Law Clinic Course

 Syllabus

Kuwait International Law School

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2013

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**Course Description**

The course is designed to provide the students with substantive legal knowledge, and to educate them to think in a process-oriented manner, for example, how to research a particular legal question and how to analyze a statute. In this course, the students will also learn how to interview clients, identify victims of human right violations, draft a pleading, represent a client in a settlement conference, or work with people from diverse backgrounds.

The course encourages debates on broader issues of justice or equality, for example, how to analyze access barriers in a local court system, how to provide legal assistance to underserved population. In addition this course will help students acquire professional self-awareness, for example, understanding how well one communicates with a client or collaborates with colleagues.

The course focuses on teaching the students lawyering skills such as: interviewing and counseling clients, legal writing and drafting, fact finding, case analysis, and trial preparation and trial advocacy.

The course is divided into divided into 13 units that will include: (1) Human Rights: A Regional and International Perspective (2) Access to Justice: Reconciling National, Regional and International Standards (3) The Right to be Heard in Court and the Right to Legal Aid (4) Assisting Domestic Workers as a Vulnerable Population (5) Legal Ethics and Professional Responsibility: Defining the Relationship between the Student and the Client, the Supervision Professor, and the Pro-bono Lawyer (6) Enhancing Lawyering Skills for Law Students (7) Filing a Petition to the National Human Rights Committee (8) Researching and Writing Legal Memorandum: Enhancing Skills for Law Students (9)Drafting Contracts: A Human Rights Approach (10) Drafting International Human Rights Legislation (11) Drafting a Domestic Workers Model Law (12) Domestic Workers Model Law (13) Comparative Models of Law Clinics.

1. **Human Rights: A Regional and International Perspective**

**Concept:**

Identifying and understanding trafficking in persons in a variety of regional and international conventions adopted over the years that contain provisions that address trafficking in persons

**Assigned Materials:**

* **Arab Charter on Human Rights 2008**

Article 1

The present Charter seeks, within the context of the national identity of the Arab States and their sense of belonging to a common civilization, to achieve the following aims:

 1. To place human rights at the centre of the key national concerns of Arab States, making them lofty and fundamental ideals that shape the will of the individual in Arab States and enable him to improve his life in accordance with noble human values.

 2. To teach the human person in the Arab States pride in his identity, loyalty to his country, attachment to his land, history and common interests and to instill in him a culture of human brotherhood, tolerance and openness towards others, in accordance with universal principles and values and with those proclaimed in international human rights instruments.

 3. To prepare the new generations in Arab States for a free and responsible life in a civil society that is characterized by solidarity, founded on a balance between awareness of rights and respect for obligations, and governed by the values of equality, tolerance and moderation.

 4. To entrench the principle that all human rights are universal, indivisible, interdependent and interrelated.

 Article 2

 1. All peoples have the right of self-determination and to control over their natural wealth and resources, and the right to freely choose their political system and to freely pursue their economic, social and cultural development.

 2. All peoples have the right to national sovereignty and territorial integrity.

 3. All forms of racism, Zionism and foreign occupation and domination constitute an impediment to human dignity and a major barrier to the exercise of the fundamental rights of peoples; all such practices must be condemned and efforts must be deployed for their elimination.

 4. All peoples have the right to resist foreign occupation.

 Article 3

1. Each State party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability.

 2. The States parties to the present Charter shall take the requisite measures to guarantee effective equality in the enjoyment of all the rights and freedoms enshrined in the present Charter in order to ensure protection against all forms of discrimination based on any of the grounds mentioned in the preceding paragraph.

 3. Men and women are equal in respect of human dignity, rights and obligations within the framework of the positive discrimination established in favour of women by the Islamic Shariah, other divine laws and by applicable laws and legal instruments. Accordingly, each State party pledges to take all the requisite measures to guarantee equal opportunities and effective equality between men and women in the enjoyment of all the rights set out in this Charter.

Article 4

 1. In exceptional situations of emergency which threaten the life of the nation and the existence of which is officially proclaimed, the States parties to the present Charter may take measures derogating from their obligations under the present Charter, to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the grounds of race, color, sex, language, religion or social origin.

 2. In exceptional situations of emergency, no derogation shall be made from the following articles: article 5, article 8, article 9, article 10, article 13, article 14, paragraph 6, article 15, article 18, article 19, article 20, article 22, article 27, article 28, article 29 and article 30. In addition, the judicial guarantees required for the protection of the aforementioned rights may not be suspended.

 3. Any State party to the present Charter availing itself of the right of derogation shall immediately inform the other States parties, through the intermediary of the Secretary-General of the League of Arab States, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

 Article 5

 1. Every human being has the inherent right to life.

 2. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 6

Sentence of death may be imposed only for the most serious crimes in accordance with the laws in force at the time of commission of the crime and pursuant to a final judgment rendered by a competent court. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.

Article 7

 1. Sentence of death shall not be imposed on persons under 18 years of age, unless otherwise stipulated in the laws in force at the time of the commission of the crime.

 2. The death penalty shall not be inflicted on a pregnant woman prior to her delivery or on a nursing mother within two years from the date of her delivery; in all cases, the best interests of the infant shall be the primary consideration.

Article 8

1. No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment.

 2. Each State party shall protect every individual subject to its jurisdiction from such practices and shall take effective measures to prevent them. The commission of, or participation in, such acts shall be regarded as crimes that are punishable by law and not subject to any statute of limitations. Each State party shall guarantee in its legal system redress for any victim of torture and the right to rehabilitation and compensation.

Article 9

 No one shall be subjected to medical or scientific experimentation or to the use of his organs without his free consent and full awareness of the consequences and provided that ethical, humanitarian and professional rules are followed and medical procedures are observed to ensure his personal safety pursuant to the relevant domestic laws in force in each State party. Trafficking in human organs is prohibited in all circumstances.

Article 10

 1. All forms of slavery and trafficking in human beings are prohibited and are punishable by law. No one shall be held in slavery and servitude under any circumstances.

 2. Forced labor, trafficking in human beings for the purposes of prostitution or sexual exploitation, the exploitation of the prostitution of others or any other form of exploitation or the exploitation of children in armed conflict are prohibited.

Article 11

All persons are equal before the law and have the right to enjoy its protection without discrimination.

Article 12

 All persons are equal before the courts and tribunals. The States parties shall guarantee the independence of the judiciary and protect magistrates against any interference, pressure or threats. They shall also guarantee every person subject to their jurisdiction the right to seek a legal remedy before courts of all levels.

Article 13

1. Everyone has the right to a fair trial that affords adequate guarantees before a competent, independent and impartial court that has been constituted by law to hear any criminal charge against him or to decide on his rights or his obligations. Each State party shall guarantee to those without the requisite financial resources legal aid to enable them to defend their rights.

 2. Trials shall be public, except in exceptional cases that may be warranted by the interests of justice in a society that respects human freedoms and rights.

Article 14

 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant.

 2. No one shall be deprived of-his liberty except on such grounds and in such circumstances as are determined by law and in accordance with such procedure as is established thereby.

 3. Anyone who is arrested shall be informed, at the time of arrest, in a language that he understands, of the reasons for his arrest and shall be promptly informed of any charges against him. He shall be entitled to contact his family members.

 4. Anyone who is deprived of his liberty by arrest or detention shall have the right to request a medical examination and must be informed of that right.

 5. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. His release may be subject to guarantees to appear for trial. Pre-trial detention shall in no case be the general rule.

 6. Anyone who is deprived of his liberty by arrest or detention shall be entitled to petition a competent court in order that it may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful.

 7. Anyone who has been the victim of arbitrary or unlawful arrest or detention shall be entitled to compensation.

Article 15

No crime and no penalty can be established without a prior provision of the law. In all circumstances, the law most favorable to the defendant shall be applied.

Article 16

 Everyone charged with a criminal offence shall be presumed innocent until proved guilty by a final judgment rendered according to law and, in the course of the investigation and trial, he shall enjoy the following minimum guarantees:

 1. The right to be informed promptly, in detail and in a language which he understands, of the charges against him.

 2. The right to have adequate time and facilities for the preparation of his defense and to be allowed to communicate with his family.

 3. The right to be tried in his presence before an ordinary court and to defend himself in person or through a lawyer of his own choosing with whom he can communicate freely and confidentially.

 4. The right to the free assistance of a lawyer who will defend him if he cannot defend himself or if the interests of justice so require, and the right to the free assistance of an interpreter if he cannot understand or does not speak the language used in court.

 5. The right to examine or have his lawyer examine the prosecution witnesses and to on defense according to the conditions applied to the prosecution witnesses.

 6. The right not to be compelled to testify against himself or to confess guilt.

 7. The right, if convicted of the crime, to file an appeal in accordance with the law before a higher tribunal.

 8. The right to respect for his security of person and his privacy in all circumstances.

Article 17

Each State party shall ensure in particular to any child at risk or any delinquent charged with an offence the right to a special legal system for minors in all stages of investigation, trial and enforcement of sentence, as well as to special treatment that takes account of his age, protects his dignity, facilitates his rehabilitation and reintegration and enables him to play a constructive role in society.

Article 18

No one who is shown by a court to be unable to pay a debt arising from a contractual obligation shall be imprisoned.

Article 19

 1. No one may be tried twice for the same offence. Anyone against whom such proceedings are brought shall have the right to challenge their legality and to demand his release.

 2. Anyone whose innocence is established by a final judgment shall be entitled to compensation for the damage suffered.

 Article 20

 1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

 2. Persons in pre-trial detention shall be separated from convicted persons and shall be treated in a manner consistent with their status as unconvicted persons.

 3. The aim of the penitentiary system shall be to reform prisoners and effect their social rehabilitation.

Article 21

1. No one shall be subjected to arbitrary or unlawful interference with regard to his privacy, family, home or correspondence, nor to unlawful attacks on his honour or his reputation

 2. Everyone has the right to the protection of the law against such interference or attacks.

Article 22

 Everyone shall have the right to recognition as a person before the law.

Article 23

Each State party to the present Charter undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

Article 24

Every citizen has the right:

 1. To freely pursue a political activity.

 2. To take part in the conduct of public affairs, directly or through freely chosen representatives.

 3. To stand for election or choose his representatives in free and impartial elections, in conditions of equality among all citizens that guarantee the free expression of his will.

 4. To the opportunity to gain access, on an equal footing with others, to public office in his country in accordance with the principle of equality of opportunity.

 5. To freely form and join associations with others.

 6. To freedom of association and peaceful assembly.

 7. No restrictions may be placed on the exercise of these rights other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public health or morals or the protection of the rights and freedoms of others.

Article 25

Persons belonging to minorities shall not be denied the right to enjoy their own culture, to use their own language and to practice their own religion. The exercise of these rights shall be governed by law.

Article 26

 1. Everyone lawfully within the territory of a State party shall, within that territory, have the right to freedom of movement and to freely choose his residence in any part of that territory in conformity with the laws in force.

 2. No State party may expel a person who does not hold its nationality but is lawfully in its territory, other than in pursuance of a decision reached in accordance with law and after that person has been allowed to submit a petition to the competent authority, unless compelling reasons of national security preclude it. Collective expulsion is prohibited under all circumstances.

Article 27

1. No one may be arbitrarily or unlawfully prevented from leaving any country, including his own, nor prohibited from residing, or compelled to reside, in any part of that country.

 2. No one may be exiled from his country or prohibited from returning thereto.

Article 28

Everyone has the right to seek political asylum in another country in order to escape persecution. This right may not be invoked by persons facing prosecution for an offence under ordinary law. Political refugees may not be extradited.

Article 29

 1. Everyone has the right to nationality. No one shall be arbitrarily or unlawfully deprived of his nationality.

2. States parties shall take such measures as they deem appropriate, in accordance with their domestic laws on nationality, to allow a child to acquire the mother's nationality, having due regard, in all cases, to the best interests of the child.

 3. Non one shall be denied the right to acquire another nationality, having due regard for the domestic legal procedures in his country.

Article 30

 1. Everyone has the right to freedom of thought, conscience and religion and no restrictions may be imposed on the exercise of such freedoms except as provided for by law.

 2. The freedom to manifest one's religion or beliefs or to perform religious observances, either alone or in community with others, shall be subject only to such limitations as are prescribed by law and are necessary in a tolerant society that respects human rights and freedoms for the protection of public safety, public order, public health or morals or the fundamental rights and freedoms of others.

 3. Parents or guardians have the freedom to provide for the religious and moral education of their children.

Article 31

Everyone has a guaranteed right to own private property, and shall not under any circumstances be arbitrarily or unlawfully divested of all or any part of his property.

Article 32

 1. The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries.

 2. Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals.

Article 33

 1. The family is the natural and fundamental group unit of society; it is based on marriage between a man and a woman. Men and women of marrying age have the right to marry and to found a family according to the rules and conditions of marriage. No marriage can take place without the full and free consent of both parties. The laws in force regulate the rights and duties of the man and woman as to marriage, during marriage and at its dissolution.

 2. The State and society shall ensure the protection of the family, the strengthening of family ties, the protection of its members and the prohibition of all forms of violence or abuse in the relations among its members, and particularly against women and children. They shall also ensure the necessary protection and care for mothers, children, older persons and persons with special needs and shall provide adolescents and young persons with the best opportunities for physical and mental development.

 3. The States parties shall take all necessary legislative, administrative and judicial measures to guarantee the protection, survival, development and well-being of the child in an atmosphere of freedom and dignity and shall ensure, in all cases, that the child's best interests are the basic criterion for all measures taken in his regard, whether the child is at risk of delinquency or is a juvenile offender.

 4. The States parties shall take all the necessary measures to guarantee, particularly to young persons, the right to pursue a sporting activity.

Article 34

 1. The right to work is a natural right of every citizen. The State shall endeavor to provide, to the extent possible, a job for the largest number of those willing to work, while ensuring production, the freedom to choose one's work and equality of opportunity without discrimination of any kind on grounds of race, colour, sex, religion, language, political opinion, membership in a union, national origin, social origin, disability or any other situation.

 2. Every worker has the right to the enjoyment of just and favourable conditions of work which ensure appropriate remuneration to meet his essential needs and those of his family and regulate working hours, rest and holidays with pay, as well as the rules for the preservation of occupational health and safety and the protection of women, children and disabled persons in the place of work.

 3. The States parties recognize the right of the child to be protected from economic exploitation and from being forced to perform any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development. To this end, and having regard to the relevant provisions of other international instruments, States parties shall in particular:

 (a) Define a minimum age for admission to employment;

(b) Establish appropriate regulation of working hours and conditions;

(c) Establish appropriate penalties or other sanctions to ensure the effective endorsement of these provisions.

 4. There shall be no discrimination between men and women in their enjoyment of the right to effectively benefit from training, employment and job protection and the right to receive equal remuneration for equal work.

 5. Each State party shall ensure to workers who migrate to its territory the requisite protection in accordance with the laws in force.

Article 35

 1. Every individual has the right to freely form trade unions or to join trade unions and to freely pursue trade union activity for the protection of his interests.

 2. No restrictions shall be placed on the exercise of these rights and freedoms except such as are prescribed by the laws in force and that are necessary for the maintenance of national security, public safety or order or for the protection of public health or morals or the rights and freedoms of others.

 3. Every State party to the present Charter guarantees the right to strike within the limits laid down by the laws in force.

Article 36

The States parties shall ensure the right of every citizen to social security, including social insurance.

Article 37

 The right to development is a fundamental human right and all States are required to establish the development policies and to take the measures needed to guarantee this right. They have a duty to give effect to the values of solidarity and cooperation among them and at the international level with a view to eradicating poverty and achieving economic, social, cultural and political development. By virtue of this right, every citizen has the right to participate in the realization of development and to enjoy the benefits and fruits thereof.

Article 38

 Every person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment. The States parties shall take the necessary measures commensurate with their resources to guarantee these rights.

Article 39

 1. The States parties recognize the right of every member of society to the enjoyment of the highest attainable standard of physical and mental health and the right of the citizen to free basic health-care services and to have access to medical facilities without discrimination of any kind.

 2. The measures taken by States parties shall include the following:

(a) Development of basic health-care services and the guaranteeing of free and easy access to the centres that provide these services, regardless of geographical location or economic status.

(b) efforts to control disease by means of prevention and cure in order to reduce the morality rate.

(c) promotion of health awareness and health education.

(d) suppression of traditional practices which are harmful to the health of the individual.

(e) provision of the basic nutrition and safe drinking water for all.

(f) Combating environmental pollution and providing proper sanitation systems;

(g) Combating drugs, psychotropic substances, smoking and substances that are damaging to health.

Article 40

 1. The States parties undertake to ensure to persons with mental or physical disabilities a decent life that guarantees their dignity, and to enhance their self-reliance and facilitate their active participation in society.

 2. The States parties shall provide social services free of charge for all persons with disabilities, shall provide the material support needed by those persons, their families or the families caring for them, and shall also do whatever is needed to avoid placing those persons in institutions. They shall in all cases take account of the best interests of the disabled person.

 3. The States parties shall take all necessary measures to curtail the incidence of disabilities by all possible means, including preventive health programmes, awareness raising and education.

 4. The States parties shall provide full educational services suited to persons with disabilities, taking into account the importance of integrating these persons in the educational system and the importance of vocational training and apprenticeship and the creation of suitable job opportunities in the public or private sectors.

 5. The States parties shall provide all health services appropriate for persons with disabilities, including the rehabilitation of these persons with a view to integrating them into society.

6. The States parties shall enable persons with disabilities to make use of all public and private services.

Article 41

1. The eradication of illiteracy is a binding obligation upon the State and everyone has the right to education.

 2. The States parties shall guarantee their citizens free education at least throughout the primary and basic levels. All forms and levels of primary education shall be compulsory and accessible to all without discrimination of any kind.

 3. The States parties shall take appropriate measures in all domains to ensure partnership between men and women with a view to achieving national development goals.

 4. The States parties shall guarantee to provide education directed to the full development of the human person and to strengthening respect for human rights and fundamental freedoms.

 5. The States parties shall endeavour to incorporate the principles of human rights and fundamental freedoms into formal and informal education curricula and educational and training programmes.

 6. The States parties shall guarantee the establishment of the mechanisms necessary to provide ongoing education for every citizen and shall develop national plans for adult education.

Article 42

 1. Every person has the right to take part in cultural life and to enjoy the benefits of scientific progress and its application.

 2. The States parties undertake to respect the freedom of scientific research and creative activity and to ensure the protection of moral and material interests resulting from scientific, literary and artistic production.

 3. The state parties shall work together and enhance cooperation among them at all levels, with the full participation of intellectuals and inventors and their organizations, in order to develop and implement recreational, cultural, artistic and scientific programmes.

Article 43

Nothing in this Charter may be construed or interpreted as impairing the rights and freedoms protected by the domestic laws of the States parties or those set force in the international and regional human rights instruments which the states parties have adopted or ratified, including the rights of women, the rights of the child and the rights of persons belonging to minorities.

Article 44

The states parties undertake to adopt, in conformity with their constitutional procedures and with the provisions of the present Charter, whatever legislative or non-legislative measures that may be necessary to give effect to the rights set forth herein.

Article 45

1. Pursuant to this Charter, an "Arab Human Rights Committee", hereinafter referred to as "the Committee" shall be established. This Committee shall consist of seven members who shall be elected by secret ballot by the states parties to this Charter.

2. The Committee shall consist of nationals of the states parties to the present Charter, who must be highly experienced and competent in the Committee's field of work. The members of the Committee shall serve in their personal capacity and shall be fully independent and impartial.

3. The Committee shall include among its members not more than one national of a State party; such member may be re-elected only once. Due regard shall be given to the rotation principle.

4. The members of the Committee shall be elected for a four-year term, although the mandate of three of the members elected during the first election shall be for two years and shall be renewed by lot.

5. Six months prior to the date of the election, the Secretary-General of the League of Arab States shall invite the States parties to submit their nominations within the following three months. He shall transmit the list of candidates to the States parties two months prior to the date the election. The candidates who obtain the largest number of votes cast shall be elected to membership of the Committee. If, because two or more candidates have an equal number of votes, the number of candidates with the largest number of votes exceeds the number required, a second ballot will be held between the persons with equal numbers of votes. If the votes are again equal, the member or members shall be selected by lottery. The first election for membership of the Committee shall be held at least six months after the Charter enters into force.

 6. The Secretary-General shall invite the States parties to a meeting at the headquarters the League of Arab States in order to elect the member of the Committee. The presence of the majority of the States parties shall constitute a quorum. If there is no quorum, the secretary-General shall call another meeting at which at least two thirds of the States parties must be present. If there is still no quorum, the Secretary-General shall call a third meeting, which will be held regardless of the number of States parties present.

 7. The Secretary-General shall convene the first meeting of the Committee, during the course of which the Committee shall elect its Chairman from among its members, for a two-year n which may be renewed only once and for an identical period. The Committee shall establish its own rules of procedure and methods of work and shall determine how often it shall etc. The Committee shall hold its meetings at the headquarters of the League of Arab States. ~ay also meet in any other State party to the present Charter at that party's invitation.

Article 46

1. The Secretary-General shall declare a seat vacant after being notified by the Chairman of a member's:

 (a) Death;

 (b) Resignation; or

(c) If, in the unanimous, opinion of the other members, a member of the Committee has ceased to perform his functions without offering an acceptable justification or for any reason other than a temporary absence.

 2. If a member's seat is declared vacant pursuant to the provisions of paragraph 1 and the term of office of the member to be replaced does not expire within six months from the date on which the vacancy was declared, the Secretary-General of the League of Arab States shall refer the matter to the States parties to the present Charter, which may, within two months, submit nominations, pursuant to article 45, in order to fill the vacant seat.

 3. The Secretary-General of the League of Arab States shall draw up an alphabetical list of all the duly nominated candidates, which he shall transmit to the States parties to the present Charter. The elections to fill the vacant seat shall be held in accordance with the relevant provisions.

 4. Any member of the Committee elected to fill a seat declared vacant in accordance with the provisions of paragraph 1 shall remain a member of the Committee until the expiry of the remainder of the term of the member whose seat was declared vacant pursuant to the provisions of that paragraph.

 5. The Secretary-General of the League of Arab States shall make provision within the budget of the League of Arab States for all the necessary financial and human resources and facilities that the Committee needs to discharge its functions effectively. The Committee's experts shall be afforded the same treatment with respect to remuneration and reimbursement of expenses as experts of the secretariat of the League of Arab States.

Article 47

The States parties undertake to ensure that members of the Committee shall enjoy the immunities necessary for their protection against any form of harassment or moral or material pressure or prosecution on account of the positions they take or statements they make while carrying out their functions as members of the Committee.

Article 48

 1. The States parties undertake to submit reports to the Secretary-General of the League of Arab States on the measures they have taken to give effect to the rights and freedoms recognized in this Charter and on the progress made towards the enjoyment thereof. The Secretary-General shall transmit these reports to the Committee for its consideration.

 2. Each State party shall submit an initial report to the Committee within one year from the date on which the Charter enters into force and a periodic report every three years thereafter. The Committee may request the States parties to supply it with additional information relating to the implementation of the Charter.

 3. The Committee shall consider the reports submitted by the States parties under paragraph 2 of this article in the presence of the representative of the State party whose report is being considered.

 4. The Committee shall discuss the report, comment thereon and make the necessary recommendations in accordance with the aims of the Charter.

 5. The Committee shall submit an annual report containing its comments and recommendations to the Council of the League, through the intermediary of the Secretary-General.

 6. The Committee's reports, concluding observations and recommendations shall be public documents which the Committee shall disseminate widely.

Article 49

 1. The Secretary-General of the League of Arab States shall submit the present Charter, once it has been approved by the Council of the League, to the States members for signature, ratification or accession.

 2. The present Charter shall enter into effect two months from the date on which the seventh instrument of ratification is deposited with the secretariat of the League of Arab States.

 3. After its entry into force, the present Charter shall become effective for each State two months after the State in question has deposited its instrument of ratification or accession with the secretariat.

 4. The Secretary-General shall notify the States members of the deposit of each instrument of ratification or accession.

Article 50

Any State party may submit written proposals, though the Secretary-General, for the amendment of the present Charter. After these amendments have been circulated among the States members, the Secretary-General shall invite the States parties to consider the proposed amendments before submitting them to the Council of the League for adoption.

Article 51

The amendments shall take effect, with regard to the States parties that have approved them, once they have been approved by two thirds of the States parties.

Article 52

 Any State party may propose additional optional protocols to the present Charter and they shall be adopted in accordance with the procedures used for the adoption of amendments to the Charter.

Article 53

 1. Any State party, when signing this Charter, depositing the instruments of ratification or acceding hereto, may make a reservation to any article of the Charter, provided that such reservation does not conflict with the aims and fundamental purposes of the Charter.

 2. Any State party that has made a reservation pursuant to paragraph 1 of this article may withdraw it at any time by addressing a notification to the Secretary-General of the League of Arab States.

* **1948 Universal Declaration of Human Rights**

**Article 4:** No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

* **1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others**

**Article 17:** The Parties to the present Convention undertake, in connection with immigration and emigration, to adopt or maintain such measures as are required, in terms of their obligations under the present Convention, to check the traffic in persons of either sex for the purpose of prostitution.

In particular they undertake:

(1) To make such regulations as are necessary for the protection of immigrants or emigrants, and in particular, women and children, both at the place of arrival and departure and while en route ;

(2) To arrange for appropriate publicity warning the public of the dangers of the aforesaid traffic;

(3) To take appropriate measures to ensure supervision of railway stations, airports, seaports and en route , and of other public places, in order to prevent international traffic in persons for the purpose of prostitution;

(4) To take appropriate measures in order that the appropriate authorities be informed of the arrival of persons who appear, prima facie, to be the principals and accomplices in or victims of such traffic.

* **1979 Convention on the Elimination of all Forms of Discrimination against Women**

**Article 6:** States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

* **The Declaration on the Elimination of Violence against Women of 1993**

**Article 2:** Violence against women shall be understood to encompass, but not be limited to, the following:

 (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

 (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

 (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

* **1989 Convention on the Rights of the Child**

**Article 35:** States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

* **2000 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**

**Article 10:** 1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

* **2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict**

**Article 2:** States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

* **1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption**

**Article 32:** 1.  No one shall derive improper financial or other gain from an activity related to an intercountry adoption.

2.  Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

3.  The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

* **1999 Convention to Eliminate the Worst Forms of Child Labor (ILO Convention No. 182)**

**Article 3:** For the purposes of this Convention, the term "the worst forms of child labour" comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

* **The International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families of 1990**

**Article 11:**

1. No migrant worker or member of his or her family shall be held in slavery or servitude.

2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.

3. Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.

4. For the purpose of the present article the term "forced or compulsory labour" shall not include:

(a) Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;

(b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(c) Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

* **The Rome Statute of the International Criminal Court**

**Article 7:** For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a)     Murder;

(b)     Extermination;

(c)     Enslavement;

(d)     Deportation or forcible transfer of population;

(e)     Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f)     Torture;

(g)     Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h)     Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i)     Enforced disappearance of persons;

(j)     The crime of apartheid;

(k)     Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

1. **Access to Justice: Reconciling National, Regional and International Standards**

**Concept:**

Identifying and understanding “Access to Justice” in accordance with regional and international instruments (i.e. the Arab Charter on Human Rights, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights)

**Assigned Materials:**

* The Right to Legal Aid in the Arab Charter on Human Rights

Article 12: All persons are equal before the courts and tribunals. The States parties shall guarantee the independence of the judiciary and protect magistrates against any interference, pressure or threats. They shall also guarantee every person subject to their jurisdiction the right to seek a legal remedy before courts of all levels.

Article 13 (1): Everyone has the right to a fair trial that affords adequate guarantees before a competent, independent and impartial court that has been constituted by law to hear any criminal charge against him or to decide on his rights or his obligations. Each State party shall guarantee to those without the requisite financial resources legal aid to enable them to defend their rights. (2) The right to be heard in court and the right to legal aid: Constitutional mandate in the criminal justice system.

* Universal Declaration of Human Rights (1948)

Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

* International Covenant on Civil and Political Rights (1966)

Article 14 (3): In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

1. Transitional Justice and the Reconciliation Committees.

Truth and reconciliation commissions are tasked with discovering and revealing wrongdoings by governments or other actors to eliminate the consequences left over from a past conflict. Commissions have been set in various states after periods of internal unrest, civil war or dictatorship. The South African Truth and Reconciliation Commission (TRC) is considered one of the most successful examples of this approach toward restorative justice. The TRC was instituted by the Promotion of National Unity and Reconciliation Act, No. 34 of 1995 and had the mandate to ear witnesses and victims of human rights abuses committed during the apartheid regime and to record and in some cases grant amnesty to the perpetrators of crimes that would publicly confess and make amend for their misdeeds. The mandate of different Commissions varies widely as they can have either a mostly historical informative task or being element of a national prosecution effort. For example the Historical Clarification Commission of Guatemala created in 1994 had the unique mandate to clarify and to investigate human rights abuses committed during the Civil War and to produce recommendations to foster peace and harmony in the Country. Instead, the Argentinean National Commission on the Disappearance of Persons created in 1983, individuated the responsible of human rights violations and paved the way to their prosecution in national courts.

2) Civil Society and Protection of Victims of Human Rights Abuses

An important role in assisting victims of human rights violations is played by Civil Society in all the different moments of an effective access to justice: from the establishment of effective legal protection to the provision of legal aid and the monitoring of the effective redress of violations. In particular, Non Governmental Organizations can influence public opinion and national legislative bodies publicizing new cases and advocating for adequate and effective solutions to existing human rights violations. At the same time, NGO’s can play an important role in guiding victims through the existing national and international legal remedies and can provide pro bono legal counseling. They can also provide assistance to victims in the redress of violations through counseling, rehabilitation and reintegration schemes, and providing psychosocial, medical, socioeconomic and other assistance.

3) Right to Remedies

The right to enjoy effective legal protection is enshrined in article 2 of the United Nations General Assembly international Covenant on Civil and Political Rights which requires states members to develop a legislation granting recognition, adjudication and enforcement of the rights recognized in the Covenant. At the basis of effective legal protection is the development of legislation recognizing the rights of vulnerable people in the justice system. Barriers to access to justice can be generated by the content of the norms: lack of preventive, timely, non-discriminatory, adequate, just and deterrent legal remedies. In particular, the presence of inadequacies in existing laws to protect women, children, poor and other disadvantaged people, including those with disabilities and low levels of literacy. In a procedural perspective, a partial and insufficient access to justice can be caused by the excessive number of laws and by the presence of formalistic and expensive procedures. To address the lack of legal remedies in a justice system is fundamental the activity of National and International Human Rights Commissions; legislative reform committees; the ratification of international conventions and their local implementation; the advocacy action of civil society groups.

4) International Justice and the World Trade Organization

The WTO considers dispute settlement the central pillar of the multilateral trading system and has developed a resolution mechanism through the adoption of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) adopted in Marrakesh in 1994. The jurisdiction of the Dispute Settlement Body of the WTO is detailed in Article 1 of the DSU and covers disputes between States on the adoption of trading policy measures and actions considered in breach of WTO agreements or previously established obligations. WTO member countries have a mandatory duty to activate the DSU mechanism instead of taking unilateral actions. Parties in such proceedings will first try to solve disputes through consultations and in case of failure will resort to a WTO Panel to hear the case and find an agreement. The recommendations provided by the Panel can be appealed and have mandatory application from the State parties of the proceedings. In case a State fails to comply with the report produced by the WTO panel, the counterpart is authorized to adopt retaliatory measures.

5) Individual Complaints to United Nations Committees

The possibility for individuals to submit a compliant under the existent human right treaties framework is vital to grant effectiveness to the protected rights. The possibility to activate UN committees is linked to the previous exhaustion of the existent domestic remedies. Access to an international organ is granted as a last resort, providing to the respondent State the right to make redress for the violation. Any individual who claims that her or his rights protected by a covenant or convention have been violated by a State party to the treaty may bring a communication before the relevant committee. Individual complaints and communications are allowed under five of the human right treaties: the First Optional Protocol to the International Covenant on Civil and Political Rights; the [Optional Protocol to the Convention on the Elimination of Discrimination Against Women](http://www2.ohchr.org/english/law/cedaw-one.htm); the Convention Against Torture;  [the Convention on the Elimination of Racial Discrimination](http://www2.ohchr.org/english/law/cerd.htm); the [Optional Protocol to the Convention on the Rights of Persons with Disabilities](http://www2.ohchr.org/english/law/disabilities-op.htm) and The [Convention on Migrant Workers](http://www2.ohchr.org/english/law/cmw.htm).

6) Access to Justice in the Arab Charter of Human Rights

The Arab Charter on Human Rights does not allow for individual communications or complaint mechanism. The Committee of Experts on Human Rights operates assessing the implementation of the provisions of the Charter by the member states through national yearly reports submitted by the state parties.

7) Gender Equality in Access to Justice

Legal systems frequently discriminate against women. Often legislation do not provide labor legal protection, remedies against domestic violence and effective prevention and reparation measures for the victims of sexual assaults in time of conflict. According to the UN Women report [Progress of the World's Women: In Pursuit of Justice](http://progress.unwomen.org/) 127 countries do not have effective laws on marital rape and only 14% of reported rapes ended in a conviction. A key element to fill the gap in gender equality in front of the justice system is the support of legal aid organizations, capable of providing legal counseling the most vulnerable women. At the same time, Civil Society and international human rights bodies have a central role in advocating for legislative reform to ensure legal equal treatment. To grant gender equality in access to justice it is also fundamental to change the funding trends of international donors. It is noteworthy that in the last ten years only the 0.001% of the total budget of the World Bank has been directed to the implementation of Gender Equality projects.

8) Right to Legal Aid

### The right to legal aid is recognized by article 11 of the Universal declaration on Human Rights during criminal proceedings. The European Union Charter of Fundamental Rights Article 47 adopts a wider perspective and provides that legal aid has to be available for those lacking effective resources when it is necessary to grant effective access to justice. The lack of adequate legal aid systems and of available and affordable legal representation precludes the possibility of vulnerable categories to have access to the justice system. This generates general avoidance of the legal system due to economic reasons or a sense of futility of purpose. National legislation should encompass measures directed to provide technical expertise to all the individuals involved in the Justice System, so to grant effective access to justice for the entire population without discrimination toward the poor and less educated. Legal aid is generally granted by state institutions in criminal cases, while in civil cases vulnerable categories have usually to rely on public interest law firms and legal clinics.

### 9) Law Clinics

The institution of law clinics is an innovative approach in the implementation of the right to legal aid. Law clinics are usually established in law schools and provide free legal service to individuals in a variety of fields. Under the guidance of professors and practitioners, students conduct research, draft arguments and provide legal advice to clients. The activity of Law clinics both furnish “hands on” experience to students and contributes to the provision of free legal help to the most vulnerable social categories. Law clinics activity is increasingly present in shaping legal culture in the Middle East. Civil Society organizations, Law Schools and professional organizations have been instrumental in fostering the establishment of Law Clinics in Egypt, Iran, Turkey, Lebanon, Jordan, Iraq and Bahrain.

10) Pro bono work, volunteering

The activity pro bono of lawyers and legal professionals is fundamental to contribute to provide effective right to legal aid. Pro Bono work is based on work activity offered voluntarily and without payment and is becoming a mandatory moment in the professional life of legal experts. For example, the American Bar Association recommends that its members contribute at least fifty hours of pro bono activity per year.

11) International Criminal Court

The International Criminal Court is the first permanent institution with the mandate to prosecute the responsible of the most serious crimes of international relevance: genocide, crimes against humanity and war crimes. The ICC is governed by the Rome Statute, adopted in 1998 by 120 states, and it is not a UN body. The Court has jurisdiction of last resort and intervenes exclusively when national proceedings do not respect the fundamental principles of justice. Article 29 of the Rome Statute provides that crimes within the jurisdiction of the Court are not subject to any Statute of limitations. The ICC follows the experience of the ad hoc tribunals on Rwanda and Former Yugoslavia and came into being in 2002 when its Statute entered into force.

12) Access to Justice in the National Court System

Access to Justice in a National Court System relies on the establishment of different steps and mechanisms. Legal protection has to be granted thanks to the development of a legislation recognizing the rights of the most vulnerable individuals without discriminations and disparities; legal awareness needs to be spread, diffusing the knowledge among the most disadvantaged categories of their right to seek redress, of the official institutions were to seek it and of the mechanisms to activate legal procedures; the state needs to furnish mechanisms for legal aid so to provide all social elements of available and affordable legal representation; the national Court System requires a competent and non corrupt judicial to work efficiently; enforcement of judgments has to be granted swiftly, so to grant the effective redress of grievances.

13) Access to Justice in suing Corporations

Corporations are governed by as special legislative body which grants them legal personality. Legal personality allows corporations to be party of legal proceedings, to sue and to be sued. As multinational corporations are the driving force of contemporary economic development, the frequency in which corporations are called to be part of proceedings has registered a steady growth. If legal personality of a corporation in civil law does not appear to be extremely problematic, as judgments in this legal field are based exclusively on economic measures, the situation is more complicated in regard to corporate liability in criminal law. It is in fact extremely controversial to determine the extent to which a corporation can be considered liable for acts and omissions of the persons it employs and, at the same time, to determine exactly which individual has to assume the responsibility of the actions committed by elements of the corporation’s structure. A ground breaking event in the regime of corporation liability has been registered with the recent US Court of Appeal decisions upholding the liability of Corporations for human rights abuses under the United States Aliens Tort Statute.

14) Access to Justice in suing the State (Sovereign Immunity)

In International Law the principle of Sovereign immunity holds that States can’t be sued in foreign courts for acts committed in the exercise of their sovereign attributions. Instead, it is possible for foreign courts to receive claims against acts of states committed while pursuing commercial or trading activities. The most recent attempt toward the waiver of the sovereign immunity of a State in presence of the the gross violation of fundamental Human Rights has been represented by the Italian Corte di Casassazione Ferrini judgment condemning Germany to reparations for the forced labors inflicted on an Italian Citizen during the Second World War. The decision of the Italian Court has been completely rejected by a subsequent judgment of the International Court of Justice, which has reiterated the validity of the sovereign immunity principle also in presence of a peremptory norm violation. Difficulties can also arise in legal proceedings concerning government officials and diplomats living in foreign countries. For example, the case Sabbithi v. Al Saleh in the United States have seen the diplomatic immunity enjoyed by Kuwaiti defendants acting as a shield against their prosecution in a case concerning the human trafficking of their domestic servants.

15) European Court of Human Rights

The European Court of Human Rights (ECHR) is a supranational Court. Complaints can be brought by individuals against the violation of human rights enshrined by the European Convention on Human Rights from one of the contracting states. The Court does not have the power to repeal domestic legislation violating human rights, but can condemn a non abiding state to the payment of material and moral damages. The ECHR has 47 members and its jurisdiction coincides with the members to the Council of Europe.

16) African Court of Justice and Human Rights

The African Court of Justice and Human Rights is responsible for the protection of human rights and acts as a supra national criminal court among members of the African Union. The Court has the mandate to research on human rights development in the region and develop rules and norms to promote their respect and protection. Differently from the European example, where a European Court of Justice and a European Court of Human Rights exist at the same time, the African Court is the only pan African organ responsible for upholding the rule of law among member states to the African Union and promote Human Rights in the continent.

17) International Court of Justice

The International Court of Justice is the main judicial organ of the United Nations. Its main function is to rule over controversies submitted by states members of the United Nations and to release advisory opinions on questions submitted by recognized international organizations, state members and the UN General Assembly.

18) Class Actions

A class action is a lawsuit presented by a group of people collectively. Notwithstanding that Class Actions are a mostly American phenomenon; several European Countries have adopted new legislation to adopt this method of raising claims. The main objective of the legislation is to allow interest groups to present claims on behalf of a large number of individuals. Through class actions a large number of individual claims are merged into one lawsuit, thus lowering the cost of the litigation and permitting to the single individual of joining it. At the same time, class actions can produce pressure to the category of the defendant to modify the behavior that originated the group grievance. Moreover filling a common lawsuit grants that all the plaintiffs will receive a fair share of the eventual compensation, avoiding that the ones that have individually filled an earlier lawsuit exhaust the existing funds and infringing the right of all the applicants to be satisfied.

19) The Traditional Justice System

The traditional justice system is a community driven approach to justice.

In presence of corrupt and “predatory” central state institutions, the local population has no trust in the administration of justice by the Formal justice system (centralized and built along western lines). In those cases the only forum in which is considered possible to find redress from grievances are the Traditional justice institutions and enforcement systems. Those are mostly present in Sub Saharan communities, and are usually administered by local religious and tribal leaders and are based upon a village level system of trust and accountability.

20) Justice Delayed is Justice Denied

The right to a trial within reasonable time is a fundamental element of effective access to justice. Article 6 of the European Convention on Human Rights is dedicated to the [right to a fair trial](http://en.wikipedia.org/wiki/Right_to_a_fair_trial) and mandates the timely exercise of justice. Similarly, The Speedy Trial Clause of the [Sixth Amendment to the United States Constitution](http://en.wikipedia.org/wiki/Sixth_Amendment_to_the_United_States_Constitution) provides that in criminal prosecution it should be enjoyed the right to a speedy trial. The lack of timely redress from injuries is equivalent to the absence of justice. Lengthy judicial proceedings are usually caused by overtly complex legal systems or overburdened courts. This problem has particular relevance in Egypt, where a variety of jurists and Civil Society organization have called for a swift reform of the overall justice system to grant effective access to justice. Central to the debate have been proposals for the rationalization of procedural legislation and the introduction of alternative dispute resolution methods to lift the burden of excessive legal conflictuality from the Courts.

21) Statute of Limitations

In particular cases effective access to justice can be granted only through a statute of limitations waiver.

In the case of the most serious crimes in the jurisdiction of the International Criminal Court, a waiver from the statute of limitations is contained in article 29 of the ICC which provides that “genocide, crimes against humanity, and war crimes "shall not be subject to any statute of limitations". The rationale of this norm is to grant redress for the victims of the most serious of the crimes independently from the time of the commission of the facts. The US Federal Protect Act from 2003 upholds the same principle. The Act provides greater legal protection for children and stricter statutes regarding child pornography. Its article 202 extends the limitations period for investigations under its framework up to the entire life of the child. Similarly the United Nations Convention Against Corruption Article 29 provides that “Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.”

1. **The Right to be Heard in Court and the Right to Legal Aid**

**Concept:**

Identifying and understanding the right to be heard in court and the right to legal aid, and identifying these rights in the Kuwaiti constitution/legislation

**Assigned Materials:**

* **Draft United Nations Principles& Guidelines on Access to Legal Aid in Criminal Justice Systems**

 **Principle 1. Right to legal aid**

Recognizing that legal aid is an essential element of a functioning criminal justice system that is based on the rule of law, a foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process. States should guarantee the right to legal aid in their national legal systems at the highest possible level, including in the constitution

 **Principle 2. Responsibilities of the State**

States should consider the provision of legal aid as their duty and responsibility. To that end, they should enact specific legislation and ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable and credible. States should allocate the necessary human and financial resources to the legal aid system.

The provision of legal aid should not interfere with the organization of the defense of the beneficiary or with the independence of his or her legal counsel.

**Principle 3. Legal aid for persons suspected or accused of a crime**

States should ensure that anyone who is arrested, detained or prosecuted for a crime punishable by a term of imprisonment or the death penalty receives legal assistance and that the legal assistance is free of charge, if the person cannot afford it, at all stages of the criminal justice process, including post-trial proceedings.

Free legal assistance should also be provided, regardless of the income of the person, if the interest of justice so requires, for example in the case of urgency, complexity or the severity of the potential penalty.

Children should have access to free legal aid under the same or more lenient conditions as adults.

Finally, it is the responsibility of prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are properly assisted.

**Principle 4. Legal aid for victims of crime**

States should provide legal aid to victims of crime, especially victims of serious crime and vulnerable victims, in the form of legal information on their rights and of legal representation.

**Principle 5. Non-discrimination**

States should ensure the provision of legal aid to all persons regardless of age; race; colour; sex; sexual orientation; language; religion or belief; political or other opinion; national or social origin; or property, birth or other status.

**Principle 6. Prompt provision of legal aid**

States should ensure that effective legal aid is provided promptly at all stages of the criminal justice process.

**Principle 7. The right to be informed**

States should ensure that, at the time of deprivation of liberty and prior to any questioning, persons are informed of their right to legal aid and other procedural safeguards and of the consequences of voluntarily waiving those rights.

States should ensure that information on rights during the criminal justice process and on legal aid services is made freely available and accessible to the public.

**Principle 8. Remedies and safeguards**

States should establish effective remedies and safeguards that apply if access to legal aid has been delayed or denied or if persons have not been adequately informed of their right to legal assistance.

**Principle 9. Equity in access to legal aid**

Special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs such as the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV/AIDS, indigenous people, stateless persons, asylum-seekers, foreign citizens, refugees and internally displaced persons. Such measures should address the special needs of those groups, including by being gender-sensitive and age-appropriate.

States should also ensure that legal aid is provided to persons living in rural, remote and economically and socially disadvantaged areas and persons who are members of economically and socially disadvantaged groups.

**Principle 10. Legal aid in the best interests of the child**

In all legal aid decisions affecting children, the best interests of the child should be the primary consideration.

Legal aid provided to children should be accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children.

**Principle 11. Independence and protection of legal aid providers**

States should ensure that legal aid providers are able to carry out their work effectively, freely and independently. In particular, States should ensure that legal aid providers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; are able to travel and to consult with their clients freely both within their own country and abroad; and should not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

**Principle 12. Competence and accountability of legal aid providers**

States should ensure that all legal aid providers possess education, training, skills and experience commensurate with the nature of their work, including the gravity of the offences, and the rights and needs of women, children and groups with special needs.

Disciplinary complaints against legal aid providers should be promptly investigated and adjudicated in accordance with professional codes of ethics before an impartial body and subject to judicial review.

**Principle 13. Partnerships**

States should recognize and encourage the contribution of lawyers’ associations, universities, civil society and other groups and institutions to providing legal aid.

Where appropriate, public-private and other forms of partnerships should be established to extend the reach of legal aid.

**United Nations Guidelines on Access to Legal Aid in Criminal Justice Systems**

**Guideline 1. Provision of legal aid free of charge**

Whenever States apply a means test to determine eligibility for legal aid that is free of charge, they should ensure that:

 (a) Persons whose means exceed the limits of the means test but who cannot afford, or do not have access to, a lawyer in situations where legal aid would have otherwise been granted or where it is in the interest of justice to provide such aid, are not excluded from receiving assistance;

 (b) Persons urgently requiring legal aid at police stations, detention centres or courts are exempted from the test;

 (c) The criteria for applying the means test are widely publicized;

 (d) Persons who are denied legal aid on the basis of the means test have the right to appeal that decision;

 (e) If the means test is calculated on the basis of the household income of families but individual family members are in conflict with each other or do not have equal access to the family income, only the income of the person applying for legal aid is used for the purpose of the means test.

**Guideline 2. The right to be informed**

In order to guarantee the right of persons to be informed of their right to legal aid, States should ensure that:

 (a) Information on the right to legal aid and what such aid consists of and on the availability of legal aid services and how to access such services, as well as other relevant information, is available in the community and to the general public in local government offices and educational and religious institutions and through the media or other appropriate means;

 (b) Information is available to isolated groups and marginalized groups. Use should be made of radio and television programmes, of regional and local newspapers and, in particular following changes to the law or specific issues affecting a community, of targeted community meetings;

 (c) Police officers, law enforcement officers, prosecutors, judicial officers and officials in any facility where persons are imprisoned or detained inform unrepresented persons of their right to legal aid and of other procedural safeguards;

 (d) Information on the rights of a person arrested or charged with a crime and on the availability of legal aid services is provided in police stations, detention centres, courts and prisons; such information is provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children; and such information is in a language that those persons understand. Information provided to children must be provided in a manner appropriate to their age and maturity;

 (e) Remedies are available to persons who have not been adequately informed of their right to legal assistance; such remedies may include a prohibition on conducting procedural actions, exclusion of evidence, judicial review and compensation.

**Guideline 3. Other rights of persons arrested, detained or accused of a crime**

States should introduce measures:

 (a) To inform every person arrested or charged with a crime of his or her right to remain silent, his or her right to consult with a legal aid provider before being interviewed by the authorities and his or her right to be accompanied by an independent legal aid provider while being interviewed;

 (b) To prohibit any interviewing of a person by the police in the absence of a lawyer, unless the person gives his or her informed and voluntary consent to waive the lawyer’s presence; and to establish mechanisms for verifying the voluntary nature of the person’s consent;

 (c) To inform all foreign prisoners of their right to request contact with their consular authorities without delay;

 (d) To ensure that persons have the opportunity to meet with a legal aid provider promptly after their arrest;

 (e) To enable every person who has been detained for any reason to imminently notify a member of his or her family, or any other appropriate person of his or her choosing, of his or her detention and location and of any imminent change of location; the competent authority may, however, delay a notification if absolutely necessary, if provided for by law and if the transmission of the information would hinder a criminal investigation;

(f) To provide the services of an interpreter who has no conflict of interest, whenever necessary;

 (g) To assign a guardian, whenever necessary;

 (h) To make available in police stations and places of detention the means to contact legal aid providers;

 (i) To ensure that suspects understand their rights;

 (j) To ensure that a mechanism for complaining against torture or ill treatment is available.

**Guideline 4. Legal aid at the pretrial stage**

To ensure that detained persons have prompt access to legal aid in conformity with the law, States should take measures:

 (a) To ensure that police do not arbitrarily restrict the right to legal aid, and access to it, of persons arrested, detained, suspected of or charged with a crime, in particular in police stations;

 (b) To facilitate access by legal aid providers to detained persons in police stations and other places of detention;

 (c) To ensure legal representation at pretrial release or detention or bail hearings;

 (d) To monitor and enforce custody time limits in police holding cells or other detention centres, for example by requesting that magistrates and judges screen the remand caseload in detention centres on a regular basis to make sure that people are remanded lawfully, that their cases are dealt with in a timely manner and that the conditions in which they are held meet the relevant legal standards, including international ones;

 (e) To provide every person, on admission to a place of detention, with information on their rights in law, the rules of the place of detention and the initial stages of the pretrial process. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, and persons with disabilities and children and in a language they understand. Information provided to children should be provided in a manner appropriate for their age and maturity. The information material should be supported by visual aids prominently located in each detention centre;

 (f) To request bar or legal associations and other legal aid providers to establish a roster of lawyers [and paralegals] to provide legal aid to persons arrested, detained, suspected of or charged with a crime, in particular at police stations;

**Guideline 5. Legal aid during court proceedings**

States should ensure that every person charged with a crime for which deprivation of liberty or capital punishment may be imposed by a court of law has access to legal aid in all proceedings at court, including on appeal. States should introduce measures:

 (a) To ensure that the accused understands the case against him or her and the possible consequences of the trial;

 (b) To ensure that every person accused of a crime has adequate time, facilities and financial support, in case he or she does not have sufficient means, to prepare his or her defense and to be able to consult with his or her lawyer;

 (c) To provide representation in any court proceedings by a lawyer of choice or by a competent lawyer assigned by the court or other legal aid authority free of charge when the person does not have sufficient means to pay and/or where the interest of justice so requires;

 (d) To enable, in accordance with national law, paralegals and law students to provide [appropriate types of] assistance to the accused in court;

 (e) To ensure that unrepresented suspects and the accused understand their rights. This may include, but is not limited to, requiring judges and prosecutors to explain their rights to them in clear and plain language.

**Guideline 6. Legal aid at the post-trial stage**

States should ensure that imprisoned persons and children deprived of their liberty have access to legal aid and that they are held in prison in conformity with the law.

For this purpose, States should introduce measures:

 (a) To provide all persons, on admission to the place of imprisonment and during their detention, with information on the rules of the place of imprisonment and their rights in law, including the right to confidential legal aid, advice and assistance; the possibilities for further review of their case; their rights during disciplinary proceedings; and procedures for complaint, appeal, early release, pardon or clemency. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children and should be in a language they understand. Information provided to children should be provided in a manner appropriate for their age and maturity. The information material should be supported by visual aids prominently located in those parts of the facilities to which prisoners have regular access;

 (b) To encourage bar and legal associations and other legal aid providers to draw up rosters of lawyers [and paralegals] to visit prisons to provide legal advice and assistance [free of charge] to prisoners;

 (c) To ensure that prisoners have access to legal aid for the purpose of submitting appeals and filing requests related to their treatment and the conditions of their imprisonment when facing serious disciplinary charges, and for requests for pardon, in particular for those prisoners facing the death penalty.

(d) To inform foreign prisoners of the possibility, where available, of seeking transfer to serve their sentence in their country of nationality, subject to the consent of the State.

**Guideline 7. Legal aid for victims**

States should take appropriate measures to ensure that:

 (a) Appropriate advice, assistance, care, facilities and support are provided to every victim of crime, in particular women and children, throughout the criminal justice process in a manner that prevents re-victimization and secondary victimization;

 (b) Child victims receive legal assistance as required, in line with the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime;

 (c) Victims receive legal advice on any aspect of their involvement in the criminal justice process, including the possibility of taking civil action or making a claim for compensation in separate legal proceedings, whichever is consistent with the relevant national legislation;

 (d) Victims are promptly informed by the police and other frontline responders (i.e. health, social and child welfare sectors) of their right to information, legal advice and representation, assistance and protection, and of how to access such rights;

 (e) The views and concerns of victims are presented and considered at appropriate stages of the criminal justice process where their personal interests are affected or where the interest of justice so requires, without prejudice to or inconsistency with the rights of the accused to a fair and impartial trial, and consistent with the relevant national legislation;

 (f) Victim services agencies and non-governmental organizations provide basic advice and assistance, including legal aid;

 (g) Mechanisms and procedures are established to ensure close cooperation (and appropriate referral systems) between legal aid providers and other professionals (e.g. social workers and health providers) to obtain a comprehensive understanding of the victim, as well as an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation and needs.

**Guideline 8. Implementation of the right of women to access legal aid**

States should take appropriate measures to ensure the right of women to access legal aid, including:

 (a) Introducing an active policy of incorporating a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid to ensure gender equality and equal and fair access to justice, including by taking active steps to ensure that female lawyers are available to represent offenders and victims;

 (b) Providing free legal aid, advice and court support services in all legal proceedings to female victims of violence in order to ensure access to justice and avoid secondary victimization. This may include translation of legal documents, where requested or required.

**Guideline 9. Child-friendly legal aid systems**

States should ensure that legal aid systems are designed to take into account children’s evolving capacities and that they strike an appropriate balance between considerations of children’s best interests and children’s right to be heard in judicial proceedings.

States should take appropriate measures to establish child-friendly and child-sensitive legal aid systems, including:

 (a) Providing information on legal rights, in a manner appropriate for the child’s age and maturity, in a language that the child can understand and that is gender- and culture-sensitive. Provision of information to parents and guardians or caregivers should be in addition, and not an alternative, to communicating information to the child;

 (b) Adopting legal aid legislation, policies and regulations that explicitly take into account the child’s rights and special developmental needs, including the right to have legal or other appropriate assistance in the preparation and presentation of his or her defence; the right to be heard in all judicial proceedings affecting him or her; standard procedures for determining best interest; privacy and protection of personal data; and the right to be considered for diversion;

 (c) Establishing child-friendly legal aid service standards and professional codes of conduct. Legal aid providers working with and for children should, where necessary, be subject to regular vetting, according to national law and without prejudice to the independence of the judiciary, to ensure their suitability for working with children;

 (d) Promoting standard legal aid training programmes. Legal aid providers representing children should be trained in and knowledgeable about children’s rights and related issues, receive ongoing and in-depth training and be capable of communicating with children at their level of understanding. All legal aid providers working with and for children should receive basic interdisciplinary training on the rights and needs of children of different age groups, as well as on proceedings that are adapted to them; and training on psychological and other aspects of the development of children, with special attention to girls and children who are members of minority groups or indigenous people, as well as on available measures for promoting the defense of children in conflict with the law;

 (e) Establishing mechanisms and procedures to ensure close cooperation and appropriate referral systems between legal aid providers and different professionals to obtain a comprehensive understanding of the child, as well as an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation and needs.

The privacy and personal data of a child who is or who has been involved in judicial or non-judicial proceedings and other interventions should be protected at all stages, and such protection should be guaranteed by law. This generally implies that no information or personal data may be made available or published, particularly in the media, which could reveal or indirectly enable the disclosure of the child’s identity, including images of the child, detailed descriptions of the child or the child’s family, names or addresses, and audio and video records.

**Guideline 10. Special measures for children**

States and legal aid providers should ensure special measures for children to prevent stigmatization and other adverse effects as a result of being involved in the criminal justice system, including:

 (a) Ensuring the right of the child to have the matter determined in the presence of the child’s parents or legal guardian, unless it is not considered to be in the best interest of the child, and by adequately trained legal professionals, such as expert lawyers or paralegal professionals, and according priority access to legal aid for children deprived of their liberty;

 (b) Establishing, where possible, dedicated mechanisms to support specialized legal aid for children;

 (c) Promoting, where appropriate, diversion or other alternative measures to the formal criminal justice system and providing children with legal aid at every stage of the process where diversion and other alternative measures are applied;

 (d) Encouraging, where appropriate, the use of alternative measures and sanctions to deprivation of liberty, and providing children with legal aid to ensure that deprivation of liberty is a measure of last resort and for the shortest appropriate period of time;

 (e) Establishing measures to ensure that court proceedings are conducted in an atmosphere and manner that allow children to participate therein and to express themselves freely;

 (f) Ensuring that children may consult freely with parents and/or guardians, and legal representatives;

 (g) Enabling children who are arrested, detained, suspected of or charged with a crime to contact their parents or guardians at once and prohibiting any interviewing of a child in the absence of his or her parent or guardian and lawyer or other legal aid provider.

**Guideline 11. Nationwide legal aid system**

In order to ensure the functioning of a nationwide legal aid system, States should undertake measures:

 (a) To ensure and promote the provision of effective legal aid at all stages of the criminal justice process for persons accused of a crime and for victims of crime;

 (b) To provide legal aid to persons who have been unlawfully arrested or detained or who have received a final judgment of the court as a result of a miscarriage of justice, in order to enforce their right to reparation, including compensation, rehabilitation and guarantees of non-repetition;

 (c) To ensure coordination between justice agencies and other professionals such as health, social services and victim support workers in order to maximize effectiveness of the legal aid system;

 (d) To establish partnerships with bar or legal associations to ensure the provision of legal aid at all stages of the criminal justice process;

 (e) To enable paralegals to provide those forms of legal aid allowed by national law or practice to persons arrested, detained, suspected of or charged with a crime, in particular in police stations or other detention centres.

States should also take measures:

 (a) To encourage bar or legal associations to draw up rosters of lawyers volunteering to provide legal assistance to persons arrested or charged with a crime before the courts on fixed days and provide services free of charge for those without sufficient means;

 (b) To encourage legal and bar associations to support the provision of legal aid by offering a range of services, including those that are free (pro bono), in line with their professional calling and ethical duty;

 (c) To identify incentives for lawyers to work in economically and socially disadvantaged areas (e.g. tax exemption, fellowships and travel and subsistence allowances);

 (d) To encourage lawyers and bar associations to organize regular circuits of lawyers around the country to provide free legal aid to those in need.

In the design of their nationwide legal aid schemes, States should take into account the needs of specific groups such as the elderly, minorities, persons with disabilities, the mentally ill, persons living with HIV/AIDS, indigenous people, stateless persons, asylum-seekers, foreign citizens, refugees and internally displaced persons, in line with guidelines 8 to 10. 14

To ensure the effective implementation of their nationwide legal aid schemes, States may consider establishing a legal aid body or authority [legal aid board] to provide, administer, coordinate and monitor legal aid services. Such a body should:

 (a) Be independent of the Government and should not be subject to the direction or control of any person or authority in the performance of its functions;

 (b) Have the necessary powers to provide legal aid, including but not limited to the appointment of personnel, the designation of legal aid services to individuals, the setting of criteria and accreditation of legal aid providers, including training requirements, the oversight of legal aid providers and the establishment of independent bodies to handle complaints against them;

 (c) Develop, in consultation with key justice sector stakeholders and civil society organizations, a long-term strategy guiding the evolution and sustainability of legal aid;

 (d) Report annually to the responsible minister and to Parliament.

**Guideline 12. Funding the national legal aid system**

States should make adequate and specific budget provisions for legal aid services [commensurate with their needs], including by providing dedicated and sustainable funding mechanisms for the national legal aid system.

To this end, States could take measures:

 (a) To establish a legal aid fund to finance legal aid schemes, including public defender schemes, to support legal aid provision by legal or bar associations; support university law clinics; and sponsor non-governmental organizations and other organizations, including paralegal organizations, in providing legal aid services throughout the country, especially in rural and economically and socially disadvantaged areas;

 (b) To identify fiscal mechanisms for channeling funds to legal aid, such as:

 (i) Allocating a percentage of the State’s criminal justice budget to legal aid services, commensurate with the needs of effective legal aid provision;

 (ii) Using funds recovered from criminal activities by seizures or fines to cover legal aid for victims;

 (c) To identify and put in place incentives for lawyers to work in rural areas and economically and socially disadvantaged areas (for example, tax exemptions or reductions, student loan payment reductions).

The budget for legal aid should cover the full range of services to be provided to suspects, accused, detained and imprisoned persons, and victims.

**Guideline 13. Human resources**

States should make adequate and specific provision for staffing the national legal aid system [body], commensurate with their needs. States should ensure that professionals working for the national legal aid system possess the qualifications and training appropriate for the services they provide.

When there is a shortage of qualified lawyers, the provision of legal aid may also include non-lawyers or paralegals, who should receive adequate training and must operate under the supervision of qualified lawyers.

**Guideline 14. Paralegals**

States should recognize the role played by paralegals in providing legal aid services, especially in countries where access to lawyers is limited.

For this purpose, States should, in consultation with civil society and justice agencies and professional associations, introduce measures:

 (a) To develop a national scheme of paralegal services with standardized training curricula and accreditation schemes, including appropriate screening and vetting;

 (b) To set quality standards for paralegal services;

 (c) To establish monitoring and evaluation mechanisms to ensure the quality of the services provided by paralegals;

 (d) To promote, in consultation with civil society and justice agencies, the development of a code of conduct that is binding for all paralegals working in the criminal justice system;

 (e) To specify the types of legal work that can be performed by paralegals and the types of work that must be performed exclusively by lawyers, unless such determination is within the competence of the courts or bar associations. In which case, it should be done by them;

 (f) To ensure access by accredited paralegals to police stations and prisons, facilities of detention, pretrial detention centres etc. (making sure that this is consistent);

 (g) To allow paralegals to participate in court proceedings and advise the accused, when there are no lawyers available to do so.

 **Guideline 15. Oversight of legal aid providers**

States, in cooperation with professional associations should:

 (a) Establish criteria for the accreditation of legal aid providers;

 (b) Ensure the adoption of professional codes of ethics for legal aid providers, with appropriate sanctions for infractions;

(c) Establish rules to ensure that legal aid providers are not allowed to request any payment from the beneficiaries of legal aid, except when authorized to do so;

 (d) Establish impartial bodies to review disciplinary complaints against legal aid providers;

 (e) Establish appropriate oversight mechanisms for legal aid providers, with a view to preventing corruption.

**Guideline 16. Partnerships with non-State legal aid providers**

States should, where appropriate, engage in partnerships with non-State legal service providers, including non-governmental organizations and other service providers.

To this end, States should take measures, in consultation with civil society and justice agencies and professional associations:

 (a) To recognize in their legal systems the role to be played by non-State actors in providing legal aid services to meet the needs of the population;

 (b) To set quality standards for legal aid services and support the development of standardized training programmes for non-State legal aid providers;

 (c) To establish monitoring and evaluation mechanisms to ensure the quality of legal aid services, in particular those provided free of charge;

 (d) To work with all legal aid providers to increase outreach, quality and impact and facilitate access to legal aid in all parts of the country and in all communities, especially in rural and economically and socially disadvantaged areas and groups;

 (e) To diversify legal aid service providers by adopting a comprehensive approach, for example by encouraging the establishment of centres to provide legal aid services that are staffed by lawyers and paralegals, and by entering into agreements with law societies and bar associations, university law clinics, and non-governmental and other organizations to provide legal aid services.

States should also take measures:

 (a) To encourage and support the establishment of legal aid clinics in law departments within universities to promote clinical and public interest law programmes among faculty members and the student body;

 (b) To encourage and provide incentives to law students to participate, under proper supervision and in accordance with national law or practice, in a legal aid clinic or other legal aid community scheme as part of their academic curriculum or professional development;

 (c) To develop, where they do not already exist, student practice rules that allow students to practice in the courts under the supervision of qualified lawyers or faculty staff, provided such rules are developed in consultation with and accepted by the competent courts or bodies that regulate the practice of law before the courts;

 (d) In jurisdictions requiring law students to undertake legal internships, develop rules for them to be allowed to practice in the courts under the supervision of qualified lawyers;

 (e) To promote the growth of the legal profession (increased numbers of lawyers) and remove financial barriers to legal education;

 (f) To encourage wide access to the legal profession, including affirmative action measures to ensure the access of women, minorities, and economically disadvantaged groups.

**Guideline 17. Research and data**

States or legal aid boards should establish and support mechanisms to track, monitor and evaluate legal aid and should continually strive to improve the provision of legal aid.

For this purpose, States should introduce measures:

 (a) To conduct regular research and data collection disaggregated by gender, age, socio-economic status and geographical distribution and to publish the findings of such research;

 (b) To share good practices in the provision of legal aid;

 (c) To monitor conduct by law enforcement officers, prosecutors, judges and lawyers, including at police stations, courts, juvenile justice institutions, detention centres and prisons, in order to ensure the efficient and effective delivery of legal aid and ensure they adhere to human rights standards;

 (d) To provide cross-cultural, culturally appropriate, gender-sensitive and age-appropriate training to legal aid providers;

 (e) To improve communication, coordination and cooperation between all justice agencies, especially at the local level, to identify local problems and agree on solutions to improve the provision of legal aid.

**Guideline 18. Technical assistance**

When providing assistance on rule of law, criminal justice reform and governance issues, relevant intergovernmental organizations, such as the United Nations, bilateral donors and non-governmental organizations, should provide States, upon request, with coordinated assistance and support in the development and implementation of legal aid systems.

 **Guideline 19. Saving clause**

Nothing in these principles and guidelines should be interpreted as providing a lesser degree of protection than that provided by international and regional human rights conventions or covenants applicable to the administration of justice including, but not limited to, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All 18 Forms of Discrimination against Women and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

* الدستور الكويتي والتشريعات الكويتية ذات الصلة

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1. **Assisting Domestic Workers as a Vulnerable Population**

**Concept:**

Identifying the vulnerable groups in the Kuwaiti society and ways to help protect their rights while providing them with legal assistance

**Assigned Materials:**

### Lack of International Consensus on the Definition of Vulnerable Persons

* Vulnerable groups are almost always underrepresented due to their lack of financial resources, lack of education about the services available to them, and due to the sheer amount of demand for legal aid, which far surpasses its availability. While the legal needs of vulnerable groups will likely be great in all communities where law clinics start operating, some communities will observe greater needs from certain segments of the vulnerable population than others. For example, religious minorities will face more persecution in some areas than in others or the presence of refugees in a community may be greater than elsewhere in the country.
* The concept of a “vulnerable person” describes someone who has the status of a victim or someone who is weak, needy, impoverished, ill, disadvantaged, or discriminated against. There is no one definition of vulnerable groups in international human rights law, as the determination of whether members of a particular group are “vulnerable” will depend on local context. International documents tend to characterize vulnerable groups in accordance with the specific right or topic that is at the core of the document. Regarding victims of human trafficking, for example, the travaux préparatoires to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children refer to vulnerability as “any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.” In another example, the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women considers women vulnerable to violence “by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom.”
* **Cases of Domestic Work**
* United States v Calimlim

The defendants, a wealthy Filipino couple residing in the United States brought a 19-year old girl from the Philippines to the U.S. to work as their housekeeper. Upon her arrival, the defendants confiscated the girl’s passport and other personal documents. For 19 years, the plaintiff worked for couple and during this time, she was locked in her room when guests arrived, prohibited to leave the house unaccompanied, denied medical and dental services, not paid her full salary, allowed only restricted communication with her family, work 17 hours days seven days a week, and threatened with arrest and deportation. The defendants were charged and convicted in 2008 on charges of obtaining and conspiring to obtain forced labor and harboring and conspiring to harbor an alien for private financial gain.

* 940 Ls 6500 Js 38/09 (494/09)

The defendant recruited an African national to work in a hair salon in Hamburg, Germany. Once in Germany, the plaintiff had her passport confiscated and was forced to work 13 hours a day in the hair salon, which was located in a cellar. The plaintiff was also forced to cook and perform domestic work; the defendant also tried unsuccessfully to force the plaintiff into prostitution. The defendant was found guilty of human trafficking for labor exploitation and trafficking for the purpose of sexual exploitation.

* United States v Fang Ping Ding

The plaintiff, a Chinese national, was recruited in China to work abroad in the United States on a B1/B2 visa. The defendant confiscated her passport and vise upon arrival to the U.S. The plaintiff was forced to work as a domestic servant without pay, and continually physically abuse and threatened, and unable to leave the house unaccompanied. The defendant was found guilty of unlawful conduct regarding documents in furtherance of forced labor and conspiracy to harbor an illegal alien.

* 3 St Js 723/05

The defendant ran an Ethiopian restaurant in Berlin, Germany, and recruited an Ethiopian woman to work in the restaurant. She signed an employment contract and was promised a monthly wage, shelter, food and medical care from the defendant. Rather, she was forced to work 85 hours a week in addition to completing domestic service duties. The defendant confiscated her passport and threatened her with deportation and torture. The defendant was charged and convicted of trafficking for the purpose of forced labor, usury, and fraud.

* Siliadin v France

The plaintiff, a young girl French national of Togolese descent, was forced into domestic servitude as an unpaid housemaid by the defendant. The plaintiff was initially promised that she would work until her plane ticket costs were reimbursed and then she would attend school under an immigration status. In reality, her passport was confiscated and she worked seven days a week without pay. The defendant was found guilty of obtaining performances of services without pay under article 4 of the European Convention on Human Rights.

1. **Legal Ethics and Professional Responsibility: Defining the Relationship between the Student and the Client, the Supervision Professor, and the Pro-bono Lawyer**

**Concept:**

Defining legal ethics and the professional responsibility rules, that students must abide by while handling the cases in their relationship with the client, and defining relationship that must be maintained between the student and the supervising professor on one hand, and the student and the pro-bono lawyer on the other hand in order to ensure a smooth handling of the case and achieving the best results for the client

**Assigned Materials:**

* **قانون المحاماة الكويتي**
* **A Comparative Model of Rules on Confidentiality: District of Columbia Rules of Professional Conduct**

Rule 1.6 - Confidentiality of Information

(a) Except when permitted under paragraph (c), (d), or (e), a lawyer shall not knowingly:

(1) Reveal a confidence or secret of the lawyer’s client;

(2) Use a confidence or secret of the lawyer’s client to the disadvantage of the client;

(3) Use a confidence or secret of the lawyer’s client for the advantage of the lawyer or of a third person.

(b) “Confidence” refers to information protected by the attorney-client privilege under applicable law, and “secret” refers to other information gained in the professional relationship that the client has requested be held inviolate, or the disclosure of which would be embarrassing, or would be likely to be detrimental, to the client.

(c) A lawyer may reveal client confidences and secrets, to the extent reasonably necessary:

(1) To prevent a criminal act that the lawyer reasonably believes is likely to result in death or substantial bodily harm absent disclosure of the client’s secrets or confidences by the lawyer; or

(2) To prevent the bribery or intimidation of witnesses, jurors, court officials, or other persons who are involved in proceedings before a tribunal if the lawyer reasonably believes that such acts are likely to result absent disclosure of the client's confidences or secrets by the lawyer.

(d) When a client has used or is using a lawyer’s services to further a crime or fraud, the lawyer may reveal client confidences and secrets, to the extent reasonably necessary:

(1) To prevent the client from committing the crime or fraud if it is reasonably certain to result in substantial injury to the financial interests or property of another; or

(2) To prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client’s commission of the crime or fraud.

(e) A lawyer may use or reveal client confidences or secrets:

(1) With the informed consent of the client;

(2)(A) when permitted by these Rules or required by law or court order; and (B) if a government lawyer, when permitted or authorized by law;

(3) to the extent reasonably necessary to establish a defense to a criminal charge, disciplinary charge, or civil claim, formally instituted against the lawyer, based upon conduct in which the client was involved, or to the extent reasonably necessary to respond to specific allegations by the client concerning the lawyer's representation of the client;

(4) When the lawyer has reasonable grounds for believing that a client has impliedly authorized disclosure of a confidence or secret in order to carry out the representation;

(5) To the minimum extent necessary in an action instituted by the lawyer to establish or collect the lawyer's fee; or

(6) To the extent reasonably necessary to secure legal advice about the lawyer’s compliance with law, including these Rules.

(f) A lawyer shall exercise reasonable care to prevent the lawyer’s employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidences or secrets of a client, except that such persons may reveal information permitted to be disclosed by paragraphs (c), (d), or (e).

(g) The lawyer’s obligation to preserve the client’s confidences and secrets continues after termination of the lawyer’s employment.

(h) The obligation of a lawyer under paragraph (a) also applies to confidences and secrets learned prior to becoming a lawyer in the course of providing assistance to another lawyer.

(i) For purposes of this rule, a lawyer who serves as a member of the D.C. Bar Lawyer Counseling Committee, or as a trained intervener for that committee, shall be deemed to have a lawyer-client relationship with respect to any lawyer-counselee being counseled under programs conducted by or on behalf of the committee. Information obtained from another lawyer being counseled under the auspices of the committee, or in the course of and associated with such counseling, shall be treated as a confidence or secret within the terms of paragraph (b). Such information may be disclosed only to the extent permitted by this rule.

(j) For purposes of this rule, a lawyer who serves as a member of the D.C. Bar Practice Management Service Committee, formerly known as the Lawyer Practice Assistance Committee [see footnote], or a staff assistant, mentor, monitor or other consultant for that committee, shall be deemed to have a lawyer-client relationship with respect to any lawyer-counselee being counseled under programs conducted by or on behalf of the committee. Communications between the counselor and the lawyer being counseled under the auspices of the committee, or made in the course of and associated with such counseling, shall be treated as a confidence or secret within the terms of paragraph (b). Such information may be disclosed only to the extent permitted by this rule. However, during the period in which the lawyer-counselee is subject to a probationary or monitoring order of the Court of Appeals or the Board on Professional Responsibility in a disciplinary case instituted pursuant to Rule XI of the Rules of the Court of Appeals Governing the Bar, such information shall be subject to disclosure in accordance with the order.

(k) The client of the government lawyer is the agency that employs the lawyer unless expressly provided to the contrary by appropriate law, regulation, or order. 21. Case Management Procedures.

* A central aspect of ethical client representation is the duty of confidentiality. Students and other staff working at the law clinic must abide by this obligation. It includes information obtained through the professional relationship with the client, the disclosure of which would be embarrassing or detrimental to the client.
* The obligation applies to information gained through the representation, irrespective of whether it is obtained through the client directly or through another source. Unless the client gives expressive consent to sharing information, all information relating to the representation should be treated as confidential.
* While such confidential information may need to be shared with other students or staff working on the case within the clinic, no such confidential information may be disclosed to anyone outside the clinic without the consent of the client.
* In the absence of student practice rules which allow law clinic students to represent clients in court, a referral system with lawyers willing to work with the law clinic on a pro-bono basis must be established. Pro-bono lawyers work on a voluntary basis to help clients with their case.
* It is helpful if the law clinic has a contact database of lawyers willing to cooperate with the clinic. Once the law clinic receives a case, it contacts one of the lawyers in its network of volunteers. While the student generally prepares the case and conducts research to assist the lawyer’s work, the lawyer is the one to be litigating the case in court. The student should be present at all stages of the trial.
* The student is responsible for corresponding with the pro-bono lawyer, updating the supervisor and the clinical administrator on the proceedings, and assisting the lawyer with the preparations for the trial.

#### Student-Supervisor Relationship

Discuss and address the nature of the relationship between supervisors and students:

* In the clinical model, supervisors do not direct, but guide.
* Clinical experience is learning-by-doing.
* Non-directive vs. directive supervision:
* There should be a tendency in clinical teaching to be as least directive as possible. Directive teaching would mean that the professor tells students exactly what to do. Non-directive supervision, however, gives the students more autonomy and enables them to experience what it is like to be a lawyer, rather than a law clerk.
1. **Enhancing Lawyering Skills for Law Students**

**Concept:**

Instructing students on how to prepare for a case in regards to interviewing the client, writing memos, filing the case, etc

**Assignments:**

### Mock Trial

* Conducted with students as many as found in a street court. All actors are represented including witnesses and observers.
* Instructor teaches and guides students on the process of a trial.
* Students learn how to make opening statements, lead evidence, cross-examine, re-examine, and make closing statements.
* Making Appointments for New Clients

These will be responsible for contacting the client and scheduling an appointment for an initial interview. The interview can take place at the clinic or at the client’s location.

* Conducting the Initial Interview

A personal interview with the client is one of the most important techniques to receive adequate information about a case. In addition to asking clients for information, facts of the case and persons involved, law clinic students must also provide clients with relevant information about the case procedure.

Students should take notes during the entire interview.

a.       The interview should start with the student introducing her/himself and explaining that she/he has been appointed to work with the client, together with the supervisor of the law clinic and/or a pro-bono lawyer who will represent the client in court should the case end up being taken to court. To get the client’s trust, it will be helpful to briefly mention some cases that the clinic and/or the student have successfully dealt with in the past.

b.      Students should explain their obligation of confidentiality to the client and that no information told in the interview will be released to third parties.

c.       It is important that the client signs the Retainer Agreement. As some clients may have limited reading abilities or little previous experience with legal representation, students should make sure that they understand the form and the implications of legal representation. If the client needs more time to decide whether or not the clinic should act as a legal representative, she/he can send the signed agreement per mail. However, the client should be reminded that the clinic cannot start working on the case before it receives the signed Agreement.

d.      The student should ask about the details of the case including when the events started, how long a certain behavior has been going on, all relevant places, and all parties involved. Names of the parties, their relationship to the client, and their involvement in the case should be carefully written down. If the client is aware of any persons who could be helpful with fact finding for the case and verifying information, their contact details should be collected. If applicable, contact information of the legal representative of the opposing party should be noted down.

e.       From the beginning of the interview, students should aim to establish a good relationship to the client. The client should build up trust in the student’s and the law clinic’s abilities to handle the case with the necessary expertise and caution and to find a solution that will truly help the client. Students should thus explain that the clinic and/or the student have been successful in handling previous cases dealing with similar issues. The student should explain that she/he will fight on the side of the client and represent her/his interests throughout the entire process.

f.        Once all the relevant information pertaining to the case has been collected, the student should explain the next steps to the client. This includes details about the communication between the student, the clinic supervisor, and the assigned pro-bono lawyer, and also the communication with the potential lawyers of the opposing party. If it seems that the case will be brought before court, procedures leading up to a trial and in the courtroom should be explained.

g.       Before ending the interview, the client should be given time to ask all questions she/he may have.

**Client Interviewing Check List**

* Introduce yourself and the law clinic’s work
* Explain that you work under supervision of the law clinic staff/pro-bono lawyers and who they are
* Describe your obligation to confidentiality
* Let the client sign the “Retainer Form”
* Build a relationship of trust with the client
* Ask about the details of the case, including
	+ exact facts of the case
	+ start/duration of the events
	+ relevant places
* Ask about all parties involved in the case, including
	+ their role in the case
	+ their relationship to the client
* Ask who could be contacted for obtaining more facts and verifying information and note down their contact details
* Ask if the opposing party has legal representation and get their contact information
* Explain the next steps, including
	+ communication between law clinic staff
	+ communication between lawyers
	+ court proceedings
* Ask for additional questions

## Writing a Memo on the Initial Interview

Within 24 hours of the initial meeting, the student should write a detailed memo on all information obtained during the interview. The memo should be sent to the law clinic supervisor and/or assigned pro-bono lawyer.

## Filing the Case

The memo should be filed in the client’s folder together with all other documents and forms pertaining to the case. The clinic administrator is responsible for creating a case number and ensuring that all documents are filed correctly and that the Case Status Form is updated regularly.

## Case Development

After the case has been opened, it will be discussed between the student responsible for the case and the supervisor. A pro-bono lawyer will be assigned to work on the case and to provide legal court representation.

### Discussing the Initial Interview with the Supervisor

Once the student has conducted the initial interview and sent the memo to the supervisor, a meeting to discuss it thoroughly should be set up. During this meeting, all details of the case should be discussed to decide on the steps to be taken. A pro-bono lawyer should be assigned to the case and the student will be responsible for all future correspondence with the lawyer.

1. **Promoting Human Rights in Kuwait: The Higher Commission for Human Rights**

**Concept**

Exploring the role of the Higher Commission for Human Rights in promoting human rights in Kuwait

**Assigned Materials:**

* **The Higher Commission for Human Rights (HCHR)**

      The State of Kuwait does all its best and exerts great efforts in order to keep pace with this tendency regionally and worldly regarding human rights; so the Ministry of Justice "MOJ" has taken many practical actions to safeguard and promote such rights within the general framework of the international organizations of human rights.

Thus, "The Higher Commission for Human Rights" has been composed within actions taken in this respect; many ministerial decrees in 2008 (No. 104, 169, 361, 360) have been issued on the composition of the Higher Commission for Human Rights, nomination of members of HCHR, setting up the secretariat thereof, nomination of members of the sub-committees thereof and rules of procedures of HCHR.

The Higher Commission for Human Rights is entrusted with a number of functions set forth in the ministerial decrees while the commission holds many meetings in order to follow up fulfilling such functions entrusted therewith and to discuss several topics related to human rights on national, regional and international level. More practically, sub-committees of the higher commission, included members representing a number of ministries and authorities similar to the higher commission, were formed for more efficiency and specialization.

***Rules of Procedure of the Higher Commission for Human Rights***

A Ministerial Decree No. of the year 2008

On the Rules of Procedure of the Higher Commission for Human Rights

The Decree:-

The Rules of Procedure of the Higher Commission for Human Rights shall be approved as follows:

Chapter One

General Provisions

Article One:

This regulation shall be called the Rules of Procedure of the Higher Commission for Human Rights.

Article Two:

In the implementation of the provisions of these rules of procedure, the following terms have the following meanings:-

1.   Ministerial Decrees: mean the ministerial decrees issued concerning the Higher Commission for Human Rights and regulating the work therein, and any other ministerial decrees issued in this respect.

2.   Higher Commission: means the Higher Commission for Human Rights (HCHR).

3.   Chairman: means the Chairman of the HCHR.

4.   Deputy-Chairman: means the Deputy-Chairman of HCHR.

5.    Rapporteur: means the Secretary-General of HCHR or his representative.

6.   Secretariat: means the secretariat of the Higher Commission formed by the Ministerial Decree No/2008, headed by the Secretary-General (the Rapporteur) and other specialists and employees who help him perform properly the works required and implement the resolutions of the Higher Commission and of the sub-committees.

7.   Sub-Committees: means the committees that are formed from the Higher Commission for Human Rights.

Chapter Two

The Commission's Competences

The Commission assumes the following responsibilities:-

1.   Express opinion and provide advice on all cases of human rights.

2.   Review the present laws and regulations and suggest amendments thereto in harmony with the internationally development of legal rules of human rights and in compliance with Muslim Law (Sharia).

3.   Express opinion on international laws, conventions, and bills relating to human rights.

4.   Draw up national plans to stress and respect human rights.

5.   Prepare reports on such matters and topics referred to the Commission from the concerned State agencies.

6.   Participate in preparing replies to the periodic and non-periodic reports of the international governmental and non-governmental organizations in respect to the situations of human rights in the State of Kuwait.

7.   Participate in preparing such reports that State of Kuwait is committed to submit under the international conventions acceded thereto.

8.   Coordinate with local and governmental agencies concerned with human rights internally and externally.

9.   Spread awareness of human rights through mass media; hold symposiums and forums and conduct studies related to human rights.

10.             Work on including the fundamental concepts of human rights into the curriculums of public and higher education.

11.             Contribute to preparing necessary and specialized cadres capable of spreading the principles of human rights in various entities.

12.             Issue publications and periodicals underlining the activity of the Higher Commission for Human Rights.

13.             Set up fact-finding committees on such cases which raise controversy on human rights issues and submit recommendations on the results of its works to the different State agencies.

14.             The Commission assumes any other works referred from the Chairman.

Chapter Three

Powers and Competences

Article Four: The Chairman

The Chairman is the general supervisor of the Commission's work and assumes the following tasks:-

1.   Call for the Higher Commission's periodical and extra-ordinary meetings.

2.   Chair the Higher Commission and manage the sessions thereof according to what is set forth in the agenda.

3.   Approve the resolutions and recommendations of the Higher Commission, and issue administrative, financial, and technical regulations and decisions relating thereto and follow up implementing thereof.

4.   Allocate specific tasks to the Members, or charge them with tasks related to the activity of the HCHR.

5.   Seek assistance, as deemed necessary to him, of those people experienced and specialized in human rights field.

6.   Determine the rewards of HCHR's and sub-committees' members and the Secretariat's staff and researchers as well as those who may help HCHR at its sole discretion.

7.   Represent the HCHR before third-party.

8.   Give press releases to various mass media or charge or authorize anyone to represent him.

Article Five: Deputy Chairman

He undertakes all the Chairman's tasks during his absence.

Article Six: the Rapporteur (Secretary-General).

He heads the executive body of HCHR Secretariat and supervises teamwork supported by the Office of Human Rights at the Ministry of Justice "MOJ" and adequate number of specialists and staff to undertake any assisting technical works, and assumes the following responsibilities:-

1.   Coordinate with the Chairman in preparing the agenda of the sessions of HCHR and calling the members to attend.

2.   Technically and administratively prepare for convening the sessions of HCHR and the sub-committees.

3.   Supervise regulating and procedural matters during holding the sessions of HCHR and the sub-committees.

4.   Supervise regulating and writing down the minutes of the sessions of HCHR and the sub-committees.

5.   Supervise keeping the papers of HCHR and the sub-committees.

6.   Prepare periodical reports on activities in which HCHR is engaged; review, in each session, the reports of following up the implementation of HCHR's resolutions and recommendations.

7.   Provide documents, researches, and studies on such topics that will be on the agenda or required by HCHR.

8.   Coordinate with the chairmen of the sub-committees.

9.   Supervise regulating symposiums and conferences proposed by HCHR.

10.             Follow-up the participation of HCHR's members in symposiums and conferences held inside and outside the country and follow up preparing reports thereon.

Chapter Four

Work Procedures of HCHR

Article Seven: Convening Sessions

1.   The HCHR members convene periodically at least once a month, or to convene, as necessary, additional or urgent sessions in accordance with an invitation by the Chairman or upon a request by one-third of HCHR's members.

2.   The Rapporteur (Secretary-General) undertakes informing the members about the date of periodical or urgent meetings early enough prior to the specified date.

3.   The meetings shall be held in one of the meeting rooms at MOJ or in any other place specified by the Chairman.

Article Eight: The Agenda

1.   The Rapporteur (Secretary-General) prepares the agenda in coordination with the Chairman or the Deputy-Chairman and sends it to the members early enough prior to the date of meeting, provided that the agenda includes specifically the following:-

A.    Topics the Chairman deems necessary to present to HCHR.

B.     Any topics suggested by HCHR members in coordination with the Rapporteur (Secretary-General).

C.    Letters, telegrams, and complaints referred to HCHR.

D.    Proposals and recommendation of the sub-committees, if any.

E.     Reports on following up the implementation of HCHR previous resolutions.

F.     Topics, reports, and studies required to be discussed

G.    Any new topics.

2.   The agenda of any urgent session shall be confined to such topics for which such session is to be held unless otherwise stated by the members.

Article Nine: Session System

1.   The sessions of HCHR are confined to its members and in attendance of the representatives of Secretary-General; HCHR may call anyone, as necessary, to attend without having the right to vote.

2.   Convening the sessions of HCHR shall be valid when the majority of its members attend provided that the Chairman or his Deputy attends.

3.   At the outset of any session, the previous session's minute shall be approved, then the Rapporteur (Secretary-General) begins to recite the topics on the agenda according to their arrangement and all topics are discussed separately and finally the HCHR takes the appropriate resolutions and recommendations on such topics.

Article Ten: Urgent Matters.

HCHR may set up a minor committee hereof to decide on any urgent matters presented by the Chairman or his Deputy or the Rapporteur (Secretary-General), provided that it presents its works to HCHR in its following meeting to be approved by majority vote of the present members.

Article Eleven: Resolutions

1.   The resolutions of HCHR shall be issued by majority vote of the present members; if votes are equal, the side of the Chairman shall be the casting vote.

2.   Any matter decided upon by HCHR may not be reconsidered unless two-thirds of HCHR members agree.

Chapter Five

The Sub-Committees

Article Twelve:

1.   Three sub-committees help the HCHR to perform its works as follows:

A.   Local Follow-up Committee

B.    International Intercommunication Committee

C.   Committee on Rooting the Principles of Human Rights

2.     The Higher Commission determines the competences of the three sub-committees and nominates members thereof.

Article Thirteen:

Each of the three sub-committees is chaired by one member of the Higher Commission, and the Secretariat assumes the role of its Rapporteur.

Article Fourteen:

1.   The sub-committees meet at least once a month by an invitation from their chairman or his representative; the meetings thereof shall be valid when the majority of members of whom the convening sub-committee is formed attend.

2.   The committee members shall be provided with the agenda timely enough prior to convening the session.

Article Fifteen:

The sub-committees shall submit their reports and recommendations to the Higher Commission in order to take the appropriate decisions.

Chapter Six

Final Provisions

Article Sixteen:

The provisions of this Rules of Procedures may not be amended unless two-thirds of the HCHR members consent to such amendment.

Article Seventeen:

This Decree shall be implemented by the parties concerned and shall be enforced as of date of issuance.

**Functions of the Higher Commission**

Pursuant to the Second Article of Ministerial Decree No (104) of the year 2008, the Higher Commission is competent with the following:

1.   To offer opinion and advice to the State decision-makers on all issues of human rights.

2.   To review the existing regulations and laws and propose the amendment thereof in line with the internationally developed legal rules of human rights and in compliance with Islamic Sharia.

3.   To express opinion about international conventions and bills relating to human rights.

4.   To draw up a national plan covers State official sectors and authorities to assure and respect human rights; to propose policies and mechanisms to implement such plan.

5.   To prepare reports on any matters and issues referred from the parliamentary "Committee for the Protection of Human Rights".

6.   To prepare reply to the periodical and non-periodical reports of the international governmental and non- governmental organizations on the situations of human rights in Kuwait.

7.   To prepare reports that should be presented by Kuwait by virtue of the international conventions conceded thereto.

8.   To coordinate with the concerned entities relating to human rights.

9.   To spread awareness of human rights through various mass media, and work on to include the fundamental concepts of these rights in school curriculums across different stages of education.

10.             To work on to prepare required and specialized cadres capable of spread the rights in various entities.

11.             To issue publications and periodicals indicating the activities of the Higher Commission for Human Rights.

12.             To exercise any required function connected and related to the purpose of establishing the Higher Commission.

**Working Sub-Committees and Functions thereof**

In order that HCHR can properly perform its work and to achieve its expected objectives, three sub-committees have been established as follows:

**1-**     **Local Follow-up Committee**

This Committee is concerned with following-up the situations of human rights inside the State Kuwait and preparing a periodical report thereon to be filed to the Higher Commission; it also receives any complaints lodged by any agencies and authorities concerning the violation of human rights and constitutes fact-finding work groups to collect facts on these violations and also requests these agencies and authorities to submit statements and explanations on these matters.

**2-**       **International Intercommunication Committee**

The task of this Committee is to coordinate with the international governmental and non-governmental organizations working in the field of human rights and to exchange experiences with them; to follow the general situation regionally and internationally of the State of Kuwait; to be acquainted with the latest world measures taken for protecting human rights and to benefit from them locally. In addition, this Committee is concerned with following–up the situations of Kuwaiti citizens abroad and to ensure that they enjoy all their civil, economic, social, and personal rights in full without any violation thereof.

**3-**     **Committee on Rooting the Principles of Human Rights**.

Such Committee works hard to root the correct concepts of human rights among the public at large, and to acquaint citizens and residents with their rights and obligations and also it follows-up upgrading and developing curricula at all academic stages quite enough so as to acquaint scholars with human rights issues.

**Higher Commission's Secretariat**

The Secretariat of the Higher Commission was established by virtue of the Fourth Article of the Ministerial Decree No (104) of the year 2008, and Ministerial Decree No (169) of the year 2008 to help the Higher Commission perform the tasks entrusted therewith and to supervise working groups derived thereof in order to perform the assisting technical works and other tasks required to enhance business conduct of the Higher Commission. The teamwork of the Secretariat, composed of a number of MOJ employees with various specifications (legal, administrative and technical), plays efficient role in performing the functions and tasks of the Higher Commission for Human Rights in order to enhance its conduct of business.

Pursuant to the Fourth Article of the Ministerial Decree No (169) of the year 2008, the Secretariat shall:-

1-  Coordinate with the sub-committees in order to prepare reports, researches, and technical studies required by the Higher Commission.

2-  Prepare documents relating to topics tabled on the agenda or such topics required by the Higher Commission.

3-  Technically and administratively prepare for the convening of the Higher Commission's meetings, prepare the agenda and supervise recording the minutes of its meetings in coordination with the Rapporteur.

4-  Supervise the regulating and procedural matters related to good conduct of business in the Higher Commission's meetings.

5-  Prepare the periodical report on the Higher Commission's activities and submit in each meeting a report on the resolutions implemented.

6-  Supervise keeping the papers and documents of the Higher Commission and its sub-committees.

7-  Undertake the secretariat of all the sub-committees of the Higher Commission.

1. **Researching and Writing Legal Memorandum: Enhancing Skills for Law Students**

###

### Concept:

### Enhancing the researching skills of students and instructing them on how to write legal memoranda. This can be achieved through giving them several exercises that require researching in order to find the applicable law to a particular case and/or writing legal memoranda

1. Instructing students on acquiring litigation skills, preparing oral arguments, and conducting professional written advocacy

### Instructing the students on the steps of closing a case

### Assignments:

### Researching and Writing Legal Memorandum: Enhancing Skills for Law Students

* To support the work of the pro-bono lawyer, the student will research the applicable law and write a legal memorandum.
* When students are assigned to a particular case, they will be instructed that legal memoranda as well as research papers or case precedents should be filed in the client’s folder.
1. Litigation Skills: Oral Arguments and Written Advocacy
* Policy and advocacy clinics generally attempt to pressure for policy changes and/or social change. This may be done through: (1) lobbying, (2) drafting legislation, (3) submitting amicus curiae briefs to courts, (4) conducting legal research, (5) bringing test cases to court to attempt to set a legal precedent, (6) community organizing, (7) human rights monitoring and reporting, and (8) street law campaigns.

3- Case Close-out

## Case Closing

Once the case has been litigated in court or the student, together with the supervisor and assigned lawyer has decided that there are no more steps to be taken to remedy the case, it should be closed.

### Closing Letter

A closing letter should be sent to the client explaining why the case is being closed, the status of any pending matters, and returning all documents to the client after copies have been made for the file.

### Case Closing Form

The Case Closing Form should be filled out by the student and signed by the supervisor.

**Sample Case Closing Form**

Case File Number:

Student Name:

Client Name:

Date and Site of Case Intake:

Area of Case:

Case Closed

 🞎 letter sent to client

 🞎 memo sent to law clinic

Reason for Case Closure

 🞎 matter resolved or case referred

 🞎 client did not want to pursue case

 🞎 lost contact with client

 🞎 case outside Legal Clinic parameters ( i.e., traffic; criminal; frivolous)

Status of Case Resolution

 🞎 1 Provided general information only

 🞎 2. Advocated on behalf of client

 🞎 3. Court appearance – please specify details and outcomes of proceedings

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 🞎 4. Referred case – to where or to whom?

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 🞎 5. Completed forms or obtained documents for client – please specify

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How much time did you spend on the case?

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Client’s last known address:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Approval for Closing

Supervisor Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(**9) Drafting Contracts: A Human Rights Approach**

**Concept:**

Instructing the students on how to draft a model employment contract that may be used by domestic workers in Kuwait

**Assigned Material:**

## STANDARD EMPLOYMENT CONTRACT

## BETWEEN FOREIGN DOMESTIC WORKER AND EMPLOYER

## Memorandum of Agreement made this day\_\_\_\_\_\_\_\_\_ between \_\_\_\_\_\_\_\_ Employer hereafter called the first party, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_(Employee), a \_\_\_\_\_\_\_\_\_ National, bearing passport No. \_\_\_\_\_\_\_\_\_dated \_\_\_\_\_\_\_. Hereinafter called the Second Party.

## BOTH THE PARTIES AGREE AS FOLLOWS:

## 1. The employee (Second Party) agrees to serve the Employer (First Party) or his representative/s

## as \_\_\_\_\_\_\_\_\_\_\_\_.

## 2. The First Party agrees to pay \_\_\_\_\_\_\_\_\_\_ Monthly Salary to the second party.

## 3. This agreement shall remain in force for a period of two years from the date of arrival of the Employee in the Sultanate.

## 4. The First Party is responsible to provide food and accommodation to the Second Party during the period of contract.

## 5. The First Party is liable to insure the Employee with an approved insurer against any responsibility which might incur as a result of application of \_\_\_\_\_\_ Labour Law \_\_\_\_\_ or compensation of occupational injuries or illness, Law No. \_\_\_\_\_\_\_\_ for the illness or injuries sustained by the Employee due to an accident, in the course of his/her duties.

## 6. The Employee is entitled to one month paid leave every two years.

## 7. On termination or completion of contractual period the Employer is liable to pay service benefits to the Employee for the period of service time. However the Employee shall not be entitled to any Service Gratuity if He/She has served less than one year with the Employer.

## 8. The Employee shall be entitled to free passage to his/her Country and back on earned annual leave and on termination of the contract, unless or otherwise, if the termination of the contract comes from the employee himself/herself.

## 9. The Employee may break the contract without notice and retain his/her legal rights as per the service contract if the Employer does not fulfill his obligation towards the Employee.

## 10. The Contract shall be renewed automatically to the same period if none of the parties has shown the desire to terminate the contract.

## 11. Both the parties agree to accept the arbitration of the Director of Labour, \_\_\_\_\_\_\_\_\_\_\_\_, in case of any dispute which may arise over the enforcement of the contract.

## 12. Three copies of this contract have been made, one for each of these Parties and one for the Director of Labour, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

## 13. In the event of death, the Employee’s body will be sent back to his/her country at the expense of the Employer.

**(10) Drafting International Human Rights Legislation**

**Concept:**

Exploring how international conventions on the area of human rights are drafted, what language is used, and the binding effect of the various provisions of a convention as well as compromises that are reached to balance state responsibilities with international human rights standards

**Assigned Material:**

* **United Nations Protocol to Prevent Suppress and Punish Trafficking in Persons Especially Women and Children of 2000**

**Article 3**

Use of terms

 For the purposes of this Protocol:

 (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

 (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

 (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

 (d) “Child” shall mean any person under eighteen years of age.

**Article 5**

Criminalization

 1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

 2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

 (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

 (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

 (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

**Article 6**

Assistance to and protection of victims of trafficking in persons

 1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

 2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

 (a) Information on relevant court and administrative proceedings;

 (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

 3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of – 4 – trafficking in persons, including, inappropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

 (a) Appropriate housing;

 (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

 (c) Medical, psychological and material assistance; and

 (d) Employment, educational and training opportunities.

 4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

 5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

 6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

**Article 7**

Status of victims of trafficking in persons in receiving States

 1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

 2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

**Article 9**

Prevention of trafficking in persons

 1. States Parties shall establish comprehensive policies, programmes and other measures:

 (a) To prevent and combat trafficking in persons; and

 (b) To protect victims of trafficking in persons, especially women and children, from revictimization.

 2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

 3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

 4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

 5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

* **ILO C189 Domestic Workers Convention 2011**

**Article 1**

For the purpose of this Convention:

(a) the term domestic work means work performed in or for a household or households;

(b) the term domestic worker means any person engaged in domestic work within an employment relationship;

(c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

**Article 2**

1. The Convention applies to all domestic workers.

2. A Member which ratifies this Convention may, after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, exclude wholly or partly from its scope:

(a) categories of workers who are otherwise provided with at least equivalent protection;

(b) limited categories of workers in respect of which special problems of a substantial nature arise.

3. Each Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organisation, indicate any particular category of workers thus excluded and the reasons for such exclusion and, in subsequent reports, specify any measures that may have been taken with a view to extending the application of the Convention to the workers concerned.

**Article 3**

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.

3. In taking measures to ensure that domestic workers and employers of domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members shall protect the right of domestic workers and employers of domestic workers to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing.

**Article 4**

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.

2. Each Member shall take measures to ensure that work performed by domestic workers who are under the age of 18 and above the minimum age of employment does not deprive them of compulsory education, or interfere with opportunities to participate in further education or vocational training.

**Article 5**

Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence.

**Article 6**

Each Member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

**Article 7**

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:

(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.

**Article 8**

1. National laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment referred to in Article 7, prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies.

2. The preceding paragraph shall not apply to workers who enjoy freedom of movement for the purpose of employment under bilateral, regional or multilateral agreements, or within the framework of regional economic integration areas.

3. Members shall take measures to cooperate with each other to ensure the effective application of the provisions of this Convention to migrant domestic workers.

4. Each Member shall specify, by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation on the expiry or termination of the employment contract for which they were recruited.

**Article 9**

Each Member shall take measures to ensure that domestic workers:

(a) are free to reach agreement with their employer or potential employer on whether to reside in the household;

(b) who reside in the household are not obliged to remain in the household or with household members during periods of daily and weekly rest or annual leave; and

(c) are entitled to keep in their possession their travel and identity documents.

**Article 10**

1. 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.

2. Weekly rest shall be at least 24 consecutive hours.

3. 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.

**Article 11**

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.

**Article 12**

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 favourable 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.

**Article 13**

1. Every domestic worker has the right to a safe and healthy working environment. Each Member shall take, in accordance with national laws, regulations and practice, effective measures, with due regard for the specific characteristics of domestic work, to ensure the occupational safety and health of domestic workers.

2. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

**Article 14**

1. Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity.

2. The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

**Article 15**

1. To effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices, each Member shall:

(a) determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers, in accordance with national laws, regulations and practice;

(b) ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers;

(c) adopt all necessary and appropriate measures, within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses;

(d) consider, where domestic workers are recruited in one country for work in another, concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment; and

(e) take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

2. In giving effect to each of the provisions of this Article, each Member shall consult with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

**Article 16**

Each Member shall take measures to ensure, in accordance with national laws, regulations and practice, that all domestic workers, either by themselves or through a representative, have effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally.

**Article 17**

1. Each Member shall establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers.

2. Each Member shall develop and implement measures for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work, in accordance with national laws and regulations.

3. In so far as compatible with national laws and regulations, such measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.

**Article 18**

Each Member shall implement the provisions of this Convention, in consultation with the most representative employers and workers organizations, through laws and regulations, as well as through collective agreements or additional measures consistent with national practice, by extending or adapting existing measures to cover domestic workers or by developing specific measures for them, as appropriate.

**Article 19**

This Convention does not affect more favourable provisions applicable to domestic workers under other international labour Conventions.

**Article 20**

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

**Article 21**

1. This Convention shall be binding only upon those Members of the International Labour Organization whose ratifications have been registered with the Director-General of the International Labour Office.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director- General.

Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification is registered.

**Article 22**

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention within the first year of each new period of ten years under the terms provided for in this Article.

**Article 23**

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organization of the registration of all ratifications and denunciations that have been communicated by the Members of the Organization.

2. When notifying the Members of the Organization of the registration of the second ratification that has been communicated, the Director-General shall draw the attention of the Members of the Organization to the date upon which the Convention will come into force.

**Article 24**

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and denunciations that have been registered.

**Article 25**

At such times as it may consider necessary, the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

**Article 26**

1. Should the Conference adopt a new Convention revising this Convention, then, unless the new Convention otherwise provides:

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 22, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

**Article 27**

The English and French versions of the text of this Convention are equally authoritative.

**(11) Drafting a Domestic Workers Model Law**

**Concept:**

Instructing the students on how to draft a model law on domestic work in Kuwait

**Assigned Material:**

* **مشروع قانون كويتي في شأن مكافحة الاتجار بالاشخاص وتهريب المهاجرين**

<http://www.protectionproject.org/wp-content/uploads/2010/09/Kuwait_Draft-TIP-Law_20071.pdf>

**(12) Domestic Workers Model Law**

**Concept:**

Exploring and analyzing the Indian Domestic Workers Welfare and Social Security Act 2010

**Assigned Materials:**

* **Domestic Workers Welfare and Social Security Act 2010**

Statement of objects and reasons

 The issue of exploitation of women and children domestic workers is frequent and regularly reported. With no rights and rules to fall back on, most of the domestic helps have become contemporary slaves. It is also a known fact that many women and children are trafficked and exploited by the placement agencies, which operate openly without any form of restrictions and regulations.

 In last few decades there has been a tremendous growth in the demand for domestic workers which has led to the trafficking and other forms of exploitation of millions of Women and children of the both sexes and to meet this growing demand there has been a spurt of thousands of placement agencies providing domestic workers in metro-towns of many states who are exploited in various ways as well as trafficked and remain outside the purview of any legislative control.

 Absence of any legal protection , has led to severe exploitation women and children which include depriving domestic workers from their entire salary average more then 16-18 hours of work per day, absence of proper food and living/sleeping condition, forced and total cut off from their family members, bounded labour , sexual exploitation by agent during transit, at the office of agency and at the work place in houses of employers, The list of exploitation is endless and frequently reported upon by the media. The legislations such the recent notification on prohibition of child labour in domestic work under Child Labour (Prohibitions &Regulation ) Act, 1986 cannot be implemented in the absence of any implementation mechanism in this Act.

Recently, few State Governments have taken different initiative such as including domestic workers under minimum wage notification but in the absence of a central legislation capable of reaching all domestic workers none of these state level measures can really benefit the domestic workers. That only a Comprehensive Central Legislation specifically designed to meet the working condition of the domestic workers including registration , who are an important segment of service sector of Indian economy and who have a multiplier impact on the economy by enabling the women in particular to work by sharing the family burden, can ensure the end of the exploitation of these domestic workers.

That in the public interest that the domestic workers, employing, as it does, a very large number of women and whose conditions of work and living need amelioration and to whom regularity of employment must be assured. Placement agencies must be regulated so that the Directive Principles of the Constitution more particularly the relevant provisions Article 39, 41, 42, 43, and 43-A of the Constitution are given effect to by a law made by Parliament with reference to entries 22, 23 and 24 of List III in the 7th Schedule in the Constitution.

CHAPTER ONE

PRELIMINARY

1. Short title, Extent and Commencement

(a) This Act may be called the Domestic Workers Welfare and Social Security Act 2010

(b) It extends to the whole of India except the state of Jammu & Kashmir

(c) It does not apply to such domestic workers immigrating for employment to any other country

 It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions- in this Act unless the Context otherwise requires

(a) “Appropriate Government” means the concerned State Government or the Union Territory administration.

(b) “Beneficiaries “means every domestic worker registered as a beneficiary under this Act

( c) “Child “means a person who has not completed eighteen years of age.

(d) “Central Advisory Committee “means an advisory Committee constituted by the central Government under section 4 of the act

(e) “District Board” means the District Board for domestic workers established under Section 8 of the act

(f) “Domestic Worker” means, a person who is employed for remuneration whether in cash or kind , in any house hold ‘or similar Establishments’ through any agency or directly, either on a temporary or contract basis or permanent, part time or full time to do the household or allied work and includes a “Replacement worker” who is working as a replacement for the main workers for a short and specific period of time as agreed with the main worker;

 EXPLANATION: household and allied work includes but is not limited to activities such as cooking or a part of it, washing clothes or utensils, cleaning or dusting of the house, driving , caring/nursing of the children/sick/old/mentally challenged or disabled persons

(g) Domestic Workers Welfare Fund – means the fund under section 19 of the Act

 (h) “Employer” means any person , authorities, management that engages the domestic worker to do any work in a household whether part time or full time either directly or through any other person or agency and who has an ultimate control over the affairs of the household and includes any other person to whom the affairs of such household is entrusted and in relation to contract labour, the principal employer

(i) “Notification” means a notification published in the Official Gazette.

(j) “Service provider” means any voluntary association registered under the society’s registration Act 1860 or a company registered under the companies Act 1956 or any other law for the time being in force, which espouses the cause of domestic work and/or provides or engages in employment of domestic workers and includes any person or an association of such persons or placement agency whether registered or otherwise through whom any such worker is engaged in any household work with the principal employer .

 Explanation: “Placement Agency” “Placement Agency” means any agency /bureau /contractor or person(s) or association or organization whether registered or otherwise which provides/ engages in employment of domestic workers or which facilitate the placement of domestic help for prospective employers and includes such agency or person offering such services through any print, electronic or any form of communication

(k) State Board means the State Advisory Committee for domestic workers established under section 6 of the act.

(l) Workplace means any household where a domestic worker works.

Explanation: household means any residential place where the domestic worker works

(m) "Wages" means all remunerations expressed in terms of money or capable of being so expressed which would, if the terms of contract of employment, express or implied were fulfilled, be payable to a domestic worker in respect of work done but does not include –

(i) the value of any house accommodation, supply of light, water, medical attendance, or any other amenity or wages by general special order of the Government;

(ii) any contribution paid by the employer to any pension fund or provident fund or under any scheme or social insurance and the interest which may have accrued thereon;

(iii) any traveling allowance or the value of any traveling concession;

(iv) any sum paid to the domestic worker to defray special expenses entailed on him by the nature of his employment

3. Act not in derogation of other laws

 The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

CHAPTER TWO

IMPLEMENTING AUTHORITIES UNDER THE ACT

4. CENTRAL ADVISORY COMMITTEE

(1) The Central Government shall, constitute a Committee to be called the Central Advisory Committee (hereinafter referred to as the Central Committee)

(2). The Central Committee shall consist of—

(a) A Chairperson to be appointed by the Central Government;

 (b) such number of members , as the central government may nominate , that shall include association, Union or persons espousing the cause of domestic workers , individuals having expertise in issues relating to labour matters, women and child issues , law and any other interests which in the opinion of the central Government ,ought to be represented on the central board provided further that composition of committee shall be at least 5 members excluding the chairperson

(3) The number of persons to be appointed as members from the categories specified in sub-section (2), the term of office and other conditions of service of, the procedure to be followed in the discharge of their functions and the manner of filling up of vacancies shall be such as may be prescribed

5. Functions of the Central Committee

 The Central committee shall perform the following functions:

(a) To review and monitor implementation of the Act and rules made there under and recommend to the Central Government of any changes in the said Act and rules.

(b ) Review and monitor the implementation of the Act in States

(c ) Advise the State Boards regarding schemes for benefit and welfare of domestic worker such as social security , health ,medical ,education and other beneficial schemes

(d) Advise upon such matters arising out of the administration of this Act or any scheme made under this Act or relating to the application of the provisions of this Act to any particular class of domestic workers and employers, and co-ordination and monitoring of the work of various Boards

(e) In consultations with State Boards prescribe Minimum Standards to achieve Decent Conditions of Work

(f) Recommend appropriate strategies on elimination of any form of trafficking/ forced/ bonded labour and child labour where the child happens to be below 18 yrs. of age.

(g) Any other matter as may be prescribed by the central Government

6. State Advisory committee

(1) The State Government may constitute an Advisory Committee to advise upon such matters arising out of the administration of this Act or relating to the application of the provisions of this Act to domestic workers and employers or co-ordination of the work of various Boards, as the State Government may refer to it for advice.

(2) The members of the Advisory Committee shall be appointed by the State Government and shall be of such number and chosen in such manner as may be prescribed:

Provided that, the Advisory Committee shall include an equal number of members representing the employers, domestic workers and the members representing State Government which shall not exceed one third of its total number of members.

(3) The Chairman of the Advisory Committee shall be one of the members appointed to represent the State Government, nominated in this behalf by the State Government.

(4) The State Government shall publish in the Official Gazette, the names of all the members of the Advisory Committee.

(5) The meetings of the Advisory Committee and procedure to be followed thereat shall be such as may be prescribed by the regulations.

(6) The term of office of members of the Advisory Committee shall be such as may be prescribed.

(7) The member of the Advisory Committee (not being a member representing the State Government) shall receive traveling and daily allowances for attending meetings of the Committee at such rates as may be prescribed.

7. Functions of the State Advisory Committee

 (a) The State Board shall perform the following functions:

The Board may, with the previous approval of the State Government, make regulations consistent with this Act and the rules made there under for all or any of the matters to be provided under this Act by regulations and generally for all other matters for which provision is, in the opinion of the Board, necessary for the exercise of its powers and the discharge of its functions under this Act.

 Review and monitor the District Board constituted for the State and take appropriate steps to ensure its proper and effective implementation

(b) Allocate funds to the district Board and administer the domestic workers welfare fund and allocate such amounts to district Boards as may be considered necessary

(c) Prescribe the fees to be charged from the employers, service providers/placement agencies and domestic workers from time to time

(d) Prescribe fee for registration as beneficiaries under the Fund and rate per mensem for the beneficiaries of the fund.

(e) Implement such schemes and welfare measures as formulated in consultation with the central Board

(f) Prescribe the form of register to be maintained for registration of domestic workers under the fund

(g) Procedure for renewal of registration certificate

(h) Entertain appeals with respect to any decision by the district Board.

(i) Ensuring decent conditions of service, including rates of remuneration, hours

of work and conditions

(j) Any other matter as may be prescribed

8. District Boards

(1) The State Government may for the purposes of preparation and implementation of the schemes for welfare of domestic workers, in a District, by notification in the Official Gazette, establish such number of Boards to be known as “District Domestic Labour Welfare Board":

Provided that, the State Government may constitute such Board for two or more Districts:

Provided further that, the State Government may, by like notification also constitute more than one Board for a District and specify the local limits in which such Boards shall have jurisdiction or authorize any existing Board under any other law dealing with labour related matters.

 (2) The Board shall consist of members nominated, from time to time, by the State Government representing the employers, the domestic workers and the State Government.

(4) The members representing employers and domestic workers shall be equal in number, and the members representing the State Government shall not exceed one-third of the total number of members representing employers and domestic workers.

(5) The Chairman of the Board shall be one of the members appointed to represent the State Government, nominated in this behalf by the State Government.

(6) After nomination of all the members including the Chairman, the State Government shall, by notification in the Official Gazette, publish the names of all the members of the Board.

(7) The term of office of members of the Board shall be such as may be prescribed.

(8) Every member shall be paid (not being a member representing the State Government) from the fund of the Board; traveling and daily allowances for attending meetings of the Board at such rates as may be prescribed.

(9) The meetings of the Board and the procedure to be followed for the purpose and all matters supplementary or ancillary thereto shall be such as may be laid down by the regulations.

9. Disqualification and removal of member

(1) No person shall be chosen as, or continue to be, a member of the Board who,-

(a) is a salaried officer of the Board;

(b) is or at any time has been adjudged insolvent;

(c) is found to be a lunatic or become of unsound mind; or

(d) is or has been convicted of any offence involving moral turpitude.

(2) The State Government may remove from office any member, who,--

(a) is or has become subject to any of the disqualifications mentioned in sub-section (1); or

(b) is absent without leave of the Board for more than three consecutive meetings of the Board;

(c) in the opinion of the Government, has so abused the position of member as to render that persons continuation in the office detrimental to the public interest or is otherwise unfit or unsuitable to continue as such member:

Provided that, no person shall be removed under clause (c), unless that person has been given a reasonable opportunity to show cause as to why he should not be removed.

(3) Notwithstanding anything contained in any other provisions of this Act, the members shall hold office during the pleasure of the State Government and if in the opinion of the State Government,--

(a) the member representing employers and the domestic workers, ceases to adequately represent the employers or, as the case may be, the domestic workers, or

(b) having regard to exigencies of circumstances or services in the State Government, the member representing the State Government cannot continue to represent the State Government, then it may, by an order, remove all or any of them from office at any time.

10. Resignation of office by member

Any member of the Board may at any time resign his office by writing under his hand addressed to the State Government, and his office shall, on acceptance of the resignation, become vacant.

11. Proceedings presumed to be good and valid No act or proceeding of the Board shall be questioned or invalidated merely by reason of any vacancy in its membership or by reason of any defect in the constitution thereof.

12. Secretary and other officers of Board

(1) The Board shall, with the approval of the State Government, appoint a secretary and such other officers and employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The Secretary of the Board shall be its Chief Executive Officer.

(3) The functions, terms and conditions of appointment and the salary and allowances payable to the secretary and other officers and employees of the Board shall be such as may be laid down, from time to time, by regulations.

13. Functions of the Board

 (1) The District Boards shall perform the following functions:

(a) The Board shall carry out or cause to carry out the registration of domestic worker and employers and service providers as per the procedure prescribed under the Act either directly or through the WFC and maintain records registration of domestic workers as beneficiaries under the Act;

(b) to grant following benefits to beneficiaries which they are entitled to under the Act:--

(i) provision for immediate assistance to a beneficiary in case of accident;

(ii) financial assistance for the education of children of the beneficiary;

(iii) provision for medical expenses for treatment of ailments of a beneficiary or his such dependent;

(iv) provision for maternity benefit to the women beneficiaries:

Provided that, such maternity benefit shall be restricted in case of two children only;

(v) make payment of funeral expenses to the legal heir on the death of the beneficiary;

(vi) Facilitate the settlement of disputes through conciliation

(vii) Renewal of registration certificate

(vii) Issue of identity card for the beneficiaries

(viii) Disseminate information on available social security schemes for the Workers;

(ix) Authorize the WFC to act as an authorized intermediary in collecting contributions from the workers and others as mandated under the Act and remit them to the district Board;

(x) Training, imparting skills to domestic workers;

(xi) Implement any schemes or any welfare measures framed by the central Board in consultation with State Boards

(xii) such other benefits as may be decided by the Board, from time to time;

(c) The district Board in consultation with the State Board may make available such schemes as applicable under other laws such as the unorganized sector

Act 2009

 (2) Designate any one or more of the following at such areas as maybe considered necessary , as Workers’ Facilitation Centres (WFC) for purposes of facilitating registration of workers:

 i) Local Panchayati Raj Institutions (PRI) or urban local bodies;

 ii) Resident welfare associations/society;

 iii) Non-profit organizations working among the Domestic workers.

Provided further that such Workers’ Facilitation Centres (WFC) shall function under the supervision of the district Board

 3. The board shall maintain such registers and records giving such particulars of domestic workers employed the nature of work performed by the domestic worker, and such other particulars in such form as may be prescribed.

4. The board may implement any welfare schemes under any other law with prior approval of the centre or State Government.

14. Powers of the District Board Subject to any rules by the State Government in this behalf, the Board may, within the local limits

(a) Make such examination and hold such inquiry as may be necessary for ascertaining whether the provisions of this Act have been or are being complied within any place or premises:

(b) Require the production of any document, record or evidence (written or oral)

(c) Enter, with such assistance as it may consider necessary, at all times any place or premises if there are reasonable grounds for suspecting that any domestic worker has or is being subjected to any form of sexual exploitation or wrongfully confined in any such place or premises or rescue any child being used employed as a domestic worker

(2) Every employer shall accord to the Board, all reasonable facilities in the discharge of his duties under this Act.

(3) Each District board shall have the same powers as are vested in civil court under the Code of Civil Procedure, 1908 (5 of 1908), when adjudicating a dispute in respect of the following matters, namely -

(a) Enforcing the attendance of any person and examining him on oath;

(b) Compelling the production of documents and material objects;

(c ) issuing commissions for the examination of witnesses;

(d) in respect of such other matters as may be prescribed;

CHAPTER THREE

REGISTRATION PROCEDURE

15. REGISTRATION – (a) Notwithstanding anything contained in any law for the time being in force, all domestic workers, employers or service providers shall be registered as per procedure hereinafter prescribed

(b) Every employer / service provider and domestic worker wherever applicable, shall within one month of the commencement of the employment of domestic worker, in the household, shall submit to the District Board or any person so authorized by the District Board, application along with prescribed fee ,for registration , providing such details as prescribed.

 Provided that the Board or any such person so authorized may entertain any such application for registration after expiry of the period fixed in this behalf, if satisfied that the applicant had sufficient cause from making the application in time

c) Where a domestic worker undertakes part time work in two or more households and is not engaged through any placement agency, it shall be the duty of such domestic worker to register with the District Board.

 Provided further that where such worker is engaged through any agency and works in more than one household, it shall be the duty of such agency to register the worker

(d) where a domestic worker leaves the work in a district and moves to any other area in any part of the territory of India and takes up work in any household in such part either on his/her own or through any agency or middleman, it shall be the duty of such worker or agency or middleman, to inform the concerned Board where so registered regarding the move and register with the Board At the place where work has been taken up.

(e) Notwithstanding anything contained in provisions above, where a domestic worker is engaged through a middleman or agency or service provider for work in any household , it shall be the duty of such agency or middleman or service provider and not of the main employer in whose household such worker works , to register as per the procedure prescribed.

16. Registration fee – (a) where a employer engages a domestic worker on full time basis, it shall be the duty of such employer to register with the Board on payment of prescribed fee, which shall form a part of yearly subscription, irrespective whether the domestic worker continues in such employment or otherwise or performs any part of household work part time in more than two households

(b) Where a domestic worker is engaged through a agency or middleman or service provider it shall be the duty of such agency or middleman as the case may be, to provide such details for registration along with the fee as may be prescribed.

 Provided that the Board may on application made by any service provider exempt such service provider from payment of the fee, if so considered necessary, giving cogent reasons therefore.

17. Renewal of registration certificate

 A registration certificate shall be renewed at an interval of One year on the payment of the fee as may be prescribed.

18. Employment of a child:

 No child shall be employed as a domestic worker or for any such incidental or ancillary work which is prohibited under any law for the time being in force.

Chapter FOUR

ESTABLISHMENT OF FUND

19. Domestic Workers Welfare Fund

There shall be formed a Fund, to be called the Domestic workers Welfare Fund, and there shall be credited thereto--

(a) Any grants made to the Fund by the Central Government and State Government;

(b) Any money received by the beneficiaries

( c ) all amounts from the District Boards received as registration and other fees

(d) Any income from investment of the amounts in the Fund.

e) All fines collected

f) all other sums received by the Board from any other sources

(2) The Fund shall be administered and applied by the district Board to meet the expenditure incurred in connection with measures and facilities which, in the its opinion is necessary or expedient to promote the welfare of domestic workers; and, in particular,--

(i) To defray the cost of such welfare measures or facilities for the benefit of domestic workers /beneficiaries as may be decided by the Board

(ii) To sanction any money in aid of any scheme for the welfare of the domestic - workers including family welfare, family planning, education ,Insurance and other welfare measures;

CHAPTER FIVE

REGISTRATION OF DOMESTIC WORKERS AS BENEFICIARIES

20. Beneficiaries of the Fund

(1) Subject to the provisions of this Act, every domestic worker registered as a beneficiary under this Act shall be entitled to the benefits provided by the Board from its Fund under this Act.

Every domestic worker who has completed eighteen years of age, but has not completed sixty five years of age, and who has been engaged in any domestic work for not less than ninety days during the preceding twelve months shall be eligible for registration as a beneficiary under this Act.

(2) An application for registration shall be made in such form, as may be prescribed, to Board in this behalf.

(3) Every application under sub-section (2) shall be accompanied by such documents together with such fee as may be prescribed.

(4) If Board under sub-section (2) is satisfied that the applicant has complied with the provisions of this Act and the rules made there under, he shall register the name of the domestic worker as a domestic worker under this Act:

 Provided that an application for registration shall not be rejected without giving the applicant an opportunity of being heard and without assigning reasons in writing.

(5) Any person aggrieved by the decision under sub-section (4) may, within thirty days from the date of such decision, prefer an appeal to the state Board and the decision of the State Board on such appeal shall be final:

 Provided that the State Board in this behalf may entertain the appeal after the expiry of the said period of thirty days if he is satisfied that the domestic worker was prevented by sufficient cause from filing the appeal in time.

21. Identity cards

 The Board shall give to every beneficiary an identity card with his photograph duly affixed thereon along with passbook to enable them in opening the bank accounts.

(2) A beneficiary who has been issued an identity card under this Act shall produce the same whenever demanded by any officer of Government or the Board, or any other authority for inspection.

22. Cessation of registration

(1) A domestic worker who has been registered as a beneficiary under this Act shall cease to be as such when he attains the age of sixty five years or when he is not engaged in any domestic work for not less than ninety days in a year:

 Provided that in computing the period of ninety days under this sub-section, there shall be excluded any period of absence from work due to any personal injury accident

(2) Notwithstanding anything contained in sub-section (1), if a person had been a beneficiary for at least three years continuously immediately before attaining the age of sixty years, he shall be eligible to get such benefits including pensions as may be prescribed.

23. Register of domestic workers

The district Board shall maintain records / register in such form as may be prescribed showing the details of employment of beneficiaries in the district.

24. Contribution of domestic workers

(1) A Domestic worker who has been registered as a beneficiary under this Act shall, until he attains the age of sixty years, contribute to the Fund at such rate per mensem, as may be specified /prescribed

Provided that the Board may, if satisfied that a beneficiary is unable to pay his contribution due to any financial hardship, waive the payment of contribution for a period not exceeding three months at a time.

(2) A beneficiary may authorize his employer to deduct his contribution from his monthly wages and to remit the same, within fifteen days from such deduction, to the Board.

25. Effect of non-payment of contribution

 When a beneficiary has not paid his contribution under sub-section (1) of section 20 for a continuous period of not less than one year, he shall cease to be a beneficiary:

 Provided that if the Board is satisfied that the non-payment of contribution was for a reasonable ground and that the domestic worker is willing to deposit the arrears, he may allow the domestic worker to deposit the contribution in arrears and on such deposit being made, the registration of domestic worker shall stand restored.

CHAPTER SIX

REGULATION OF THE WORKING CONDITIONS

26. Duties of the employer and service provider

(1) Every employer and service provider shall provide such particulars of the domestic workers engaged directly or through agency, to the District Board or any person so authorized by the Board , in such form and paying such fees as may be prescribed

(2) No service provider or a person /agency shall carry on the business of providing domestic worker to any employer unless they said service provider or agency or person is registered under the Act

(3) The service provider shall maintain the records of all the domestic workers being contracted by them for purposes of employment from any part of the territory of India and provide the details thereof in such form as may be prescribed

(4) Working hours - No employee shall be required or allowed to work in any household for more than nine hours in any day or for more than forty-eight hours in any week; Working hours are to be defined as per the nature of work and taking 8 hrs as maximum, with sufficient periods of rest and food for full time workers; provided that t he work span should not be more than 12 hours for live – in (with 3-4 hrs. of rest in between), and similarly full time live-out workers, the work span should not be more than 8 hours;

 Provided further that any adult employee may be allowed to work in such household premises for any period in excess of the limit fixed under this section subject to the payment of overtime wages if the period of work, exceeds 48 hrs a week and including overtime work, does not exceed ten hours in any day and in the aggregate fifty- hours in any week.

(5) Wages for overtime work

 Where any employee employed in any household is required to work overtime, she shall be entitled in respect of such overtime work, to wages at the rate of twice her ordinary rate of wages; The overtime rate shall be calculated, shall be calculated at one and half times the average earnings for the days on which they had actually worked during the week immediately preceding the week in which the overtime work has been done;

(6) Interval for rest - The periods of work for employees in a household shall be so fixed that no period shall exceed five hours and that no employee shall work for more than five hours before she has had an interval for rest of not less than half hour;

(7) Weekly holidays - Every worker irrespective of being a full-time, part- time, live-in, nights shift workers will be entitled to a weekly day off;

27. Minimum wages - The appropriate Government shall by notification fix the minimum rates of wages payable to domestic worker

(b) review at such intervals as it may think fit, such intervals not exceeding five years. The minimum rates of wages so fixed and revise the minimum rates, if necessary:

 (2) The appropriate Government may fix--

 (a) a minimum rate of wages for time work (hereinafter referred to as 'a minimum time rate');

 (b) a minimum rate of wages for piece work (hereinafter referred to as 'minimum piece rate');

 (c) a minimum rate of remuneration to apply in the case of employees employed en piece work for the purpose of securing 23 to such employees a minimum rate of wages on a time work basis (hereinafter referred to as 'a guaranteed time rate');

 (d) a minimum rate (whether a time rate or a piece rate) to apply in substitution for minimum rate which would otherwise be applicable, in respect of overtime work done by employees (hereinafter referred to as 'overtime rate');

 (e) Minimum rates of wages may be fixed by any one or more of the following wage- periods, namely :--

 (i) by the hour,

 (ii) by the day,

 (iii) by the month

28. Offences and penalties

(1) Any service provider who contravenes the provisions of the Act or any rules made there under shall be punishable with imprisonment for a term which may extend to three months and with fine which may extend to two thousand rupees, or with both, and in the case of a continuing contravention, with an additional fine which may extend to one hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(2) If any person who has been convicted of any offence punishable under sub section (1) is again guilty of an offence involving a contravention or failure of compliance of the same provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to six months and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees or with both:

(3) Where an employer fails to comply with the provisions of the Act he/she shall be punishable with fine which may extend to two thousand rupees

(4) any person who willfully obstructs any officer so authorized by the district boards to conduct inspection under the act or refuses or willfully neglects to afford the such officer any reasonable facility for making any inspection, examination, inquiry or investigation authorized by or under this Act in relation to the employer or a service provider to whom, this Act applies, shall be punishable with imprisonment for a term which may extend to three months and with fine which may extend to two thousand rupees, or with both.

 (5) Whoever willfully refuses to produce on the demand of such an inspecting a person so authorized by the district boards, any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by an inspecting person acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to three months or with a fine which may extend to two thousand rupees, or with both.

 (6) Any person who –

 (i) Knowingly sends, directs or takes any girl or woman to any place for immoral purposes or to a place where she is likely to be morally corrupted or ,

(ii) In any manner sexually exploits such woman or child or

(d) Make available young children as domestic workers shall be subjected to imprisonment for not less than three years and which may extend up to period of seven years and fine up to 2000 rupees or both.

29. No court shall take cognizance of any offence punishable under this Act except on a complaint--

(a) Made by, or with the previous sanction in writing of, the State Board or the district Board or

(b) Made by an office-bearer of a voluntary organization registered under the Societies Registration Act, 1860 (21 of 1860) or any other law for the time being in force; or

 (c) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

30 Limitation of prosecutions

 No court shall take cognizance of an offence punishable under this Act unless the complaint thereof is made within one year from the date on which the alleged commission of the offence came to the knowledge of the district or state Board

CHAPTER SEVEN

MISC PROVISIONS

31. Effect of laws and agreements inconsistent with the Act

(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law or in the terms of any agreement or contract of service, whether made before or after the commencement of this Act:

 (2) Nothing contained in this Act shall be construed as precluding any worker from entering into an agreement with the principal employer as the case may be, for granting them rights or privileges in respect of any matter which are more favorable to them than those to which they would be entitled under this Act.

32. Protection of action taken under Act

(1) No suit, prosecution or other legal proceedings shall lie against any Member of the Board or any Nongovernmental organization for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made there under.

(2) No suit or other legal proceedings shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or notification or order made or issued there under.

33. Supersession of Board

(1) If the State Government is satisfied that, or otherwise is of the opinion that,--

(a) The Board is unable to perform its functions, or

(b) The Board has persistently made delay in the discharge of its functions or has exceeded or abused its powers, then the State Government may, by notification in the Official Gazette, supersede the Board and re-constitute it in the manner specified in section … within a period of twelve months from the date of supersession. The period of supersession may be extended for sufficient reasons by a like notification by not more than six months:

Provided that, before issuing a notification under this sub-section on any of the grounds mentioned in clause (b), the State Government shall give a reasonable opportunity to the Board to show case why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(2) After the supersession of the Board and until it is reconstituted, the powers and functions of the Board under this Act shall be exercised and performed by the State Government or by such officer or officers as the State Government may appoint for this purpose.

(3) When the Board is superseded, the following consequences shall ensue, that is to say,--

(a) all the members of the Board shall, as from the date of publication of the notification under sub-section (1), vacate their office;

(b) all the powers and functions, which may be exercised or performed by the Board shall, during the period of supersession, be exercised or performed by such persons as may be specified in the notification;

(c) all funds and other property vesting in the Board shall, during the period of supersession, vest in the State Government and on the reconstitution of the Board, such funds and property shall reinvest in the Board.

34 Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the official Gazette, make such provisions not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty:

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

35. Accounts and Audit

(a) The Central, State and district Boards shall maintain proper accounts and other relevant records and prepare annual statements of accounts in such form as may be prescribed.

(b) The Central Board shall furnish to the Central Government, before such date as may be prescribed, the audited copy of the consolidated account of itself and the Funds together with the auditor’s report.

(c) The state and district boards shall furnish to the State Government before such date as may be prescribed its audited copy of accounts together with the auditor's report.

36. Power to make rules

(1) The Central Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) the number of persons to be appointed on the Central Board , the term of their office and other conditions of service, the procedure to be followed in the discharge of their functions and the manner of filling of casual vacancies of the Chairperson and other members of the Board under section 4 of the Act.

(b) Any other matter which is required to be, or may be, prescribed under section 5 (g) of the Act.

(c) The form and manner in which the annual statement of accounts together with the auditor's report shall be furnished under section 29 of the Act.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both

 Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

37. Power to make rules

(1) The State Government may, by notification in the Official Gazette, and subject to the conditions of previous publication except when the rules are made for the first time, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the forgoing provision, such rules may be made for all or any of the following matters, namely:--

(a) term of office of members of the Board;

(b) rate of traveling and daily allowances to be payable to members of the Board for attending meetings of the Board;

(c) form of application for registration as a beneficiary;

(d) documents to be accompanied along with application for registration as a beneficiary and fees for the same;

(e) registers to be maintained by the Secretary of the Board;

(f) form of an application to be made by a beneficiary to the Board and documents which may be accompanied to such application, for grant of payments out of the fund;

(g) amount of contribution of the beneficiaries to the fund;

(h) form of annual statement of accounts including a balance sheet;

(i) form in which and the time when the budget of the Board is to be prepared and forwarded to the State Government;

(j) form in which and the time when the annual report of the Board is to be prepared and submitted to the State Government;

(k) number of members of the Advisory Committee and the manner in which they may be chosen;

 (m) term of office of members of the Advisory Committee;

(n) rate of traveling and daily allowances to be payable to members of the Advisory Committee for attending meetings of the Advisory Committee;

(o) any other matter which is required to be or may be prescribed, for carrying out the purposes of this Act.

(3) Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made and notify such decision in the Official Gazette, the rule shall, from the date of publication of a notification in the Official Gazette, have effect only in such modified form, or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

 **(13) Comparative Models of Law Clinics**

**Concept:**

Discussing comparative models of law clinics around the world in order to have a better understanding of law clinics and benefit from the experiences of these different law clinics

##

**Assigned Materials:**

## The Global Movement of Law Clinics

Beginning of 20th century: First law clinics are established at U.S. law schools.

1960s: Clinical legal education spreads to other common-law countries, i.e. Great Britain, Canada, and Australia.

1970s: Several universities in African countries adopt the clinical model.

1990s: The clinical movement spreads to Southeast Asia, Central and Eastern Europe, Latin America, and China.

2000s: First legal clinics are established at universities in the Middle East.

## The Development of Law Clinics in the United States

* This “first wave” of clinical legal education involved law students volunteering to provide legal advice to serve a social justice mission. By the late 1950s, 35 of 126 ABA-approved law schools offered some kind of clinical program.
* “Second wave” of CLE which spanned from the 1960s through the late 1990s, was rooted in the demands of law students for more relevant and practical training and the increased availability of funding through the Ford Foundation and the Department of Education. It evoked greater interest in CLE among professors and university staff and led to the development of special clinical curricula.
* A “third wave” of CLE, starting in the year 2000, sees increased collaboration between faculty and students, further integration of clinical curricula in the traditional teaching schedules, and practical lawyering skills and professional values as part of the core curriculum. Every one of the more than 200 accredited law schools in the United States has some sort of clinical program, in accordance with the accreditation requirements of the American Bar Association.
* Establishing a link between Kuwait University Law Clinic and law clinics in the United States
* In the United States, presently all law schools accredited by the American Bar Association (ABA) – approximately 200 law schools – offer in-house clinical courses, externships, or both. The ABA accreditation of law schools assures that students receive an adequate legal education.
* In order to be accredited, an ABA committee conducts onsite evaluations to assess campus infrastructure, staff, enrollment, fiscal health, tuition, technology, and extracurricular activities. Moreover, the ABA actively encourages law schools to set up clinics. The possibility for students to engage in real-life practice is actually a requirement for a law school to be accredited.

**ABA Standards for Approval of Law Schools 2011–2012**

Standard 302. CURRICULUM

(a) A law school shall require that each student receive substantial instruction in:

(1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;

(2) legal analysis and reasoning, legal research, problem solving, and oral communication;

(3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year;

(4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and

(5) the history, goals, structure, values, rules and responsibilities of the legal profession and its members. ABA Standards for Approval of Law Schools 2011–2012 21

(b) A law school shall offer substantial opportunities for:

(1) live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one’s ability to assess his or her performance and level of competence;

(2) student participation in pro bono activities; and

(3) small group work through seminars, directed research, small classes, or collaborative work.

* Comparative Models: Examples of Law Clinics in the U.S.
* Family Law Clinics give students practical experience in family law cases through litigation, negotiation, and court proceedings assisting clients who seek child custody, support, divorce, adoption, or civil remedies for domestic violence;
* Criminal justice clinics where students interview and counsel clients, conduct fact investigation, draft motions, examine witnesses, file sentencing memoranda, and argue on behalf of their clients on charges such as assault, drug possession, theft, unlawful entry, and destruction of property;
* Juvenile justice clinics provide legal representation to adolescents in conflict with the law or address issues of juvenile justice generally;
* Human rights clinics in which students work on projects and cases, representing clients in federal and regional courts, monitoring and reporting on human rights violations in collaboration with civil society, and advocating for improved human rights legislation, both domestically and internationally;
* Mediation clinics teach students how to conduct mediation for civil cases, address matters of domestic relations, and provide services for contracts, dependency-neglect issues, juveniles, probation, and families;
* Environmental law clinics allow students to represent environmental advocacy organizations before courts and administrative agencies for a broad range of environmental matters, including endangered species, public lands, air quality, and public health;
* A human trafficking clinic provides representation for victims of human trafficking, addressing issues of recruitment, transportation, harboring, and receipt of people for the purposes of slavery, forced labor, and servitude, and assisting victims to enforce their rights in court and applying for special visas;
* Child law clinics allow students to represent children who have been abused or neglected, have violated the law, or are otherwise in need of legal assistance;
* Elder law clinics focus on the legal problems of older adults, relating to health law and health care coverage, guardianships, and other litigation focused on mental capacity issues, wills, nursing home negligence litigation, handicap and age discrimination cases, and pension rights;
* Immigration clinics provide assistance to non-citizens in removal proceedings, to underprivileged foreign-born individuals seeking asylum, to prisoners of various nationalities held at American military facilities and detention sites worldwide.
* The International Human Rights Clinics at The Johns Hopkins University is designed to teach students skills for careers in international human rights advocacy and protection. Each student taking the course has the opportunity to gain practical experience in international human rights through clinical work with The Protection Project. Such work may include, writing a human rights report, drafting a model law or fact-finding mission, developing human rights education materials and programming, conducting research, etc.

### Egypt

* Alexandria University Faculty of Law Legal Clinic officially incorporated the concept of clinical legal education into the University Statute in December 2009. In cooperation with The Protection Project at The Johns Hopkins University School of Advanced International Studies and the Ministry of Justice of the Arab Republic of Egypt and with the support of the U.S. Agency for International Development, Alexandria University officially established the first law clinic in Egypt.
* The Clinic is managed by an Executive Director, who is a full-time member of the law faculty; an Associate Director, who is an associate lecturer; and a Legal Clinic Program Coordinator, who is a recent law graduate and alumna of AUFL.
* Each year, 20-30 third and fourth-year law students are selected through a competitive process to participate in the clinic, which is comprised of three components:
* First: The Classroom Component: The Practical Training Course offered to 3rd and 4th year law students is taught by members of the law faculty, practicing legal professionals, and representatives from the Ministry of Justice. The course consists of 8 units and includes the following topics: (1) Code of professional responsibility and client-lawyer relationship; (2) Researching and writing a legal memorandum: enhancing lawyering skills for law students; (3) Enhancing access to justice for women in family courts and filing a civil action on behalf of a victim; (4) Preparing for a case: evidence collection, interviewing a client; (5) Enhancing access to justice, especially through family courts, with a particular focus on violence against women; (6) Delivering legal services through pro-bono work; (7) Comparative models of legal clinics; (8) Civil society representation of clients.
* Second: Client Representation: Students in the legal clinic facilitate access to justice for victims of domestic violence and/or human trafficking through: (1)Networking with local NGOs to notify public of services available through the law clinic; (2) Identifying if a case is suitable for representation by the clinic; (3) Collecting evidence and victim testimony; (4) Researching and drafting legal arguments and oral advocacy; (5) Notifying the client of available legal remedies; and (6) If necessary, referring the case to pro bono lawyers (alumni referral network), who may represent the case in court, with the students in attendance.
* Third: Human Rights Monitoring and Advocacy: The Legal Clinic at Alexandria University engages students in a number of advocacy, research, and educational projects and activities, including: (1) Realizing a joint research project with the Georgetown Law Community Justice Project on a comparative analysis of family courts and access to justice for women; (2) Conducting research on the rights of Egyptian migrant workers abroad; (3) Developing of a model law on legal aid; (4) Drafting a model law on the establishment and operation of non-governmental organizations in cooperation with Columbia Law School Community Enterprise Clinic; (5) Conducting public civic education on constitutional rights and political participation in cooperation with the Bibliotheca Alexandrina.

### Iran

The Mofid University Legal Clinic was established in 2006 in Qom, Iran. With its premises on the grounds of Mofid University, its students, working under the supervision of Mofid University law professors and in cooperation with pro-bono lawyers, offers legal advice to numerous residents of Qom city in matters of family law. The clinic pursues two main objectives: (1) legal empowerment of socially disadvantaged individuals and groups through providing free legal services; (2) Training law students in legal skills and preparing them to assume social responsibilities. The clinic is unique in that it offers not only legal, but also psychological advice to clients. The clinic has also engaged in a number of activities in addition to direct client assistance, including the facilitation of the first network of pro-bono lawyers in Iran, and holding workshops for other universities in the country on developing clinical legal education. Approximately 30-40 students are being trained at the clinic each semester, and nearly 25 pro-bono lawyers are cooperating with the clinic.

### Turkey

The legal clinic in Istanbul Bilgi University is a two semester course for law students. The first semester is aimed at developing a students’ knowledge of social issues, such as poverty and social exclusion as well as honing their interview and communication skills. The second semester has the students using their practical skills in the field, either working with clients unable to afford legal aid or, with the permission of the Ministry of Justice, working with inmates to address their legal options during and after their imprisonment. Anadolu University will commence a legal clinic program in 2012.

### Palestine

A Human Rights Clinic was established at Al Quds University in 2006. It was the first accredited clinic in the Arab World and it is designed to operate under occupation. The clinic is year-long course for which students receive 6 credits. The clinic provides students with theoretical training in international human rights and humanitarian law as well as practical training in lawyering skills and it gives students the opportunity to practice skills in real-life setting. Students volunteer with local NGOs (1 day/week, minimum 4 hrs) and provide walk-in hours to Palestinians at the East Jerusalem community center, where they advise on residency and identification issues, social welfare, and other questions relating to Israeli law. Students also collaborate with NGOs on advocacy campaigns, including anti-illegal settlement campaigns, right to education campaigns, and anti-honor killing campaigns.

### Iraq, Lebanon, United Arab Emirates, Qatar and Oman

The newly established law clinics at Baghdad University and Salah Al-Din University in Iraq, Beirut Arab University in Lebanon, University of Jordan in Jordan, University of the United Arab Emirates in the United Arab Emirates, Qatar University in Qatar, and Sultan Qaboos University in Oman, and Islamic University in Gaza.