



An Equal Treatment for Domestic Workers: Qatari Law and International Law

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<https://doi.org/10.35516/law.v49i1.825>

Received: 21/12/2020

Revised: 18/8/2021

Accepted 7/9/2021

Published: 1/3/2022

Abstract

Objectives: This article aims at studying the rights and obligations of domestic workers under the Qatari Law No. 15/2017 Promulgating the Domestic Workers Law in comparison with the Domestic Workers Convention, 2011 (No. 189) issued by the International Labor Organization (ILO). It also aims at shedding light on the principle of equal treatment between domestic and regular workers, which is fully adopted by the International Convention.

Methods: This study follows a descriptive, analytical and comparative methodology. hence, the legal provisions were reviewed and analyzed, then compared at two levels: comparison between the provisions of the national law on the one hand and the International Convention on the other hand, and comparison between Qatari Law No. (15) relating to domestic workers and the Qatari Employment Law.

Results: The study reached some results, the most important of which is that Qatari law was and still excludes domestic workers from the ambit of the Employment Law; this in turn does not allow applying any of the provisions of the Employment Law to domestic workers, even if it includes a preferential rule. On the other hand, the International Convention aims at achieving equality between regular and domestic workers. The particular law that relates to domestic workers should only apply when it grants an advantage that is not given under Employment Law. That is to say, Employment Law must still be referred to as being the general law.

Conclusions: Qatari legislator should adopt International Convention No. 189, or at least adopt more of its provisions, in order to better approach the principle of equal treatment.

Keywords: domestic workers, Qatari law, international standards.

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المعاملة المتساوية لمستخدمي المنازل: القانون القطري والقانون الدولي

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ملخص

الأهداف: يهدف هذا البحث إلى دراسة حقوق والتزامات مستخدمي المنازل في القانون رقم (15)، لسنة 2017 المتعلق بمستخدمي المنازل في قطر بالمقارنة مع الأحكام الواردة في اتفاقية مستخدمي المنازل رقم 189 لسنة 2011 الصادرة عن منظمة العمل الدولية. كما يهدف إلى تسليط الضوء على مبدأ المعاملة المتساوية بين عمال المنازل والعمال العاديين، والذي أرسته الاتفاقية الدولية رقم 189.

المنهجية: اتبعت الدراسة منهجاً وصفيًا تحليليًا مقارنة، حيث تم استعراض النصوص القانونية وتحليل مضمونها، وبعد ذلك مقارنتها على مستويين: المقارنة بين أحكام القانون الوطني والاتفاقية الدولية من ناحية، ومن ناحية أخرى المقارنة بين القانون القطري رقم (15) الخاص بعمال المنازل، وقانون العمل القطري.

النتائج: توصلت الدراسة إلى مجموعة من النتائج، أهمها أنّ القانون القطري كان ولا يزال يستثني مستخدمي المنازل من نطاق تطبيق قانون العمل، الأمر الذي لا يجعل من الممكن تطبيق أي حكم من أحكام قانون العمل على مستخدمي المنازل عندما يتضمن هذا القانون أحكاماً تفضيلية. في حين تهدف الاتفاقية الدولية إلى المساواة بين العمال العاديين ومستخدمي المنازل، على أن يطبق القانون الخاص بهم عليهم بما يحقق مصلحة لهم لا تتحقق في قانون العمل الذي يجب أن يظل الشريعة العامة.

التوصيات: توصي الدراسة المشرّع القطري بتبني الاتفاقية الدولية رقم 189، أو على أقل تقدير تبني أحكاماً أكثر منها، بحيث يقترب أكثر من مبدأ المعاملة المتساوية.

الكلمات الدالة: عمال المنازل، القانون القطري، المعايير الدولية.

Introduction

In 2017, Qatar issued Law No. 15/2017 promulgating the Domestic Workers Law, the purpose of which is to afford legal protection for domestic workers in the country. At the international level, the International Labour Organization (ILO) issued the Domestic Workers Convention, 2011 (No. 189) with its supplementing Recommendation (201), which came into force in 2013. Up to the moment of writing this article, 33 countries have ratified the Convention, and none of them is within the Arab world (https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:2551460:NO (last accessed August 2021))

However, being a non-state party does not necessarily prevent benefiting from international regulation, in the sense that countries can optionally still adopt and include some of the international rules in their domestic laws. In this regard, it is to be noted that the global regulation of domestic workers' rights is based on equal treatment. Hence, domestic workers must enjoy the same rights and legal treatment as regular workers. Still, some other particular laws may confer upon domestic workers favorable treatment or additional protection. Therefore, this article argues that national laws should benefit from the Domestic Workers Convention, 2011 (No. 189), and adopt its rules as being more advanced in protecting domestic workers' rights, achieving equal treatment for all workers. This article raises the following questions; to what extent, the relevant Qatari laws are in line with the Domestic Workers Convention. What are the commonalities between both legal instruments? And what are the differences? How possible for the Qatari legislator to achieve better harmony between its national law and the Domestic Workers Convention.

The importance of this topic emerges from the fact that such a group of people is legally vulnerable; what is more, Qatar is a host to a large population of domestic workers, causing thereby the question about their legal status and rights as compared with relevant international standards to be timely and important.

This article aims to study the new regulation of domestic workers' rights in Qatar in comparison with the Convention, particularly with a view of the principle of equal treatment. Indeed, the Domestic Workers Convention is here used as a benchmark because it is the most recent and essential international instrument. This article attempts to address the rationale behind specific legal regulations for domestic workers and then explore how international standards can influence national law.

1. Background

This section tackles two issues; firstly, an overview of the laws which govern domestic workers nationally and internationally, then most importantly, the characteristics of international regulation of domestic workers' rights.

A. *The Need for Special Legal Regulation*

Domestic workers in Qatar are governed by Law No. 15/2017 Promulgating the Domestic Workers Law and are expressly excluded from the sphere of application of Employment Act No. 14/2004 (Art. 3/4 of the Employment Act No. 14/2004). Moreover, they were excluded from the application of the abolished Employment Act No. 3/1962 (Art. 6/5 of the repealed Employment Act No. 3/1962), which raises the question of the legal regulation of domestic workers' rights and obligations before the 2017 Act. It could be said that the Qatari Civil Code might apply during the period between excluding domestic workers from the sphere of application of Employment Acts and the issuance of the Domestic Workers Act (Abu AL-Amaiem, 2017).

It should be noted that the current Qatari Civil Code No. 22/2004 does not include regulation of the employment contract; the same applies to the abolished Civil Code No. 6/1971, which means that domestic workers were only subject to the general doctrine of contracting under the Civil Code, which in turn does not include any particular rules for wages, rest times, working hours and other issues that concern only workers. The rationale behind this trend is that there is one specific law which is the Employment Act 2004. Therefore, there is no need for duplication. However, as indicated, the Employment Act excludes domestic workers from its ambit, which means that domestic workers had no legal umbrella before 2017.

At the international level, an indication is made to the Domestic Workers Convention, 2011 (No. 189), along with its supplementing Recommendation No. 201*, which came into force in 2013 (KAWAR, 2014) and constitutes a particular legal

* It is worth noting that the Recommendation No. 201 is not binding to the contracting states; however, it is merely guidance for contracting

framework for the rights of domestic workers.

It took the International Labour Organization a long time to issue a convention that applies to one specific type of workers. This trend has been justified by the organization, as there is a huge social and economic value for domestic workers, besides their large numbers all over the world. Most of whom are vulnerable and thus require legal protection. Another justification relates to national employment laws, which generally exclude domestic workers from their ambit. Finally, most domestic workers are women and children; the Domestic Workers Convention comes as a continuation of the efforts of the ILO in protecting employed women and organizing child labor (International Labour Office, 2011); (KAWAR, 2014).

Therefore, before the Convention, domestic workers did not legally enjoy the status of workers, which means that they were not considered workers legally wise. However, they are now included in the labor market. (Blackett, 2018).

Also, it is argued that special laws should be issued and applied to domestic workers because regular employment laws are not designed for domestic workers and do not consider the distinctive nature of their work. Those laws may be too old and not advanced enough to satisfy the requirements of legal protection. Furthermore, the rules included under employment laws might not be practiced or enforced with regard to domestic workers (Islam et al., 2015). What is more, it is doubtful that the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 succeeded in affording legal protection to domestic workers ((KAWAR, 2014).

Most importantly, it is submitted that the employment relationship in the case of domestic workers is distinctive; they work in private rather than public environment, they are isolated, working under informal and precarious conditions where the level of dependency is higher than it is in regular employment relationships. In addition, migrant domestic workers suffer legal problems relating to the lack of understanding of the laws or the language of the countries they work in, where sometimes they are under threat of expulsion (Pape, 2016).

However, another opinion objects to framing a special law for domestic workers. The rationale behind this argument embodies the proposition that labor rights are human rights and should remain collective to serve their social goals. Further, there are no material differences between work in general and domestic work. Thus, there is no particular definition of employee, employer, and workplace, whether private or public. Besides, the nature of work performed is the same. Therefore, there is comparable value to both work in general and domestic work, which justifies not regulating the rights of domestic workers separately (Blackett, 2012).

In brief, creating a special legal regime for domestic workers is subject to debate.

B. Characteristics of International Regulation

There are some notable characteristics regarding international legal regulation for domestic workers; first, international regulation ensures all other international instruments must apply to domestic workers in harmony with the Domestic Workers Convention as far as these instruments grant more favorable protection (International Labour Office, 2011)*. Domestic workers, therefore, are part of the workforce and subject to all general international labor standards unless provided otherwise (BLACKETT,

states that help them specify the measures they should adopt to implement the provisions of the Convention.

* Art 3 of the 189 Convention provides “ 1. Each Member shall take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention.

2. Each Member shall, in relation to domestic workers, take the measures set out in this Convention to respect, promote and realize the fundamental principles and rights at work, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.....”

Art 4 provides “ 1. Each Member shall set a minimum age for domestic workers consistent with the provisions of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182), and not lower than that established by national laws and regulations for workers generally.....”.

2014). This trend is known as "positive discrimination." Positive discrimination means treating one person or a group of people favorably than others because they need protection. This can be the case with people with disabilities, children, and women. (<https://uk.practicallaw.thomsonreuters.com> / (last accessed August 2021).

To illustrate, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990 may apply to domestic workers. However, it is broader than the Domestic Workers Convention since it applies to all migrant workers, whether they are domestic or regular workers. Furthermore, all other international instruments related to human rights are applicable, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights 1966, the Convention on the Elimination of All Forms of Discrimination against Women 1979, and others.

In conclusion, the Convention does not adopt complete separation between regular and domestic workers; a special legal regime applies to them as far as it grants them favorable treatment to achieve equitable inclusion (Blackett, 2012), given the fact that they are marginalized and socially excluded. Article 3 of the Domestic Workers Convention requires all state parties to take measures to ensure the effective promotion and protection of the human rights of all domestic workers. The Convention expressly connects its provisions to the Declaration of Human Rights and other core human rights conventions issued by the United Nations. (International labor office, C189 & R201 at a glance, 2011).

It is worth noting that Qatar is not a party to both the Domestic Workers Convention 2011 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1990. Moreover, none of the Arab states is a member of the Domestic Workers Convention (<https://www.ilo.org>). However, Qatar has ratified the 1966 Covenants and the 1979 Convention (Discrimination against Women). Also, Qatar has ratified Forced Labour Convention, 1930 (No. 29), Abolition of Forced Labour Convention, 1957 (No. 105), Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Minimum Age Convention, 1973 (No. 138), and Labour Inspection Convention, 1947 (No. 81).

Secondly, the Domestic Workers Convention applies to migrant and local domestic workers. However, some provisions are designed only for migrant domestic workers (International Labour Office, 2011). For example, the provisions concerning repatriation, social security contributions, inspection visits to workplaces of domestic workers, and diplomatic immunity for employers are all matters that concern migrant workers (BLACKETT, 2012). This trend is not followed under Qatari Act; since all domestic workers are migrants, there are no Qatari domestic workers. It is worth indicating that maids and drivers exist in every Qatari house for cultural, social, and economic reasons. The result of which, domestic workers in Qatar are indeed a widespread phenomenon.

Thirdly, international regulation by international treaties ensures that domestic workers are no different from other workers (BLACKETT, 2018), referring to employment acts in several aspects, such as minimum wages, rest time, leave time, and working hours. Here, the rules contained under the employment act should be the minimum standards for domestic workers, where the rules of the particular laws are designed to satisfy one of two primary purposes; first, to raise minimum protection, second, to deal with issues that only concern domestic workers (International Labour Office, 2011). Art 19 of the Domestic Workers Convention provides "This Convention does not affect more favorable provisions applicable to domestic workers under other international labour Conventions".

Although Qatari Employment Act has expressly excluded domestic workers from the scope of its application, Qatari Domestic Workers Act 2017 refers to it in Articles 18 and 19, concerning dispute resolution between domestic workers and employers (Art. 18) and compensation for work injury (Art. 19). As for all other matters, the only applicable law is Law No. 15/2017.

To sum up, the Domestic Workers Convention, 2011 aims at granting favorable legal treatment to domestic workers; it ensures that the rules embodied under employment laws should constitute the minimum standards of legal protection.

An attempt will be made in the following section to evaluate the adequacy of Qatari Domestic Workers law rules in achieving legal protection.

2. Legal Regulation Of Domestic Worker's Rights And Duties

The Domestic Workers Convention and Qatari Act are consistent with the definition of "domestic work" and "domestic

worker." The Convention provides that the domestic worker is in an employment relationship with the employer, where the Qatari Act asserts the existence of legal dependency, which in turn reflects an employment relationship. The domestic worker is defined under Art 1/b of the 189 Convention as "any person engaged in domestic work within an employment relationship." And defined under Qatari Law "natural person who performs domestic work under the management and supervision of the employer for wages, such as the driver, Nursemaid, cook, gardener and alike."

However, in practice, unlike the Domestic Workers Convention, the concept of domestic workers under the Qatari Act is confined to live-in workers, non-nationals, or workers who work full time for only one employer. Domestic work under both regulations includes work performed in households, but unlike the Qatari Act, it is foreseen under the Convention that the household is an agency that employs domestic workers by making them available to households, which reflects non-live-in part-time domestic workers (International Labour Office, 2011). Domestic work is defined under Art 1/a of the Convention as "work performed in or for a household or households". It is defined under the Qatari Law as "works performed for the service of the employer or the people who live with him". The Convention does not apply to self-employed domestic workers (Pape, 2016), and nor does Qatari Act.

Legal protection of domestic workers under the Qatari Act in comparison with the Domestic Workers Convention is discussed under the following headings:

A. Pre-Contracting and Contracting

Qatari Act stipulates that a written contract must recruit domestic workers, and the worker must have a copy. However, the official language of the contract is Arabic, and it is optional to have the contract in another language (Abu AL-Amaiem, 2017). The Convention, however, does not stipulate a written contract but instead insists on the right of the worker to be informed about the terms and conditions of the contract. Written contracts may be one of the means that the right to be informed is achieved.

Art 7 of the Convention provides "Each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements, in particular:....". The Recommendation {Para 6} provides for Assistance for understanding the terms and conditions, communication of terms and conditions, model contracts. Art 3 of the Qatari Law provides "no domestic worker can be recruited unless by a contract of three copies approved by the administration, each party is eligible to keep a copy, one copy is kept by the administration. The contract must be drafted in the Arabic language; however, it may be accompanied by a translation in another language. If there is a discrepancy between the Arabic version and the translated version, the Arabic one prevails.....".

If however, domestic workers cannot read and write, written contracts may not guarantee full knowledge about their rights and duties. There should be other means to achieve their legal right to be informed under national law.

Both the Domestic Workers Convention and Qatari Act enumerate the items that should be included in the work contract; names and address for both parties, date of the contract, type of work, probation period, duration of the contract, wages in terms of the time of payment and method are all provided for under both. The list under Qatari Act is not exclusive, with the last sentence of Article 3 of the Qatari Act stating, "any other rules or data provided for under this Act." Therefore, other items can be added to the terms of the contract if tackled under the Act. However, the Convention is more detailed in the items that should be included in the contract; most of them are provided for under the Qatari Act but not necessarily required within the terms of the contract, such as working hours, leave and rest time, termination of employment and working conditions.

Art 7 of the Convention provides "(a) the name and address of the employer and of the worker;

(b) the address of the usual workplace or workplaces;

(c) the starting date and, where the contract is for a specified period of time, its duration;

(d) the type of work to be performed;

(e) the remuneration, method of calculation and periodicity of payments;

(f) the normal hours of work;

(g) paid annual leave, and daily and weekly rest periods;

(h) the provision of food and accommodation, if applicable;

- (i) the period of probation or trial period, if applicable;
- (j) the terms of repatriation, if applicable; and
- (k) terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer”.

Here, Article 7 of the Convention provides for the importance of including terms of repatriation in the contract when the worker is a migrant. As for Qatari Act, it does provide for repatriation on several occasions; in the case of death, the employer is obliged to send back the body of the worker to their hometown, bearing all expenses (Art 10 of the 2017 Qatari Domestic Workers Act). In addition, the employer is obliged to send the worker back to his hometown at their expense if the latter terminates the contract because the employer breaches any of their obligations under the Act. Art 9 of the 2017 Qatari Domestic Workers Act provides for the domestic worker to terminate the contract if the employer made them work in another country without their consent. And Art 17 of the 2017 Qatari Act, enumerates the cases under which the domestic worker is entitled to terminate the contract with no harm to his/her legal rights under the contract. These cases are:

“1- the employer’s breach of any of its obligation under the contract or the law. 2- when fraud is used in contracting with the domestic worker. 3- Assault on worker’s life or body by the employer or any of his family. 4- the existence of a big danger on the health of the worker or his/her safety, the employer must know about this but no interfering in removing this danger. “

Finally, the worker is eligible for a one-way ticket to their country when they finish their contract with the employer (Art 14 of the 2017 Qatari Domestic Workers Act).

Unlike the Qatari Act, the Convention provides for a special kind of protection for domestic workers in case they are migrants, which constitutes pre-contracting legal protection. Here, the worker must receive a written job offer or a contract before travel (Art 8/1 of the Domestic Workers Convention). Since all domestic workers in Qatar are migrants, it would be more suitable if the Qatari Act adopted the same rule under the Convention.

Qatar ratified the Minimum Age Convention, 1973 (No. 138) in 2006, according to which 16 years is the starting age of work as a general rule, taking into account some exceptional cases under the 1973 Convention. The Qatari Domestic Workers Act made 18 the minimum age for recruitment and 60 the maximum. The Minister of Administrative Development, Labour & Social Affairs, however, can issue an exception only to the maximum age, which means that minimum age of 18 is by no mean subject to the exception (Art 5 of the 2017 Qatari Domestic Workers Act). The Qatari Act is consistent with its international obligations giving favorable treatment to domestic workers than that provided for under the 1973 Convention.

In conclusion, the Convention dealt with the stage of contracting and pre-contracting more deeply, thereby achieving more legal protection.

B. Domestic Workers’ Rights

There are several rights for domestic workers that are dealt with under both the Qatari Act and the Domestic Workers Convention, all as follows.:

1. Wages

The most crucial right for the domestic worker is wages, since it constitutes the purpose of contracting. Qatari Act grants legal protection to wages in that it obliges the employer to pay it by the end of each month. In addition, the employer is not discharged unless they prove that the wages have been deposited in a bank account for the worker or handed over to them by a receipt signed by the worker. Moreover, the law asserts that the employer is not entitled to deduct any amount from the worker's wages as recruitment expenses (Art 8 of the 2017 Qatari Domestic Workers Act).

It is worth mentioning here that the methods by which the workers are paid are the same under the 2004 Qatari Employment Law (Art 66 of the Qatari Employment Act No. 14/2004). These rules are consistent with Art. 12 of the Domestic Workers Convention.

Art 12 of the 189 Convention provides:

“1. Domestic workers shall be paid directly in cash at regular intervals at least once a month. Unless provided for by national laws, regulations, or collective agreements, payment may be made by bank transfer, bank cheque, postal cheque, money order, or other lawful means of monetary payment, with the consent of the worker concerned.

2. National laws, regulations, collective agreements, or arbitration awards may provide for the payment of a limited proportion of the remuneration of domestic workers in the form of payments in kind that are not less favorable than those generally applicable to other categories of workers, provided that measures are taken to ensure that such payments in kind are agreed to by the worker, are for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable."

Moreover, Qatar issued Law No. (17) of 2020 determining the minimum wage for regular and domestic workers, which makes Qatari law consistent with the Convention, besides achieving equal treatment.

Art 11 of the 189 Convention provides:

"Each Member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination based on sex."

However, the Qatari Law does not tackle in-kind wages. Here, the Convention did mention that workers may get part of their wages in the form of benefits, provided that the worker approves such in-kind wages, as well as the monetary value of such benefits, must be fair (Art 12 of the Domestic Workers Convention). It is worth indicating that the Qatari government has recently announced that the minimum wage in Qatar is QAR 1000, including accommodation and meals (Qatari Government Communication Office, 2020). Notably, however, although no law provision under Qatari Law allows verities in wages based on nationality, it is reported that this discrimination exists in practice (Human Rights Watch, 2018).

Therefore, apart from not expressly regulating in-kind wages, the Qatari law achieved equal treatment for all workers in Qatar as far as wages are concerned.

2. Leave & rest time

The 2017 Qatari Domestic Workers Act grants several kinds of leave and rests time for the domestic worker. According to the said Act, the maximum number of daily working hours is ten, unless agreed otherwise, and they should not include rest, food, and prayer time. Two points should be noted regarding this issue; firstly, the number of working hours is more than provided for under Employment Act, which is only eight hours (Art 73 of the Qatari Employment Act No. 14/2004). Secondly, there is the possibility of a different agreement; this contrary agreement is by no means in the worker's interest since they are the weakest party in the employment relationship. Furthermore, Qatari Domestic Workers Act does not specify the length of rest time (Human Rights Watch, 2018). The Ministry of Administrative Development, Labor and Social Affairs justified this situation by the fact that the nature of work in houses is far different from that in factories; therefore, domestic workers may gain better rest times than that provided for under the Employment Law. (Human Rights Watch Commentary on Qatar's Laws and Regulations on Domestic Workers, 2018), while it is specified under the 2004 Qatari Employment Act as to be not less than one hour after a maximum of five hours of work (Art 73 of the Qatari Employment Act No. 14/2004). Therefore, the Employment Act grants favorable treatment as to working hours. (Bulkanani, 2014).

As for leaves, three kinds are provided for under the 2017 Qatari Domestic Workers Act; the first is weekly leave, which is, according to the aforementioned Act, 24 consecutive hours, but not necessarily at the weekend. This rule is consistent with the Domestic Workers Convention (10/2 of the Convention), and Qatari Employment Act (Art 75 of the Qatari Employment Act No. 14/2004). The employer is not allowed to make the employee work during rest time and weekly leave unless agreed otherwise (Art 7 of the 2017 Qatari Domestic Workers Act). However, the 2017 Qatari Domestic Workers Act does not mention overtime compensation in such cases. Unlike the 2017 Act, Qatari Employment Act specifies that the overtime limit for working hours must not exceed two hours a day. Besides, it establishes a mechanism to calculate overtime compensation for holidays (Art 74 of the Qatari Employment Act). It is to be noted here that agreement between the employer and the worker about overtime work is not reliable since the worker is indeed in a weaker position.

Under the 2017 Qatari Domestic Workers Act, domestic workers are eligible for annual leave for three weeks. They have the right to use it as a whole or divide it into several periods as agreed. In addition, a domestic worker is eligible every two years to travel at the expense of the employer to their homeland during annual leave (Art 14 of the 2017 Qatari Domestic Workers Act). Under Qatari Employment Act, the annual leave starts with three weeks; however, after the fifth year at service, it increases to four weeks, which constitutes a favorable rule (Art 79 of the Qatari Employment Act No. 14/2004). Furthermore, sick leave is mentioned under the Qatari Domestic Workers Act, where the employer is prohibited from making the employee work during sick

leave, and the employer is obliged to provide the appropriate medical treatment and medicine all at their own expense (Art 7 of the 2017 Qatari Domestic Workers Act). However, the Act does not regulate the number of sick leave days or provide that it is paid (Human Rights Watch, 2018), however, Employment Act does. (Bulkanani, 2014).

If we compare the rules concerning rest time and leave under the 2017 Qatari Domestic Workers Act with the Domestic Workers Convention, the approach appears different. The Convention ensures equal treatment between regular workers and domestic workers for rest time and leave. Art 10/1 of the 189 Convention provides

“Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.”

We have seen that the 2017 Qatari Domestic Workers Act is consistent sometimes with the 2004 Employment Act, which means that the legislator tries to achieve this equal treatment as far as possible; however, in some cases, it is not achieved at all. For example, there is no reference under the 2017 Qatari Domestic Workers Act to overtime compensation, although it is regulated under Employment Act and needed for domestic workers.

One important issue here is the "on-call hours" or "standby hours". Given the nature of the work of domestic workers, they may spend their rest hours and leave days at the house of their employer, which makes the possibility of giving them some occasional tasks during their rest times or leave days very likely. The 2017 Qatari Domestic Workers Act does not mention on-call hours, whereas the Domestic Workers Convention ensures that they must not be calculated within the leave time for workers.

Art 10/3 of the Convention provides:

“Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws, regulations or collective agreements, or any other means consistent with national practice.”

Moreover, it is recommended that there should be a particular calculation for compensation for those hours and night working hours (Human Rights Watch, 2018).

To sum up, equal treatment is not achieved under Qatari law regarding working hours, overtime work, rest time, sick and annual leave.

3. Work conditions

As for work conditions, the 2017 Qatari Domestic Workers Act makes the employer responsible for affording proper accommodation and food, besides humane treatment. The employer must not put the life or the health of the worker at risk, and it must not insult them bodily or morally (Art 7 of the 2017 Qatari Domestic Workers Act). However, it is argued that there must be detailed regulation as to the conditions of work, including the worker's right to privacy and using utilities (Human Rights Watch, 2018). Furthermore, more regulation would be needed to guarantee a safe and healthy environment for the worker (Human Rights Watch, 2018).

The Convention assures that domestic workers should not be obliged to remain in the household or with the householders during rest time and weekly rest (Art 9/b of the 189 Convention). According to the 2017 Qatari Domestic Workers Act, a domestic worker is obliged to respect the traditions and values of the country (Art 11/1 of the 2017 Qatari Domestic Workers Act), which may require not permitting a female domestic worker to go out alone. The Convention assures that identity and travel documents should be kept in possession of the domestic worker (Art 9/c of the 189 Convention). The 2009 law regulating entry, exit, residence, and sponsorship of expatriates in Qatar assures the same, subject to a fine. However, the said law only applies to workers who are subject to Employment law (Bulkanani, 2014). The Qatari Domestic Workers Act is silent about this issue, which means that it authorizes the employer to keep these documents with them or with the worker. Again, domestic workers are deprived of a favorable legal rule because Employment Law does not apply.

The 2017 Qatari Domestic Workers Act grants domestic workers the right to end of service compensation, which must not be less than three weeks' wages for each year of service, although it may exceed this limit by agreement (Art 15 of the 2017 Qatari Domestic Workers Act). It is worth noting that in case of the domestic worker's death, the worker's right in the end service compensation transfers automatically to his inheritors(Art 10 of the 2017 Qatari Domestic Workers Act). This rule is consistent

with Qatari Employment Act (Art 54 of the 2004 Qatari Employment Act). Again, it is not wise to use agreements between the employer and the worker as a benchmark since it is not a free balanced agreement.

In brief, equal treatment is met with regard to end of service compensation. However, it is not met concerning the right of the worker to keep their identity and travel documents.

C. The rights of the employer

The 2017 Qatari Domestic Workers Act provides for several obligations on the part of the domestic worker for the benefit of the employer. Some obligations are crossed with what is provided for under the Employment Act. For example, work performance, keeping the secrets of the employer, preserving the property of the employer, obedience unless instructions are illegal or include danger to the worker's life or properties, or the life or properties of others, and not to work for another employer whether paid or unpaid (Art 11 of the 2017 Qatari Domestic Workers Act and Art 42 of the Qatari Employment Act).

Other obligations are specifically designed for domestic workers, such as respecting the traditions of the country and its religious and ethical values (Art 11 of the 2017 Qatari Domestic Workers Act). This obligation is understandable in a country like Qatar, since the country's people are conservative; they have their own identity, which is highly based on Islamic values. Another specific obligation is to treat the employer and their family well, especially the elderly and children (Art 11 of the 2017 Qatari Domestic Workers Act). The nature of the relationship between domestic workers and the households justifies this obligation since it is within the scope of domestic workers' tasks to look after children and the elderly.

Notwithstanding this, the 2017 Qatari Domestic Workers Act expressly provides that the domestic worker must give the care of a careful person (Art 11/3 of the 2017 Qatari Domestic Workers Act). However, the worker under the Qatari Employment Act must give the care of a regular person (Art 42/1 of the 2004 Qatari Employment Act). The rule under Employment Act is more favorable to workers since the liability of domestic workers under the 2017 Qatari Domestic Workers Act is very strict.

The employer is entitled to terminate the contract with no notice if the domestic worker breaches any of their obligations under the contract or the law. In the said case, the employer is released from paying the end of service compensation only for the year of termination (Art 16 of the 2017 Qatari Domestic Workers Act). This right for the employer corresponds with the worker's right of termination when the employer breaches any of their obligations under the contract or the law (Art 17 of the 2017 Qatari Domestic Workers Act).

The Domestic Workers Convention does not cover the rights of employers, as it is only concerned with protecting the rights of domestic workers. This approach must not be interpreted that the Convention does not admit rights for employers in this particular relationship. Still, instead, the Convention does refer to national laws in this matter, as it aims not to disable the application of said national laws.

3. Position of Qatar towards the Ratification of the Domestic Workers Convention

Given the differences outlined above, there is a legitimate question why Qatari law does not adopt most of the Domestic Workers Convention's standards and rules. The below analysis contains some possible justifications for the said approach.

To start with, it must be said that the ceiling under which the Convention protects domestic workers is very high not only for Qatar, but for most countries. This indeed can justify why up to this date the number of countries that ratified the Convention is only 33 countries (https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300-INSTRUMENT_ID:2551460:NO).

It is further worth indicating here to an area of confusion where some countries tend to develop a conception that it would not be enough to only ratify the Domestic Workers Convention, but also the whole set of other international conventions and protocols dealing with workers issues, particularly the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Hence, countries are likely to become discouraged to sign up to this Convention*.

* It is to be noted that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990 entered into force only in 2003, and it is not widely ratified; 56 countries have ratified the Convention, 39 only are signatory countries. Some Arab countries are member states in the Convention, and they are Libya, Morocco, Egypt, Syria, and Algeria.

It may be well said that the current legal environment in Qatar is not overall prepared yet to adopt some obligations provided for under the Domestic Workers Convention 2011. For example, the Convention stresses the importance of the freedom of associations for domestic workers along with the importance of consulting with such associations with regards to domestic workers rights (Art 3 of the Convention). According to the Ministry of Administrative Development, Labor and Social Affairs, the legal system in Qatar does not regulate trade unions. However, the Employment Act does include some regulations to workers' committees (Human Rights Watch, 2018), but again domestic workers are excluded from the ambit of the Employment Act. In conclusion, some important legal developments must take place first at the level of legal framework in order to facilitate the ratification of such convention.

Moreover, although Qatari Employment Law provides for maternity leave for female workers, the Domestic Workers Act does not. Another important point relates to social security, all migrant workers in Qatar are not covered by social security. However, the Convention ensures the importance of such measures (Art 14 of the Convention).

Other serious obligations on the ratifying countries include the establishment of an effective complaint system for domestic workers, besides implementing inspection mechanisms on their conditions (Art 17 (1&2) of the Convention). Such obligations serve as tools to enforce legal protection for domestic workers. The 2017 Qatari Domestic Act does not deal with these issues yet. On the other hand, the Convention ensures that domestic workers must have full access to courts (Art 16 of the Convention). Here it is worth indicating that the 2017 Qatari Act makes a reference to Employment Act with regards to dispute resolutions between domestic workers and employers (Art 18 of the 2017 Qatari Domestic Workers Act). According to the said Act, the first step in settling any dispute is approaching the Ministry of Labor; if the responsible department fails to settle the dispute, then the second step is to bring the dispute before the Labor Disputes Resolutions Committee, which is formed by judges, and their decision must be enforced immediately, subject to an appeal in front of the Appeal Court (chapter 11 of the Qatari Employment Act 2004). Such mechanisms can be effective if awareness is provided for domestic workers. It should be noted that not all of them are aware of the law, their rights, and access to the Committee.

This article does not call for lowering the standards of the Convention. On the contrary, international instruments must include the maximum level of protection within the most superior international standards, and each country in the world then should follow such standards. International standards constitute indeed best practices all over the world. However, no country can automatically shift from its old system to the international one. Rather, shift normally happens by time, and requires gradual integration of each country local relevant laws and regulations with international instruments. This practically requires issuing new laws or amending existing ones.

The Domestic Workers Convention is relatively speaking a new one, only ten years in existence. It will take some time before more countries, including Qatar, can establish more harmony between their national laws and the international standards to ratify the Convention. This harmony is achieved when local laws and regulations that relate to domestic workers are consistent with the rules provided for under the International Convention.

Qatar has been open to reports and criticism from international bodies about wages and other workers' rights (Amnesty International Report, 2019). All observations used to be taken positively, many actions have been taken, and others will follow to better achieve international standards as best practices. Therefore, an electronic system for payment has been established, more empowerment is given to labor inspectors, electronic complaints systems have been launched in seven languages, and harsh punishment is applied on violation of the law. Moreover, Qatar is one of the countries most welcoming the Assistance of international organizations, such as Amnesty International, to discover short-comes and find solutions (The US-Qatar Business Council Report, 2017).

It is submitted here that 33 countries have ratified the Convention so far, and this is understandable, as ratification of migration labor conventions used to be slow, given their sensitivity (Blackett, 2018).

Conclusion

Suppose we are going to put together all findings that emerged out of this study. In that case, it might be well said that the Qatari Law No. 15/2017 Promulgating the Domestic Workers Act is only the first step in Qatar, that is to say, before the issuance

of the Act, there was no legal umbrella for domestic workers, given the fact that they are excluded from the ambit of Employment Act. Therefore, Qatari Employment Act does not reflect the minimum legal protection for domestic workers whenever it gives favorable treatment. Not all rules under the 2017 Act are in harmony with their counterpart under Employment Act. Therefore, the principle of equal treatment is not fully implemented. This can be easily noticed when exploring working hours, rest time, annual and sick leaves, overtime hours, degree of care, and the right to keep travel documents. The current legal frame in Qatar classifies workers into two classes; regular workers and domestic workers, the trend that Domestic Workers Convention 2011 rejects.

The Qatari Domestic Workers Act 2017 differs in many aspects from the Domestic Workers Convention, 2011 (No. 189). The Convention sets higher standards for protecting domestic workers all around the world. That is why a limited number of countries only ratify the Convention. It can be concluded that there will be some time until national laws – including those of Qatar's - can reach the necessary level under the Convention.

Domestic workers are vulnerable; thus, even with the best legal framework that aims to protect their rights, there will still be a possibility of violations. There should be an adequate and reliable system of genuine and effective enforcement of national laws. Ratifying the Domestic Workers Convention at a national level does not guarantee such enforcement. The Convention provides for some means of enforcement, such as a complaints system, inspection system, and access to courts. Furthermore, the existence of associations for domestic workers plays a significant role in providing them firstly with awareness and subsequently facilitates enforcement of the Convention.

This article recommends that Qatar benefit more from the Domestic Workers Convention 2011 by either ratification of the same in its entirety, or by merely adopting some of the rules provided for under the Convention.

The employment Act must set up the minimum level of protection for all workers, including domestic workers; the domestic Workers Act may supersede the Employment Act only when it grants better protection. Having said, it is recommended that both instruments must regulate domestic work; the Employment Act and the Domestic Workers Act. The priority in application is to the Domestic Workers Act unless Employment Act grants favorable treatment. This mechanism in turn achieves the equal treatment for all workers in the c

References

- Abu AL-Amaiem, M. (2017). The Legal Regulation for Domestic Workers: A Study in Law No. 15 of 2017 Regarding Domestic Workers. 2017. *The Legal and Judicial Journal*, 11 (2), 451-496.
- Amnesty International, (2019). Retrieved from <https://www.amnesty.org/en/latest/news/2019/09/qatar-despite-reform-promises-migrant-workers-still-return-home-without-wages-or>. Last accessed 27/10/2019.
- Blackett, A. (2012). Current Developments, the Decent Work for Domestic Workers Convention and Recommendation, 2011. *The American Journal of International Law*, 106 (778), 778-794.
- Blackett, A. (2014). Introductory Note to the Decent Work for Domestic Workers Convention, 2011(189) and Recommendation (201). *International Legal Materials*, 53, 250-253.
- Blackett, A. (2018). Regulatory Innovation on Decent Work for Domestic Workers in the Light of International Labour Organization Convention No. 189. *International Journal of Comparative Labour Law and Industrial Relations*, 34 (2), 141-148.
- Bulkanani, F. (2014). Domestic Workers between the Right of Privacy and the Right of Decent Work, *Legal & Judicial Journal*, 8 (1), 107-146.
- De Guchteneire, P. & Pécoud, A. (2009). *Introduction: The UN Convention on Migrant Workers' Rights*. In *Migration and Human Rights: The United Nations Convention on Migrant Workers' Rights*. Cambridge: Cambridge University Press.
- Human Rights Watch, (2018). Domestic Workers' Rights in Qatar. In *Human Rights Watch Commentary on Qatar's Laws and Regulations on Domestic Worker*.
- International Labour Office, (2011). Decent Work for Domestic Workers Convention 189 & Recommendation 201 at a glance,

- Islam, M. & Cojocaru, S. (2015). Migrant Domestic Workers in Asia: Transnational Variations and Policy Concerns. *International Migration*, 54 (1), 48-63.
- KAWAR, L. (2014). Making the Machine Work: Technocratic Engineering of Rights for Domestic Workers at the International Labour Organization. *Indiana Journal of Global Legal Studies*, 21(20), 483-511.
- Pape, K. (2016). ILO Convention C189—a good start for the protection of domestic workers: An insider's view. *Progress in Development Studies*, 16(2), 189-202.
- The US-Qatar Business Council, (2017). *Amnesty International report "Promising Little, Delivering less"*. Retrieved from: <https://www.usqbc.org/news/amnesty-international-report-on-qatars-migrant-workers>

Legislations:

- Domestic Workers Convention, 2011 (No. 189) with its supplementing Recommendation (201).
- Qatari Civil Code No. 22/2004.
- Qatari Employment Act No. 14/2004.
- Qatari Law No. 15/2017 Promulgating the Domestic Workers Law.