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**THE IMPLICATIONS OF THE SPONSORSHIP SYSTEM:
CHALLENGES AND OPPORTUNITIES**

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Preface

The paper was prepared as a background paper for the “Managing Labour Mobility” session of the bi-regional ESCAP-ESCWA Workshop held in Beirut, Lebanon from 28-30 June 2011.

The paper provides an overview of the initiatives undertaken to date to reform the *kafala* (sponsorship) system in the Gulf Cooperation Council states, as well as Jordan and Lebanon. It also provides policy recommendations for an alternative to the *kafala* system.

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The views expressed in this paper belong to the authors and do not necessarily reflect the views of ESCWA, ESCAP or the ILO.

Introduction

For all migrant workers in the Mashreq region and the Gulf Cooperation Council (GCC) countries, life is governed by a sponsorship system, known as the *kafala*.¹ The *kafala* system aims at meeting the demand for labour with migrant workers while at the same time ensuring that these workers are only temporary residents in the country. It has indeed over the years become the legal basis for residency and employment for migrant workers.²

Under the system, employers are, for the most part, the *kafeels* (sponsors)³ who determine their demand for labour 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 Labour issues employment permits for the workers based on an administrative process, which includes health screening.

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. Such business arrangements, where the *kafeels* play a passive role, have introduced new complexities to an already complex system. This new phenomenon is problematic as under the current immigration and residency system, the *kafeel* is to assume full economic and legal responsibility for the employee during the contract period. 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 not eligible for permanent residency status or citizenship.

All countries in the Middle East have variants of the *kafala* system, which emerged in the 1950s from the Bedouin principles of hospitality that sets obligations required in the treatment and protection of foreign guests. Unfortunately this principle 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.

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 authors of this paper 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 labour."

³ There are also employers in the GCC who hail from foreign countries but to secure workers must have a partnership with a local, who is technically a *kafeel*.

This paper will focus primarily on countries receiving large numbers of migrant workers, namely the GCC states, Lebanon, and Jordan. In the case of the Gulf States, the *kafala* system is strictly enforced for all workers across occupational categories. The cases of Lebanon and Jordan are more nuanced to that of the GCC countries, as in Lebanon the *kafala* system regulates mainly domestic workers coming primarily from Asia and Africa and not the agricultural workforce from Egypt and Syria, as these Arab nationals enjoys greater freedom of movement in the region. In Jordan, the *kafala* system is only relevant to migrant workers recruited by nationals and not to those working in the Qualified Industrial Zones (that operate with foreign capital) or the Special Economic Zone of Aqaba, which relies on its own procedures.

The *kafala* remains, nonetheless, the main system of labour migration management in the region, which affects the lives of millions of migrants each year. Indeed, the stock of migrant workers in the Middle East stood in 2010 at an estimated 25 million migrants, roughly 14% of the global migrant stock.⁴ The annual average growth rate in migrant stock is equal to 4 percent, making the Middle East one of the fastest growing migrant-receiving regions.⁵ These estimates do not, however, account for the high number of irregular migrants⁶ working in the major destination countries of the region, who arguably make up at least 10 to 15 percent of a country's workforce.⁷

One of the major characteristics of the migration to these destination countries is its "south-to-south" orientation; in other words, migration coming primarily from one developing country to another developing country. In the GCC, for instance, initial migratory flows came from the Arab Mediterranean countries between 1945 and 1973, but were subsequently replaced by large flows of Asian migrants after the first oil boom of 1973, to work mainly on large-scale infrastructure programmes. In subsequent years, as the economies matured, the demand for labour 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 doing primarily in domestic work.

⁴ Economic and Social Commission for Western Asia, A Conceptual Framework for Integrating Migration into Development Planning in the ESCWA Region, Technical Paper 4, October 2010. 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.

⁵ International Organisation of Migration, World Migration Report 2010. 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.

⁶ Migrants become irregular if they 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.

⁷ Quoted in Nasra Shah, The Management of Irregular Migration and its Consequence for Development: Gulf Cooperation Council, March 2009.

Another characteristic of the labour migration in the region is its size, which is also increasing far beyond the world averages. With the exception of Oman, the GCC migrant stock growth rates surpass by far the international levels. They have among the highest percentages of migrants to the total population.⁸ In Qatar, for instance, migrant workers made up 87% of the total population in 2010, while in the United Arab Emirates (UAE), migrants accounted for 70% of the population.⁹ This increase in the volume of migrant workers also increased the reliance on the *kafala* system and the use of temporary workers.

Another notable characteristic of this labour migration is the close relationship that sponsors and migrant workers have. Indeed, labour as well as living terms and conditions are typically determined by the *kafeels* under the *kafala* system. 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. The table below seeks to exemplify some of the ongoing challenges that the *kafala* system presents.

⁸ Mohamed Dito, GCC Labour Migration Governance, 2008.

⁹ IOM, World Migration Report 2010.

Consequences of the <i>Kafala</i> system	
Low-level wages	Easy access to migrant labour results in abundant supply that exercises downward pressures on wages. In the absence of wage re-negotiating mechanisms and the workers being under the absolute power of the <i>kafeel</i> , they are made to accept even further lower wages.
Underpayment, non-payment and delay in payment	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. 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 <i>kafeels</i> deducting medical insurance payments, administrative expenses for the issuance of working and residence permits or even 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.
Unwarranted additional costs	For each worker, the <i>kafeel</i> is expected to bear costs corresponding to payments such as for medical insurance, the issuance of employment and residence permits and the like. Workers are not supposed to bear any of these costs. However, <i>kafeels</i> 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 <i>kafeels</i> partially withhold final payments to migrant workers at the end of their employment relationships. Some <i>kafeels</i> , supposed to be business partners, in fact only lease their names against payments.
Working conditions	Labour law provisions are often not respected. Low-skilled workers are 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 labour and human trafficking. They may also be the victim of physical and sexual abuse and exploitation by their sponsors. Workplaces of low-skilled migrant workers often lack safety and health conditions. Workers may lose their lives because of the collapse of buildings, fires or work accidents.
Passport retention	Under the system, the <i>kafeel</i> 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. 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 accusations or ultimately deportation. Passport retention may produce its most perverse effects in occasions of change in <i>kafeels</i> or at leaving the country of employment. In extreme cases, <i>kafeels</i> exchange passports for declarations by workers that they have received all their dues, especially the end of service payments and arrear wages.
Living conditions	Many low-skilled migrant workers live in collective households, as determined by their <i>kafeels</i> . They typically receive inadequate housing. The density of inhabitants is high in these lodgings, which lack comfort and safety. Ten workers can share a room. Buildings often collapse or carry high fire risks. In migrant workers' dwellings, cleanliness is wanting and living

	conditions are particularly gruelling in the summer months.
Constrained labour mobility	Under the <i>kafala</i> system, migrant workers are closely tied to their <i>kafeels</i> . If the <i>kafeels</i> are unwilling, workers cannot leave them for other more favourable employment. In fact, workers can be victims of blackmailing by unscrupulous <i>kafeels</i> . If they protest or put into question their terms and conditions of employment, <i>kafeels</i> can have them deported. There is also an indissoluble tie between employment and stay permits, which that at the end of a contract, the worker would necessarily have to leave the country. This could deprive needing enterprises from valuable experience and expertise acquired in the host country, which comes with years of working in the country, learning the rudimentary of Arabic and understanding better its culture and people.
Specific situation for domestic workers	The consequences of the <i>kafala</i> system for the terms and conditions of work and living situations for migrant workers identified in this table also apply to foreign women domestic workers. A distinct and significant difference in how the system applies to them, however, is that the Ministry of Interior (rather than the Ministry of Labour) manages their employment. In such a situation, a labour dispute becomes a security concern. Labour law is not applicable to them, which means that remedial measures envisaged in labour disputes are not available to these women workers. With total power over employment and stay in the country in the hands of employers, deprived of remedial mechanisms in cases of labour disputes and without inspection of their living and working terms and conditions by the Ministry of Labour, these women domestic workers are at the absolute mercy of their <i>kafeels</i> . Given the volume of domestic workers involved, the number of potential victims is far from negligible.

The *kafala* system can also contribute to more or less intentional violations of immigration regulations in three notable ways.

First, easy access to migrant labour can produce unemployment among migrant workers if unscrupulous *kafeels* bring in workers, for whom there is no matching demand to fill fictitiously identified jobs. This is tantamount to creating a reserve pool of labour. This is a common occurrence for workers coming to the GCC on "free visas", as the recruitment process is highly informalised in the *kafala* system. If the profits of the *kafeels* exceed the costs of the migrant workers, some of them will be tempted to bring in workers for whom there is no real demand, and channel them to the informal labour market. This will further depress wages of migrant workers formally employed. The impact of this labour distortion is, however, difficult to gage for nationals from the countries of destination, as typically they do not want the low skilled jobs taken up by the majority of migrant workers.

In addition to feeding and expanding informal employment, the presence of these workers will be in violation of immigration regulations, which closely link residence permits and the availability of real jobs in the formal economy. As in many other countries, the informal economy is a magnet for migrant

workers in an irregular situation from the perspective of immigration (residence) law. The only difference is that in the case of destination countries in the Middle East, a legal mantle veils this irregular situation as a result of the *kafala* system. As such, migrants that are legally resident in the country nonetheless are working irregularly, which is a perverse outcome of the system. Consequently, the *kafala* system defeats the objectives sought by the immigration law. It does so by allowing the possibility of granting immigration permits for workers even in the absence of the formal employment foundation envisaged by the law.

Second, low wages, poor working conditions and abuse can be at the origin of migrant workers quitting the jobs for which they were brought in and selling their labour informally to the employer, or multiple employers, offering them the highest terms and conditions of labour. Such decisions can in many instances be seen by migrant workers as a necessary survival strategy. Breaking the tight relationship between employment and residence permits envisaged by the immigration law would in this case be done by workers, as a consequence of depressed terms conditions of labour made possible by the *kafala* system. Workers not having made good on the cost of their migration for work might be tempted to secure a bigger revenue by joining the informal economy.

Third, depressed wages can be at the origin of migrant workers extending their stay in the country beyond the duration of the employment contract. The migrant worker's motivation to maximize returns on the investments made in their migration for employment, can tempt some not to return to their countries of origin at the end of their contract. These workers also sell their labour to one or multiple employers in the informal economy. In this case, workers do not enjoy the mantle of legality of stay and are in outright violation of immigration law. Any change in the *kafala* system will have to address these three forms of violation of the immigration regulation.

Background of the Reforms

In recent years, the *kafala* system 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. As referenced above, a host of issues have emerged highlighting the violations of rights of migrant workers. These range from complaints about unpaid wages for significant period of time, forced confinement in the workplace and excessive workload to more direct ones of verbal, physical and sexual abuse and there also exist situations that amount to forced labour and human trafficking. Many

of these issues have been recognised by the governments in the region who have taken action to mitigate the impact.

Calls to reform the system initially focused on abolishing the sponsorship system. 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* system, such as the lack of labour mobility, advocates of change hope that governments will pay more heed to their demands. A need for change has also been accepted by the GCC and the Mashreq countries; Bahrain being the first to move on it and more recently Kuwait and Oman have requested the International Labour Organisation (ILO) for policy advice in developing an alternative to the sponsorship system.

Indeed, in response to the widespread concern over the treatment of workers, as well as concerns about the perverse effects of the *kafala* system on domestic labour markets, several countries in the region have taken initiatives since 2009 to improve 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 human trafficking report. Others also have demonstrated a genuine willingness to improve the protection of migrant workers. Others 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.

Regardless of the rationale behind these reforms, the need remains for proper, concerted action by countries of destination regarding the status and situation of migrant workers. This applies both to those covered by the labour laws and those who fall outside those parameters, such as domestic workers, oil and finance employees, free zone workers, some tourist sector workers and free visas workers.

Given the recent waves of reforms in the region, the objectives of this paper are to assess the new initiatives, explain what could and should be done to comprehensively improve labour migration management, and provide key recommendations both to countries of origin and destination, as well as to other stakeholders, on a possible way forward.

Objectives of the Reforms

Several countries have therefore taken initiatives to improve the protection of migrant workers in the region. Below is a brief summary of the reforms undertaken in recent years.

In Bahrain, the Minister of Labour announced in May 2009 that the country would dismantle its *kafala* system in August 2009, so that the Labour Market Regulatory Authority (LMRA) would be responsible for sponsoring migrant workers instead of employers.¹⁰ The change has yet to materialise, such that the LMRA continues to regulate only the labour recruitment process and has not replaced the *kafala*.

Bahrain has nonetheless eased one constrictive element of the *kafala* system, by allowing foreign employees to change employers without the consent of their current employer.^{11 12} This should be considered as one major policy milestone in the region that serves to better protect the rights of migrant workers against abuse and exploitation and respect their right to freedom of movement. Bahrain also stands out as a leader in the region, for publicly committing itself publicly to dismantling the *kafala* system in its current form.

In Jordan, the government has primarily sought to improve the protection of migrant domestic workers, by passing a standard contract in 2003, along with a law in 2008 that included domestic workers under the labour law. This was a major achievement, which was lauded by human rights advocates.¹³ Jordan also endorsed legislation to combat human trafficking and created a commission to oversee its implementation.¹⁴ Jordan has not, however, sought to change the *kafala* system in its current form and seems unlikely to do so anytime soon. Indeed, the Ministry of Labour's commitment to reform labour migration management has waned over the last five years now, due to frequent changes in leadership and should now renew its commitment to change.

In Kuwait, the Minister of Social Affairs and Labour announced in September 2010 the government's decision to mark the 10th anniversary of Kuwait's liberation during the first Gulf War by abolishing the

¹⁰ Mohammed Harmassi, Bahrain to end 'slavery' system, BBC Arabic Service Radio, 6 May 2009, http://news.bbc.co.uk/go/pr/fr/-/2/hi/middle_east/8035972.stm

¹¹ Migrant Rights, Three months after the Sponsorship system in Bahrain was "scrapped", what really changed?, 6 May 2009.

¹² Al-Jazeera, Bahrain to halt labour sponsorship, 7 May 2009, <http://english.aljazeera.net/business/2009/05/20095733344100581.html>

¹³ Hani Hazaimah, Rights group praises Jordan for granting protections to domestic workers, The Jordan Times, 12 May 2011, <http://www.jordantimes.com/?news=26127>

¹⁴ UNHCR, Jordan: Government adopts anti-human trafficking law, 27 January 2009, <http://www.unhcr.org/refworld/country,,IRIN,,JOR,,498178901e,0.html>

kafala system in February 2011. The Minister did not provide specificities on an alternative law nor the mechanisms for abolishing the current one.¹⁵ A day later, however, 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.¹⁶ Since then, the Ministry of Social Affairs and Labour has requested and received technical assistance from the International Labour Organisation in December 2010 on policy measures to improve its management of labour migration. Kuwait is no doubt, after Bahrain, the country in the region that has the most actively sought to consider a range of policy options. It has now reached a crossroad, and must decide which way to proceed.

In Lebanon, the Ministry of Labour introduced in January 2009 a standard employment contract that clarifies certain terms and conditions of employment for domestic workers.¹⁷ By taking such an initiative, the government has thereby focused its attention on improving the protection of migrant workers by better regulating the terms of work, and clarifying the rights and responsibilities of both migrant workers and the employers. The government has not, however, put into question the overall continued reliance on the *kafala* system. It is hoped that the formation of a new government in June 2011 will help revive conversations around this subject, and facilitate the decision-making process in the country.

In Oman, the government introduced in 2003 a law that made it illegal for employers to loan migrants working for them to other employers.¹⁸ This evidently was designed as a first step towards eliminating incidences of human trafficking and forced labour. The government has not, however, sought to change the *kafala* system to better protect migrant workers from exploitation. This lack of initiative in this area is perplexing, as migrant workers are not adequately shielded from abuse and exploitation in the country.

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 allow the authorities to ensure workers are paid on time and that no unnecessary deductions have been made. It would also help identify workers that have not been paid.¹⁹ This measure has not yet been implemented to date. The government also recently announced that they

¹⁵ Khaled Al-Shamari, Kuwait to abolish Kafala system, 19 October 2010, Al-Shorfa.com

¹⁶ Jamie Etheridge, Confusion rife over Kuwait sponsorship system reform, 20 October 2010, Gulfnews.com

¹⁷ HRW, Slow Movement, December 2009.

¹⁸ Kerala Monitor, Oman's new labour law to control exploitation of expatriate workers, <http://www.keralamonitor.com/omanlabourlaw.html>

¹⁹ Habib Toumi, Qatar considers move to secure financial protection for labourers, 7 May 2011, Gulfnews.com

had no intention to abolish the *kafala* system 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.²⁰

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 a whopping \$100 billion.²¹ It is precisely during the run up to the World Cup that the Qatari Government should strive to make changes to the *kafala* system, 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 Shura Council passed a bill in July 2009 for the protection of domestic workers, which affected 1.5 million workers coming primarily from Indonesia, Sri Lanka and the Philippines. The legislation detailed certain conditions of work (e.g. employers have to provide accommodate housing, allow rest after a nine hour work day etc.) but also contained some vague provisions (such as requiring that a worker obtain the employer's permission to leave the house), which leave the domestic worker vulnerable to abuse.²² The Government has not, however, included domestic workers in the labour law nor has it signalled any willingness to change the *kafala* system. Indeed, the Ministry of Labour recently announced on 20 June 2011 that the country had no intention of reforming the sponsorship system.²³ Again, this type of posturing is of considerable concern, especially given the large number of migrant workers living in the country.

The UAE is, much like the other countries in the region, currently not seeking to transform its *kafala* system in any comprehensive manner. 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.²⁴ To its credit, the UAE did roll out in 2009 a Wage Protection System, requiring all businesses to choose an agent through which

²⁰ Qatarshares.com, Al-Mulla to "Al-Sharq": No Intention of Abolishing the Kafala System, 19 May 2011, <http://www.qatarshares.com/vb/showthread.php?t=455184>

²¹ International Trade Union Confederation, Qatar's ambitions for the 2022 World Cup are pharaonic in scale, May 2011 : <http://www.ituc-csi.org/hidden-faces-of-the-gulf-miracle,9144.html>

²² HRW, Saudi Arabia: Shura Council passes domestic workers protection, <http://www.hrw.org/en/news/2009/07/10/saudi-arabia-shura-council-passes-domestic-worker-protections>

²³ Shorouknews.com, Labour Minister: No intention of dismantling the Kafala System, 20 June 2011: <http://www.shorouknews.com/ContentData.aspx?id=379462>

²⁴ Reuters, Gulf Arabs still wedded to "kafala" system, 8 June 2009.

their workers will be paid.²⁵ The agent receives the wages, notifies the responsible ministry and ensures that payments are made. The effectiveness of the system in protecting migrant workers' salaries has not yet been evaluated, preventing a full assessment of this model.

Current Challenges to Reform

With the notable exception of Bahrain and, to a lesser extent, Kuwait, the initiatives for reform described above, while encouraging, appear rather piecemeal in their approach, tackling only a few of the pressing issues of labour migration management. Indeed, the trend of announcing the abolition of the *kafala* system has not been accompanied with details on what a new system will look like.²⁶

The fact that reforms have been slow can be attributed in part to major policy decisions made in the Gulf region over the last six decades. One needs to recall first how during the 1950s and 1960s, the majority of the workforce migration to the Gulf came from poorer Arab countries, like Egypt, Yemen and the countries of the Levant. The discovery of oil, and the ensuing oil price hike of 1974 and massive investment outlays, convinced Arab leaders that the scale of labour demand would be so great that the Arab states could not fulfil the shortfall. Hence, the need to recruit Asian workers in the Gulf states, especially in the construction sector.

International companies, which were involved in the infrastructure development projects in India and Pakistan after the Second World War also went on to play a major role in the GCC countries. They needed hard and tested labour that could work under extreme weather conditions. As their prior experience with Pakistani and Indian workers was very positive, they also decided to bring in workers from Asia. The mix of migrant workers nonetheless did change over the years, as the GCC economies progressively matured economically.

There were also political dimensions to the policy decision to hire more Asian labour. As one scholar explains, "the Gulf governments were worried about Arab migrant workers bringing and spreading radical social and political concepts."²⁷ GCC leaders quickly realized that Arab workers would create

²⁵ Rayeesa Absal, UAE government launches wage protection system for workers, 26 May 2009,

<http://gulfnews.com/news/gulf/uae/employment/uae-government-launches-wage-protection-system-for-workers-1.69869>

²⁶ See Human Rights Watch, *Slow Movement*, December 2009. HRW has argued that incremental reforms "are being introduced very slowly and fall short of the comprehensive protections required."

²⁷ Steven Roper, "Labour Migration to the Gulf: Understanding Variations in the Kafala System". He 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 organisations which called for the destruction of certain GCC regimes

more problems for them than migrant workers from Asia or Africa, which were perceived as being more 'docile.'

The GCC countries also considered the presence of Palestinians workers to be potentially problematic, as they could push GCC States into more active involvement in the politics of the Arab-Israeli conflict. In many respects, the decision to rely more on an Asian and African workforce enabled GCC and the other destination countries to keep the *kafala* system. It is difficult to know whether such a system would still be in place today had the Gulf States continued to rely heavily on an Arab workforce, which were already making demands for naturalisation and assimilation.

It can also be argued that 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 seek to lose from any change in the system. One renowned scholar noted that "facilitating the entry and maintenance of Asian workers to the Gulf is more than a billion dollar industry."²⁸

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 of executives is not uncommon when a high ranking official expresses interest in reforming the *kafala* system. These lobby groups have also certainly benefitted from the political revolutions underway in the Middle East and North Africa as of January 2011, which have shifted the attention away from the abuses inflicted on migrant workers towards the aspirations of the people in the region to have their own rights respected.

Arguably, the limited impact of the reforms is also tied to the fact that there currently are no regional civil society organizations able or willing to inform on and defend migrant workers' rights. Trade unions, for instance, that are allowed to operate in certain countries such as Bahrain, Kuwait and Oman, typically do not include migrants in their ranks.

Clearly, the current policy orientations are not sustainable: despite some attempts by the authorities to stamp out abuses, including those against migrant workers, these persist, in part due to migrants' dependence on their *kafeel*. Moreover, such abuses undermine the operation of the rule of law in

²⁸ Quote of John Willoughby in Mohamed Dito, GCC Labour Migration Governance, 2008.

countries of destination and affect negatively countries of destinations' relations with countries of origin and other partners.²⁹

Opportunities of Kafala Reform

Two premises underlie the following policy advice. First, migrant workers will be needed for many years to come in the Gulf region, to make up for the overall shortage of national labour supply. In other words, migrant workers are needed for the effective and efficient operation of the labour market and indeed, for the functioning of the economies of countries of destination. Second, migrant workers present in the country are considered temporary contractual labour.³⁰

An alternative to the current *kafala* system should aim at realizing several policy objectives of the host country:

- To reduce dependence on migrant workers and promote the employment of nationals
- To improve the terms of employment and working conditions of temporary contractual workers
- To allow workers the right to orderly labour mobility, in other words to change employers for justifiable reasons while preserving the interests of employers and the efficiency of the labour market
- To formalize the recruitment process

The sequencing of objective is for analytical purposes only and does not reflect the importance or priority of objectives.

i. Promoting the employment of nationals

Easy access to cheap sources of migrant labour is at the origin of the abundant supply in the GCC labour market. One solution used to remedy this situation may be to restrict labour supply by putting a cap on the absolute number of annual recruitments or on rates of growth of such recruitments. Such a solution is not, however applicable everywhere, as the situation varies between countries. Given that the majority of expatriate workers in the GCC countries are involved in construction, it is unfeasible to limit their numbers nor possible to fill the gap through the employment of nationals. Indeed, few

²⁹ Kapiszewski, *Asian Versus Arab Workers in the GCC Countries*, 2006 p. 12

³⁰ This is in line with the sovereign right of all States to formulate and apply their own migration policies, as recognized by the ILO Multilateral Framework on Labour Migration.

nationals would be willing to take up such jobs. The small population base of GCC countries negates the option of reducing the dependence on migrant labour as a viable strategy. Temporary contractual labour is therefore likely to continue in this sector on a large scale.

The dependence on migrant labour in countries of destination has a number of causes. In addition to the small populations of most countries of destination, it is often noted that nationals are not equipped with necessary skills for the labour market. It is also true that certain jobs (especially those concerned with manual labour) carry stigmas; that some citizens are content with the generous benefits provided for by the welfare state, compared to the comparatively low wages offered by private employers;³¹ and that there is a continued preference for public sector jobs, which have become scarcer as a result of retrenchment.

Experience suggests that training and wage-support programmes, with a particular focus on youth, where unemployment is concentrated, effectively promote the employment of nationals.³² Other aspects could be considered, such as reforming education systems to better fit labour market needs and reducing stigmas attached to specific jobs, as well as retraining, vocational guidance, and requirements to carry out labour market tests, working with employment agencies to advertise positions for nationals for a specific period of time before it is permitted to advertise to non-nationals. The ultimate goal in reducing depending on foreign labour is contingent on the ability of both the public and private sectors to offer high-value-added jobs that attract nationals from the country.

ii. Improving working and living terms and conditions of labour

Setting a minimum wage, in addition to reducing dependence on migrant workers, would in itself introduce an improvement in their terms and conditions of employment. But other measures, to be formulated by the State, would also be needed. Most terms regulating living and labour conditions are already regulated by provisions of labour laws. Those that are not require the formulation of new measures of a regulatory nature. The principles of international labour law, as provided for in relevant international labour standards and in the ILO Multilateral Framework on Labour Migration, in addition to principles of international labour law, can guide the formulation of such measures.

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 Labour, including particularly

³¹ Migration Study, p. 32

³² Dito, 2010, p. 9

labour 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. Labour 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 Labour 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 programmes 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 labour 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 labour disputes.

Addressing the specific situation of domestic workers and their terms and conditions of employment require a separate treatment.³³ However, a first measure to be contemplated is to include them in the scope of application of the labour law. The Ministry of Labour 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 on the Decent Work of Domestic Migrant Workers, adopted at the 100th Session of the International Labour Conference in June 2011 by governments, employers and workers' associations, should serve as a guide to policy and law makers.³⁴

iii. **Promoting the mobility of migrant workers**

Ensuring mobility of labour, in other words the ability of workers to change jobs in the labour market, should have two beneficial consequences. The first consequence is contribution to greater flexibility and effectiveness in the operation of the labour market, to the benefit of the economy of the country of destination: workers are able to move to where their labour is required. The second is to prevent exploitation of foreign workers by enabling them to leave unscrupulous *kafeels*. The conditions to be

³³ For more information, please see the background paper by Simel Esim, Carol Karbagge and Mansour Omeira entitled "Situation of migrant domestic workers in Arab states: a Legislative Overview" that will be presented at the June 2011 ESCWA-ESCAP meeting in Lebanon.

³⁴ 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

taken into account in proposing an alternative to the present situation are the necessity to preserve the interests of employers and preventing a disruption in the operation of the labour market.

One way of reconciling desired consequences and conditions would be to have the Ministry of Labour responsible for overseeing the recruitment process in coordination with countries of origin, acting as a clearing house 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.

Alternatively, the Ministry of Labour could manage the process itself, acting as the sponsor to foreign workers and matching their skills to needs presented by employers. In such a case, it may be considered to enter into bilateral agreements or Memoranda of Understanding (MOU) with countries of origin on migrant workers. Such agreements or MOU would provide a role for governments of origin countries in supervising the recruitment processes and guaranteeing that country's demand is met. This supervision would naturally encompass private recruitment agencies which play a central role in the recruitment of foreign workers in all countries of the GCC.

To reinforce the effective operation of the labour 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 six months after the end of their employment and offer their labour to employers. Job searches can be confined to the same sector where the worker was employed, or be allowed in all branches. This authorization to search for a new job at the end of the period of the original employment permit may be allowed once or twice for durations similar to the first one. Its application may first be tested in high productivity branches with relatively limited volumes of foreign labour. It can also be considered to allow the worker to search for jobs in other branches of economic activity than that he/she initially came for. Opening access to all sectors, after the end of the initial employment relationship, can also be allowed only once or twice for a duration similar to that of the first contract. It is also clear that administering mobility of labour, in the best interests of the host country's labour market and of foreign workers, requires a strong interventionist role of the Government, supported by employers and workers.

iv. Measures to formalize the recruitment process

The informalisation of the recruitment system permitted by the *kafala* system allows abuses to be perpetuated. Migrant workers are brought to the GCC countries especially through agents. These could

just be independent brokers pushing workers at a cheap price to the employers, but charging a high price to the worker for an opportunity to work abroad. Many of them are also not licensed 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 in some countries already be established procedures 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 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 marginalised. and this is why bilateral agreements become important.

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 be benefited by 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. International cooperation is also needed in disseminating information on rights and responsibilities throughout the migration process. This information can also empower migrants against being forced into irregularity, or becoming irregular unintentionally.³⁵

Implementation of an Alternative Policy

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

Moreover, the role of and effect on countries of destination will be significant as well; their engagement in the process would therefore be beneficial to ensuring their cooperation in the migration process. Such a dialogue could also be a venue to define the appropriate nature of protection

³⁵ Dovelyn Agunias, *Migration's Middlemen*, 2010.

of migrant workers and agree on mechanisms for its implementation, and would ensure reform did not have negative impacts on country of origin development.

After an alternative to the *kafala* system is agreed, the central role in putting them into practice should be carried out by the Ministry of Labour with implementing partners in countries of origin. However, new or changed roles will have to be played by other Government Ministries. All these institutions will have to be prepared for these roles. A coordination body for all concerned Ministries and Government agencies will then have to be set up. Ideally, social partners and country of origin authorities would be consulted by this coordination body. Alternatively, the Ministry of Labour could set up a consultative body on migrant labour.

Conclusions: A Roadmap for a Kafala Alternative

One practitioner from the region aptly explained that “labour migration governance – and migrations governance especially – in the GCC is facing a historic crossroad”³⁶ between the status quo and incremental or even comprehensive reform. Countries could either continue past policies with partial improvements in some areas (and postponing an honest approach to others) or embark on a comprehensive, critical and constructive review of the whole policy paradigm in dealing with the challenges of the labour market.

The proposals of an alternative to the *kafala* system articulated in this paper are only of a preliminary nature. They nonetheless point towards reforms which might improve the situation of countries of origin, destination and migrants themselves. The formulation of a complete policy proposal would need to be developed based on the specificities of each country. Changing the *kafala* system would be in the best interests of the host countries and of migrant workers. The elements of the alternative system and their rationale elaborated in the paper are summarized below.

General Principles

- i. The main thrust is to adopt a strategic approach to meeting labour market needs, restricting the use of temporary migration to where it is identified as necessary, providing support to ensure that migrants are able to succeed in their migration projects, and using active labour market policies to promote the employment of nationals wherever possible.
- ii. Regular consultation with employers’ and workers’ organizations as well as countries of origin on formulating and implementing policies concerning foreign workers and an alternative to the current *kafala* system.
- iii. Capacity building of authorities in countries of destination and origin to ensure the implementation of relevant laws to prevent abuses

Specific Proposals for Regulation of Recruitment, Employment and Stay

Two options can be suggested in order to achieve the abovementioned objectives.

³⁶ Mohamed Dito, GCC Labour Migration Governance, 2008.

- i. Option 1: The continuation of the existing system of recruitment with the right of the *kafala* transferred to a unit/department of the Ministry of Labour. Employers would ask for the authorization of the unit but would conduct the recruitment and make the transportation arrangements for the foreign worker.
- ii. Option 2: The special unit/department of the Ministry of Labour would carry out the recruitment of migrant workers upon the request of employers, in line with agreements with countries of origin. The Government unit/department would bear the initial costs of recruitment and transportation, which would be reimbursed by the employer upon signature of the work contract. As in the previous option, the State exercises the *kafala* of the foreign worker.
- iii. Migrant workers can seek new employment positions for six months after the termination of the initial contract. Workers would not be limited to the specific branch of economic activity in which they were previously employed. Workers would benefit from this opportunity only once or twice, and the duration of each extension of the employment and stay permits would be similar to that of the original period. Application of this suggested measure could be tested first in high productivity branches with relatively limited volumes of migrant labour.

Implementation, Monitoring and Dispute Settlement and Grievance Procedures

- i. Monitoring and strict enforcement measures should be formulated and applied by the State, with a central role for labour inspection. Training for Ministry of Labour and other relevant ministry officials in relation to their new functions and the administration of the new system should be undertaken.
- ii. The Ministry of Labour unit/department would investigate and rule on all allegations of mistreatment or violations of the provisions of the labour law or of the employment contract. If the worker infringes upon the provisions of the contract or labour regulations, he/she will lose the employment and stay permits. The worker would have the right to appeal the administrative decision before a labour court. 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 stay 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.

- iii. Sanctions against unscrupulous employers could be strengthened by focusing on the non-reimbursement for the costs of recruitment and transportation and the suspension of the authorization to bring in migrant workers for a number of years, depending on the gravity of the infringement.

Consultative mechanisms with partners in formulating policy

- i. Establish an Inter-Ministerial coordinating body for all ministries concerned with migrant workers, with the provision of regular consultation with social partners and countries of origin on the formulation of foreign worker policies.
- ii. Alternatively, the Ministry of Labour can set up a tripartite consultative body on migrant labour.
- iii. Encourage migrant workers' membership in trade unions, which can articulate the interests and protection of these workers.

Additional measures to consider

- i. Alongside adopting an alternative *kafala* system, governments of countries of origin and destination should focus on improving the recruitment process and monitoring the work of private employment agencies to prevent abuses against migrant workers.
- ii. Governments in the region could also enact bilateral agreements with countries of origin to better protect migrant workers.
- iii. Governments should ensure that all workers, irrespective of the occupational category, should be covered under the labour laws of the country that fall under the auspices of the Ministry of Labour.
- iv. Governments in the region should also ratify key international conventions, notably the ILO Conventions 97 and 143 on migration for employment and the United Nations' International

Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

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