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6. Contractual norms

6.1 introduction

Contractual norms are norms that are considered to be binding on parties, because parties have in freedom and knowledge agreed to them and wanted to be bound by them. Contracts create *in personam* rights or relative rights, meaning rights that are binding only on contracting parties, not on third parties. They are distinguished from absolute rights that are binding on all individuals: everyone has to observe, for instance, somebody else's property right, but can largely ignore somebody else's contract. Contractual norms are furthermore distinguished from statutory norms, as contractual norms are self-imposed, while for instance tort law is not.³¹⁹

Contractual norms are a third type of norm to which domestic workers and their employers refer in conflicts. They concern everything that parties agreed on during the recruitment process, both by the domestic worker in the country of origin and by the employer in the country of destination. Furthermore, as views on what has been agreed on can vary between parties, it concerns everything parties think they have agreed on. As the data in this research show, there are large differences of opinion between employers and domestic workers on this type of norm and this regularly results in type one conflicts; conflicts that concern preliminary disagreement on norms.

Section 6.2 therefore starts with the description of the perspective of an average employer and employee, to show how their expectations on contractual norms can lead to conflicts. Section 6.3 describes where the perceptions of the domestic workers concerning what has been agreed on stem from. These perceptions result from the contact with the agency, the contract and the pre-departure procedures and courses. Section 6.4 describes the information that agencies provide in the countries of destination, that shape the perception of the employers on what has been agreed on. Section 6.5 provides an overview of the type one conflicts that result from the preliminary disagreement on contractual norms. Section 6.6 discusses that the Western theory of consent does not apply.

The data for this particular chapter have been gathered through questionnaires, mainly filled in by domestic workers who were about to leave for the Middle East, but also by domestic workers who had been working in Saudi Arabia and the Emirates already. Other sources were unannounced visits and calls to agencies in Saudi Arabia, the Emirates, Indonesia and the Philippines, visits to pre-departure orientation courses, about two dozen written contracts, and interviews with domestic workers, employers and government officials.

³¹⁹ Clark (2007) P290.

6.2 Perspectives of an average employer and employee

The international press usually blames the employer for all conflicts between domestic workers and their employers.³²⁰ This judgment however is not always correct. To explain such, this section describes the point of view of an average Saudi or Emirati employer: he visits an agency located somewhere in the part of town where he is living and formulates his wishes: “I want a domestic worker to take care of the house and my four children. We want her to have work experience and we prefer a Filipina.” The agency replies that the going rate for Filipinas is \$200 a month. The man does not agree, as many people pay a monthly salary of \$100. The agency explains that he can currently get a Nepalese for that money, but for Filipinas the price has gone up. They agree on a Filipina and the man has to pay \$1,600 to the agency for travel expenses and paperwork. The man is told that for the first two months he does not have to pay any salary (her contribution to the travel expenses) and that it is best not to allow her to talk to anybody and to keep her inside the house.

Three months later, he is notified that his domestic worker has arrived. He goes to the airport to a special place to pick her up and brings her to his wife, who will explain her all the work to be done. Soon the problems start. For starters, she does not want to take care of the children, but after some discussion she gets to work. It soon becomes clear, however, that she does not have experience, as she has no idea how to iron an *abaya*, the traditional Arab dress. The next problem is that she wants to leave the house, but this is not permitted in Saudi Arabia. At the end of the third month, she erupts in anger when he hands her the agreed \$200. That night she runs away. The man is very upset, as this has cost him a lot of money and his wife will be without help for another 3 months.

From the perspective of an average Filipina, however, the story is very different. She has heard from friends at home that one can earn big money in the Middle East as domestic worker. Some of them are in Dubai and she wants to go there as well. She goes to an agency and pays them \$260 to find her a good employer in the Emirates. She is told that the salary for Filipinas in the Middle East is \$400 per month. The agency does not give her a written contract, because they say that the work and the salary are the same everywhere. From then on, she has to remain within the compound of the agency. During her 2 months there, she receives a 3 hour lesson on how to operate electronic devices and she follows a 3 day crash course in Arabic and Middle Eastern culture, but she understands only half of it.

She is brought to the airport where a man from the agency in the capital, whom she has never met, hands her a sealed envelope that contains her contract. He then gives her a ticket and she finds out that she is not going to Dubai, but to Riyadh.

³²⁰ In the studied media coverage, abusive employers were usually mentioned and the meager legal protection facilitating such abuse was sometimes mentioned, but no mention was ever made of the agencies misinforming the domestic workers.

As she does not know anything about the Middle East, she does not realize that life will be different there. Upon arrival, she has to wait in a room for three days, where she has to sleep in a chair. Eventually somebody hands her a black dress and a veil that she is expected to wear. Finally, a man who does not even introduce himself, comes to pick her up. Apparently, he is her master now. After arriving at the house of the family, in poor English she is told to take care of children. She is angry about that, because she agreed to become a domestic worker and according to her, this entails only cleaning and cooking. In addition, she has to prepare all the food. She gets to eat the leftovers, but as the taste is so different, she cannot stand it and is continuously hungry. The worst part is that she is never allowed to leave the house! She is terribly homesick and when at the end of the third month her employer pays her only \$200, she snaps. She cannot take it anymore. During the night she climbs out of the window and runs away.

6.3 Contractual rights as perceived by domestic workers

Many domestic workers thus have very different ideas from those of their employers as to what the agreed labor conditions are. How does this situation develop? To understand this, the process of recruitment of domestic workers has been researched to examine where and to what extent both parties gather information on contractual norms.

6.3.1 *The recruitment process*

Domestic workers enter their labor relation through a variety of channels, often used in combination. As interviewed domestic workers explained, they are often approached in their villages by middlemen or recruiters.³²¹ Others approach these recruiters themselves, after hearing stories from friends or family members about making 'big money' in the Middle East. In larger cities, women can simply walk into job agencies. Middle men usually ask for a placement fee; the domestic workers never question them about this amount, as it is presented as fixed, while it is not. Many agencies in the capital no longer ask for a placement fee for the Middle East - as revealed by the questionnaires filled in by domestic workers who were about to leave for the Middle East.³²²

In Manila, a male informant hired for the purpose of this research, visited seven recruitment agencies. He pretended to gather information for his cousin from the countryside, who wanted to work in the Middle East as domestic worker. A female informant researched three additional agencies by phone.

³²¹ Many of these middle men recruit for jobs abroad. If for some reason the papers required can not (immediately) be obtained, the domestic worker will work in the city (first).

³²² This seems to be the successful result of both governments in their attempts to reduce debt bondage. For instance in the Philippines nowadays the placement fee cannot be over one month's salary of the employment contract, with some exceptions. Maruah in Kuptsch (2006) P41.

The ten agencies investigated were partly Filipino and partly Arabic. The answers given were very inconsistent (in contrast to the answers given in Jakarta). Three agencies said that they no longer sent women to the Middle East because of the danger of imprisonment or because of the many salary conflicts. Of the remaining seven agencies, five did not allow the informant to see the contract. One agency provided two different contracts and required both to be signed; the contracts stated different salaries, and one granted free days, whereas the other did not. Two agencies stated that salary and days off depended on the employer. First, the domestic worker was required to sign a contract, and then she would be informed of the conditions. Six agencies said nothing about workers not being permitted to leave the house or not having any days off. The salary offered was generally around \$200, but one agency offered \$400. Some requested valid identity documents and police clearances, while others did not. None of them requested permission from family members. Six agencies refused to answer certain questions posed by the informant.

In Jakarta, a female informant investigated eight agencies, pretending to want a job as domestic worker in the Middle East and to inquire for her younger (undocumented) niece. The responses were very consistent and all of the agents she talked to were Indonesian. In none of the agencies, she was permitted to read the contract before deciding if she wanted to sign or not. None of the agencies requested a birth certificate or passport; they all stated that they could provide (false) documents for the younger niece. Yet they all demanded a letter from the parents or husband with permission; this permission may be prescribed by the government, but according to several interviewees this was not because of a lack of full legal capacity of the women, but because the society is still very patriarchal, more so than in the Philippines. No information was provided voluntarily about days off, but upon being questioned hereon, half the recruiters replied there would be no days off and half replied that it depended on the individual employer. No information was provided voluntarily regarding the segregation of men and women in the Middle East or on the fact that most domestic workers are not permitted to leave the house. Upon the question concerned, they replied that it depended on the employer, or that there would not be any place to visit anyway.

All of the agencies offered a salary of around \$200. Most agencies said they would decide which country the domestic worker would go to. One agent asked after five questions from the informant: "Are you sure you want to work?" Several of the agencies' guards offered money and protection in exchange for mentioning to the recruiter that the informant had come to the agency through the guard. Afterwards the informant said: "They were mostly very intimidating and condescending. They seem to think you do not need to know anything."

Neither the agents in Manila nor the agents in Jakarta are thus very generous in providing information during the recruitment process. Some information given is incorrect, such as the salary of \$400 per month. Other important information is

simply not provided, such as exactly what the work entails, how many days or hours per week the domestic worker has to work and the fact that most domestic workers are not permitted to freely leave the house. Many agencies do not allow the domestic workers to read the contract or they do not give a contract and often they do not have answers to important questions. Thus, the recruiters are not informing the domestic workers correctly on the labor conditions.

6.3.2 Written contracts

A second factor that influences the perceptions of what domestic workers have agreed on, is written contracts. These contracts have been researched through the use of questionnaires that were completed by 160 domestic workers³²³ who were about to leave for the Middle East.³²⁴ Furthermore, a number of the domestic workers that were interviewed also provided copies of their contracts.

Table 6.1 Written contracts

(n= 155)

	Jakarta	Manila
Yes, I signed a contract	91%	77%
Yes, I signed a contract I could read	89%	70%
Yes, I got a copy of the contract	73%	58%

These percentages were all lower when the same questions were asked to returning domestic workers (overall 73% had a contract, 58% could read it and 35% received a copy). The policy of both Saudi Arabia and the Emirates to obligate a written contract, mentioned by interviewees from both governments, therefore seems to have effect. Interesting is the fact that most NGOs both in Manila and Jakarta believe that the recruitment process is better organized in Manila, while these data shows the opposite concerning written contracts. (Other aspects were indeed better organized in Manila, such as the possibility to return to the same employer after finishing a 2 year contract without having to pay an agency again).³²⁵ Several domestic workers who were interviewed upon their return in Asia made statements such as: “There was a contract, but the signature wasn’t mine.” One of them explained that her agent had signed both her false passport and her contract. Furthermore, many domestic workers in the interviews made statements like: “They made me sign all these papers, I don’t know what.”

³²³ As not all domestic workers replied to all questions, n is always somewhat lower than 160.

³²⁴ Sometimes these data are compared to 100 questionnaires filled in by domestic workers who had left their employers, either because of a conflict or after finishing the two-year contract.

³²⁵ Compare Anggraeni (2006) p36 & 42.

Fraud and contract substitution

One domestic worker interviewed in Riyadh stated that she had signed a contract stating that she was going to earn 400 dollars per month, but the Arabic version turned out to state 400 Riyal, which is only about 90 dollars and that is what her employer paid her. Likewise a journalist wrote on his blog³²⁶: “A lot of people I’ve met in Dubai, prepare a contract with a quite reasonable English version and a quite unreasonable Arabic version and rely on the fact that, in a UAE³²⁷ court, the English has absolutely no standing.” The Emirates government later on blocked this website stating that the author is lying, but an interviewee from the Dubai Ministry of Labor admitted: “The problem is that many domestic workers think they are going to earn 600 dollars per month, which turns out to be only 600 dirham” (about 135 dollars).

Another problem is the fact that several agencies switch the contracts upon arrival in the Middle East, which is called contract substitution. The new contracts contain clauses stating: “agreed and signed by both parties without interference or pressure from any party.” This is problematic considering that the judges tend to read contracts literally and ignore the possibility of fraud, as will be further discussed in chapter 8. Interviewees from the Filipino embassies both in Saudi Arabia and the Emirates state that contract substitution is widespread: “When they arrive here, they are pressured to sign another contract and then that is the one that counts, so our contracts are never applied. It is hard for them to say no and also many of them are too trusting; they think the agents know what they are doing or they just don’t want to go back, because they will be discredited.”

Governmental standard contracts

The Emirati government has written a standard contract that is enforced through the Naturalization and Residency Department. Here, papers are only processed if the Emirati standard contract has been signed by the employer. A Dubai government official stated that “the core of the new contract is transparency in the relationship between the employer and the worker, while ensuring that both parties’ rights are protected”. This Emirati governmental standard contract is problematic as it provides a weekly day off for all those who have entered the country on this new contract. This news spread quickly and many other workers (with older contracts) believed that they also had the right to this day off, which created conflicts. These conflicts should be solved in 2 years when all domestic workers are supposed to have the new contract.

³²⁶ <http://secretdubai.blogspot.com/> February 2008, currently blocked by the Emirati government, see also Ali (2010) P58.

³²⁷ United Arab Emirates.

More serious is the fact that neither the Saudi nor the Emirati government recognizes the conditions that have been offered to the workers pre departure. Therefore, in the Emirates it is actually the government that practices contract substitution. As some countries of origin also have written a standard contract, some domestic workers have three different contracts. This seems to be most problematic in the case of Filipina domestic workers because their government currently uses a standard contract demanding \$400 salary per month, plus a weekly day off.³²⁸ The Filipino government claims to enforce its own standard contract, but in reality they are not very consistent. Several governmental offices process the paperwork of domestic workers who present a contract with a far lower salary. Also the government's pre-departure courses do not contain any information on the standard contract or the minimum wage. Furthermore during this research in both Saudi Arabia and the Emirates there were some indications that the embassies themselves 'replace' runaway domestic workers in other families for a salary of \$200 per month.

Most employers in Saudi Arabia and the Emirates do not recognize the standard contracts of the countries of origin - if they are aware of their existence. An interviewed Filipina domestic worker stated: "In the embassy they make the employer sign the contract with the 400 dollar and the day off. But then if they come back to the house they throw that away." An interviewed employer said: "We signed a contract with the agency and with the embassy, but we stick to the first." As the conditions are quite different especially for the Filipina workers (half the salary), many are to be qualified as trafficking victims, but neither government recognizes them as such. Neither government recognizes the labor conditions as they have been agreed on in the countries of origin, nor do they recognize the workers concerned as trafficking victims (more on this issue in chapter 6).

Other standard contracts

Apart from the governmental standard contracts (both from countries of origin and destination) certain agencies both in Saudi Arabia and the Emirates work on standard contracts. These bilingual standard contracts are sent to their counterpart in the countries of origin, with the request to have the domestic worker read and sign this contract. These contracts contain clauses like: "The employer shall treat the employee in a just and human manner. In no case shall physical violence be used upon the employee" and "It shall be unlawful to deduct any amount from the regular salary of the employee". But these contracts contain other stipulations that can cause problems. The most important one is the rule on the travel expenses of the domestic worker for the trip returning home. The employer has to pay this, as interviewees explained, both according to customary rules and these contracts.

³²⁸ Saudi Gazette 19-06-2009 reported on Sri Lankan prescribed contracts with a minimum salary and the same large scale problem of contract substitution.

Yet the employer is released of this duty in two cases: if the domestic worker is doing something wrong and if the domestic worker decides to end the work relation prematurely for personal reasons. Interviewing runaways, it turned out that the behavior of certain employers heavily deteriorates close to the end of the contract, to force the domestic worker to run away in order to have others pay for her return ticket.

Another group writing standard contracts is formed by the unions of agencies. Sometimes these standard contracts are agreed on and sometimes the unions in the countries of destination try to prescribe them. In September 2008 the largest union of agencies in Manila was upset about a contract that Saudi unions tried to prescribe. It was a strange contract indeed, because it mainly described rights and duties of agencies, while it was supposed to replace also the contracts between employer and employee. Nevertheless the agreements contained no clause stating that the agencies signed as a legal representative of the employers or employees. The right of the agencies to bind third parties seemed to be implied. In this respect the contract seemed inspired by the patriarchal thought that richer or more powerful individuals have the right to make decisions for poor and less powerful individuals, without the latter giving consent. The fact that somebody needs help or protection provides enough legitimization. Every time when Saudis or Emiratis were questioned about the legal weaknesses of these contracts, they immediately evaded the topic by giving examples of 'bad' domestic workers.

But government officials in countries of origin also regularly refer to the stereotype that domestic workers are not fully capable of handling their own affairs. In Indonesia, workers are currently provided with medical insurance, although the policy which seems to be necessary to actually receive help, is given to the agency, not to the worker. In Manila, domestic workers who returned from overseas in distress (sick, traumatized or simply broke) are sheltered in the capital, but they are not permitted to leave the premises. In Jakarta, returning domestic workers arrive at a separate terminal, which they are not permitted to leave freely; they have to pay the government to bring them home. All of these regulations are presented as being established to help the workers, but they also create ample opportunity to abuse migrant workers.

In summary, many domestic workers either do not have a contract or they have several contracts. For others contracts have been signed by agents, while it is not clear if this is based on a perceived sense of representation or a method to deceive the workers. Governments and other organizations use different standard contracts without agreement on which contract should be binding or on the legal base of these actions.

6.3.3 Preparations & Courses

In addition to the recruitment talk with the agent or recruiter and the oral or written agreements, a third factor that affects expectations concerning working conditions is the information given to the domestic workers during the waiting period and preparations.³²⁹ Both in Manila and Jakarta the governments require and organize seminars. The courses focus mainly on language, culture and relevant legal rules. They are intended to properly prepare the domestic workers, but this research revealed that frequently incorrect information is provided concerning work conditions and rights.

Some parts of the booklets handed out during the courses imply that the domestic workers have rights that go beyond what any of the studied or discussed contracts state. For instance, it states that: “You may terminate your contract without just causes by serving one (1) month in advance written notice to the employer.” No contract has been found that allows the worker to leave within 2 years without just causes. No employer or agent agreed to domestic workers having that right. Another teacher handed out booklets printed by the Saudi government, that were intended for workers going to Saudi Arabia who were covered by the labor law, while the women concerned as domestic workers are not. One school showed a film that stated that the workers have the right to one month holiday per year, while in reality the domestic workers do not have that right.

In some cases domestic workers were told that they do not have rights, while they actually do. Some teachers stated, for instance, that domestic workers do not have the right to bring mobile phones, while in neither Saudi Arabia nor the Emirates there is such a law. Several teachers made statements such as: “Don’t ever run away from the house. If you run away, people who say they help you, can sell you into another country. You have to be obedient. You can be sued as a witch if you are disobedient and then you will be in troubles.” But the most frequent problem was teachers simply being too vague about rights and duties. They stated, for instance, that the women have the right to rest and to sleep, without stating how much rest or sleep. Other remarks were certainly useful, such as “Don’t ever sign a blank paper or don’t put your finger print on any paper. They will use it to say you got your salary.” or “Don’t gather any hair, the employer will think you do magic” or “stay away from men, if you get pregnant you go to jail!” (More on occultism and sexual relations in chapter 11).

None of the teachers was very clear about what to do if these rights were violated. One teacher stated the following, which is a good example of the attitude of teachers towards rights: “Your salary is about 800 Riyal, but you have to be prepared for the reality.

³²⁹ After signing, domestic workers usually do not have the right to leave the agencies’ dorms anymore. If they change their minds, the agents press them to stay, with expositions on the large investments they have made in order to get the papers for the women concerned processed.

Many only give 600, so what do you do? Do you want to go back home? If you accept you continue your work well and you have to be nice to them so you can carefully try to persuade them to pay you the 800 as they have agreed to in the contract. If they refuse, you can try again after a year. You have to work well, so hopefully they pity you and they raise your salary. But it is against the law, so you can also refuse it. Then there are 2 possibilities. If the agency decides to send you to another family, but you will be illegal after that. You can also go home. It is not easy to persuade the Arabs to pay what is in the contract. It's sad but the reality is that sometimes you do have to accept this." So the teachers in general do not stimulate rights awareness, but acquiescence.

In case of serious problems, all the teachers and booklets advise the workers to go to their embassy. Phone numbers are handed out, though many domestic workers in the Middle East complain that these lines are rarely answered. Nobody handed out addresses or phone numbers of Saudi or Emirati authorities. No teacher or booklet said anything about rights vis-à-vis the agencies or where to go in case of a conflict with the agents or middle men, while this would have been very useful information.

In general, the domestic workers were not very receptive to the information given. One teacher was very clear when she showed a contract on a screen and pointed out all the conditions it should contain. While she explained that the contract had to state that the employer is responsible for medical fees, nobody reacted, even though contracts with such provision are very rare. Likewise, a teacher said that they had the right to a weekly day off, which triggered no response from the workers although it is likely that at least some of them have heard otherwise from domestic workers in the dormitories where they were staying (below). They did not state that they did not understand their contracts, nor did they ask questions or state that their contract or agent did not provide for these rights.

Some information is given to domestic workers in the dormitories in which they usually stay for about two months before departure. It is provided by other workers who have been to the Middle East before. This information tends to be more accurate than any other source, more accurate than information from friends and family members, who tend not to say anything about negative aspects. The 'dorm' information usually creates more realistic expectations about work conditions, but it is provided after, not before the contract is signed.

Employers from their side expect a well trained worker and both in Manila and Jakarta the women usually receive some form of training, although in practice this regularly comes down to keeping the offices or houses of the agents clean without receiving payment. Some admit that this is the case: "They practice by cleaning our offices." Other agencies say they prepare the women very well: "We have a whole manual of all the training the domestic workers should go through (...). 50% of our program is Arabic language lessons. The rest is how to handle babies,

how to do beds, use a blender, a gas oven, how to clean an airco filter and all they have to do at the airport.” When asked how it was possible that I had not met any domestic worker who had told me about a proper preparation this same agent said: “We have no choice. The training is expensive and if we would follow our own manual, we wouldn’t be able to compete anymore.” Several NGOs stated that in the capital there is indeed some minimal training given at the agencies, but in the countryside there is nothing. Domestic workers confirm this: “I was in the capital only one day. I never had any training or course.”

During their training domestic workers thus receive information that is incorrect, information that is vague and information that should have been provided to the worker prior to her committing to the job offer. As for the training that the laborers are supposed to receive, usually they are not properly trained.

6.4 Contractual rights as perceived by employers

Both in Saudi Arabia and the Emirates, several agencies were visited by the researcher, presenting herself as looking for a domestic worker in order to hear what the agents tell employers about work conditions.

Emirati Agencies

In the Emirates on the border of Sharjah and Ajman³³⁰ fees to be paid to the agency depended on nationality and experience, ranging from \$340 for an inexperienced Ethiopian, to \$1.370 for an experienced Indonesian. Everywhere the salary was around \$200 monthly, never the \$400 that the Filipino government demands. None of the 6 agencies said that the domestic workers sign a contract before departure. They all stated that the workers sign a contract upon arrival in the Middle East. None of the agents permitted potential employers to read the contract. They said it was not important; all an employer needed to know was that she would stay for 2 years, what the salary would be and the fact that there were no days off or maximum work hours.

I had to be persistent in all agencies to receive more information on further costs. Sometimes medical examinations and visas were included in the fee and sometimes they were not. The fee always included a one way ticket for the domestic workers and the employer would have to pay the return ticket, but no agency voluntarily offered that information. The fee to be paid to the agency, turned out to be nonrefundable, but if an employer was unsatisfied with the worker, he could exchange her for somebody else within the first 3 months. When asked who would pay the cost if the domestic worker would get sick, several agents stated that she would not get sick. When insisting (“what if she gets cancer or something?”), they said the domestic worker should be sent home.

³³⁰ I haven’t been able to find agencies in Dubai proper, which suggests a difference in law or enforcement per Emirate, but I haven’t been able to find out more information thereon.

Some were aware of the existence of health insurance or a health card, but most said it was better to put her on a plane.

Other remarks the agents made were: “Don’t allow her to go outside on her own. Don’t allow her to have a mobile phone. And it is not allowed for her to talk to the neighbor housewife or the neighbor maid. That is the law here.” When asked why the domestic worker should not be allowed to go out, she (a Filipina agent) replied the domestic worker would get pregnant. When asked if instead of locking her up, maybe she should be given condoms, they insisted that she should not be given any freedom: “She will only abuse your kindness, as they always do with foreigners.”

The agencies near the Omani border were visited by many Omanis (easily recognized by their different head coverings). In the street where all the agencies were located, about a third of the cars was Omani, while in the next street where there were no agencies, there were no Omani cars at all. An Indonesian diplomat explained that some domestic workers are immediately offered to Omani employers. Others run away from their employer to the agency after which the agents then offer them a second chance across the border. According to this diplomat, not all these domestic workers are aware that they are brought to another country.³³¹

Saudi agencies

In Saudi Arabia 8 agencies were researched in the capital Riyadh and 3 in Jeddah. They were hard to find in Jeddah and locals (both nationals and migrant workers) explained that this is due to the fact that many workers arrive on a visa for Mecca, to overstay their visa in search for work. Most of these illegal workers do not move on to Riyadh, although the salary is higher there, because migrants in Jeddah know about the stricter conditions in Riyadh and the severely diminished freedom of movement this entails.

To the agencies in Riyadh a fee of \$1,580 to \$3,840 needed to be paid, depending on nationality, experience and waiting period; for an additional payment somebody could start the next day. Diplomats explained that these workers had been ‘bought’ from their former Saudi employer and were therefore more expensive as the agencies wanted to earn a second premium on the worker. Other information, as in the Emirates, was not voluntarily given, but had to be pulled out of the agents. The financial arrangements were very much the same as in the Emirates; a non-returnable fee to the agency, responsibility of the employer for the return ticket and - officially - responsibility for medical expenses. Here as well many agents stated that the worker would not get sick or if she would really get sick, she should be sent back home. Several agents stated salary would not have to be paid for the first 2 months, either because the domestic worker had already received this or because this was her contribution to the ticket.

³³¹ which is not unlikely in light of the fact that researcher herself crossed that same border pretending to be asleep in the car, while a friend signed papers for her.

Some offered a card on which the domestic worker was supposed to print her finger every month, as evidence she had received her salary. Others suggested not to pay her at all until the day she was going to return home. One agent advised not to take a Filipina as they all want to know exactly what hours they have to work: “You better take an Indonesian.”

In response to the questions if the domestic workers signed a contract before they leave the home country, half the agencies said no and the other half stated yes, but that this contract is disregarded in Saudi Arabia. One agent stated: “She works all the time, every day. You pick her up from the airport and then you put her in the house and lock the door and after 2 years you open the door again.” Another said: “That is there and this is Saudi Arabia and here we have our own rules and the rules are that she has no rights. I am sorry to say, but when she comes to your house, she is your slave. No need for contracts, that is nothing.” And although the domestic workers are not covered by the labor law, one agent stated: “Well, there is the labor law but that, we don’t use in practice. I don’t know what it says, but it is not important really, nobody looks at the labor law.”

The agencies in Jeddah were slightly different in this respect as nobody advocated ignoring the law. Here the central issue seemed to be the amount paid to the government in order to legalize a worker who had overstayed the visa for Mecca. One agent admitted to the existence of the Filipino standard contract demanding 400 dollars and a work day of 8 hours maximum. If I would want her to work more, maybe I could pay her a little extra.

In Saudi Arabia the business cards of several agents stated a second job as a civil servant in either the Ministry of Labor or the Ministry of Internal Affairs / Migration. Although this was not the case with the business cards in the Emirates, several sources confirmed that many agents here as well have a second job in a government office where they can influence the processing of the papers they request or influence political decisions on issues concerning migrant workers. When I asked Emiratis about a conflict of interests, they all agreed that this issue is not considered problematic by locals.

All agencies

One thing the agencies in the countries of origin and destination all had in common was that they were not willing to provide the names of their counterparts. If there were problems, these were always attributed to the counterpart. If, for instance, the domestic worker had been misinformed about her salary, the agencies in the Middle East blamed the agencies in Asia, while the agencies in Asia blamed the agencies in the Middle East. Yet nobody wanted to give phone numbers or names of these counterparts, except for one agency that volunteered the name of a very large well-connected agency.

In summary, the agencies in the countries of destination provide a great deal of incorrect information to the employers. They generally deny that the domestic worker has signed a contract pre-departure and often employers are not permitted to read the substitute contract. Agencies actively encourage the employers to restrict the domestic workers' rights and freedoms. Furthermore, according to other sources than this particular research, many domestic workers claim to have been (threatened to be) beaten up by agents, as among others Human Rights Watch discovered.³³²

6.5 Conflicts

Due to the myriad of contracts and the incorrect information provided by the agencies on both sides, many domestic workers have conflicts with their employer over the most essential labor conditions:

Salary

The salary is the topic that causes the most conflict. Many domestic workers do not know the salary at the moment they decide to go to the Middle East. Either they have been promised big money by a middle man or agent, or they have heard success stories. The going rate for both Filipina and Indonesian domestic workers is around 200 American dollars per month. The questionnaires from leaving domestic workers revealed the following results:

Table 6.2 Verbally promised salary (n = 156)

	Jakarta	Manila
Don't know	19%	28%
Up to \$210	80%	36%
More than \$210	1%	36%

Table 6.3 Salary according to contract (n = 153)

	Jakarta	Manila
Don't know	23%	51%
Up to \$210	76%	20%
More than \$210	1%	29%

³³² Report 9.

About a third of the Filipina women and a fifth of the Indonesians did not know what their salary would be. Yet the literature shows that in other countries there are many more who leave without agreement on this particular point: in Bangladesh, regardless of the channel of recruitment, around half did not know the wages they could expect.³³³ Yet even if an oral agreement on this point had been made, many did not receive this amount; almost a third of the Filipinas according to these data were misinformed about their salary. This is problematic for the employer as well: “When I worked in Riyadh, I had a domestic worker who was very well educated. She had been told that she was going to earn \$750 per month. Of course I didn’t have that kind of money. I paid her a lot less; I paid her what I had agreed to, but the result was a very unsatisfied worker.”

The embassies insist that if the worker does not receive this higher amount, she can claim the difference from the agency. In light of the fact that almost nobody receives this promised salary, this would cause most agencies to go bankrupt. According to NGOs in Manila, laborers very rarely succeed in winning a case against an agency due to the fact that (i) workers are intimidated not to start a case (ii) the cases take too long and the worker has to move on into new employment and (iii) both agencies and judges tend to ask for evidence that the worker has not received her (full) salary, while giving evidence that something has not happened is usually impossible.

Fees

Connected to the issue of the salary is the question of who pays the transaction costs. Most middle men and some agents ask for a placement fee, usually to be paid in cash. Placement fees seem to depend on the middle man, the age of the domestic workers and the necessity of false identification documents. Sometimes a salary deduction is agreed on, instead of a placement fee. Yet very often further deductions take place that the domestic worker never agreed to. This often amounts to 2, sometimes 3 months worth of salary. The result is that she will not receive any salary until the end of the third or fourth month. If the domestic worker and her employer get into a conflict thereafter, the employer cannot, under Saudi or Emirati law, go back to the agency to either get a worker who has not been misinformed about work conditions, or to get (part of) his fees back. So by telling the employer that the first 2 months do not have to be paid for, the agencies in the countries of destination prevent problems for themselves. Some employers deduct further amounts, for instance for the *abaya* (traditional Arabic dress) or work clothes. The contracts usually do not contain rules against this practice, but if they do, few agencies or judges stop the employers from doing it, especially in Saudi Arabia.³³⁴

³³³ Report 6, P11.

³³⁴ As stated by interviewed diplomats from labor sending countries, who accounted of cases in which they had tried to settle salary conflicts, not only for domestic workers, but also for other migrant workers. In The Emirates there appear to be more restrictions on the sometimes unlimited deductions though.

Other employers have been told to pay 2 months salary to the agency for the worker in advance, “so she could buy things she would need for the journey. But they didn’t give her the 2 months salary. It’s actually what she had paid to the agency herself.”

Days and hours

Two more issues leading to frequent conflicts are weekly days off and the amount of hours per day. Contracts regularly state that there will be days off, while hardly any domestic worker actually enjoys this. Most contracts do not state the amount of hours that have to be worked per day, but some state a maximum of 8 or 12 hours. The average amount of hours reported by the respondents is 17 hours per day, which is concurrent with research from the ILO and HRW. Several domestic workers who had run away told me they had decided to do so for the simple reason that they were exhausted. According to diplomats, this is also the reason why during Ramadan the amount of runaways in their shelters doubles; many are not given the time for sufficient sleep during this month.

Most domestic workers in the Middle East work 7 days per week (like many do in their countries of origin). But the following had been agreed to:

Table 6.4 Verbally agreed to work days per week (n = 154)

	Jakarta	Manila
Don’t know / no answer	33%	50%
5 or 6 days per week	24%	27%
7 days per week	43%	23%

Table 6.5 Contractually agreed to work days per week (n = 154)

	Jakarta	Manila
Don’t know / no answer	36%	63%
5 or 6 days per week	31%	26%
7 days per week	33%	10%

These numbers are slightly better for the domestic workers who had already been in the Middle East. Several domestic workers were asked if they felt they had the right to a day off and if yes to explain why. Some answered that right was given by the laws in the countries of destination (which is not true). Others stated that the right came from the laws in the countries of origin (which is not true either). Still others answered that the rights had been acquired in previous work contracts. Yet most Indonesians answered they did not have the right to a day off and found that completely natural, as there is work to do in the house every day.

Confinement

Another important matter in which disagreement arises is the fact that most domestic workers are either not permitted to leave the employer's house at all, or not on her own. Although it is not unusual for domestic workers in the countries of origin to not be permitted to leave the house on their own and although many agencies do not allow the women to leave the dorm, many domestic workers complain about this aspect of their job. The results from the questionnaires show the following:

Table 6.6 Knowledge about confinement

(n = 145)

	Jakarta	Manila
They told me I will not be allowed to leave	80%	39%
They told me I will probably not be allowed to leave	13%	12%
They said nothing about that	5%	25%
They told me I will be allowed to leave	1%	24%

Table 6.7 Upset if confined?

(n = 150)

	Jakarta	Manila
No, it would not upset me	71%	38%
I do not know	14%	24%
Yes, it would upset me	15%	38%

In Saudi Arabia, the only two domestic workers who indicated they were permitted to leave the house were working for Lebanese and European employers. In Dubai more people were permitted to leave the house, but not many: Of the 9 people in Dubai who were permitted to leave the house whenever they did not work, 6 were working for foreigners. Of the 6 who were permitted to go outside on their day off, all 6 were working for foreigners.

Yet here the results are likely not be representative of all domestic workers, as the questionnaires were largely filled in by runaways. In Saudi Arabia most domestic workers are not permitted to leave the house; they are not permitted to drive a car, there is no public transport and they are not seen walking in the street. But in Dubai, domestic workers can be found on the streets. On Fridays the parks and churches are visited not only by beauticians and waitresses,³³⁵ but also by some domestic workers. So the fact that the questionnaires say most domestic workers were not permitted to leave the house, does not prove that the Emiratis are just as strict; it can indicate that not being permitted, creates a higher rate of runaways.

As for the reason why they are not permitted to leave the house, it is important to note that many wives and daughters are not permitted to leave the house either, especially in the most conservative part of Saudi Arabia, the Najd. Agents state that the concept of not being permitted to go outside for 2 years cannot be explained to uneducated young women. The women themselves claim to understand it very well and those who decide to go back to the same employer certainly agree to it. Many Saudis and Emiratis claim that all domestic workers know and thus agree to it, as it has been like this for over forty years; they must have heard about it from family and friends. But this is not true as the first contract workers usually do not realize that the women they see on TV in the streets of Dubai are largely beauticians and waitresses, not domestic workers.

Age, experience and training

Another issue that causes regular conflict is the experience or age requested by employers. Even if a worker is known to lack experience, they expect her to have received proper training. As discussed above, domestic workers usually receive very minimal training. Concerning age; in Saudi Arabia and the Emirates as in many other countries there is an official minimum age of 23 years old. Older domestic workers are expected to be more mature and better able to manage difficult work situations and consequently, cause fewer employment-related problems.³³⁶ But many low-skilled workers have not been registered at birth; it is estimated that more than 7 in 10 children in the world's least-developed countries do not have birth certificates or other registration documents.³³⁷ They buy fake birth certificates at a town hall after which a passport can easily be acquired.

³³⁵ All migrants, as the Emirati's in general refuse to perform these serving and low paid jobs.

³³⁶ Anggraeni (2006) P115.

³³⁷ Report 27, P32.

Others use the identification papers from elder siblings or the agency supplies the workers with the documents needed. Several interviewees in Manila explained that fake birth certificates can be acquired anywhere, even across the street from the Department of Foreign Affairs. According to somebody from the ILO in Jakarta, it is quite normal for people to have several identification documents such as passports or drivers licenses readily available in case they may be needed.

If false documents are acquired, their official age is usually altered because of circumstances at home: these women usually do not have the means to follow education beyond the age of 10 or 12. They come from agrarian villages where, due to modern techniques and smaller lots of land per family, they simply do not have much work to do either. On top of that, as the families are poor and need cash to be able to participate in the market economy, they all want to work. Therefore even if they can read and have read the data in their own documents and know these to be false, they do not report this. Some employers are unhappy with under-aged workers because they don't have the appropriate skills, they aren't strong enough to complete the work and they are not emotionally strong enough to stay away from home for two years. Yet other employers do not have a problem with these workers as they do not return them to the agency within the 3 month probation period. While nobody wanted to admit to being aware that his or her domestic worker was under-aged, some interviewed employers stated that young girls are by many (others) thought more obedient or more attractive.

The number of domestic workers that are under-aged can only be guessed. During the research, when asked about their age and year of birth, many women gave contradicting or confusing answers to these questions. Many faces looked much younger than the stated 25 years. Both in Manila and Jakarta the interpreters guessed that 5% to 20% of the domestic workers were under-aged, but NGOs in the Emirates guessed these numbers to be higher for countries of origin such as Nepal. Interviewed diplomats agreed with these estimates. Yet these under-aged women comprised a large percentage of the population in the shelters in Saudi Arabia. There are several possible reasons for this: (i) younger workers run away more often as they might be less capable to do the work, to function in a labor relation (see chapter 3), to communicate on problems or to deal with homesickness (ii) younger workers are abused more often or (iii) older workers run away as often and are abused as often, but they do not end up in the shelters as they have been to Saudi Arabia before and have built up a network of acquaintances that they can go to for help (more hereon in chapter 8).

Country of destination

Many domestic workers do not know what country they will work in, or they are brought to a country different from the one they agreed to. Several interviewees, even after up to 2 years, still did not know in what country they were working. For

many women from Kerala 'Dubai' stands for the entire Middle East. This to some does not seem like a serious problem, but actually it is for a number of reasons: (i) some of the women expect to be close to family members who could be contacted in case of problems. (ii) If family members back home do not know where they are, they are untraceable in case of emergencies. (iii) These domestic workers leave with the wrong telephone numbers (embassies, hotlines) in their luggage. (iv) Some domestic workers specifically want to go to Saudi Arabia to be able to do the Hajj, while (v) others specifically do not want to go to Saudi Arabia, as they know about the confinement and religious police.

An even more serious problem form the cases in which women are brought across the border to be forced elsewhere into prostitution. There are numerous rumors about female migrant workers being brought to countries such as Iraq. The large flow of workers from the Emirates into Dubai through Al Ain - Buraimi is less problematic from the perspective of the workers, as many seem to agree to this. Yet some are forced to go there by a fake first employer who pretends not to want them anymore, or they are brought across the border illegally (with or without fake identity papers), which makes them vulnerable to abuse.

In conclusion: the recruitment process leads to many conflicts on the most basic working conditions; salary, transaction costs, deductions, weekly days off, hours to be worked per day, confinement, tasks, experience, age and even the country in which a domestic worker will be employed. In many of these conflicts both the employer and the employee feel that they are only demanding the agreed upon labor conditions, while the other party is in breach of the contract. Both in the Emirates and Saudi Arabia, the employer is usually in the position to enforce his view on the agreed on labor conditions (see chapters 10 & 11 on power relations).

6.6 Contract law and consent

The initial source of Islamic contract law is the Quranic revelation "ye who believe! Fulfill (all) obligations". This verse is the basis of the sanctity of a wide variety of obligations, including those that are spiritual, social, political, and commercial,³³⁸ and has been elaborated on in the Jurisprudence of Transactions. It is the basis for the rule that in matters of civil or commercial dealing, any agreement not specifically prohibited by Sharia is valid and binding on the parties and could be enforced by the courts.³³⁹ Sharia jurisprudence states that consent is an essential part of the contract; a marriage closed without consent for instance is invalid. But the range of situations in which the level of consent is deemed to have been insufficient is limited. For instance, there appears to be little theory on 'abuse of circumstances.'

³³⁸ Mohammed (1988) p116.

³³⁹ Habachy (1962) P459.

If a domestic worker is forced to sign a new contract upon arrival in The Middle East and she gets to work even one day, she is deemed to have consented to the new contract, no matter what her reasons may have been to do so.

Many Muslims and scholars state that Sharia – including its contract law – is complete, infallible and valid equally throughout the centuries. Others state that it may be assumed that, at the time that Islamic contract law started taking its shape in the seventh century, commerce was limited to a market of goods that consisted of surplus farm products and handicraft. They state that Islamic contract law therefore reflects and addresses the transactional reality of that period.³⁴⁰ This may explain the absence of a well developed theory on consent; the concept may not have been necessary by lack of too many contracts concluded without consent.

There are other explanations thinkable. In Europe the theory of consent was not generally accepted until the nineteenth century. By that time, dietary improvements had raised the average IQ and combined with better education, this had created a situation in which most individuals indeed bound themselves in what could be referred to as free will. Currently in many villages where domestic workers stem from, the average IQ and education do not seem to have reached that level, but that is disregarded in Saudi Arabia and The Emirates. A third hypothesis is that the theory of consent was – also in the West - never developed to protect those that had entered an agreement without consent, but to bind those that could not prove that there was no consent. A fourth explanation could be the theory discussed in chapter 7, that the theory of consent has been developed because the upper classes had incentives to protect the lower classes, which is not the case in the Middle East.

Whichever is the correct theory, the research results of chapter 6 show that the level of consent is usually very low. First, there is often no consent because many domestic workers are not capable or not permitted to acquire knowledge on the conditions of the agreement.³⁴¹ Second, there is often no alternative to signing; many families are extremely poor and have no alternative to gather financial means. Third, many domestic workers are more or less forced by their (especially male) family members into signing; they take the decision to send daughters and wives overseas “to earn well, save and give their family a bright future.”³⁴² In addition, they are regularly minors and last but not least, some do not even have an understanding of the concept of an agreement as they have been raised in a patriarchal society with status related concepts of rights and obligations (see chapter 5).

340 Mohammed (1988) P117.

341 In many countries of the world women have more problems gathering proper knowledge of labor market conditions due to their position in the respective societies.

342 As stated by several NGOs in Manila & Jakarta, see also Heyzer (2006) P48-49 & Report 22 P36.

In both Saudi Arabia and the Emirates this low level of consent has no consequence; domestic workers are deemed to be bound to the contract, but usually only to the most basic stipulations: the obligation to work for 2 years as a domestic worker, for a certain salary, with the duty to obey the employer 24 hours per day. Contractual stipulations are disregarded on such a scale, that it is unclear what the purpose of the contract is. One option could be to satisfy the international community and press, who complain about the poorly organized labor market in the Gulf. Another option could be the fact that after signing the contract the domestic workers feel that they have lost the freedom to leave their employer.

As discussed shortly in section 4 of chapter 6, the Western concept of legal representation is not applied and this paragraph shows that the Western concept of consent is not applied. Both can be explained with the patriarchal model in which a more powerful person represents and protects a less powerful person. Consent in this model is not necessary; the fact that a woman walks into an agency in need of a job, shows that she needs a more powerful person to handle her affairs and from then on this more powerful person makes all the decisions for her. Domestic workers never complain about agents not having the right to legally represent them. They rarely state to have the rights to certain conditions based on their contract, nor do they refer to the interconnectedness of their rights and the rights of the employer (as discussed in chapter 5). Rather they think that they deserve a certain treatment in light of the fact that they performed their duties well: if one behaves as a good worker, one deserves proper treatment. If they do not receive the salary that has been promised to them, most attribute this fact to fate. This is also one of the reasons why upon returning to their home country, they do not warn others of possible lies told by the agencies; it is just a matter of fate who gets a good salary and who does not.

6.7 Summary

Due to a lack of information or lies, domestic workers and employers often have a very different perception of the contractual norms that have been agreed on. This leads to many conflicts and it raises questions about the binding force of the contracts, conflicts that can hardly be blamed on either party. In The Philippines and Indonesia middle men or agents do not provide important information such as exactly what the work entails, how many days or hours per week the domestic worker has to work and the fact that most domestic workers are not permitted to freely leave the house. Domestic workers from these two countries regularly have to sign contracts they cannot read, contracts they are not permitted to read, multiple contracts or they have no contracts at all. Governments and other organizations use different standard contracts without agreement on which contract should be binding or on the legal base of these actions. During their training domestic workers receive information that is incorrect, information that is simply

too vague and information that should have been provided to the worker prior to her committing to the job offer. As for the training that the laborers are supposed to receive, usually they are not properly trained.

Agencies in Saudi Arabia and the Emirates do not perform any better. They provide a great deal of incorrect information to the employers and deny the fact that the domestic worker has signed a contract pre-departure. Often employers are not permitted to read the contract either. On top of that, agencies actively encourage the employers to restrict the domestic workers' rights and freedoms. The result is a broad range of conflicts caused by disagreement on the applicable contractual norms. Such conflicts concern the most basic working conditions: salary, transaction costs, deductions, weekly days off, hours to be worked per day, confinement, tasks, experience, age and even the country in which a domestic worker will be employed.