<sup>536</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 36

<sup>537</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 36

‘enhance the skills of officials responsible for the prevention of trafficking in persons.’<sup>538</sup>

The remaining four training sessions occurred with a presence of almost twenty KSA official participants in each session, from all KSA departments and bodies for the purpose of learning possible ways to combat and prevent trafficking in persons in KSA.<sup>539</sup> Whilst the report makes it clear that the focus was mainly on prevention, a copy of the training session should be made available in order to assess the quality of the knowledge presented.

An additional focus the KSA government could have in future, would be to direct training sessions not only on the prevention of human trafficking and not only on the prevention of trafficking of migrant workers. A solution for the KSA government is proposed here, which is to divide the efforts of the training session into several categories.

That means training sessions are run in the areas of prevention, protection and punishment of trafficking of human. Moreover, those categories could be directed in appropriate directions, such as providing judges with proper training on punishment and security officials on the prevention of human trafficking. This method would easily deliver the proper training to the appropriate officials in a short time.

#### **5.5.2.4 Part IV: KSA international cooperation**

Part IV of the report explains the concept of international cooperation that was affirmed in the Palermo Protocol, as explained earlier, for the purpose of

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<sup>538</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 36

<sup>539</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 36

using best practices between countries in combating human trafficking.<sup>540</sup> The report reaffirms this concept in this part, stating that ‘international cooperation is a fundamental prerequisite to combat trafficking in persons. States therefore need to formulate plans and strategies at the national level to facilitate such cooperation...’<sup>541</sup>

The report also affirms another main goal, to apply international cooperation between the KSA government and other international agencies, which can be summarised in eliminating the causes of trafficking in persons. The report states that ‘cooperation between the Kingdom and other States and international organizations is illustrated by the programme under which the Kingdom and UNICEF are collaborating to prevent trafficking...’<sup>542</sup>

As the explanation continues, other goals of international cooperation can be seen in the KSA efforts to eliminate child exploitation and provide better protection for child victims of trafficking that have been exploited sexually or in the begging sector.<sup>543</sup> Additional result can be seen from international cooperation, as the report states that in light of the efforts of the KSA government, children who were trafficked into KSA have been returned to their families in their countries of origin. The report states that the children

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<sup>540</sup> The extent of cooperation between the Saudi Arabian government and international agencies has been explained in earlier chapters extensively. This section will mainly discuss the case study of the Saudi Arabian report on human trafficking and since the report contains a separate section on international cooperation, it is ideal for understanding how the Saudi Arabian government envisages, applies and executes the concept of international cooperation.

<sup>541</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 47

<sup>542</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 47

<sup>543</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 47

come from different countries such as Yemen, Nigeria, Afghanistan, Pakistan and Niger for the purpose of exploitation in mainly the beggary industry.<sup>544</sup>

Another area the report focused on was to show KSA international cooperation is the participation of KSA officials in international forums. The report explains this strategy by stating that the participation of KSA officials in international forums was due to the need to enhance their capabilities in understanding the phenomenon of trafficking in persons, broadening their knowledge of ways to deal with trafficking and its ramifications in an enlightened and decisive manner.<sup>545</sup>

While it is important to keep in mind the above reasons for international cooperation, it is also important to expand the concept of KSA officials' international cooperation through learning from other countries experiences. Additionally, elaborating on the above argument, it would be a great strategy for the KSA government to provide officials with the tools of success in the area of combating human trafficking such as the adequate training, clear laws and clear policies.

The concept of international cooperation could use a little more input in addition to attending international forums, such as attending international conferences, promoting research on human trafficking internationally and nationally, following the best State's practices and listening to international and national NGOs. A clear example can be seen in this part, as the report lists two international agencies, which the KSA government cooperated with previously, the International Criminal Police Organization and the International Organization of Migration.<sup>546</sup>

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<sup>544</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 47

<sup>545</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 47

<sup>546</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 47

In addition, KSA government officials have participated in several regional and international forums to promote international cooperation to combat trafficking in persons by KSA.<sup>547</sup> Other than the above, there is no other mention of the kind of international cooperation that the KSA government has taken or is willing to take in the future. The KSA government is a member of the Palermo Protocol and obliged to implement all of its articles, it asserts that member countries should cooperate with NGOs, civil societies and multilateral bilateral agreements.<sup>548</sup>

In KSA, having to participate in conferences that have an interest in combating human trafficking is not quite the same as what is described in the Palermo Protocol. The idea that is explained in the Protocol explicitly encourages states to cooperate with NGOs and civil societies, and at the same time to cooperate with other states through bilateral agreements to combat trafficking.

Cooperation is not limited to the Palermo Protocol, it should go beyond that by establishing a pattern of willingness to combat trafficking. It might also conduct international cooperation between states in the three P's as in prevention of trafficking, protection of victims, punishment of traffickers and even partnership with NGOs.

The last point that needs to be addressed in this area is what has been explained in this report as an example of KSA international cooperation, which is the collaboration of the Naif Arab University in KSA with several

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<sup>547</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 47

<sup>548</sup> Article 9 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the UN Convention against Transnational Organized Crime), adopted by resolution A/RES/55/25 of 15/11/2000 at the fifty-fifth session of the UN General Assembly (see text to n 30)

regional and international bodies.<sup>549</sup> This collaboration, as the report shows, comes under the organisation of a number of symposiums, seminars, seventeen scientific publications and twenty-two research projects.<sup>550</sup>

While appreciation is given to this University for the efforts that has been made in the area of human trafficking, the report should in future include the quantity of knowledge gained from their efforts along with the methodology used in the researches. It could be very helpful to the cause of combating human trafficking, if this University has a plan to establish a Human Trafficking Institute, which works under the wing of the University and under its direct supervision.

Some areas of international cooperation can be listed as closely linked to the concept of human trafficking such as criminal enforcement, labour enforcement, victim outreach, public awareness, education, trade policy, international development and programmes, immigration, intelligence and diplomacy.

Additional international agencies that the KSA government should strengthen or create a relationship with are the ILO, UNHRC, UNODC and the IOM. The final area of international cooperation that the KSA government should look at is cooperation with the sending countries of migrant workers and other destination countries of migrant workers.

In such case the type of cooperation, the international agencies and the countries profile in regards to migrant workers, would summarize most of the goals of the Palermo Protocol. For example, international agencies such as the ILO, UNHRC, EU and the IOM have published numerous publications that focus on combating human trafficking, some of which are cited this thesis.

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<sup>549</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 48

<sup>550</sup> The Saudi Arabian Annual Report on the Suppression of Crimes of Trafficking in Persons in the Kingdom of Saudi Arabia (The Human Rights Authority 2013) 48

Because of that, those agencies can be seen as agencies with experience in the matter of human trafficking and experience on how countries deal with protection of victims, prevention of human trafficking and punishing the traffickers. The other side of the cooperation is the cooperation between the sending countries and the receiving countries of migrant workers. Putting aside the countries' differences and political reasons, those two types of countries can lead the way in countries cooperating. As the sending countries should look out for the best interests of their migrant citizens and the receiving countries should protect and prevent crimes for the safety of its society.

## **5.6 Summary and Conclusion**

The second section of this chapter has shown that the KSA government acknowledged the problem of human trafficking by ratifying the Palermo Protocol and issuing its first, and last, anti-trafficking legislation. It has also established a permanent committee dedicated to combating human trafficking. The KSA government, however, lacks the necessary cooperation with international and regional agencies in this area.

Additionally, the means of human trafficking is defined in the SAATL, yet the data that have been collected showed that the various governmental departments generally have no knowledge of this. This might be because of the lack of training of some officials or an unwillingness to cooperate in this research. Either way, all relevant departments in the KSA government need to have full knowledge of the practice of human trafficking, including the definition of the means of human trafficking, in order to combat it.

It has been shown in this chapter, that it is necessary to clarify the difference between forced labour, smuggling, abuse and exploitation and human trafficking, which the KSA government has not yet done. One could conclude that the KSA government has failed in explaining the means of human

trafficking, because most of the KSA department staff does not yet seem to have acquired the knowledge or the research in human trafficking.

Those departments urgently need to start adopting and amending current laws and procedures, including knowing what the means of trafficking signifies, in order to fight and combat trafficking. At the same time, all departments can cooperate with each other fully to accomplish the minimum standards of combating human trafficking.

Furthermore, as has been established, the lack of knowledge and information concerning the means of trafficking can be considered as a vital flaw in the formula. Similarly, not knowing the purpose of human trafficking in KSA is facing the same problem as the means.

The risks and vulnerabilities and the lack of household inspections of domestic workers is subjecting them to becoming the next victims of trafficking. It is undeniable that Department A exempted domestic workers from the national Labour Law; however, it is not understandable not having a law to protect domestic workers.

Four steps have been mentioned in identifying the victims of human trafficking in the country that are really needed to help the KSA government identify and rescue the victims of domestic worker trafficking. The four steps are firstly, immediate home inspections of the domestic workers place of work, providing accurate statistics on their number and location.

Secondly, establish a hotline concerned with human trafficking along with arrangements for qualified translators. Thirdly, start trusting NGOs, along with acting in partnership to start combating the trafficking of domestic workers. Finally, establishing a national task force with the sole goal of identifying victims of trafficking, protecting the victims, punishing the traffickers and preparing the necessary research, in order to prevent the trafficking of domestic workers.

The establishment of the recruitment companies, as shown in this section, is a step in the right direction for protecting migrant workers and in particular domestic workers, as their role will replace the role of the employers. At the same time, those companies are supervised by the KSA government, which means that the government needs to step-up their role in preventing trafficking, rather than being named as responsible for it happening.

Another process that the KSA government recently introduced is the domestic workers bylaw. This section shows that this bylaw contains the minimum human rights standards that it should be guaranteed as a principle. This thesis argues that this bylaw should be a model for increasing the basic human rights given to domestic workers and not just guaranteeing them their basic rights.

The third section of this chapter discusses KSA techniques in combating human trafficking internationally. It has been shown that the KSA government applied all three Ps in its first anti-trafficking legislation. This anti-trafficking legislation went beyond the Palermo Protocol by focusing on the trafficking itself and through endorsing a very comprehensive article on the punishment of traffickers, especially when the victims are women, children or disabled persons.

The fourth section of this chapter have shown that the international instruments that relate to human trafficking that the KSA government is part of show the importance of the prevention factor. In the Palermo Protocol, it can be seen clearly in article 9, with many assertions on how to prevent such violation. However, the KSA government has not been able so far to produce a single statute that includes a clause or articles on the prevention factor, including in their anti-trafficking law or their domestic workers bylaw.

It is more important, now than before, to amend the SAATL to be compatible with international instruments such as the Palermo Protocol. This compatibility could be seen if the KSA government first started amending the

law and then implementing the laws nationally. It is absolutely vital to include prevention clauses and prevention measures in any domestic law, national law or international instrument so the definition of prevention can be seen and subsequently applied from all of the concern departments.

Preventing the human trafficking requires governments and related departments to work on the laws surrounding this issue. It also, requires those departments to approach the concept from the right angle. Applying this to the KSA government, one might find that the KSA government and all its departments have approached the idea of combating human trafficking from the wrong angle.

No logical concept would agree with preventing human trafficking by issuing a new anti-trafficking law with no insistence or assurance on the concept of prevention. Similarly, no logical concept would agree with the idea of mixing the prevention of human trafficking with combating the forms of exploitation, forced labour and child labour as the KSA Department of Labour have approached this area. Additionally, no logical concept would agree with the Border Control Agency in treating the human trafficking like crimes of smuggling.

The Palermo Protocol, which is considered the main theoretical approach in preventing human trafficking, insists on certain measures being addressed by countries in bilateral agreements. The country examined in this thesis, KSA, has not established any kind of bilateral agreement with any other countries to help combat the trafficking of domestic workers. This was clear from the data that has been collected and analysed. If the will to prevent the trafficking of those working behind closed doors is available, then signing a ministerial agreement will not be enough.

In research concepts, we should start from the point of where people have finished and not start at the same place they started. This concept would apply

directly to the role of the KSA government in the bilateral agreements to prevent the trafficking of domestic workers. They should have learned from the efforts of the USA, for example, the measures, which they have applied in preventing.

Once the prevention clause is implemented in KSA laws, it would be ideally as the next step to focus on the remedies that victims of trafficking should have available. This fact is to complete the three main areas of combating the human trafficking the prevention, the punishments and the protection.

In the KSA anti-trafficking law the focus on victim was added in accordance to the states obligations on the Palermo Protocol. The KSA Permanent Committee to Combat Trafficking has a duty to follow up cases and the victims of trafficking, ensuring a safe return for victims of trafficking and recommendations of extending the stay of victims in KSA.

While it is understandable that those measures that have been seen from this committee are important to victims, it should also be known how this committee can implement procedures or suggest improvement in providing victims with their deserved remedies.

The responsibility of providing victims of trafficking the remedies that are set out in international instruments and national law are under the state's obligation in this matter and it also falls to the states to ensure the implementation of those measures. In addition, it is the state's responsibility to ensure they are not neglecting any vulnerable groups from this process.

The vulnerable group in this matter is domestic workers in KSA, and while it was clear in this thesis that there are sufficient grounds to consider them as vulnerable, it is vital that the KSA government takes extra steps in protecting them. Similar to the situation in KSA, when the government has issued a specific law to protect domestic workers, it should announce a strategy

protecting the victims of domestic worker trafficking and how remedies can be made available to them.

Similarly, cooperation between states and NGOs in the form of partnerships was affirmed in the international instruments, such as the Palermo Protocol. In the case of KSA, it is clear that no measures have been taken to cooperate with either international or national organisations. The example of not being able to implement an international instrument such as the Palermo Protocol is obvious in the KSA government's implementation to the cooperation element with NGOs.

## CHAPTER 6

# Conclusion and Recommendations

### 6.1 Answering the Research Question

As established in the introduction, the aim of this thesis is to answer the question: to what extent do Saudi Arabian laws and government policies fulfil the obligations of preventing the trafficking of domestic workers. In order to answer this question, two aspects must be explained in the following order serving as background to the topic: KSA law obligations under the Palermo Protocol and KSA policy obligations under the Palermo Protocol.

That being said, this research question compromise three fundamental parts, the domestic workers vulnerability, the KSA laws and the KSA policies. In order to fully understand the background of this topic, four main areas have been shown and studied in this research, which are the migration and KSA laws, the vulnerability of domestic workers, the human trafficking history and the legal context of trafficking in KSA.

In the second part, the law obligations in KSA under the Palermo Protocol consist on four fundamental principles to this research, which are the KSA approach to ant-trafficking legislations, the KSA laws and obligations, the KSA laws obligations under the Palermo Protocol and finally, the conclusion of the case study that has been provided in that chapter (the domestic workers by-law).

In the third part, the KSA policy obligations under the Palermo Protocol, which consist of four fundamental principles to this research, which are the KSA policies and obligations, the KSA policies and domestic workers under the Palermo Protocol obligations, current and beyond the KSA policies of

prevention and, finally, the conclusion of the case study that has been presented in chapter 5 which is the KSA national report on human trafficking.

Eventually this chapter will present the results of this research study through a series of concrete recommendations to the KSA government on their current laws and policies and the obligations to prevent the trafficking of domestic workers. It will also, provide the research limitation that occurred during the preparation of this thesis, including the conducted previous research that has a link to this topic.

## **6.2 Background chapter**

### **6.2.1 Migration, KSA laws and women rights**

The KSA government have established numbers of laws that are indeed in the core of the fundamental human rights principles and standards. The theory that have been argued that in KSA, the present of the protection of the human rights values are incorporated within the SABL, which is the constitution of the KSA government.

This theory can be seen clearly in both articles 26 and 37 of the SABL along with the main source of the legislation in KSA, which is the holy Quran. No doubt that those legislation are made to protect the rights of all citizens and migrant workers, yet, this thesis have shown that establishing perfect law does not promote the human rights values without implementing them.

However, it is clear that one main element is not on the table of discussion in KSA while looking to promote and protect the human rights values of migrants. This element can be seen in not implementing the international treaties in KSA or not being able to amend the SALL according to the fundamental human rights standards. One could argue, that this can be seen in the cases of exploitation, forced labour, human trafficking, abuse and child labour that the international organisations are presenting.

It is also can be seen from the SALL which as explained in this section is deeply concerned with the welfare of the migrant workers in some of its aspects. Yet, some amendments to the SALL are urgently required in the areas of processes of enforcing this law between the KSA departments and including the domestic workers in its provisions.

The fast growth of the KSA in the early 1980's has dictated from the Saudis to depend on migrants. This has resulted in majority of migrant come to work in KSA looking for better life and money for them and their families. This large number of migration faced, at that time, with the introduction of the two fundamental laws in KSA.

Firstly, the fact is, in1992 the KSA government has introduced their Basic Law that should govern the duties and responsibilities of a ruler. It has also, stated the rights and obligations that are needed from both sides, the government and the citizens or migrants. In addition to the SABL, the government has introduced their Labour Law that tin theory should protect all migrant workers and this law included provisions for those male and female migrant workers in the Kingdom including in its most significant as articles 37, 38 and 40.

Women's rights in Saudi Arabia are limited in comparison to many of its neighbours. All women, regardless of age, are required to have a male guardian. Saudi Arabia is the only country in the world that prohibits women from driving. Saudi women constitute 13% of the country's native workforce as of 2015.

However, women's status has changed in recent decades. Women were previously forbidden from voting or being elected to political office, but in 2011, the late King Abdullah declared that women would be able to vote and run in the 2015 local elections, as well as be appointed to the Consultative Assembly.

Having that in mind, women have been dominated by men in KSA and most importantly must take it into consideration while looking at the right of women and domestic worker trafficking in KSA. The KSA government in attempt to response to the international criticism of the human rights they established the National Society for Human Rights and the Human Rights Authority studying all violations and vulnerabilities of women, children, migrants and the topic of this thesis the domestic workers.

These actions by the KSA government would most definitely to be attributed to the human rights issues that have attracted strong criticism in KSA, including the disadvantaged position of women. That being said, in 2004 the KSA government approved the establishment of the National Society for Human Rights (NSHR), staffed by government employees, to monitor their implementation.

This to be seen as in response to the continuing criticism of its human rights record, the Saudi government looks to the special Islamic character of the country, and asserts that this justifies a different social and political order. According to Article two from the constitution of the National Society for Human Rights, the objectives of the Society are as follows:

- 1) To endeavor to protect the human rights according to the Constitution of the Kingdom of Saudi Arabia which is based on the Qu'ran and the teachings of Prophet Mohammed and in accordance with applied regulations, along with the Declarations and Covenants of Human Rights issued by the Arab League, Organization of Islamic Cooperation and the United Nations and its agencies and specialized committees, so long as they do not contradict with Islamic Shariah (Islamic Laws).<sup>551</sup> 2)

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<sup>551</sup> Accessed from the Saudi National Human Rights society web < [http://nshr.org.sa/en/?page\\_id=55](http://nshr.org.sa/en/?page_id=55)>

To cooperate with the international organizations working in the same field.<sup>552</sup> 3) To stand against injustice, abuse, violence, torture, and intolerance.<sup>553</sup>

### **6.2.2 Vulnerability of domestic workers**

The domestic workers are indeed vulnerable due to their type and nature of the work. In KSA, the case of domestic workers is not different, it is to be considered as more harmful to them as the domestic workers are vulnerable and used to work without any laws that give them the kind of protection they need. It has been shown, from the data, that the domestic workers in KSA, while they get miss-treatment from their employers they are forced to leave the house of residence where they work unwillingly. Once they leave this house, they are either stay in the embassies shelters and being exploited by the employers through stalling in the court or they forced to fall on the hands of the traffickers and being sexually exploited.

In both cases, the KSA government can step up their duties and responsibilities and to provide those domestic workers with a protection laws. The theory in this area is of course, the cases of domestic workers those are being exploited or trafficked in KSA are limited, from the data, and not to be seen as a human trafficking phenomenon. The international agencies that concerns with such cases are, in fact showing at the most few cases in each report comparing to almost one million domestic workers in KSA. That being said, it is not the intention of this theory to reduce the importance of those few cases, still the KSA has duties and responsibilities towards those cases and the domestic workers in general.

Another theory have emerged in this area which is that the domestic workers in KSA have no consent in their situation due to the nature of the country and

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<sup>552</sup> Accessed from the Saudi National Human Rights society web < [http://nshr.org.sa/en/?page\\_id=55](http://nshr.org.sa/en/?page_id=55)>

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the domination of men. This is not to say that this domination is the main cause of trafficking, yet, it is one of the reasons that the consent of domestic workers in KSA is not present. The Palermo Protocol has insisted on its Article 3 on the fact that the consent of a victim to be trafficked should not be considered.

Similarly, the KSA government in their anti-trafficking law have not considered the consent factor of victims of trafficking, which can be seen as a combatable part with the Palermo Protocol. Yet, the consent factor in the KSA anti-trafficking law is intended for domestic workers that who are involved in the exploitation or trafficking, which in both cases is violation to the SAAL.

That being said, this thesis has argued a theory that the victims of domestic workers trafficking in KSA are in a place where either to be exploited or to be trafficked. The error come is in place when such violation occurs in KSA, and the victims of domestic workers tried the legal solution in KSA. This legal solution was to be that the domestic workers have to merge themselves with the bureaucracy of KSA courts, which ends them in years waiting in either their embassies shelters or the KSA government shelters.

In both cases, the domestic workers find themselves in situation where they cannot chooses, which is either to waiting for years for their rights to come while their families back home in need of money, or accept their actual fact and face the exploitation and traffickers in KSA. In both cases, the clear fact is when such violation occurs; the domestic workers have no consent on their future and in many cases that future is not in their control.

Another theory in this section have been shown which is attaching the sexual exploitation and forced labour of domestic workers with some facts that might happen such as the domestic workers might be underage. It has been shown that some of the domestic workers desperately, deceive the destination

country authorities by changing their age to be allowed to work while the fact is they are children.

This combination, as shown, is the leading factor into the domestic workers faces the exploitation, forced labour or the worst case the human trafficking. It has also been shown that, as per the data, the most identifies cases in KSA cannot be known as the typical cases of human trafficking as the can be seen as exploitation or forced labour. This thesis have argued a theory in regards to the trafficking of domestic workers in KSA, which is there are three steps of violation to be known as human trafficking. One of those steps is the movement of the victims while they are exploited or forced to work.

It is fact that those violation, the exploitation and forced labour, against the humanity and the domestic workers in particular as horrible as they can be seen, yet, they cannot fall under the definition of the cases of human trafficking. It is still a fact that if the human trafficking to occurs it needs three elements; the movement of the victims, the means and the exploitation. The responsibility in such cases falls on both the method that to identify the cases of human trafficking, which is used by the KSA government, and at the same time, partially, on the country of origin where domestic workers should know the signs of exploitation, forced labour and human trafficking.

In this case, and in the area of the organised crime and trafficking of domestic workers, the argument have shown a large efforts by the KSA government to combat the human trafficking as a problem and not as targeted cases focused on organised crimes. This can be seen, in the KSA anti-trafficking law, which focused on the cases of the human trafficking and punishments can be seen more when cases of organised crimes found. Yet, by not protecting the domestic workers from the leading elements of human trafficking such as the exploitation and forced labour, it seems that a platform of domestic workers trafficking have been created unintentionally.

On the issue of the KSA departments and the laws that should protect the migrants and domestic workers, the fact is when the number of domestic workers is increasing the laws and policies can be implemented into current domestic law unless it is for propaganda purposes. The right strategy should start from the point of issuing laws and go through the point of studying the current performance of their laws to the end of improving it toward the best standards reaching the objective a balanced legal system that protects the victims of trafficking, prevents future trafficking and punishes traffickers fulfilling the Palermo Protocol obligations.

For example, the department of Labour in KSA should govern the relation between the employers and the employees, including the relationship of the domestic workers. This relationship cannot be governed merely by issuing an entry visa to employees or by ignoring the fact that employee rights, especially those of domestic workers. The KSA Department of Labour should initiate a comprehensive strategic plan on the implementation of a new recruitment company, the training available to the domestic workers prior to their arrival and national campaigns educating people on the prevention of human trafficking.

### **6.2.3 Human trafficking history**

The history of human trafficking comes in tow main parts, the League of Nations efforts and the UN efforts in regards to human trafficking. The League of Nations dealt with the issue of slavery, and the white slave trade in particular, by taking some measures that are relevant to the states and political interests. But the, UN's efforts took the approach to promote a better understanding of human rights and combat and eliminate the human trafficking. However, the UN could have achieved more in this area through stressing the implementation or following up with states that adopted those conventions.

In the area of human trafficking, the UNGA created the Ad Hoc Committee on the Elaboration of Conventions against Transnational Organised Crime to combat trafficking in persons. An achievement made by the UNGA is that the purpose of the Trafficking of People Protocol was to prevent and combat trafficking, paying close attention to the protection of women and children, and to promote and encourage cooperation among the state parties.

In the history of the efforts of states or regional entities in regards to human trafficking, two examples sprung to mind. The first is the United States Trafficking Victims Protection Act, which focuses on protecting victims of trafficking and preventing future human trafficking, and the EU Decision that focuses on criminalising trafficking, outlining penalties for punishing trafficking offences. The inclusion of the above section is to outline the subject stated in my thesis where issue on the human trafficking can be addressed along with its existence in Saudi Arabia being a State Party to the Palermo Protocol.

#### **6.2.4 Legal context of trafficking and KSA**

There are two main areas in terms of the legal contexts relevant in this thesis that has been discussed in detail: the international instruments that the KSA have become party to and the national instruments that the KSA have initiated in response to human trafficking. In the international part, the Palermo Protocol was signed on December 2002 and ratified on July 2007 by Saudi Arabia being one of the signatory to the convention. Similarly, the KSA government has ratified some ILO conventions regarding migrant workers, forced labour, and child labour among other conventions. In this area, the KSA government has understood that the ratification of five major conventions at the ILO concerning the work of women was at their best interests.

On the national level, the establishment of the SABL was designed to protect fundamental human rights, as the explanation provided by KSA government.

Also, and the following their joining to the Palermo Protocol they published the first anti-trafficking legislation in KSA. This anti-trafficking legislation, KSA government listed its obligations towards some of the aspects of trafficking such as the punishments of traffickers only. That obligation at the SAATL only has 17 articles explaining the definition, the means, the purpose and the punishment for human trafficking cases.

A final law, which have been discussed fully in chapter 4, is the KSA domestic workers by-law. In this regard, the KSA government needs to understand that all rights mentioned in this bylaw fall under the minimum human rights standards that any government should implement. This bylaw should contain standards that are beyond the idea of minimum human rights and goes further to the extent of fulfilling the Palermo Protocol obligation on prevention of trafficking.

## **6.3 The KSA laws and the Palermo Protocol obligations**

### **6.3.1 The KSA approach to Anti-trafficking legislations**

The most relevant international anti-trafficking legislation is the Palermo Protocol against human trafficking, which the KSA become a party to as stated in this thesis. Yet, there are other treaties that are not targeting the Human trafficking specifically, however, the target some of the reasons and causes that leads to trafficking. Such as, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).

Because almost all domestic workers are female, excluding them from the protections of the labour law seems indirect discrimination. The Palermo Protocol obligates states to offer assistance and protection to trafficking victims and to criminalize and prevent trafficking. These are essential towards meeting the Palermo Protocol obligations of trafficking of domestic workers prevention in KSA.

It has been established that the efforts to combat trafficking that have been done by the KSA department of Labour are in fact not related to any concepts of human trafficking. All of those efforts are to combat different kinds of exploitation, forced labour and child labour. Thus, it is imperative to the conclusion of this thesis to laid out the fact of misunderstanding to how approach the human trafficking legislations by this department.

Looking at the Saudi Anti-Trafficking Law, which as illustrated earlier, consists of 17 articles on the idea of definition, protection and punishment only and without obligations to prevent human trafficking in Saudi Arabia. The argument provided is that the KSA were struggling with producing new laws compatible with the Palermo Protocol obligation such as then SALL that being issued in 2005. Nonetheless, the approach of establishing an anti-trafficking law that does not contain all the obligations that laid out in the Palermo Protocol, is to be considered as one hand law.

Looking also at some of the articles of the KSA Labour Law, it can be seen as prohibition to the acts of forced labour, restrict the movement of an employee, children labour, yet, it is not an approach to an anti-trafficking legislation. One would agree that it could be seen as method of eliminating the causes of exploitations. The approach to the anti-trafficking legislations must complete that method through establishing the accurate approach. The misunderstandings of the right approach by the KSA can be seen in the KSA actions to protect some of the human rights standards, but they cannot be seen as fulfilling the Palermo Protocol obligation towards trafficking.

Ideally, there are many international treaties that have been designed to combat the human trafficking in all of its names and shapes. Yet the KSA government has chosen to become member to only the slavery conventions and the Transnational Organised Crime Convention (and its Palermo Protocol). Yet, one way in understanding the KSA approach to anti-trafficking legislations is through looking to the purpose of ignoring such a

problem, especially as migrants started flowing into the country from the early 1980s, to help in the development of the country.

Another way is that the KSA government lacked the intent to protect human rights principles, as in general principles not limited to trafficking, during the early 80s and 90s with the they heavy present of migrant in KSA back then. A valid argument can be in place if the KSA government had explained their intentions towards the human rights and human trafficking especially in situation in which they are exploited.

On the other hand, the establishment of the national committee to combat the human trafficking in KSA is considered to be the right move towards fulfilling the KSA obligations towards Palermo Protocol, prevention of trafficking and eliminating the causes of human trafficking. Gathering all departments concerned with resolving the human trafficking and can fulfil KSA obligations in one committee facilitate the needed communication at this stage.

### **6.3.2 The KSA laws and the Palermo Protocol obligations**

As established in the approach to human trafficking legislations, there are three main laws in KSA that are indeed relevant to this matter. Those laws are the Basic Law, the KSA bilateral agreements and the KSA executive orders. These three instruments are crucial in the issue of human trafficking; as it shows the KSA government have not met their full obligations towards trafficking and most importantly towards the prevention.

Firstly, the KSA Basic Law, in fact, has been remaining without any changes to any concerning the obligations to prevent the human trafficking, especially after the KSA become party to the Palermo Protocol. An example has shown that the KSA Basic Law is contradicting the Article 9 (4) of the Palermo Protocol, which emphasises on the need to illuminate all causes of

vulnerabilities that may lead to trafficking such as domestic workers working behind closed doors.

The fact is, there is no doubt that the government of Saudi Arabia needs to examine the effectiveness of this law in accordance with Palermo Protocol obligations to prevent the trafficking.

Secondly, Saudi Arabia being one of the States Parties to the Palermo Protocol should adopt or strengthen its legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation to discourage the demand that fosters all forms of exploitation of persons, especially the domestic workers that leads to trafficking.

According to the Palermo Protocol article 9 (4), States parties shall fulfil their obligations to prevent trafficking, through the bilateral agreement, for example, that necessity comes from the fact that the countries of origin should educate the domestic workers about the causes and signs of trafficking at an early stage. In KSA the indicators show that there are not being any bilateral agreements between the KSA government and any other government.

Thirdly, the executive order the prohibiting all kinds of human trafficking, the selling of all entry visas, collecting money from migrants cannot be seen as part of the obligations to prevent the trafficking. The fact is, this effort can be seen as part of the KSA obligations towards exploitations. In this regard, however, targeting specific Articles from the international conventions, such as the Palermo Protocol, is in fact an attempt to not fully meet the obligations that the entire international convention asserts on.

This was shown clearly in the ILO has concerns about the enforcement of Article 25 of the ILO Forced Labour Convention, as an for example, which asked all ratifying governments to enforce and criminalize all kinds of forced labour actions.

That being said, the KSA government should act upon their international obligations and not keep some concerned departments, with human trafficking, to issue executive orders that not meeting their obligations.

As seen previously, the vulnerabilities that the KSA government are intending to eliminate can be seen in some parts of the domestic workers bylaw that actually does not meet all of the Palermo Protocol obligations to prevent the trafficking.

Thus, the issue of human trafficking should be dealt with as an issue, which affects the fundamental human rights of the victims. The absolute fact is, the Anti-Trafficking Law in KSA, for example, does not share the same values. Rather, it has strengthening the punishment for the trafficking, without looking towards obligations of trafficking, such as the prevention.

If the KSA government intended to meet their Palermo Protocol obligations, it is the suggestion of this thesis that a thin line between the concepts of meeting the Palermo Protocol obligations towards human trafficking and focusing on strengthening the punishment of trafficking as the one elements that matter. One fact have to be admitted in this are is that the KSA government did not link committed crimes of human trafficking with organised crime only, yet, it was linked with any one fits the KSA criteria.

### **6.3.3 The KSA obligations under the Palermo Protocol**

There are two main areas of this part, where it both discusses the KSA obligations towards the Palermo Protocol. in details, the first one explains the fact beyond the KSA obligations towards the Palermo Protocol as a entire international instrument, whereas the second part explains the facts beyond the KSA obligations of prevention towards the Palermo Protocol.

In more detail, the KSA obligations towards implementing the Palermo Protocol could include the adoption of laws in which intended to criminalize

the act of trafficking, protect the victims of trafficking and prevent the trafficking. And in that area, if the SAMC acceded on the Palermo Protocol, as they did, those conventions should be interpreted immediately as part of KSA law.

The KSA Basic Law explained this process of these procedures, however, since it was issued in 1992 and there have been no amendments to it, then the Palermo Protocol not be fully integrated. Another example was seen in the SALL, which has been amended recently, yet the amendments did not meet all Palermo Protocol obligations of prevention.

Specifically, the KSA departments have explained that the laws in KSA, including the Anti-Trafficking Law, are implemented within the departments concerned in KSA, but actual implementation, such as amending the laws, is not available. The difficulties in the implementation, was found in the absent of the tools that needed by all departments and there. The intent to implement some of the laws in KSA does not consider as an implementation.

Another crucial fact is not about what sort of laws any department would implement, rather it is about whether this KSA Anti-Trafficking Law is meeting the Palermo Protocol obligations. The establishment of the facts about the process of the implementation of the laws or the obligation to prevent the trafficking in KSA was not available even though that they some departments are one of the main departments that are relevant to the legal and judiciary system.

In regards to the KSA obligations towards the prevention of trafficking, specifically, the fact is when looking at the KSA anti-trafficking law; one would find the unavailability of the prevention in that instrument. To some extent the KSA have copied the Palermo Protocol into national anti-trafficking legislation, just without the prevention.

In the explanation provided by the Human Rights Authority in KSA the definition of human trafficking, the punishment of the traffickers, and illustrations on strengthening the punishment when the victims are women, disabled persons or children are the cores of this law. Thus, this law, if the KSA intended to prevent the trafficking and meets their obligations towards the Palermo Protocol, could be changes to include prevention clauses at the least.

Strengthening the punishment of crimes of human trafficking does necessarily constitute the enforcement of the Palermo Protocol obligations. In contrary to the Palermo Protocol, The point of view of the KSA government is the three Ps of human trafficking, protection, punishment and prevention are all very important to combat human trafficking.

Finally, joining some of the international conventions and protocols with relevancy to human trafficking is not an obligation of prevention, which explains the total misunderstanding of the Palermo Protocol in KSA.

#### **6.3.4 Conclusion of the first aspect of the case study**

This case has shown some of the worst elements in any law designed initially to protect certain groups. The fact is, the KSA government have not looked at their international obligations, which are clearly set out in the ILO conventions of which they are part and at the same time the Palermo Protocol obligations to prevent the trafficking. At the same time, they have not looked at the interest of this vulnerable group that they designed the law to protect. It is a fact that this law lacks the international standard of human rights and at worst it could even be seen as a law to protect the employers of domestic workers.

This argument can be seen in the KSA bylaw and this case has shown some of the worst elements in any law, which can be seen clearly in articles 7, 8 and 10, which demonstrate the law is biased towards employers. Protective laws

should at a minimum consider international standards, consult with the international community and most importantly consult with the people the law concerns, in this case the domestic workers.

## **6.4 The KSA policies and the Palermo Protocol obligations**

### **6.4.1 The KSA Limited Policies of Domestic Workers**

The law part of this thesis, have shown that the KSA did not meet the Palermo Protocol obligations to prevent the trafficking of domestic workers. The relevant area in KSA to this section is where the policies in KSA are provided in regards to the domestic workers in to meet the Palermo Protocol obligations. That being said, looking at the KSA policies on trafficking, the KSA government have in fact included in the definition of the means of trafficking in its law, and the KSA department could adopt enough policies regarding human trafficking, and especially in regards to the prevention.

Another missing policy in KSA is the absent of specialist section within the department, with knowledgeable people on the human trafficking. Including the cooperation between the KSA departments and promote the act collectively and in cooperation with each other to reach the maximum effort to combat human trafficking. The policies that could be available at this stage as a start are the policies that focus the efforts towards the causes and abuses of domestic workers in KSA, and that policies could under the Palermo Protocol obligations to prevent the trafficking.

The different approach to end such abuses and exploitation would most definitely reduce the changes of domestic workers being trafficking. The KSA committee to combat the trafficking in persons have submitted draft of targeted policies that all KSA departments could follow. The fact is that draft have should have been enacted to meet the Palermo Protocol obligations of prevention.

Another missing area in the KSA policies is the response to human trafficking, which leverages the resources of the coordination efforts between the KSA departments fulfilling the Palermo Protocol obligations to prevent trafficking. That can be seen in terms of the enforcement of the KSA anti-trafficking legislation within their own departments. As established in the thesis, the large error comes looking at some of the KSA departments are not enforcing anti-trafficking legislation within their own departments.

The policies on following up the victims of in the KSA departments, was not found, even though, the permanent committee to combat the trafficking in person can recommend of not returning the victims of trafficking to their home countries. The needed policy, in this area, is the policies of relocating the victims of trafficking, providing adequate training, arranging research on victims, media campaigns, and social and economic measures to prevent trafficking.

The domestic workers, as established before, work behind closed doors, face the absent of national legislation that protects them, they become unprotected workers making them more vulnerable to being abused and subsequently trafficked. Having in mind, the established definition of domestic work, the department of labour in KSA could produce policies that focuses on the Palermo Protocol obligations to prevent the trafficking, and as well as facing the exploitations.

In each society some cases of domestic workers treated fairly and their work is well paid and does not violate any of their rights. On the area of this statement, and in regards to KSA situation, obligations of prevention of domestic workers trafficking should recognise their vulnerability creating a national policy on preventing the trafficking of domestic workers including their particular work situation.

One of those policies can be seen in the issuance of laws to protect the domestic workers and meets the KSA obligations of Palermo Protocol. Certain policies concerning the domestic workers human rights, protections specifically linked to their vulnerable status and most importantly policies towards the exploitations and abuse.

As established, the exploitation of domestic workers needs to be associated with the movement of the victims so it can be considered as domestic worker trafficking. Thus, the KSA government have not produce any policies preventing the domestic workers from sexual abuse, force labour, force into acts of beggary.

Those purposes are in most common in domestic workers trafficking, and as such the KSA department should share at least the same opinion on this issue. The fact is, this study have concluded that the KSA departments does not share the same opinion facing the purpose of trafficking in KSA.

The statement provided by the KSA departments is that the risk and vulnerability of domestic workers become reality when they run away from their employers or from the household and then run out of money or lose their identity papers. The fact is, the KSA government, if they know that those are the reasons of trafficking of domestic workers, they should focus their efforts in preparing policies that targeted the work situation of domestic workers.

If that being done, the risk factors that create vulnerability for domestic workers becoming victims of trafficking would be eliminated and the KSA meets their Palermo Protocol obligations to prevent the trafficking.

A clear policy that targeted specific risks and vulnerabilities that the domestic workers seeing in KSA would be most effective in terminating those causes and meets its international obligations such as the Palermo Protocol. For example, in an absence of policies in regards to the household inspections it increases the possibility of exploitation and trafficking for domestic workers.

But the reality still that the KSA government does not have policies addresses the above concerns, which makes them not, meeting their Palermo Protocol obligations on prevention. The lack of understanding of the concept that has been given by the Palermo Protocol of protecting, punishing and preventing human trafficking and most importantly the obligations of prevention is without a doubt missing from the agenda of the KSA government.

More specifically, in regards to the KSA policies that shows their efforts towards the victims of domestic workers trafficking, a limited rights available to the domestic workers was found and no response of policy form the government. That was seen clearly in the limited rights of domestic workers, particularly in keeping their identity documentations.

The question become after, is the policy of the KSA government of arranging shelters for the victims of human trafficking enough or they could prepare policies that targeted the limited rights of the domestic workers avoiding them being trafficked.

The nine shelters that have been provided by the KSA government would benefit more if they have been used as supporting place to those victims socially and medically rather than as place to sleep. The fact is, it is not enough to establish shelters without elaborating in detail on the numbers, the treatment that provided to those victims, their current legal situation.

As seen by in the Palermo Protocol obligations, those facts are essentials to meet the Palermo Protocol obligations of prevention of trafficking of domestic workers in KSA.

These four steps were identified as part of the thesis analysis and directed towards the Saudi Arabian government's commitment and obligations to Palermo Protocol. Similar steps were already undertaken and adopted by other countries mostly the gulf countries. Other countries such as Bahrain

and Qatar, has much to accomplish in order to improve its migrant rights record and reduce the inflow of human trafficking.

In order for the KSA government, or any other country, to meet their Palermo Protocol obligations of prevention, in terms of policies, they might take four main steps. These steps were identified as part of the government's commitment and obligations to the Protocol.

Firstly, they need to arrange for new policies on immediate home inspections for those employing domestic workers. Secondly, an emergency hotline needs to be established in order to identify the victims of trafficking. Thirdly, allow NGO's to participate in identifying and helping victims of trafficking. Finally, produce a national policy that will guide a national task force with the priority of identifying, rescuing and protecting the victims of trafficking.

These steps if adopted may work in other gulf countries such as Qatar and Bahrain. It also requires the judicial department to establish stages with steps to be taken in recognising the law, updating the current law and executing new laws. In all three countries, foreign migrant workers, especially women, still face physical and mental abuse as domestic workers. Their environment is worsened by the lack of access to justice. Despite Sharia law providing punishment for any individual that commits rape, migrant women who are victims of sexual violence often are the ones being punished.

Like its regional neighbours, the amended labour laws in Saudi Arabia have not been successfully implemented, nor have they resulted in visible changes in the lives of migrant workers. This is due to, as discussed earlier, several reasons that have been done by the Saudi Arabian government. Firstly, the lack of publicity of the migrant workers and the ambivalent nature by which the legal system punishes victims of sexual crimes.

Secondly, the KSA has signed and ratified several ILO conventions, committing themselves to the abolition of child labour, forced labour, discrimination in the workplace, and much more. In order to genuinely and

effectively tackle migrant labour and human trafficking, it should not only legislate the laws, but also enforce them and create policies with purports of protect the migrant workers.

Finally, failure to implement legislation from KSA, demonstrates to the international community that Saudi Arabia wants only to cooperate on paper, all while the migrant workers, in particular, the domestic workers are being exploited.

Other major are in the KSA policies is the needs to establish an enforcement authority having the appropriate knowledge, skills, understanding and consideration of people in the matter of human trafficking. This fact was due to current growth of migration KSA and the number of victims of trafficking per year. Needless to say, the prevention measures that to be taken by the KSA could include bilateral agreements, training, research, and information and mass media campaigns.

Keeping that in mind, when establishing the measures to be taken by KSA, they could cooperate with other states in order to fulfil the Palermo Protocol obligations and according to Article 9 of the Palermo Protocol, which emphasising on bilateral cooperation. The focus on bilateral agreements with other countries by the KSA should include the willing to establish the necessary measures for the bilateral and multilateral talks in regards to human trafficking.

On the issue of KSA official training, they have shown that they hold a temporary national plan to combat human trafficking in KSA, which had established a policy procedure to train KSA officials. Yet, the purpose of the required training is to increase knowledge about human trafficking, give the necessary experience to the KSA officials of how to treat the victims of trafficking and increase cooperative participation in implementing the laws combating human trafficking, which is not motioned.

The public awareness on the other hand, focuses in KSA on the employers and how to treat the migrant workers in general. Yet it lacked the intention to show the vulnerability of the domestic workers and their risk of being exploited, and most importantly, it should not have been focused to particulars, rather it should be to the KSA society. It is encouraged by the KSA to promote the rights of migrant workers, but what about those in need of extra measures of prevention due to their work situation. Similarly, the public awareness should be seen as the result of the KSA government itself not as an efforts by separate departments.

#### **6.4.2 Beyond and current KSA Policies of prevention**

As established, this thesis argues for creating policies to fulfil the KSA obligations towards the domestic workers and in particular in terms of prevention. The current anti-trafficking law in KSA does not recognise the prevention as a method of combating the trafficking, which raise the question of if the KSA actually fulfil their Palermo Protocol obligations of prevention. While this law has not been amended to include a new articles or clause concerning the prevention of human trafficking, still the fact they have not yet committed with the Palermo Protocol obligations. The amendment should include, at least, the measures that has been mentioned in the Palermo Protocol, and followed by the national policy on the execution of those measures.

The KSA government, however, should take into consideration while drafting or preparing a new obligation of prevention clauses the different types of people covered by the clause, the purposes of trafficking.

The fact is it is not possible for the KSA government to define the prevention of trafficking in KSA if it has not been included or expressed clearly in their policies or laws. Another fact is identifying the error could be seen as one of the steps to improve or update the current policies in KSA and would show

that the will to prevent the trafficking of domestic workers was actually present and to fulfil the Palermo Protocol obligations of prevention.

Nonetheless, an essential part of the prevention is reaching to potential victims of trafficking of domestic workers, with a clear policy that guide the process. The importance of victims gaining sufficient access to remedies in KSA Is crucial as such stage. Those victims need to feel the state providing any necessary protection, if they were trafficked.

In this regard, it is appropriate to acknowledge the work plane of the permanent committee to combat human trafficking in KSA, which their main duties, in terms of the victims, are 1) to follow up victims of trafficking to ensure their safety and ensure they do not become victims again; 2) coordination with other countries such as the victims' countries of origin to guarantee the safe return of the victims to their homes; and 3) the recommendation to the KSA authorities of allowing some victims to stay in the country if needed. Yet, none of the above is to explain the potential victims of trafficking and this considered by as the lack intention to create the policy in KSA.

The measures that have been illustrated upon in the KSA anti-trafficking law, in regards to the victims of trafficking are explicit and clear such informing the victims of trafficking of their rights in a language he/she can understand; providing medical services if needed; providing physical or social shelter if needed; providing secure protection; and an over stay in the country if the victims is non-KSA. Yet, those measures, again, ignores the potential victims of trafficking without providing the clear policy for implementing that law.

As explained, stating what should be done, in terms of victims of trafficking, is not nearly enough, as it should go beyond by preventing the potential victims from being trafficked. As it has been shown that domestic workers are vulnerable group due to the nature of their work the special consideration by

the KSA government is needed in focusing on the potential victims, and the remedies for the current victims.

A final area of the KSA limited policies under the Palermo Protocol obligations is the partnership and cooperation with the non-governmental organisations. It is crucial to keep in mind the fact of this action by the KSA contradicts the principle of article 9 (3) of the Palermo Protocol, which the KSA government has signed, which states ‘Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society’. Ultimately, the KSA government are still missing the full implementation of all of the Palermo Protocol, which affirms on the importance of partnering with NGOs in KSA as they are bound by the Palermo Protocol obligations and its implement article 9.

#### **6.4.3 Conclusion of the second aspect of the case study**

The KSA report on combating human trafficking was divided into main four areas in this chapter. The case study explained the general legislation framework, the national mechanism to combat trafficking, awareness and training programmes and international cooperation. Firstly, the general legislative section contained a comprehensive explanation of the KSA laws and the benefits of those laws. While it is agreed that the Department of Labour in KSA played a major role in terms of the legislation and combating of forced labour, child labour, sexual exploitation and human trafficking, still the fact is that this case study has shown no clear pathway to the implementation of the law in KSA. At the same time, the establishment of recruitment companies under the supervision of the Department of Labour might be seen as a strong indication of the interests of the KSA government in eliminating the causes of vulnerabilities.

The efforts of the KSA government concerning the regional and international legislation and framework were concluded by the ratification of sixteen regional and international instruments. However, the point of joining an international instrument or a regional instrument is the cooperation between states in implementing the instrument's point of view. This cooperation, as explained before, can be seen in the implementation of the regional or international instrument domestically. That being said, the case study in this area was not very successful in showing the implementation of the international law in KSA. Rather, the case study has shown that the report could be seen as pages describing international instruments.

Secondly, the KSA national mechanism to combat trafficking, showed extensive procedures and roles in this area in the report. Establishing different departments, each focusing on particular parts of the causes of human trafficking, was a great approach towards combating human trafficking. The discussion on the actual role of each department, the job performance and the direct focus of the attention on the causes of human trafficking was extensive in the report. The Anti-Beggary Department, for example, showed that a lot of children who had been exploited in this industry were hosted in shelters provided by the KSA government until they were returned to their own countries. The Expatriate Worker's Welfare Department showed extra efforts in helping protect migrant workers from exploitation and with disputes that occurred. However, the missing areas in this part were a focus on domestic workers' protection from abuse or exploitation, along with the implementation of the KSA laws by each department.

Thirdly, as mentioned in the report, the awareness programme, the information programmes and the training sessions were designed to increase public and government officials' knowledge on the effects of human trafficking, the causes of human trafficking and combating human trafficking. However, the methodology that was used was not given in the report, neither

was the number of publications and training sessions organized by the KSA government specified for each department. Rather, every training session or symposium that occurred during this report, was for judges, inspectors and security officials, which makes the knowledge gained in regards to combating human trafficking questionable.

Finally, the most important part of this case study, is international cooperation between the KSA government and the international community. The case study re-affirmed the conclusion given elsewhere in the thesis that the KSA government is not implementing the Palermo Protocol fully. This case study has shown that the link between international cooperation, the Palermo Protocol, the KSA government and the implementation of the laws is missing a critical link. This link, which is missing in this case study, is the participation by the KSA government and its officials internationally to learn the prospect of implementing the laws.

## **6.5 Recommendations**

### **6.5.1 Recommendations to KSA Laws**

- 1) Redirect the concept of combating the trafficking by the KSA department of Labour, rather than to focus on all forms of abuses
- 2) Amend the KSA anti-trafficking law to include a prevention clause
- 3) Amend the current KSA laws that restrict the movement of the migrants and especially in terms of domestic workers.
- 4) Re-consider a new approach to combat the human trafficking, and to include in it the prevention.
- 5) Amend the current KSA basic law to be compatible with the international treaties that the government have become a member to especially the Palermo Protocol.

- 6) The KSA government is required to start the cooperation with another countries, especially the country of origin in terms of the domestic workers.
- 7) Arrange for bilateral agreement with the countries of origin that should educate the domestic workers about the causes and signs of trafficking at an early stage.
- 8) The executive orders from the KSA departments must be inline with the Palermo Protocol obligations and for the goal of preventing the trafficking of domestic workers.
- 9) The KSA government is required to target the roots and causes of human trafficking and especially the domestic workers. Those causes can be seen in the focusing on the abuse, exploitations.
- 10) The vulnerabilities are the main problems to the domestic workers, which the KSA government are required to focus on.
- 11) The implementation of the international laws, in this case the Palermo Protocol, must come with obligations and guides that sets out in those treaties.
- 12) The implementation of the Palermo Protocol within KSA laws must consider the prevention of trafficking in the first instance.
- 13) The process of implementation of the Palermo Protocol in KSA laws must be provided to third parties for review and suggestions.
- 14) The KSA enforcement of Anti-Trafficking Laws must be in the same line with Palermo Protocol obligations for prevention.
- 15) The domestic workers' bylaw must be in line with Palermo Protocol obligations, especially in terms of prevention.

- 16) The domestic workers' bylaw must be amended to include the elimination of vulnerability and causes of trafficking.
- 17) The domestic workers' bylaw should conform at least to the minimum international standards. KSA is required to consult with the international community to amend such law.

### **6.5.2 Recommendations to KSA Policies**

- 1) All KSA departments that are concerned with trafficking and domestic workers must have knowledge of the causes and effects of trafficking.
- 2) The KSA government needs to adapt its measures and policies to prevent the trafficking of domestic workers.
- 3) Every department in KSA must recruit a specialised person in human trafficking and the vulnerabilities of domestic workers.
- 4) KSA departments need to work collectively and in cooperation with each other for matters that concern the trafficking of domestic workers.
- 5) KSA policies must be compatible with Palermo Protocol obligations to prevent trafficking.
- 6) The KSA government must provide its officials with the appropriate training to increase their knowledge on human trafficking and the vulnerabilities of domestic workers.
- 7) KSA departments must cooperate with each other in exchanging information and statistical data on the crimes of human trafficking.
- 8) The KSA government is required to reconsider the privacy of house owners in cases of actual threat to domestic workers.

- 9) The KSA government is required to increase the protection of domestic workers from crimes of human trafficking through the creation of a national policy on preventing the trafficking of domestic workers.
- 10) The KSA government is required to arrange for a new policy that addresses the risk and vulnerability of domestic workers becoming victims of trafficking.
- 11) The KSA government is required to change their policy in regards to the movement of domestic workers, especially in terms of their passports and identification documents.
- 12) An emergency hotline is needed now more than ever, to establish the identity of the victims of trafficking.
- 13) KSA is required to cooperate with non-governmental organisations and allow them to participate in identifying and aiding the victims of trafficking.
- 14) The KSA government is urgently required to initiate a national task force whose priority would be to identify, rescue and protect the victims of trafficking.
- 15) The KSA government must emphasise in the measures to be taken the inclusion of cooperation between states in order to encourage the prevention of trafficking.
- 16) The KSA government is required to launch a public awareness campaign promoting the rights of employees.
- 17) The KSA government must focus on the importance of victims gaining sufficient access to remedies and providing them with needed protection.

- 18) The KSA government must not neglect the potential victims of trafficking and the necessary measures in that respect, such as cooperation with non-governmental organisations.

## **6.6 Reflections and Suggestions**

### **6.6.1 Research Reflections**

It has to be acknowledged that the above limitation did not pose insurmountable barriers to this research. Firstly, this project has shown the researcher's determination to collect the necessary information and data from the relevant KSA governmental departments over the course of one academic year. It was a challenging endeavour but eventually it was completed, thus successfully presenting the first KSA domestic workers bylaw, as well as the first KSA national report on human trafficking.

Secondly, it was expected from the outset of this research that some difficulties would present themselves during preparation and data collection. Yet, the severity of the reaction on the part of the KSA government was not expected by the researcher. The knowledge and development of any society in terms of respecting human rights values should not be subject to harassment, fund cuts or, at worst, controlling the freedom of a human being.

Finally, it was the preparation of such a comprehensive PhD thesis utilising an acceptable amount of materials and previous publications that was the true challenge. It is important, while preparing a law PhD thesis on the prevention of human trafficking, to strike a balance between States' statutes, published books and published articles. As it was shown, the main difficulty was to be found in merging three main factors, such as the role of the government, the prevention of human trafficking and domestic workers. It is fact that if the are enough materials and research the covers all the above factors, this research will depend on another strategy, but the comprehensive and focused analytical

skills that have been used in this research would hopefully complete what is missing.

### **6.6.2 Research Suggestions**

To help future academic research on the area of the prevention of human trafficking, the following actions must be taken. Firstly, if one would target a country such as KSA in the future research and in human trafficking, the priority would be the with finding the right contacts in the targeted government through a high ranking official and before conducting the interviews or the questionnaires, as it was enormously valuable especially in gathering the needed data.

Finally, the use of recently published articles and NGO reports should be valuable as a basis for reading cases and materials in terms of human trafficking. The use of those publications should be accompanied with strong knowledge on the analytical skills and interpretations. Similarly, suggestion could be made in this point by illustrating on the fact that more research should be focused and directed towards the vulnerable group of migrant such as women and children or even towards the vulnerable sectors or works. Having those into consideration, would most definitely promote the needed actions into preventing the trafficking.

# Appendix 1

## Data collection

### A) CONSENT FORM

Project title: To what extent do Saudi Arabian laws and government policies fulfil the obligations to prevent the trafficking of domestic workers?

Name of researcher: Mohamd Ayed M Alassmari

Contact details: mama500@york.ac.uk

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(Please tick (✓) where appropriate)

- I confirm that I have read and understood the information sheet provided by Mohamd Alassmari for the above study.
- Or  the information sheet has been read and explained to me.
- I have had the opportunity to consider the information, ask questions and have had these answered satisfactorily.
- I understand that my participation is voluntary and that I am free to withdraw at any time, without giving any reason.
- I understand that the collected data will be used by the researcher in his thesis as a quotes about the procedures.
- I understand that researcher might give a feedback to the Saudi Arabian governments on his results of this study and the researcher could

use the results of this study in future publications (Journals, Articles or researches)

- \_\_\_\_\_ I understand that if I decide to withdraw, all data collected from me will be discarded and will not be used in the study.
- \_\_\_\_\_ I confirm that Mohamd Alassmari has explained that false name can be used in his thesis.
- (Please tick whichever (✓) option you agree too)
- \_\_\_\_\_ I agree that the data can be used in Mohamd Alassmari's thesis or in any future academic publications.
- \_\_\_\_\_ I agree to take part in the above research study.

Name of research participant: \_\_\_\_\_

Signature of research participant: \_\_\_\_\_

Date: \_\_\_\_\_

## **B) PARTICIPANT INFORMATION SHEET**

You are being invited to take part in a research study as part of a student project. Before you decide it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Alternatively, the researcher will read the information in the language most easy understood by you. Please ask if there is anything that is not clear or if you would like more information.

The Humanities and Social Sciences Ethics Committee (HSSEC), University of York, who are satisfied, approved this study and that the research does not pose a risk of harm to you. In the event of complaints arising concerning this research, please address them to Professor Paul Gready, Head of the Centre For Applied Human Rights, University of York, Law and Management Building, Freboys Lane, York YO10 5GD, United Kingdome. .

### **Who will conduct the research?**

Mohamd Ayed Alassmari who is a PhD student at the University of York (UK).

### **Title of the Research**

To what extent do Saudi Arabian laws and government policies fulfil the obligations to prevent the trafficking of domestic workers?

### **What is the aim of the research?**

The main aim is to identify possible ways to implement national and international laws to prevent trafficking of domestic workers in Saudi Arabia. Additionally, another aim is to identify the weak points in the Saudi Arabian legal system to protect domestic workers.

### **Why you have been chosen as a participant?**

I have selected you as a participant to obtain the knowledge that you have gained from working with the Saudi Arabian government in the sector of migrants. This includes your participation in understanding the Saudi policies of your department in combating human trafficking in Saudi Arabia and implementing laws (national and international) to prevent trafficking. Your knowledge and understanding of the issue of human trafficking in Saudi Arabia are crucial to this research and your input is valuable to me.

### **What happens to the collected data?**

All data will be collected from the identified Saudi departments and analysed by the researcher, as the data will be a response to several questions in writing on official department documents. If consent is given by the participant(s) to use their comments, these will be used in the thesis as quotes about the procedures in combating or dealing with human trafficking. The analysed data will be part of the researcher's PhD thesis. At the same time, the data and the finding of the thesis, after giving feedback to the Saudi Arabian government, could be used in future publications either in this thesis or future journal articles. All data collected on paper, will be shredded immediately after they are scanned to the electronic files, except the consent forms and the cover sheets, they will be destroyed at the end of this project.

### **How is confidentiality maintained?**

While it is considered that none from the participants will need confidentiality, as I will use the name of the department in the research, any

participants who wish to have their name or contribution used anonymously will be granted this immediately.

**What happens if you do not want to take part or if you change your mind?**

It is up to you to decide whether or not to take part. If you do decide to take part you will be given or read this information sheet and be asked to sign a consent form. If you decide to take part you are still free to withdraw at any time without giving a reason and without detriment to yourself. In cases where a participant withdraws, all data collected from you will be discarded and will not be used in the study.

**Will you be paid for participating in the research?**

There is no financial payment for participating in this research.

**What is the duration of the research?**

It will take you up to two hours to answer the questions. The department will have 60 days to complete this research. I will answer all your questions about the specifics of this research and the aims of it.

**Contact for further information**

1. Mohamd Ayed M. Alassmari

Email: [mama500@york.ac.uk](mailto:mama500@york.ac.uk); Saudi Mobile Number: 00966557559474; UK Mobile Number: 00447837323439

2. Centre For Applied Human Rights, The University of York

Law & Management Building, Freboys Lane York YO10 5GD, E-mail: [cahr@york.ac.uk](mailto:cahr@york.ac.uk), Telephone: +44 (0)1904 325830

### **C) The open questionnaire**

1. Had the Saudi Arabian government participated in drafting the Palermo convention?
2. What kind of remedies does the Saudi Arabian government provide for the victims of human trafficking?
3. Can your department illustrate on the process of legal courts in regards to human trafficking cases?
4. As far as the Saudi Arabian government knowledge, what is the process of human trafficking in Saudi Arabia? In another word, how does the trafficking occur in Saudi Arabia?
5. Can the Saudi Arabian government explain the means that the traffickers follow?
6. In details, what is the Saudi Arabian government prospective on the purpose of trafficking? And why?
7. How can the Saudi Arabian authorities identify the victims of trafficking or the cases of human trafficking?
8. To what extent the anti-trafficking legislation in Saudi Arabia are implemented within the Saudi Arabian departments?
9. What are the measures that the Saudi authority follow to implement the anti-trafficking legislation?
10. Can your department list the obligations of the Saudi Arabian government towards:
  - a) Palermo protocol (as a signatory state)
  - b) Victims of trafficking ( as a destination country)

c)Public (as policymaker state)

d)Other

11. Would your department say that the Saudi Arabian anti-trafficking legislation focuses on crime against the state or the crime against the individuals?
12. Does the organized crime play a role in increasing the numbers of trafficking victims or trafficking cases?
13. Would you say that the Saudi Arabian government classifies forced labour, removal of organs and prostitution within the circle of human trafficking? why?
14. Could your department list the number of domestic workers in Saudi Arabia in the last ten years?
15. What are the measures that the Saudi Arabian government have taken to reduce the vulnerability of domestic workers?
16. How your department classifies the vulnerability of women and children as one of the main cause of human trafficking?
17. What is your department opinion on the theory of women and children are the most likely to be victims of human trafficking? why?
18. Would your department say that women are an easy target for the traffickers and subsequently can be exploited sexually as well as work? Why?
19. As far as your department knowledge, are there any children female domestic workers? What are the processes to prevent such children from being domestic workers in Saudi Arabia?
20. What are the common problems that the domestic workers are facing in Saudi Arabia? Are there any solutions to avoid such problems?
21. What is the government response to violence against the female domestic workers? Is there any draft plan or strategy to eliminate such violence?

22. Does your department link between the idea of domestic workers and the concept of children, slavery, prostitution and modern day slavery?
23. Are there any differences between coercive prostitution and voluntary sex work, according to your department view,?
24. What is the view of your department on the relationship between the Vienna Convention and the known three P's (prevention, protection, punishment)? Why?
25. What is the main element of combating trafficking according to your department strategy? Is it prevention or punishment or protection?
26. What the measures that have been taken to ensure that this element is will establish and implemented within your department strategy and laws?
27. Does your department include in its strategy the following ideas:
- a) Officials training
  - b) Public awareness
  - c) Law enforcement cooperation
  - d) Departments cooperation
  - e) Victims protection
  - f) Integration of victims and society
  - g) Other
28. According to your department views, what does it mean to prevent crime such as human trafficking?
29. Does your department define the prevention of human trafficking? is there any links with this definition and with any other element of combating trafficking?
30. Have your department amended its laws after the Saudi Arabian government joining the Palermo Convention? How?
31. What are the processes of implementing the international conventions into the Saudi Arabian domestic law?

32. Does the Saudi Arabian law and polices fulfill the international obligations on combating human trafficking?
33. How long it will take to implement an international convention into the Saudi Arabian law?
34. Could your department explain its opinion on the idea of domestic workers are vulnerable and considered to be one of the most favorable target for human trafficking?
35. Could you illustrate on the Saudi Arabian obligations towards the private sector to prevent human trafficking (especially in the case of domestic workers)?
36. What is the last legislation that the Saudi Arabian government have enacted in the last five years? Is it implemented in the national law?
37. Could your department say that the anti-trafficking laws are problematic to enforce? Why?
38. What are the standards that the Saudi Arabian government have taken into consideration while drafting the anti-trafficking legislation (according to your department views)?
39. Does the Saudi Arabian government or your department as representative to the government, have signed a bilateral agreement with other country in regards to combating human trafficking?
40. Does your department engage with the public or any other NGO (non-governmental organization) in regards to combating human trafficking?

## **Appendix 2**

**PROTOCOL TO PREVENT, SUPPRESS AND PUNISH  
TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND  
CHILDREN, SUPPLEMENTING THE UNITED NATIONS  
CONVENTION AGAINST TRANSNATIONAL ORGANIZED  
CRIME**

## **Preamble**

*The States Parties to this Protocol,*

*Declaring* that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

*Taking into account* the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

*Concerned* that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

*Recalling* General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

*Convinced* that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

*Have agreed as follows:*

## ***General provisions***

### ***Article 1***

#### ***Relation with the United Nations Convention against Transnational Organized Crime***

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

### ***Article 2***

#### ***Statement of purpose***

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

### ***Article 3***

#### ***Use of terms***

For the purposes of this Protocol:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.

#### *Article 4*

##### *Scope of application*

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized

criminal group, as well as to the protection of victims of such offences.

### *Article 5*

#### *Criminalization*

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) commit an offence;

Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

## **II. Protection of victims of trafficking in persons**

### *Article 6*

#### *Assistance to and protection of victims of trafficking in persons*

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal

system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

### *Article 7*

#### *Status of victims of trafficking in persons in receiving States*

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

### *Article 8*

#### *Repatriation of victims of trafficking in persons*

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a

person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

### **III. Prevention, cooperation and other measures**

#### *Article 9*

##### *Prevention of trafficking in persons*

1. States Parties shall establish comprehensive policies, programmes and other measures:
  - (a) To prevent and combat trafficking in persons; and
  - (b) To protect victims of trafficking in persons, especially women and children, from revictimization.
2. States Parties shall endeavour to undertake measures

such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

### ***Article 10***

#### ***Information exchange and training***

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used

or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

### *Article 11*

#### *Border measures*

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other

appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

## *Article 12*

### *Security and control of documents*

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot

readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

***Article 13***

***Legitimacy and validity of documents***

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

**IV. Final provisions**

***Article 14***

***Saving clause***

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

***Article 15***

***Settlement of disputes***

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

### *Article 16*

#### *Signature, ratification, acceptance, approval and accession*

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its States parties has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

### *Article 17*

#### *Entry into force*

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration

organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

### *Article 18*

#### *Amendment*

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

### ***Article 19***

#### ***Denunciation***

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

### ***Article 20***

#### ***Depositary and languages***

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

## **Appendix 3**

### **The Saudi Arabian Anti-Trafficking Law**

*Council of Ministers Decision number (244) dated 20/7/1430 (June 13, 2009)*

The Council of Ministers after viewing the paper of the Administration of the Council of Ministers number 47832/B dated 3/12/1429 (November 20, 2009) including draft of the law for combating trafficking in persons and related meeting minutes and recommendations decided the following:

**First:** Approved the law for combating the crime of trafficking in persons in its attached text. A draft royal decree is prepared, the text of which is attached.

**Second:** Forming a committee for combating crimes of trafficking in person at the Human Rights Commission consisting of representatives from the Ministry of Interior, Ministry of Foreign Affairs, Ministry of Justice, Ministry of Social Affairs, Ministry of Labor, Ministry of Education and Information and Human Rights Commission.

**Three:** The speciality of the above mentioned committee is:

1. To follow up situation of victims of trafficking in person to ensure prevention of repeated abuse;

2. To draw a policy urging active search for victims of trafficking in person and training individuals on means of identifying them;

3. To coordinate with relevant authorities to return victims to their home countries or other countries where they reside whenever they demanded to leave;

4. To recommend keeping the victims in the country and to resettle their legal papers so they would be able to work if they wishes to do so. Such recommendation – when approved – is reviewed annually.

5. To prepare researches, information, media campaigns, social and economic initiatives to prevent and combat trafficking in persons.

6. To coordinate with government departments regarding information and statistics related to crimes of trafficking in persons.

**Fourth:** Head of the Commission of Human Rights will issue a decision planning the work of this committee.

The Anti-trafficking Law for Combating Crimes of Trafficking in Person  
Published in Um Al-Quran newspaper August 7, 2009

*The following terms – wherever they appear in this law – have the meaning assigned to them below, unless the context requires otherwise:*

### **Article I**

1. Trafficking in Person: Use, transfer, accommodation, reception of a person for the purpose of abuse.
  2. Transnational Crime: A crime would be of a transnational nature in the following cases:
    - a) If it is committed in more than one state;
    - b) If it is committed in one state but a large part of its preparation, planning, instruction or supervision took place in another state;
    - c) If it is committed in one state but its perpetrators are an organized criminal group practicing criminal activities in more than one state;
    - d) If it is committed in one state but has substantial effects in another state;
  3. Organized Criminal Group: Any group consisting of two persons or more acting in concert to commit the crime of trafficking in person for the sake of gaining –directly or indirectly – a material, financial or other benefits.
- Prohibits trafficking in any person in any form including forcing, threatening, defrauding, deceiving, kidnapping him/her. Prohibiting exploiting position, authority, exploiting a person's weakness, or giving person money or benefits to gain approval of one person to control another person for the purpose of sexual assault. Prohibits forced work or service, begging, slavery or semi slavery practices, enslaving, removing physical parts, or subjecting a person to medical tests.

### **Article II**

Prohibition of Traffic to any person in any form including compelled or threatened or fraud upon or deception or kidnapped, or the exploitation of

position or influence, or abuse of authority what it is, or exploit the weakness , or giving payments or benefits or received to achieve the consent of a person his control another for sexual assault, or work or service forcibly , or begging , slavery or practices similar to slavery , servitude or the removal of organs , or make him medical experiments.

### **Article III**

Any person who commits the crime of trafficking in persons is sentenced to a term not exceeding (fifteen years) or a fine not exceeding (SR. one million), or both.

### **Article IV**

Penalties provided for in this law are accentuated in the following cases:

1. If the crime is committed by and organized criminal group
2. If the crime is committed against a woman or people of special needs;
3. If the crime is committed against a child, even if the perpetrator is not aware that the victim is a child;
4. If the perpetrator used a weapon or threatened of its use;
5. If the perpetrator is a spouse of the victim or any of his ascendants ore descendants or guardian;
6. If perpetrator of the crime is an employer in law enforcement;
7. If crime is committed by more than one person;
8. If the crime was transnational;
9. If the crime resulted in a great harm to the victim or caused him permanent deformity.

### **Article V**

The consent of the victim in any crime stated in this law does not affect punishment enforcement.

### **Article VI**

1. Use physical force, threats, intimidation or denial of any undue advantage, or promise of undeserved advantage, or offering it to incite false

witnessing or providing false evidence relating to committing any of the crimes stated in this law.

2. Use physical force, threats or intimidation to interfere in the practice of any judicial officer – or law enforcement officer – while executing his official duties regarding any of the crimes mentioned in this law.

### **Article VII**

Punishable by imprisonment for a term not exceeding (five years) or fine not exceeding (SR two thousand), or both whoever:

Punished by imprisonment for a period not exceeding (two years) or a fine not exceeding (SR one Hundred thousand) or both, whoever has knowledge of any of the crimes stated in this law or intention of committing them, even if he was an official required of professional confidentiality, or received information or instructions, relating directly or indirectly, and did not inform the competent authorities.

### **Article VIII**

The relevant court may exclude parents, children, spouses, brothers and sisters from this article.

Whoever participate in the crime of trafficking in persons, or has any relation to any of the crimes mentioned in articles II, IV and VI of this law shall receive the punishment of the perpetrator of the crime.

### **Article IX**

Any person who acquire benefits from any of the crimes stated in this law, or hide these benefits or used them, or hid one or more persons that participated in the crime with the purpose of helping them to escape from justice, or participated in hiding evidences of a crime is punished by imprisonment for a period not exceeding (five) years.

The court may exempt the accused from punishment relating to hiding people in case the person in hiding is a spouse or his ascendants or descendants.

### **Article X**

Attempt of any of the crimes mentioned in article (II), (IV) and (VI) of this law is punished as a full crime.

### **Article XI**

The relevant court may at all times confiscate private funds, luggage and tools that are used or prepared for use for committing a crime of trafficking in persons or gained after the crime is committed.

### **Article XII**

Exempt from the penalties prescribed in this law any individual from the perpetrators who inform the competent authorities of the crime before it takes place and prevent its completion. If the report came after the occurrence of the crime, the reporter may be exempt from penalty if he enabled the authorities to arrest the other perpetrators. If the individual reported to the authorities during the investigation it is possible to reduce his sentence.

### **Article XIII**

Without reliving the individual from his personal responsibilities, if the crime of trafficking in person took place through a legal personality, or in his name or on his behalf, he would be punishable by a fine not exceeding (SR. 10 Millions). The court has the right to close his business or any of its branches temporarily or permanently.

### **Article XIV**

Penalties stated in this law do not prevent applying more severe penalties in other laws.

### **Article XV**

The following procedures are taken during investigation or trial concerning the victim of the crime of trafficking in person:

1. Informing the victim of his legal rights in a language that he understands
2. Allowing the victim the chance to explain his situation in being a victim

of trafficking, as well as his legal, physical, psychological and social position.

3. Presenting him to a specialized physician, in case he needs a physical or psychological care, or if he requested to see such a physician.

4. Admitting the victim in one of the physical, psychological or social rehabilitation centers if his physical, psychological or age requires such admission.

5. Admitting him in a shelter if he is need of one.

6. Providing him with the necessary security protection if there is a need.

7. If the victim is a foreigner and it is necessary for him to stay in the Kingdom during the investigation procedures, the prosecution or the competent court would assess the matter.

#### **Article XVI**

Investigation and Prosecution Commission is the authority that carries out prosecution and investigation in crimes mentioned in this law. It is also the authority responsible for searching places of accommodating of victims to ensure executing judicial penalties in this regard.

**This law would be in effect 90 days after being published by the official newspaper.**

## **Appendix 4**

### **The Saudi Arabian Labour Law**

Issued by the Royal Decree No. M/51

23 Sha'ban 1426 / 27 September 2005

First Edition 2006

*In the name of God the Compassionate the Merciful*

**This translation is provided for guidance. The governing text is the Arabic text.**

**Article (1):**

This law shall be called the Labor Law.

**Article (2):**

The following terms and phrases, whenever mentioned in this Law, shall have the meanings expressed next to them, unless the context requires otherwise.

Ministry: Ministry of Labor. Minister: Minister of Labor.

Labor Office: The administrative authority assuming jurisdiction over the labor affairs within an area specified by a decision of the Minister.

Employer: Any natural or corporate person employing one or more workers for a wage.

Worker: Any natural person working for an employer and under his management or supervision for a wage, even if he is not under his direct control.

Minor: Any person of fifteen and below eighteen years of age.

Work: The effort exerted in all human activities in execution of a (written or unwritten) work contract regardless of their nature or kind, be they industrial, trade, agricultural, technical or otherwise, whether physical or mental.

Original Work: For individuals: Their usual business activities. For firms: The activities for which the firm has been established as stated in its articles of incorporation, franchise contract- if a franchise company- or Commercial Register.

Temporary Work: Work considered by its nature to be part of the employer's activities, the completion of which requires a specific period or relates to a specific job and ends with its completion. It shall not exceed ninety days in either case.

Incidental Work: Work that is not considered by its nature to be part of the usual activities of an employer, and its execution does not require more than ninety days.

Seasonal Work: Work that takes place in known periodical seasons.

Part-time Work: Work performed by a part-time worker for an employer and for less than half the usual daily working hours at the firm, whether such a worker works on a daily basis or on certain days of the week.

Continuous Service: Uninterrupted service of a worker for the same employer

or his legal successor from the starting date of service. Service shall be deemed continuous in the following cases:

- (1) Official holidays and vacations.
- (2) Interruptions for sitting for examinations in accordance with the provisions of this Law.
- (3) Worker's unpaid absences from work for intermittent periods not exceeding twenty days per work year.

**Basic Wage:** All that is given to the worker for his work by virtue of a written or unwritten work contract regardless of the kind of wage or its method of payment, in addition to periodic increments.

**Actual Wage:** The basic wage plus all other due increments decided for the worker for the effort he exerts at work or for risks he encounters in performing his work, or those decided for the worker for the work under the work contract or work organization regulation. This includes:

- (1) The commission or percentage from sales or profits paid against what the worker markets, produces, collects or realizes from increased or enhanced production.
- (2) Allowances the worker is entitled to for exerted effort, or risks he encounters while performing his job.
- (3) Increments that may be granted in accordance with the standard of living or to meet family expenses.
- (4) Grant or reward: What the employer grants to the worker and what is paid to him for honesty or efficiency and the like, if such grant or reward is stipulated in the work contract or the work organization regulation of the firm or if customarily granted to the extent that the workers consider it part of the wage rather than a donation.
- (5) In rem privileges: what the employer commits himself to provide to the worker for his work by stating it in the work contract or the work organization regulation and its estimated at a maximum of two months basic wage per annum, unless it is otherwise determined to exceed that in the work contract or

the work organization regulation.

Wage: actual wage.

Firm: Any enterprise run by a natural or corporate person who employs one or more workers for a wage of any kind.

Month: Thirty days, unless it is otherwise specified in the work contract or the work organization regulation.

Regulations: The Implementing Regulations of this Law.

**Article (3):**

Work is the right of every citizen. No one else may exercise such right unless the conditions provided for in this Law are fulfilled. All citizens are equal in the right to work.

**Article (4):**

When implementing the provisions of this Law, the employer and the worker shall adhere to the provisions of Shari'ah.

**Article (5):**

The provisions of this Law shall apply to:

- (1) Any contract whereby a person commits himself to work for an employer and under his management or supervision for a wage.
- (2) Workers of the government and public organizations and institutions including those who work in pastures or agriculture.
- (3) Workers of charitable institutions.
- (4) Workers of agricultural and pastoral firms that employ ten or more workers.
- (5) Workers of agricultural firms that process their own products.
- (6) Workers who operate or repair agricultural machineries on a permanent basis.
- (7) Qualification and training contracts with workers other than those working for the employer within the limits of the special provisions provided for in this Law.
- (8) Part-time workers with respect to safety, occupational health and work

injuries, as well as what is decided by the Minister.

**Article (6):**

Incidental, seasonal and temporary workers shall be subject to the provisions on duties and disciplinary rules, the maximum working hours, daily and weekly rest intervals, overtime work, official holidays, safety rules, occupational health, work injuries and compensation therefore as well as whatever is decided by the Minister.

**Article (7):**

The following shall be exempted from the implementation of the provisions of this Law:

(1) The employer's family members, namely, the spouse, the ascendants and descendants who constitute the only workers of the firm.

(2) Domestic helpers and the like.

(3) Sea workers working on board of vessels with a load of less than five hundred tons.

(4) Agricultural workers other than the categories stated in Article (5) of this Law.

(5) Non-Saudi workers entering the Kingdom to perform a specific task for a period not exceeding two months.

(6) Players and coaches of sports clubs and federations.

The Ministry shall, in coordination with the competent authorities, draft regulations for domestic helpers and the like to govern their relations with their employers and specify the rights and duties of each party and submit the same to the Council of Ministers.

**Article (8):**

Any condition that contradicts the provisions of this Law shall be deemed null and void. The same applies to any release or settlement of the worker's rights arising from this Law during the validity of the work contract, unless the same is more beneficial to the worker.

**Article (9):**

Arabic shall be the language used for data, records, files, work contracts and the like as provided for in this Law or in any decision issued in implementation of its provisions as well as the instructions issued by the employer to his workers. If the employer uses a foreign language beside Arabic in any of the mentioned cases, the Arabic text shall prevail.

**Article (10):**

All periods and schedules provided for in this Law shall be according to Hegira calendar, unless otherwise stated in the work contract or the work organization regulation.

**Article (11):**

(1) If the employer assigns all or part of his original business to a natural or corporate person, the latter shall give his workers all the rights and privileges which the original employer gives to his workers, and both of them shall be jointly and severally liable.

(2) In case of multiple employers, all of them shall be jointly and severally responsible for the fulfillment of the obligations arising from this Law and the work contracts.

**Article (12):**

Both the employer and the worker shall be familiar with the provisions of the Labor Law in all its contents so that each of them shall be aware of his position and of his rights and duties. Any employer who employs ten or more workers shall submit to the Ministry, a work organization regulation including internal work provisions, within a year of the effective date of this Law or from the date of reaching the quota. Such regulations shall include the work organization rules and all related provisions including the provisions related to privileges, violations and disciplinary penalties, not contradicting the provisions of this Law.

**Article (13):**

The Ministry shall approve the work organization regulation and all amendments to it within sixty days from the date of its submission to the

Ministry. If such period elapses without approval or objection, the regulation shall be considered effective as of the end of such period. The employer shall announce the regulation by displaying it in a prominent location in the firm or by any other means that ensures the workers' awareness thereof.

**Article (14):**

A model(s) work organization regulation shall be issued pursuant to a decision by the Minister for the guidance of employers.

**Article (15):**

An employer shall, upon commencement of work in the firm, notify the competent labor office in writing of the following data:

- (1) Name, type and headquarters of the firm, as well as its mailing address and any information that facilitates contact there with.
- (2) Line of business for which it is licensed, providing the number of the Commercial Register or the license, its date and issuing authority, together with a copy thereof.
- (3) Number of workers to be employed in the firm. (4) Name of the firm's manager in-charge.
- (5) Any other data required by the Ministry.

**Article (16):**

(1) If the employer is unable to run the business in person, he shall designate a representative at the workplace. In case of multiple partners or managers in the firm, one of them, from among those residing at the place of work, shall be nominated to represent the employer and be liable for any violation of the provisions of this Law.

(2) The employer shall notify the competent labor office in writing of the name of the partner or manager, and, in case of his replacement, he shall notify the labor office of the name of the new partner or manager within seven days at most of the date of the latter's assuming the job.

(3) In case no manager is appointed to be in charge of the firm, or if the appointed manager does not assume his duties, then the person who actually

runs the firm or the employer himself shall be considered the manager in charge of the firm. In all cases, the employer is ultimately liable.

**Article (17):**

An employer shall maintain at the workplace records, statements and files the nature and contents of which shall be specified in the regulations. He shall display at a prominent location at the workplace a schedule of working hours, breaks, weekly rest days and time of start and end of each shift, when operating in shifts.

**Article (18):**

If the ownership of a firm is transferred to a new owner or a change takes place in its legal form through merger, partition or otherwise, the work contracts shall remain in force in both cases and service shall be deemed continuous. As for workers' rights accrued for the period prior to the change such as wages or unrealized end-of-service award on the date of transfer of ownership and other rights, the predecessor and the successor shall be jointly and severally liable. However, in the case of transfer of ownership of individual firms, for any reason, the predecessor and the successor may agree to transfer all the previous rights of the worker to the new owner with the written consent of the worker. If the worker disapproves, he may request the termination of his contract and collect his dues from the predecessor.

**Article (19):**

Amounts due to the worker or his heirs under this Law shall be deemed first rate privileged debts and the worker and his heirs shall, for the purpose of settling them, be entitled to a privilege over all the employer's properties. In the case of bankruptcy of the employer or liquidation of his firm, the aforementioned amounts shall be entered as privileged debts and the worker is paid an expedited amount equivalent to one month wage prior to payment of any other expenses including judicial, bankruptcy or liquidation expenses.

**Article (20):**

An employer or a worker may not perform any act that may abuse the

provisions of this Law or the decisions or regulations issued for its implementation. Neither of them may undertake any act that infringes upon the freedom of the other or the freedom of other workers or employers to realize any interest or impose a point of view that conflicts with the freedom of work or the jurisdiction of the competent authority in charge of settlement of disputes.

**Article (21):**

The Minister, in implementing the provisions of this Law, shall coordinate with relevant authorities whenever necessary.

**Article (22):**

The Ministry shall provide employment units, free of charge, at locations convenient for employers and workers, which shall undertake the following:

(1) Assisting workers in finding suitable jobs and aiding employers in recruiting suitable workers.

(2) Gathering necessary information on the labor market and its developments and analyzing such information to make it available to various public and private organizations concerned with economic and social planning affairs.

(3) Performing the following duties:

(3-1) Registration of job seekers.

(3-2) Obtaining data on vacant jobs from employers.

(3-3) Referring workers' applications to suitable vacant jobs.

(3-4) Providing advice and assistance to job seekers with respect to vocational qualification and training or the required retraining to fill vacancies.

(3-5) Other matters decided by the Ministry.

**Article (23):**

Every citizen of working age who is capable of and willing to work may register his name at the employment unit, his date of birth, qualifications, previous employment, preferences and address.

**Article (24):**

The regulations shall specify the rules for work progress and procedures at the employment units, forms of registers, notices and others used for its work as well as the job classification tables, according to the official job classification, which shall be the basis for organization of recruitment.

**Article (25):**

Every employer shall send the following to the competent labor office:

- (1) A statement of vacant and new jobs, their types, locations, wages, and qualifications within a period not exceeding fifteen days from the date of vacancy or creation.
  
- (2) A notice of measures taken to employ the citizens nominated by the employment unit within seven days from receiving the nomination letter.
- (3) A list of names, jobs, professions, wages, ages, nationalities of his workers, numbers and dates of work permits for non- Saudis and other data specified in the Regulations.
- (4) A report on the status, conditions and nature of work and the anticipated increase or decrease in jobs during the year following the date of the report.
- (5) The statements specified in Paragraphs (3) and (4) of this Article shall be sent during the month of Muharram every year.

**Article (26):**

(1) All firms in all fields, and regardless of number of workers, shall work to attract and employ Saudis, provide conditions to keep them on the job and avail them of an adequate opportunity to prove their suitability for the job by guiding, training and qualifying them for their assigned jobs.

(2) The percentage of Saudi workers employed by the employer shall not be less than 75% of the total number of his workers. The Minister may temporarily reduce this percentage in case of non-availability of adequate technically or academically qualified workers or if it is not possible to fill the vacant jobs with nationals.

**Article (27):**

The Minister may - when necessary in respect of certain activities and professions and in some provinces and counties - require employers not employ workers until they have been registered at the employment units under the terms and conditions specified pursuant to his decision.

**Article (28):**

Each employer employing twenty- five workers or more where the nature of his work allows recruitment of the professionally disabled shall employ a number of disabled that represents at least 4% of the total number of his workers whether through nomination by the employment units or otherwise, and he shall send to the competent labor office a list of the jobs and posts occupied by the professionally rehabilitated disabled persons and their wages

**Article (29):**

If a worker sustains a work injury that results in a loss in his usual capabilities that does not prevent him from performing another job, the employer, in whose service the work injury was sustained, shall employ said worker in a suitable job for the wage specified for such job. This shall not prejudice the worker's compensation for the injury.

**Article (30):**

A natural or corporate person may not engage in the recruitment of Saudis or in the recruitment of workers from abroad unless licensed for the same by the Ministry. The Regulations shall determine the functions of these two types of activities, the conditions for granting and renewing a license to each of them, the duties and prohibitions as well as rules for non-renewal or revocation of the license and the consequences thereof and other conditions and controls necessary for ensuring the proper conduct of business.

**Article (31):**

The Saudi workers to whose employment the recruitment offices contributed and the workers recruited from abroad on behalf of the employers shall be

deemed workers of the employer and bound to him by direct contractual relation.

**Article (32):**

Recruitment from abroad for the purpose of work may not be undertaken without the approval of the Ministry.

**Article (33):**

A non- Saudi may not engage in or be allowed to engage in any work except after obtaining a work permit from the Ministry, according to the form prepared by it for this purpose.

The conditions for granting the permit are as follows:

- (1) The worker has lawfully entered the country and is authorized to work.
- (2) He possesses the professional and academic qualifications which the country needs and which are not possessed by citizens or the available number of such citizens is insufficient to meet the needs, or that he belongs to the class of ordinary workers that the country needs.
- (3) He has a contract with the employer and is under his responsibility.

The word "work" in this Article means any industrial, commercial, agricultural, financial or other work, and any service including domestic service.

**Article (34):**

No permit or license required by any other agency for engaging in a work or a profession may substitute for the said work permit.

**Article (35):**

Prior to renewing the work permit, it shall be ascertained that none of the Saudi applicants possesses the required qualifications and is willing to undertake the same work.

**Article (36):**

The Minister shall issue a decision specifying the professions and jobs which are prohibited for non-Saudis.

**Article (37):**

The work contract for non-Saudis shall be written and of a specified period. If the contract does not specify the duration, the duration of the work permit shall be deemed as the duration of the contract.

**Article (38):**

An employer may not employ the worker in a profession other than the one specified in his work permit. Before following the legal procedures for changing the profession, a worker is prohibited to engage in a profession other than his.

**Article (39):**

(1) Unless he has followed the stipulated legal rules and procedures, an employer may not allow his worker to work for others, and a worker may not work for other employers. Similarly, an employer may not employ workers of other employers.

(2) An employer may not allow a worker to work for his own account and a worker may not work for his own account.

**Article (40):**

(1) An employer shall incur the fees pertaining to recruitment of non-Saudi workers, the fees of the residence permit (Iqama) and work permit together with their renewal and the fines resulting from their delay, as well as the fees pertaining to change of profession, exit and re-entry visas and return tickets to the worker's home country at the end of the relation between the two parties.

(2) A worker shall incur the costs of returning to his home country if he is unfit for work or if he wishes to return to his home country without a legitimate reason.

(3) An employer shall bear the fees of transferring the services of a worker who wishes to transfer his service to him.

(4) An employer shall be responsible for the cost of preparing the body of a deceased worker and transporting it to the location where the contract was concluded, or where the worker was recruited unless the worker is interred

in the Kingdom with the approval of his family. The employer shall be relieved if the General Organization for Social Insurance (GOSI) undertakes the same.

**Article (41):**

The Regulations shall specify the conditions for recruitment from abroad, transfer of services and change of profession, and the controls and procedures thereof.

**Article (42):**

An employer shall be required to prepare his Saudi workers and enhance their technical, administrative, vocational and other skills for the purpose of gradually replacing non-Saudis.

The employer shall keep a record showing the names of the Saudi workers who have replaced the non-Saudis in accordance with the conditions and rules set forth in the Regulations.

**Article (43):**

Without prejudice to the conditions set forth in concession and other agreements relative to training, qualification, education, and scholarships, every employer employing fifty or more workers shall annually train, in his business, a number of his Saudi workers not less than 6% of the total number of his workers. The Minister may raise this percentage in certain firms pursuant to a decision by him.

**Article (44):**

The training program shall provide for the rules and conditions to be followed in training, its duration, number of hours, the theoretical and practical training programs, method of testing and certificates to be granted in this regard. The Regulations shall set forth the general criteria and rules to be followed in this regard to raise the worker's level of performance in terms of skills and productivity.

**Article (45):**

The training or qualification contract is a contract which commits the

employer to train and qualify a person for a specific profession.

**Article (46):**

The training or qualification contract shall be in writing, indicating the profession for which the training is contracted, the duration of training and successive stages, and the allowance to be paid to the trainee in each stage, provided that it is not based on piecemeal or productivity.

**Article (47):**

The Minister may require the firms, to be identified pursuant to a decision by him, to accept a certain number or percentage of the students and graduates of colleges, institutes and centers to receive training and supplementary practical experience in accordance with the conditions, circumstances, durations and trainee allowances to be specified in an agreement to be concluded between the Ministry and the management of the relevant firm.

**Article (48):**

The employer may terminate the training or qualification contract if the trainee, in his opinion, is not amenable to or incapable of completing the training program in a beneficial manner. The trainee, his guardian or trustee shall have the same right. The party wishing to terminate the contract shall notify the other party at least one week prior to the date of cessation of the training. The employer may require the trainee to work for him upon completion of the training period for a period not to exceed twice the duration of the training or one year, whichever is longer.

**Article (49):**

The training and qualification contract shall be subject to this Law's provisions on annual vacations, official holidays, maximum working hours, daily and weekly rest periods, occupational health and safety rules, work injuries and their conditions as well as whatever is decided by the Minister.

**Article (50):**

A work contract is a contract concluded between an employer and a worker,

whereby the latter undertakes to work under the management or supervision of the former for a wage.

**Article (51):**

The work contract shall be in duplicates, one copy to be retained by each of the two parties. However, a contract shall be deemed to exist even if not written. In this case the worker alone may establish the contract and his entitlements arising therefrom by all methods of proof. Either party may at any time demand that the contract be in writing.

As for workers of the government and public corporations, the appointment decision or order issued by the competent authority shall serve as the contract.

**Article (52):**

The work contract shall primarily include the name of the employer, venue, the name of the worker, nationality, identification, wage agreed upon, type and location of work, date of employment, duration of the contract if fixed, subject to the provisions of Article 37 of this Law.

**Article (53):**

If the worker is subject to a probation period, the same shall be expressly stated and clearly indicated in the work contract. Such probation period shall not exceed ninety days, exclusive of Eid al-Fitr and Eid al-Adha holidays and sick leaves. Each party shall have the right to terminate the contract during this period, unless the contract embodies a clause giving the right to terminate the contract to only one of them.

**Article (54):**

A worker may not be placed on probation more than once by the same employer. As an exception to this, the worker may, with the approval of the contract parties, be subjected to another probation period of not more than ninety days on the condition that this period involves another profession or work. If the contract is terminated during the probation period, neither party shall be entitled to compensation nor shall the worker be entitled to

an end-of-service award.

**Article (55):**

(1) The fixed-term contract shall terminate upon expiration of its term. If the two parties continue to implement it, it shall be deemed renewed for an indefinite period of time, subject to the provisions of Article (37) of this Law for non-Saudi workers.

(2) If the fixed-term contract incorporates a clause providing for its renewal for a similar term or a specified term, the contract shall be renewed for the period agreed upon. If the contract is renewed for two consecutive terms or if the original contract term and the renewal period amount to three years, whichever is less, and the two parties continue to implement it, the contract shall become an indefinite term contract.

**Article (56):**

In all cases where the contract term is renewed for a specific period of time, the contract renewal period shall be an extension of the original term in determining the worker's rights which takes into account the worker's period of service.

**Article (57):**

If the contract involves performance of a specific work, it shall terminate with the completion of the work agreed upon.

**Article (58):**

The employer may not transfer the worker from his original workplace to another place that entails a change in his place of residence, if such transfer is likely to cause serious harm to the worker and is not justified by the nature of work.

**Article (59):**

A monthly-paid worker may not be reclassified as a daily-paid, a weekly-paid or an hourly-paid worker nor as a worker paid by piecework, unless the worker agrees thereto in writing and without prejudice to the rights he has acquired during the period he spent as a monthly-paid worker.

**Article (60):**

Without prejudice to the provisions of Article (38) of this Law, a worker may not be assigned duties which are essentially different from the work agreed upon without his written consent, except in cases of necessity dictated by transient circumstances and for a period not exceeding thirty days a year.

**Article (61):**

In addition to the duties provided for in this Law and the regulations and decisions issued for its implementation, the employer shall be required to:

(1) Refrain from using the worker without pay and shall not, without a judicial instrument, withhold the worker's wages or any part thereof. The employer shall treat his workers with due respect and refrain from any action or utterances that may infringe upon their dignity and religion.

(2) Give the workers the time required to exercise their rights as provided for in this Law without any deductions from their wages against such time. He may regulate the exercise of this right in a manner not detrimental to the work progress.

(3) Facilitate for the employees of the competent authorities any task related to the enforcement of the provisions of this Law.

**Article (62):**

If the worker reports to work on the prescribed time or expresses his readiness to perform his work at such times but is prevented from doing so only by a cause which is ascribed to the employer, the worker shall be entitled to the wage for the period during which no work is performed.

**Article (63):**

The employer, his agents, or any person having authority over the workers shall forbid entry of any illegal substances into the places of work. Anyone who is found in possession of or consumes such substance shall be subject to the punishments provided for in this Law on, without prejudice to the other punishments provided for in Shari'ah.

**Article (64):**

Upon expiration of the work contract, the employer shall be required to:

(1) Give the worker, upon his request and free of charge, a certificate of work experience, indicating date of his employment, date of end of work, his profession, and the last wage received. If the certificate contains any remarks that are prejudicial to the worker's reputation or likely to limit his employment chances, the reasons shall be given.

(2) Return to the worker all certificates and documents he had submitted.

**Article (65):**

In addition to the duties provided for in this Law and the regulations and decisions in implementation thereof, the worker shall be required to:

(1) Perform the work in accordance with the trade practice and the employer's instructions provided that such instructions do not conflict with the contract, the law or public morality and that they do not expose him to any undue hazards.

(2) Take due care of the employer's machinery, tools, supplies and raw materials placed at his disposal or in his custody and return to the employers the unused materials.

(3) Abide by proper conduct and ethical norms during work.

(4) Extend all assistance and help without making it contingent on additional pay in cases of disasters or hazards threatening the workplace or the persons working therein.

(5) Undergo, upon the employer's request, the medical examinations required prior to or during employment to ensure that he is free from occupational or communicable diseases.

(6) Keep confidential the technical, trade and industrial secrets of the products or which he directly or indirectly contributed to their production, as well as all trade secrets related to the work or the firm, the disclosure of which is likely to cause damage to the employer's interests.

**Article (66):**

The disciplinary penalties that the employer may inflict on the worker:

- (1) Warning.
- (2) Fines.
- (3) Withholding allowance or postponing it for a period not exceeding one year if prescribed by the employer.
- (4) Postponement of promotion for a period not exceeding one year if prescribed by the employer.
- (5) Suspension from work and withholding of wages.
- (6) Dismissal from work in cases set forth by the law.

**Article (67):**

An employer may not inflict on a worker a penalty not provided for in this Law or in the work organization regulation.

**Article (68):**

The penalty shall not be made harsher in the event of repeated violation if one hundred eighty days have elapsed since the previous violation was committed, calculated from the date the worker is informed of the penalty for that violation.

**Article (69):**

A worker may not be accused of any offense discovered after the elapse of more than thirty days, nor shall he be subjected to a disciplinary penalty after the elapse of more than thirty days from conclusion of the investigation and establishment of the worker's guilt.

**Article (70):**

A worker may not be subjected to disciplinary penalty for an act committed outside the workplace unless such act is related to the job, the employer or the manager in-charge. Nor may a worker be fined for a single violation an amount in excess of a five-day wage, and no more than one penalty shall be applied for the same violation. No more than a five-day wage shall be deducted from his wages in one month in payment of fines, or his suspension

from work without pay may not exceed five days a month.

**Article (71):**

A disciplinary action may not be imposed on a worker except after notifying him in writing of the allegations, interrogating him, hearing his defense and recording the same in minutes to be kept in his file. The interrogation may be verbal in minor violations the penalty for which does not go beyond a warning or a deduction of a one-day salary. This shall be recorded in minutes.

**Article (72):**

The worker shall be notified in writing of the decision of imposing the penalty on him. If he refuses to receive the same or if he is absent, the notice shall be sent to the address shown in his file by registered mail. The worker may object to the decision of imposing the penalty upon him within fifteen days, excluding official holidays, from the date of notifying him of the final decision. The objection shall be filed with the Commission for the Settlement of Labor Disputes which shall be required to issue its decision within thirty days from the date of registering the objection.

**Article (73):**

Fines imposed on the workers shall be entered in a special record, showing the worker's name, his wages, the amount of the fine, reasons and date of the fine. Such fines may not be disposed of except for the benefit of the firm's workers, upon the Ministry's approval.

**Article (74):**

A work contract shall terminate in the following cases:

- (1) If both parties agree to terminate it, provided that the worker's consent be in writing.
- (2) If the term specified in the contract expires, unless the contract has been explicitly renewed in accordance with the provisions of this Law in which case it shall remain in force until the expiry of its term.
- (3) At the discretion of either party in indefinite term contracts.

(4) The worker attains the age of retirement, which is sixty years for males and fifty five years for females, unless the two parties agree upon continuing work after this age. The retirement age may be reduced in cases of early retirement as provided for in the work organization regulation. If it is a fixed-term work contract which extends beyond the retirement age, it shall terminate at the end of its term.

(5) Force majeure.

The provisions of Paragraph (4) of this Article shall apply two years after this Law enters into force.

**Article (75):**

If the contract is of an indefinite term, either party may terminate it for a valid reason to be specified in a written notice to be served to the other party at least thirty days prior to the termination date if the worker is paid monthly and not less than fifteen days for others.

**Article (76):**

If the party terminating the contract does not observe the period provided for in Article (75) of this Law, such party shall be required to pay the other party compensation equal to the worker's wage for the duration of the notice or the balance thereof. The last wage received by the worker shall serve as the basis for estimating the compensation for workers who are paid by the time frame criterion. For workers who are paid by another criterion, the estimation shall take into account the provisions of Article (96) of this Law.

**Article (77):**

If the contract is terminated for an invalid reason, the party who is harmed by such termination shall be entitled to indemnity to be assessed by the Commission for the Settlement of Labor Disputes, taking into account the termination circumstances and actual and potential material and moral damages sustained.

**Article (78):**

A worker who has been dismissed from work without valid reason may

demand reinstatement. Such claims shall be considered in accordance with the provisions of this Law and the Litigation Regulations before the Commissions for the Settlement of Labor Disputes.

**Article (79):**

A work contract shall not expire by the death of the employer unless his person has been taken into consideration in concluding the contract, but shall expire with the death or incapacity of the worker in accordance with a medical report approved by the competent health authority or the authorized physician designated by the employer.

**Article (80):**

An employer may not terminate the contract without an award, advance notice or indemnity except in the following cases, and provided that he gives the worker a chance to state his reasons for objecting to the termination:

- (1) If, during or by reason of the work, the worker assaults the employer, the manager in-charge or any of his superiors.
- (2) If the worker fails to perform his essential obligations arising from the work contract, or to obey legitimate orders, or if, in spite of written warnings, he deliberately fails to observe the instructions related to the safety of work and workers as may be posted by the employer in a prominent place.
- (3) If it is established that the worker has committed a misconduct or an act infringing on honesty or integrity.
- (4) If the worker deliberately commits any act or default with the intent to cause material loss to the employer, provided that the latter shall report the incident to the appropriate authorities within twenty-four hours from being aware of such occurrence.
- (5) If the worker resorts to forgery in order to obtain the job.
- (6) If the worker is hired on probation.
- (7) If the worker is absent without valid reason for more than twenty days

in one year or for more than ten consecutive days, provided that the dismissal be preceded by a written warning from the employer to the worker if the latter is absent for ten days in the first case and for five days in the second.

(8) If the worker unlawfully takes advantage of his position for personal gain.

(9) If the worker discloses work-related industrial or commercial secrets.

**Article (81):**

Without prejudice to all of his statutory rights, a worker may leave his job without notice in any of the following cases:

(1) If the employer fails to fulfill his essential contractual or statutory obligations towards the worker.

(2) If the employer or his representative resorts to fraud at the time of contracting with respect to the work conditions and circumstances.

(3) If the employer assigns the worker, without his consent, to perform a work which is essentially different from the work agreed upon and in violation of provisions of Article (60) of this Law.

(4) If the employer, a family member or the manager in-charge commits a violent assault or an immoral act against the worker or any of his family members.

(5) If the treatment by the employer or the manager in-charge is characterized by cruelty, injustice or insult.

(6) If there exists in the workplace a serious hazard threatening the safety or health of the worker, provided that the employer is aware thereof but fails to take measures indicating its removal.

(7) If the employer or his representative, through his actions and particularly his unjust treatment or violation of the terms of the contract, has caused the worker to appear as the party terminating the contract.

**Article (82):**

An employer may not terminate the worker's services on account of illness prior to availing him of the period designated for sick leave as provided for

in this Law. The worker may request that his sick leave be combined with his annual leave.

**Article (83):**

If the work assigned to the worker allows him to get acquainted with the employer's customers, or to have access to his business secrets, the employer may require the worker in the contract not to compete with him or reveal his secrets upon expiration of the contract. For this condition to be valid, it shall be in writing and specific in terms of time, place and type of work and to the extent required to protect the legitimate interests of the employer. In all cases, the duration of such agreement shall not exceed two years from the date of termination of the relationship between the two parties.

**Article (84):**

Upon the end of the work relation, the employer shall pay the worker an end-of-service award of a half-month wage for each of the first five years and a one-month wage for each of the following years. The end-of-service award shall be calculated on the basis of the last wage and the worker shall be entitled to an end-of-service award for the portions of the year in proportion to the time spent on the job.

**Article (85):**

If the work relation ends due to the worker's resignation, he shall, in this case, be entitled to one third of the award after a service of not less than two consecutive years and not more than five years, to two thirds if his service is in excess of five successive years but less than ten years and to the full award if his service amounts to ten or more years.

**Article (86):**

As an exception to the provision of Article (8) of this Law, it may be agreed that the wage used as a basis for calculating the end-of-service award does not include all or some of the commissions, sales percentages, and similar wage components paid to the worker which are by their nature subject to increase or decrease.

**Article (87):**

As an exception to the provisions of Article (85) of this Law, the worker shall be entitled to the full award if he leaves the work due to a force majeure beyond his control. A female worker shall likewise be entitled to the full award if she ends her contract within six months from the date of her marriage or three months from the date of giving birth.

**Article (88):**

Upon the end of the worker's service, the employer shall pay his wages and settle his entitlements within a maximum period of one week from the date of the end of the contractual relation. If the worker ends the contract, the employer shall settle all his entitlements within a period not exceeding two weeks. The employer may deduct any work-related debt due to him from the worker's entitlements.

**Article (89):**

The Council of Ministers may, when necessary and upon a proposal by the Minister, set a minimum wage.

**Article (90):**

(1) The worker's wages and all other entitlements shall be paid in the Country's official currency. Wages shall be paid during working hours and at the workplace in accordance with the following provisions:

(1.1) Workers paid on a daily basis shall be paid at least once a week. (1.2) Workers paid on a monthly basis shall be paid once a month.

(1.3) If the work is done by the piece and requires a period of more than two weeks, the worker shall receive a payment each week commensurate with the completed portion of the work. The balance of the wage shall be paid in full during the week following delivery of the work.

(1.4) In cases other than the above, the worker's wages shall be paid at least once a week.

(2) Wages may be paid through accredited banks in the Kingdom, with the consent of the worker, provided that their due dates do not exceed the dates

specified above.

**Article (91):**

(1) If the worker, as a result of his own fault or violation of the employer's instructions and not as a result of a third party's fault or a force majeure, causes loss, damage or destruction to machineries or products owned by the employer while in his custody, the employer may deduct from the worker's wage the amount necessary for repair or restoration to the original condition, provided that such deductions do not exceed a five-day wage per month. The employer may file a grievance, if necessary, demanding more deductions if the worker has other properties from which collections may be made. The worker may file a grievance with the Commission for the Settlement of Labor Disputes regarding the allegations leveled at him or the employer's estimation of the damages. If the Commission rules that the employer is not entitled to claim such deductions or if it awards the employer a lower amount, the employer shall return to the worker the amounts unjustifiably deducted, within seven days from the date of the award.

(2) Either party shall file its grievance within fifteen work days; otherwise, it shall forfeit his right thereto. For the employer, the date of filing the grievance shall be from the date the occurrence is discovered, and for the worker from the date of his notification of the same by the employer.

**Article (92):**

No amount shall be deducted from the worker's wages against private rights without his written consent, except in the following cases:

(1) Repayment of loans extended by the employer, provided that such deductions do not exceed 10% of his wage.

(2) Social insurance or any other contributions due on the workers as provided for by law.

(3) Worker's contributions to thrift funds or loans due to such funds.

(4) Installments of any scheme undertaken by the employer involving

home ownership programs or any other privilege.

(5) Fines imposed on the worker on account of violations committed, as well as deductions made for damages caused.

(6) Any debt collected in implementation of a judicial judgment, provided that the monthly deduction shall not exceed one quarter of the worker's wage, unless the judgment provides otherwise.

First to be collected is alimony, followed by food, clothing and accommodation debts, before other debts.

**Article (93):**

In all cases, deductions made may not exceed half the worker's due wage, unless the Commission for the Settlement of Labor Disputes determines that further deductions can be made or that the worker is in need of more than half his wage. In the latter case, the worker may not be given more than three quarters of his wage.

**Article (94):**

(1) If any amount is deducted from the worker's wages for reasons other than those specified in this Law without his written consent, or if the employer delays, without a valid justification, payment of the worker's wages beyond the due date set forth in the Law, the worker, his representative or the head of the competent Labor Office may submit a request to the Commission for the Settlement of Labor Disputes to order the employer to return to the worker any wrongfully-deducted amounts or to pay him his outstanding wages.

(2) The said Commission may, if it establishes that the employer has unjustifiably deducted the said amounts or delayed the payment of the wages, impose on the employer a fine not exceeding twice the amount deducted from the worker's wage or twice the outstanding wages.

**Article (95):**

(1) If the work contract or the work organization regulation does not provide for the wage binding on the employer, the wage estimated for the

same type of work in the firm, if any, shall be adopted; otherwise, the wage shall be estimated in accordance with the profession's norms at the place where the work is performed. In the absence of such norms, the Commission for Settlement of Labor Disputes shall estimate the wage in accordance with the dictates of justice.

(2) The same shall also apply in determining the type and scope of the service that the worker is required to render.

**Article (96):**

(1) If the worker's wage is determined on the basis of piecework or productivity, the average wage which the worker receives for his actual workdays during the last year of his service shall be used as the basis for calculating any entitlements determined for the worker under this Law.

(2) If the entire wage is the amounts received as commissions, a percentage of sales or the like which are by nature subject to increases or decreases, the daily average wage shall be calculated on the basis of the amounts the worker receives for the actual work days, divided by them.

**Article (97):**

If a worker is detained or taken into custody by the competent authorities in cases related to work or occasioned by it, the employer shall continue to pay the worker 50% of the wage until the case is decided, provided that the period of detention or custody shall not exceed one hundred eighty days. If said period exceeds that, the employer shall not be required to pay any portion of the wage for the excess period. If the worker is acquitted or the investigation is closed for lack of evidence or invalidity thereof, the employer shall return to the worker the amount previously deducted from his wage. However, if he is convicted, none of the payments made shall be recovered unless the judgment provides otherwise.

**Article (98):**

A worker may not actually work for more than eight hours a day if the employer uses the daily work criterion, or more than forty-eight hours a

week if he uses the weekly criterion. During the month of Ramadan, the actual working hours for Muslims shall be reduced to a maximum of six hours a day or thirty-six hours a week.

**Article (99):**

The number of working hours provided for in Article (98) of this Law may be raised to nine hours a day for certain categories of workers or in certain industries and jobs where the worker does not work continuously. It may likewise be reduced to seven hours a day for certain categories of workers or in certain hazardous or harmful industries or jobs. Categories of workers, industries and jobs referred to shall be determined pursuant to a decision by the Minister.

**Article (100):**

In firms where work is done in shifts, an employer may, with the Ministry's approval, increase the number of working hours to more than eight hours a day or forty eight hours a week, provided that the average working hours in three weeks time shall not be more or less than eight hours a day or forty eight hours a week.

**Article (101):**

Working hours and rest periods during the day shall be scheduled so that no worker shall work for more than five consecutive hours without a break of no less than thirty minutes each time during the total working hours for rest, prayer and meals, provided that a worker shall not remain at the workplace for more than eleven hours a day.

**Article (102):**

The periods designated for rest, prayers and meals shall not be included in the actual working hours. During such periods, the worker shall not be under the employer's authority. The employer shall not require the worker to remain at the workplace during such breaks.

**Article (103):**

The Minister may specify, pursuant to a decision by him, the cases and jobs

where work shall, for technical reasons or operational conditions, continue without breaks. In such cases and jobs, the employer shall allow prayer, meal and rest periods to be scheduled during working hours by the management of the firm.

**Article (104):**

(1) Friday shall be the weekly rest day for all workers.

After proper notification of the competent labor office, the employer may replace this day for some of his workers by any other day of the week. The employer shall allow the workers to perform their religious obligations. The weekly rest day may not be compensated by cash.

(2) The weekly rest day shall be at full pay and shall not be less than twenty-four consecutive hours.

**Article (105):**

As an exception to the provisions of Article (104) of this Law, in remote areas and in jobs where the nature of work and operational conditions require continuous work, weekly rest periods accruing to the worker may be consolidated for up to eight weeks if the employer and the workers agree to that effect, subject to the Ministry's approval. In calculating the consolidated weekly rest periods, it shall be taken into consideration that said periods begin at the hour the workers arrive at the nearest city with transportation services and end at the hour the workers return to it.

**Article (106):**

An employer may not comply with the provisions of Articles (98), (101) and Paragraph (1) of Article (104) of this Law, in the following cases:

(1) Annual inventory activities, preparation of the budget, liquidation, closing of accounts and preparations for discount and seasonal sales, provided that the number of days during which the workers work shall not exceed thirty days a year.

(2) If the work is intended to prevent a hazardous accident, remedy its impact or avoid an imminent loss of perishable materials.

(3) If the work is intended to meet unusual work pressure.

(4) Eids, other seasons, occasions and seasonal activities specified pursuant to a decision by the Minister.

In all of the above cases, the actual working hours shall not exceed ten hours a day or sixty hours a week. The maximum overtime hours allowed per year shall be determined by a decision of the Minister.

**Article (107):**

(1) The employer shall pay the worker for overtime working hours an additional amount equal to the hourly wage plus 50% of his basic wage.

(2) If the firm is operated on the basis of weekly working hours, the hours in excess of the hours taken as the criterion shall be deemed overtime hours.

(3) All working hours performed during holidays and Eids shall be deemed overtime hours.

**Article (108):**

The provisions of Articles (98) and (101) of this Law shall not apply to the following cases:

(1) Persons occupying high positions of authority in management and policy, if such positions grant the persons occupying them authority over workers.

(2) Preparatory or supplemental works which must be completed before or after commencement of work.

(3) Work that is intermittent by necessity.

(4) Guards and janitors, excluding civil security guards.

The Regulations shall specify the jobs listed under paragraphs (2), (3) and (4) of this Article and their maximum working hours.

**Article (109):**

(1) A worker shall be entitled to a prepaid annual leave of not less than twenty one days, to be increased to a period of not less than thirty days if the worker spends five consecutive years in the service of the

employer.

(2) A worker shall enjoy his leave in the year it is due. He may not forgo it or receive cash in lieu during his period of service. The employer may set the dates of such leave according to work requirements or may grant them in rotation to ensure smooth progress of work. The employer shall notify the worker of the date of his leave in sufficient time of not less than thirty days.

**Article (110):**

(1) A worker may, with the employer's approval, postpone his annual leave or days thereof to the following year.

(2) An employer may postpone, for a period of not more than ninety days, the worker's leave after the end of the year it is due if required by work conditions. If work conditions require extension of the postponement, the worker's consent must be obtained in writing. Such postponement shall not, however, exceed the end of the year following the year the leave is due.

**Article (111):**

A worker shall be entitled to a wage for the accrued days of the leave if he leaves the work without using such leave. This applies to the period of work for which he has not used his leave. He is also entitled to a leave pay for the parts of the year in proportion to the part he spent at work.

**Article (112):**

Each worker shall be entitled to full-pay leave on Eids and occasions specified in the Regulations.

**Article (113):**

A worker shall be entitled to one day of paid leave in the case of childbirth and three days for marriage or in the case of the death of a spouse or one of his ascendants and descendants. The employer may request supporting documents for cases referred to.

**Article (114):**

A worker shall be entitled to a paid leave of not less than ten days and not more than fifteen days, including Eid Al-Adha holiday, to perform Hajj only once during his service if he has not performed it before. To be eligible for this leave, the worker must have spent at least two consecutive years of service with the employer. The employer may determine the number of workers who shall be given this leave annually in accordance with work requirements.

**Article (115):**

A worker enrolled in an educational institution shall have the right to a fully paid leave to sit for an examination of an unrepeated year. Days of leave shall be based on the actual number of the examination days. However, for the examinations of a repeated year, the worker shall be entitled to unpaid leave to sit for the examinations. The employer may require the worker to submit documents in support of the leave application as well as proof of having taken the examination. The worker shall apply for the leave at least fifteen days ahead of the due date. Without prejudice to disciplinary action, the worker shall be denied the wage if it is proven that he had not taken the examination.

**Article (116):**

A worker, subject to the employer's approval, may obtain leave without pay for a duration to be agreed upon by the two parties. The work contract shall be deemed suspended for the duration of the leave in excess of twenty days, unless both parties agree otherwise.

**Article (117):**

A worker whose illness has been proven shall be eligible for a paid sick leave for the first thirty days, three quarters of the wage for the next sixty days and without pay for the following thirty days, during a single year, whether such leaves are continuous or intermittent. A single year shall mean the year which begins from the date of the first sick leave.

**Article (118):**

A worker may not work for another employer, while enjoying any of his leaves provided for in this Chapter. If the employer proves that the worker has violated this provision, he may deprive him of his wages for the duration of the leave or recover any wages previously paid to him.

**Article (119):**

Full-time workers who are affected by a collective temporary reduction in their normal working hours for economic, technical or structural reasons shall not be considered part-time workers.

**Article (120):**

The Minister shall issue the necessary rules and controls for organizing part-time work, indicating therein the obligations of the part-time workers and employers. To the exclusion of the protection extended to the similar full-time workers in terms of occupational health and safety and work injuries, the provisions of this Law shall apply only to the extent determined by the Minister.

**Article (121):**

An employer shall maintain the firm in a clean and hygienic condition. He shall provide lighting, supply potable and washing water and comply with other rules, measures and standards of occupational protection, health and safety in accordance with what is specified in the Minister's decision.

**Article (122):**

An employer shall take the necessary precautions to protect the workers against hazards, occupational diseases, the machinery in use, and shall ensure work safety and protection. He shall post in a prominent place in the firm the instructions related to work and workers safety in Arabic and, when necessary, in any other language that the workers understand. The employer may not charge the workers or deduct from their wages any amounts for the provision of such protection.

**Article (123):**

An employer shall inform the worker, prior to engaging in the work, of the

hazards of his job and shall require him to use the prescribed protective equipment. The employer shall supply the workers with the appropriate personal gear and train them on their use.

**Article (124):**

A worker shall use and preserve the personal protective equipment designated for each process and shall carry out the instructions established to protect his health against injuries and diseases. He shall refrain from any action or omission that may lead to failure to implement the instructions, misuse or impair the devices provided to protect the workplace as well as the health and safety of fellow workers.

**Article (125):**

An employer shall take necessary precautions for protection against fire and provide the technical means to combat it, including safety exits which shall be maintained in working condition at all times. He shall post in a prominent location in the workplace detailed instructions for fire prevention devices.

**Article (126):**

An employer shall be responsible for emergencies and accidents which may affect persons, other than his workers, who enter the workplaces by virtue of their official duties or with the approval of the employer or his agents, if such emergencies and accidents are due to negligence in taking the technical precautions required by the nature of his work, and he shall compensate them for damage and harm they may sustain in accordance with the general laws.

**Article (127):**

The provisions of this Chapter shall apply to high risk firms.

**Article (128):**

(1) The term “high risk firm” shall mean the firm which produces, prepares, disposes of, handles, uses or stores, on a permanent or temporary basis, one or more hazardous substances, or categories of these substances in quantities that exceed allowable limits the exceeding of which results in

listing the firm among the high risk firms.

(2) The term “hazardous substance” shall mean any material or a mixture of substances that constitutes a hazard on account of its chemical, physical or toxic properties either alone or in combination with other substances.

(3) The term “major accident” shall mean any sudden occurrence such as a major leak, fire or explosion in the course of an activity within the high-risk firm and which involves one or more hazardous substances posing a great immediate or potential danger to the workers, the public or the environment.

**Article (129):**

The Ministry shall establish controls to identify the high risk firms according to the hazardous materials list, their categories or both.

**Article (130):**

The employers shall coordinate with the Ministry to determine the status of their firms on the basis of the controls referred to in Article (129) of this Law.

**Article (131):**

The Minister shall issue the regulations and decisions embodying the necessary arrangements at firm level for protection against major hazards, related duties of the employers, arrangements for protecting the public and the environment outside the site of each high risk firm, the worker’s rights and duties, and other measures necessary to prevent major accidents, minimize their the risks of their occurrence and mitigate their impacts.

**Article (132):**

The provisions of this Chapter shall not apply to the firms subject to the Occupational Hazards Branch of the Social Insurance Law.

**Article (133):**

If a worker sustains a work injury or an occupational disease, the employer shall be required to treat him and assume directly or indirectly all necessary expenses, including hospitalization, medical examinations and tests, radiology, prosthetic devices and transportation expenses to treatment

centers.

**Article (134):**

An injury shall be deemed a work injury in accordance with the provisions of the Social Insurance Law. Occupational diseases shall also be considered work injuries and the date of the first medical diagnosis of the disease shall be treated tantamount to the date of injury.

**Article (135):**

Any relapse or complication arising from an injury shall be deemed an injury and shall be treated as such in terms of aid and treatment.

**Article (136):**

Occupational diseases shall be determined in accordance with the Occupational Diseases Schedule provided for in the Social Insurance Law. Degree of total or partial disability shall be determined according to the Disability Percentage Guide provided for in the said Law.

**Article (137):**

In the case of temporary disability arising from work injury, the injured party shall be entitled to financial aid equal to his full wage for thirty days, then 75% of the wage for the entire duration of his treatment. If one year elapses or it is medically determined that the injured party's chances of recovery are improbable or that he is not physically fit to work, his injury shall be deemed total disability. The contract shall be terminated and the worker shall be compensated for the injury. The employer may not recover the payments made to the injured worker during that year.

**Article (138):**

If an injury results in a permanent total disability or the death of the injured person, the injured person or his eligible beneficiaries shall be entitled to a compensation equal to his wages for three years, with a minimum of fifty four thousand riyals. If the injury results in a permanent partial disability, the injured person shall be entitled to a compensation equal to the percentage of the estimated disability in accordance with the approved

disability percentage guide schedule multiplied by the amount of compensation for the permanent total disability.

**Article (139):**

An employer shall not be required to comply with the provisions of Articles (133), (137) and (138) of this Law if any of the following is established:

- (1) If a worker deliberately injures himself.
- (2) If an injury is caused by intentional misconduct on the part of the worker.
- (3) If a worker refuses to be examined by a physician or refuses to accept treatment by the physician designated by the employer without a valid reason.

**Article (140):**

Liability of previous employers of a worker suffering from an occupational disease shall be determined in light of the medical report of the attending physician. Previous employers shall be required to pay the compensation provided for in Article (138) of this Law, each in proportion to the period such worker has spent in his service, provided that the industries or occupations they engage in cause the disease the worker suffers from.

**Article (141):**

The procedures for reporting work injuries shall be determined pursuant to a decision by the Minister.

**Article (142):**

An employer shall make available one or more medical aid cabinets, supplied with drugs and other necessities required for first aid.

The Regulations shall specify the contents of such cabinets of first aid means, numbers of such means and quantities of drugs and shall also regulate the method of keeping them and the conditions and requirements to be satisfied by first aid providers.

**Article (143):**

An employer shall assign one or more physicians to provide, at least once a

year, a comprehensive medical examination for his workers who are exposed to any of the occupational diseases listed in the Schedules of Occupational Diseases provided for in the Social Insurance Law. The findings of the examination shall be kept in the employer's records as well as in the workers' files.

**Article (144):**

An employer shall provide his workers with preventive and therapeutic health care in accordance with the standards set forth by the Minister, taking into consideration whatever is provided for by the Cooperative Health Insurance Law.

**Article (145):**

An employer may, subject to the Minister's approval, set up a saving and thrift fund provided that the workers' contribution is optional. The provisions regulating the operations of such funds shall be made public.

**Article (146):**

An employer shall provide at his own expense all or some of the following, as may be determined by the Minister, to those who work in remote locations:

(1) Stores for selling food, clothing and other necessities at moderate prices in places where such stores are not available.

(2) Suitable recreational and educational services and sports facilities annexed to the workplaces.

(3) Necessary medical arrangements to protect the workers' health and provide comprehensive treatment for their families (family shall mean spouse, children and parents residing with the worker).

(4) Schools for the workers' children in the absence of sufficient schools in the area.

(5) Mosques or prayer areas at the workplaces.

(6) Literacy programs for the workers.

The Regulations shall specify the remote locations.

**Article (147):**

An employer operating in remote locations, mines, quarries and oil exploration centers shall provide his workers with accommodation, camps and meals. The Minister shall determine, pursuant to a decision by him, the conditions and specifications of the accommodations and camps as well as the charges for the accommodations, the number of meals, quantities and kinds of food and related conditions, cost of meals to the worker and any other requirements necessary for the workers' health.

**Article (148):**

An employer shall provide means for transporting his workers from their place of residence or from a certain gathering point to the places of work and bring them back daily, if the places of work are not served by regular means of transportation at times compatible with the working hours.

**Article (149):**

Taking into consideration the provisions of Article (4) of this Law, women shall work in all fields suitable to their nature. It is prohibited to employ women in hazardous jobs or industries. The Minister pursuant to a decision by him shall determine the professions and jobs that are deemed detrimental to health and are likely to expose women to specific risks; in which cases, women's employment shall be prohibited or restricted under certain terms.

**Article (150):**

Women may not work during a period of night the duration of which is not less than eleven consecutive hours, except in cases determined pursuant to a decision by the Minister.

**Article (151):**

A female worker shall be entitled to a maternity leave for the four weeks immediately preceding the expected date of delivery and the subsequent six weeks. The probable date of delivery shall be determined by the physician of the firm or pursuant to a medical report certified by a

health authority. A woman may not work during the six weeks immediately following delivery.

**Article (152):**

During the maternity leave, an employer shall pay the female worker half her wage if she has been in his service for one year or more, and a full wage if she has served for three years or more as of the date of commencement of such leave. A female worker shall not be paid any wages during her regular annual leave if she has enjoyed in the same year a maternity leave with full wage. She shall be paid half her wage during the annual leave if she has enjoyed in the same year a maternity leave at half wage.

**Article (153):**

An employer shall provide medical care for female workers during pregnancy and delivery.

**Article (154):**

When a female worker returns to work following a maternity leave, she shall be entitled, in addition to the rest periods granted to all workers, to a rest period or periods not exceeding in aggregate one hour a day for nursing her infant. Such period or periods shall be calculated as part of the actual working hours and shall not entail any reduction in wages.

**Article (155):**

An employer may not terminate the employment of a female worker or give her a warning of the same while on maternity leave.

**Article (156):**

An employer may not terminate the employment of a female worker during illness resulting from pregnancy or delivery, and such illness shall be established by a certified medical report, provided that the period of her absence does not exceed one hundred and eighty days. The employment of such female worker may not be terminated during the one hundred and eighty days preceding the expected date of delivery in the absence of one of the legitimate causes provided for in this Law.

**Article (157):**

A female worker shall forfeit her entitlements under the provisions of this Part if she works for another employer during her authorized leave. In such event, the original employer may deprive her of her wage for the duration of the leave or recover any payments made to her.

**Article (158):**

In all occupations and places where women are employed, the employer shall provide them with seats for resting.

**Article (159):**

(1) An employer who employs fifty female workers and more shall provide them with a suitable place with adequate number of babysitters to look after the children under the age of six years, if the number of children reaches ten and more.

(2) The Minister may require the employer who employs a hundred women and more in a single city to set up a nursery, either on his own or in conjunction with other employers in the same city, or alternatively to contract with an existing nursery to care for the children of the female workers who are under six years of age during the work periods. In such case, the Minister shall set forth the terms and conditions regulating such facility as well as the charges imposed on the female workers benefiting from service.

**Article (160):**

A female worker whose husband passes away shall be entitled to a fully paid leave for a minimum period of fifteen days as of the date of death.

**Article (161):**

Minors may not be employed in hazardous jobs or harmful industries or in occupations or jobs that may endanger their health, safety or morals due to the nature or conditions of the same. A Minister's decision shall specify such jobs, industries and occupations.

**Article (162):**

(1) Any person under the age of fifteen years may not be employed or allowed to enter places of work. The Minister may, pursuant to a decision by him, raise this age limit in certain industries or areas or for certain categories of minors.

(2) As an exception to Paragraph (1) of this Article, the Minister may allow the employment or work of persons between 13 and 15 years of age in light works, subject to the following conditions:

(2.1) Such jobs shall not be potentially harmful to their health or growth.

(2.2) Such jobs shall not hinder their school attendance, participation in orientation or vocational training programs, or impair their ability to benefit from their schooling.

**Article (163):**

Minors may not work during a period of night the duration of which is not less than twelve consecutive hours, except in cases determined pursuant to a decision by the Minister.

**Article (164):**

Minors may not be made to perform actual work for more than six hours a day for all months except for the month of Ramadhan when the actual working hours shall not exceed four hours. The minor shall not stay at the workplace for more than seven hours. Working hours shall be organized so that a minor may not work for more than four consecutive hours without one or more periods, each not less than half an hour, for rest, food and prayers, provided that the minor does not remain at the workplace for more than seven hours.

Minors may not be made to work during the weekly rest days, Eids, official holidays or annual vacations, nor shall they be subject to the exceptions provided for in Article (106) of this Law.

**Article (165):**

Prior to employing a minor, the employer shall obtain from him the

following documents:

- (1) The national identification card or an official birth certificate.
- (2) A report of physical fitness for the required job issued by a competent physician and duly certified by a health authority.
- (3) The consent of the minor's guardian.

Said documents shall be kept in the minor's personal file.

**Article (166):**

An employer shall notify the competent labor office of the employment of each minor within the first week of such employment, and shall keep at the workplace a register for employed minors, showing the name of the minor, his age, full name of his guardian, his place of residence and date of his employment.

**Article (167):**

The provisions provided for in this Part shall not apply to work undertaken by children and minors in schools for general, vocational or technical education, and in other training institutions, nor shall they apply to work undertaken in firms by persons who are at least fourteen years of age if such work is performed in accordance with the conditions set forth by the Minister and the work constitutes an essential part of the following:

- (1) An educational or training course the primary responsibility for which lies with a school or a training institution.
- (2) A training program all or the major part of which is implemented in a firm if approved by the competent authority.
- (3) An orientation program aimed at facilitating the selection of the career or type of training.

**Article (168):**

The following words and phrases, wherever mentioned in the provisions of this Part, shall have the meanings expressed next to them, unless the context requires otherwise:

**Vessel:** A floating craft registered in the Kingdom of Saudi Arabia, whose

tonnage is not less than five hundred tons.

**Vessel chandler:** A natural person, public or private firm for whose account the vessel is being rigged.

**Captain:** A seaman qualified to command a vessel and assume responsibility for it. **Seaman:** A person working aboard a vessel on a marine work contract.

**Marine work contract:** A work contract for a wage concluded between the vessel's owner or chandler or the representative of either of them and a seaman to work on board. Such contract shall be subject to the provisions of this Law, unless they are in conflict with the provisions of this Part and the decisions issued hereunder.

**Article (169):**

All persons working on a vessel shall be subject to the authority and orders of its captain.

**Article (170):**

All work contracts of seamen working on a vessel shall be entered in the vessel's records or appended thereto. Such contracts shall be drafted in a clear language, and shall indicate whether they are made for a specified period or for a single voyage. If the contract is made for a specified period, this period shall be clearly specified. If it is made for a single voyage, it shall specify the city or harbor where the voyage ends, and at what stage of unloading or loading the vessel at this harbor the contract terminates.

**Article (171):**

The marine work contract shall provide for date and place of its conclusion, name of the chandler, name of the seaman, his surname, age, nationality and homeland, type of assigned work, method of performance, certification for work in sea navigation, the personal marine card, wage and duration of the contract. If the contract is for a single voyage, it shall specify the city or harbor where the voyage ends and at what stage during the unloading or loading of the vessel at the harbor the work ends, and other details of the contract.

Such contract shall be made out in triplicates, one copy for the vessel's chandler, and one for the captain, to be kept aboard the vessel and a copy for the seaman.

**Article (172):**

The work terms and rules aboard the vessel shall be posted in the crew quarters. These terms and rules shall include the following:

- (1) Seamen's obligations and duties, organization rules for work aboard the vessel, service timetables and daily working hours.
- (2) Obligations of the vessel's chandler towards seamen in respect of fixed wages, rewards, and other types of wage.
- (3) Method of suspending payment of wages and deductions therefrom and method of advance payments.
- (4) Place and time of settlement of wages as well as final calculation thereof.
- (5) Rules and ways for provision of food and accommodation aboard the vessel.
- (6) Treatment of seamen's illnesses and injuries.
- (7) Conduct of seamen and conditions for their repatriation. (8) Seamen's paid annual leaves.
- (9) End-of-service award and other indemnities payable upon termination or expiration of the work contract.

**Article (173):**

A seaman shall satisfy the following:

- (1) He shall have completed eighteen years of age.
- (2) He shall hold a certificate allowing him to work in marine service.
- (3) He shall be physically fit.

**Article (174):**

All the seaman's entitlements shall be paid in the official currency. They may be paid in foreign currency if they become due while the vessel is outside the territorial waters, subject to the seaman's approval.

The seaman may ask the employer to pay his due monetary wage to the person designated by him.

**Article (175):**

If the voyage is cut short for any reason, voluntarily or forcibly, this shall not entail reduction of the wage of the seaman employed on a marine work contract for a single voyage.

**Article (176):**

If the wage is set as a share of the profits or the proceeds of the vessel's charter, the seaman shall not be entitled to compensation if the voyage is cancelled nor to a wage increase if the voyage is delayed or extended. If the delay or extension is due to the action of the shippers, the seaman shall be entitled to compensation from the Chandler.

**Article (177):**

A seaman shall be eligible for pay, through the day of occurrence, if the ship is captured, sinks or becomes unseaworthy.

**Article (178):**

Seamen shall be provided with food and accommodation at the expense of the vessel Chandler. This shall be regulated by a decision to be issued by the Minister.

**Article (179):**

Working hours aboard the vessel while on the high seas shall not exceed fourteen hours in a twenty four hour period and not more than seventy two hours in a seven-day period.

**Article (180):**

A seaman who contributes to aiding or rescuing another vessel is eligible to a share of the reward that the vessel on which he worked is entitled to, regardless of the type of wage of the work performed.

**Article (181):**

If a seaman dies during the voyage, his heirs shall be eligible to receive his wages through the date of his death, if the wage is on a monthly basis. If the

wage is on a voyage basis, the heirs shall be entitled to the full voyage wage, and if the wage is a share of profits, it shall be fully payable. The dues of the deceased or missing seaman, or who is unable to collect his wage shall be deposited with the labor office at the port of destination in the Kingdom.

**Article (182):**

An employer may terminate the contract without prior notice and without compensation in the following cases:

- (1) If the vessel sinks, is confiscated, goes missing or becomes unseaworthy.

**CONTRACT**

- (2) If the voyage is cancelled at the outset, for reasons beyond the Chandler's control and the wage is on a single voyage basis, unless the contract provides otherwise.

**Article (183):**

If the contract expires or is revoked, the employer shall be obligated to:

- (1) return the seaman to the port of departure at the commencement of the contract.
- (2) provide him with food and accommodation until he reaches that port.

**Article (184):**

A Chandler shall return the seaman to his country in the following cases:

- (1) If the Chandler cancels the voyage after the vessel sails off.
- (2) If the voyage is cancelled after the vessel sails off on account of prohibition of trading with the destination.
- (3) If the seaman is removed from the vessel due to illness, injury or disability.
- (4) If the vessel is sold in a foreign country.
- (5) If the seaman is dismissed from service during the voyage without a legitimate justification.
- (6) If the contract concluded with the seaman expires at a port other than the one provided for in the contract.

**Article (185):**

Working in mines and quarries shall mean the following:

(1) Operations involving prospection, detection, extraction or manufacture of (solid or liquid) mineral substances, including precious stones, in the area for which the license has been issued.

(2) Operations involving extraction, concentration or manufacture of mineral sediments on or under the ground surface in the area of the license.

(3) Construction works, installation of structure and equipment related to the operations referred to in Paragraphs (1) and (2) of this Article.

**Article (186):**

No person under the age of eighteen or any woman regardless of her age shall be employed in a mine or quarry.

**Article (187):**

No person shall be allowed to engage in operations subject to the provisions of this Part until he undergoes a complete medical examination and proven to be physically fit for the required work. Such examination shall be repeated periodically. The worker may not be required to bear the costs of necessary medical examinations. The Minister shall set forth pursuant to a decision by him the terms, conditions and periods that must be complied with.

**Article (188):**

The actual working hours spent by the worker underground shall not exceed seven hours a day. No worker shall be kept at the workplace, above or under ground, for more than ten hours a day. If the work is conducted underground, such a period shall include the time needed for the worker to reach the underground and the time needed to return to the surface.

**Article (189):**

Access to the work location and facilities shall be prohibited for people other than the workers, persons authorized to inspect the mine or the quarry and persons holding special permits from the competent authority.

**Article (190):**

An employer shall keep a record to register and count the workers before

their entry into the workplace and at the time of their exit therefrom.

**Article (191):**

An employer or the manager in-charge shall draft a list of orders and instructions related to the public safety.

**Article (192):**

An employer shall establish a rescue point in the vicinity of the workplace, equipped with necessary rescue and first aid equipment. Said point shall be equipped with suitable means of communication for immediate access and the employer shall appoint a trained technician to supervise the rescue and first aid operations.

**Article (193):**

Without prejudice to the provisions of Article (142) of this Law, the employer of each mine or quarry with at least fifty workers shall set up a suitable location with a room equipped with rescue and first aid equipment, another room for nursing and one or more locker rooms. As for quarries and mines with less than fifty workers located within a twenty-kilometer radius of each other, employers may pool their resources to establish a place of rescue and first aid in between such quarries and mines, or else establish their own places of rescue and first aid.

The Minister may determine the rescue and first aid equipment, protection and prevention measures in mines and quarries as well as employers' responsibilities and workers' rights and duties.

**Article (194):**

Work inspection shall be undertaken by competent inspectors to be named pursuant to a decision by the Minister. They shall have the powers and authorities provided for in this Law.

**Article (195):**

In addition to the general conditions for appointment of employees, a work inspector shall satisfy the following requirements when performing his duties:

- (1) Total impartiality.
- (2) Absence of any direct or indirect relation with the firms he inspects.
- (3) Passing a conduct examination following completion of a training period of at least ninety days.

**Article (196):**

Work inspectors shall have the following powers:

- (1) Monitor the proper implementation of the provisions of the Labor Law and its implementing regulations and decisions.
- (2) Furnishing employers and workers with technical information and guidelines that enable them to follow the best means for implementing the provisions of the Law.
- (3) Reporting to the competent authorities the shortcomings which the existing provisions fail to remedy and providing relevant suggestions.
- (4) Recording violations of the provisions of the Labor Law and its implementing decisions.

**Article (197):**

Before assuming their official duties, work inspectors shall take an oath before the Minister to discharge their duties honestly and sincerely, and not disclose the secrets of any industrial invention or any other secrets which may come to their knowledge by reason of their offices, even after leaving such offices. A work inspector shall carry an identification card issued by the Ministry.

**Article (198):**

Work inspectors shall have the right to:

- (1) Access any firm that is subject to the provisions of the Labor Law at any time, day or night, without prior notice.
- (2) Perform any examination or investigation required to ascertain proper implementation of the Law. They may in particular:
  - (a) Question the employer, his representative or the workers in private or in the presence of witnesses about any matter relating to the

implementation of the provisions of the Law.

(b) Review all books, records and other documents required to be kept pursuant to the provisions of this Law and related decisions, and obtain any copies or extracts therefrom.

(c) Take sample(s) of the materials used or handled in the industrial and other operations subject to inspection and believed to have a harmful effect on the health or safety of workers, for the purpose of analyzing such samples in government laboratories to determine the extent of such effect, and duly notify the employer or his representative of the same.

**Article (199):**

Employers and their agents shall facilitate for the inspectors and officials entrusted with work inspection the performance of their duties. They shall provide them with required data related to the nature of their work, respond to requests to appear before them and dispatch a representative when asked.

**Article (200):**

A person conducting inspection shall notify the employer or his representative of his visit except where he believes that the task for which the inspection is being made requires otherwise.

**Article (201):**

A work inspector may instruct employers to amend the rules for operating their equipment and machinery at deadlines he specifies, to ensure compliance with the provisions pertaining to workers' health and safety. In the event of a hazard threatening the workers' health and safety, the inspector may request the immediate implementation of measures he may deem necessary to prevent such hazard.

**Article (202):**

A work inspector shall treat with absolute secrecy complaints he receives regarding any shortage in equipment or any violation of the provisions of

the Law, and shall not disclose to the employer or his representative the existence of such complaints.

**Article (203):**

If, in the course of inspection, the inspector concludes the existence of a violation of the provisions of this Law or of any decisions issued hereunder, he shall, provide advice to the employer on how to avoid such violation, serve the employer with a verbal notice or a written warning to rectify the violation within a certain period or else draft a report recording the violation, depending on the seriousness of the violation and the other circumstances that are left to his discretion.

**Article (204):**

Whenever the need arises, physicians, engineers, chemists, and specialists in occupational health and safety shall participate in the inspection. If necessary, the director of the labor office and inspectors may request the competent executive bodies to extend the required assistance.

**Article (205):**

The work inspection chief at the labor office shall prepare a monthly report on the work inspection activities, the aspects of inspection, the firms inspected, the number and type of violations committed and the actions taken with respect thereto. He shall also prepare an annual report on the inspection undertaken within the jurisdiction of the labor office, its findings and effects, and include therein his comments and proposals. Copies of both reports shall be submitted to the Ministry.

**Article (206):**

The Deputy Minister for Labor Affairs shall prepare, within a period not exceeding one hundred eighty days from the end of the year, a comprehensive annual report on work inspection in the Kingdom, addressing all matters relating to the Ministry's monitoring of the implementation of the provisions of the Labor Law. In particular, the report shall include the following:

- (1) A statement of the provisions regulating inspection.
- (2) A list of the

officials in charge of inspection.

(3) Statistics on firms that are subject to inspection and number of their workers.

(4) Statistics on inspectors' visits and inspections.

(5) Statistics on the violations committed and the penalties imposed. (6) Statistics on work injuries.

(7) Statistics on occupational diseases.

**Article (207):**

The Ministry shall prepare forms for recording violations, inspection records, notices and warnings, and shall establish the provisions necessary for the filing and use of such forms and for their distribution to labor offices.

**Article (208):**

Training courses shall be organized for work inspectors, and shall in particular include the following:

(1) Principles for organizing inspection visits and communication with employers and workers.

(2) Principles for auditing books, records and computers, as well as principles for organizing inspection reports and interrogation of persons.

(3) Principles for guiding employers on the requirements of statutory provisions and the benefits of their application, and assisting them in such application.

(4) Fundamental principles of industrial technology and means of protection against work injuries and occupational diseases.

(5) Fundamental principles of production efficiency and its relevance to providing conditions conducive to a proper work environment.

**Article (209):**

The Council of Ministers shall issue the Implementing Regulations needed to regulate and organize the inspection activities as provided for in this Part.

**Article (210):**

Commissions for settlement of labor disputes are:

(1) The Preliminary Commissions for Settlement of Disputes. (2) The High Commission for Settlement of Disputes.

**Article (211):**

Pursuant to a decision by the Minister and following the approval of the President of the Council of Ministers, members of the preliminary commissions shall be named from among holders of degrees in Shari'ah or law.

**Article (212):**

Based on a decision by the Minister, a preliminary commission comprising one or more one-member circuits shall be formed in each labor office specified by the Minister. Each of these circuits shall decide the cases referred to it. If the commission comprises more than one circuit, the Minister shall name a head from among the members, who shall, in addition to his duties, assign the cases to commission members and organize the administrative and clerical work.

**Article (213):**

If no preliminary commission is formed in a labor office, the Minister shall, when necessary, delegate the commission formed at the nearest labor office with the duties and jurisdictions of the commission which has not been formed.

**Article (214):**

The Preliminary Commission shall have jurisdiction to: (1) Render final decisions on:

(1.1) Labor disputes, irrespective of their type, the value of which does not exceed ten thousand riyals.

(1.2) Objection to the penalty imposed by the employer upon the worker.

(1.3) Imposition of the punishments provided for in this Law for a violation of which the punishment does not exceed five thousand riyals

and violations with a combined punishment not exceeding five thousand riyals.

(2) Render preliminary decisions on:

(2.1) Labor disputes the value of which exceeds ten thousand riyals.

(2.2) Disputes over compensations for work injuries, irrespective of the amount of the compensation.

(2.3) Disputes over termination of service.

(2.4) Imposition of the punishments provided for in this Law for a violation the punishment of which exceeds five thousand riyals and violations with a combined punishment exceeding five thousand riyals.

(2.5) Imposition of punishments on violations punishable by fines and consequential punishments.

**Article (215):**

The High Commission for Settlement of Disputes shall be comprised of several circuits, each comprising not less than three members. The chairman and members of the commission who shall be holders of degrees in Shari'ah and law with expertise in labor disputes shall be named by a decision of the Council of Ministers, based on a nomination by the Minister. A decision by the Minister, based on a recommendation of the Chairman of the Commission, shall specify the number of circuits of the High Commission and their venue jurisdiction. The Chairman of the Commission shall select the heads of the circuits, assign the duties of each and supervise all administrative functions of the circuits.

**Article (216):**

Each of the circuits of the High Commission shall have jurisdiction to decide finally and definitively on all appeals brought before it against decisions of the circuits of preliminary commissions.

**Article (217):**

Decisions may be appealed within thirty days from the date of utterance on the preliminary circuit's decisions made in the presence of the parties and

from the date of notification in other cases

**Article (218):**

If the decision of the preliminary circuit is not appealed within the period specified in the previous Article, the decision shall be deemed final and enforceable. All decisions of the circuits of the High Commission shall be deemed enforceable from the date of their issuance.

**Article (219):**

Each of these Commissions shall solely have exclusive right to consider all disputes relating to this Law and the disputes arising from work contracts. It may summon any person for interrogation or assign one of its members to conduct such interrogation. It may also require submission of documents and evidence and take any other measures it may deem fit. The Commission shall also have the right of access to any premises of the firm for the purpose of conducting the investigation and reviewing all books, records and documents it deems necessary.

**Article (220):**

Cases shall be filed through the competent labor office with the preliminary commissions in whose locality or under whose jurisdiction the place of work falls. Prior to referring the dispute to the Commission, the labor office shall take the necessary measures to settle the dispute amicably. The Minister shall issue a decision setting forth the relevant procedures and rules.

**Article (221)**

Cases arising from the provisions of this Law shall be reviewed promptly.

**Article (222):**

(1) No case shall be accepted by the commissions provided for in this Law involving a claim of the rights provided for in this Law or arising from a work contract after twelve months following termination of the work relation.

(2) No case involving a claim of the rights provided for in the previous Labor Law shall be accepted after twelve months following the effective date

of this Law.

(3) No complaint regarding violations of the provisions of this Law or the regulations and decisions issued hereunder shall be accepted after twelve months following the date of the occurrence of the violation.

**Article (223):**

None of the commissions provided for in this Part shall abstain from rendering its decision on the pretext of the absence of applicable provisions in this Law. In such case, the commissions shall resort to the principles of Shari'ah, established judicial precedents, norms and the principles of justice.

**Article (224):**

The work contract parties may incorporate a clause in the work contract providing for settlement of disputes through arbitration or may agree to do so after the dispute arises. In all cases, the provisions of the Arbitration Law and its Implementing Regulations in force in the Kingdom shall apply.

**Article (225):**

Neither of the disputing parties may bring the dispute, upon which a final decision has been rendered by one of the commissions provided for in this Part, before this Commission or other judicial bodies.

**Article (226):**

During the reconciliation or arbitration proceedings or while the case is under review before one of the commissions provided for in this Part, the employer may not change the terms of employment applicable before the initiation of the proceedings in a way that would cause harm to the worker.

**Article (227):**

The Commission may order the losing party to pay the other party all or part of the costs incurred by him.

**Article (228):**

The Council of Ministers shall issue the regulations for litigation before the commissions for settlement of labor disputes.

**Article (229):**

The punishments provided for in this Part shall apply in the absence of harsher punishments provided for in any other laws.

**Article (230):**

A fine of not less than three thousand riyals and not more than ten thousand riyals shall be imposed on any person who violates any of the provisions related to the vocational preparation of Saudi workers to replace others, as provided for in this Law and the decisions issued hereunder.

**Article (231):**

Violators of the provisions of Articles (16), (25), (33), (37) and (38) of this Law shall be subject to a fine of not less than two thousand riyals and not more than five thousand riyals. The fine shall be multiplied by the number of workers subject of the violation.

**Article (232):**

Violators of the provision of Article (30) of this Law shall be subject to a fine of not less than ten thousand riyals and not more than thirty thousand riyals.

**Article (233):**

Violators of the provision of Article (39) of this Law shall be subject to a fine of not less than five thousand riyals and not more than twenty thousand riyals, and the fine shall be multiplied by the number of persons subject of the violation. The worker shall be repatriated at the expense of the person who employs him.

**Article (234):**

An employer or any person responsible for violation of the provisions of Chapters Two, Three and Four of Part VI of this Law, or any decisions issued hereunder shall be subject to a fine of not less than two thousand riyals and not exceeding five thousand riyals for each violation.

**Article (235):**

An employer who violates the provision of Article (90) of this Law shall be subject to a fine of not less than five hundred riyals and not more than three

thousand riyals. The fine shall be multiplied by the number of the workers subject of the violation.

**Article (236):**

Any person who violates the provisions of Chapters One and Two of Part VIII of this Law and the rules issued in accordance with the provision of Article (121) of this Law shall be subject to a fine of not less than three thousand riyals and not more than ten thousand riyals for each violation or closing down the firm for not more than thirty days or permanently. The fine and the closing down may be combined along with the elimination of the source of the hazard.

**Article (237):**

Without prejudice to the punishment provided for in other laws applicable to those who obstruct an official in the course of his duties, violators of the provisions of Article (199) of this Law shall be subject to a fine of not less than five thousand riyals and not more than ten thousand riyals.

**Article (238):**

Any employer, project manager or worker who refuses or delays execution of an arbitration award or a final decision rendered by any of the labor dispute settlement commissions shall be subject to a fine of not less than ten thousand riyals and not more than thirty thousand riyals.

**Article (239):**

A violator of any of the provisions of this Law and the regulations and decisions issued hereunder shall be subject to a fine of not less than two thousand riyals and not more than five thousand riyals, for punishments not provided for herein.

**Article (240):**

If the violation is repeated within ninety days or the violator fails to correct it within the specified period, the fine shall be doubled.

**Article (241):**

In all cases, the violator may pay the maximum prescribed fine as provided

for in this Part without resorting to the Commission for Settlement of Labor Disputes.

**Article (242):**

Proceeds of fines collected on account of violations of the provisions of this Law and the regulations and decisions issued hereunder shall eventually be deposited with the Human Resources Development Fund.

**Article (243):**

The Minister shall issue, within one hundred eighty days from the effective date of this Law, the decisions and regulations necessary for implementing the provisions of this Law. The Implementing Regulations shall be published in the Official Gazette.

**Article (244):**

This Law shall supersede the Labor and Workers Law promulgated by Royal Decree No. (M/21), dated 6 Ramadan 1389H and shall repeal all the provisions that are inconsistent with it. Regulations and decisions issued prior to the effective date of this Law shall remain in effect until they are amended.

**Article (245):**

This Law shall be published in the Official Gazette and shall come into effect one hundred eighty days after the date of its publication.

## TABLE OF ABBREVIATIONS

CE	Council of Europe
EU	European Union
UNGA	The United Nations General Assembly
HRW	The Human Rights Watch
ICCPR	The International Covenant on Civil and Political Rights
ILO	International Labour Organization
IOM	International Organization of Migration
KSA	Kingdom of Saudi Arabia
SAATL	Saudi Arabian Anti-Trafficking Law
SABL	Saudi Arabian Basic Law
SALL	Saudi Arabian Labour Law
SAMC	Saudi Arabian Ministerial Council
TVPA	Trafficking Victims Protection Act
UN	The United Nations
UNHCHR	The United Nations High Commission for Human Rights
USA	United States of America
UDHR	Universal Declaration for Human Rights
USTVPA	United States Trafficking Victims Protection Act
UK	United Kingdom

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