

# The illusion of greener pastures: Violence and justice for female Ugandan migrant workers in the Middle East

Zahara Nampewo\*

### Abstract

*High levels of unemployment especially among the youth remains one of Uganda's challenges. About 165,000 Ugandans currently work in the Middle East; some in search of greener pastures through what the labour movement terms as labour expropriation. The Ugandan Government has recognised this expropriation as one providing employment opportunities for young people and good for Uganda's economy. However, many youth - mostly young women - have fallen prey to violence and abuse meted on them by their employers, including physical and sexual abuse. This article illustrates through real experiences of Ugandan women, the negative consequences of labour expropriation, which have attracted national visibility because of the obvious human rights and gender-based violations that arise especially in the form of violence against women. The article also examines the legal and policy framework relevant to expropriation, including bilateral agreements signed between Uganda and receiving countries in the Middle East. Making reference to interviews with returnees or former domestic workers in the Middle East as well as key informants working in key institutions, this interrogation finds both the laws and structures for protection of young women inadequate in terms of meeting their subjective needs and expectations for protection against violence while working abroad. Going forward, the Ugandan Government should make deliberate efforts at addressing the plight of female migrant workers in the Middle East through strengthening the legal framework and facilitating the Ministry of Gender, Labour and Social Development to undertake stronger monitoring of recruitment agencies, among other initiatives.*

\* Zahara Nampewo is a Lecturer and Director of the Human Rights and Peace Centre (HURIPEC) at the School of Law, Makerere University.

## Keywords

*Ugandan Law, Migrant Workers, Middle East Law, Violence, Labour and Social Development*

### 1 Introduction

This article focuses on the lived experiences of Uganda's female migrants employed as domestic workers<sup>1</sup> in the Middle East where they care for children, cook meals and clean their employers' homes.<sup>2</sup> The exodus of Ugandans to the Middle East is arguably due to the dire unemployment situation in the country which currently stands at 9% of the national population that has attained the working age of which 13% are female.<sup>3</sup> Some of Uganda's youth who seek employment abroad are graduates from universities and other technical institutions who are either unemployed or are underemployed as casual labourers, earning as little as USD 50 (not more than 150,000 Uganda shillings) in monthly pay without any guarantees such as workman compensation.<sup>4</sup> This makes domestic work in countries such as Kuwait and Jordan – where they are entitled to a fixed minimum wage of USD198 (approximately Uganda shillings 742,000) and USD 212 (approximately Uganda shillings 795,000) respectively<sup>5</sup> a

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<sup>1</sup> The terms 'domestic worker' and 'domestic work' are defined in the same way as Article 1 of the International Labour Organisation (ILO) Convention No. 189 (2011) that is; any person engaged in domestic work within an employment relationship and domestic work as work performed in a household.

<sup>2</sup> It is reported that there is a high demand for imported domestic labourers in the Middle East mainly due to a boom in the region's oil industry which absorbs most of the locally-available labour force. According to the ILO, this region hosts as much as 19% of the world's domestic workers of whom 1.6 million are women. See ILO, *Domestic workers and employers in the Arab States: Promising practices and innovative models for a productive working relationship*, March 2018, available at <[https://www.ilo.org/beirut/publications/WCMS\\_619661/lang-en/index.htm](https://www.ilo.org/beirut/publications/WCMS_619661/lang-en/index.htm)> on 15 December 2020. ILO, *World Employment and Social Outlook- Trends 2020*, available at <<https://www.ilo.org/global/research/global-reports/weso/2020/lang-en/index.htm>> on 15 December 2020.

<sup>3</sup> Uganda Bureau of Statistics (UBOS), *The International Labour Day, May 01 2019-Agago District: National theme: Promoting employment through enhanced public infrastructure*, 2019, available at <<https://www.ubos.org/wp-content/uploads/2019/05/UBOS-LABOUR-DAY-BOOK-final.pdf>> on 15 December 2020.

<sup>4</sup> Human Rights Network (HURINET-U), *A shadow report submitted to the United Nations Committee on Migrant Workers on the occasion of its consideration of the Consolidated Periodic Reports of Uganda*, 2015, 9, available at <<https://www.ecoi.net/en/document/1270514.html>> on 15 December 2020.

<sup>5</sup> ILO Policy Advisory Committee on Fair Migration in the Middle East, *Minimum wages and wage protection in the Arab States: Ensuring a just system for national and migrant workers*, January 2019, 1, available at <[https://www.ilo.org/beirut/publications/WCMS\\_660002/lang-en/index.htm](https://www.ilo.org/beirut/publications/WCMS_660002/lang-en/index.htm)> on 15 December 2020.

more viable option.<sup>6</sup> This payment is not only almost eight times what is earned by a domestic worker in Uganda, but is also much higher than what most formal sector workers such as teachers, nurses and low-ranking local government staff earn. Additionally, domestic workers are offered a number of other benefits including free accommodation, free food, medical insurance and bonuses.

The Ugandan Government acknowledges expropriation<sup>7</sup> of labour as one of the stopgap measures that are helping to cushion the country's unemployment problem.<sup>8</sup> Statistics indicate that there are currently 165,000 Ugandans working in the Middle East with an annual contribution of USD 650 million to the Ugandan economy through remittances.<sup>9</sup> Thus, the arrangement constitutes a win-win situation for both parties; on the one hand the Arabs are able to get the much needed domestic help in their homes, while on the other hand the Ugandan Government is availed employment opportunities for its citizens and revenue for its coffers.

Considering the high numbers of Ugandans travelling abroad for work, there was a need to establish structures to coordinate the same. In order to formalise expropriation of labour, the Ugandan Government created an External Employment Unit (EEU) within the Ministry of Gender, Labour and Social Development (MoGLSD), the government agency responsible for labour matters in the country. The EEU was created under the Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations of 2005<sup>10</sup> with the mandate to license and regulate private recruitment agencies, in addition to facilitating access to opportunities abroad. Uganda currently has a total of 186 formally registered recruitment agencies. These agencies are organised under the Uganda Association of External Recruitment Agencies (UAERA),<sup>11</sup> which is recognised by the MoGLSD. The spontaneous growth in the number of private recruitment agencies in Uganda is attributed to the lucrative nature of the business.<sup>12</sup>

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<sup>6</sup> HURINET-U, *A shadow report submitted to the United Nations Committee on Migrant Workers on the occasion of its consideration of the Consolidated Periodic Reports of Uganda*, 9.

<sup>7</sup> This term is used interchangeably with 'expropriation' and they mean the same thing.

<sup>8</sup> Janat Mukwaya, *Statement on promoting safe and productive migration of labour*, 20 November 2018, 7.

<sup>9</sup> See, Uganda Association of External Recruitment Agencies (UAERA) website, <https://uaera.org/> on 15 December 2020.

<sup>10</sup> Statutory Instrument No. 62 of 2005.

<sup>11</sup> See <https://uaera.org/> on 15 December 2020. UAERA currently has 186 member companies as per February 2020.

<sup>12</sup> Republic of Uganda, *Preliminary Report of the Committee on Gender, Labour and Social Development on the Externalization of Labour Phenomenon*, November 2019, 2.

## Migrant labour under international law

Migration for work is not a new phenomenon under international law. Owing to the magnitude of persons travelling for work across the world, there are several international labour instruments which provide a range of guarantees to migrant workers generally and domestic workers in particular. The most notable among these are: International Labour Organisation (ILO) Domestic Workers Convention, 2011 (No. 189) (Domestic Workers Convention); the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) as well as the ILO Private Employment Agencies Convention, 1997 (No. 181) (Private Employment Agencies Convention).

As its name suggests, the Domestic Workers Convention is exclusive to domestic work and is mainly concerned with ensuring decent work for domestic workers. This convention is notable for its strong emphasis on the effective promotion and protection of the human rights of all domestic workers. In realising this goal, Member States are required to take a number of measures to eliminate discrimination by ensuring that domestic workers are accorded with the same guarantees as those generally applicable to workers in other sectors.

Examples of these guarantees include: protection from all forms of forced or compulsory labour<sup>13</sup> as well as all forms of abuse, harassment and violence;<sup>14</sup> fair terms of employment and decent living conditions that respect their privacy;<sup>15</sup> being availed information relating to their terms and conditions of employment<sup>16</sup> in a manner that is appropriate, verifiable and easily understood, preferably, where possible, through a written contract as per the applicable regulatory frameworks<sup>17</sup> in which case should the contract be for domestic work performed outside the borders of the country in which the contract is entered into, this information has to be shared before the employee in question sets off

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<sup>13</sup> Article 3, *Domestic Workers Convention*, 2011 (No. 189).

<sup>14</sup> Article 5, *Domestic Workers Convention*.

<sup>15</sup> Article 6, *Domestic Workers Convention*.

<sup>16</sup> The Convention lists a number of key issues that should be covered in the information shared with the domestic worker ahead of their engagement including: the name and address of the employer and of the worker; the address of the usual workplace(s); commencement date and/or the duration where the contract is for a specified time period; the type of work to be performed; the remuneration, method of calculation and periodicity of payments; the normal hours of work; paid annual leave, and daily and week rest period; the provision of food and accommodation if applicable; the terms of repatriation, if applicable; and the terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.

<sup>17</sup> Article 7, *Domestic Workers Convention*.

from the source country;<sup>18</sup> the right to keep, in one's possession one's travel and identity documents;<sup>19</sup> and effective access to justice.<sup>20</sup>

Further, this convention requires Member States to ensure protection of domestic workers, including migrant workers, recruited through private recruitment agencies by establishing conditions for governing the operations and curtailing malpractices of such agencies or foreign employers for whom such agencies procure domestic workers. Furthermore, Member States should consider entering into agreements (bilateral, regional or multi-lateral) in order to protect domestic workers employed in foreign countries against the possible abuses and fraudulent practices meted out during recruitment, placement or employment.<sup>21</sup>

On its part, the ICRMW sets minimum standards for migrant workers and members of their families with a focus on eliminating exploitation of workers in the migration process. This instrument is considered the most comprehensive international treaty in the field of migration and human rights with the primary objective to foster respect for human rights. It emphasises that migrants are not just workers, but also human beings. It thus establishes minimum standards that state parties should apply to migrant workers and members of their families, irrespective of their migratory status.

The ICRMW has to be read together with the Private Employment Agencies Convention, which recognises the role of private employment agencies in the labour market and applies to both the employment agencies that assign workers to clients and recruitment agencies that place them with an employer. It establishes clear protections for job seekers, including the prohibition of fee-charging. Specifically, the Private Employment Agencies Convention stipulates that where workers are recruited in one country for work in another, the concerned states should consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.

The General Agreement on Trade in Services and Labour Export (GATS) offers an additional framework for international trade in services and defines four modes in which international trade in services can be provided. Among these is the temporary movement of persons across national borders with a view of providing services in another. This includes independent service

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<sup>18</sup> Article 8, *Domestic Workers Convention*.

<sup>19</sup> Article 9 (c), *Domestic Workers Convention*.

<sup>20</sup> Article 16, *Domestic Workers Convention*.

<sup>21</sup> Article 15, *Domestic Workers Convention*.

suppliers and the self-employed, as well as foreign employees of foreign companies established in the territory of a Member State. However, just as Geoffrey Bakunda and George Mpanga observed, GATS in its current form excludes unskilled labour where many of the female Ugandan domestic workers fall and therefore, they are not covered under its protective clauses.<sup>22</sup>

Notably, none of the Middle East countries hosting Ugandan domestic workers has ratified these instruments.<sup>23</sup> Even Uganda itself has so far ratified only the ICRMW. In the absence of the force of these protective frameworks, the employment status of Ugandan domestic migrant workers in the Middle East is regulated by a sponsorship system known as *Kafala*. Under that system, a migrant worker's immigration and legal residency status is tied to an individual sponsor (*kafael*) throughout the contract period. As such, the migrant worker cannot resign from a job, transfer employment, and in some countries may not leave the country without first obtaining explicit permission from their employer.<sup>24</sup>

To cure some of the excesses of the *Kafala* system, Uganda has variously engaged with the hosting countries and has so far signed two bilateral agreements -that is with Saudi Arabia and with the Kingdom of Jordan -in addition to a Memorandum of Understanding (MoU) signed in mid-2019 with the United Arab Emirates (UAE).<sup>25</sup> The MoGLSD indicates that negotiations with the other countries are underway albeit with varying levels of progress.<sup>26</sup> These arrangements seek to secure a fair, safe and healthy working environment for Ugandan citizens working in these countries. Yet, in spite of these attempts, there are reports of continued violation of the rights of Ugandan female domestic workers including in those countries that signed bilateral agreements with Uganda.

As a remedy to the harrowing experiences of Ugandan workers in the

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<sup>22</sup> Geoffrey Bakunda & George Mpanga, 'Labour export as government policy: An assessment of Uganda's potential for export of labour in the framework of regional and multilateral agreements' Private Sector Foundation Uganda, Investment Climate and Business Environment Research Fund Research Report No. 12/11, Dakar, July 2011, available at <[https://media.africaportal.org/documents/icbe\\_labor\\_export2.pdf](https://media.africaportal.org/documents/icbe_labor_export2.pdf)> on 15 December 2020.

<sup>23</sup> For Domestic Workers Convention, see <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310\\_INSTRUMENT\\_ID:2551460:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_ID:2551460:NO)> on 15 December 2020. The list of countries that have not ratified the Private Employment Agencies Convention can be accessed here <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310\\_INSTRUMENT\\_ID:312326:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11310:0::NO:11310:P11310_INSTRUMENT_ID:312326:NO)> on 15 December 2020.

<sup>24</sup> ILO, *Domestic workers and employers in the Arab States*.

<sup>25</sup> Janet Mukwaya, *Statement on promoting safe and productive migration of labour*, 9.

<sup>26</sup> Janet Mukwaya, *Statement on promoting safe and productive migration of labour*, 9.

Middle East, Uganda has signed bilateral understandings with the aim of securing stronger protection of their rights. Part of this article examines these agreements in terms of their legal weight and efficiency to offer meaningful protection to the intended beneficiaries. This is done in order to understand if and how such arrangements can be better harnessed as a basis for enhanced protection of Ugandan female domestic workers abroad and specifically in the Middle East.

Case studies and interviews carried out between December 2019 and May 2020 with mostly young female returnees from the Middle East who had gone to seek work but managed to return home to Uganda, form the basis of this article. These experiences detail the hardships faced during their time of employment, disappointments about the kind of work they had expected to do versus what they actually ended up doing, and the struggles for freedom and return to Uganda.

The article is structured into six sections. The first section introduced labour expropriation in Uganda and the international legal framework governing migrant labour. This is followed by a presentation of the different forms of harrowing experiences suffered by Ugandan female domestic workers in the Middle East. Section 3 highlights the international human rights issues flagged by such occurrences through the lenses of the would-be applicable international human rights and labour law standards but for the lack of ratification of the same by the countries in question. In view of the void of ratification of some of the major instruments, Section 4 presents and examines the applicable regulatory frameworks to the specific context of Uganda's externalisation of domestic workers to countries in the Middle East, including the bilateral agreements signed where applicable and, in their absence, the *Kafala* system. That discussion is then followed by a reflection on the opportunities and rights issues relating to the *Kafala* system in Section 5. The discussion ends in Section 6 with a presentation of concluding observations and proposals on improving the situation of labour expropriation between Uganda and the Middle East.

## **2. Experiences of female migrant workers in the Middle East: Responses from key stakeholders**

Compared to other categories of the Ugandan migrant population in the Middle East,<sup>27</sup> female domestic workers are the main victims of abuses of violations such as sexual violence and other forms of cruel, inhuman and

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<sup>27</sup> These are professionals, technicians, security personnel, porters, drivers, catering and hospital personnel and cleaners.

degrading treatment, and mysterious deaths.<sup>28</sup> Reports from different sources attest to the dire situation of these female workers. For example in 2013, the Human Rights Network Uganda (HURINET-U) submitted a shadow report to the Committee on the Convention on the Rights of Migrant Workers<sup>29</sup> in which Uganda's Director of Interpol at the time summarised the experiences of Ugandan migrant workers in the Middle East as follows:

...victims work for no pay or for peanuts. They are mistreated, beaten, denied food and threatened with violence. They are kept in isolation and their passports retained. They are imprisoned, forced into prostitution, exotic dancing and unpaid labour, often times moved from place to place.<sup>30</sup>

These conclusions were drawn on the basis of narratives of Ugandans who had been trafficked to – and later rescued by Interpol from – the Middle East.

Uganda's Parliament and the Uganda Human Rights Commission (UHRC) have also considered the intensity of the concerns relating to the violation of the rights of Ugandan migrants employed as domestic workers in the Middle East. Parliament reacted through a resolution passed on 18 December 2014, which expressed, 'Government should ban the export of domestic workers from Uganda.'<sup>31</sup> Countries such as Philippines and Ethiopia that had banned a similar arrangement guided this parliamentary resolution.<sup>32</sup>

Yet, the Ugandan Government continued to procure negotiations and MoUs on the same issue, a development which was not welcomed by the Speaker and Members of Parliament (MP) attending a subsequent parliamentary session held on 22 September 2015. The Hansard record for this sitting reveals that MPs opposed the idea of Uganda entering into agreements and MoUs with Middle East countries purposely to export Ugandan girls as domestic workers vehemently,

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<sup>28</sup> George Mangula, 'Uganda has over 140,000 labour workers in Middle East' Eagle Online, 12 January 2019, <<https://eagle.co.ug/2019/01/12/uganda-has-over-140000-labour-workers-in-middle-east.html>> on 15 December 2020.

<sup>29</sup> HURINET-U, *A shadow report submitted to the United Nations Committee on Migrant Workers on the occasion of its consideration of the Consolidated Periodic Reports of Uganda*, para. 5.0.

<sup>30</sup> HURINET-U, *A shadow report submitted to the United Nations Committee on Migrant Workers on the occasion of its consideration of the Consolidated Periodic Reports of Uganda*, 20. (The shadow report cited Uganda Human Rights Commission, *Human trafficking: An emerging threat to human rights*, December 2014, at 54).

<sup>31</sup> Ugandan Parliament Hansard Report, 22 September 2015, page 1. *See also*, Joyce Namutebi & Moses Walubiri, 'Uganda told to ban export of domestic workers' New Vision, 27 November 2014 <<https://www.newvision.co.ug/news/1316069/uganda-told-ban-export-domestic-workers>> on 15 December 2020.

<sup>32</sup> Joyce Namutebi & Moses Walubiri, 'Uganda told to ban export of domestic workers' New Vision, 27 November 2014 <<https://www.newvision.co.ug/news/1316069/uganda-told-ban-export-domestic-workers>> on 15 December 2020.



albeit unsuccessfully. Below are excerpts of some of the speeches by the MPs.

Francis Epetait, emotionally remarked as follows:

Madam Speaker, it is disheartening to find these kinds of agreements or memoranda of understanding with certain countries being signed committing our children – especially the girls – to countries with reports of human rights abuses, especially sexual harassment of our girls.

We are demanding the withdrawal of our Ugandans who are being molested in other countries, while the Government is doing the opposite. That, in my opinion, is being insensitive to the plight of Ugandans. Why must we send the few who are safe back home here to the very areas where we are demanding the withdrawal of Ugandans? Really?<sup>33</sup>

The observations of another MP, Benard Atiku, are also telling of Parliament's displeasure with the government's indifference to their position as well as the plight of Ugandan female domestic workers in the Middle East:

I would like to condemn the Ministry of Gender, Labour and Social Development for ignoring the parliamentary resolution on this particular issue.

I remember very well our position was that we can source labour from this country to other countries and the areas were very specific. The issue of domestic workers was very contentious because we have sent delegations right from this Parliament to these countries where our people have been exported to provide labour. We have had issues, particularly with the female labourers that have been exported.

As I speak, by last night, a young girl who has been in Malaysia was discovered very weak after she disappeared for three weeks only to go and die in hospital. This issue has not yet been brought to light by this same ministry, which is busy signing memoranda to export our children.

Madam Speaker, what we are actually calling 'domestic workers' are 'sex slaves' that side. Most of these young girls that I am talking about are actually university graduates who—out of desperation—have sought for these employment opportunities.

If you go to the labour recruitment agencies here, the language that is being used is basically to lure the young girls. They are not given the right information. When they reach there, they become sex slaves. Some of the pictures that we have found on social media are very disturbing.

Some of them are actually yearning to come back. However, immediately they are acquired, they become properties in these homes. Their passports are confiscated and they cannot have any way of communication outside until someone has got a medical complication. Many of these medical complications are with their private parts. It is these ones that are either (*sic*) dumped that make their way back home.<sup>34</sup>

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<sup>33</sup> Ugandan Parliament Hansard Report, 22 September 2015, page 3.

<sup>34</sup> Ugandan Parliament Hansard Report, 22 September 2015, page 3

On his part, MP Elijah Okupa, reported how two weeks earlier, he had met and interviewed Ugandan girls whom he found practicing sex trade in Dubai. He reported having been told by them that they resorted to the trade after escaping from Saudi Arabia where they had been working and had had their passports confiscated. As evidence of these girls' dissatisfaction, the MP reported that they actually pleaded with him to assist them to return back home.<sup>35</sup>

Indeed, other members of the House reported that they received distress calls from girls in the Middle East, mainly seeking assistance to return home. The Speaker of Parliament, Rebecca Kadaga, who had been approached just the day before the September 2015 parliamentary session narrated her experience as follows:

Honorable members...yesterday as I was driving to Kamuli, I received a call from Oman. One of the young girls in Oman said they wrote to me two weeks ago saying they need to be rescued, but I have not yet worked out the mechanics of how to bring them back to Uganda. She was ringing to check when I would be getting them home. I said I am still working with the police to see how they can come home. Another one rang me and asked whether I could raise 5 million shillings so that she pays her owner to release her.

It is that bad. Once you go there, you are property and you do not even earn salaries. If you want to be released, you must find money to pay your way out. How you will get it, I do not know.<sup>36</sup>

Conversely, the Ugandan Government insists that these opportunities are good for the unemployed and that the concerns against the arrangement were already addressed through the bilateral agreements concluded with some countries. For instance, during an interview with the *Mail & Guardian* in 2016, Uganda's Youth Minister observed that 'the bilateral agreement was fair and offered a good opportunity for the unemployed youth' while acknowledging that some of 'the conditions of the agreement have not been respected' owing to gaps in enforcement.<sup>37</sup>

Notably, there is literature backing Parliament's position that the bilateral agreements may not yield the intended results. On the basis of what he terms as 'large-scale maltreatment of immigrant workers in the Middle East' that had prompted many countries to stop sending their nationals there, Yasin Kakande concluded that Uganda's domestic labour export deal 'was bound to

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<sup>35</sup> Ugandan Parliament Hansard Report, 22 September 2015, page 4-5.

<sup>36</sup> Ugandan Parliament Hansard Report, 22 September 2015, page 5. See also, Leah Eryenyu, 'Export of domestic workers is slavery dressed up as greener pastures' Daily Monitor, 10 April 2017.

<sup>37</sup> Gloria Nakajubi, 'Uganda bans deployment of workers to Saudi Arabia' Mail & Guardian, 3 March 2016 <<https://mg.co.za/article/2016-03-03-uganda-bans-deployment-of-workers-to-saudi-arabia/>> on 15 December 2020.

end in controversy...<sup>38</sup> Yasin, a Ugandan journalist who has covered stories in the Middle East for over a decade, writes about concerns regarding the way recruitment agencies only show Ugandans the good side of the employment deals in the Middle East, without telling them that things can go wrong, and that when that happens ‘the only feasible way to report abuses or assaults would be to escape from the employer, thereby becoming an “illegal” or undocumented migrant, who would be hunted down by authorities.’<sup>39</sup>

Such realities render legitimate the legislators’ reservations against the government’s arrangements to formalise externalisation of Ugandan domestic labour to the Middle East countries. According to the Speaker of the House, even when such agreements or MoUs are signed, there is a high likelihood that when the girls ‘...enter the home of a sheikh, no one will be able to check whether they are sleeping, eating, over-used or abused; No one will be able to do that...’<sup>40</sup> Nevertheless, Parliament’s bold resolve has been continuously disregarded by the Ugandan Government, which has entered into bilateral arrangements with countries such as Saudi Arabia and Jordan and recently (2019) the UAE, to externalise domestic workers there.

This is notwithstanding that the Government of Uganda itself later came face to face with a reality; that the signed agreements may not necessarily address a seemingly entrenched practice of harassment of domestic workers in Saudi Arabia. Specifically, on 22 January 2016, Uganda’s Minister for Gender, Labour and Social Development reportedly wrote to the Minister of Foreign Affairs communicating to the latter a ban on the recruitment and deployment of domestic workers to Saudi Arabia and other countries.<sup>41</sup> The Minister’s decision was hinged on the discovery that in spite of having in place signed bilateral agreements with some of the Middle East countries, the government was still receiving ‘...information of our people being subjected to inhumane treatment

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<sup>38</sup> Gloria Nakajubi, ‘Uganda bans deployment of workers to Saudi Arabia’ Mail & Guardian, 3 March 2016 <<https://mg.co.za/article/2016-03-03-uganda-bans-deployment-of-workers-to-saudi-arabia/>> on 15 December 2020. (Gloria cites Yasin Kakande’s two books namely, *Slave states: The practice of Kafala in the Gulf Arab Region*, Zero Books, United Kingdom, 2015; and *The ambitious struggle: An African journalist’s journey to hope and identity in a land of migrants*, Florida Academic Press, Gainesville, Florida, 2013).

<sup>39</sup> Gloria Nakajubi, ‘Uganda bans deployment of workers to Saudi Arabia’ Mail & Guardian, 3 March 2016 <<https://mg.co.za/article/2016-03-03-uganda-bans-deployment-of-workers-to-saudi-arabia/>> on 15 December 2020.

<sup>40</sup> Ugandan Parliament Hansard Report, 22 September 2015, page 11.

<sup>41</sup> Gloria Nakajubi, ‘Uganda bans deployment of workers to Saudi Arabia’ Mail & Guardian, 3 March 2016 <<https://mg.co.za/article/2016-03-03-uganda-bans-deployment-of-workers-to-saudi-arabia/>> on 15 December 2020.

at the hands of the employers in Saudi Arabia.<sup>42</sup> However, that ban was lifted a year later on 10 March 2017 with a reopening date of 1 April 2017<sup>43</sup> following which thousands of Ugandan girls have continued to flock the Middle East for domestic work.<sup>44</sup> And, as day follows night, violations continue to occur.

Most of the occurrences of abuse do not often come to light since they go unreported as the UHRC has previously noted.<sup>45</sup> The few existing samples of published accounts of survivors reveal that there is need to revise the arrangement through which Ugandan girls are externalised for domestic work in the Middle East. Below is a presentation of three select stories which are admittedly a small representation of a larger problem that persists despite the presence of legal instruments between Uganda and some of the Middle East countries. These cases sample real stories of Ugandan women and elucidate the human rights concerns surrounding expropriation of labour to the Middle East.

The first two cases were reported by Gloria Nakajubi and published in the *Mail & Guardian* on 3 March 2016 under the title *‘Uganda bans deployment of workers to Saudi Arabia.’*<sup>46</sup> This was ‘barely six months after the Ugandan Government signed a bilateral agreement with Saudi Arabia to send Ugandans to the kingdom as domestic workers.’<sup>47</sup> That report drew on interviews with girls found under the care of an anti-trafficking NGO-cum- rehabilitation centre for returning women and girls, located on the outskirts of Uganda’s capital, Kampala. Similarly, the third account of Prudence Nandawula was also reported by a journalist, Paul Kiwuuwa, in one of Uganda’s leading dailies, *New Vision* on 19 April 2017.<sup>48</sup>

<sup>42</sup> Gloria Nakajubi, ‘Uganda bans deployment of workers to Saudi Arabia’ *Mail & Guardian*, 3 March 2016 <<https://mg.co.za/article/2016-03-03-uganda-bans-deployment-of-workers-to-saudi-arabia/>> on 15 December 2020.

<sup>43</sup> Paul Kiwuuwa, “I was made to sleep on the balcony” *New Vision*, 19 April 2017, <<https://www.newvision.co.ug/news/1451381/-sleep-balcony>> on 15 December 2020.

<sup>44</sup> Paul Kiwuuwa, “I was made to sleep on the balcony” *New Vision*, 19 April 2017, <<https://www.newvision.co.ug/news/1451381/-sleep-balcony>> on 15 December 2020.

<sup>45</sup> Uganda Human Rights Commission, *Human trafficking*, at 5. (Cited in HURINET-U, *A shadow report submitted to the United Nations Committee on Migrant Workers on the occasion of its consideration of the Consolidated Periodic Reports of Uganda*).

<sup>46</sup> Gloria Nakajubi, ‘Uganda bans deployment of workers to Saudi Arabia’ *Mail & Guardian*, 3 March 2016 <<https://mg.co.za/article/2016-03-03-uganda-bans-deployment-of-workers-to-saudi-arabia/>> on 15 December 2020.

<sup>47</sup> Gloria Nakajubi, ‘Uganda bans deployment of workers to Saudi Arabia’ *Mail & Guardian*, 3 March 2016 <<https://mg.co.za/article/2016-03-03-uganda-bans-deployment-of-workers-to-saudi-arabia/>> on 15 December 2020.

<sup>48</sup> Paul Kiwuuwa, “I was made to sleep on the balcony” *New Vision*, 19 April 2017, <<https://www.newvision.co.ug/news/1451381/-sleep-balcony>> on 15 December 2020.

### Case one: Joan Nalugya, aged 23

The story of Joan Nalugya is presented as follows:

...Joan Nalugya, travelled with 24 other women to Saudi Arabia. She was taken to a home in Ha'il in the northwest of the country where, in addition to her domestic chores, she had to massage everyone in the family.

Joan's situation deteriorated further and she was forced to endure daily sexual abuse from different members of the family. On one occasion she was stabbed when she tried to ward off a family member who was trying to rape her.

Joan managed to escape and fled to the local police station where she spent two weeks before her employer returned her passport and paid for her ticket to Uganda.<sup>49</sup>

### Case two: Justine Nakandi, aged 25

On her part, Justine Nakandi reportedly:

...left for Saudi Arabia in October last year [2015] with 56 other women. All arrangements were made by a recruitment agency. As soon as the group landed in Saudi Arabia, their passports were taken from them.

After a five-hour wait, Justine said she was taken to a hospital to undergo HIV and pregnancy tests, which she said had already been done in Uganda. She was later taken to her employer's three-storey house where 10 family members lived.

"I had to clean the whole house every day and also take care of the grandmother – from bathing her to changing her diapers. I also had to respond to the endless demands of the seven children," she said.

After three weeks, Justine suffered intense abdominal pains. She was taken to a hospital where she was told doctors would carry out a surgical procedure on her.

With the stitches visible and no medical report, Justine has no idea what was done to her in hospital. Three days after the surgery her employer wanted her back at work. When she refused to return, she was put on a flight back to Kampala.<sup>50</sup>

### Case three: Prudence Nandawula

The story of Prudence Nandawula is not any different from the two above, apart from the fact that at the time she left for the Middle East, she had obtained a university degree in Education. The arrangement as she understood it before

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<sup>49</sup> Gloria Nakajubi, 'Uganda bans deployment of workers to Saudi Arabia' Mail & Guardian, 3 March 2016 <<https://mg.co.za/article/2016-03-03-uganda-bans-deployment-of-workers-to-saudi-arabia/>> on 15 December 2020.

<sup>50</sup> Gloria Nakajubi, 'Uganda bans deployment of workers to Saudi Arabia' Mail & Guardian, 3 March 2016 <<https://mg.co.za/article/2016-03-03-uganda-bans-deployment-of-workers-to-saudi-arabia/>> on 15 December 2020.

leaving Kampala was that she was going to Kuwait to work as a teacher. To her shock, she ended up being sold to a family that took her on as a maid and subjected her to cruel working conditions including: working for abnormal hours, from 5am to 2am, without resting; she was denied food; she experienced physical and psychological torture; as well as being paid a paltry 500,000 Uganda shillings (approximately USD 135 at the exchange rate of 3700 Uganda shillings) in monthly wages which was four times less than the 2,000,000 Uganda shillings (approximately USD 540) earned by her counterparts from Philippines for the same job.<sup>51</sup>

She further decried the way in which ‘Ugandan women who try to fight the injustice either end up killed, going into prostitution or going to prisons on forged charges’<sup>52</sup> without rescue. Prudence’s story confirms the observations previously made by UHRC regarding the way in which some of the labour recruitment companies were exploiting desperate Ugandans with fake opportunities. They noted, for instance, that the companies at times:

(P)resent victims with fake agreements which they sign before boarding. This is intended to give them no time to study the implications of such agreements. The victims realise after they have reached their places of destination that they have to reimburse the cost of their passports, air ticket, lodging and other expenses approximately between USD 7000 and 9000 or more. This keeps them in bondage to do whatever work they are presented including demanding domestic work and prostitution without pay.<sup>53</sup>

However, there is another side to this narrative. Paul Kiwuuwa who followed the journey of some of these girls shares a nuanced view: that Ugandan women also solicit for sex while in the Middle East or forget that they travelled for domestic work and instead try to engage in other ventures, some sexual and others trade related. Of course this does not justify violence against women no matter what a particular individual is involved in. The next section reflects on the human rights issues highlighted by the cases presented in this section.

### **3. International human rights implications of the experiences of the Ugandan domestic workers in the Middle East**

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<sup>51</sup> Paul Kiwuuwa, “I was made to sleep on the balcony” New Vision, 19 April 2017, <<https://www.newvision.co.ug/news/1451381/-sleep-balcony>> on 15 December 2020.

<sup>52</sup> Paul Kiwuuwa, “I was made to sleep on the balcony” New Vision, 19 April 2017, <<https://www.newvision.co.ug/news/1451381/-sleep-balcony>> on 15 December 2020.

<sup>53</sup> Uganda Human Rights Commission, *Human trafficking*, 4. (Cited in HURINET-U, *A shadow report*, 21).

As already highlighted in section one, the international community has put in place an elaborate regulatory framework for protection of migrant workers generally and migrant domestic workers in particular. This is evidence of the appreciation of the danger that these workers face. This section highlights some of the international human rights issues presented by the experiences of domestic workers in the Middle East and in particular the cases sampled above.

## Forced labour

The ILO describes forced labour as ‘all work which is exacted from a person under the menace of any penalty and for which the person has not offered himself voluntarily.’<sup>54</sup> A subsequent ILO Convention, the Abolition of Forced Labour Convention 1957 (No. 105), further limits the situations in which forced labour by states would be considered permissible. These standards were updated by the 2014 ILO Protocol to the Forced Labour Convention of 1930, which requires states to take measures to identify, release, and provide assistance to forced labour victims as well as protect them from retaliation.

The three accounts above reveal that not all the tasks performed by the young women were ever envisaged when they boarded flights to the Middle East. For instance, Prudence Nandawula, a university graduate who left Uganda expecting that she would be working as a teacher ended up being bought by a family in Kuwait to work for them as a domestic worker. To her surprise therefore, rather than teaching students, she ended up cleaning and cooking in a private residence. For the whole duration of her stay in Kuwait under the stewardship of the purchasing family, Prudence was under captivity since she had no alternative work or place to stay. Such conditions are tantamount to forced labour.

Furthermore, the cases manifest wage abuses, excessive work and lack of rest, all clear violations of the standards outlined in the Domestic Workers Convention. This is in addition to the refusal of workers to communicate with other persons outside the household in violation of their right to expression and association. Also, as evident from the case of Joan Nalugya, the women are subjected to several other forms of psychological and sexual abuse. In aggregate, their work was demeaning and un-dignifying.

Worse still, such employees who feel that they cannot do the work assigned to them due to violation of what they expect to be the terms of their contract at the time they left Uganda, are required to refund the ‘procurement’ fee that was

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<sup>54</sup> Article 2(1), *ILO Forced Labour Convention*, 1930 (No. 29).

paid to their agents when they were being acquired.<sup>55</sup> In this regard, the remarks by the Speaker of Parliament on the fate of these young women is instructive, that is, ‘Once you go there, you are property and you do not even earn salaries.

If you want to be released, you must find money to pay your way out. How you will get it, I do not know.<sup>56</sup>

More often than not, these girls are unable to buy their freedom especially where their pay is withheld or they are paid less than what was promised. Such a situation leaves them trapped in indentured servitude or alternatively they are forced to find ways of calling up family and friends in Uganda for rescue towards air travel costs and even livelihood support while in shelters after they run away from their employers. At such points, the young women have lost contact with their placement agencies who normally demand that either they return to their employers or they will get them alternative employment. When the ladies refuse these options, the agencies normally cut off ties and abandon them.

The confiscation of travel documents is another indication of keeping persons at work against their will which, as indicated in section one, is prohibited under the ICRMW as well as the more specific Forced Labour Convention cited above.

### Discrimination on the basis of gender

The recounted experiences by the female returnees manifested gender discrimination. One of the indications of this is the differential treatment and general underpayment of female domestic workers—with monthly salaries as low as USD 135 as seen in the testimony of Prudence Nandawula—compared to the payment given to their male counterparts. The gender inequality in this instance arises from the differential treatment attached to the female-dominated field of domestic work, which is undervalued vis-à-vis other types of work where the males are involved. One of the key respondents interviewed for this study—who profiled herself as having previously worked in the Kingdom of Jordan—suggested that the tendency of Middle East employers to underpay female domestic workers is occasioned by their negative attitude towards domestic work, which such employers regard as insignificant and therefore unworthy of good

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<sup>55</sup> As part of the recruitment process, agencies at community level, through local councils, charge their applicants placement costs that include HIV tests, vaccinations and travel costs. The costs vary from approximately 800 USD to 2000 USD depending on job category, country salary and required amount of agent fees.

<sup>56</sup> Ugandan Parliament Hansard Report, 22 September 2015, page 5.



payment.<sup>57</sup> If true, this treatment would amount to a violation of the principles of equality established under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). CEDAW requires the elimination of discrimination against women in all aspects of employment including pay equity regardless of the type of work.<sup>58</sup>

This fact of inequality can also be deduced by the comparison between the men and women who have returned from work in the Middle East. As the respondents shared, these former male employees tend to lead better lives upon their return; many of them have been able to make investments in the form of small businesses as well as acquire properties such as land, houses and cars. They also seem to have less traumatic stories of their employment as evidenced by a dearth of reports which mostly focus on the women. This is not to say that all women, and particularly former domestic workers in the Middle East, return with nothing to show for their time away. The respondents shared a few cases of progress made by some female returnees, but these were few and far between.

Apparently, the disparities in payment are not only prevalent as between the male and female workers. Rather, according to a focus group discussion with returnees from the Middle East, the disparities are also witnessed among workers of different nationalities regardless of one's skills and experience.<sup>59</sup> The narration in the case of Prudence Nandawula cited above affirms that her fellow domestic workers from the Philippines were earning USD 540 in monthly wages which is four times more than the USD 135 she was receiving. This points to the fact of discrimination even within the same category of work and workers – domestic work by female workers. Thus, by paying more to some nationalities and not others, there is inequality even within the same gender.

## Violence against women

There are also aspects of violence against women (VAW) suffered by female domestic workers. Notably, the appreciation of VAW as a serious human rights violation has been gradual, and was indeed not understood as a human rights issue until the mid-1980s. As such, the term 'violence' does not even appear in the 1979 draft of the CEDAW. It was not until January 1992 that the CEDAW Committee adopted General Recommendation No. 19 on VAW that the term 'violence' was defined in international human rights law for the first time.

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<sup>57</sup> Interview with a former employee in the Middle East, Miida K, on 24 May 2020 in Kampala.

<sup>58</sup> Article 11(9), *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), 1979.

<sup>59</sup> Focus group discussion with 3 Ugandan returnees from the Middle East, on 23 May 2020.

According to the CEDAW Committee, gender-based violence (VAW) is violence that 'is directed against a woman because she is a woman or that affects women disproportionately.'<sup>60</sup> The definition of VAW was later certified in the 1993 UN General Assembly's Declaration on the Elimination of Violence against Women (DEVAW). With these two documents, the international community made it unmistakably clear that every form of VAW constitutes discrimination against women, as defined in Article 1 of the CEDAW,<sup>61</sup> and importantly requires State Parties to try to eliminate it by all appropriate means.

It is important, at this stage, to contextualise VAW in Uganda. Generally, there are high rates of VAW in Uganda. For example, the 2011 Uganda Demographic Household Survey (DHS) indicated national prevalence rates of 56% for physical violence, 27.7% for sexual violence and 42.9% for spousal emotional violence. The most recent DHS data from 2016 indicates that 50% of women in Uganda who have ever been in a partnership have experienced physical or sexual forms of intimate partner violence (IPV) at some point in their lifetime. Critically, 30% of women who have ever been in a partnership reported having experienced IPV (physical and/or sexual) within 12 months of survey participation.<sup>62</sup> Further, in Uganda, one in five women (or 22%) have suffered sexual violence. In the twelve months preceding the DHS in 2016, 13% of women (and 4% of men) reported an experience of sexual violence.<sup>63</sup> Additionally, VAW is not only high but, as the DHS data shows, it is also widely normalised with, for instance, 58% of women and 44% of men accepting intimate partner violence as a private matter. Many Ugandans believe that VAW is only a crime in the most extreme cases of physical assault.<sup>64</sup>

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<sup>60</sup> CEDAW General Recommendation No. 19: *Violence against women*, 1992, at para. 6. According to the General Recommendation VAW further refers to 'acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty'.

<sup>61</sup> Article 1 of CEDAW reads: 'the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field'.

<sup>62</sup> Uganda Bureau of Statistics (UBOS), *Uganda Demographic and Health Survey 2016*, 2018, available at <<https://dhsprogram.com/publications/publication-FR333-DHS-Final-Reports.cfm>> on 15 December 2020.

<sup>63</sup> United Nations Population Fund (UNFPA), *Evaluation of UNFPA support to the prevention, response to and elimination of gender-based violence and harmful practices (2012-2017): Uganda case study*, January 2018, 8, available at <<https://www.unfpa.org/admin-resource/corporate-evaluation-unfpa-support-prevention-response-and-elimination-gender-based>> on 15 December 2020.

<sup>64</sup> Global Challenges Research Fund, *Uganda- Gender Based Violence Policy Briefing*, April 2018, accessed April 14, 2020, 2, available at, <<http://noneinthree.hud.ac.uk/wp-content/uploads/2018/06/>

Even at another level outside of marriage and the family, young girls in school have also been subjected to various forms of VAW. Reporting to the CEDAW Committee in 2010, the Government of Uganda admitted that sexual and gender-based violence ‘...remains both a serious human rights and public health issue...[w]omen are subjected to different forms of gender-based violence, including . . . defilement [and] rape.’<sup>65</sup> In fact, the Uganda Police ranked defilement as the most reported sex-related crime in Uganda for the year 2014 and 2015.<sup>66</sup> According to Uganda’s National Adolescent Health Strategy (2011-2015), girls aged 15 to 19 are sexually abused about three times more often than boys the same age, while young women aged 20 to 24 are sexually abused over four times as often than young men the same age.<sup>67</sup> Sexual abuse of girls is so widespread in the country that the Ministry of Education and Sports (MoES) itself has deemed it ‘an urgent matter of national importance.’<sup>68</sup>

With such a context in mind, one may argue that VAW in Uganda is so normalised that Ugandan women who have been part of this culture should not complain much when they experience it elsewhere in the world. However, raising this set of facts here is by no means an affirmation to this contention. Rather, my intention in reproducing them is simply to emphasise the point that VAW is still a challenge. Its victims suffer immense consequences that may include shock, fear, anxiety, guilt, emotional detachment and mental replays of the assault.<sup>69</sup> Indeed, many female domestic workers have reportedly committed suicide as a result of the grievous abuse suffered at the hands of their employers in the Middle East.

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Uganda-policy-briefing-Apr18.pdf> on 15 December 2020.

<sup>65</sup> Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by State parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women: *Combined fourth, fifth, sixth and seventh periodic report of States parties*, 25 May 2009, CEDAW/C/UGA/7, para. 165, available at, <<https://digitallibrary.un.org/record/695260?ln=en>> on 15 December 2020.

<sup>66</sup> Uganda Police, *Draft annual crime report 2015*, at 34, available at <<https://www.upf.go.ug/publications/>> on 15 December 2020.

<sup>67</sup> Ministry of Health, *The National Adolescent Health Strategy (2011-2015)*, 2011, at 3. (‘21.3% of females aged 15-19 and 40.9% of those between 20-24 years had experienced some form of sexual violence. Whereas sexual violence in males was registered as 7.4% in those aged 15-19 and 9.1% for those aged 20-24’).

<sup>68</sup> Ministry of Education and Sports, *National Strategy for Girls’ Education (NSGE) in Uganda (2015-2019)*, November 2013, 14.

<sup>69</sup> Centers for Disease Control and Prevention (USA), ‘Preventing sexual violence,’ available at <[https://www.cdc.gov/violenceprevention/sexualviolence/fastfact.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fviolenceprevention%2Fsexualviolence%2Fconsequences.html](https://www.cdc.gov/violenceprevention/sexualviolence/fastfact.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fviolenceprevention%2Fsexualviolence%2Fconsequences.html)> on 15 December 2020.

Under this conceptualisation, all the three cases highlighted in the previous section exhibit different forms of VAW suffered by Ugandan domestic workers: physical abuse through beatings and excessive work, sexual abuse in the form of rape and sexual assault as well as psychological abuse through denial of contact with the outside world as well as subjection to compulsory medical tests (HIV and pregnancy tests specifically).

### The Kafala sponsorship system: An enabler of violence against female Ugandan domestic workers?

The *Kafala* sponsorship system emerged in the 1950s as a sponsorship system to regulate the relationship between employers and migrant workers in such a way that a migrant worker's immigration status is legally bound to an individual employer or *kafeel* (sponsor) for their entire contract period. The practice is operational in the Gulf Cooperation Council (GCC) countries where many Ugandan workers go.<sup>70</sup> According to this system, migrant workers cannot enter the country, transfer employment or leave the country for any reason without first obtaining explicit written permission from the *kafeel*. Often, the *kafeel* exerts further control over migrant workers by confiscating the workers' travel documents.<sup>71</sup> Working for someone other than one's sponsor is not foreseen in this system, and is punishable by law. Furthermore, in the duration of their contract, workers are prohibited from leaving the country or changing employers without the sponsor's permission. Workers who do otherwise are categorised as 'absconders' and, if arrested, are subjected to detention and/or deportation. Moreover, if they continue to stay in the country without valid papers, they face additional fines for overstaying their visa. The risk of being punished and repatriated for violating the labour or residence law is a constant concern for foreign migrants.<sup>72</sup> This situates the migrant worker as completely dependent upon their *kafeel* for their livelihood and residency. The power that the *Kafala* system delegates to the sponsor over the migrant worker has been likened to a contemporary form of slavery.<sup>73</sup> The *kafeel* meets their labour needs in the context of immense control and unchecked leverage over workers creating an environment ripe for human rights violations and erosion of labour standards.

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<sup>70</sup> These include Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates (UAE), Jordan and Lebanon. See Migrant Forum in Asia, *Reform of the Kafala (Sponsorship) System*, Policy Brief No. 2, at 1, available at <<https://mfasia.org/mfa-policy-briefs/>> on 15 December 2020.

<sup>71</sup> Migrant Forum in Asia, *Reform of the Kafala (Sponsorship) System*, 1.

<sup>72</sup> Sabine Damir-Geilsdorf and Michaela Pelican, Between regular and irregular employment: Subverting the *kafeel* system in the GCC countries, 8(2) *Migration and Development*, 2019, 155-175.

<sup>73</sup> Migrant Forum in Asia, *Reform of the Kafala (Sponsorship) System*, 1.

Under such circumstances, it is almost impossible to envisage a worker reporting abuse against their employer in a formal system. Clearly, the *Kafala* system makes migrant workers very vulnerable. It allows employers to retaliate against workers who attempt to flee abusive situations, rather than secure domestic workers' rights or their right to access justice. In fact, a worker who flees falls outside of the scope of the law, leaving them with little recourse for justice.

However, there have been attempts to reduce the harshness of the *Kafala* system on migrant workers. While countries such as Oman and Qatar exclude domestic workers from their labour laws, others like Kuwait, Saudi Arabia and the United Arab Emirates (UAE)<sup>74</sup> have enacted laws to offer some level of protection for the rights of domestic workers. Saudi Arabia, for instance, adopted a regulation in 2013 that grants domestic workers nine hours of rest in every 24-hour period — meaning that they work for up to 15 hours a day — with one day off a week, and one month of paid vacation after every two years. It suffices to note that even then, domestic workers' daily work limit almost doubles the eight-hour limit for other categories of workers in the same country. Similarly, Kuwait passed a law on domestic workers' rights in 2015 which grants domestic workers the right to a weekly day off, 30 days of annual paid leave, a 12-hour working day with rest, and an end-of-service benefit of one month's wages for each year worked. In the UAE, on 26 September 2017, the President, Sheikh Khalifa, issued Federal Law No. 10 of 2017 which is aimed at strengthening the legal measures for the protection of domestic service workers. These are commendable steps being taken in the direction of enhancing the protection of the rights of migrant workers.

#### **4 An examination of the legal framework on Uganda's expropriation of domestic workers to the Middle East**

This section examines the efficiency of the legal framework governing the arrangement for Uganda's expropriation of domestic workers to the Middle East, from international law, national legislation and bilateral agreements. It examines the extent to which the objectives underlying the construction of this framework meet the subjective needs and expectations of women seeking employment abroad especially in light of the challenges of VAW. In so doing, it aims to identify some of the issues both emerging and absent from the legal framework.

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<sup>74</sup> Migrant Forum in Asia, *Reform of the Kafala (Sponsorship) System*.

Uganda has a duty to protect its citizens from violence, including VAW. The Constitution obligates all organs and agencies of the state to respect international law and treaty obligations in ‘applying or interpreting the Constitution or any other law.’<sup>75</sup> Moreover, as a member of the community of the international community of civilised states, Uganda recognises that the ‘fundamental human rights and freedoms of the individual are inherent and not granted by the state,’ which indicates that Uganda recognises all fundamental rights, including those not explicitly granted in the Constitution such as the prohibition on VAW.<sup>76</sup>

This constitutional framing of rights benefits from the fact that Uganda is a state party to CEDAW. While CEDAW does not explicitly mention VAW, the CEDAW Committee has determined that gender-based violence (including VAW) is ‘discrimination’ within the meaning of Article 1 of CEDAW, thus obliging State Parties to take measures to combat VAW.<sup>77</sup>

The obligation of the Ugandan Government extends to omissions to protect women from VAW as well as protecting women from VAW committed abroad. As the Committee on Economic Social and Cultural Rights has explained, ‘rights violations...can also occur through the omission or failure of states to take necessary measures arising from legal obligations.’<sup>78</sup> Therefore, Uganda’s obligation to protect its citizens from VAW is not limited by acts taking place overseas, especially if the expropriation of these young victims happens with the government’s blessing and facilitation.

Notably, ICRMW together with the Private Employment Agencies Convention discussed earlier provide a number of safeguards in terms of duties and responsibilities on the part of both the state and the private employment agencies. These buttress the realisation of the two treaties, which prohibit

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<sup>75</sup> Objective I(i), *Constitution of Uganda*, 1995. See also Objective XXVIII on Uganda’s foreign policy. The legal force of the national objectives and directive principles of state policy should be assessed in light of Article 8A, which states that ‘Uganda shall be governed based on principles of national interest and common good enshrined in the national objectives and directive principles of state policy,’ and requires ‘Parliament [to] make relevant laws for purposes of giving full effect’ to this.

<sup>76</sup> Article 20(1), *Constitution of Uganda*, 1995. See also Article 45 which states that ‘the rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned’.

<sup>77</sup> In fact, VAW is substantively expounded in the CEDAW Committee’s General Recommendations 19 and 26.

<sup>78</sup> Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No.14: The right to the highest attainable standard of health (Art.12)*, August 2000, at para. 49. See also CEDAW, *General Recommendation No. 24: Article 12 of the Convention (Women and Health)*, 1999, at para. 15.

discrimination of workers of whatever form<sup>79</sup> and mandate concerned states to provide adequate protection for and prevention of abuses of migrant workers. This is through enacting laws or regulations which provide for penalties, including prohibition of private agencies engaged in fraudulent practices and abuses.<sup>80</sup> They further require investigation of complaints of alleged abuses.<sup>81</sup> It is unfortunate, however, that Uganda has not yet signed the latter treaty and this affects the implementation of these guarantees negatively.

With regard to statutory law, Uganda has in place an Employment Act<sup>82</sup> which carries prohibitions against forced labour,<sup>83</sup> discrimination<sup>84</sup> and sexual harassment.<sup>85</sup> This law also bars engagement of persons in the business of operating a recruitment agency without a valid permit.<sup>86</sup> However, this particular clause excludes employment of domestic workers from its application.<sup>87</sup> As such, any would-be benefits and protections mandated upon recruitment agencies in procuring workers for expropriation would not cover domestic workers. Section 37 of the Employment Act, which prohibits illicit movement of migrants for purposes of employment, seems to offer the only protection. Therefore, the Act is inefficient because of its limited provisions on expropriated labour and specifically VAW. It also omits to provide for the creation of a competent authority responsible for labour externalisation and export. However, this is catered for in the Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations which were enacted in 2015. These rules confer responsibility on the MoGLSD through the External Employment Unit (EEU) to regulate all processes of recruiting employees in Uganda for purposes of working abroad. The rules further provide for the accreditation of all recruiting agencies.<sup>88</sup> While the Regulations complement the Employment Act by establishing an enforcement framework, they are deficient of sanctions as required by international law like the Domestic Workers Convention which has not even been ratified by Uganda.<sup>89</sup> This affects implementation.

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<sup>79</sup> Article 5(1), *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)*, 1990.

<sup>80</sup> Article 8(1), *ICRMW*.

<sup>81</sup> Article 10, *ICRMW*.

<sup>82</sup> Act No.6 of 2006.

<sup>83</sup> Section 5, *Employment Act* (Act No. 6 of 2006).

<sup>84</sup> Section 6, *Employment Act* (Act No. 6 of 2006).

<sup>85</sup> Section 7, *Employment Act* (Act No. 6 of 2006).

<sup>86</sup> Section 38 (1), *Employment Act* (Act No. 6 of 2006).

<sup>87</sup> Section 38 (3) (a), *Employment Act* (Act No. 6 of 2006).

<sup>88</sup> Part V, *Employment (Recruitment of Uganda Migrant Workers Abroad) Regulations*, 2005.

<sup>89</sup> Article 15 (c), *Domestic Workers Convention*.

Also notable is the Prevention of Trafficking in Persons Act<sup>90</sup> which among others criminalises recruitment, hire or transfer of persons for purposes of prostitution, sexual exploitation, forced labour and slavery. This legislation complements the above regulatory framework by preventing unlawful transfer of persons abroad. According to the Act, a person commits the offence of trafficking in persons if she or he recruits, hires, maintains, confines, transports, transfers, harbours or receives a person or facilitates the listed acts through force or other forms of coercion for the purpose of engaging that person in prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude, death bondage, forced or arranged marriage and is liable to imprisonment for fifteen years.<sup>91</sup>

It is a fact that there are many cases of young women who have been recruited for work in the Middle East but realised upon arrival that they were actually forced into slavery, sex work and domestic work. In this instance, recruitment agencies and their associations can be liable to the offence of human trafficking, as the intermediaries in this equation of labour expropriation. In fact, the offence can be even more grievous amounting to aggravated trafficking when the offender operates as a syndicate or on-large-scale. Such a situation would cover the mode of operation of these agencies which recruit *en masse*<sup>92</sup> or where the victim dies, becomes a person of unsound mind, suffers mutilation, gets infected with HIV/ AIDS or any other life threatening illness<sup>93</sup> as has been the case with many of the women who have travelled for work. That is not to say that all recruitment agencies intentionally violate the law on protection of migrant workers but they should have some responsibilities with regard to overall welfare of their recruits and to assist them to return home upon request. This is a possible role that can be played by the Uganda Association of External Recruitment Agencies (UAERA) together with EEU. For instance, six firms were suspended by the MoGLSD for failing to abide by Regulation 29(1) of the Employment (Recruitment of Uganda Migrant Workers Abroad) Regulations, 2005 which set limits to the chargeable administration fees payable by a migrant worker only after he or she has signed an employment contract with the firm. The Regulations also mandate recruitment agencies to refund the said fees upon failure to place the workers.<sup>94</sup>

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<sup>90</sup> Act No. 6 of 2009.

<sup>91</sup> Section 3, *Prevention of Trafficking in Persons Act* (Act No. 6 of 2009).

<sup>92</sup> Section 7 (c), *Prevention of Trafficking in Persons Act* (Act No. 6 of 2009).

<sup>93</sup> Section 7(j), *Prevention of Trafficking in Persons Act* (Act No. 6 of 2009).

<sup>94</sup> According to a statement by the Permanent Secretary of the MoGLSD, the suspended firms are: Middle East Consultants, Elite Placement Consulting, Eagle Supervision, Elite Winners Agency,



Despite the existence of internal laws in Uganda on employment standards, these can only do so much to guarantee the labour rights of workers abroad, and in this case, against VAW suffered by female domestic workers. Thus, in order to cure the gaps emanating from this challenge, Uganda has entered into bilateral arrangements with some Middle East countries aimed at protecting the rights of migrant domestic labourers especially women. Uganda has so far signed labour externalisation agreements with Jordan and Saudi Arabia. The next section begins with a review of a draft bilateral agreement on labour externalisation between Uganda and receiving states in the Middle East, which is then contrasted with a signed MoU between Uganda and the Kingdom of Saudi Arabia. The extent of focus on VAW is also analysed.

## Bilateral labour agreements between Uganda and Middle East receiving countries

From a perusal of the draft bilateral agreement,<sup>95</sup> it is clear from its preamble that there is emphasis on a fair, safe and healthy working environment in compliance with the ILO standards. The main text carries a clause that mandates the establishment of a mechanism for ensuring the protection of the basic rights and safe working conditions of Ugandan workers and to enhance the enforcement of their rights, through for instance conclusion of employment contracts.<sup>96</sup> It stipulates that there will be an employment contract which shall indicate the parties to the contract, contract period, probationary period, procedure of terminating the contract, wages to be paid, the employer as being responsible for a round trip ticket of a worker to and from the receiving state, medical care provided by insurance coverage, a dispute settlement procedure and drafting of the agreement in both English and Arabic.<sup>97</sup> For effective oversight by the Ministry of Labour, the said contracts should be issued in Arabic and English in four original copies; one for the employer, the worker, the Ministry of Labour of the specific receiving state and the Uganda Ministry of Labour.<sup>98</sup>

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Spotlight International and High Ground International Ltd, <[https://mglsd.go.ug/statement-on-the-suspension-of-6-labour-export-firms/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=statement-on-the-suspension-of-6-labour-export-firms](https://mglsd.go.ug/statement-on-the-suspension-of-6-labour-export-firms/?utm_source=rss&utm_medium=rss&utm_campaign=statement-on-the-suspension-of-6-labour-export-firms)> on 15 December 2020.

<sup>95</sup> The text of the Bilateral Agreement between the Republic of Uganda and the receiving State, concerning the recruitment and employment of Ugandan Migrant workers (as approved by the Solicitor General). A hard copy was accessed from the MoGLSD.

<sup>96</sup> Articles 1, 2 and 5(3), Bilateral Agreement between the Republic of Uganda and the receiving State.

<sup>97</sup> Article 5(6), Bilateral Agreement between the Republic of Uganda and the receiving State.

<sup>98</sup> Article 5(7), Bilateral Agreement between the Republic of Uganda and the receiving State.

Additionally, the generic text of the draft mentions the need to ensure safe working conditions for Ugandan workers and respect for internationally recognised rights of migrant workers including; freedom from forced labour, protection from unlawful confiscation of passports, freedom from restriction of movement, right to prompt and correct wages and freedom from any form of physical or sexual abuse.<sup>99</sup> The employer should provide the Ugandan workers with an insurance cover for life, accidents, health and travel. In case of the Ugandan worker's death, the employer has to repatriate the body to the worker's home country and the employer should bear all the Ugandan worker's travel-related expenses to their home country upon expiry of the contract.<sup>100</sup>

On the side of remedies, the generic provisions direct concerned states to institute necessary legal procedures against perpetrators of illegal employment within their jurisdiction. Lastly, the Ministry of Labour of the specific receiving state is obliged to provide Uganda with details concerning the labour market, demand and a list of employers. The same ministry is also obliged to provide the contact information of employers of all Ugandan workers upon placement in employment.<sup>101</sup>

All in all, this generic model provides a good basis upon which Uganda can design an agreement honed to fit the specific needs of its migrant workers and the receiving countries. However, as a draft, it puts little emphasis on sanctions in case of wrongs committed by employers. Similarly, whereas it includes a reference to international human rights or labour guarantees, it should be remembered that most of the Middle East countries have not signed the pertinent ILO labour conventions namely, the Domestic Workers Convention, Private Employment Agencies Convention and the ICRMW. They have not ratified the CEDAW either.

## The Uganda-Saudi Arabia Labour Expropriation MoU

On 5 July 2015, Uganda signed an MOU with Saudi Arabia with a target of recruiting 1,000,000 domestic workers to Saudi Arabia for five years. The agreement set the minimum wage for this category of workers at 700 Riyals (approximately USD 200) a month, which is fairly good in comparison to the local rate offered in Uganda but much lower than the minimum set for

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<sup>99</sup> Article 7.

<sup>100</sup> Article 8.

<sup>101</sup> Article 5 (1) and (2).

Bangladeshi, Filipino and Indian domestic workers.<sup>102</sup> Further, the agreement set a maximum eight-hour working day with paid overtime allowances and prohibited deductions from the workers' salaries. In addition, the workers would receive 'other benefits.' It also required employers to provide food, medical care and shelter and an off day each week. Moreover, the employer had to provide a 'return ticket, decent accommodation, health insurance and transportation to and from work.' Employers were also required to facilitate the issuance of exit visas 'for repatriation of workers upon contract completion or in emergency.'

Uganda was charged with providing qualified workers for the available jobs; train Ugandan employees about Saudi law, morals and ethics; and set up a joint technical committee to ensure compliance with the terms of employment. These obligations implied that the Ugandan Government had in place a coordinating unit to oversee the enforcement of relevant laws/agreements, a task that would include monitoring the activities of recruitment agencies.

On the other hand, the obligations of the host country included oversight of the welfare of the workers according to international law. The agreement also applied to Ugandans who had gone to Saudi Arabia prior to the signing of the MoU.

While the agreement received little attention in Saudi press, Ugandan media coverage indicated an optimism in Ugandan officials' expectations of the employment conditions in Saudi Arabia. According to the MoGLSD official, Muruli Mukasa, the MoU was signed 'to guarantee the protection of the rights and promotion of welfare of immigrant workers in view of the experience of uncoordinated and illegal movement of workers out of the country.'<sup>103</sup> Mukasa promised further that, 'the agreement will ensure that all Ugandans employed as domestic workers abroad are respected.'<sup>104</sup>

On the face of it, the agreement seemed well-articulated in as far as advancing both the human rights and labour rights of Ugandan workers in Saudi Arabia. This is because it explicitly provided for the rights of workers, while at the same time establishing duties on the part of Saudi Arabia. However, it had

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<sup>102</sup> Sabine Damir-Geilsdorf & Michaela Pelican, Between regular and irregular employment: subverting the *kafala* system in the GCC countries, *Migration and Development*, 8:2, 2019.

<sup>103</sup> Vision reporter, 'Gov't secures 3,000 jobs for Ugandans in Saudi Arabia' *New Vision*, 25 July 2015, <<https://www.newvision.co.ug/news/1331150/gov-secures-jobs-ugandans-saudi-arabia>> on 15 December 2020.

<sup>104</sup> Vision reporter, 'Gov't secures 3,000 jobs for Ugandans in Saudi Arabia' *New Vision*, 25 July 2015, <<https://www.newvision.co.ug/news/1331150/gov-secures-jobs-ugandans-saudi-arabia>> on 15 December 2020.

a few gaps such as the lack of clarity on what the ‘other benefits’ amounted to. This gave leeway to employers to either provide or withhold them. It also lacked guidance on the steps that should be taken in the case of the death of a worker. At the same time, employers still retained the power to issue and refuse to issue exit visas, which offered employers a lot of discretion with limited control from the receiving state.

Despite the good intentions of the wording in this MoU, there was really no enforcement structure to assure some aspects such as timely payments to workers or protection from abuse. Therefore, the MoU was open to mischief. Unsurprisingly, shortly after the MoU was signed, Ugandan media was awash with harrowing tales of abuse of Ugandan women working abroad. Hence, the Ugandan Government on 22 January 2016, banned domestic labour export to the Middle East countries. In the words of Ugandan journalist, Yasin Kakande, who worked in the region for a decade,

the Uganda-Saudi Arabia migrant labour deal was bound to end in controversy because of the large-scale maltreatment of immigrant workers in the Middle East. By signing the agreement, Uganda went against the tide, because many countries had stopped sending migrant workers to certain Middle East states.<sup>105</sup>

Thus, while the objectives of the MoU were honourable by emphasising the welfare of Ugandan migrant workers, they were let down by the lack of an enforcement mechanism. From the discussions above, it can be deduced that the legal and policy framework in place, including the bilateral agreements were largely inefficient in meeting the subjective needs and expectations of women seeking justice as a result of VAW. The Minister for Youth, Evelyn Anite, validated this deduction by her statement below:

The bilateral agreement was fair and offered a good opportunity for the unemployed youth. [But] I think someone has not been doing their job and the conditions of the agreement have not been respected. The people in charge should explain to the country what went wrong.

Since then, attempts have been made to remedy this situation in Uganda and Middle East. Such attempts include introduction of an online monitoring system that is used to manage the recruitment process (*Musaned*) and the establishment of labour dispute and settlement centres in several cities of Saudi Arabia manned by judges that levy hefty penalties for employers who violate

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<sup>105</sup> It is instructive to note that by the time Uganda entered into the said agreement, other countries such as Philippines and Ethiopia, which were former major exporters of domestic workers to the Middle East, had terminated their agreements on grounds of mistreatment.

employees' human rights.<sup>106</sup> Other initiatives encompass the establishment of a human rights department at the Domestic Centre of the Ministry of Labour in Saudi Arabia; establishment of call centres to respond to labour complaints; establishment of reception centre with medical facilities in major cities to care for workers who are unwell; compulsory provision of mobile phones to workers; provision of return air ticket by the Saudi Arabia to returning workers who are compelled to leave the country and the compulsory opening of bank accounts for all migrant workers and payment of wages through the banks.<sup>107</sup>

The other countries in the Middle East have also strengthened their labour laws for the protection of workers' human rights. It is reported that several countries in the region have joined cross-regional consultative processes, such as the Abu Dhabi Dialogue, designed to prevent illegal recruitment, promote worker welfare and develop a framework to manage labour migration.<sup>108</sup> Additionally, the Governments of Iraq, Jordan, Lebanon and Saudi Arabia have voluntarily entered into various international agreements or treaties that are relevant to understanding the scope of protection obligations. All of these governments have ratified a series of critical treaties, including: The UN Convention against Transnational Organised Crime and its Protocol on Trafficking in Persons; the ILO Convention on Forced Labour as amended by the Abolition of Forced Labour Convention; and the ILO Convention on the Worst Forms of Child Labour. Jordan and Saudi Arabia have ratified the Slavery Convention (1926), and Iraq, Jordan and Lebanon have ratified the International Convention on Civil and Political Rights. Moreover, all the key receiving countries have ratified the CEDAW. Notably however, neither of the mentioned states has ratified the Private Employment Agencies Convention or the Domestic Workers Convention. This is detrimental to the protection of labour rights of migrant workers employed in the private homes of individuals and most especially women who are most vulnerable to VAW.

The irony, though, is that Uganda does not have embassies in most of the countries in the Middle East and yet this is a high destination region for labour externalisation. The country has diplomatic missions in only three of

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<sup>106</sup> Musaned is an integrated electronic system initiated by the Ministry of Labour and Social Development of Saudi Arabia to facilitate procedures for the recruitment of domestic workers and to increase the level of protection of the rights of all parties. See Rashid Hassan, 'Saudi Arabia's Musaned platform makes e-visa easy for domestic workers' Arab News, 7 March 2019, <[www.arabnews.com/node/1462711/saudi-arabia](http://www.arabnews.com/node/1462711/saudi-arabia)> on 15 December 2020.

<sup>107</sup> Clyde and Co LLP, 'Employment and Labour Law in Saudia Arabia', [www.lexology.com/library](http://www.lexology.com/library), accessed 12 September 2020.

<sup>108</sup> Samantha McCormack, Jacqueline Larsen and Hana Husn, 'The other migrant crisis: Protecting migrant workers against exploitation in the Middle East and North Africa' Walk Free Foundation and International Organization for Migration, 2015, 32.

the regions' countries: UAE, Saudi Arabia and Qatar. Other high destination countries, including Jordan, Kuwait and Oman lack the same.<sup>109</sup> Even where they exist, such embassies are often limited in capacity with calls for their upgrading in order to enable them to execute the demand for services by Ugandans working there.<sup>110</sup> The absence of Ugandan embassies in most of these countries means that there is no governmental supervisory agency to which Ugandan migrant workers can register with upon arrival nor refer to in case of need. It also implies that there is no external agency to oversee enforcement of the signed bilateral agreements on labour expropriation between Uganda and the recipient countries in the Middle East.

Through the MoGLSD, Uganda is managing the expropriation of labour through registering and vetting labour recruitment agencies, terminating the licenses of agencies that are non-compliant with regulations and screening of persons entering and leaving the country. The Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations, 2005 outlines grounds for suspension or revocation of a licence. Those most relevant to VAW include misrepresentation.<sup>111</sup> This applies in instances in which workers are forced to take up employment other than that applied for where they may be subjected to VAW; coercing workers to accept prejudicial arrangements in exchange for certain benefits that rightfully belong to the workers;<sup>112</sup> or recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of Uganda.<sup>113</sup> The EEU also undertakes the repatriation of survivors of human trafficking. It should be noted that the prevention and response to gender-based violence (and VAW in particular) of female workers abroad requires more government interventions such as establishing mechanisms for quick response to calls for help.

Other interventions under development include steps to amend the current Employment Act of 2006. The Employment Amendment Bill No. 30 of 2019 proposes several ways to regulate recruitment and ensure protection of migrant workers abroad. The Bill proposes that a recruitment agency shall undertake

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<sup>109</sup> In some of these countries, desperate Ugandans looking for assistance in the face of harassment by their employers resort to missions of other African countries for example Kenya. Such was the case in Oman where a maid on the run sought refuge from a Kenyan Mission. See Robert Mugagga, '29-year-old Ugandan maid flees from Oman' Daily Monitor, 18 August 2016.

<sup>110</sup> See, for instance, Parliament of the Republic of Uganda, 'Upgrade UAE Mission, MPs asked,' 2 November 2018, available at <<https://www.parliament.go.ug/news/2873/upgrade-uae-mission-mps-asked>> on 15 December 2020.

<sup>111</sup> Section 19 (f), *Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations*, 2005.

<sup>112</sup> Section 19(s), *Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations*, 2005.

<sup>113</sup> Section 19(x), *Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations*, 2005.

due diligence on an employer before arranging the placement of an employee. This is particularly important to ensure that employers notorious for VAW and other forms of abuse against employees are not allowed to take on new workers. Additionally, recruitment agencies are obliged to maintain a database of its employees. The Bill also restricts the types of persons and agencies that may engage in external recruitment. Individuals whose licences were cancelled for any reason are ineligible just as it is for persons convicted of the crime of trafficking in person. The amendment also provides for sanctions for failure to comply, both fines and imprisonment. This provides an avenue to strengthen the implementation of employment law generally in regard to migrant workers.

The country is also in the process of enacting an Externalisation of Labour Bill and the Anti-Slavery Bill. These are before the floor of Parliament and aim to buttress the existing efforts to regulate the labour export industry. For instance, the former proposes to streamline labour export by strengthening procedures for licensing of recruitment agencies and imposing obligations for them to continually monitor conditions of placed workers. It also provides for the repatriation of Ugandan migrant workers, a key aspect in ensuring that abused workers do not stay in strenuous work conditions just because they lack adequate travel funds back home to Uganda.

Premised on these new developments and on the understanding that conditions of work for migrant workers will be improved, new agreements with better protection mechanisms have since been concluded between Uganda and countries in the Middle East focusing on stronger standards of protection of rights of migrant workers and entrenching additional provisions protecting female workers. Resultantly, the ban for recruitment of labour under the agreement with Saudi Arabia was lifted on 10 March 2017. Further, a new agreement, the General Labour Recruitment Bilateral Agreement was signed on 31 December 2017 between the two countries to extend recruitment to professional workers.

## 5 A case for returnees: Any hope for recourse?

They never tell them that the only feasible way to report abuses or assaults would be to escape from the employer, thereby becoming an 'illegal' or undocumented migrant who would be hunted down by authorities. (*Yasin Kakande*)<sup>114</sup>

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<sup>114</sup> Gloria Nakajubi, 'Uganda bans deployment of workers to Saudi Arabia' Mail & Guardian, 3 March 2016 <<https://mg.co.za/article/2016-03-03-uganda-bans-deployment-of-workers-to-saudi-arabia/>> on 15 December 2020.

Despite the presence of bilateral agreements between Uganda and some Middle East countries, the absence of enforcement mechanisms has hindered their efficiency. Consequently, such migrant female domestic workers are largely left unprotected. The question then is, what next upon their return home? Is there any hope for recourse under the Ugandan justice system considering that the wrongs in question were committed outside Uganda's jurisdiction?

#### Case four: Resty Ramisi

This last case is the author's own analogy, synthesising facts relayed to her from several sources. These facts bring into perspective the challenges faced by many female returnees from the Middle East including family rejection.

The husband of Resty Ramisi, a mother of four, will not allow her to return to her marital home after working as a domestic servant in Saudi Arabia. She escaped her abusive working conditions in the middle of the night and ended up at a police station from where she was taken to a holding centre. Without her passport, which had been confiscated by her employer on her arrival, she spent nearly six weeks waiting to be flown back to Uganda. But back home, with the news of the abuse and rape suffered by women working abroad, Resty's husband does not want anything to do with her. "He thinks I was also sexually abused and has told me not to return to his house," says Resty.

Has Resty suffered any wrongs? Certainly yes. Can she seek justice?

With a strong constitutional grounding, and considering that Uganda's justice system is fairly well-rated within the region,<sup>115</sup> Resty should ideally have a good chance of attaining justice. Article 50 of Uganda's Constitution states that any person claiming that a fundamental right guaranteed under the Constitution has been infringed 'is entitled to apply to a competent court for redress.' The state has a related obligation to provide institutions that protect human rights, such as the criminal justice system, with adequate resources to function effectively.<sup>116</sup> Moreover, Uganda has repeatedly assumed an obligation to provide access to an effective remedy under international human rights instruments.<sup>117</sup>

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<sup>115</sup> Uganda is ranked 68th in the world, 9th in Africa and 1st in East Africa in accessibility and affordability of civil justice, and 1st in East Africa and 12th in Africa in effectiveness and criminal investigations, adjudication and correctional systems. See JLOS, *Fourth Strategic Development Plan (SDP IV) 2017-2021*, at 19.

<sup>116</sup> Objective V(i), *Constitution of Uganda*, 1995.

<sup>117</sup> Article 2(3)(a), *International Covenant on Civil and Political Rights (ICCPR)*, 1966. Article 25 (a), *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)*, 2003. Article 14(1), *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984. Article 2(c), *CEDAW*.



The criminal justice system in Uganda is facilitated by the Justice Law and Order Sector (JLOS). JLOS mainly comprises the Judiciary, police, prisons services, Directorate of Public Prosecutions, local council courts, MoGLSD, Judicial Service Commission, Ministry of Internal Affairs, Probation Services, Ministry of Justice and Constitutional Affairs and the Ministry of Local Government.<sup>118</sup> These are tasked with ensuring access to justice and more specifically criminal justice collectively. The access to criminal justice is a basic principle of the rule of law and its promotion enables people to exercise their rights and seek redress.

In order to improve the criminal justice system and guarantee access to justice, JLOS has since 2000, undertaken four Strategic Investment Plans<sup>119</sup> which among its objects is to reduce crime incidences by promoting crime prevention and enhanced enforcement. As a result, Uganda Bureau of Statistics (UBOS) reported that in 2017, 86% of the adult population were aware of the right to seek redress while public confidence in the JLOS institutions increased from 26% in 2012 to 48% in 2017<sup>120</sup> and 59% in 2019.<sup>121</sup> On the other hand, the JLOS report notes that people can now access JLOS services within a 15-kilometre radius compared to 75 kilometres in 2010/11 and in its midterm report of 2016, JLOS reported that user satisfaction had improved to 72% from 59%.<sup>122</sup>

JLOS has equally made deliberate steps at eliminating case backlog through implementing a Case Backlog Reduction Strategy, which led to a reduction of 18% in 2018/19 from 21% in 2017 despite a 13% growth in case registration.<sup>123</sup> The sector's annual performance report 2018/19 indicates a steady progress in addressing its case backlog. It states that the average number of cases disposed of grew by 64% from 86,000 in 2011/12 to an average of 141,809 per year over a five-year period and peaked at 165,556 in 2016/17. The number increased by 5.5% in 2018/19 to 173,200<sup>124</sup> and as a result, 56,000 backlogged cases were disposed of reducing the case backlog to 18% of the total cases in the system.<sup>125</sup> The average length of stay on remand for persons charged with capital offences reduced to 10.4 months from 15 months in 2010/11 while the average time to process a forensic investigation reduced to 90 days from 210 days in 2010.

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<sup>118</sup> A Criminal Justice Baseline Survey of the Justice Law and Order Sector of Uganda - 2002.

<sup>119</sup> Strategic Investment Plan (SIP) I, II, III and IV.

<sup>120</sup> Uganda Bureau of Statistics, *National Governance, Peace and Security Survey*, 2017.

<sup>121</sup> JLOS, *Annual Performance Report 2018/19*.

<sup>122</sup> JLOS, *Annual Performance Report 2016/17*.

<sup>123</sup> JLOS, *Annual Performance Report 2018/19*.

<sup>124</sup> JLOS, *Annual Performance Report 2018/19*.

<sup>125</sup> JLOS, *Annual Performance Report 2018/19*.

Similarly, through the plea-bargaining initiative, over 1500 cases were disposed of leading to a reduction in pre-trial detainees as well as a reduction in the average length of stay on remand to under one year.

The report shows that the government recognises the importance of access to legal aid services in the administration of justice and notes that under the existing arrangement, 39.02% of the magisterial areas have access to state-funded legal aid services.

Notwithstanding the optimistic impression cast by JLOS reports, access to criminal justice for VAW victims remains elusive. Women still face huge obstacles in their quest for justice as highlighted by Amnesty International, which notes that only a small proportion of reported cases go to court and many of those fail to reach a conclusion.<sup>126</sup> Within a six-months period from January to June 2009, there was a 1.83% conviction rate for rape and 5.83% conviction rate for defilement cases.<sup>127</sup> During the time, 366 rape cases were reported, 109 were taken to court resulting into 2 convictions, 11 dismissals and 96 were pending.<sup>128</sup>

But the challenges of seeking justice are numerous. First is the elephant in the room, an aspect that many people in Uganda face - the disinclination to resort to legal remedies. Poverty, stigma, reprisals from partners and fear of being humiliated when sharing their abuse are among the obstacles that prevent many from seeking any sort of redress. Moreover, women who say that they have been raped often face rejection by their families and others.<sup>129</sup> For these reasons, 65% of the respondents in a study conducted by Amnesty International refused to contact the police or anyone else after a sexual assault.<sup>130</sup> Most cases of violence especially sexual violence go unreported especially where the abuse occurs in foreign lands. These pressures are worsened by the lack of a harmonised reporting mechanism, police incompetence in collecting evidence and the overstretched capacity in legal aid institutions. Similarly, there is no state-guaranteed medical help, legal aid or counselling for victims of VAW or even safe homes or state-owned shelters. Rather, the Ugandan Government has to rely

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<sup>126</sup> Amnesty International, *'I can't afford justice': Violence Against women in Uganda continues unchecked and unpunished*, 2010, <<https://www.amnesty.org/en/documents/AFR59/001/2010/en/>> on 16 December 2020.

<sup>127</sup> Amnesty International, *'I can't afford justice': Violence Against women in Uganda continues unchecked and unpunished*, at 34-35.

<sup>128</sup> Amnesty International, *'I can't afford justice'*, at 34-35.

<sup>129</sup> Amnesty International, *'I can't afford justice'*.

<sup>130</sup> Amnesty International, *'I can't afford justice'*.

on civil society to fill the gaps. Therefore, compensation to victims of violence committed abroad is hard to fathom.

In addition, the state only provides minimal resources for the criminal justice system which affects its efficiency. Seeing that the cost of VAW is considerably high at 0.35% of Uganda's GDP, the budget allocated to address it is not equivalent to the need.<sup>131</sup> As explained by the undersecretary at the MoGLSD, a budget of 165.73 billion Uganda shillings (USD 45 million) covering the entire sector is a drop in the ocean. 'The money is insufficient for the purpose. But we work closely with development partners to achieve our objectives. We rely heavily on off budget funding,' explains a MoGLSD official.<sup>132</sup> In fact, the MoGLSD has been castigated for opting for 'softer' interventions.<sup>133</sup>

The failure by the police force to specifically allocate money towards handling cases of VAW continues to strain all efforts. Of all the cases of GBV reported to the police, only 30% are handled to conclusion. This not only delays, but also denies the victims due justice and protection. At the same time, the budget does not make any provision for shelters, and yet these have been found to provide a safe haven for women experiencing life-threatening cases of VAW. Currently, the shelters are run by civil society organisations in a few districts.<sup>134</sup>

From the above, it is clear that more often than not, victims are left facing inadequate responses from the criminal justice system. With the prevalence of VAW coupled with the lack of government resources and political willingness to curb its spread, perpetrators rarely face justice. In light of this, the criminal justice system in Uganda is far from being a safe haven for these returnees. Resty's exposure outside Uganda will not protect her from the pressures that she now faces such as poverty and partner rejection. So back to the question, can the justice system in Uganda help Resty? The likely answer is, no.

Would the criminal justice system in Saudi Arabia have been able to help? That is even harder to say especially because of the employment set-up through

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<sup>131</sup> According to a study by the Centre for Domestic Violence Prevention, the cost of handling cases of VAW is considerably high at 0.35% of Uganda's GDP. Additionally, in another report by Care, it is mentioned that the overall costs of violence against women are comparable to state budgets for essential services. In Bangladesh, the cost of domestic violence at US\$2.3 billion (equivalent to 2.1% of GDP in 2010) was equal to the health and nutrition budget for the whole country in that year. It further mentions that in Zambia, the cost of gender-based violence at 2.27% of GDP or US\$473 million was comparable to the entire health budget for the country in 2016. See Care, *Counting the cost: The price society pays for violence against women*, March 2018, 15.

<sup>132</sup> Benon Kigenyi, 'Stakeholders argue that the 2017/18 Budget cannot bring down the increasing cases of GBV' *New Vision*, 16 May 2017, 11.

<sup>133</sup> 'Softer options' refers to extra-legal remedies such as counseling and mediation.

<sup>134</sup> HURINET-U, *A shadow report*.

the *Kafala* system. Access to justice for victims of VAW is significantly hampered by the absence of Ugandan embassies in most of the destinations for the migrant workers and in the absence of this, it would be no surprise if the majority of domestic workers fear to have any interaction with the justice system and avoid it altogether, an entirely reasonable fear. In light of this, it is hard to envisage that Resty, like many others, can attain justice for employer violence from her employer country or even their home country, Uganda.

## 6 Conclusion and recommendations

Uganda's labour expropriation scheme while a defensible tool for development as benefitting both individuals' economic well-being and the country's revenue and GDP, has had a turn for the worse when many of the female migrant workers suffered VAW while abroad. On average 3000 candidates are externalised to the Middle East every month and it is reported that there are over 140,000 Ugandans at work in the region. However, what started out as an honourable venture turned out to be a disaster when workers who had not long ago bid farewell to their families in search of brighter opportunities abroad followed this with harrowing cries of abuse and violence. Upon arrival, many found themselves trapped with abusive employers and forced to work in exploitative conditions, their plight hidden behind closed doors. The biggest victims were female domestic workers kept in the private homes of Arab families. Story after story highlighted the gross abuses suffered, worst of all being sexual violence.

This article has illustrated the experiences of female migrant workers in the Middle East within the current operation of international human rights standards. The gaps in national law and implementation both in Uganda and the receiving countries necessitates a number of steps to be taken in order to strengthen labour rights of these women and especially protection from VAW.

These include the strengthening of bilateral labour agreements to include stronger language on protection against VAW and sanctions to individual employers. The bilateral agreements should also restrict the application of the traditional *Kafala* system to Ugandan workers. Accordingly, a migrant worker should have the right to change employment without the permission of their first employer and without losing their legal status. Additionally, the agreements should eliminate the requirement of migrant domestic workers to secure the consent of their sponsors for exit visas to leave the country. In fact, some countries like Saudi Arabia are abolishing the system formally this year with introduction of new systems like Premium Iqama.

There is need for strong enforcement mechanisms to ensure equitable conditions of work for migrant workers. This requires the strengthening of the EEU within the MoGLSD in a number of ways. First, funds and human resources should be made available so that the ministry can second labour officers to Uganda missions in the Middle East. These labour attachés should also help in reviewing and verifying foreign principles including employment contracts. Secondly, the EEU should be capacitated to collect comprehensive and periodic data on migrant workers and monitor the activities of the recruitment agencies. In order to obtain compliance of recruitment agencies, the MoGLSD should only renew licences of the recruitment agencies that meet all minimum standards set out in the law. The agencies should also periodically submit reports of their compliance to the ministry. Third, the ministry should conduct mass media campaigns about the dangers of being deployed abroad by unregistered recruitment companies.

The government of Uganda should also ensure post-return support to victims of VAW including provision of refuge in safe homes or shelters for those who are rejected by families. Additional support should extend to provision of start-up financial costs as a means of helping returnees to re-establish themselves back into the Ugandan society. This support should be channelled through the MoGLSD to civil society organisations and other actors who have been providing shelters to victims in need.

The scope of responsibility for migrant work abroad should also stretch beyond the state and recruitment agencies to cover actors in the private sector. For instance, criminal liability should be extended to media houses for carrying job advertisements of employment that the ministry has not cleared and which are placed by unlicensed agencies. There should also be a strengthening of the criminal justice system at both ends which responds in a timely and adequate manner to reported cases of VAW. In the same regard, Uganda is strongly reminded of the need to ratify the Convention on Domestic Workers, and the Convention on Private Employment Agencies. This is particularly important because these two conventions provide sanctions and penalties for non-compliant agencies or employers and can be useful protective legal frameworks as Uganda's Parliament debates the Employment (Amendment) Bill 2019 as well as the Anti-Slavery and Externalisation of Labour Bill. It should also be mandatory that receiving countries should have also signed these treaties. It is only this that can assure Ugandan hopeful migrant workers of protection backed by legal obligations.