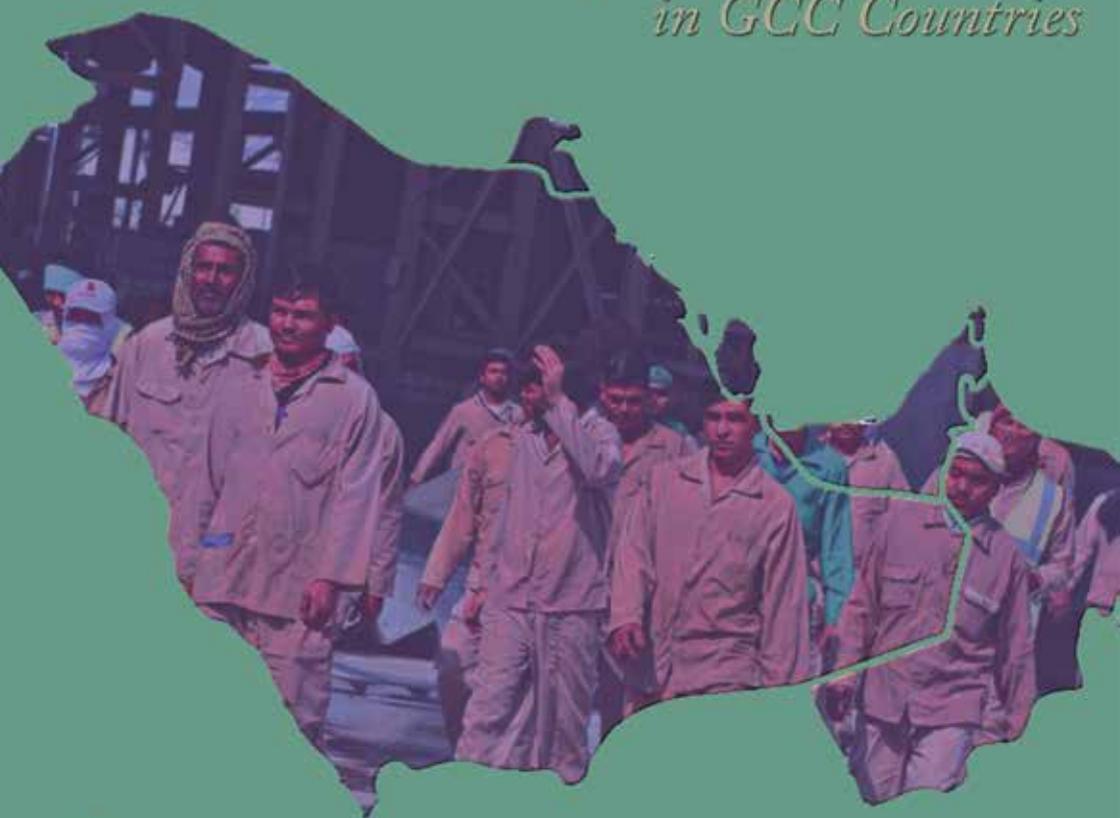


The Kafala

*Research on the Impact and Relation
of the Sponsorship System
to Migrant Labor Bondage
in GCC Countries*



Asia Pacific Mission for Migrants
APMM September 2014

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Preface

The role of the kafala system in migrant labor bondage in the Middle East makes it a persistent concern in the Asia Pacific Mission for Migrant's (APMM) engagement of forced labor migration in the Gulf countries, and one that cuts across most of APMM's thematic and cross-thematic programs – on Undocumented Migrants, Migrant Unionism, Domestic Work as Work, Faith Partnership and Solidarity, and Development and Forced Migration.

It has been a matter of great interest for APMM since its initial sallies into migrant work in the Gulf countries in the early 80s, for then as now the kafala system has contributed substantially to creating an immense pool of undocumented workers who are extremely vulnerable to government and employer abuses. While the proven responses to these abuses are grassroots organizing and migrant advocacy, the political and cultural terrain among GCC countries have always proved to be inhospitable to these responses, which are often deemed to be threats to existing socio-cultural norms in the subregion.

A salient feature of grassroots organizing has been social research, “or “social investigation” in the parlance of grassroots organizations. This was done at the ground level by the first organizers fielded in the Gulf – from the local to the national level, and was instrumental in establishing the migrant associations that still operate vibrantly to this day in Qatar, Kingdom of Saudi Arabia, Bahrain and the United Arab Emirates. What was previously considered to be “mission impossible” in the world of migrant organizing became possible with the correct approach that was based on accurate, painstaking social research on the ground.

But the expanding character of organizing, the ever-changing socio-political terrain of Gulf countries and APMM's evolving prerogatives prescribe raising the bar on social research. The forces that shape migration do not just operate locally or nationally, but more so, regionally and globally. Cross-border movement is being increasingly influenced not just by national actors at both ends of the migration flow, but by intergovernmental agencies and

international CSOs that have locked horns over the paradigm of migration and development. These dynamics in the migration discourse now present challenges to the way human rights defenders work, especially to regional ones like APMM, in terms of conducting advocacy, organizing and research.

This recognition is at the heart of this APMM research on the kafala system, a broader perspective that ties together major national researches into one cohesive whole. It presents a highly concise yet informative regional context that shows how the sponsorship system evolved historically, as well as its place in the common culture that predominates in the Gulf. It also looks at particularities in the way system operates in each country and how its continued existence in a highly liberalized migration regime is now being increasingly questioned by migrant and human rights organizations.

While this research is admittedly a secondary one, it still fills in a large gap in available literature regarding the particularities of the kafala in each Gulf country, as well as cross-border attitudes and responses of major stakeholders vis-a-vis the kafala. By tackling overarching concerns related to the sponsorship system in the Middle East, migrant and human rights defenders on the ground are able to round out their appreciation of the socio-political terrain and improve on time-tested approaches for grassroots-based advocacy and organizing in the Gulf area.

It is our fervent hope that the release of this report will provide guidance not only to APMM's work, but will also serve as reference for other migrant advocates in the region and elsewhere.

Ramon Bultron
Managing Director
APMM

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~ Migrante International, the global alliance of Filipino migrant organizations, that has partnered with APMM in many campaigns to uphold and protect the rights of migrants as well as attend to individual cases of Filipino migrants in distress. Truly, working with grassroots migrant organizations and relying on their strength are what APMM find valuable;

~ Katelyn Davis who has spearheaded and wrote the research even when she has already finished her term with the APMM and has gone back to the United States. Her diligence in her work and commitment to pursuing the truth for the benefit of the those on the ground is indeed remarkable;

~ The staff and volunteers of the APMM who have collectively helped in completing this research.



Gulf Cooperation Council countries
(Source: wikipedia.org)

General Introduction

The Gulf Cooperation Council (GCC) consists of six countries in the Arabian gulf region: Bahrain, Kuwait, Oman, Kingdom of Saudi Arabia, Qatar and the United Arab Emirates. These six countries possess large gas reserves and almost half of the world's known oil reserves. The export of petroleum and petroleum-related products led to the massive influx of petrodollars into state coffers. The government and private companies rapidly expanded public infrastructure and poured funds into the healthcare, education and private sectors. This rapid expansion required a large unskilled workforce, which the region's rulers decided to import from outside their respective countries.

Beginning in the 1970's, thousands of men migrated to the GCC each year in hopes of finding employment. The majority of these men came from other Arab countries initially, but after a number of years, leaders decided to encourage labor recruitment from other Asian nations. As oil revenues continued to increase household incomes, the demand for domestic workers increased as well, so migrant women began to travel to GCC to work in households.

The state applied a system known as the kafala to govern and regulate this migrant workforce. The kafala system stems from Bedouin cultural practices and traditional bonded labor relationships in the region. Kafala loosely translates as sponsorship, and under this system, every foreign employee must obtain a sponsor or local employer. The employer applies for the visa and becomes legally responsible for the worker.

Main Thesis

At least in its original form, the kafala system was not devised as a mechanism to oppress migrant workers. In its current form however, the kafala system creates a severe power imbalance between employers and workers and becomes detrimental to rights of migrant workers as a direct result of the policies that states justify by way of the kafala system. The kafala system causes, facilitates and perpetuates human rights abuses of male and

female migrant workers in the GCC. The only way to address the systemic abuses caused by the kafala system is to abolish it entirely.

Objective of the Research

This research provides an in-depth study into the history, rationale, justification and results of the kafala system. It aims to act as a clearinghouse of sorts for other recent researches and provides comprehensive combined information with updates to current laws and policies. It also provides explanations as to how and why the kafala system operates this way.

This research contains eleven sections. The first section discusses the Gulf Cooperation Council itself, its history, political structure and several current issues affecting the region. The second section provides a brief overview of migration to the Gulf and the effect of labor export policy on sending countries. The third section explains the demographics of the migrant population in each GCC country. The fourth section discusses the kafala system itself, its historical development, how it works and how it creates abusive employment situations. The fifth section talks about undocumented migration and the corresponding phenomenon of “free visa.” The sixth section explores the gender and racial dimensions of Gulf migration and how the kafala system particularly exploits women. The seventh section discusses male migrant workers and how the policies justified by the kafala system systemically exploit migrant workers. The eighth section talks about relevant international conventions and how those conventions can be used to call for changes. The ninth section discusses recent changes to the kafala system and related policies by GCC state. It tracks and explains these changes and provides recommendations for further steps. The final section contains case studies of migrant workers affected by the kafala system. The APMM obtained these case studies through its contacts with Migrante International, an international alliance of grassroots Filipino migrant organizations based in the Philippines with chapters in the Gulf region. The research also contains a conclusion at the end.

APMM presents this research project in hopes that it will educate migrant workers, NGO personnel, and advocates around the world. We hope that they will use it to understand the complete nature of the kafala system, ways to advocate for changes, and monitor developments. This research will hopefully inspire the migrants to keep fighting for their rights.

I. GCC

Introduction

The Gulf Cooperation Council (GCC) consists of six countries near the Arabian Gulf in the Middle East. The six countries that compose the GCC are Bahrain, Kuwait, and Oman, Qatar, the Kingdom of Saudi Arabia and the United Arab Emirates (UAE). The leaders of the individual GCC countries sought to establish a cooperative region in 1981 in reaction to the Iran-Iraq war and fear from other pan-Arab and pro-nationalist movements. The GCC states share several characteristics including geographical proximity, a common religion (Islam), a common language (Arabic), similar political structures and economies. These societies all experience a need to reconstruct a common identity and have a “principle of a single culture and nation” (Al-Khouri, 2010). These commonalities and political realities led to the creation of the GCC.

The exportation and refinement of crude oil accounts for a large majority of the economic activity in these countries. Oil revenues, also known as “petrodollars”, have been the primary source of government funds since the 1970’s. The GCC states possess 45% of the world’s known oil reserves and account for 25% of the world’s oil exports (Al-Khouri, 2010). This massive influx of cash led to rapid development and a higher standard of living for Gulf citizens. The governments of GCC states used petrodollars to invest in the economy in three primary ways: development of infrastructure, improvement of social services (primarily healthcare and education) and investment in the industrial and agricultural sectors (Al-Khouri, 2010). As a result of these efforts, several development indicators showed positive improvement. For example, literacy and education levels rose, infant and maternal mortality declined, life expectancy and household incomes increased.

The Gulf states have per capita incomes equivalent to or above those of United States and Western Europe. Qatar has the highest per capita income in the world at 103,900 USD. The UAE is number 15 in the world at 49,800 USD; Kuwait ranks number 27 at 40,500 USD, Saudi Arabia number 46 at 31,800 USD, and Oman and Bahrain at number 50 and 51 with 29,600 and 29,200 USD, respectively (Central Intelligence Agency, 2012). In addition to high

per capita incomes, the influx of petrodollars allowed governments to provide an unprecedented level of services to its citizens. Citizens generally receive free education at all levels, free healthcare, almost guaranteed employment, and other benefits such as housing allowances and payments for having children. Citizens pay little or no tax for these benefits.

In order to achieve rapid development, GCC governments actively recruited a foreign labor force to supply them with the needed labor and technical skills. Migrants, predominately male, from other Arab states initially comprised the majority of this labor force. The leaders of the GCC countries began to encourage migration from Asian countries in response to several outside factors. This labor force now comprises a significant portion, if not a majority, of the population in all of the GCC states. However, the migrant labor force suffers from severe abuse, maltreatment and lacks access to basic rights. The kafala or sponsorship system facilitates much of this abuse by restricting freedom, rights and opportunities to challenge employers.

History

The region currently known as the Gulf Cooperation Council originally consisted of several sultanates and kingdoms prior to British control in the late 1800's. The Ottoman empire nominally controlled certain regions of the present-day countries of the GCC. The sultanate of Oman, which extended northeast of the present state, vied for control of the region with several tribes along the Gulf coast. Starting in the 1800's, the British coerced local rulers into signing treaties to protect the former's shipping interests in the Arabian gulf.

The British became involved in the Gulf region after pirates attacked British ships en route to India. They did not want to take over desolate desert regions with few natural resources or advantages but merely protect their shipping interests to India. After attacking and defeating the pirates in 1819, the British signed several treaties with leaders who promised to suppress all pirate activity. Through these treaties, the British divested the Ottoman empire of official control over the region and "propped up" local rulers.

The defeat of the Ottoman empire and the Central powers during World War I solidified French and British colonial control over the Middle East

region in general. The secret agreement between the French and British to divide up the Levant and southern Turkey, now known as the Sykes-Picot Agreement, “granted” British control over present-day Jordan, Iraq and Palestine. The British already nominally controlled the Gulf region, and so the various treaties and agreements following World War I only peripherally impacted the Gulf states.

A much more significant point in the development of geopolitics in the Gulf region was the decision of British Secretary of War, Winston Churchill, to change the fuel for the British Navy from coal to oil in 1913. This decision catapulted the prevalence of oil in new machinery and caused demand to skyrocket. As such, the British (and later Americans) began to explore all possibilities for oil production throughout its empire but primarily in Iraq, the Gulf states and Persia (present-day Iran).

Beginning in the early twentieth century, Abdul Aziz bin Saud (Ibn Saud) began uniting the present-day Kingdom of Saudi Arabia under one ruler, himself. Ibn Saud practiced an extremely conservative form of Islam known as Wahhabism, which eventually became the dominant Islamic practice in the kingdom up to this day. In 1932, he declared the Kingdom of Saudi Arabia, and used his powerful position to negotiate oil concessions with an American company.

In 1932, the Standard Oil Company of California (SoCal, now known as Chevron) discovered oil in present-day Bahrain. SoCal also soon discovered oil in Saudi Arabia, Kuwait, Qatar and the present-day UAE. However, the outbreak of World War II prevented the development of these oil fields and delayed the exportation of oil.

The Arab leaders initially granted concessions to oil companies and received small portions of the profits. The treaties signed with the British identified local leaders as “owners” of certain areas of land. Thus, when oil companies explored for oil, they looked for the “owner” of the land and paid fees to these families. As oil revenues increased, the leaders became rich but still did not control the company or receive the majority of the profits. However, the rise of Arab nationalism and the decline of the British empire in the 1950’s emboldened leaders to demand equal shares in company profits in addition to the previously negotiated royalty fees.

By the 1970's, the rulers bought majority shares in the now independent oil companies, thus transferring the power and income into the hands of local leaders. The oil crisis in 1973 and subsequent price increases by the Organization of Petroleum Exporting Countries (OPEC) led to unprecedented incomes and government revenues in these states. These states remained under pseudo-British control throughout the 1950s and 1960s and began declaring their independence in the 1970s.

Political System

All of the governments in the Gulf Cooperation Council are hereditary monarchies. Power remains concentrated in the hands of the king and his appointed ministers. Most of the countries have a form of parliament or elected representation, locally known as a Shura Council, but these elected bodies generally serve as advisory councils with very little concrete political power to change or implement laws.

Political dissent remains tightly controlled, and the regimes continue to exercise authoritarian policies. According to one scholar, the actions of rulers in the Gulf send a clear message that the activity of parliament "is tolerated only within certain boundaries set by the ruling authorities" (Power, 2011).

Bahrain

The kingdom of Bahrain declared its independence from Britain in August of 1971. Its current ruler is King Hamad bin Isa Al-Khalifa. The monarch appoints the prime minister and cabinet. King Hamad reestablished the parliament in 2002 as a way to diffuse social tensions between the two primary religious sects in Islam. The ruling family is Sunni Muslim whereas the majority of the population is Shi'a. The Shi'a population suffers from systemic poverty and discrimination. Political parties are illegal in Bahrain, but a 2005 law permitted the formation of political societies.

Bahrain possesses the smallest oil reserves of the Gulf states, so it began diversifying its economy early on and moved towards oil refinement. Petroleum export still account for 60% of its gross domestic product (GDP), but Bahrain also competes with Malaysia as the center for Islamic finance (CIA, 2012).

Kuwait

Kuwait declared its independence from the British first among the Gulf states in June of 1961. The current ruler is Amir Sabah al-Ahmad al-Jabir al-Sabah. The amir appoints the prime minister and deputy prime minister. The prime minister appoints a council of ministers who receive approval from the amir. The amir also appoints all judges to the judicial system with consultation from the Supreme Judicial Council. Kuwait has an elected national assembly with limited powers. The government does not allow the formation of political parties.

Kuwait has almost 7% of the world's oil reserves and oil export accounts for nearly half of its GDP and 95% of government revenue (CIA, 2012).

Oman

The sultanate of Oman maintained its independence throughout the time of British treaties. The current ruler is Sultan Qaboos bin Said Al-Said. He is also the prime minister. Oman does not have a formal constitution, but in 1996, the Sultan provided a basic law considered by many as a constitution. The Sultan also appoints a cabinet. Oman has a popularly elected bicameral legislature. However, the upper chamber only has advisory powers, whereas the lower chamber has the ability to craft legislation but it is subordinate to the Sultan (CIA, 2012). Political parties are illegal.

The Omani economy remains dependent on dwindling oil reserves. The government is pursuing a development plan calling for diversification through tourism and natural gas, and industrialization.

Qatar

The state of Qatar declared its independence from the British in September of 1971. The current ruler is Amir Tamim bin Hamad al Thani. The amir appoints the council of ministers and the prime minister. In 2003, Qatar ratified a constitution through public referendum. The amir endorsed it in 2004, and it went into effect in 2005. The constitution provides for the creation of an advisory council with 30 members popularly elected and 15 appointed by the amir. Elections for the council were scheduled for 2013. The

council has the authority to draft and approve laws, but the amir maintains “final say” on all matters (CIA, 2012). Political parties are outlawed as well.

Oil and gas exports account for more than 50% of the GDP and 70% of government revenues. Proven oil reserves will allow Qatar to continue exporting oil at current levels for approximately 50 years. Additionally, Qatar possesses 13% of the world’s natural gas reserves, which it exports as well. Oil and gas revenues have made Qatar one of the richest countries in the world.

Kingdom of Saudi Arabia

The Kingdom of Saudi Arabia became a country in 1932 after a process of unification by Ibn- Saud. The current king is Abdallah bin Abd al-Aziz al Saud. The king appoints the deputy prime ministers and a council of ministers. Saudi Arabia is governed according to Islamic law but the King announced a basic law in 1992. The kingdom has a popularly elected consultative council. However, women cannot vote in Saudi Arabia. Saudi Arabia follows an extremely conservative interpretation of Islam, Wahhabism, which proscribes several restrictions on women’s rights and treats them as second-class citizens. Women cannot drive, they must wear an abayah (head cover) when in public and be accompanied by a male guardian. They are not allowed to leave the country without the permission of a male guardian.

Saudi Arabia possesses about 17% of the world’s known oil reserves. Oil exports represent 45% of the GDP and 80% of budget revenues. The government is making efforts to diversify the economy into power generation, telecommunications and natural gas exploration (CIA, 2012).

UAE

The United Arab Emirates consists of seven emirates: Abu Dhabi, Ajman, Al Fujayrah, Sharjah, Dubai, Ras al Khayman, and Umm al Qaywayn. Overall, the country is a federation with specified powers delegated to the federal government and others reserved for the individual emirates. The UAE declared its independence in December of 1971. After the other states announced their independence, the remaining tribal areas decided to unite into one country, leading to the creation of the UAE.

The ruler of each emirate is hereditary according to the male line. The president of the UAE is the ruler of Abu Dhabi, Khalifa bin Zayid al-Nahayyan. The UAE has a vice president and several prime ministers appointed by the president. The Federal Supreme Council (FSC), which consists of the ruler of each of the seven emirates, appoints the president and the vice president for a five-year term. The FSC is the highest constitutional authority in the UAE, establishes policies and regulations but the rulers of Abu Dhabi and Dubai have veto power. The UAE also has Federal National Council with 40 members, 20 of whom are appointed by the rulers and the remaining are elected. Political parties are not allowed.

The oil and gas industry accounts for 25% of the GDP. Over the past decade, the government actively pursued a plan of diversification to reduce dependency on oil and natural gas. Services accounted for slightly over 40% of the GDP in 2012 (CIA, 2012).

Nationalization Policies

A consequence of relying on a foreign labor force has been the rising unemployment among the native population, especially when coupled with an increasing population and high birth rates over the past four decades. The leaders of Gulf nations addressed this situation beginning in the late 1980's through the introduction of nationalization policies. These policies essentially require companies to reserve a certain portion of jobs for the native population. Each country uses a different system, but nationalization policies either create levies on visas for migrant workers, or use a quota system limiting the number of foreign workers that each company may hire.

Historically, the vast majority of the native population in Gulf states works in the public sector with the foreign work force employed primarily in the private sector. Nationals in Gulf countries generally prefer to work in the public sector because of higher salaries, shorter working hours, and greater benefits. Private companies also prefer to hire foreigners at all levels because they claim that nationals lack the necessary skills, and private companies can pay foreigners lower salaries with fewer benefits. However, a burgeoning youth population coupled with stagnant or declining state revenues means that the public sector cannot absorb those newly entering the workforce. The official unemployment rates for nationals in the Gulf states remains between 10 to

15% depending on the country. State nationalization policies aim to equip the native population with education and skills training while simultaneously “encouraging” private companies to hire natives instead of foreigners.

Until recently, these policies have failed to affect the situation or economy in any concrete manner. However, the Gulf states recently intensified efforts to nationalize the workforce as a result of rapidly increasing unemployment, particularly among youth, and the resulting rising discontent among the population. For example, the International Monetary Fund (IMF) estimated that the unemployment rate in Saudi Arabia among nationals reached 12% although the economy grew by 6.25% in 2013. The unemployment rate among Saudi youth and women was more than double the overall unemployment rate at 30 and 35%, respectively (Hoetjes, 2013).

In 1994, the government of Saudi Arabia introduced the first Nitaqat or “Saudization” program. The program failed to address the rising unemployment rate or quell discontent among the population. The situation continued to grow more pressing as the proliferation of social media and Arab Spring protests allowed citizens space to express their discontent.

By 2011, the government decided to drastically “step up” efforts to force private companies to hire more Saudi nationals by revamping the Nitaqat program. The new Nitaqat assigns every Saudi private company a category of compliance (Premium, Green, Yellow, Red) based on the percent of Saudi employees in respect to the total number of employees. The categories determine a company’s ability to obtain new or transfer visas for foreign employees. Private companies with a “premium” ranking must employ 40% or more Saudi citizens, whereas those with a “red” ranking employ less than 5% Saudi citizens.

The deadline for compliance with the regulations was 2013, so the full impact on migrant workers remains to be determined. However, the government used the Nitaqat program as its justification for the massive deportation campaign against undocumented migrants. The King eventually announced an amnesty to allow undocumented workers to regularize their status by finding a new sponsor or changing their documents to reflect the correct employment information. Around two million migrants of a variety of nationalities regularized their immigration status during the amnesty period. However, the Guardian newspaper reported that the Saudi government deported

two million undocumented workers prior to and after the expiration of the amnesty period (Black, 2013).

Other countries have implemented nationalization policies as well, such as “Omanization, Emiratization, Kuwaitization, and Qatarization.” These policies have largely failed to decrease the number of migrant workers in the destination country or address native unemployment. However, the recent push of the Saudi government towards Saudization might signal a “game changer” for these nationalization policies. The push for Saudization led to widespread deportations, alleged human rights abuses during the deportation process, and potential economic disruption as many businesses failed to find replacement employees prior to the crackdown. While we cannot know the effects of Saudization on the overall rate of migration at the time of writing, the push to nationalize might conceivably slow migration to the Gulf region for the first time in decades.

II. Migration to the Gulf: A Brief Overview

Labor migration to the Gulf states began in the 1960’s following the discovery and exportation of oil. The local residents lacked the necessary skills to develop the infrastructure that oil export requires. Additionally, the Gulf states suffered from significant underdevelopment without roads or electricity in most areas. Thus, the newly independent governments decided to import labor rather than train a native labor force because by importing labor, the region could accomplish development much more quickly without waiting for a local labor force to develop.

Labor migration to the Gulf states consisted of three waves. Men from neighboring Arab states made up the first wave. As the later section discusses, government officials decided to actively recruit men from South and Southeast Asian countries because men from other Arab states might eventually demand citizenship and upset the social order. Thus, a notable shift occurred in the late 1970’s and 1980’s as male labor migrants came from countries outside the Middle East, such as India, Bangladesh, Pakistan, the Philippines and Nepal. This wave continues to the present. The third phase began in the early 1990’s, as more women began to migrate to the Gulf also for the purpose of labor. The

vast majority of women find work in private household as domestic laborers. They engage in a variety of tasks such as cooking, cleaning, and taking care of children. In certain sending countries, such as Sri Lanka, the Philippines and Indonesia, female outward labor migration currently accounts for over 50% of migration flows (APMM, 2013).

The need to import a foreign labor force coincided with the development of labor export policy (LEP) in key sending countries, especially the Philippines. Widespread poverty, unemployment and rising costs for social services and servicing of foreign debt caused successive crisis in the Philippine economy and society. The Philippines began its labor export policy under the Marcos dictatorship as a way to provide an outlet for this social and political unrest, gain access to foreign currency and improve the economy and the balance of payments (APMM, 2013). It established the Philippine Overseas Employment Administration (POEA) to actively promote overseas work, facilitate the employment of Filipinos overseas, and seek foreign labor markets for Filipino nationals. Indonesia followed suit with its own labor export program in the 1990's. Currently, many governments consider the Philippine LEP a "model," one that maximizes remittances by facilitating labor migration and protecting human rights in the process. In reality however, the Philippine LEP does little to protect the rights of migrants and leaves them extremely vulnerable to abuse by employers and recruitment agencies.

Beyond a formal labor export policy, other conditions force people to migrate overseas in search of employment. These conditions include poverty, unemployment and rising costs for basic goods. Government policies fail to address the causes of these circumstances. Most migrants to the Gulf use an agent or a recruitment agency who promises high salary and enough money to take care of the migrants' family, pay for education and healthcare costs. However, the reality of the situation rarely matches this idyllic picture.

III. Demographics of the Migrant Population in Each GCC State

Bahrain

Migrants account for 54% of the total population in Bahrain (LMRA, 2013). According to the Labor Market Regulation Authority of Bahrain (LMRA, 2013), there were 499,797 migrant workers in the country in the beginning of 2013. Around 409,810 of these migrant workers are male; about 90,000 are women and the remainder are dependents of migrant workers (LMRA, 2013). Migrant workers accounted for 77% of the total workforce, but nearly 85% of migrants work in the low-skill and low-wage employment sectors (Human Rights Watch, 2012a). About one third of male migrant workers work in the construction sector, some 23% in the retail and wholesale trade sectors, 16% in manufacturing, 9% in domestic work and 7% in the hotel-restaurant industry (HRW, 2012a). Of the 90,000 female migrant workers, about 61,000 of them work in the household as nannies, cooks, housemaids, and so on (LMRA, 2013).

The majority of these workers come from labor-sending countries in South and Southeast Asia. The top five source countries for immigrants to Bahrain come from India, Pakistan, Egypt, Iran, and the Philippines (World Bank, 2011). Bangladesh, Nepal and Sri Lanka are also significant source countries for migrant workers to Bahrain. In general, female domestic workers come from the Philippines and Sri Lanka, while the male migrant workers come from India, Pakistan, Bangladesh and Nepal.

Kuwait

Migrant workers comprise approximately 70% of the total population of Kuwait (World Bank, 2011). The top five source countries are India, Egypt, Sri Lanka, Bangladesh and Syria (World Bank, 2011). Of the 1.3 million migrants in Kuwait, 715,700 were from Asian countries and 446,800 were from other Arab countries in 2008 (Baldwin-Edwards, 2011). There were an estimated 660,000 foreign domestic workers accounting for 30% of the

total migrant worker population in 2009 (HRW, 2010). The overwhelming majority of them are women primarily from India, Sri Lanka, the Philippines, Indonesia, Nepal and Ethiopia (HRW, 2010). Given the small native population, this number means that there is approximately one domestic worker for every two citizens in Kuwait. Migrant workers accounted for slightly over 80% of the total labor force in 2009 (Baldwin-Edwards, 2011).

Migrant workers account for over 90% of employees in certain sectors, primarily the industrial, manufacturing, construction, and service industries (restaurant, hotels, retail). Notably, these employment concentrations have not changed since 1985 (Godfrey, Ruhs, Shah and Smith, 2004).

Oman

Migrants accounted for 30% of the total population of Oman in 2010, slightly less than other GCC states (World Bank, 2011). According to the Omani government, there were 1.5 million migrants in Oman in 2013. Of these, only about 165,900 were women. The top three sending countries for male migrants are India with 602,235, Bangladesh with 478,567, and Pakistan with 222,401. The top sending countries for female migrants are Ethiopia with 43,634, India and Indonesia with 27,000 each, and the Philippines with 18,000 (National Center for Statistics and Information, 2013).

The male migrants are concentrated mostly in unskilled, low-wage industries. The construction sector employs nearly 700,000 of male migrants. The service sector employs the next largest portion with 265,000 people working in this sector. Finally, the agricultural sector employs about 77,000 people, mostly men. Female migrants work predominantly in the domestic work sector (NCSI, 2013).

UAE

Slightly over 80% of the population of the United Arab Emirates (UAE) are migrants. According to the UAE National Bureau of Statistics (2011), there were about 7.1 million non-nationals and about 1.2 million nationals living in the country in 2010. Foreign workers accounted for nearly 85% of the workforce in 2008 (Sonmenz, Apostopoulos, Tran and Rentroppe, 2011).

In 2008, nearly half of all migrants worked in the construction sector. The trade sector employs almost 20% of migrants, followed by the manufacturing sector at 11%. Around 16% of migrants work in the real estate, transportation and hotel/restaurant sectors (National Media Council, 2010). There were an estimated 450,000 domestic workers in the UAE in 2006. Domestic work accounted for 12.8% of total employment in 2008 (International Labor Organization, 2013).

Saudi Arabia

The Kingdom of Saudi Arabia was the fourth largest recipient of migrants worldwide and the second largest sender of remittances in 2010 (World Bank, 2011). Of the eight million migrants in Saudi Arabia, migrants from three labor-sending countries in South and Southeast Asia comprise a third of the population. There are one million migrants from each: India, the Philippines and Indonesia (HRW, 2008). There are an additional 600,000 migrants from Sri Lanka (HRW, 2008). Other source countries include Pakistan, Egypt, Yemen and Bangladesh.

As with other Gulf countries, the majority of male migrant workers work in low-wage, unskilled occupations, such as the construction sector. A small but significant number work in households, primarily as drivers as a result of the ban on women driving.

The majority of the migrant workers from the Philippines, Indonesia and Sri Lanka are women who work in Saudi Arabia as domestic workers. According to the Saudi government, there are 1.2 million household workers, 428,000 of whom are registered as domestic workers with the Saudi Ministry of Labor. However, deployment figures from sending countries estimate one million domestic workers in the Kingdom (HRW, 2008).

Qatar

Qatar is the country with the highest ratio of migrants to citizens worldwide (HRW, 2012). Migrants account for 86.5% of the total population and 94% of the workforce (World Bank, 2011). The top source countries for these migrants are Pakistan, India, Nepal, Iran, the Philippines, Egypt and Sri Lanka (World Bank, 2011). There is also a significant number of migrants

from Bangladesh (HRW, 2012). Migrant workers are mainly employed in the construction, service and household service industries. The construction sector employs almost 50% of male migrant workers, so it is the largest employment sector in the country (HRW, 2012). There are about 132,000 domestic workers in Qatar according to the Human Rights Watch (2012). This low number reflects the fact that Qatar has the lowest proportion of migrant women, at 8.3% in 2009 (Baldwin-Edwards, 2011).

IV. Kafala System

Introduction

The kafala system is essentially a sponsorship system used in the Gulf Cooperation Council countries to regulate migrant labor. The employer or company applies for employment visas from the government, which grants the employer visa based on the needs of the company and other guidelines. The employer then uses a recruitment agency to hire an employee generally from countries in South or Southeast Asia. Through the process, the employer becomes the legal entity responsible for the worker while in the country thereby controlling and dictating the conditions of stay for the employee.

The kafala system creates a severe power imbalance between employees and employers. Scholars, human rights activists and international non-profit organizations describe the system as part of modern-day slavery and a form of structural violence against migrant workers. The kafala system causes, facilitates and perpetuates human rights abuse against migrant workers.

Historical Development

Roughly translated, kafala means “sponsorship.” All six of the GCC countries use some dimension of this sponsorship system to regulate foreign labor in their respective countries. The kafala system began in the late 1960’s and 1970’s as the Gulf countries began to import labor to enable rapid development. The kafala system stems from three separate sources of the social, political and economic environment in the Gulf. It contains cultural and historical roots in Bedouin culture, follows a tradition of bonded labor relationships in the Gulf, and was an active decision of governments to manage and control the foreign labor population.

According to one scholar, all GCC countries share three broad objectives reflected in the “unique design” and policies of the kafala system: providing a cheap workforce to private companies, monitoring the “perceived impact” of immigration on the collective identity and culture of the local population, and addressing any “security concerns” that might arise from a high number of migrants who outnumber citizens (Ruhs, 2012).

The rationale behind the kafala system contains roots in Bedouin culture, and the government developed the system itself to accomplish certain political goals. The representative of the International Labor Organization (ILO) in Kuwait told the Human Rights Watch that the kafala system “is a custom, not a code. It is from the culture of the people” (HRW, 2010). One scholar, Beague, argues that the kafala system stems from the Bedouin custom of “temporarily granting strangers protection and even affiliation into the tribe for specific purposes” (Heeg, N.D.). Furthermore, Jennifer Heeg (N.D.) argues that Arabs in Gulf often discuss generosity as a “hallmark of Bedouin life.” In Bedouin custom, it was customary to take strangers in, feed them and his animals, and allow him to stay as long as necessary (Heeg, N.D.). Thus, the tribe absorbs and extends protection to the visitor. Under the kafala system, the migrant worker becomes the responsibility of the sponsor. The migrant worker in theory enjoys protection of the tribe and cares for his or her basic needs. Many government officials use this connection to Bedouin custom and tradition to justify and explain the kafala system.

The kafala system also derives from traditional bonded-labor relationships. In this arrangement, workers labored against a previously incurred debt instead of receiving wages, and in exchange, sponsors guaranteed to meet the basic needs of the worker and their families (HRW, 2010). An example of this type of relationship is domestic workers prior to the influx of women from South and Southeast Asia because Arab women and girls used to occupy these positions. The father would generally visit at least once per year to collect her wages. One scholar, Al-Najjar, argues that these girls were “less vulnerable” because a visit from the father represented an act of protection as well as an opportunity to collect wages. These cultures shared “an understanding that family honor was at stake” (Jureidini, 2003).

These historical precedents show that there is a custom of maintaining unequal relationships between employers and employees in the GCC countries. This dynamic in employment was structural, and state-sanctioned

because many GCC states did not outlaw slavery until the 1960's. Additionally, this employment dynamic interacts with traditional Bedouin customs of foreigners, especially women, requiring protection. The kafala system seemingly extends protection to migrant workers but also maintains the traditional understanding of labor relations in the GCC.

Finally, and potentially most significantly, state engineers established the kafala system explicitly to serve the needs of the state. After the discovery of oil and following the infusion of petrodollars, the state required rapid development, which could only be accomplished through the importation of short-term labor as it would take too long to train a native workforce (Baldwin-Edwards, 2011). The extraction and production of oil required a large workforce that needed to be housed, fed, entertained, and so on. The push for rapid development began with the construction of basic infrastructure, such as roads, but continued as governments sought to improve access to services (healthcare and education for its citizens). Today, as governments engage in economic diversification, they continue to rely on a migrant labor to enable diversification into other industries, such as hospitality.

State engineers quickly realized that petrodollars would propel the Gulf from an unknown "back-water" region to a wealthy center of business and production. Prior to the discovery oil, the region lacked basic services such as roads, running water and electricity. For example, the UAE began exporting in 1962, at a time when the area lacked roads, electricity, and even newspapers. By 1980, the UAE was the wealthiest country in the world in terms of its per capita income (Sabban, 2004).

However, the state also needs to ensure control over this foreign labor force (Sabban, 2004). Initially, this workforce originated in both South Asia and the Arab world. However, state leaders chose to rely on a labor force predominantly from Asia and Africa for multiple reasons. Firstly, Asians and Africans were "perceived as more 'docile' than an Arab labor force" (Khan and Harroff-Tavel, 2011). Secondly, leaders believed that diversifying the nationalities of the labor force would "deflect potential political encroachment by Arabs from other regions" (Khan and Harroff-Tavel, 2011).

The local population and leaders perceived non-national Arabs as "threat" because common linguistic, cultural and religious origins made non-national Arabs feel as though they deserved to have a "stake" in the their new country

of residence (Jureidini, 2003). Expanding the number of citizens to include non-national Arabs would mean sharing resources with a higher number of people. Recruiting labor from Asian and African source countries addressed these concerns because Asians and Africans could not as easily justify their call for citizenship as they did not share any cultural or linguistic characteristics with the native population.

How it works

The specific functioning of the kafala system remains quite simple. Employers, both companies and individuals, hire workers from abroad to work for generally a period of two years using the services of a manpower recruitment agency. The sponsor must pay all fees associated with recruitment including to the agency, employment visa, work permit, and return airfare home (Manseau, N.D.). Once hired, the worker receives a stamp in his/her passport in the sending country allowing the worker to enter the country for employment. After the worker arrives in the host country, she/he generally has about one month to obtain a residency permit with the assistance of her/his sponsor. The migrant worker generally must pass a medical examination, which includes an HIV/AIDS test, in order to receive the residency permit. The residency permit allows the worker to stay in the country and access social services, such as medical care.

The requirements to hire a foreign worker depend on the country, the size of the company, and the ability to fulfill income requirements for domestic workers. With the wave of recent nationalization policies, it has become harder for companies to hire migrant workers unless they pass government nationalization policies.

As the sponsor of the employee, the employer, rather than the state, becomes legally responsible for the employee. The worker relies on the employer for his or her legal right to stay in the country. The system creates a situation wherein the employer can dictate all conditions of employment for the worker because the state has passed its responsibility to sponsors.

In Qatar for example, the sponsor assumes legal responsibility for the employee for the duration of her/his stay in the country by agreeing to employ the worker. If the worker commits a crime, the employer might be

called to account for the actions of the employee. Other duties of the sponsor include monitoring the legal exit and entry into the country of the worker by granting an exit visa/permit, notifying the Ministry of Interior of changes in the worker's status, and reporting the worker to the police if he/she leaves the job without prior permission (HRW, 2012).

A prominent attorney in Kuwait and President of the Kuwait Lawyer's Association, Mesharia al Osaimi, said the kafala system gives "the kafeel [sponsor] enormous powers, first to import workers simply on the strength of his assertion that they were economically necessary to him, and then to exploit them either directly or by taking a share of their wages if he allowed them to work for others" (HRW, 2010).

In case of foreign employers residing in the GCC, whether a foreign individual hiring a domestic worker or a foreign company hiring migrant workers in a business establishment, they need to partner with a local nationality for sponsorship.

In this sponsorship relationship between the foreign company and the local nationality, a dual scale of labor relationship complicates the status of the migrant worker in terms of benefits, freedom of movement or change of work with the restriction of the policy on "No Objection Certificate" and the exit permits. This is all under the discretion of the sponsor despite the company's policies (including human resource policy of the company). The sponsor must sign the "No Objection Certificate" to enable the migrant worker to transfer to another job in case of company bankruptcy or abandonment of the business. The local sponsor must approve any benefits applied by the migrant worker like driving license, housing or further schooling allowed by law. The sponsor needs to approve and sign all exit permits purposely for vacation, resignation, or even in cases of repatriation. Moreover, only the sponsor has the authority to cancel existing working visas. And in cases of criminal prosecution of migrant workers, only sponsors can deal with the police authorities through their agents and not the employing company or foreign nationals, with exemption to civil liabilities against the company.

Abuses under the Kafala System

The kafala system causes, facilitates and perpetuates human rights abuses in several concrete ways that exploit migrant workers. Both men and women

suffer from abuses resulting from the kafala system although the specifics vary according to gender. The kafala system engenders a sense of control by employers over workers. The most common methods of control are confiscation of passports and “keeping workers’ pay in arrears” (Sonmez et al, 2011).

Exploitative working conditions

Migrant workers suffer from the following forms of abuse in the Gulf countries: nonpayment or underpayment of wages, confiscation of passports, inadequate living conditions, long working hours, agency fees and recruitment violations, contract substitution and restricted or no freedom of movement, physical, sexual or emotional abuse, and abandonment in case of bankruptcy.

Confiscation of passports remains widespread among all sectors of migrant workers even though many states recently passed laws outlawing the practice. The Kuwait Undersecretary of Foreign Affairs said that ‘the employers keep the passports to put pressure on the girls [to pay their debts]’ (HRW, 2010). Employers also confiscate passports to prevent employees from “absconding” or “running away.” Passport confiscation remains one of the simplest ways to ensure a sense of control over others.

Many employers withhold wages to prevent workers from leaving employment early. Migrant construction workers in Qatar told the HRW that companies use official policies of withholding wages for the first one to three months to prevent workers from leaving employment early (HRW, 2012). Employers frequently withhold wages for the duration of employment, only paying the worker upon the completion of the contract. In many cases, the final wages remain far below what the worker originally agreed to in the home country.

Much of these wage deductions are state-sponsored in some countries. The law in Qatar allows employers to deduct up to “five days’ wages for disciplinary purposes, and up to 50% of workers’ wages per month to settle debts or loans to the employer” (HRW, 2012). Furthermore, the law does not outlaw the deduction of wages to cover visa fees, food costs or other expenses (HRW, 2012). Even in cases where the law protects the worker from wage deductions, the law often goes unenforced or the government agency responsible for settling disputes does not have the ability to compel the employer to pay.

Migrants in the construction sector suffer from dangerous working conditions and long hours. Employers generally force them to work at least 12-hour shifts six days a week. Work generally continues during the hot summer months, when temperatures exceed 40 degrees Celsius on a daily basis. Furthermore, workplace accidents remain common, particularly falling from elevated heights. Employers typically fail to provide adequate protective gear or deduct the cost of such equipment (i.e. gloves, goggles) from workers' pay. Amnesty International found that hospitals in Doha, Qatar admitted more than 1,000 workers after falling from heights in 2012 (North, 2013). Thousands suffer from heat stroke during the summer months and must receive medical attention.

Migrants in the domestic sector also suffer from exploitative working conditions. Employers typically require them to work 12-16 hours per day with few rest breaks. Most of the standard contracts recently implemented in GCC fail to specify a weekly day off – or a weekly day off apart from the employers. Many employers do not provide adequate food or decent living spaces to their domestic workers. As discussed in a later section, many domestic workers experience forced confinement and physical/sexual abuse.

Exploitative Living Conditions

The kafala system gives sponsors complete discretion in deciding where the employee will live. Migrant workers either live with their employers (in the case of domestic workers) or in labor camps.

The vast majority of male migrant workers, especially construction workers, live in labor camps on the outskirts of the cities in Gulf countries. These labor camps typically lack basic necessities, such as electricity and running water. Many are generally overcrowded with six people sharing a 10ft x 10ft room. The camps also tend not to have proper bathroom facilities, ventilation or air conditioning units. One former construction worker told Al-Jazeera that employers “treat them like dogs” (Al Jazeera, 2007).

Domestic workers generally live with their employers. Although many countries recently implemented a standard contract for domestic workers which includes a provision for “proper accommodation,” the standard contract fails to define the meaning of suitable and/or proper accommodation leaving

room for interpretation. Domestic workers may or may not have a separate room, or they may share with a member of the family.

The provisions of the kafala system, which gives employers almost total control over employees, allow employers to determine the living arrangements for migrant workers. As a result of the system, most migrant workers live in substandard and subhuman living conditions.

Exploitative State Policies

One primary consequence of the creation and implementation of the kafala system was the development of laws and policies further restricting the rights of migrants. These policies stem from the control or “responsibility” of the sponsor over the worker. Many policies are codified into law, whereas others, such as labor camps, have been institutionalized as common practice.

“Running away” or “absconding” occurs when an employee leaves employment without permission. In Gulf countries, absconding is a criminal charge leading to indefinite detention and deportation. The kafala system gives employers the ability to grant workers legal status and the ability to take that status away. Laws require employers to report workers as “missing” or face hefty fines themselves. A person discovered hiding an “absconding” worker faces significant fines as well. Upon notification of a “missing” worker, the police cancel her/his residency permit and file an order for detention (HRW, 2010). As a result of the kafala system, workers do not have the legal right to leave employment even in cases of abuse.

A direct offshoot of the kafala system is the inability of workers to change employer/sponsors without permission of the current sponsor. Saudi Arabia requires migrant workers to obtain permission from both the old and new employers prior to changing employers (HRW, 2004). In Kuwait, domestic workers must procure a release form, *tanazul*, from the original employer prior to legally transferring sponsorship (HRW, 2010) while all migrant workers in Oman cannot legally transfer sponsorship without permission of the current and new employer. In these countries, the employee must obtain permission to transfer sponsors regardless of violations of the employment contract, such as non-payment of wages.

Workers in Qatar can appeal to the Ministry of the Interior to transfer sponsorship without the permission of the current sponsor if the current employer breaches the terms of the contract. However, the Ministry rarely grants the request (HRW, 2012).

In Bahrain, workers also must procure a “No Objection” Certificate (NOC) from the current employer at the end of the employment contract in order to return within six months. Furthermore, employers can request the Ministry of Labor to blacklist a worker and prevent the latter from returning to Bahrain if disputes arise (Al-Najjar, 2004).

Finally, in addition to maintaining similar provisions to transferring sponsorship, Saudi Arabia and Qatar require workers to obtain an exit visa prior to leaving the country, whether at the end of a contract or for vacation (HRW, 2013).

The kafala system clearly causes, facilitates and perpetuates systemic human rights abuses for migrant workers. The system leaves the migrant at the mercy of her/his employer with few options for redress. She/he cannot leave employment at will without being detained as a criminal. She/he also cannot change employers without permission of current employers. If the employee decides to file a complaint against an employer with the responsible body, those agencies rarely possess the power to compel employers to compensate employees for damages, even if the agency rules in favor of the worker. These circumstances leave workers with very few options.

The following section examines the practice of “free visa” and how workers become undocumented. The policies described in this section cause the majority of migrant workers to become undocumented as discussed in the following section.

V. “Free Visa” and Undocumented Workers

In the beginning of 2013, Saudi Arabia began widely deporting undocumented migrants as part of its “Saudization” program. The government deported nearly 200,000 people over three months prior to announcing an amnesty in

response to international criticism. The amnesty period allowed undocumented migrants the opportunity “regularize” their status. King Abdullah announced the amnesty period initially for three months, but then further extended it due to a backlog of applications. However, this amnesty represents just one amnesty given to undocumented workers over the decades in just one Gulf country. The governments of the Gulf countries tend to announce a period of amnesty about every five years to regularize undocumented workers.

Undocumented migrants comprise at least 10% of the total population of migrant workers in the GCC according to estimates. Saudi Arabia has the highest number with approximately 700,000, followed by the UAE with 300,000 and Qatar with 100,000 (Kapiszewski, 2004). A migrant worker becomes undocumented through two primary ways; either through visa overstay or by working for someone other than the official sponsor of his/her visa and residency permit. Migrants “overstay” their visas for a variety of reasons including entering on a tourist visa and then working without obtaining a work visa, and leaving employment without the permission of the employer (“running away”) who usually has his/her passport. Employers will also fail to renew the visa and/or residency permit also leading to undocumented migration.

The kafala system causes human rights and labor abuses as discussed in the previous section. In addition to these labor conditions, the kafala system creates undocumented migrants through so-called “visa trading” and restrictive visa policies. These policies, combined with the effects of debt through high recruitment fees, force migrants into a situation wherein they must “overstay” and continue working to pay off their debt. The penalties for “overstaying” frequently include fines, which an already indebted migrant generally cannot afford, and detention periods.

The practice of entering the Gulf sponsored by one individual or company and working for another is known as “free visa” practices or “visa trading.” Visa trading occurs when a migrant buys a work visa from a recruiter in his or her home country. The visa lists an official sponsor, but this sponsor does not employ the migrant in reality. Upon arrival, the migrant then finds a job with an employer other than the one listed on her/his visa (Kapiszewski, 2004).

Over the years, this practice became extremely common and widespread throughout the Gulf countries leading to the development of a black market

for visas. One official at the Pakistani embassy said that Pakistanis “call it the Azad visa, meaning free or open visa. It’s famous in Pakistan, and people think they can work anywhere” (Harroff-Tavel and Nasri, 2013). In most situations, agents, recruiters, relatives and friends deceive migrants about the legality of the “free visa,” so the migrant assumes that it is legal for her/him to work for a different employer other than the sponsor listed on the visa (Harroff-Tavel and Nasri, 2013).

The “free visa” places the migrant in an extremely vulnerable situation because they essentially have “no rights whatsoever.” These migrants experience similar exploitative conditions described in the previous section but without any avenues for formal redress. If they approached the authorities, they would be deported. In some cases, migrants with “free visa” will wait until a period of amnesty to regularize their status (Harroff-Tavel and Nasri, 201). Most migrants remain in the host country under a “free visa” because they must work in order to pay off the debt the incurred to purchase the visa. Thus, they simply endure the exploitative living conditions, and in many cases, these conditions are akin to human trafficking and modern-day slavery.

Selling visas on the black market is a highly lucrative business for sponsors. A “free visa” to work in the UAE can be sold in India for around Dh 7,500 (2,042 USD) or in Iran for about Dh 15,000 (4,084 USD) (Kapiszewski, 2004). An official at the Migrant Workers Protection Society in Bahrain told the ILO that, “the initial purchase costs of a ‘free visa’ are 1,000 Bahraini dinar [2,650 USD]. Then the visa seller will charge the worker additional fees to renew the visa every two years” (Harroff-Tavel and Nasri, 2013). The migrant worker generally pays portion of her/his monthly wages to the “sponsor” as a sort of payment for the “service” provided by the sponsor in addition to the initial visa fees and any renewal fees. Sponsors sell the visas on the black market to intermediary agents in sending countries who then add a commission and sell the visa to a migrant worker. One visa seller in Yemen told Arabnews.com that, “I usually get these free visas from sellers in GCC countries at a fair cost price. Then I add my commission of 50% and sell these visas here in Yemen. Sometimes I sell the illegal visas for double the price to my colleagues in Pakistan, India and Ethiopia” (Al-Jassem, 2013).

An “excess” of visas occurs because most GCC countries allow companies and individuals to obtain several visa with little oversight onto their actual need for employees. For example, Bahrain allows nationals up to three visas for

hiring domestic workers, which in turn allows nationals to sell the ones that they do not use on the black market. In 2004, the UAE estimated that the number of workers sponsored by fictitious companies “was 600,000 or 27% of the total workforce” (Kapiszewski, 2004). The Saudi Minister of Labor estimated that 70% of visas issued by the government get sold on the black market (Kapiszewski, 2004).

Kapiszewski argues that the government tolerated the presence of undocumented migrants for many years because “it was beneficial to the economy and [is] very profitable for employers and middlemen” (Kapiszewski, 2004). Rising local unemployment pushed the government to crack down on the practice of visa trading severely over the past few years as part of the push to nationalization the workforce.

Kapiszewski argues that the government tolerated the presence of undocumented migrants for many years because “it was beneficial to the economy and [is] very profitable for employers and middlemen” (Kapiszewski, 2004). Rising local unemployment pushed the government to crack down on the practice of visa trading severely over the past few years as part of the push to nationalization the workforce.

Migrants suffer from the practice of visa trading for many reasons, whereas companies and sponsors benefit at the expense of the migrants. Those holding free visa generally earn a lower salary than their “legal” counterparts and are expected to bear other financial burdens related to her/his employment, such as repatriation, hospitalization, health card cost, and so on. One HR official at a private construction company told Arabnews.com that many small and medium sized companies “prefer to hire those free visa holders as their salaries are relatively low between Saudi Riyal (SR) 800 (213 USD) and SR 2,500 (666 USD) per month.” Additionally, companies avoid paying taxes and fees to the government (Al-Jassem, 2013).

There is clearly a demand for overstayers and those on free visa in the construction and service sectors. A demand for temporary labor also exists in the domestic work sector. An ILO survey found that “14% of employers admit to occasionally employing temporary workers” (Godfrey et al, 2004). Almost 30% of respondents of the survey indicated they know individuals who hire domestic workers without sponsoring them, and another 20% admitted to sometimes doing this themselves (Godfrey et al, 2004).

GCC countries maintain highly restrictive visa policies, however the demand for expatriate labor remains extremely high. A lack of government oversight in monitoring the needs of employers leads to an excess of visas “available” for purchase on the black market. Migrants in this situation endure further vulnerability as they are both victims of the kafala system, are exploited as cheaper labor with no rights and are under constant threat of deportation.

GCC countries criminalize undocumented migrants by arresting and charging them with “absconding” if they leave their place of employment without prior permission. Employers must report employees who fail to report to work within a certain timeframe or face severe penalties. In Kuwait, an employer must “notify the Ministry of Interior if a servant absconds or leaves his/her service, within one week from the date of such act” (HRW, 2010). Law Decree no. 41 of 1987 states that anyone who fails to report “missing” employees faces imprisonment for up to six months or a fine between roughly 700 USD to 2,000 USD (HRW, 2010). The police will arrest the migrant worker and handle the case in the court system. Once charged with absconding, the period of detention cannot exceed six months prior to deportation. One social worker told the ILO that, “most domestic workers want to go home because they only have the choice between jail and home” (Harroff-Tavel and Nasri, 2013). In 2011, the Kuwait government deported 2,353 domestic workers from Ethiopia, Indonesia, Nepal, Sri Lanka and the Philippines (Harroff-Tavel and Nasri, 2013).

The creation of the kafala system led to the development of a black market for “free” visas for migrant workers, which in turned created a large population of undocumented workers. Other restrictive policies of the kafala system further force migrants to become undocumented. Many undocumented migrants remain in the host country because they must continue working to pay off the debt incurred through the recruitment process. However, they also generally work in extremely exploitative working conditions. Any steps taken to address the situation of undocumented workers must include a revision or elimination of the kafala system because only by changing the kafala system can the government begin to address the situation of undocumented workers.

VI. Gender and Racial Dimensions of Domestic Work in the Gulf

There are about 2.1 million domestic workers in the Middle East, and about a third of these workers are male. Domestic work inherently relates to the traditional breakdown of gender roles across the world because women primarily perform domestic work, which is traditionally the role of the women in the household. There are several circumstances that make domestic work particular to the Gulf countries and affect the way the government and society perceive these women and then treat them.

Throughout the Gulf, the ability to hire a maid is a symbol of social status that has recently become available to the general native population. Prior to the oil boom in the 1970's, wealthy families would hire a domestic helper as a way "to gain social prestige and have access to a Western lifestyle" (Al-Najjar, 2004). Overall, the practice of hiring a domestic helper for wealthy families is not a new occurrence in many Gulf countries, especially Bahrain. However, the oil boom led to a substantial increase in wealth for Bahrainis, so nearly all families have the ability to hire a domestic helper (Al-Najjar, 2004). Other scholars and sources note this phenomenon repeating in countries throughout the Gulf region.

Once a family hires a domestic worker, she becomes part of the household structure and her sexuality must be controlled as a part of this structure (Sabban, 2004). The harem structure governs household relations in the Gulf region by providing the role and place of each gender and member of the household. Traditionally, the mother, the grandmother and other women in the extended family shared the responsibility of raising children. However, the nuclear family has replaced the extended family, which increased the social obligations of women (Sabban, 2004). The need to replace the labor lost by women from the extended family created a rising demand for domestic workers. However, the harem structure still maintains control over women in Arab societies, and thus foreign domestic workers.

Society in Gulf countries considers domestic work a "natural extension of women's role in family and society" and her proper place and role in that

society (Joseph, 2010). Now that migrant women have stepped into that role, they have become conceptualized as members of the household. Therefore, the prevailing system of gender segregation in Gulf countries, which dictates a woman's personal status according to Islamic law, comprises the rights of foreign domestic workers along with the rights of native women. Additionally, the general social "disregard for the labor and human rights of domestic female workers is directly linked to the status of women who are often expected to provide service to the family for free" (Joseph, 2010).

Men in the Middle East wield an extreme amount of power over women in the social sphere that then extends into the legal sphere as laws rarely protect women from violence. Domestic workers face particular conditions as the various systems of oppression interact with one another. The prevalence of social practices exploiting foreign domestic workers indicates three primary circumstances of these workers in the Gulf: the general situation of women condones the violation of rights of migrant women, employers generally feel a sense of ownership over domestic workers, and the centralization of domestic workers from South and Southeast Asian countries racializes domestic work and leads to state-sanctioned discrimination.

Human Rights Watch (HRW) has written dozens of reports of the past twenty years documenting abuse experienced by domestic workers. It has also discovered several forms of abuse that reinforce gender politics as well as contain racial dimensions, particularly forced confinement. Many employers refuse to allow their domestic workers to leave without a companion and will lock the front door/gate every time they leave to prevent the domestic worker from leaving. The HRW found that domestic workers "are literally locked into their workplace and residences for the full term of their employment with little or no ability to interact with the outside world" (HRW, 2004). HRW describes this forced confinement of domestic workers as "an extreme extension of the power that men can and do wield over the movement" of women according to social custom (HRW, 2004).

Forced confinement is endemic to the working conditions of domestic workers and facilitated by recruitment agencies as "most recruitment agencies advise their clients not to allow the domestic worker to leave the house unaccompanied" (Jureidini, 2003). Agencies argue that forced confinement maintains control over the workers "so that they will not speak to other maids and then demand higher wages. It is also assumed that they may engage in

sexual relations, possibly getting pregnant, and thus would have to be sent home” (Jureidini, 2003). This explanation of forced confinement shows the intersectionality of conditions confronting female domestic workers. Society hyper-sexualizes domestic workers by assuming that she will engage in illicit affairs if allowed outside and simultaneously denies her rights as a worker and a human being.

Many of the ideas surrounding passport confiscation and forced confinement stem from the feelings of ownership that employers possess over their domestic workers. Several state policies interact to perpetuate this feeling. The HRW found that employers across the GCC justify the retention of passports and forced confinement “on the basis of having paid large sums of money for their recruitment and not wanting them to run away, thereby losing their ‘investment’” (HRW, 2008). Employers generally pay between 1,000 to 2,000 USD to hire a domestic worker, and these high recruitment fees give employers a sense of having “paid for” or “bought” a domestic worker. Therefore, they feel “entitled to treat the worker however they wish, especially in the context of inadequate and poorly enforced laws” (HRW, 2010).

This feeling of ownership translates into several realities for domestic workers including forced confinement, passport confiscation, underpayment or nonpayment of wages, long working hours, and verbal, emotional and sexual abuse.

Passport confiscation remains a basic violation of human rights and described as an indication of human trafficking. One employer told HRW that she “keeps the passport of my domestic workers, she is like a member of the family” (HRW, 2008). Another report quoted an owner of a recruitment agency saying that passport confiscation “is kind of protection for domestic workers.” The report further says that statement of the recruitment agency “reflects the paternalist approach to domestic workers found in many Middle Eastern household, according to which the domestic worker is a junior member of the family and should be protected as one of the children by the head of the household” (Harroff-Tavel and Nasri, 2013). The standard contract recently implemented in many countries generally forbids passport confiscation, but provisions of the contract routinely go unenforced and additionally, the contract fails to indicate paths for redress.

The final dimension of conditions for domestic workers in the Gulf is the recent racialization of domestic work caused by the high number of workers from Africa, South Asia and Southeast Asia. “Racialization” is essentially a term in sociology used to describe the production and reproduction on racial identities on a group. Those in the dominant class use racial categories to dehumanize those being racialized.

The presence of domestic workers from Asia created a situation wherein only women of African or Asian descent perform domestic workers and nationals “refuse to perform this work even if persistently poor and unemployed” (Manseau, N.D.). Thus, domestic work has become racialized and as a result perpetuates ideas about inferiority of peoples from sending countries and reinforces existing racist attitudes. Stakeholders use these racist ideas to justify their treatment of domestic workers. Various forms of abuse become a mechanism for employers to express and reinforce ideas about racial inferiority. Janice Joseph argues in her article that the withholding of food or providing poor quality food is “one of the most common forms of mistreatment that serves to reinforce the inferiority of domestic workers’ status” (2010).

The general position of women in Middle Eastern society, feelings of “ownership” by employers, and racialized domestic work all combine to produce tangible impacts on the lives of these women. Evidences of these interactions abound in the region from how employers treat domestic workers, to experiences with recruitment agencies, and laws. Abuse takes multiple forms and can be categorized as labor-related, violence by employers and systemic by the state. Labor-related abuse include underpayment or nonpayment of wages, no rest days or breaks, lack of paid vacation or vacation at all and inadequate lodging and food. Violence by employers takes the form of verbal, emotional, physical and sexual abuse, and forced confinement. Physical abuse ranges from hitting, slapping, punching to severe beatings. Sexual abuse includes any forced sexual contact, assault or rape. Many recruitment agencies charge high fees to employers and employees, and employers frequently pass those fees on to domestic workers.

Many countries officially condone this treatment though the law. Labor laws in these host countries explicitly exclude domestic workers, and many of the recent reforms do not apply to domestic workers. In countries that require a standard contract, the contract generally fails to ensure safeguards by not guaranteeing a minimum wage, allowing racial discrimination in wages,

failing to define the meaning of “adequate” or provide for a day-off away from the employer. Furthermore, governments have made little attempt to regulate domestic work or extend new protections to domestic workers as they fear interfering with the private household. These laws, policies or lack thereof create, sustain and perpetuate this abuse amounting to state-sanctioned violence against women.

Domestic workers serve a vital function in Middle Eastern societies because the “cheap and easy availability of female domestic workers” keeps the “social reproductive roles of women intact and retards the cultural evolution of male-female roles” and thus perpetuates the traditional nature of these states (Manseau, N.D.). Cultural norms emphasize family responsibility and place the burden of caring for children and the elderly on women. According to employers in the United Arab Emirates, the sustainability of the household is “directly linked with the continuous import of female domestic workers” (Sabban, 2004). Ironically, though the local population seems to acknowledge the contribution of the domestic workers, they are “becoming a scapegoat in the disrupted social order.” Newspapers, TV programs, government publications and even scholars frequently publish extremely negative commentary about the heavy reliance on foreign domestic workers (Sabban, 2004). However, this reliance shows no signs of slowing as the number of FDWs in the Gulf increases each year. Rather than decrying the reliance on FDWs, the government needs to protect the human and labor rights of these women.

VII. Male Migrant Workers

Although the share of female migrants to the Gulf countries has been steadily increasing over the past two decades, male migrant workers currently account for approximately two-thirds of migration to the Gulf countries. Male migrant workers suffer from abusive working conditions, racism and widespread discrimination. Male migrant workers, like female domestic workers, experience racial discrimination. Constructions of the “racial inferiority” of Asian migrant workers contribute to the way that employers and governments treat them.

The majority of male migrants are married with children in their home countries. However, the public imagination in Gulf society describes these

male migrants as bachelors. The public then views these bachelors as a threat to the traditional Gulf family unit and uses this perceived threat as a way to rationalize passport confiscation and denial of exit permits (Heeg, N.D.). However, society also simultaneously conceptualizes male migrant workers “as innately docile” (Heeg, N.D.). The government tackles this “problem” through the construction of labor camps that house this unskilled migrant population, so called bachelor cities. These labor camps are located on the outskirts of the cities, essentially hiding the migrant workers from public view. The drive to decrease the public visibility of this workforce stems from the “widespread sentiment that these men pose a threat to the cultural security” of the local population (Gardner, 2010).

The conditions of the labor camps remain abysmal in most cases. Some governments in the Gulf have recently passed regulations requiring the improvement of conditions of the labor camps in response to international criticism. The government of Dubai largely publicized its creation of so-called “model” labor camps, which include more space, access to a kitchen, air-conditioning, a clinic and shops on the campus. However, “model labor” camps remain the exception. The construction of labor camps interacts with racial identities as well, as many locals assume that housing in the labor camps is “better than laborers housing in their home countries” (Al-jazeera, 2007). Racial constructions about migrants living in extreme poverty in home countries seem to justify employers treating them as less than human.

Male migrants suffer from poor working conditions as a result of the kafala system, as discussed in an earlier section. Male migrants also endure particular difficulties endemic to both migration itself and facilitated by the kafala system. These difficulties include a high level of indebtedness, and resulting rates of suicide.

The vast majority of male migrant workers incur crippling debt in order to migrate to the Gulf. Although many sending and receiving countries have regulations for recruitment agencies limiting or prohibiting the collection of fees for migration, the government rarely enforces these regulations. Thus, the migrants must pay hundreds or thousands of US dollars to obtain a visa. The ILO found that average fee paid by migrants in Qatar was 2,000 Qatari rials (QAR) or about 550 USD (Harroff-Tavel and Nasri, 2013). Many migrants borrow many from friends and relatives, individual brokers or local banks. It can take a migrant up to two years to pay off the debt.

And in order to get entry to Qatar, tourist visas are one of the recourse. However, this kind of visas costs huge amounts: Male Business-Tourist Visa for 1 month is QAR 1,500-1,600, extensible for another 2 months with QAR 1,200/monthly renewal. (Airfare is not included depending the nationality's country.) Working visa is QAR 8,000-10,000 renewable every year for QAR 1,000.

The pressure to pay off debt forces migrants to accept conditions that they encounter. Contract substitution and deception about amount of monthly wages is incredibly common. In many cases, a recruiter will tell the migrant certain specifications and the worker will agree to a certain wage, only to discover upon arrival the actual wage may be hundreds of dollars less per month. One Indian worker in Kuwait told the ILO that the agent in India told him that he would receive 200 Kuwaiti Dinar or KWD (712 USD) per month including food, but he only receives 160 KWD (570 USD) without food (Harroff-Tavel and Nasri, 2013). An official at the Nepali embassy in the UAE explained how debt traps migrant workers by saying "although they are getting less money than what was initially agreed to in their country, they still have to work as they spent a lot of money to come here" (Harroff-Tavel and Nasri, 2013).

The prevalence of debt has caused alarming suicide rates among male migrant workers. One civil society leader linked the suicide rate to the pressure that migrants feel to pay off their debt because "they are under terrible pressure from their families" to send money home and "need to recover their investment" and are "ashamed" then they are unable to send or bring money back home (Harroff-Tavel and Nasri, 2013). Unfortunately, public records do not show exact figures on how many migrants commit suicide each year. However, in 2006, the Indian embassy recorded almost 200 cases of confirmed suicide in the United Arab Emirates alone (Al Jazeera, 2007).

The kafala system facilitates these circumstances because the kafala system allows employers to dictate employment terms. Employers can easily change the terms of employment, especially monthly wages. The ILO concluded that the fees and interest on loans charged to migrant workers limit a workers' bargaining power and translates into "involuntary servitude through excessive work hours with little or virtually no pay for months" (Harroff-Tavel and Nasri, 2013). Eliminating the kafala system is the only way to adequately address these circumstances.

VIII. Response of the International Community and Sending Governments, and Violations under International Conventions

The kafala system has been under scrutiny and criticism from international human rights organizations, migrant rights advocates and even commentators and journalists in the Gulf region itself. The Human Rights Watch and Amnesty International have written numerous reports documenting the abusive working conditions faced by male and female migrants in the Gulf. The International Labor Organization also expresses its concern about the kafala system in general terms.

Sending governments tend to avoid outright criticism of the kafala system although many sending countries have recently engaged Gulf countries on a bilateral basis to secure better rights. For example, the Philippines secured a standard employment contract for Filipino household workers in Saudi Arabia after a year-long deployment ban. The standard contract includes provisions for a 400 USD per month minimum wage (Quismundo, 2012). Other sending countries, such as Indonesia and Sri Lanka, have implemented periodic deployment bans for domestic workers to certain Gulf countries after repeated stories of abuse. India also signed an agreement to implement a standard contract for domestic workers in Saudi Arabia in 2014.

Standard employment contracts for domestic workers on a bilateral basis are merely a minuscule step towards protecting rights for many reasons. Firstly, this system relies on each sending country to negotiate a standard contract with each destination country in the Gulf. Secondly, the main “bargaining chip” of a sending country is a deployment ban, which may or may not affect the destination country depending on how many migrant workers each country hosts. Also, the success of a deployment ban relies on the political will and political clout of the sending country. Thirdly, the negotiations so far have focused on standard employment contracts for domestic workers, and while it is highly important to safeguard their rights, male migrant workers also suffer from inhumane working conditions. Sending countries should focus on protecting the rights of all migrant workers in the destination country.

The upcoming 2022 FIFA World Cup in Qatar has provided a unique opportunity to both expose the conditions caused by the kafala system and advocate for broad changes. Qatar won in 2010 the bid to host the 2022 FIFA World Cup and thrust itself firmly onto the international stage. The government will invest up to 100 billion USD in the construction industry, particularly stadiums, roads, a metro system, and new hotels to accommodate spectators. They will need to recruit up to an additional 500,000 workers according to estimates (HRW, 2012).

Preparations for the 2022 World Cup have fixed the international spotlight on Qatar and its labor practices. The HRW released a report in 2010 calling on the Qatari government to improve labor standards for migrant construction workers. It responded by implementing incremental reforms. The report also called on FIFA to ensure that all construction companies abide by all international human rights standards.

After successive reports and new stories and with mounting international pressure, governments finally took a formal stance against labor conditions in Qatar. In November, the European Parliament passed an emergency resolution expressing concern over the plight of migrant workers in the country. The resolution said, “The European Parliament is concerned about the situation of the migrant workers in Qatar. MEPs call on the Qatari authorities to stop detaining individuals for ‘running away’ from their employers.” Additionally, the resolution appealed to “European corporations involved in building stadiums or other infrastructure projects in Qatar to provide working conditions that are in line with international human rights standards” (Homewood, 2013). The European Parliament also called on FIFA to send a “clear and strong” message to the Qatari government.

Public awareness seems to be growing and individuals continue to call for broad reforms. Momentum and international pressure seem to be growing and hopefully will lead to lasting changes for migrant workers.

IX. International Conventions

International conventions provide another avenue to challenge the kafala system and call for its abolition because many practices under the kafala system explicitly violate specific provisions of many of these international conventions. However, many of the Gulf countries have only signed a couple of the fundamental international conventions protecting human rights.

All of the six Gulf countries have signed the UN Convention on the Elimination of Discrimination Against Women (CEDAW), the UN Convention on Transnational Organized Crime and the related Trafficking in Persons Protocol (Palermo Protocol), and the UN Convention on the Elimination of All Forms of Racial Discrimination. However, most countries signed CEDAW with reservations as regards Article 2, which stipulates the elimination of gender discrimination in the national constitution and laws. The periodic reviews submitted to the CEDAW Committee tend to focus on the plight of national women and exclude migrant women. Also, although each state signed the Palermo Protocol, the annual State Department Trafficking in Persons Report continues to place each Gulf country either on Tier 2 or the Tier 2 Watchlist, meaning that state policies fail to adequately address human trafficking (Esim, 2011). None of the Gulf states have ratified the International Convention on the Protection of Rights of Migrant Workers and Members of Their Families.

The International Labor Organization (ILO) also uses international conventions to protect workers' rights across the world. In addition to several "fundamental" conventions that address basic workers' rights, each sector has its own convention or series of conventions. However, all of the Gulf states have only ratified Conventions No. 29 and 105 regarding the abolition of forced labor. Kuwait has also ratified the conventions protecting the right to organize and collective bargaining (Esim, 2011). However, no GCC member has yet ratified ILO's Domestic Workers' Convention (No. 189, or "C189"), a landmark statute which if adopted and implemented would do much to improve the treatment and working conditions of foreign domestic workers in the Gulf.

Although the Gulf states have not ratified many UN or ILO conventions, several of the ratified conventions can be used by human rights advocates to call on the governments to change the policies of the kafala system because these violate the provisions of the convention. For example, under the Palermo Protocol, the confiscation of passports qualifies as human trafficking because passport confiscation restricts freedom of movement, which is a key criterion of human trafficking. Thus, employers who confiscate passports technically commit human trafficking and should be prosecuted.

Once a country ratifies any international convention, it must then harmonize its national legislation with the provisions of the convention. However, many of the kafala system's practices violate conventions ratified by Gulf states. Thus, the committees and organizations responsible for monitoring the implementation of these conventions should ensure that all laws and policies comply with the provisions of the convention. These bodies should take appropriate action if the local laws do not comply with the provisions of the convention.

X. Recent Changes to Kafala System and Labor Laws

Over the past five years and in response to sustained international criticism, many Gulf countries embarked on enacting reforms to address the systemic violations of human and labor rights to migrant workers caused by the kafala system. Some of these reforms directly reform the kafala system, while others merely tackle the “symptoms,” such as mid-day work bans during the summer.

A significant amount of media hype surrounded the announcement of some of these reforms, such as the so-called end of the kafala system in Bahrain. In many cases, the Ministry of Labor or another government official announced the intention to pass a reform, but the parliament or ruler has yet to officially pass the decree. A significant amount of confusion remains over what the reforms entail and how they will specifically address abuses on the ground. This section provides a brief overview of these reforms in hopes of clarifying the specifics of the reforms and recommending ways for governments to improve these efforts. It contains a summary by country of recent reforms, followed by a list of further improvements or developments to monitor.

While many of the recommendations set forth by APMM in this section are country-specific, some general ones may also be made that applies to all the GCC countries where kafala holds sway. These include the ratification of the ILO Domestic Workers' Convention (or C189) and harmonizing national laws with its provisions; promotion of trade union membership among migrant workers and allowing domestic workers to join these and other migrant workers' associations; banning of midday work during summer months; and a stop to the practice of confiscating passports and other identification documents. For many of these reforms to occur, international pressure will have to be brought to bear on the GCC regime itself through various platforms, including through "riders" in plurilateral and bilateral trade agreements.

Bahrain: End to the *kafala* system?

In 2009, the Ministry of Labor announced the first significant change to the kafala system in the Gulf countries. Decree No. 79 "regarding the mobility of foreign employees from one employer to another" allows migrant workers to change employers without the consent of their current employer. The employee must notify the employer by mail with a certain amount of notice as specified in the contract. The migrant worker then has 30 days to find a new employer before he must leave the country (HRW, 2012a). The minister of labor, Majeed Al Alawi, said of the change that "the end of the sponsorship system is the most important aspect of this law because in my opinion that phenomena (sic) does not differ much from the system of slavery and it is not suitable for a modernized country like Bahrain" (Mahdi, 2009).

The international community welcomed the change with excitement and hoped that it would lead to further systemic changes and possibly spread to other countries. However, the business community in Bahrain responded with anger and pushed the government to amend the policy. In 2011, the government amended the legislation to require workers to stay with an employer for one year before they can move to another employer. Neither the original decree nor the amendment covers domestic workers who remain under the total sponsorship of their Bahraini employers.

The Bahrain government has passed two other significant pieces of legislation that have the potential to improve the lives of migrant workers in the country: Law No. 19 "Regulating the Labor Market" and "Concerning the Regulation of the Private Sector" in 2012.

Law No. 19 of 2006 “mandates that the Labor Market Regulatory Authority (LMRA) issue work visas, regulate manpower and recruiting agencies, and educate workers and sponsors about their rights and legal obligations” (HRW, 2012a). The LMRA officially “sponsors” employment visas but workers must still have a local sponsor who has legal responsibility for the worker while she/he is in Bahrain. The law also prohibits employers and recruitment agencies from collecting fees from workers. Employers must pay for repatriation, for work visa and residency card fees. Initial reports indicate that most recruitment agencies for domestic workers comply with the new regulations, but that individual recruiters used primarily by construction and manufacturing firms generally ignore this law and pass fees on to workers (HRW, 2012a). Finally, law No. 19 requires all private employment recruiters and agencies to obtain a license.

The private sector labor law of 2012 extended several additional protections and rights to migrant workers. However, the majority of the provisions do not apply to domestic workers. The existing labor law contained provisions for a standard work week, a day off and overtime pay. The new labor law extended sick days and annual leave and included a provision allowing unfairly fired workers to obtain up to a year’s salary in compensation. It increased fines and added possible jail time for employers who violate the law. Finally, it created a new case management system for handling labor violations that streamlines the process and makes it more accessible for migrant workers (HRW, 2012a).

For domestic workers, the new private sector labor law extends limited protections to them. The law gives them access to the new case management system and mediation for labor disputes through the Ministry of Labor. It requires domestic workers to have a contract with their employer. The law grants them the right to annual vacation, severance pay and protection from undue termination. However, the provisions regarding working hours, a weekly day off and anti-discrimination do not apply to domestic workers (HRW, 2012a).

The Ministry of Labor has recently announced several decrees to address the working situation of migrant workers in response to international criticism and severe cases of migrant abuse. The anti-human trafficking law and article 389 of the criminal code prohibits employers from confiscating the passports of their employees (HRW, 2012a). However, the practice remains widespread as only a court can compel the employer to return a passport;

neither the Ministry of Immigration nor the Ministry of Labor has the authority to do so (HRW, 2012a). In 2007, the government imposed a ban on outdoor construction during July and August between 12:00-4:00 PM and started conducting about 10,000 on-site inspections per year. In 2009, the government banned the transportation of migrant workers in open air trucks to prevent traffic-related deaths (HRW, 2012a).

Bahrain also allows migrant workers, excluding household workers, to join trade unions, but the unions have low membership among migrant workers. This has been attributed to various factors, not least among them the fear by migrants of being deported once they join a union, and the general “condescending” attitude of trade union activists towards migrant workers.

Bahrain has made several attempts to improve the working conditions for migrant workers in the country, especially with regard to health and safety of construction workers. However, most of these improvements have ignored the plight of domestic workers and remain widely unenforced for all migrants. Companies frequently and openly flout the provisions of the law by confiscating passports, charging recruitment fees, continuing to house workers in substandard conditions and forcing them to work during the hot summer months. Therefore, the following set of recommendations is in order for Bahrain:

- ◆ Protect and ensure the rights of domestic workers by extending coverage under the labor law to include domestic workers and ratifying the ILO convention on domestic work no. 189.
- ◆ Protect the rights of migrant workers in other industries by repealing the 2011 amendment to decree no. 79 and extend the provisions to domestic workers, implement a minimum wage for all low and unskilled sectors and strictly enforce all new regulations by punishing employers.
- ◆ Strictly enforce all existing regulations regarding confiscation of passports, recruitment fees, and labor rights
- ◆ Promote trade union membership among migrant workers and allow domestic workers to organize.

Kuwait

The Kuwaiti parliament passed a new labor law in 2010 for the private sector that extended several employment protections to migrant workers. The law limits a workday to eight hours, specifies overtime pay rates, necessitates

that employers provide a weekly day off, paid maternity and annual leave and regulates termination procedures (HRW, 2010). In 2007, the Ministry of Labor announced a decree that prohibits employers from confiscating workers' passports, and in 2009, a separate decree from the Ministry of Labor allows workers to change employers without the permission of their current employer/sponsor (HRW, 2010). However, none of these laws or decrees apply to domestic workers.

Domestic workers enjoy limited protection under the standard contract implemented in 2004 and revised in 2006. The standard contract requires employers to pay the worker's travel costs, any agency fees, food and living expenses, medical treatment costs and return airfare. Employers cannot extract reimbursements from the domestic worker. The standard contract provides for a month of paid annual leave, a minimum salary of Kuwaiti Dinar (KD) 40 (USD 139), compensation for workplace injuries, and one day off per week (HRW, 2010). However, it does not articulate the right to free movement during the rest day, fails to specify a maximum number of working hours per day or a practical system for redress. The Domestic Workers' Department within the Ministry of the Interior offers mediation for disputes between domestic workers and employers but participation remains voluntary, so the department cannot enforce binding decisions in cases for domestic workers (HRW, 2010).

The 2011 amendment to the 2010 Kuwait Labor Law called for the creation of a Public Authority for the Workforce within the Ministry of Social Affairs and Labor (MSAL). The amendment was passed by the National Assembly in 2012, but still needs approval by the Cabinet before it receives endorsement from the Emir. Once established, the authority will oversee all matters related to private sector employees, including recruitment and the relationship between employees and employers. A source at the MSAL said that the "the sponsorship system will be replaced with an alternative system that allows the MSAL to be responsible for expatriate labor forces" (Kuwait Times, N.D.) The creation of the Public Authority for the Workforce has the potential to dismantle or significantly alter the kafala system.

APMM highly anticipates the creation of the Public Authority for the Workforce and hopes that political forces do not impede its creation. Furthermore, we hope that provisions under the authority will include domestic workers. In light of other reforms, we make the following recommendations for Kuwait:

- ◆ Push forward with the creation of the Public Authority for the Workforce and the abolishment of the kafala system.
- ◆ Include domestic workers in the Kuwaiti labor law
- ◆ Extend provisions of the standard contract to allow for a rest day with freedom of movement (taken outside the employer's home)
- ◆ Give the Domestic workers' Department authority to compel employer compliance with binding decisions
- ◆ Ratify the ILO's Convention on Decent Work for Domestic Workers (C189).

Oman

Oman has enacted several small reforms to address human rights violations associated with the kafala system. A Royal Decree issued in 2006 outlawed the confiscation of passports, but a subsequent decree by the Ministry of Labor did not assign any penalties for the offense. As a result, employers continue to confiscate passports because the government cannot take legal action to stop the practice (Muscatdaily.com, 2011).

Oman began to allow the formation of trade unions in 2006, and migrant workers may join the trade union, but they cannot be elected to executive positions. Domestic workers do not have the right to join a trade union. Members of the trade union may engage in collective bargaining and have a right to strike within certain provisions (United Nations field and regional offices, 2011).

The government enacted a new Labor Law in 2012. However, this labor law does not apply to domestic workers. It does apply to other types of migrant workers, the majority of whom work in the construction sector. The law identifies a minimum wage to be set by the Council of Ministers. It also requires employers to protect workers against occupational hazards, provide adequate living conditions and paid annual leave of two weeks per year. The new law also limits deductions that employers may take out of their employees' salary. The law includes provisions for two paid weekly rest days, maximum working hours of nine per day and overtime pay (Ministry of Manpower, 2012). However, the kafala systems remains firmly in place as workers cannot enter the country without a sponsor, nor can they change employers without permission of the previous employer.

Oman, like other countries, enacted a mid-day work ban in June of 2010. The ban prohibits outdoor labor from June to September between 12:30 to 3:30 PM (Shaibany, 2010). However, many companies continue to flout the ban and force employers to continue working during the hottest summer hours.

Given these small changes and improvements, APMM makes the following recommendations to the government of Oman:

- ◆ Include domestic workers in the local labor laws and ratify the ILO Convention no. 189 on domestic work
- ◆ Strictly enforce existing bans on passport confiscation and mid-day work ban during the summer months
- ◆ Enact new legislation dismantling the kafala system to further protect the rights of workers.

UAE

Over the past five years, the United Arab Emirates took several steps to improve labor conditions for migrant workers. However, the majority of these reforms fail to protect the rights of domestic workers neither do they reform the kafala system, which facilitates the abuse. Furthermore and due to the federal nature of the government in the UAE, many of these reforms only apply to certain emirates, not all seven.

The Ruler of Dubai issued six binding directives applicable to migrant workers in Dubai to address several issues related to working conditions: “adequate housing,” safe transportation of workers to labor sites, additional inspectors, federal labor courts to resolve labor disputes with online access and mediators, food and housing for workers waiting for departure, and the granting of immediate release from sponsorship of an unpaid worker (for two or more months) (UAE Ministry of Labor, 2007).

The cabinet of the UAE and the Ministry of Labor have implemented several measures that protect the rights of workers throughout all seven emirates. In 2005, the cabinet imposed a “mid-day break rule” which prohibits outdoor labor from 12:00 to 3:30 PM during July and August (UAE Ministry of Labor, 2007). The Minister of the Interior declared it illegal for employers to withhold passports of workers. After implementing an insurance policy

in Abu Dhabi, the cabinet expanded the policy to all emirates in 2008. The policy requires all employers to purchase health insurance for their employees including domestic workers (UAE Ministry of Labor, 2007).

The cabinet also enacted incremental steps to dismantling the kafala system. Under a new policy announced in 2010, workers will be allowed to transfer sponsorship to a new employer without the permission of the current sponsor if the worker meets two requirements: the worker has been employed for at least two years and the work relationship ended “amicably.” The previous policy required workers to wait six months before the Ministry would issue a new employment permit. The worker can transfer sponsorship without meeting these conditions if the employer does not fulfill her/his legal obligations to the worker (Abella, 2010).

In 2008, the government implemented the Wage Protection System (WPS) across the country. The WPS requires employers and workers to enroll in an electronic payment system. The employers deposit wages directly into bank accounts via wire transfer, which enables the government to monitor payments in cases of labor disputes. However, the requirement for enrollment in WPS does not apply to domestic workers (Baldwin-Edwards, 2011).

The government of the UAE implemented a standard employment contract for all domestic workers in 2007. The contract offers limited protection for domestic workers. It provides for one month of paid leave per two-year contract, return ticket paid for by the employer, and provisions for “adequate breaks.” However, it does not provide a weekly rest day, worker’s compensations, overtime or a limit to daily or weekly working hours (HRW, 2012c)

A newspaper, Gulf News, reported in 2012 that the government was considering a new law to protect the rights of domestic workers. The proposed legislation allows for several benefits paid weekly day-off, two weeks of paid leave per year, paid holidays, 15 paid sick days and an end of service award. The legislation also provides for protection of domestic workers from all forms of abuse including harassment and violence. Employers must also provide a safe work environment, adequate food and housing (HRW, 2012c). The passage of the proposed legislation has not occurred yet, nor has the government released the full text of the law as of September 2013.

The UAE has taken small steps towards protecting the rights of migrant workers. However, the majority of migrant workers still suffer from some form of abuse. Therefore, APMM makes the following recommendations:

- ◆ Increase the fines and possible jail time for employers failing to provide safe, comfortable housing for migrant workers
- ◆ Include domestic workers in the WPS to ensure payment of wages
- ◆ Set a minimum wage for all sectors including domestic workers
- ◆ Pass the proposed legislation in regards to domestic workers as long as it fully complies with existing international conventions such as the Convention for the Elimination of All Forms of Discrimination Against Women and ILO Convention on Domestic Work (C189)
- ◆ Strictly enforce all decrees that protect the rights of migrant workers, such as the banning of passport confiscation, prohibiting illegal recruitment fees and banning “mid-day work”
- ◆ Ratify the Convention on Decent Work for Domestic Workers (C189) under the ILO.

Saudi Arabia

Saudi Arabia has announced several measures to curb abuse of migrant workers in the Kingdom. These measures once implemented would dismantle the kafala system and protect domestic workers. However, they remain mired in the legislative process, so migrants continue to suffer from rampant abuses.

Unlike other Gulf countries, Saudi Arabia has announced the abolition of the kafala system, although official changes and implementation remain slow. Beginning in 2000, King Faud bin Abdul Aziz Al Saud issued “decree 166 abolishing the sponsorship system in employment relations, while maintaining it for immigration and residency purposes” (HRW, 2012b). In practical terms, this decree banned the confiscation of passports from employees and changes some terms used to describe employment. The decree also eased provisions, such as bringing family to the Kingdom and obtaining the permission from the employer to go on the Haj. It fails to create any significant changes to how the kafala system actually functions in practice. Furthermore, the practice of passport confiscation remains widespread.

In April 2012, a committee appointed by the Ministry of Labor concluded a five-year study that recommended replacing the individual-based kafala

system with a corporate-based system of sponsorship. The study recommended the creation of a recruitment and placement agency operated by the state named the Expatriate Labour Authority. The state would effectively sponsor all expatriate workers in the Kingdom. Furthermore, the study recommended the introduction of an insurance scheme to protect employers from any violations of local laws caused by employees. The system would also pay for return air tickets for employees and up to six months of back wages in cases of wage nonpayment (Emirates 24/7 News, 2012). The committee presented the Council of Ministers with a proposal in late 2012. However, as of September 2013, the Council of Minister had yet to approve the draft legislation.

Saudi Arabia began considering a law to improve legal protection for domestic workers in 2009. (The current labor law explicitly excludes all household laborers.) The law received approval from the Shura Council in July of 2009 and passed the Council of Ministers in July of 2013. The law improves conditions for domestic workers but could still leave workers open to abuse. The law requires employers to give domestic workers nine hours of rest per day, a weekly day off and one month of paid vacation every two years (Ghafour, 2013). However, it requires workers to obey the orders of the employer and prohibits workers from leaving without a “legitimate reason.”

APMM acknowledges Saudi Arabia for discussing the possibility of drastically changing the way the kafala system operates in the Kingdom. However, we also register concern at the pace of these changes.

We therefore make the following recommendations:

- ◆ Push through with passage of the legislation ensuring the rights of domestic workers, including ratification of the ILO C189. However, the legislation should protect the rights of domestic workers including a minimum wage, freedom of movement and the right to change employers.
- ◆ The Shura Council, Council of Ministers and King Faud should approve the legislation creating the Expatriate Labor Authority immediately. The government should then move forward with the transfer of sponsorship to the agency and away from individual employers.

Qatar

Qatar recently enacted significant changes for migrant workers in sectors other than the private household with the passing of the 2004 labor law. This law provides several protective provisions and improvements on current labor practices for migrant non-domestic workers. The law sets maximum working hours per week, requires paid annual leave and end-service awards, and provisions for the health and safety of workers. Employers must pay salaries on time each month, and recruitment agencies licensed in Qatar can no longer charge workers' fees. The law also prohibits employers from confiscating passports and implements strict requirements for accommodations. Finally, the law implements a "midday work ban" similar to those in other countries in the GCC. Outdoor work must stop between 12:00/11:00 to 4:00 pm from June 15 to August 15 (HRW, 2012).

However, the labor law of 2004 prohibits migrant workers from joining trade unions. Under the kafala system, workers cannot change employers without permission of their existing employer for any reason even in cases of nonpayment of wages, indecent living conditions or other violations of the contract. Furthermore, workers must obtain an exit permit from their employers before they may legally leave the country meaning that an employer can force a worker to stay in Qatar.

We welcome these initial efforts made by the Qatari government to protect the human rights of migrants. However, these reforms still leave the kafala system intact leaving migrant workers vulnerable to abuse. Domestic workers do not enjoy any of the protections offered by the 2004 labor law therefore, they remain extremely vulnerable and exploited.

Therefore, we make the following recommendations:

- ◆ Amend the 2004 labor law to include domestic workers therefore offering them the protections it offers
- ◆ Dismantle the kafala system or for the immediate future, allow all workers (including domestic workers) to change employers without the consent of their current employer
- ◆ Abolish the need for an exit visa

Case studies - Marilou Ranario

In 2005, the highest court in Kuwait sentenced a Filipina domestic worker, Marilou Ranario, to death after Ranario allegedly murdered her employer. After significant lobbying and the mobilization of overseas workers across the world led by Migrante International, the former president of the Philippines personally asked the Emir of Kuwait to commute the sentence to life imprisonment. The Emir granted this request in 2007, and Ranario is currently serving a life sentence in a Kuwaiti prison (APMM, 2012). This case provides an example of the concrete realities of the kafala system, and how it traps migrant workers in extreme situations forcing them to take action that might hurt themselves or others.

Ranario arrived in Kuwait in 2002 and began to work for a Kuwait employer as a domestic worker. She wrote numerous letters to her family detailing the variety of the abuse that she experienced at the hands of her employer. These letters describe regular physical abuse, starvation, overwork and few rest periods (APMM, 2012). Ranario clearly began to suffer from severe psychological abuse and felt as though she had no other alternatives. The details of the case remain unclear, but Ranario allegedly killed her employer in 2005, possibly in self-defense.

The kafala system trapped Ranario in this situation. She could not find anyone to help her or any alternatives. She paid thousands of dollars for her visa and needed to continue working to pay off the debt. Since her employer most likely confiscated her passport and residency card, she could not even leave the house without permission of the employer. The employer who paid a large recruitment fee most likely felt a sense of ownership over her, potentially coupled with racist ideas about Filipino women. Thus, the employer may have treated Ranario however what the former felt that was “appropriate.”

Once arrested, Ranario had little access to legal counsel or translation services (APMM, 2012). She finally received two defense attorneys who tried to use her mental state as evidence, but it was “too little too late” (APMM, 2012).

The policies of the kafala system do not operate in a vacuum. They affect migrant workers and their employers and force people to take extreme action to find a way out. A case of murder may be an extreme example, but a previous section mentioned high suicide rate of construction workers showing that this type of action is not an isolated incident but a systemic result of the kafala system.

- ◆ Strictly enforce all existing provisions of the labor law to prevent violations
- ◆ The draft of the “No NOC” that was recently drafted last March 2014 should not be construed as separate piece from the kafala/sponsorship system but rather viewed as one and that the elimination of the other is equivalent to the whole system
- ◆ Ratify the Convention on Decent Work for Domestic Workers known as C189 under the ILO.

X. Recommendations to the Governments of the GCC Countries

While governments in the six GCC countries have initiated in various degrees to make reforms to uphold and protect the rights of migrant workers, the continued implementation of the kafala to regulate migrant labor in these countries remains a burden to many migrant workers.

It is for this reason that the APMM recommends to the governments to ensure the protection of the rights, welfare and dignity of migrant workers through:

- ◆ Ratification of international conventions such as the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families and the ILO C189 (Decent Work for Domestic Workers);
- ◆ Domestication of these conventions by enacting laws beneficial for migrant workers, inclusion of migrant workers, especially domestic workers, in existing labor laws;
- ◆ Creation and/or strict enforcement of regulations that protect migrant workers from abuse and punish erring agencies and employers who violate the rights of migrant workers (i.e. confiscation of migrant workers’ documents like passports, nonpayment of wages, being made to work in harsh working conditions, being provided bad, unlivable accommodations);
- ◆ Promotion of trade union membership among migrant workers
- ◆ Enactment of new legislation that would lead to dismantling of the kafala system, allow workers (including domestic workers) to change employers without the consent of their current employer, etc.

XI. Conclusion

There are millions of migrant workers, both male and female in the six countries of the Gulf Cooperation Council (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates). Migrant workers comprise the majority of the population in several of these countries.

The Gulf countries use a system of employee sponsorship, known as the kafala system, to regulate this foreign labor force. Through the kafala system, the state divested itself of the responsibility to monitor this labor force and passed this responsibility over to the employer. This transfer of power creates a severe imbalance in power between the employer and the employee, which gives the employee little self-determination in regards to her/his employment. The kafala system gives the employer the power to determine working conditions, and the living arrangements for the worker. A key provision of the kafala system prevents workers from transferring their sponsorship to a new employer without first obtaining the permission of the current employer. Some countries require migrant workers to obtain an exit visa from their current employer prior to leaving the country.

The conditions of migrant workers in the region are a direct result of the policies of the kafala system because the system allows employers to abuse the rights of migrant workers without fearing reprisal from the state. As a result of the kafala system, migrant workers in the GCC experience severely restricted civil, social and political rights. The kafala system deprives a worker of the right to question the policy of her/his employer. The worker must endure any employment situation because she/he does not have any recourse to change employers without losing her/his legal right to stay in the country. Additionally, even when the state decides to take action against the employers, it rarely has the authority or power to inflict punitive damages for employers because the state passed its responsibility to employers. For example, the Ministry of Interior in Kuwait will regulate disputes between domestic workers and employers but the Ministry cannot force binding decisions on employers.

The provisions of the kafala system interact with, and reflect other realities of, migration patterns worldwide. For example, fraud in the recruitment

process and high recruitment fees are violations that migrant workers in most destination countries experience. The crippling debt caused by high recruitment fees forces migrant workers to stay in abusive employment situations in almost every destination country. Migrant workers in the GCC experience this feeling as well. The kafala system in many cases exacerbates this condition because the kafala system also facilitates underpayment of wages, poor living and working conditions and other forms of employer abuse. Racial and gender discrimination provides another example of how the kafala system interacts with other issues related to migration patterns.

Migration to the GCC represents but one of the major trends in labor migration today. Migrants in other regions also experience violations against their human rights. All are victims of the increasing trends of labor flexibilization and neoliberal globalization of the labor force. Corporations increasingly target migrant workers as the “ideal” source of cheap and docile workforces. The kafala system reinforces this policy of neoliberal globalization and is a form of state-sponsored abuse of human rights.

In opposition to widespread abuse and violations of rights, a strong international advocacy movement has arisen. This campaign continues to call for changes to the kafala system inside and outside the Gulf region. The campaign includes grassroots organizations with chapters inside Gulf countries, like Migrante International, and international human rights organizations, such as the Human Rights Watch. The International Migrants Alliance (IMA), a grassroots formation of migrants, spoke out against the kafala system during the 2012 International Migrants’ Tribunal on the Global Forum for Migration and Development. Several high profile news agencies, such as Al-Jazeera, have released reports increasingly critical of the kafala system and calling for widespread changes. Finally, the European Parliament took a stand against the kafala by passing an emergency resolution calling on the Qatari government to protect the rights of migrant workers. The campaign has successfully raised global awareness about the realities of the kafala system and international pressure for real change continues to build.

The governments in the Gulf region have announced or pursued significant changes to the kafala system as a result of this movement. APMM sees these changes as positive and marks initial efforts of government officials to speak out against the kafala system and work for concrete changes. Some of these changes have begun to address the rights violations caused by the

kafala system. Other changes focus on addressing the working conditions experienced by migrant workers. However, many of these new policies remain unenforced. For example, the laws in the Gulf states now outlaw the confiscation of passports for migrant workers through the anti-human trafficking laws, the local labor laws or the standard contract for domestic workers. However, these laws continue to go unenforced, meaning that passport confiscation remains widespread. Many of the existing changes would dramatically change the conditions for millions of migrant workers in the Gulf. So, the APMM would like the governments of the Gulf region to push through with announced changes to kafala system and enforce the existing changes.

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About the Research

This research provides an in-depth study into the history, rationale, justification and results of the kafala system. It aims to act as a clearinghouse of sorts for other recent researches and provides comprehensive combined information with updates to current laws and policies. It also provides explanations as to how and why the kafala system operates this way.

APMM presents this research project in hopes that it will educate migrant workers, NGO personnel, and advocates around the world. We hope that they will use it to understand the complete nature of the kafala system, ways to advocate for changes, and monitor developments. This research will hopefully inspire the migrants to keep fighting for their rights.

About APMM

The Asia Pacific Mission for Migrants was founded in 1984 as a regional research, advocacy, and movement building organization for the Asia Pacific and Middle East (APME) region. In the 30 years since its founding, APMM has adapted to the changing times while still maintaining its purpose; to serve those who migrate to other countries in search of a better life. APMM supports the migrant movement through advocacy, organizing, and building partnership and solidarity for the advancement of migrants' rights and welfare.