



International  
Labour  
Organization

**EMPLOYER-MIGRANT  
WORKER RELATIONSHIPS  
IN THE MIDDLE EAST:**  
*Exploring scope for internal labour  
market mobility and fair migration*

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Regional Office for Arab States



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White Paper, March 2017

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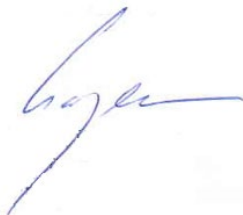
## FOREWORD

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Faced with decreasing oil revenues,<sup>1</sup> high levels of youth and women's unemployment among nationals, massive influxes of refugee movements,<sup>2</sup> mounting international concerns over the sponsorship systems under which migrants work, and increasing evidence of the benefits of allowing internal labour market mobility for (migrant) workers,<sup>3</sup> governments in the Middle East are reassessing the current functioning of their sponsorship systems.

In order to help understand the root causes that lead to inefficient labour markets, undersubscribed nationalization programmes, inadequate working conditions and a high level of vulnerability experienced by many migrant workers in the Middle East, this paper offers a way of analysing the employer-migrant worker relationship under the *kafala* sponsorship system. It offers a lens to review five elements in the employer-migrant worker relationship under this system, along with specific employer-migrant worker modalities and exacerbating factors that may impede internal labour market mobility, and that may enable or sustain labour exploitation, including situations of forced labour.

The analysis offered in this paper, and recommended ways forward, serve to stimulate policy dialogue and remedial action to the ultimate benefit of all concerned – including employers, economies at destination and migrant workers. As such, the paper is envisaged to contribute to the development of a fair migration framework in the Middle East in line with the Sustainable Development Goals (SDGs),<sup>4</sup> and the Fair Migration Agenda, as adopted by member States of the United Nations and the International Labour Organization (ILO) respectively.



Frank Hagemann  
Deputy Regional Director / Decent Work Team Director  
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<sup>1</sup> Primarily in the Gulf countries.

<sup>2</sup> Particularly in Lebanon and Jordan.

<sup>3</sup> The term 'migrant worker' is used throughout this paper in accordance with international norms as outlined in box 1.

<sup>4</sup> In particular SDG targets 8.7 (forced labour), 8.8 (decent work for migrant workers), and 10.7 (migration governance).

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## EXECUTIVE SUMMARY

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The unique aspects of sponsorship systems in the Middle East, commonly known as *kafala*, result in a delegation of responsibility by the State to the private employer to oversee both a migrant worker's immigration and employment status. This is inherently problematic as it creates an imbalance between the rights and abilities of workers and employers to terminate an employment relationship, and be mobile on the labour market in the respective country.

This paper argues that reforming the sponsorship systems in a way which disassociates a worker's immigration status from their employer's control, and enables a migrant worker to resign or terminate his/her employment contract by giving reasonable notice and without losing valid immigration status, can have significant economic, social and administrative benefits. Furthermore it may contribute to progress towards nationalization programmes, the smooth functioning of the labour market, and adherence to the rule of law.

In particular, reforming *kafala* can achieve:

- Economic benefits to the State through raised economic productivity as a result of a more attractive labour market for both businesses and workers with recognized skills; and an improved international reputation.
- Benefits to companies and workers through improved skills-matching of workers to companies, and an incentive for employers to provide higher wages and better working conditions to attract talent.
- Improved labour governance through a reduction in practices where employers seek to sponsor multiple workers without intending to employ them (a practice also referred to as visa trading). It could also lead to a reduction in employer practices that are designed to prevent migrant workers from leaving the employer (or 'absconding'), including through withholding of wages, passport confiscation and restrictions on freedom of movement.

The framework for analysing the core aspects of sponsorship systems in the region is simplified to five key questions: namely, is the migrant worker tied to the employer for:

- i. Entry to country of destination?
- ii. Renewal of residence and work permit?
- iii. Termination of employment?
- iv. Transfer to a different employer?
- v. Exit from country of destination?

This approach allows a comparison of the sponsorship systems of eight countries in the region, while also outlining some examples of recent reforms.

The paper presents a series of suggested evidence-based policy measures for reform of current sponsorship systems, which may enhance internal labour market mobility and promote fair migration. These suggested policy measures include:

- ensuring that a migrant worker's entry, residence and work permit are not tied to a specific employer;
- enabling the migrant worker to be responsible for renewing his or her own visas, work and residence permits;
- creating the option for migrant workers to resign and terminate his/her contract (with notice), without losing valid immigration status;
- ensuring that a migrant worker has the possibility to change employers without the consent of his/her current employer and without losing valid immigration status; and
- permitting the worker to exit the country without seeking approval from his/her employer.



## ACRONYMS AND ABBREVIATIONS

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|              |  |
|--------------|--|
| <b>BD</b>    | Bahraini dinar   |
| <b>CEACR</b> | Committee of Experts on the Application of Conventions and Recommendations |
| <b>FPRW</b>  | Fundamental Principles and Rights at Work                                  |
| <b>GCC</b>   | Gulf Cooperation Council   |
| <b>ILO</b>   | International Labour Organization  |
| <b>LMRA</b>  | Labour Market Regulatory Authority (Bahrain)                               |
| <b>MOHRE</b> | Ministry of Human Resources and Emiratization (United Arab Emirates)       |
| <b>NOC</b>   | no objection certificate   |
| <b>SDG</b>   | Sustainable Development Goal   |
| <b>UAE</b>   | United Arab Emirates   |

# 1. INTRODUCTION

---

Labour relations between employers and migrant workers, otherwise known as ‘temporary expatriate workers’ (see box 1) in the Gulf Cooperation Council countries (referred to as ‘GCC’ hereafter)<sup>5</sup> and Jordan and Lebanon, are governed by an all-encompassing collection of laws, administrative regulations, norms and customary practices which places primary responsibility for regulating the relationship between worker and employer in the hands of the employer.

Although immigration sponsorship systems are common in many parts of the world, the type of sponsorship arrangements prevalent in the Middle East severely limits migrant workers’ opportunity to leave an employer, creates a number of risks of human rights abuses and labour exploitation, and impedes internal labour market mobility. As argued below, internal labour market mobility can bring critical benefits to the effective functioning of labour markets and broadly to the economies of countries of destination. A number of countries in the region are thus rethinking the utility of the current shape of this system, both to avoid the potential for abuse inherent in an unbalanced employment relationship, and to achieve more flexibility in labour markets.

This paper begins by offering a framework to analyse employer-migrant worker relationships in the Middle East.<sup>6</sup> It describes the aspects of the sponsorship system that may reinforce the dependency of workers on their *kafeel* (employer) and may thus impact labour market mobility. It further outlines specific types of employer-migrant worker relationships under the *kafala* sponsorship system along with exacerbating factors that make workers particularly vulnerable.

Based on publicly available information, the paper provides an overview of the current use of sponsorship arrangements in GCC States, Lebanon and Jordan, reflecting on both commonalities and differences within each of the eight country settings and giving particular attention to the specifics of recent policy reform efforts (as at January 2017), insofar as they seek to address the central, most exploitative elements of the sponsorship system.

Based on an analysis of current modalities, the paper also explores ways to rebalance the relationship between workers and employers in the sponsorship systems in the region, which would in turn contribute to more efficient labour markets and enhanced chances of success in nationalization programmes and fair migration. Many of these policy options were presented in draft form to a range of senior policy makers in the Middle East, at the time of the Senior Officials Meeting of the Abu Dhabi Dialogue in May 2016.<sup>7</sup> Ways forward are also reflected in the Bali Declaration which ILO member States from Asia and the Middle East adopted in December 2016. The Declaration emphasizes the need to enhance labour migration governance through “redressing employer-worker relationships that impede workers’ freedom of movement, their right to terminate employment or change employers, taking into account any contractual obligations that may apply, and their right to return freely to their countries of origin” (ILO, 2016c: 3).

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<sup>5</sup> These countries comprise Bahrain, Kuwait, Oman, Saudi Arabia, Qatar and the United Arab Emirates (UAE).

<sup>6</sup> Within the Middle East region, the focus of this study is on the GCC, Jordan and Lebanon.

<sup>7</sup> The Abu Dhabi Dialogue is a key forum for policy dialogue on labour migration in the Asia-GCC region.

## BOX 1. DEFINITIONS

The term '**migrant worker**' is used throughout this paper in accordance with international norms, in particular, Article 2 of the International Convention on the Protection of all Migrant Workers and Members of their Families (1990), which defines a 'migrant worker' as a "person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national". It is important to note that governments in the Middle East view most labour migration as temporary and tend to prefer to use the term 'temporary foreign contract labourers' or 'temporary expatriate workers'.<sup>8</sup>

The type of sponsorship system used in the GCC countries and Lebanon and Jordan is commonly referred to as the '**kafala system**'. While the term *kafala* itself is rarely used in legislation, the concept remains a commonly applied term, particularly in the media, to describe the unique elements of sponsorship which the systems of the Middle East share and which are different to sponsorship systems in other countries.

'**Internal labour market mobility**' is defined in this paper as the ability of workers to terminate employment, switch to a different employer, renew their work permit or leave the destination country without the approval of their employer.

'**Fair migration**' is defined for the purposes of this paper as migration that respects the human and labour rights of migrant workers and offers them real opportunities for decent work, in line with international human rights, including labour standards.<sup>9</sup>

The term '**absconding**' refers to an administrative offence specific to the sponsorship systems in the Middle East whereby migrant workers, especially migrant domestic workers, leave their employer/sponsor without permission. These workers are rendered an irregular migrant worker and are subject to arrest, detention and deportation. This also applies to workers who have escaped an exploitative or abusive situation. The term '**fake absconding**' is used to refer to a situation where an employer falsely claims that a worker has 'absconded'.

<sup>8</sup> Similar definitions of migration for employment/migrant worker are found in the ILO migrant workers instruments (Article 11, Migration for Employment Convention (Revised), 1949 (No. 97); and Article 11, Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

<sup>9</sup> No conclusive definition of 'fair migration' has to date been agreed on.

## 2. BACKGROUND

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The sponsorship systems which allow the temporary employment of non-nationals in the GCC countries, as well as Jordan and Lebanon, have historically been based on the concept of *kafala* which in classical Arabic draws connotations of ‘guarantee’, ‘provide for’ and ‘take care of’. The term *kafala* is described in Arab Gulf countries (and Jordan) as having stemmed from a noble Bedouin tradition of hospitality that made it incumbent upon nationals to grant strangers protection and temporary affiliation to the tribe for specific purposes (Beauge, 1986; Dito, 2015; Asia Pacific Mission for Migrants, 2014). Newcomers to society were considered guests of a local who took legal and economic responsibility for their welfare, as well as for the consequences of their actions.

The modern use of the *kafala* system appeared in GCC countries during the 1960s and 1970s, when it was developed as a means to regulate the entry of migrant labour in the GCC countries of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the UAE. Under *kafala*, a migrant worker’s immigration and legal residency status is tied to an individual sponsor (*kafeel*) throughout his or her contract period in such a way that the migrant worker cannot typically enter the country, resign from a job, transfer employment, nor leave the country without first obtaining explicit permission from his or her employer. This is distinct from most other sponsorship regimes, where only the migrant worker’s employment status is determined by the employer at the time of entering the country, and where there is more flexibility in being able to switch employers without losing immigration status.

Although it is important to recognize that there are many sponsors who do strive to provide decent and respectful working conditions, the modern functioning of *kafala* is inherently ripe with opportunities for employers to violate the fundamental human rights of the migrant workers under their sponsorship. Through *kafala*, migrant workers are placed in a position of vulnerability and have very little leverage to negotiate with employers, given the significant power imbalance embedded within the employment relationship. Common grievances expressed by migrant workers include restrictions on free movement, confiscation of passports, delayed or non-payment of salaries, long working hours, untreated medical needs, and violence – all conditions that can give rise to situations of forced labour and human trafficking.

Arguably, the most problematic feature of *kafala* is the delegation or ‘outsourcing’ of responsibility by the state to the private employer to oversee both a migrant worker’s immigration and employment status. Through the linking of residence and work permits, a migrant worker’s immigration status is dependent on the contractual relationship with the sponsor. If the employment relationship is terminated, there is no longer a legal basis for the migrant worker to stay in the country. As ‘owner’ of the permit, the sponsor is given authorization to exert far-reaching control over the lives of migrant workers employed by them, making this employer-worker relationship much more asymmetrical than is common in a normal labour market situation. It also hinders internal labour market mobility and hence negatively affects the functioning of labour markets, as this paper argues below.

The International Labour Organization’s independent Committee of Experts on the Application of Conventions and Recommendations (CEACR) has stated in its observations with regard to the Forced Labour Convention, 1930 (No. 29) that *kafala* ties migrant workers to particular employers, limiting their options and freedoms. The CEACR noted that “the so-called visa ‘sponsorship system’ (or ‘*kafala*’ system) in certain countries in the Middle East may be conducive to the exaction of forced labour” and urged governments to “adopt legislative provisions specially tailored to the difficult circumstances faced by this category of workers and to protect them from abusive practices” (CEACR, 2015) and to “take the necessary measures in law and practice, to ensure that migrant domestic workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour” (CEACR, 2016).

In line with CEACR's main concerns, a number of governments in the Middle East have released public statements in recent years indicating their recognition of the need for change, while some have also taken measures to address unacceptable practices (see section 5 for a detailed overview of sponsorship arrangements in countries in the Middle East).

### 3. POTENTIAL BENEFITS OF INTERNAL LABOUR MARKET MOBILITY

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Reforming the sponsorship systems in the Middle East is not only critical to workers as a labour rights issue, but (by enhancing internal labour market mobility) may also offer a series of benefits to governments, employers and economies at destination.

These benefits may include the following:

#### Support to nationalization policies

- Internal labour market mobility may enhance the success of strategies to enrol more nationals in the private sector of economies in the Middle East (i.e. nationalization strategies). First by reducing the wages and rights gap between migrant workers and nationals, as the large differential is currently a disincentive to hire national workers. Second, if the extent of administrative and legal responsibility of employers were to be reduced, this could stimulate more interest among employers to engage nationals.
- The potential of a more diverse economy is also a possibility. Current restrictions on labour market mobility and high levels of control by employers over workers serve as a disincentive to (foreign) skilled workers, and thus impede the creation of a vibrant, diversified and resilient knowledge economy, which in turn limit the potential to create jobs that would attract significant numbers of nationals (Nyarko, 2016).

#### Economic benefits

- Reforms would make the labour market more attractive both for businesses and their workers, attract the workers needed for knowledge-based activities, and provide incentives for investment in human capital (Saidi, 2016).
- Enabling internal labour market mobility could also reduce the practice of visa trading and labour hoarding, whereby employers seek more work permits than they actually need, as workers could be hired from a pool of available workers at destination.
- The possibility of migrant workers moving into better paid employment may act as an incentive for workers to acquire new skills – benefiting the national economy as a whole by gradually increasing the overall skill level of the migrant workforce (Nyarko, 2016). Currently, workers and their employers do not have significant incentives to invest in on-the-job training and upgrading of skills, since the workers are confined to working for their sponsor (Saidi, 2016).
- *Kafala* reforms in line with international labour standards may also contribute to improved international reputation and a better investment climate, especially as the region has been the target of increased international scrutiny on labour rights and working conditions of migrant workers,<sup>10</sup> and will likely continue to be under global scrutiny given a number of high-profile mega

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<sup>10</sup> Human Rights Council (2014) *Report of the Special Rapporteur on the human rights of migrants, François Crépeau: Mission to Qatar*; ILO (2016), *Complaint concerning non-observance by Qatar of the Forced Labour Convention, 1930 (No. 29), and the Labour Inspection Convention, 1947 (No. 81), made by delegates to the 103rd Session (2014) of the International Labour Conference under article 26 of the ILO Constitution*; Human Rights Watch (2016) *"I Was Sold": Abuse and Exploitation of Migrant Domestic Workers in Oman*; Human Rights Watch (2015) *Migrant Workers' Rights on Saadiyat Island in the United Arab Emirates*; Human Rights Watch (2014) *"I Already Bought You": Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates*; Human

projects, including the World Cup 2022 (Qatar), the World Expo 2020 (UAE), and the Guggenheim, Louvre and NYU Abu Dhabi (UAE).

- In the same vein, demonstrated commitment to improved labour standards would increase the attraction for world-class businesses with reputations to uphold to operate in the Middle East, which in turn could contribute to upgrading and diversifying the economies of the region.
- The likely reduction in worker complaints and dispute resolution cases may result in lower costs for law enforcement. Likewise, a decrease in the number of migrant workers needing government-funded support, including crisis accommodation and other assistance, would contribute to lower costs for welfare assistance.

## Worker protection

- Allowing migrant workers to change employers would contribute to better functioning and more dynamic national labour markets and would help to ensure that the skills of migrant workers are better matched with industry and employer needs (ILO, 2015). It could lead to increased competition among employers for qualified workers already available on the local labour market, which could lead to employers providing higher wages and better working conditions as they compete for the best workers. A further outcome would be higher overall productivity and a higher ranking in the World Economic Forum's annual Global Competitiveness Index (Gulf Business, 2016).
- Enhancing internal labour mobility may also address the issue of workers falling into an irregular situation through no fault of their own.<sup>11</sup> If such forced irregularity were to be addressed, it would reduce the costs and administrative burden of current deportation and amnesty and regularization schemes.

## Benefits to business

- Employers who are able to engage foreign workers already in the destination country (i.e. those who terminated their previous employment contract) can save on time, cost and administration involved in recruiting a worker from abroad, and reduce the risk of being associated with exploitative recruitment practices.
- *Kafala* reform may also lead to higher satisfaction of employers, as research suggests that many employers find current sponsorship responsibilities too burdensome (Insan Association, 2014). The same research suggests that 65 per cent of employers would support *kafala* reform if an alternative employment-based visa and various options for reimbursement of recruitment fees in cases of early termination of the contract would be offered.

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Rights Watch (2012) *Building a Better World Cup: Protecting Migrant Workers in Qatar Ahead of FIFA 2022*; US Department of State (2016) *Trafficking in Persons Report 2016*, Amnesty International (2016) *The Ugly Side of the Beautiful Game: Exploitation of migrant workers on a Qatar 2022 World Cup site*, ITUC (2014) *The Case Against Qatar*.

<sup>11</sup> While some migrant workers become irregular willingly, most do so beyond their control and through no fault of their own, for example through administrative errors, through the action (or inaction) of their sponsor, or through escaping an abusive situation. If workers are eligible to move to a different employer when the first employer engages in, for instance, fake absconding, withholding passports, non-payment of a return ticket, or failing to make a financial settlement with a migrant worker following a court case, they will not fall into an irregular status.

## 4. EMPLOYER-MIGRANT WORKER RELATIONSHIPS THAT MAY IMPEDE INTERNAL LABOUR MARKET MOBILITY AND FAIR MIGRATION

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This section offers a framework for analysing the employer-migrant worker relationship under the *kafala* sponsorship systems. It offers a lens to review five elements in the employer-migrant worker relationship under *kafala*, along with specific employer-migrant worker modalities and exacerbating factors that may impede internal labour market mobility, and that may enable or sustain labour exploitation, and situations of forced labour.

### 4.1 Central elements of sponsorship arrangements

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The systems of sponsorship in the Middle East are composed of various legal requirements, administrative regulations, and socio-cultural practices that tie a migrant worker's immigration and employment status to one specific sponsor. As there is some variation amongst countries in the Middle East, this paper proposes an analysis framework covering **five core elements in the employer-migrant worker relationship** that may impede internal labour market mobility and fair migration, by asking five questions as follows:

#### i. Is entry into the country tied to a specific employer<sup>12</sup> through a work and/or residence visa?

In order to enter the destination country, a migrant worker must be sponsored by a *kafeel* and mostly remain tied to this same *kafeel* throughout their stay. The *kafeel*'s name is typically written inside the migrant worker's entry visa, as well as in the residence and work permits.<sup>13</sup> While a requirement for a sponsor is common in other sponsorship systems (including in Australia, Canada and the United States), a sponsor in the Middle East is offered a level of control over migrant workers throughout their stay in the destination country, and is expected to assume responsibility for the migrant worker while they are present in the country. This includes ensuring that the migrant worker leaves the country, by paying for the plane ticket after termination of the contract. A number of employers have exploited this modality by applying for more work visas than they need, resulting in migrant workers getting stranded upon arrival, and being forced into irregularity through no fault of their own.

#### ii. Is renewal of stay in the country (through a residence visa) the responsibility of the employer?

As the 'owner' of the work and residence permits, in most countries in the Middle East the employer is accorded the responsibility to renew the residence visa so that the migrant worker has legal status to continue working in the country. This makes the migrant worker dependent upon the employer for legal residence in the country.<sup>14</sup> If the employer fails to renew the visa, the migrant worker becomes undocumented and may be subject to penalization, including detention and deportation. Conversely, only a few countries have provisions that stipulate penalties for the employer in such cases. This failure to renew the

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<sup>12</sup> Rather than tied to specific 'employment'.

<sup>13</sup> Though this is not required for Egyptian workers in Jordan under a bilateral agreement between Jordan and Egypt (*Organization of Egyptian Labour Force*), signed in 2007.

<sup>14</sup> There are however exceptions. In Jordan, while the worker is responsible for submitting an application for, or renewal of, a residence permit, this may not be issued or renewed without a valid work permit (which is still the employer's responsibility).

visa is a particularly common occurrence where the length of the residence visa is shorter than the length of the employment contract.<sup>15</sup>

### iii. Does termination of employment require approval of the employer?

During the contract period, migrant workers in most countries in the Middle East are commonly unable to resign or terminate their employment without the explicit written consent of the employer. If migrant workers decide to leave a job before the end of their contracts without first securing their employer's approval, even when responding to situations of abuse, they will automatically become 'irregular' (still called 'illegal' in countries in the Middle East). In some countries, the law may contain a provision for immediate termination of a contract in the particular case of abuse. However, conditions and procedures for this can be onerous. In practice, immediate termination without penalization is rare. In fact the migrant worker is often returned to the employer and/or faces administrative penalties for 'absconding', including fines, indefinite detention and deportation. The employer is typically obligated to report 'missing' migrant workers to the local police, whereupon the employer is relinquished of all responsibility. Upon notification, the police then commonly cancel the migrant worker's residency permit and file an order for his or her detention. Conversely, employers often can cancel a migrant worker's employment permit and residency visa at their own discretion, often with little or no notice. This power differential makes it difficult for migrant workers to contest or complain when any part of their contractual agreement is violated or when they face abuse.

### iv. Does transfer from one employer to another require approval of the (first) employer?

In most countries in the Middle East migrant workers are required by law to procure a release form – or no objection certificate (NOC) – from the original employer prior to legally transferring sponsorship. Commonly this is also the case even after the worker has completed their contract and wishes to move to another employer. Some countries require the worker to return home for several years before they are allowed to come back to work for a new employer. Workers are not allowed to continue remaining in the country to work for a new employer, even if they were to get permission from the current employer.<sup>16</sup> In some cases, the migrant worker may additionally be required to obtain written permission from the new employer. Generally, the only way around this requirement is to seek special permission from the relevant ministry or to file a court case. These arduous procedures for the transfer of employers place serious restrictions on a migrant worker's mobility and freedom of movement, and undermine labour market efficiency to the detriment of all including employers.

### v. Does exit from the country require approval of the employer?

In some countries in the Middle East, the migrant worker must also procure an exit permit from their current employer in order to leave the country.<sup>17</sup> Even in countries where an exit permit is not explicitly required, sponsors may be able to file a complaint with immigration authorities, who then block the migrant worker from departing the country (thus cancelling the need for employers to pay for the migrant worker's return plane ticket). In some cases, authorities may ban the workers' later re-entry.

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<sup>15</sup> Commonly, the employer has a certain period (for example, 90 days) after expiry of the residency to have it renewed. This can create irregularity for a worker during this period, and thus the migrant worker cannot leave the country without the residency being cancelled.

<sup>16</sup> This is a requirement, for example, in Oman, though not in all countries. The UAE for example, allows workers who have completed their contracts to remain in the country for 30 days to find a new sponsor.

<sup>17</sup> Currently, Saudi Arabia, Qatar and Jordan.



Each of these elements on their own contribute to an unequal relationship between the employer and the migrant worker, and in particular if combined, they may limit internal labour market mobility and may expose migrant workers to the greatest risk of exploitation and abuse. Figure 1 below puts all of the elements together, and will be used in section five of this paper, where the sponsorship systems of eight countries in the Middle East will be reviewed.

**FIGURE 1. ANALYSIS MODEL FOR SPONSORSHIP SYSTEMS IN THE MIDDLE EAST:**

| IS THE MIGRANT WORKER TIED TO THE EMPLOYER FOR:                                      |    |   |     |   |
|--|----|---|-----|---|
| Any 'No' contributes to enhancing internal labour market mobility and fair migration | No | I. Entry to country of destination?       | Yes | Any 'Yes' offers employers a level of control and may impede internal labour market mobility and fair migration |
|  | No | II. Renewal of residence and work permit? | Yes |   |
|  | No | III. Termination of employment?           | Yes |   |
|  | No | IV. Transfer to different employer?       | Yes |   |
|  | No | V. Exit from country of destination?      | Yes |   |

## 4.2 Specific types of sponsorship arrangements

The majority of migrant workers in the Middle East work in private sector companies through a process whereby an employer gains approval from the relevant ministry to sponsor a migrant worker, and the employer then directly employs this worker through recruitment via a recruitment agent. While workers in these relationships are in an inherent position of vulnerability, some specific categories of workers are even more vulnerable due to exacerbating circumstances of their sponsorship (Dito, 2015). Specific types of sponsorship arrangements that may impede internal labour market mobility and fair migration include:

### i. Workers whose *kafeel* is a labour supply company

Where a worker is recruited by a labour supply company, he or she essentially has two 'employers' – one who employs him or her through the work and residence permit, and a second who benefits from his or her labour. Outsourcing of labour through a sponsorship arrangement can lead to a blurring of employment relationships and confusion over which of the two employers should assume accountability for a migrant worker's wages, living conditions, insurance and other responsibilities. This may result in the second employer abusing a migrant worker, while only the first employer is held accountable as s/he is the actual *kafeel*.

### ii. Migrant domestic workers who are not fully covered under the labour law

While employers of migrant domestic workers are sponsors (or *kafeels*) who exert control over their workers, what makes the latter especially vulnerable to exploitation is the absence of a full legal framework regulating the employment relationship.<sup>18</sup> Domestic workers are not covered (or in a few cases only minimally covered) by protections afforded to other categories of workers under national labour laws. Their vulnerability is compounded by

<sup>18</sup> Bahrain, Jordan, Kuwait and Saudi Arabia are exceptions with partial coverage of domestic work in the labour law, or specific laws.

the isolated nature of the place of work, as domestic workers are employed within a private household and usually live under the same roof as their employers. This employment structure limits opportunities for social interaction outside of the workplace, and places serious restrictions on mobility since domestic workers are typically required to notify or obtain permission from their employer prior to leaving the household, even on days off or during hours of rest. Accordingly, migrant domestic workers are among the most vulnerable of all categories of workers.

### iii. Workers who are on a 'free visa'

Under an arrangement often referred to as a 'free visa',<sup>19</sup> the migrant worker becomes a self-employed rent payer to the sponsor, as opposed to a wage earner. There are two main sub-forms: (a) a sponsor brings a migrant worker to the country in order to operate and run a commercial activity (such as a small grocery store) and establishes an unofficial agreement with the migrant worker to operate the business in return for rent money; or (b) the migrant worker informally agrees to pay the sponsor rent money in exchange for maintaining his or her work permit and residence status. In both of these scenarios, the migrant worker is dependent on the sponsor for their continued legal residency status, making them vulnerable to exploitation and debt bondage and limiting their mobility. Such rent-seeking activities by *kafeels* are highly lucrative and amount to what is believed to be a multi-billion dollar industry (Dito, 2008).

### iv. Workers whose status became irregular beyond their control

In some cases, a migrant can become irregular through no fault of his/her own, thus further compounding vulnerability to exploitation. Such irregularity may happen in the following ways (Dito, 2015):

- A. a migrant worker remains in the country despite the expiration or cancellation of his/her visa. For instance, the contract expires but the employer refuses to pay for the return airfare (as required by law in some sectors of some countries in the Middle East); the employer does not return the migrant worker's passport; or the employer does not renew the visa to ensure the migrant worker's legal residency status. Workers who have experienced abuse and are in shelters or are awaiting the outcome of a legal case may have also lost their legal status, and fall into this category.
- B. a migrant worker holding a valid work permit is reported as having 'absconded' by the employer, without actually having run away (i.e. 'fake absconding') which may result in administrative deportation without trial.
- C. a migrant worker works for an employer other than the original employer. This may be at the request, and with the permission of the original employer, but where either the first sponsor or the second sponsor has failed to follow the specific legal procedures involved in this process. In this situation the worker is in breach of their visa requirements.<sup>20</sup>

In all of these circumstances, the worker is classified as an 'irregular' migrant. In most countries, workers with an irregular migration status are deemed to be 'illegal', as the worker's status is said to result from an infringement of existing laws and they are thus subject to arrest, detention and deportation, even if the irregularity is not the fault of the migrant worker.

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<sup>19</sup> Where the work visa is not free of cost, but free of an employer (as the sponsor is not effectively the employer). Despite the practice being illegal, these visas are traded among workers and employers for a fee.

<sup>20</sup> For example, a sponsor agrees to release the migrant worker to another employer. This first sponsor grants the mobility right to the migrant worker through a statement at the notary, yet the second employer neglects to renew the worker's residency and work permits. The government authority does not recognise the second employer as s/he does not appear on the records as the sponsor. If the first sponsor leaves the country, the migrant worker may be trapped in an irregular situation.

The threat of irregularity forces many migrant workers to endure difficult and exploitative conditions due to the inherent deficiencies of *kafala*, and thus effectively limits their mobility in the labour market. Once a worker falls into an irregular status, it may be difficult for him or her either to regularize their status, or to legally leave the country. This may partly be as a result of the accumulation of large amounts of overstay fines. Should such workers be identified as irregular and placed in detention, they may be prohibited from leaving the country as a result of having insufficient funds to pay the accumulated fines.

In response to growing international criticism, some of the governments in the region carry out periodic amnesty programmes, allowing undocumented migrant workers to 'regularize' their migration status or return to their country of origin without penalty. However, critics of these amnesty programmes argue that they do not adequately address the reasons why migrant workers end up in irregularity (Al Jazeera, 2013; Shah, 2014).

### 4.3 Other exacerbating factors in sponsorship arrangements

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In order to more fully understand the impact of the central elements of sponsorship systems on migrant workers, it is necessary to outline a number of other **exacerbating factors** that may impede internal labour market mobility of migrant workers and that may place them at a heightened risk of abuse and exploitation. Some of these factors are briefly analysed in this section; others, such as high recruitment debt borne by migrant workers, and limits on freedom of association, are covered in related papers (see respectively ILO, 2016b and ILO, 2015).

#### a) Upfront payments by employers, leading to fear of early termination of contract

Where employers pay recruitment costs of migrant workers (including for permits, travel, medical examination and medical insurance), as per fair recruitment standards (see ILO, 2016b), these costs can be a cause of concern to employers who fear losing their 'financial investment' if the migrant worker does not complete the full duration of the contract (Insan Association, 2014). Thus an employer may feel pressured to impose restrictions on the migrant worker's mobility or to pass on these costs to the worker, despite national legislation that may be in place to prohibit migrant workers from paying any fees. A sponsor may withhold a migrant worker's wage payments, or oblige the worker to pay for any losses that would be incurred through early termination of the contract in exchange for approval to resign or transfer jobs. Such practices limit internal labour market mobility and make migrant workers vulnerable to any demand of the employer.

#### b) Passport confiscation

Employers often confiscate migrant workers' passports (and work permits) even where national legislation is in place to prohibit the practice (ILO, 2016b). Few countries assign penalties to a breach of the prohibition on passport confiscation, where such a prohibition exists in legislation. Passport retention is one of the simplest ways for an employer to be assured that the migrant worker stays for the duration of their contact and does not 'abscond'. Without access to their passports, migrant workers face restrictions that prevent them leaving an employment relationship at their own volition, even in situations where they may be subject to abuse or exploitation. Without identification, authorities are also unable to determine the identity of migrant workers and migrant workers face challenges in accessing justice without their identity cards.

### c) Inefficient dispute settlement and compensation mechanisms

Migrant workers who wish to pursue legal recourse against their employers in most countries in the Middle East face multiple barriers. In most cases, filing a complaint results in the migrant worker no longer being able to work with the same employer, thus putting their residency status at risk in most sponsorship systems.<sup>21</sup> In cases where migrant workers are not given a visa that allows them to reside legally in the country and continue to work while awaiting the outcome of a tribunal hearing, workers often refrain from even filing a complaint in the first place. Migrant workers with insecure immigration status are often not able to stay in the country long enough to engage in legal proceedings. Dispute settlement procedures tend to be time consuming, while compensation mechanisms for migrant workers in distress are virtually absent. Consequently, migrant workers are rarely able to recoup unpaid wages. Most workers continue to endure sub-standard working and living conditions rather than pursuing cases against their employers, again reflecting imbalanced relationship between employer and migrant worker.

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<sup>21</sup> In most cases, once the residence permit has expired or been terminated, employers can report the workers as 'illegally residing' persons and they will be repatriated. They will not be given the opportunity to file a claim for any unpaid wages.

## 5. NATIONAL IMPLEMENTATION OF SPONSORSHIP SCHEMES AND RECENT LEGISLATIVE DEVELOPMENTS IN THE MIDDLE EAST

While a number of countries in the Middle East no longer use the term *kafala*, central elements of the sponsorship system remain largely intact in most countries, with some degree of variation. In recent years, a number of governments have declared their intention to restructure, reform or even abolish their sponsorship system. Some initiatives have sought to alleviate the most exploitative elements of the sponsorship system, while others have merely tackled superficial ‘symptoms’. Where progress has been made, often migrant domestic workers are explicitly excluded from the reforms.

Applying the analysis framework offered in section 4, figure 2 below provides a brief overview of sponsorship modalities in the six GCC countries, and Jordan and Lebanon. Particular attention is paid to the specifics of recent policy reform efforts insofar as they seek to promote labour market mobility and address the central, most exploitative elements of the sponsorship system. These reforms offer learning opportunities for other countries. The information contained in this figure is based on a thorough review of publicly available information (as at January 2017), and further detail is provided in the footnotes.

**FIGURE 2. ANALYSIS OF SPONSORSHIP SYSTEMS OF EIGHT COUNTRIES IN THE REGION**

| COUNTRY  | BAHRAIN           | KUWAIT            | OMAN | QATAR | SAUDI ARABIA | UAE              | JORDAN            | LEBANON |
|--|-------------------|-------------------|------|-------|--------------|------------------|-------------------|---------|
| <b>SPONSORSHIP-RELATED ELEMENTS</b>                    |                   |                   |      |       |              |                  |                   |         |
| <b>IS THE MIGRANT WORKER TIED TO THE EMPLOYER FOR:</b> |                   |                   |      |       |              |                  |                   |         |
| i. Entry to country of destination                     | yes <sup>22</sup> | yes               | yes  | yes   | yes          | yes              | yes               | yes     |
| ii. Renewal of residence permit                        | no                | yes               | yes  | yes   | yes          | no <sup>23</sup> | yes <sup>24</sup> | yes     |
| iii. Termination of employment                         | no <sup>25</sup>  | yes               | yes  | yes   | yes          | no <sup>26</sup> | yes               | yes     |
| iv. Transfer to different employer                     | no <sup>27</sup>  | yes <sup>28</sup> | yes  | yes   | yes          | no <sup>29</sup> | yes               | yes     |
| v. Exit from country of destination                    | no                | no                | no   | yes   | yes          | no <sup>30</sup> | no                | no      |

*Any ‘yes’ in the matrix offers employers a level of control and may impede internal labour market mobility and fair migration*

*Does the migrant worker need the approval of the employer for:*

<sup>22</sup> In 2009, Bahrain’s Ministry of Labour announced that the LMRA would assume a sponsorship role, but in practice the migrant worker is still tied to an individual sponsor.

<sup>23</sup> For workers who obtain their work permit through the Ministry of Human Resources and Emiratization (MoHRE), currently excluding migrant domestic workers.

<sup>24</sup> The process is particularly problematic as one year work permit need to be renewed annually.

<sup>25</sup> Required if within 12 months of employment and for domestic workers for the duration of contract period; otherwise not required.

<sup>26</sup> For workers who obtain their work permit through the MoHRE, yet this can cost up to three months’ salary.

<sup>27</sup> Required if within 12 months of employment and for domestic workers for the duration of contract period; otherwise not required

<sup>28</sup> On 31 March 2016, the Public Authority for Manpower published Administrative Decision No. 378/2016, which allows migrant workers (although not domestic workers) in the private sector to transfer their sponsorship to a new employer without their current employer’s consent after three years of work, provided they give 90 day notice to their current employers. While this is a slight improvement, workers are still tied to employers for three years, and it does not apply to domestic workers.

<sup>29</sup> For workers who obtain their work permit through the MoHRE.

<sup>30</sup> Except migrant workers in agriculture and migrant workers whose work permit fines have not been settled.

| COUNTRY  | BAHRAIN          | KUWAIT            | OMAN              | QATAR             | SAUDI ARABIA      | UAE               | JORDAN           | LEBANON           |
|--|------------------|-------------------|-------------------|-------------------|-------------------|-------------------|------------------|-------------------|
| <b>EXACERBATING ELEMENTS</b>   |                  |                   |                   |                   |                   |                   |                  |                   |
| Passport confiscation allowed (not prohibited the law)                   | no               | no                | no                | no                | no                | no                | no               | yes               |
| Domestic workers excluded from labour law                                | no <sup>31</sup> | yes <sup>32</sup> | yes <sup>33</sup> | yes <sup>34</sup> | yes <sup>35</sup> | yes <sup>36</sup> | no <sup>37</sup> | yes <sup>38</sup> |
| Charging recruitment fees to workers allowed (not prohibited by the law) | yes              | yes               | yes               | no                | no                | no                | yes              | no                |

Any 'yes' in the matrix means lack of legal coverage thus not offering legal protection to migrant workers

## Recent developments regarding sponsorship reform in the region

The period of 2015-16 witnessed a number of legislative efforts to modify sponsorship arrangements in a number of countries in the Middle East, in particular relating to migrant workers' ability to terminate a contract or transfer to a new sponsor.

In Qatar, Law No. 21 (2015) *Regulating the Entry, Exit and Residency of Expatriates*,<sup>39</sup> which came into force in December 2016, removed the terminology of sponsorship. However despite media coverage suggesting otherwise, the new law continues to prohibit workers from changing employers during the contract period without the permission of the current employer (through the NOC). Where no end date is listed in the contract, the worker will be able to move without permission of the employer only after five years (and upon receiving permission from the Ministry of Administrative Development, Labour and Social Affairs). Where the contract does specify an end period, a worker can only switch employers without the permission of the employer after the end of the contract (generally two or five years) and after giving notice to their employer (Government of Qatar, 2016).

Likewise in Saudi Arabia, changes to the labour law,<sup>40</sup> and the enactment of new Implementing Regulations which came into effect in April 2016 (Ministerial Decree No. 1982), made minor changes to a migrant workers' ability to change employers, noting that transfer of sponsor/ employer is permitted without the approval of the current sponsor/employer if:

- the employer has failed to renew the worker's residency permit;
- the worker's wages have not been paid for three consecutive months and at any time during the

<sup>31</sup> Covered in part under the labour code, but excluded from many important provisions, including the right to change employers.

<sup>32</sup> Excluded from the labour law. A specific domestic work regulation was adopted in 2015, but it falls short of international labour standards.

<sup>33</sup> Excluded from the labour law. No other legislation is in place. The standard contract falls short of international labour standards.

<sup>34</sup> Excluded from the labour law. No other legislation is in place. No standard contract.

<sup>35</sup> Excluded from the labour law. A specific domestic work regulation was adopted in 2013, but falls short of international labour standards.

<sup>36</sup> Excluded from the labour law and benefits afforded under Decrees 764, 765, 766. No other legislation is in place. Standard contract falls short of international labour standards.

<sup>37</sup> Covered in part under the labour law, but excluded from many important provisions. Separate regulation adopted in 2009 falls short of international labour standards.

<sup>38</sup> Excluded from the labour law. No other legislation is in place. Standard contract adopted in 2009 falls short of international labour standards.

<sup>39</sup> Law published in official gazette (Issue No. 29) on 13 December 2016.

<sup>40</sup> Enacted pursuant to Royal Decree No. M/51 dated 27 September 2005, as amended pursuant to Royal Decree No. M/24 dated 24 March 2013, and as amended pursuant to Royal Decree No. M/46 dated 25 March 2015.

year that follows the due date of the third month of delay; or

- the worker has denounced a commercial cover-up activity involving the employer, with evidence to this effect and without involvement on his/her part.<sup>41</sup>

Both Saudi Arabia and Qatar continue to impose exit bans, though in Qatar, the 2015 law introduces a process of appeal for the migrant, in cases where the employer denies their request to leave the country (in such cases, workers can lodge a complaint with the Exit Permit Grievances Committee, which allows the employer 72 hours to object to the departure. The Committee and has the power to issue an exit permit).<sup>42</sup>

More extensive changes to sponsorship have taken place in the UAE, where three Decrees represent an important change in employer-worker relations by allowing “either party... to unilaterally terminate the employment relation at any time; neither party may be obliged to continue in this relationship against his/her free will” (Article 6, Decree 764). This applies both to the ‘first two-year’ contract, and a ‘renewed’ contact, provided that the notice provisions are complied with, or payment is made in lieu of notice being given (maximum notice of three months)(Decree 765).

Furthermore, the UAE now also allows a migrant worker to transfer to a new employer and be issued a new work permit without the permission of their current employer when the current employer has failed to meet their legal or contractual obligations; when the business has closed down; when a worker has brought a successful labour complaint against their current employer; or when the worker settles indemnities with the first employer in line with contract termination clauses (up to three months’ salary). In addition, any worker who has completed the first two-year contract may be transferred to the new employer without conditions, and without their current employer’s approval (Decree 766).

The Tripartite Committee of the ILO Governing Body (in March 2016) made comments on the new legislation calling on the UAE to ensure that there is effective implementation of its provisions, and that workers have access to a mechanism through which they can resolve complaints and sanctions can be made against offenders (ILO 2016a). The UAE is also requested to share data on the number of migrant workers who had recourse to complaints mechanisms and the outcomes; and on the number of transfers of employment that have occurred, prior to and following the new legislation.

In another promising sign, in October 2016 Oman announced plans to scrap the NOC required to transfer to another employer;<sup>43</sup> a decisions which may have been prompted by recent changes in neighbouring countries, and a poor ranking in the Global Competitive Report 2016-17 of the World Economic Forum due to restrictive labour regulations (Gulf Business, 2016).

An interesting announcement was made by the government of Bahrain in September 2016, noting that in the second quarter of 2017 it will introduce a new ‘flexible’ work permit for irregular migrant workers under which workers can apply to work without a sponsor for two years. The stated purpose of the visa was to respond to the need of the private sector for flexibility, including immediate and temporary sources of labour. Under the scheme, which is not available to those who already have a sponsor or had one until September 2016, applicants would bear their own issuance fees of 200 Bahraini dinar (BD) (approximately US\$530), healthcare fees of BD144 (approximately US\$380) and a

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<sup>41</sup> The Minister of Labor may also authorize such a transfer in the event of a dispute between the worker and his/her sponsor/ employer before judicial authorities if it is revealed that the employer (but not the worker) is unduly attempting to prolong such dispute. Indicators of such an intention include the unjustified absence of the employer (or his/her representative) at two or more hearings before the same judicial level, or if the judicial authority recommends the sponsorship transfer in order to avoid the worker suffering any harm.

<sup>42</sup> “New Expat Law Awareness Campaign Proves Popular”, Government of Qatar press release, issued 1 December 2016. The Exit Permit Grievance Committee will be composed of officials from the Ministry of Interior, the Ministry of Administrative Development, Labour and Social Affairs, and the National Human Rights Committee.

<sup>43</sup> At the time of completing this paper, Oman has not yet implemented the plan to abolish the ‘no objection certificate’.

monthly social insurance fee of BD30 (approximately US\$80). The expenses would also include a deposit of the price of a flight ticket to the worker's home country. Flexible visa holders will be able to work for multiple employers simultaneously, be it individuals or organizations, and essentially be 'self-employed' rather than be tied to a *kafeel*. The LMRA's stated plan is to make the scheme operational in the second quarter of 2017 and to accept 2,000 employees every month through a dedicated centre to administer the scheme. Domestic workers will not be eligible for the visa (Mansour, 2016). The impact of this initiative will, however, deserve further study in the future to measure its impact on migrant workers and their labour market mobility.



## 6. SUGGESTED POLICY MEASURES TO ENHANCE LABOUR MARKET MOBILITY AND FAIR MIGRATION

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This paper argues that the current sponsorship arrangements result in an imbalanced relationship between employers and migrant workers that may impede internal labour market mobility. Such arrangements place a high responsibility – and often a burden – on employers and may result in abuse of workers. To address these concerns, alternative models of sponsorship can be pursued which place the role of regulation and protection more clearly with the government. This argument is supported by leading experts in the area of migration regulation, as shown by the outcomes of an interregional meeting in 2014, where the experts agreed that “while regulating immigration is the sovereign right of all nations, a legitimate criticism of *kafala* is that it has transitioned from immigration control to also include labour relations where the employer is the *kafeel* (sponsor)” and noted that “*kafala* should not be a tool for employment and labour relations, and that reform is needed in this respect to de-link the employer-worker relationship from the immigration status of the migrant worker” who has arrived legally in a country for a specified period to work (ILO, 2015, p. 10).

This notion of exploring ways to end the control by employers over migrant workers and possible abuse of the latter while enhancing labour market mobility was elaborated further – building upon positive developments in Bahrain (2009-11) and the UAE (2016) – during the senior officials meeting of the Abu Dhabi Dialogue in May 2016 (Glind, van de, 2016). Furthermore, delegations from countries in the Middle East, Asia and the Pacific at the ILO Asia Pacific Regional Meeting (December 2016) adopted the Bali Declaration in which they prioritized enhancing labour migration policies based on international labour standards that “redress employer-worker relationships that impede workers’ freedom of movement, their right to terminate employment or change employers, taking into account any contractual obligations that may apply, and their right to return freely to their countries of origin” (ILO, 2016c, p. 3).

### Core measures proposed

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To achieve enhanced internal labour market mobility and address abuse in the employer-migrant worker relationship, the following policy measures should be considered:

#### i) A migrant worker’s entry, residence and work permit are not tied to a specific employer

Implementing this policy measure would mean that an employer no longer controls the terms and conditions of a migrant worker’s immigration and employment status in the country.

- One option could be to introduce a so-called ‘employment-based visa’ whereby a migrant worker applies for and renews visas under his or her own name. Under this system, the recruitment process would still be ‘employer-led’ as the migrant worker would need to demonstrate that they have a legitimate job offer in order to begin the visa application procedure, yet there would be no requirement to specify the name of an individual employer on the migrant worker’s entry papers, immigration visa, work visa, or passport for the purposes of sponsorship (Hamill, 2012). An employment visa, rather than the sponsor, would regulate the migrant worker’s entry into the country. Such an employment-based visa would likely curtail the fraudulent practice of visa trading, since the issuance of permits would no longer be under the name of the employer.
- An alternative is to introduce sector-specific visas that would allow workers to change employers only within the sector specified on their work permit. This ensures an adequate labour supply in the designated sectors, while enabling workers to leave exploitative situations or simply seek employment with more favourable working conditions.

## ii) A migrant worker is responsible for renewing his or her own visas, work and residence permits

To prevent a situation whereby a worker becomes undocumented and falls into irregular migration status due to an act of negligence by the employer, under this option the migrant worker is responsible for the renewal (at reasonable or no cost) of his or her own visas.

- To reduce the need and frequency of visa renewals, work and residence permits should be sufficiently longer in duration than the employment contract.
- To reduce travel costs and save time for migrant workers, innovative models for permit renewal should be explored, including online mechanisms, mobile units that visit work sites, and migrant drop-in centres near living areas of migrant workers. Awareness raising campaigns, and support to overcome workers' language barriers would also support workers' capacity for permit renewal.

## iii) A migrant worker has the possibility to resign and terminate her/his employment contract at will, without losing valid immigration status

In line with recent reforms in the UAE, a migrant worker should be able to end a contract for any reason by giving reasonable notice (in line with the stipulations of the contract) and without needing to obtain written approval from the current employer. In the event of an abusive situation, a migrant worker should be able to terminate their contract immediately.

- After giving notice of resignation, a migrant worker should be permitted to return to his or her home country without facing fines, detention, or immigration sanctions. A migrant worker should not face the prospect of being 'returned' to the same employer or private employment agency against his or her will (Hamill, 2012). Nor should an employer have the legal responsibility to report to the police any migrant worker who has decided to leave the employment relationship.
- Policy measures which alleviate employers' fears related to the potential loss of workers and financial investment (i.e. recruitment fees and associated costs) if the migrant worker terminates the contract early should be considered. This might include the introduction of an insurance scheme similar to that currently operating in Jordan.<sup>44</sup>
- The loss of employment shall not in itself imply the loss of permission to reside in the country. As stipulated in Article 8 of the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), on the condition that the worker has resided legally in the country for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of employment.
- To alleviate the dependence of migrant workers on their employer to maintain their immigration status, automatic 'grace periods' should be granted to allow migrant workers to remain in the country for a reasonable period of time in the event of dismissal or early termination of the employment contract. Grace periods would ensure migrant workers are not at risk of suddenly falling into irregular migration status, nor would they feel compelled to remain in an abusive employment situation for fear of becoming irregular.<sup>45</sup> A grace period would remove the power of employers to abruptly terminate a migrant worker's contract and then forcibly repatriate the worker at short notice (Hamill, 2012). This would also deter employers from seeking to extort money from the migrant worker in exchange for written approval to resign from the job. It should be noted here that grace periods would generally not be necessary if work and residence visas are of sufficiently longer duration than employment contracts.

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<sup>44</sup> For example, Aslan, R. and Mazen, R. (forthcoming). Jordanian comprehensive insurance scheme for migrant domestic workers. (ILO, Geneva).

<sup>45</sup> ILO Recommendation No. 151, accompanying Convention No. 143, in particular paragraph 31: states that "a migrant who has lost his employment should be allowed sufficient time to find alternative employment, at least for a period corresponding to that during which he may be entitled to unemployment benefit; the authorisation of residence should be extended accordingly."

#### iv) A migrant worker has the possibility to change employer without the consent of her/his current employer, and without losing valid immigration status

A migrant worker should be able to identify new employers independently and elect whether or not to work for them. In this way, the migrant worker would no longer be inextricably linked to a single employer. This measure would enhance internal labour market mobility to the benefit of migrant workers and employers.

- A migrant worker should be eligible for a visa extension that allows her or him to extend legal residence in the country for a reasonable period of time. This would facilitate the process of switching employers in case of any difficulties that arise in the transfer process (Hamill, 2012).
- Importantly, the right to change employers plays a crucial role in facilitating a migrant worker's access to justice. A visa extension should be issued to persons wishing to pursue legal recourse against their employer through labour tribunals and/or criminal courts until their claims have been resolved. The right to pursue compensation is futile for migrant workers who have insecure immigration status, and are unable to work with another employer in order to financially support themselves to remain in the country.

#### v) A migrant worker is able to exit the country without seeking approval from her/his employer

The exit permit requirement should be abolished in its entirety in countries where it still exists, as it places serious restrictions on a migrant worker's freedom of movement. Similarly, exit bans should be eradicated whereby an employer is able to block a migrant worker from departing the country of destination upon lodging a complaint with immigration authorities.

- In states that do not have exit permits but still require sponsors to cancel residency permits, the law/regulations should be amended to enable workers to appeal a cancellation of their permit as well as the ability to make a claim for any unpaid wages.

## Complementary measures proposed

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For *kafala* reform to be truly effective, it should be accompanied by complementary policy, legislative and enforcement measures that aim to further reduce migrant workers' vulnerabilities to abuse and exploitation and redress the unequal power relationship between employers and migrant workers under the *kafala* sponsorship system. What follows is a non-exhaustive list of suggested complementary measures, which are supplemented by proposed recruitment-specific measures covered in a 2016 ILO White Paper (ILO, 2016b):

#### a) Employer-migrant worker relations should be governed by the labour law and a standard contract

The relationship between the migrant worker and employer should be governed by the labour law, and thus the scope of the labour law should be extended to all categories of migrant workers, including domestic workers and agricultural workers. In cases where these workers may already receive partial protection under the labour law, exclusionary provisions should be eliminated so that full coverage of the law applies.

In accordance with the labour law, a standard employment contract, signed by both the employer and migrant worker, should spell out unambiguous and straightforward termination clauses that are not under the control of the sponsor, including the migrant worker's right to resign and to change employers at will. The standard contract should also provide clarity in terms of compensation arrangements as well as the minimum working conditions and rights to which a migrant worker should be entitled. A copy of the standard

contract should be made in the worker's native language (or a language clearly understood by him or her) and should be used in case of any labour dispute. Furthermore, in the case of a domestic worker, the standard contract should include unambiguous mobility clauses that stipulate the migrant worker's right to leave the household/ workplace during work hours, rest hours and days off, without having to notify or seek permission from the employer.

#### **b) A national coordination body should be established, or strengthened where already in existence**

To address the challenges of institutional fragmentation, it is crucial that a central coordinating body under the Ministry of Labour regulate the entry, residence, employment, transfer and departure of migrant workers. The responsibilities of this coordination body would include issuing permits, enforcing employment contracts, and carrying out labour inspection activities (Fakih and Marrouch, 2014). The body would oversee governance of the labour force, increase policy coherence and streamline the work of different ministries with regards to migrant workers. If implemented well, benefits would include increased harmonization between immigration and labour systems and policies, more consistent recruitment processes, and improved ability to inspect and respond to work-related abuses. In considering such coordination mechanisms, authorities may draw lessons from Bahrain's LMRA.

#### **c) Address particular vulnerabilities of live-in domestic workers**

Live-in domestic workers are particularly vulnerable to abuse by their employer and limitations on mobility. To address this, live-out models of domestic work should be explored, including freelancing mechanisms and on demand services, while domestic work should be covered under the labour law or other regulations.

#### **d) Mechanisms should be introduced to decrease number of forced irregular workers**

Introducing bridging visas would alleviate the exploitation associated with undocumented work, allowing migrant workers to remain in the country long enough to locate a new employer, and long enough to complete a possible court case and benefit from a possible financial settlement. Migrant workers who have become irregular through no fault of their own should be provided a visa (of a minimum of three months to regularize their status temporarily) through which they would be able to secure new employment with regular status. If at the end of this timeframe an individual still cannot find regular employment, his or her case would be passed on to the relevant authority to make a final judgment on their residency status (Hamill, 2012). Such measures would contribute significantly to internal labour market mobility given that 10-15 per cent of all migrant workers in the GCC are thought to be in irregular situations (Shah, 2014). This practice in turn could contribute tremendously to reducing the overall cost of recruitment of workers (by recruiting workers who are already at destination rather than recruiting additional migrant workers from abroad).

#### **e) Dispute settlement and compensation mechanisms should be efficient and well-functioning**

Migrant workers should have the right to file labour-related grievances with the Ministry of Labour, assured that proactive measures will be taken to make inquiries and verify allegations through credible investigation. Migrant workers need to be able to access complaints procedures without fear of intimidation or retaliation and have access to free or affordable legal assistance and adequate language translation services. Reforms should also incorporate some measures of due diligence to ensure migrant workers are made aware of their rights and informed on how to access and navigate dispute settlement procedures.

Capacity building training for law enforcement officials, lawyers and the judiciary on how to protect the rights of migrant workers, including gender-sensitivity training should also be undertaken.<sup>46</sup>

Compensation schemes should be set up to ensure that migrant workers are able to recoup any unpaid salaries they are owed and recruitment fees they have paid. Provisions should be made to extend the worker's visa until their claims have been resolved (Hamill, 2012). Access to unemployment benefits in line with provisions under the social security law (where applicable) may also be required for the worker to support him/herself upon termination of employment.

## f) Legislative and regulatory frameworks should adhere to ILO's Fundamental Principles and Rights at Work

National migration frameworks should adhere to the eight core conventions<sup>47</sup> that make up ILO's Fundamental Principles and Rights at Work (FPRW) and take account of other relevant international labour standards.<sup>48</sup> The rights and freedoms expressed in these standards should be accorded to all categories of workers, including migrant workers, domestic workers and irregular workers, and should be accompanied by credible law enforcement.

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<sup>46</sup> In particular, dealing with gender-based violence.

<sup>47</sup> Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1951 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Minimum Age Convention, 1973 (No. 138); The Worst Forms of Child Labour Convention, 1999 (No. 182); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

<sup>48</sup> While the countries in the region have not ratified the Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), these migrant worker Conventions also serve as a relevant framework for labour migration governance. Other relevant standards include the Private Employment Agencies Convention, 1997 (No. 181) and the Domestic Workers Convention, 2011 (No. 189). Moreover, besides ratifying some of the FPRW Conventions, countries in the regions have ratified other relevant instruments. For example, the Labour Inspection Convention, 1947 (No. 81) has been ratified by five GCC countries: Bahrain, Kuwait, Qatar, Saudi Arabia, and UAE.

## 7. CONCLUSION

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Arguably, the most problematic feature of sponsorship systems in the GCC countries, Lebanon and Jordan is the delegation of responsibility by the state to the private employer to oversee both a migrant worker's immigration and employment status. Through the linking of residence and work permits a migrant worker's immigration status is dependent on the contractual relationship with the sponsor. This grants employers a level of control over migrant workers which may violate the latter's labour rights and impede internal labour market mobility. Therefore, the primary policy objective recommended in this paper is to explore options to end the control employers currently have over migrant workers with regards to their mobility and legal status.

Measures to free workers from being tied to an individual employer, to enable workers to be responsible for the renewal of their own permits, and to allow workers to resign, change employers and exit the country without seeking permission or falling into an irregular migration status, would have profound impact on the realization of migrant workers' rights in the region. It would also create a more dynamic labour market, enhance productivity and create a more robust economy that is more resilient to both domestic and foreign shocks.

Addressing the most exploitative elements of *kafala* and increasing internal labour market mobility can help countries in the Middle East prepare for additional challenges in the region related to the sustained low oil price, efforts to nationalize the labour force, high youth and female unemployment of nationals, and international scrutiny on workers' rights. The benefits of greater labour market efficiency would be felt immediately in the areas of skills development and skill matching, and in the recruitment of migrant workers from the local labour supply at destination rather than the costly recruitment from countries of origin. Such reforms also have the potential to reduce the number of irregular migrant workers in the region, and would contribute to lower overall law enforcement costs.<sup>49</sup> Finally, removing restrictive labour policies would increase competitiveness and result in better scores in the annual Global Competitiveness Index by the World Economic Forum.

As such, reform of employer-migrant worker relationships in the Middle East has the potential to offer a triple win – for governments, employers and migrant workers.

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<sup>49</sup> It would also greatly contribute to addressing fraudulent activities surrounding the use of threats of arrest, detention and deportation of irregular migrant workers. In some countries, practices have been reported where detained migrant workers are asked for large amounts of money to release them on the spot with no guarantee not to be detained the next time they are apprehended.

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## SUMMARY

The unique aspects of sponsorship systems in the Middle East, commonly known as *kafala*, result in a delegation of responsibility by the State to the private employer to oversee both a migrant worker's immigration and employment status. This is inherently problematic as it creates an imbalance between the rights and abilities of workers and employers to terminate an employment relationship, and be mobile on the labour market in the respective country.

The paper presents a series of suggested evidence-based policy measures for reform of current sponsorship systems, which may enhance internal labour market mobility and promote fair migration.

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