

**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:  
AL KWT 1/2020

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Excellency,

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 sending this letter under the communications procedure of the Special Procedures of the United Nations (UN) Human Rights Council to seek clarification on the information we have received regarding alleged facilitation of the enslavement, trafficking and forced labour of migrant domestic workers in Kuwait by online applications such as *4Sale*, available on Google and Apple Application Stores, as well as Facebook-owned Instagram and privacy concerns due to the retention of personal information on these applications.

According to the information we have received:

Mobile phone applications, such as *4Sale* in Kuwait and *Haraj* in the Kingdom of Saudi Arabia, widely known platforms to trade goods, 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 Facebook-owned Instagram. Selling and buying of domestic workers was reportedly also 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 featured<sup>1</sup>. BBC reporters, in the course of gathering information for the documentary in Kuwait, had conversations with 57 users of these tools and applications and met with employers who were attempting to resell domestic workers employed by them. The journalists also interviewed alleged victims of these crimes in Kuwait, the majority of whom were women and girls from South Asian, Southeast Asian and African countries. One of the victims interviewed 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 abusing living and exploitative working conditions, such as physical and social isolation, physical abuse, as well as excessive overtime and denial of weekly rest and annual paid leave.

We understand that most of the domestic workers are employed under the sponsorship (Kafala) system, a State-regulated system which links work permits of foreign workers to a single sponsor, often the employer. The Special Rapporteur on contemporary forms of slavery highlighted 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 economy<sup>2</sup>. A number of international human rights experts and bodies, including the Special Rapporteur on the human rights of migrants, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women, have also expressed concern that the sponsorship system increases the vulnerability of migrant workers to the risk of abuse and exploitation.<sup>3</sup> While Kuwait has undertaken a number of measures to improve the protection and the working conditions of domestic workers, including through Law No. 68 of 2015, the Kafala system still creates an environment

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<sup>1</sup> Please, see: <https://www.bbc.com/news/technology-50228549>

<sup>2</sup> A/HRC/36/43.

<sup>3</sup> Report of the Special Rapporteur on the human rights of migrants, A/HRC/26/35, paragraphs 38-39; Committee on Economic, Social and Cultural Rights, General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, para. 47(e); CERD/C/KWT/CO/15-20 (CERD, 2012)

conducive to violations and abuses of human rights and labour standards, which may amount to contemporary forms of slavery.

While expressing overall concern about the working and living conditions of affected individuals in Kuwait, we are particularly alarmed about the allegations that services provided by online applications such as 4Sale facilitate human rights abuses.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards 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 highlight the steps that your Excellency's Government has taken, or is considering to take, to protect against human rights abuses by business enterprises, including 4Sale, and to ensure that business enterprises domiciled in its territory respect human rights throughout their operations, including by carrying out human rights due diligence in line with the UN Guiding Principles on Business and Human Rights.
3. Please indicate the steps that your Excellency's Government has taken, or is considering to take, to ensure effective access to domestic judicial mechanisms for victims of business-related human rights abuses.
4. Please indicate the steps that your Excellency's Government has taken, or is considering to take, to ensure that business enterprises such as 4Sale provide effective operational-level grievance mechanisms, or cooperate in the provision of effective remedies through legitimate processes to the affected victims if they have contributed to adverse human rights impact.
5. Furthermore, please provide information on the plans or steps undertaken to fundamentally reform the governance of foreign labour migration and to end the Kafala system, so that migrant workers are protected from human rights abuses.

We would appreciate receiving a response within 60 days. Past this period, this communication and any response received from your Excellency's Government 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 Saudi Arabia and United states of America as well as to the companies allegedly involved in the abovementioned allegations.

Please accept, Excellency, 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  
Special Rapporteur on the human rights of migrants

Joseph Cannataci  
Special Rapporteur on the right to privacy

Mama Fatima Singhateh  
Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material

Dubravka Šimonovic  
Special Rapporteur on violence against women, its causes and consequences

Meskerem Techane  
Chair-Rapporteur of the Working Group on discrimination against women and girls

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your Excellency Government attention to its international obligations, relevant for this case.

The Universal Declaration of Human Rights (UDHR), adopted by the General Assembly of the United Nations on December 10, 1948, further contributes to international standards regarding the elimination of all forms of slavery. Article 4 states that "no one shall be subjected to slavery or servitude, slavery and slave trade are prohibited in all its forms."

Article 8 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Kuwait in 1996 prohibits slavery and the slave trade in all its forms and states that no one shall be held in slavery or servitude. Furthermore, the enjoyment of the rights guaranteed in the ICCPR are not limited to citizens of States parties but "must also be available to all individuals, regardless of their nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party" (ICCPR/C/21/Rev.1/Add. 13 (2004), Para. 10).

Work performed by children does not necessarily constitute modern slavery. Even where child labour is seen as harmful, and it is prohibited under most national legislation and all international standards on its own grounds, it cannot automatically be equated with contemporary forms of slavery. Some forms of child labour, however, do constitute contemporary forms of slavery. This includes some of the worst forms of child labour as defined by the ILO's Worst Forms of Child Labour Convention, 1999 (No. 182), ratified by Kuwait in 2000, which includes the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour; the use, procuring or offering of a child for prostitution; and the use, procuring or offering of a child for illicit activities.

In this regard, we would also like to refer Your Excellency's Government to the thematic report of the Special Rapporteur on the sale and sexual exploitation of children, which concludes that new technologies have a significant impact on the different forms of the sale of children (A/HRC/28/56). For example, in cases of sale for the purposes of child labour, the Internet may be used to identify job opportunities or facilitate communication between traffickers.

Forced or compulsory labour is defined in the International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29), ratified by Kuwait in 1968. As per Article 2, paragraph 1, 'term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'. The Protocol of 2014 to the Forced Labour Convention (P 029) also provides specific guidelines to governments and businesses on steps to end forced labour.

Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Kuwait in 1996, enshrines the right of everyone to the enjoyment of just and favourable conditions of work, including safe and healthy working conditions. Such conditions must ensure, inter alia, remuneration which provides all workers, as a minimum, a decent living for themselves and their families, safe and healthy working conditions, rest, leisure, and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays. Moreover, Article 10 of the ICESCR recognizes that special measures of protection and assistance should be taken on behalf of all children and young persons, who should be protected from economic and social exploitation. Furthermore, the rights in the Covenant apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation (Committee on Economic, Social and Cultural Rights, general comment no 20, para. 30).

In this regard, we would like to refer Your Excellency's Government to the 2014 Human Rights Council report of the Special Rapporteur on the human rights of migrants, regarding labour exploitation of migrants, in which he recommends States to "refrain from using sponsorship systems that make immigration status conditional on one given employer, as this creates a precarious status, restricts freedom of movement, increases vulnerability to exploitation and abuse, and leads to forced labour."

We would like to recall General Assembly resolution 62/156 on the protection of migrants and specifically paragraph 14 which "requests all States, in conformity with national legislation and applicable international legal instruments to which they are party, to enforce labour law effectively, including by addressing violations of such law, with regard to migrant workers' labour relations and working conditions, inter alia, those related to their remuneration and conditions of health, safety at work and the right to freedom of association".

Furthermore, we would also like to refer Your Excellency's Government to the thematic report of the Special Rapporteur on the human rights of migrants on labour exploitation of migrants (A/HRC/26/35), in which the Special Rapporteur recommends States to:

83. Guarantee that all migrants have the right to accept and to leave employment voluntarily, without the threat of a penalty. Migrants who choose to leave an abusive employer should not lose their residence permit. Instead, they should receive adequate support, for example by providing them with a long enough grace period in order to find a new job. Allowing migrants to change employers when they wish would render them far less vulnerable to exploitation.

91. Ensure that migrants are free to terminate their employment contract, without fear of retribution, and find another employer or leave the country when they so wish. Protect migrants against unfair dismissals, and refrain from tying visas to

the employer, so that migrants can find a new job in case their employment is terminated.

The Special Rapporteur also underlined in his report on gender-responsive migration legislation and policies (A/74/191) 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.”

In this respect, we would like to draw up your Excellency’s Government’s attention to the General Assembly Resolution 62/132 which in paragraph 6 “calls upon Governments to adopt or strengthen measures to protect the human rights of women migrant workers, regardless of their immigration status, including in policies that regulate the recruitment and deployment of women migrant workers”. We would also like to refer to paragraph 11, which “calls upon Governments [...] to provide women migrant workers who are victims of violence with the full range of immediate assistance and protection, such as access in counselling, legal and consular assistance and temporary shelter, as well as mechanisms to allow the views and concerns of victims to be presented and considered at appropriate stages of proceedings, including other measures that will allow victims to be present during the judicial process, to the extent possible, as well as establish reintegration and rehabilitation schemes for returning women migrant workers”.

Human trafficking can lead to situations of forced labour and is defined under the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), ratified by Kuwait in 2006, as ‘recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion ... for the purpose of exploitation.’ Furthermore, businesses should strengthen their criteria and indicators of trafficking in persons for the purpose of labour exploitation in accordance with the benchmarks and indicators for ensuring trafficking-free supply chains proposed by the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/23/48/Add.4, appendix I and A/HRC/35/37).

We would like to refer your Excellency’s Government to the proposed 2035 Agenda for facilitating human mobility (A/72/173) of the Special Rapporteur on the human rights of migrants, and specifically to Target 1.5: “Abolish all temporary migration schemes, such as those based on single-employer sponsorship mechanisms or *kafalah* systems, in favour of open work visas”.

Furthermore, we would also like to draw Your Excellency’s Government attention to the right to privacy, which is enshrined in article 12 of the Universal Declaration of Human Rights and article 17 of the International Covenant on Civil and Political Rights, which state that no one should be subjected to “arbitrary or unlawful interference with his privacy, family, home or correspondence”, which Kuwait ratified in 1996. The Human Rights Committee stated in its General Comment 32 (par. 8) that the positive obligations

on States Parties under ICCPR are only fully discharged if individuals are protected by the State, not just against violations of their rights by its agents, but also against acts committed by private persons or entities.

In this regard, we would like to refer Your Excellency's Government to the 2020 Human Rights Council report (A/HRC/43/52, para. 28 (d) (iii) of the Special Rapporteur on the right to privacy which urges "States to take all necessary legislative, policy, administrative and other measures in line with international human rights norms and standards, to prevent victimisation, re-victimisation, criminalisation, on the basis of gender, by preventing forced labour, human trafficking, abuse and violence in the context of commercial sex".

We would also like to highlight the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in resolution A/HRC/RES/17/31 in 2011. These Guiding Principles are grounded in recognition of:

- a) "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b) "The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; and
- c) "The need for rights and obligations to be matched to appropriate and effective remedies when breached."

It is a recognized principle that States must protect against human rights abuses by business enterprises within their territory. As part of their duty to protect against business-related human rights abuse, States are required to take appropriate steps to "prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication" (Guiding Principle 1). In addition, States should "enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights..." (Guiding Principle 3). The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities occur.

The duty applies to all internationally recognized human rights as set out in the International Bill of Human Rights and the fundamental labour rights as set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. The Guiding Principles also require States to ensure that victims have access to effective remedy in instances where adverse human rights impacts linked to business activities do occur.

The Guiding Principles also clarify that business enterprises have an independent responsibility to respect human rights. However, States may be considered to have breached their international human law obligations where they fail to take appropriate steps to prevent, investigate and redress human rights violations committed by private



actors. While States generally have discretion in deciding upon these steps, they should consider the full range of permissible preventative and remedial measures.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.