

Mandates of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the right to privacy; the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls

REFERENCE:
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19 June 2020

Mr. Moustafa,

We have the honour to address you in our capacities as Special Rapporteur on contemporary forms of slavery, including its causes and consequences; Working Group on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the human rights of migrants; Special Rapporteur on the right to privacy; Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 42/10, 35/7, 34/21, 37/2, 34/16, 41/17 and 41/6.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council¹ to report and advise on human rights issues from a thematic or country-specific perspective. We are part of the system of Special Procedures, which has 56 thematic and country mandates on a broad range of human rights issues.

We are sending this letter under the communications procedure of the Special Procedures of the Human Rights Council² to seek clarification on the information we have received regarding the alleged role of the 4Sale internet application of the enslavement, trafficking and forced labour of migrant domestic workers in Kuwait, and privacy concerns due to the retention of personal information on these applications. It is our understanding that NBK Capital Partners is a major investor in the 4Sale application, owned by the Kuwait-based Falcon Group.

In this context, we wish to draw your attention to the following.

According to the information we have received:

¹ <https://www.ohchr.org/EN/HRBodies/HRC/Pages/SpecialProcedures.aspx>

² Special Procedures can decide to intervene directly with Governments and non-state actors, including private companies, on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. Further information about the communication procedure is available at:
<http://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>

Mobile phone applications, such as *4Sale* in Kuwait and *Haraj* in Saudi Arabia, widely known platforms to trade goods, reportedly enable users to engage in the selling and buying of domestic workers. They provided users with options to filter through the listings, including profiles of the individuals “for sale” according to price, race, nationality, and other categories. Furthermore, the prices charged for domestic workers on the platforms varied according to their racial or national background, and these characteristics are referred to in hashtags and in the description attached to the listings. Some of the users of these applications reportedly buy domestic workers for as little as USD 2,000 and profit further by reselling them at a higher price.

These and other online technologies were available on Apple and Google app stores, as well as on Instagram. Selling and buying of domestic workers was reportedly facilitated and arranged through the use of Instagram posts and hashtags, such as “#maidsfortransfer” and other similar phrases in Arabic language, as well as through WhatsApp communication tools. We understand that the personal information and identity of these individuals is alleged to be contained within this posted content.

Furthermore, we would like to bring to your attention that these practices were also depicted in 2019 BBC documentary, called “Maids for Sale: Silicon Valley’s Online Slave Market”, in which the former Special Rapporteur on contemporary forms of slavery, Ms. Urmila Bhoola, was featured³. In the course of gathering information for the documentary, BBC reporters had conversations with 57 users of these tools and applications in Kuwait and met with employers who were attempting to resell domestic workers employed by them. The journalists also interviewed alleged victims of these crimes, the majority of whom were reportedly women and girls from South Asian, Southeast Asian and African countries. One of the interviewed victims was a 16-year-old child. The working and living conditions they described fall under the definition of forced labour: the employers retained the passports of these domestic workers; restricted their freedom of movement and personal freedom; and subjected them to abusive living and exploitative working conditions, such as physical and social isolation, physical abuse, as well as excessive overtime work and denial of weekly rest and annual paid leave.

Migrant domestic workers in Kuwait, Saudi Arabia and elsewhere in the Arab States Region are often employed under the Kafala system, a State-regulated system which links work permits of foreign workers to a single sponsor, often the employer. While multiple States in the region have initiated reforms of this system, it still creates an environment that is conducive to violations and abuses of human rights and labour standards, including as related to contemporary forms of slavery. A summary of the human rights context and concerns specific to the

³ Please, see: <https://www.bbc.com/news/technology-50228549>

situation of women migrant domestic workers in Kuwait, Saudi Arabia and other countries in the Arab States Region is available in **Annex I** attached to this letter.

While expressing overall concern about the situation of these individuals, we are especially alarmed about the allegations that services available on the 4Sale online application facilitate the human rights abuses.

While States have the main duty under international human rights law to protect everyone within their territory and/or jurisdiction from human rights abuses, we would like to recall that your company has a responsibility to respect human rights, independently of the States' ability or willingness to fulfil their duty to protect human rights. As you are aware, the corporate responsibility as set out in Pillar II of the Guiding Principles on Business and Human Rights⁴ (Guiding Principles) means that all businesses, including technology companies, should avoid infringing on the human rights of others and address adverse human rights impacts in which they are involved (Guiding Principle 11). In this context, all companies should have in place "policies and processes appropriate to their size and circumstances", including a "human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights." (Guiding Principle 15). Business enterprises are also required to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not directly contributed to those impacts (Guiding Principle 13 b). Specifically, companies are expected to use their leverage to "effect change in the wrongful practices of an entity that causes a harm" (Commentary to Guiding Principle 19).

In connection with the above alleged facts and concerns, please refer to the **Annex II** attached to this letter, which cites in detail the human rights standards set out in the Guiding Principles that are relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information as to what human rights due diligence steps, as set out in the United Nations Guiding Principles on Business and Human Rights, have been undertaken by your company to identify, prevent, mitigate, and account for human rights abuses caused by or contributed to through your own activities, or directly linked to your operations, products or services by your business relationships. This includes the negative impact that the use of the online application, that your company has invested in, could have caused on the enjoyment of human rights of the women migrant domestic workers, including the right to privacy, freedom

⁴ https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

of movement and protection from forced labour and other contemporary forms of slavery.

3. Please provide information about specific due diligence measures adopted by your company before deciding to finance the development of 4sale application
4. Furthermore, please explain what measures have been adopted to ensure that your company's staff is equipped with adequate awareness, knowledge and tools to identify and report human rights abuses as described in this letter.
5. Please explain what monitoring and evaluation systems your company has in place to ensure the effectiveness of actions taken to mitigate and prevent modern slavery in the supply chains of your company, including the companies you have invested in.
6. Please provide information on steps taken by your company to establish operational-level grievance mechanisms to address adverse human rights impacts caused by a company directly linked to your financing operations

We would appreciate receiving a response within 60 days. Past this period, this communication and any response received from your company will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

In the near future, we may publicly express our concerns in a press release as, in our view, the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your company to clarify the issue/s in question.

Please be informed that a letter on the same subject has also been sent to the Governments of Kuwait, Saudi Arabia, the United States and to the other companies allegedly involved in the abovementioned allegations.

Please accept, Mr. Moustafa, the assurances of our highest consideration.

Tomoya Obokata
Special Rapporteur on contemporary forms of slavery, including its causes and
consequences

Githu Muigai
Chair-Rapporteur of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Felipe González Morales
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Dubravka Šimonovic
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Meskerem Techane
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex I

Background information on the human rights situation of migrant domestic workers in Kuwait and the Arab States region

According to the International Labour Organization (ILO), there are an estimated 1.6 million women working as domestic workers in the Arab States region⁵. Households in Kuwait are the second largest employer, where the proportion of domestic workers in total employment, reaches 14 per cent (both men and women)⁶. Furthermore, based on data published by ILO, there were 32,500 domestic workers from African countries employed in Kuwait in 2018, of which 92 per cent were female⁷.

The majority of the migrant domestic workers in Kuwait and other countries in the Middle East are employed under the umbrella of the state-regulated sponsorship system known as *Kafala*. It enables employers to sponsor foreign workers by maintaining responsibility for the administrative arrangements, including the visa and legal residency status of the employees for the duration of their stay in the country. In most countries, the migrant workers cannot enter the country, resign from a job, transfer employment or leave the country without first obtaining explicit permission from his or her employer. Furthermore, while the transfer from one employer to another should be legally registered, the domestic workers have no say in choosing their new employer.

As described in the BBC documentary, some employers sell the sponsorship of their domestic workers to other employers. This bypasses government agencies, and creates an unregulated black market, which puts the domestic workers at high risk of becoming victims of exploitative work relationships, contemporary forms of slavery, slavery-like situations, trafficking in human beings and forced labour.

In Kuwait, legislation introduced in 2015 explicitly prohibits passport confiscation by the employer and regulates the employment relationship between the employer, recruiter and domestic workers, particularly with regard to hours of work, remuneration and rest time, as well as holidays. However, despite these measures, domestic workers continue to face a high risk of exploitation and abuse and significant challenges in accessing justice.

Concerns regarding the impact of the *Kafala* system on the human rights of migrant domestic workers employed in Kuwait and in other countries of the region have been raised in a number of reports by international human rights mechanisms, including the Committee on the Elimination of Racial Discrimination⁸, the Committee against Torture⁹ and the Committee on the Elimination of Discrimination against Women¹⁰. The

⁵ ILO, Domestic workers and employers in the Arab States: Promising practices and innovative models for a productive working relationship, March 2018.

⁶ ILO, Care Work and Care Jobs; For the Future of Decent Work (2018), p. 2016.

⁷ See: https://www.ilo.org/beirut/events/WCMS_740070/lang--en/index.htm

⁸ CERD/C/OMN/CO/2-5

⁹ CAT/C/LBN/CO/1

¹⁰ CEDAW/C/SAU/CO/3-4

reports highlighted obstacles impeding access to justice for women migrant domestic workers, including the fear of detention and deportation while legal proceedings are pending, and the lack of regular labour inspections to monitor the working conditions of women migrant domestic workers in their workplaces. The Special Rapporteur on the contemporary forms of slavery listed her concerns about the *Kafala* system in her 2018 thematic report to the Human Rights Council dedicated to the impact of slavery and servitude on marginalized migrant women workers in the global domestic economy¹¹.

The Special Rapporteur on the human rights of migrants outlined in his report on the mission to Qatar¹² the specific human rights concerns related to the *Kafala* system in Qatar and addressed the issue more broadly in his report on labour exploitation of migrants¹³. He reiterated the call for the abolishment of the *Kafala* system in his proposed 2035 Agenda on facilitating human mobility¹⁴. The Special Rapporteur also underlined in his report on gender-responsive migration legislation and policies¹⁵ that “migrant domestic workers, many of whom are women, may be confronted with a hostile network of regulations and find themselves in a situation where their dependency on their “sponsor” makes them particularly vulnerable to arrest and deportation.”

¹¹ A/HRC/39/52

¹² A/HRC/26/35/Add.1: https://www.ohchr.org/Documents/Issues/SRMigrants/A-HRC-26-35-Add1_en.pdf

¹³ A/HRC/26/35 : <https://www.ohchr.org/Documents/Issues/SRMigrants/A.HRC.26.35.pdf>

¹⁴ A/72/173: [https://documents-dds-](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/220/93/PDF/N1722093.pdf?OpenElement)

[ny.un.org/doc/UNDOC/GEN/N17/220/93/PDF/N1722093.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/220/93/PDF/N1722093.pdf?OpenElement)

¹⁵ A/74/191: <https://undocs.org/A/74/191>

Annex II

Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to draw your attention to the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31), after years of consultations involving governments, civil society and the business community.

The Guiding Principles have been established as the global authoritative norm for all States and companies to prevent and address the negative consequences related to companies on human rights. The responsibility to respect human rights is a global standard of conduct applicable to all companies, wherever they operate. It exists regardless of the ability and / or willingness of States to meet their own human rights obligations and does not reduce those obligations. It is an additional responsibility to comply with national laws and regulations for the protection of human rights.

"The responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."(Guiding Principle 13).

"In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action." (Guiding Principle 19).

Appropriate action will vary depending on whether the business actor causes human rights abuses, contributes to human rights abuses; or whether the adverse human rights impact is linked to the operations of the company by a business relationship. Furthermore, the action will depend on the extend of leverage of the business enterprise to adverse the impact.

To fulfill their responsibility to respect human rights, business enterprises should have in place:

- “(a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.”(Guiding Principles 15)

In this connection, we recall that Guiding Principle 22 states that: “[w]here business enterprises identify that they have caused or contributed to adverse impacts, they

should provide for or cooperate in their remediation through legitimate processes”. The Guiding Principle 20 states that business should track the effectiveness of their response. Tracking should: a) be based in appropriate qualitative and quantitative indicators; and b) draw on feedback from both internal and external sources, including affected stakeholders.

Furthermore, business enterprises are expected to utilize their leverage to prevent or mitigate the adverse impact. And if the lack leverage there may be ways for the enterprise to increase it. Leverage may be increased by, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors” (Commentary to Guiding Principle 19).

The Guiding Principles 25 to 31 provide guidance to business enterprises and States on steps to be taken to ensure that victims of business-related human rights abuse have access to effective remedy.

In the 2018 report of the Working Group on the issue of human rights and transnational corporations and other business enterprises (Working Group) to the General Assembly the working Group noted that “The Guiding Principles clarify that business enterprises have an independent responsibility to respect human rights and that in order to do so they are required to exercise human rights due diligence. Human rights due diligence refers to the processes that all business enterprises should undertake to identify, prevent, mitigate and account for how they address potential and actual impacts on human rights caused by or contributed to through their own activities, or directly linked to their operations, products or services by their business relationships”.¹⁶ Effective due diligence involves identifying and assessing actual or potential adverse human rights impacts that the enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships; (b) Integrating findings from impact assessments across relevant company processes and taking appropriate action according to its involvement in the impact; (c) Tracking the effectiveness of measures and processes to address adverse human rights impacts in order to know if they are working; (d) Communicating on how impacts are being addressed and showing stakeholders – in particular affected stakeholders – that there are adequate policies and processes in place.¹⁷

¹⁶ United Nations Guiding Principles on Business and Human Rights, Principles 17-19, available at https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

¹⁷ Summary of the report of the Working Group on Business and Human Rights to the General Assembly, October 2018 (A/73/163), available at https://www.ohchr.org/Documents/Issues/Business/A_73_163_ExecutiveSummary_EN.pdf