



Reforming the *Kafala*: Challenges and Opportunities in Moving Forward*

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This paper provides an overview of the kafala or sponsorship system, and explains the role the sponsor (*kafeel*) assumes in the legal and economic responsibilities for the migrant worker for the contract period. The paper then assesses the initiatives undertaken to reform it in the Gulf Cooperation Council states, as well as in Jordan and Lebanon. An analysis of the previous attempts to reform the system shows that the results have been very limited to date. The paper goes on to examine reasons behind the lack of real reform, and ends with policy recommendations for an alternative to the system.

Contextual Overview

One observer of migration trends in the Arab region aptly explained that “labor market governance—and migration governance especially—in the Gulf Cooperation Council (GCC) (states) is facing a historic crossroad” between the status quo and incremental or even comprehensive reform (Dito, 2008). Countries can either continue with pursuing past policies with partial

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improvements in some areas or embark on a comprehensive, critical and constructive review of the whole policy paradigm in dealing with the challenges of the labor market.

The objective of this paper is to examine the sponsorship system (known as the *kafala*), which regulates the relationship between migrant workers and their employers (known as the *kafeel*) in many countries in the Middle East. The paper assesses the level of reforms attempted to date and provides key recommendations on a possible way forward that will benefit not only migrant workers, but also countries of origin and destination. It attempts to show why countries of destination should work towards a comprehensive reform, which would be in their best interest. This paper focuses primarily on countries receiving large numbers of migrant workers, namely the GCC states, as well as Lebanon and Jordan in the Mashreq region, which all have variants of the *kafala*.

The sponsorship system is a time-honored tradition of the Bedouin principle of hospitality, which sets obligations in the treatment and protection of foreign guests (Heeg, 2010). It was a noble principle, which unfortunately no longer holds the same meaning today. Instead, it is being denounced globally as a system of structural dependence between an employer and a migrant worker, which enables the violations of fundamental human rights (ITUC, 2011a). This is because, under the *kafala*, the employer assumes full economic and legal responsibility for the employee and thereby holds considerable power over him or her.

For the majority of migrant workers in the Mashreq region and the GCC countries, life is governed by the *kafala*.¹ There are some variations, however. The *kafala* is typically the most strictly enforced in the Gulf states for all workers across occupational categories.² The cases of Lebanon and Jordan are more nuanced than in the GCC countries, as in Lebanon, the *kafala* regulates low-skilled workers coming primarily from Asia and Africa but not those coming from Syria, as they enjoy greater cross-border movement with Lebanon. In Jordan, the *kafala* is only relevant to migrant workers recruited by nationals and not to those working in the Qualified Industrial Zones or QIZs

¹ Following the regional classification used by the ILO, the Arab Mashreq covers Iraq, Jordan, Lebanon, Palestine and the Syrian Arab Republic. The Gulf Cooperation Council countries are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. Yemen holds an observer status at the GCC.

² The special free economic zones in the UAE, which play a significant role in supporting the national economy, are the one notable exception. Although labor law provisions are applicable to them, these zones are subject to their own rules and regulations. Migrant workers are sponsored by the concerned free zones and not by their employers.

(that operate with foreign capital)³ or the Aqaba Special Economic Zone Authority (ASEZA), which relies on its own procedures.⁴

The system aims to meet the demand for labor with migrant workers while at the same time ensuring that these workers are only temporary residents in the country. Indeed, over the years it has become the legal basis for residency and employment for migrant workers.⁵ Under the system, employers are, for the most part, the *kafeels*,⁶ who determine their demand for labor and meet it either directly or through intermediaries, such as private employment agencies. Based on identifications of specific jobs, they obtain authorization for selected migrant workers to enter the country. The Ministry of Labor issues employment permits for the workers based on an administrative process, which includes health screening. Upon their arrival in the destination countries, the migrants are considered to be the responsibility of the *kafeel*, with their residency status dependant on their continued employment by the *kafeel*.

As the main system of labor migration management in the region, the *kafala* affects the lives of millions of migrants. Indeed, the number of migrant workers in the Middle East region was estimated at around 25 million in 2010, roughly 14 percent of the global migrant stock (ESCWA, 2010).⁷ The annual average growth rate in migrant stock is equal to four percent, making the Middle East one of the fastest growing migrant-receiving regions in the world

³ There are currently six QIZs operating throughout Jordan. These areas are designated by the Jordanian and Israeli authorities and approved by the US government. The QIZs represent an unprecedented opportunity for goods produced to gain duty- and quota-free entry into the US market.

⁴ The Jordanian labor code applies in the ASEZA but special provisions allow it to be responsible for the recruitment and work of the foreign workers.

⁵ The authors have decided to use the term “migrant worker” in accordance with international norms. The term has been defined in article 2 of the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (1990) as referring “to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.” It is nonetheless important to note that the GCC countries prefer to use the term “temporary contract labor.”

⁶ There are also employers in the GCC who hail from foreign countries but who must have a partnership with a local, who is technically a *kafeel*, in order to recruit workers.

⁷ The ESCWA region covers 14 Arab countries in Western Asia: Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Oman, Palestine, Qatar, Saudi Arabia, the Sudan, the Syrian Arab Republic, the United Arab Emirates and Yemen.



(IOM, 2010).⁸ These approximations do not, however, account for the high number of irregular migrants⁹ working in the major destination countries of the region, who are estimated to make up to at least 10 to 15 percent of a country's workforce (Shah, 2009).

A characteristic of labor migration in the region is the demographic significance of the phenomenon (Dito, 2008). In Qatar, for instance, migrant workers made up 87 percent of the total population in 2010, while in the United Arab Emirates (UAE), migrants accounted for 70 percent of the population (IOM, 2010). Another characteristic of migration to these destination countries is that it cannot exactly be classified as a 'south-north' movement nor as a 'south-south' migration. On the one hand, the countries of destination have industrial structures which are less diversified than those of the countries from which the migrant workers come from. On the other hand, they are capital-rich economies, endowed with financial wealth that rivals and exceeds (on a per capita basis) that of many developed market economies.

In the GCC countries, the earlier migration streams hailed mainly from the Arab Mediterranean countries, particularly the countries of the Levant and Egypt, but were subsequently replaced by large flows of Asian migrants after the first oil boom of 1973, to work mainly on large-scale infrastructure programs.¹⁰ In subsequent years, as the economies matured, the demand for labor diversified. The essentially 'male' migrant streams of the earlier period were supplemented in the more recent phases by inflows of large numbers of women migrants who came to work as domestic workers and also in the services sector.

As the number of migrant domestic workers increased exponentially, governments in the region opted to apply the *kafala*. While the need for a sponsor remained, a decision was made in all the GCC countries – and indeed

⁸ Note that the regional classification used by IOM for the Middle East includes also Egypt and Israel, in addition to the countries covered by ILO's regional classification.

⁹ Irregular migrants include those who enter the country through smuggling or trafficking. They can also become irregular if they enter the country legally but overstay the duration of their valid permit, work for an employer other than for their sponsor, or run away from their employer.

¹⁰ International companies, which were involved in the infrastructure development projects in India and Pakistan after the Second World War, also played a major role in the GCC countries. They needed, tried and tested workers who could work under extreme weather conditions. As their prior experience with Pakistani and Indian workers was very positive, they decided to bring in workers from these countries to work on the infrastructure projects which were being implemented, supported by the accretion in revenues subsequent upon the rise in the price of oil (Burki, 1980; Choucri, 1983 and Weiner, 1982)



also in Lebanon - to make the Ministry of Interior (rather than the Ministry of Labor) responsible for managing their employment. The national labor law is, therefore, not applicable to this category of workers, which in effect means that the protection provided by the regulatory framework and remedial measures envisaged in labor disputes are not available to them. With total power over their employment and stay in the country in the hands of employers, deprived of remedial mechanisms in cases of labor disputes and without inspection of their living and working terms and conditions by the Ministry of Labor, many of these domestic workers are in highly vulnerable states and at the absolute mercy of their *kafeels*.

Implications of the Kafala

The nature of the relationship that sponsors have with migrant workers is a distinctive characteristic of labor migration in the Middle East. Once the employment relationship is terminated, there is no legal basis for the worker to stay on in the host country, as foreign migrant workers are generally not eligible for permanent residency status or citizenship. As a result, the terms and conditions of residence and work are typically determined by the *kafeels* under the *kafala*. As immigration status depends on a contractual relationship, migrant workers can be made to accept terms and conditions of employment at variance with those they were promised before departure from their home countries. In order to understand the need for reform of the *kafala*, this paper attempts to sketch below a number of challenges that migrant workers face when living and working in the Middle East under the current sponsorship system.

With the exception of domestic workers, many low-skilled migrant workers live in collective households, as determined by their *kafeels*. They typically live in sub-standard housing; the density of inhabitants is high in these lodgings, which lack basic facilities and are often unsafe. As many as ten workers may have to share a room (Afsar, 2009). In migrant workers' dwellings, cleanliness is found wanting, and living and working conditions are particularly grueling in the hot summer months (HRW, 2006).

The close relationship between a migrant worker and his or her employer can also make the employee more vulnerable to abuse and exploitation. In terms of exploitative practices, migrant workers may suffer from underpayment, non-payment and delays in payment of wages and unwarranted additional costs. Cases exist where two contracts are made out for the worker, one for official procedures and another for practical implementation, with a lower wage and poorer working conditions (Baldwin-Edwards, 2011). Workers who are faced with this situation upon their arrival are forced to accept contract substitution, having borne high costs for emigration and recruitment.



Other examples exist of *kafeels* deducting the costs of clothes, food or lodging from wages due to workers. Wages can also be delayed for weeks or months. Often, no advances are made in the first weeks of employment to help workers meet their basic needs (HRW, 2007).

For each worker, the *kafeel* is expected to bear costs corresponding to payments, such as for medical insurance and the issuance of employment and residence permits. Workers are not supposed to bear any of these costs. However, *kafeels* or intermediaries such as recruitment agencies, often charge these expenses to migrant workers. Indemnities for delays in registration are also often charged to workers. Some *kafeels* partially withhold final payments to migrant workers at the end of their employment relationships. Some *kafeels*, supposed to be business partners, in fact only lease their names against payments. Indeed, in recent years, many *kafeels*, who can only be nationals of the countries, have taken on the role of 'sleeping partners' and have entered into financial arrangements with expatriate business persons. These nationals do not play the role of an employer *per se*, but rather facilitate the paperwork for foreigners needing the manpower. Such business arrangements, where the *kafeels* play a passive role, have introduced new complexities to an already complex system (Khan, 2009).

Migrant workers may also experience exploitative working conditions, as labor law provisions are often not respected by their employers. Low-skilled workers are frequently made to work in arduous conditions for longer hours than envisaged by the law, without overtime payments. They may be deprived of weekly rests, annual leaves or home leaves with paid flight tickets to countries of origin. Such exploitation is sometimes tantamount to forced labor and human trafficking. They may also be the victim of physical and sexual abuse and exploitation by their sponsors (HRW, 2008). Workplaces of low-skilled migrant workers often lack adequate health and safety conditions. Workers may lose their lives because of the collapse of buildings, fires or work accidents.

In addition, migrant workers are typically constrained in their mobility. If the *kafeels* are unwilling, workers cannot leave them for other more favorable employment. In fact, workers can be victims of blackmailing by unscrupulous *kafeels*. If they protest or call into question their terms and conditions of employment, *kafeels* can have them deported. Moreover, under the system, the *kafeel* often chooses to retain the worker's passport, which transforms the latter into a "hostage." Thus, at times, the travel document is used to blackmail the worker. Public authorities forbid the retention of the passport and recognize migrant workers' right to complain and recover their passports (Vlieger, 2011). However, workers are aware that such a move would be considered as a hostile challenge by employers and may result in punishments, reduction in wages, non-renewal of contracts, false accusa-



tions or ultimately deportation. Passport retention may produce its most perverse effects in occasions of change in *kafeels* or at leaving the country of employment. In extreme cases, *kafeels* exchange passports for declarations by workers that they have received all their dues, especially the end of service payments and wages in arrears.

The Sponsorship System under Reform?

In recent years, the *kafala* has been under growing scrutiny by civil society and international organizations, which have taken the lead in terms of migrant workers rights' advocacy and defence. The initial calls focused on abolishing the sponsorship system. However, the onus nowadays tends to be more on promoting reform instead. By adopting an approach that calls for incremental reforms aimed at removing the most restrictive elements of the *kafala*, such as the lack of labor mobility, advocates of change hope that governments will pay more heed to their demands.

Indeed, in response to the widespread concern over the treatment of workers, as well as concerns about the perverse effects of the *kafala* on domestic labor markets, several countries in the region have taken initiatives since 2009 to bolster the protection of migrant workers. Their motivations for doing so are varied. Policy makers in the region are aware of the ongoing bad press their countries receive in international media regarding the treatment of migrant workers, and are also not indifferent to their countries' poor rankings in the US State Department's annual Trafficking in Persons Report (TIP). Some also have demonstrated a genuine willingness to improve the protection of migrant workers. Some still may have regarded moderate reforms as a better approach than altogether abolishing the system, given the financial stakes at play for nationals in the country.

There is, however, an important difference between taking steps to improve the working and living conditions of foreign workers (such as introducing a standard contract) and revamping and/or reforming the *kafala*. This paper seeks to determine what has been done to date by destination countries to transform the *kafala*. To answer this plausibly, it is necessary to assess the pronouncements and actions of individual countries in the Mashreq and Gulf regions, which have been recorded in Arabic and English news outlets over the past few years.

In Bahrain, the Minister of Labor announced in May 2009 that the country would dismantle the *kafala* in August 2009, so that the government-run Labour Market Regulatory Authority (LMRA) would be responsible for sponsoring migrant workers rather than employers (Harnassy, 2009). The change has yet to materialize, since the LMRA continues to regulate only the work process, post-recruitment, and has, as such, not replaced the *kafala*.



With the passage of “Decision No. (79) for 2009 Regarding the mobility of foreign employee from one employer to another” from the Ministry of Labor, Bahrain has, nonetheless, eased one constraint of the *kafala*, i.e., by allowing foreign employees to change employers without the consent of their current employer (Migrant Rights, 2009; *Al-Jazeera*, 2009). This was hailed internationally as a major step forward in reforming the *kafala*, as allowing such mobility serves to better protect the rights of migrant workers against abuse and exploitation and respect their right to freedom of movement. However, in 2011, the government further stipulated in law 15/2011 that the migrant worker needs to wait one year before being legally allowed to change employer (Migrant Rights, 2011). Such a move illustrates ongoing political ambivalence by the government in reforming the *kafala*.

Bahrain now also permits migrant workers, who give advance notice that their contract is ending, a period of one month to look for new employment. Such a measure helps break the strong correlation between employment and residence, which exists under the sponsorship system. Bahrain stands out as a leader in the region, for committing itself publicly to dismantling the *kafala* in its current form. It has also sought technical advice from the International Labour Organization (ILO) on how to implement the reforms.

In Kuwait, the Minister of Social Affairs and Labor announced in September 2010 the government’s decision to mark the 20th anniversary of Kuwait’s liberation during the first Gulf War by abolishing the *kafala* in February 2011. The Minister did not provide specificities on an alternative law nor the mechanisms for abolishing the current one (Al-Shamari, 2010). Subsequent to that announcement, an Under Secretary from the same ministry explained that the government would not cancel the system but only amend it to make it easier for migrant workers to transfer sponsors (Etheridge, 2010). Since then, the Ministry of Social Affairs and Labour requested and received technical assistance from the ILO in December 2010 on policy measures to improve its management of labor migration. Kuwait is no doubt, after Bahrain, the country in the region that has the most actively sought consideration for a range of policy options. It has now reached a crossroad, and must decide which way to proceed.

In Jordan, the government has not sought to change the *kafala* system in its current form and seems unlikely to do so anytime soon. Indeed, the Ministry of Labor’s commitment to reform labor migration management has waned over the last few years, due to frequent changes in the Executive. The same is true of Lebanon, which has not put into question the overall continued reliance on the *kafala*. Both countries have made modest attempts at reform (e.g. by introducing a standard contract) but these measures do not represent changes to the current sponsorship system.

In Oman, the government introduced a law in 2003 that made it illegal for employers to loan migrants working for them to other employers (*Kerala Monitor*, n.d.). This evidently was designed as a first step towards eliminating incidences of human trafficking and forced labor. The government has not, however, sought to change the *kafala* to better protect migrant workers from exploitation.

In Qatar, the government considered a move in October 2010 to secure the financial security of migrant workers by requiring private companies to provide monthly details of their salary. Such a move would, in theory, allow the authorities to ensure that workers are paid on time and that no unnecessary deductions have been made. It would also help identify workers that have not been paid (Toumi, 2011). However, this measure has not yet been implemented to date. The government also recently announced that it had no intention to abolish the *kafala* or to follow the footsteps of other Arab countries in this regard, arguing that each country has its own specificity, sovereignty and its own decision to make (Al-Sharq-Qatari, 2010).

Such pronouncements are worrisome given the ongoing challenges facing migrant workers, and the fact that Qatar will likely recruit millions of additional migrants to build the required infrastructure for the World Cup scheduled in 2022 (which includes twelve football stadiums, additional hotels and new rail and subway networks, as well as a new city with 200,000 residents). Infrastructure investments are expected to top \$100 billion (ITUC, 2011). It is precisely during the run up to the World Cup that the Qatari government should strive to make changes to the *kafala*, to ensure that the reputation of the country is not tarnished by stories of abuse of migrant workers and to live up to its commitments to respect human rights.

In Saudi Arabia, the government has not signalled any willingness to change the *kafala*. Indeed, the Ministry of Labor recently announced on 20 June 2011 that the country had no intention of reforming the sponsorship system (*Shorouk News*, 2011). A Wikileaks cable documenting the meeting of the US Ambassador with the Minister of Labor in December 2007 also suggests that the possibility of a law being issued to cover and protect domestic workers is slim, as “everyone is satisfied with the status quo” (Wikileaks, 2007). Again, the adoption of such positions is of considerable concern, especially given that Saudi Arabia is host to the largest community of migrant workers in the region.

The UAE has implemented a Wage Protection System designed to monitor payments to migrant workers, to ensure they receive the amounts due to them (Absal, 2009). In addition, the authorities announced in May 2009 that migrant workers would be able to switch jobs if their employer delayed wages by more than two months, and would be entitled to visa extensions if made redundant in order to find other work in the country. No details, however,



were given on when these new measures would come into effect (Reuters, 2009). However, much like the other countries in the region, these reforms do not represent a transformation of the *kafala* system in any comprehensive manner.

Current Challenges to Reform

With the exception of Bahrain and Kuwait, it appears that few countries in the region have signalled any willingness to tackle the issue of labor migration management. Indeed, the trend of announcing the abolition of the *kafala* has not been accompanied with details on what a new system will look like (see the annual report of Human Rights Watch, 2009).

There are a number of reasons that could be given to explain the current status quo. One could understand it as part of a political strategy in the region. Indeed, if one recalls recent historical trends, governments in the region opted to rely increasingly on a labor force from Asia and Africa, that were perceived as more 'docile' than an Arab labor force, which was already making demands for naturalization and assimilation. As one scholar explains, "the Gulf governments were worried about Arab migrant workers bringing and spreading radical social and political concepts" (Roper, n.d.)¹¹ The GCC countries also considered the presence of Palestinian workers to be potentially problematic, as they could push GCC states into more active involvement in the politics of the Arab-Israeli conflict. Arguably, the decision to rely more on an Asian and African workforce enabled GCC states and the other destination countries to keep the *kafala*, as such workforce had less bargaining power than fellow Arab nationals.

The lack of impetus to transform the *kafala* is also due to the lack of civil liberties in many countries in the region, especially in the Gulf states. Trade unions, for instance, which are allowed to operate in certain countries, such as Bahrain, Kuwait and Oman, typically do not include migrant workers in their ranks. There are also very few independent human rights organizations in the Gulf states that are able or willing to inform on and defend migrant workers' rights. In Lebanon and Jordan, where NGOs and trade unions play a more prominent role, they have focused their advocacy on increasing the protection of migrant workers (through the use of a standard contract, awareness raising campaigns, lobbying, etc.) and not on dismantling the

¹¹ Steven Roper adds that in the 1970s and 1980s, numerous immigrant Arab workers were prosecuted, jailed and deported because of their participation in various leftist and radical organizations which called for the destruction of certain GCC regimes.



kafala entirely. As a result, governments are not under much internal pressure to make changes to the current labor migration governance system.

The lack of aspirations to reform the *kafala* could also be due to the largely-unchallenged prejudice in the region against migrant workers, coming primarily from Africa, as well as East and South Asia, which makes nationals less inclined to speak out for individuals considered as second-class citizens. Analysis of the reports of the Commission for the Elimination of Racial Discrimination suggests that anti-discrimination laws, which would strengthen migrant workers' position in this regard, do not exist in several countries of the region; where they do exist, they are found to fall short of international standards, and there is little information on their implementation.¹² In Jordan, for instance, an anti-discrimination law exists, but it does not cover foreigners in the country. In Lebanon, a small group of activists have created an anti-racism movement and condemns the fact that, according to their estimates, "250,000 migrant workers in Lebanon are suffering from the ugliest forms of segregation based on their skin color and their working conditions."¹³ This type of discrimination against foreigners, especially those holding low- or semi-skilled positions, is also present in other large destination countries of the Middle East.

One could also look at the economic interests at play in destination countries as probable clues in explaining the lack of concerted policy action around the *kafala*. The gap between professed statements and actual realities reveals the ongoing ambivalence of countries in the region to pursue a sound migration strategy. Indeed, the lack of comprehensive reforms to date speaks in part to the powerful lobbies that believe they would lose from any change in the system. It has been estimated that the total rent taken for facilitating the entry and maintenance of Asian workers in the Gulf amounted to US\$4 billion in 1998; the figure excludes the regular payments workers already in the Gulf must make to their *kafeels* to maintain their employment status (Willoughby, 2005, as cited in Dito, 2008:13)

Lobby groups, which have formed to protect important business interests, have at times been so powerful as to successfully sideline those with a more reformist agenda. Indeed, a change in Executives is not uncommon when a high ranking official expresses interest in reforming the *kafala*. These lobby groups have also certainly benefitted from the political revolutions underway

¹² For more information on the subject, read the CERD annual reports of 2009 (on the UAE), 2006 (on Oman and Yemen) and 2005 (Bahrain).

¹³ For more information about Lebanon's Anti Racism Movement, please visit the following website: <http://antiracismmovement.blogspot.com/>



in the Middle East and North Africa, which have shifted the attention away from the daily abuses inflicted on migrant workers by the employers towards the aspirations of the people in the region to have their own rights respected and the need to provide aid to stranded migrant workers caught in the crossfire.

A palpable lack of effort to change the *kafala* could also lie in countries of origin themselves, which have, until now, refused to band together to collectively articulate their demands to destination countries in the Middle East. This unwillingness to form a bloc is almost certainly due to the considerable economic interests at stake, with remittances forming a large part of many countries' gross domestic product. Many countries of origin have preferred to pursue international cooperation, mainly through non-binding memoranda of understanding – and to a lesser extent through bilateral labor agreements – to strengthen regulation and coordination of international labor migration.

However these documents often fail to guarantee key protections for migrant workers. Advocacy groups in Asia have even argued that bilateral cooperation of this type may actually promote unhealthy competition, so that if one country establishes stronger protection for its nationals, employers and recruiters from the host country may opt to work with another country that is willing to send its workers without such protection (Migrant Forum in Asia et al., 2011). A case in point would be Saudi Arabia, which recently implemented a hiring freeze for domestic workers from the Philippines and Indonesia, due to the new hiring guidelines set by the two nations to protect its migrant workers (*ABS-CBN News*, 2011). In stark contrast, Nepal has decided to lift its ban on domestic workers travelling to the Gulf states (Khan, 2011).

Opportunities of Kafala Reform

The *realpolitik* of labor migration to the Middle East suggests the need to be strategic and precise in the type of action that is needed to reform the sponsorship system. It is in the interests of countries of destination to introduce incremental reforms, as the current abuses undermine the rule of law on their territory and negatively affect their relations with countries of origin and other partners (Kapiszewski, 2006). Countries of origin must respond to the needs of their citizens abroad. It is obviously also in the interest of migrants themselves, who should be able to have decent working and living conditions.

Two premises underlie the following policy advice. First, migrant workers will be needed for many years to come in the Gulf states, to make up for the overall shortage of national labor supply and skills gaps in particular areas.¹⁴ Lebanon and Jordan depend on the migrant labor force for construction and



the garment industries, as well as for domestic labor and elderly care, given the absence of effective state provision of social services (Tzannatos, 2009). In other words, migrant workers are needed for the effective and efficient operation of the labor market and indeed, for the functioning of the economies of countries of destination. Second, migrant workers present in the country will continue to be considered temporary contractual labor, as per the expressed wishes of the host countries.

An alternative to the current system embodied in the *kafala* in destination countries, would consist in realizing several policy objectives, which include:

- Formalizing the recruitment process;
- Allowing workers the right to orderly labor mobility; in other words, to change employers for justifiable reasons while preserving the interests of employers and the efficiency of the labor market;
- Increasing the safeguards against abuse and exploitation by improving the terms of employment and working conditions of temporary contractual workers; and
- Strengthening the implementation of labor laws, monitoring and dispute settlement.

Measures to Formalize the Recruitment Process

One important policy objective of destination countries should be to formalize the recruitment process, as it is precisely the informal nature of the recruitment system permitted by the *kafala* that allows abuses to be perpetuated. The problems emerge, in part, because many migrant workers are brought to the Middle East through individual agents. Many of these agents are also not licensed in the countries of origin, and therefore, it becomes very difficult to monitor their activities. Migrant workers also often incur the costs because the employers in the countries of destination select agents to whom they pay no fees and therefore save on costs. There may already be established procedures in some countries but if people go outside these procedures, then problems can emerge. As such, it should be made incumbent upon employers to only go through accredited Private Employment Agencies (PEAs) in their countries and also have the stamp of approval from the countries of origin in their counterpart dealings with the accredited PEAs in the source countries. If people only come in through accredited PEAs, the independent agents will be marginalized.

¹⁴ Data on national labor supply and skills gaps are not readily available; trends and existing practices provide some indications of labor supply and shortages.



There is also an important role for inter-state cooperation in preventing and punishing unscrupulous recruiters and agents in both countries of origin and destination. This would require harmonization of standards between countries of origin and destination, capacity-building assistance for relevant enforcement agencies in both countries, and information-sharing and cooperation between these agencies to uncover and sanction those abusing the system and promoting irregular migration. This cooperation should be formalized in either a bilateral or multilateral agreement, which ensures that migrant workers are better protected. International cooperation is also needed in disseminating information on rights and responsibilities throughout the migration process. Countries of origin have an important role to play in ensuring that their nationals receive adequate information and training on the realities of life and work abroad. This information can also empower migrants against being forced into irregularity, or becoming irregular unintentionally (Agunias, 2010).

Permitting the Mobility of Migrant Workers

A second necessary policy objective is to ensure the mobility of migrant workers, such that migrant workers can stay on in a country without being subject to expulsion, at little or no notice, by an employer. The UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families states that a migrant can be free to leave and return to his or her country and limits arbitrary expulsion. While there is no ILO convention that states that a migrant worker has the right to change employers freely, ILO Conventions 97 and 143 and the UN Migrant Workers Convention provide for freely chosen employment and migrant workers having the same rights as nationals. Once this threat is removed, migrant workers will have greater possibilities to assert their rights under the law of the land.

Ensuring the mobility of labor, in other words, the ability of workers to change jobs in the labor market, should have two beneficial consequences. The first could be a contribution to greater flexibility and effectiveness in the operation of the labor market, to the benefit of the economy of the country of destination: workers are able to move to where their labor is required. The second is to prevent exploitation of foreign workers by enabling them to leave unscrupulous *kafeels*. The conditions to be taken into account in proposing an alternative to the present situation are necessary to preserve the interests of employers and to prevent a disruption in the operation of the labor market.

One way of reconciling desired consequences and conditions would be to have the Ministry of Labor responsible for overseeing the recruitment process in coordination with countries of origin, acting as a clearinghouse for complaints by migrants and employers, ensuring appropriate action is taken,

and intervening in verifying allegations of mistreatment and permitting workers to remain in the country for a certain period and look for work.

To reinforce the effective operation of the labor market and to allow enterprises to make the best use of experience and expertise acquired in the country, workers could be allowed to stay for a period of three to six months after the end of their employment and offer their labor to employers. Job searches could be confined to the same sector where the worker was employed, or be allowed in all branches. It is also clear that administering mobility of labor, in the best interests of the host country's labor market and of foreign workers, would require a strong interventionist role of the government, supported by employers and workers. The government would also need to determine a financial threshold for migrant workers that would enable them to be able to support themselves while seeking work. It is, of course, in the interests of the employers as well, as they would gain from having access to workers who have already developed their skills in the country, are more familiar with its language and cultural norms, and are eager to find work.

Improving Working and Living Conditions

A third policy objective should aim at improving the working and living conditions of migrant workers. For example, setting a minimum wage would in itself introduce an improvement in their terms and conditions of employment. Other measures, to be formulated by the state, would also be needed. Most terms overseeing living and working conditions are already regulated by provisions of labor laws. Those that are not, require the formulation of new measures of a regulatory nature. The principles of international labor law, as provided for in relevant international labor standards and in the ILO Multilateral Framework on Labor Migration, in addition to principles of international labor law, can guide the formulation of such measures. Governments should also ensure that all workers, irrespective of the occupational category, should be covered under the labor laws of the country that fall under the auspices of the Ministry of Labor.

Regulatory measures alone are not sufficient, however. They would have to be backed up by strict enforcement measures. The institutional capacity of the Ministry of Labor, including particularly labor inspection, would have to be greatly strengthened. This would require the allocation of sufficient financial and human resources, as well as training and coordination with the authorities of countries of origin in investigating specific complaints. Labor inspection would apply to work places as well as to living conditions of foreign workers. Workers also need access to grievance and complaints procedures without fear of intimidation or retaliation.

The Ministry of Labor can be usefully supported by representatives of employers and workers in carrying out the enforcement measures. The participation of employers and workers would serve to negotiate and agree on programs to improve terms and conditions and to follow up on putting them into practice. It would also help set up a sort of early warning system that would serve to prevent disputes over working and living conditions. Representation and the participation of migrant workers in the articulation of their interests by trade unions are the best guarantees of peaceful and orderly settlement of labor disputes.

Addressing the specific situation of domestic workers and their terms and conditions of employment require a separate treatment.¹⁵ However, a first measure to be contemplated is to include them in the scope of application of the labor law. The Ministry of Labor would then be responsible for their employment contracts. This would allow domestic workers to resort to remedial measures envisaged by the law. Questions, such as inspecting their terms and conditions of employment and their work environment, would still need to be taken up. The new International Convention Concerning Decent Work for Domestic Workers, adopted at the 100th Session of the International Labor Conference in June 2011 by governments, employers and workers' associations, should serve as a guide to policy and lawmakers.¹⁶

Implementation and Monitoring of Labor Laws, Dispute Settlement and Grievance Procedures

A fourth policy objective could consist in the government formulating and applying strict enforcement measures of the labor laws, with a central role for labor inspection. Training for the Ministry of Labor and other relevant ministry officials in relation to their new functions and the administration of the new system could be undertaken.

Central to this is the development and implementation of the employment contract. Such a covenant, besides spelling out the standard articles applying to wages and benefits, rest periods and other entitlements, should also clearly state the responsibilities of the employer and that of the employee. It should also describe the procedures relating to the articulation of the grievances and

¹⁵ For more information, please see the background paper by Simel Esim, Carol Kerbage and Mansour Omeira entitled "Situation of Migrant Domestic Workers in Arab States: A Legislative Overview" presented at the June 2011 ESCWA-ESCAP meeting in Lebanon.

¹⁶ For more information, please see the International Convention on Decent Work for Domestic Workers (2011) at: http://www.ilo.org/ilc/ILCSessions/100thSession/reports/provisional-records/WCMS_157836/lang—en/index.htm

their resolution and the procedures to be pursued in the event of wrongful dismissal of the employee and the appeals process.

The Ministry of Labor could and, as the main regulatory authority on work, should investigate and rule on all allegations of mistreatment or violations of the provisions of the labor law or of the employment contract. If the worker infringes upon the provisions of the contract or labor regulations, he/she will lose the employment and residency permits. The worker would have the right to appeal the administrative decision before a labor court. During the appeal process, the government would provide accommodation to the worker temporarily. If the worker's complaint proves to be unfounded, either he/she would be liable to repay the associated costs or the Ministry of Labor could waive the charges. If the case goes against the employer, it would be up to the employer to pay the cost of accommodation along with the amount of loss earnings during the legal/mediation process.

Moreover, if the employer is found to be responsible, the worker would be allowed to stay and seek another position within the economic branch he/she was previously employed in for the remaining duration of the employment and residency permits. The worker would be entitled to the unemployment benefits envisaged under the social security law. The new employer would pay the remaining costs of the original recruitment for which the previous employer would be reimbursed.

Sanctions against unscrupulous employers could be strengthened by focusing on the non-reimbursement of the costs of recruitment and transportation arrangements and the suspension of the authorization to bring in migrant workers for a number of years, depending on the gravity of the infringement, in addition to any criminal punishment that the court system delivers.

Implementation of an Alternative Policy

The *kafala* is difficult to distinguish from the whole labor market setup of many Gulf countries. Therefore, any change in the system will require and will affect other parts of the labor market. Under the circumstances, it would be useful for any proposal on developing an alternative to the current system to be discussed and agreed upon with representatives of employers' and workers' organizations, given their major stakes on this issue.

An implementation of an alternative policy, which serves the interests of countries of origin, destination and migrants themselves, will only come about if there is adequate political conviction among senior policymakers. Time will tell whether the debates over labor migration to the Middle East successfully evolved to ensure the rights of all workers, or whether the Governments of today missed a historical crossroad in improving the governance of labor migration.

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